IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

WESLEY and DORIS BARNETT, a joint venture, d/b/a WESLEY BARNETT FARMS, et al.,	§	
Plaintiffs,	§	
v.	§	
FEDERAL CROP INSURANCE CORP., PRODUCERS AG INSURANCE GROUP, INC., NAU COUNTRY INSURANCE COMPANY, RURAL COMMUNITY INSURANCE AGENCY, INC., ARMtech INSURANCE SERVICES, INC., RAIN AND HAIL, L.L.C., and CROP 1 INSURANCE DIRECT, INC.,	§	**No. 2-07CV-245-J**
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs, complaining of the Federal Crop Insurance Corporation, Producers Ag Insurance Group, Inc., NAU Country Insurance Company, Rural Community Insurance Agency, Inc., ARMtech Insurance Services, Inc., Rain and Hail, L.L.C., and Crop 1 Insurance Direct, Inc., and for cause of action would respectfully show the Court as follows:

I. PARTIES

A. Plaintiffs

The Plaintiffs are identified below:

1. Dennis Anthony, d/b/a Anthony Farm & Cattle, 1625 W. 9th, Friona, Texas 79035.

2. Richard and Erin Barnett, d/b/a Ricky Barnett Farms, a partnership, 1303 W. 7th, Friona, Texas 79035.

3. Wesley and Doris Barnett, a joint venture, d/b/a Wesley Barnett Farms, 1709 W. 9th, Friona, Texas 79035.

4. 3 J's Farming & Cattle, Inc., a Texas corporation, P.O. Box 1008, Farwell, Texas 79325.

5. J.B. and Mable Sue Barrett, 1298 CR 14, Bovina, Texas 79009.

6. Cotton River Cattle Company, a Texas corporation, P.O. Box 1008, Farwell, Texas 79325.

7. Monty and Bonnie Barrett, 4801 99th, Lubbock, Texas 79424.

8. J. Kevin Belt and Cindy Belt, a joint venture, 2701 W. 14th, Plainview, Texas 79072.

9. Randall Roberts, P.O. Box 337, Plainview, Texas 79072.

10. Raider Farms, Inc., a Texas corporation, P.O. Box 431, Bovina, Texas 79009.

11. Thomas M. Beauchamp and Debra K. Beauchamp Partnership, a Texas partnership, P.O. Box 116, Bovina, Texas 79009.

12. Kim Caffey, 1990 CR E, Friona, Texas 79035.

13. Cynthia Cotton, 221 21st Place, Santa Monica, California 90402-2501.

14. Tony Beauchamp, P.O. Box 66, Bovina, Texas 79009.

15. Keith Burch, 2440 CR U, Friona, Texas 79035.

16. Valter Nowell, 12910 Winding Oak, Lindale, Texas 75771.

17. Iva Carpenter, 32918 Sawgrass St., Magnolia, Texas 77354-6894.

18. Ronald and Flonita Ashford, 504 W. 20th, Muleshoe, Texas 79347.

19. Lloyd and Janice Bradshaw, a joint venture, 669 CR 21, Muleshoe, Texas 79347.

20. Bradshaw Partnership, P.O. Box 13, Paradise, Texas 76076.

21. Kirby and Vickie Burch, 950 CR 21, Friona, Texas 79035.

22. Burch Farms, Inc., a Texas corporation, P.O. Box 226, Lazbuddie, Texas 79053.

23. David and Kathleen Carthel, a joint venture, 2306 FM 1172, Friona, Texas 79035.

24. KCC Farms, Inc., a Texas corporation, 935 FM 1731, Farwell, Texas 79325.

25. Rocking C Farm, Inc., a Texas corporation, 935 FM 1731, Farwell, Texas 79325.

26. Donald F. and Dot Christian, 941 FM 1731, Farwell, Texas 79325.

27. Circle C Farms, a partnership, 757 FM 1731, Farwell, Texas 79325.

28. Troy Christian, 899 FM 1731, Farwell, Texas 79325.

29. Frances Willard McNerlin, 128 W. Huron Circle, Nocona, Texas 76255.

30. T&W Ag, Inc., a Texas corporation, 899 FM 1731, Farwell, Texas 79325.

31. E and P Farms, a partnership, 1013 FM 1731, Farwell, Texas 79235.

32. Cinco Farms, Inc., a Texas corporation, 899 FM 1731, Farwell, Texas 79325.

33. Able Acres, Inc., a Texas corporation, P.O. Box 340, Bovina, Texas 79009-0340.

34. John Caldwell, as executor of the Estate of Tom Caldwell, 67 Baker Bridge Rd., Lincoln, Massachusetts 01773.

35. Ronald D. and Frances Clark, 1746 CR 20, Friona, Texas 79035.

36. Crest Agro, Inc., a New Mexico corporation, 2791 SR 108, Texico, New Mexico 88135.

37. Jim Roy and Paula Daniel, a joint venture, 1279 CR 28, Friona, Texas 79035.

38. Kendall and Tracy Devault, 364 CR 1, Farwell, Texas 79325.

39. Catfish Draw Farms, Inc., a Texas corporation, 364 CR 1, Farwell, Texas 79325.

40. Don Williams, P.O. Box 241, Farwell, Texas 79325.

41. JBW Farms, Inc., a Texas corporation, 364 CR 1, Farwell, Texas 79325.

42. B. Ellis Donelson Farms, Inc., a Texas corporation, 472 Arrowhead Point Rd., Belton, Texas 76512.

43. Martha Lee Donelson Farms, Inc., a Texas corporation, 472 Arrowhead Point Rd., Belton, Texas 76512.

44. Three County Farms, Inc., a Texas corporation, 344 CR 1, Farwell, Texas 79325.

45. K Bar T Farms, Inc., a Texas corporation, 364 CR 1, Farwell, Texas 79325.

46. Bert and LaMoinWilliams, 344 CR 1, Farwell, Texas 79325.

47. Owen and Melody Drake, 1400 Jackson Ave., Friona, Texas 79035.

48. David Conner, P.O. Box 850, Fairacres, New Mexico 88033.

49. Lonnie and Teresa Ellis, 2254 CR Q, Friona, Texas 79035.

50. Eugene and Dorothy Ellis, 2370 Hwy 86, Friona, Texas 79035.

51. George A. and Andrea B. Frye, a joint venture, 2513 FM 1172, Friona, Texas 79035.

52. Harland H. and Hertha A. Frye, a joint venture, HCR 6 Box 82, Hereford, Texas 79045.

53. David and Uldene Grimsley, a joint venture, 1717 W. 9th, Friona, Texas 79035.

54. Jayson and Jyl Grimsley, a joint venture, d/b/a Jayson Grimsley Farms, 1708 W. 9th, Friona, Texas 79035.

55. J.C. & Frances Mills Family Partnership, Ltd., P.O. Box 190, Abernathy, Texas 79311.

56. Jimmy and Barbara Grimsley, a joint venture, P.O. Box 485, Friona, Texas 79035.

57. Gary and Gail Hand, a joint venture, 1304 W 8th, Friona, Texas 79035.

58. John and Billie Jo Hand, Box 2310 Rt. 1, Friona, Texas 79035.

59. Doug and Lisa Harrison, 1375 Victoria, Clovis, New Mexico 88101.

60. Darren Haseloff, individually, and d/b/a Haseloff Farms, P.O. Box 797, Farwell, Texas 79325.

61. Pine Valley Farms, Inc., a Texas corporation, 609 Hwy 214, Muleshoe, Texas 79347.

62. Ethel Storrs, 6016 Oxford Ave., Lubbock, Texas 79413.

63. Jody Winders, P.O. Box 210, Elida, New Mexico 88116.

64. Keith Hicks, 609 Hwy 214, Muleshoe, Texas 79347.

65. H Bar H Farms, a Texas partnership, 1195 FM 2396, Farwell, Texas 79325.

66. Vane and Alice Dosher, P.O. Box 585, Farwell, Texas 79325.

67. Cris and Sylvia Ingram, a joint venture, 1626 W. 9th, Friona, Texas 79035.

68. Michael R. and Sandra Berend, 805 Arrah, Friona, Texas 79035.

69. Billy R. and Brookie Johnson, 105 CR 11, Farwell, Texas 79325.

70. Scott and Patti Johnson, individually, and d/b/a Scott Johnson Farms, 120 US Hwy 84, Farwell, Texas 79325.

71. Steven and Carla Kaltwasser, a joint venture, P.O. Box 967, Farwell, Texas 79325.

72. Gilbert Kaltwasser, 483 CR 7, Farwell, Texas 79325.

73. Daryl Kirkpatrick, P.O. Box 130, Bovina, Texas 79009.

74. Garry and Carolyn Beauchamp, 101 Sandzen Drive, Clovis, New Mexico 88101.

75. Karen Beauchamp Kirkpatrick, P.O. Box 130, Bovina, Texas 79009.

76. Black Farm Center, Inc., a Texas corporation, P.O. Box 339, Friona, Texas 79035.

77. Jerry and Joyce Loftin, P.O. Box 339, Friona, Texas 79035.

78. E.C. and Patsy Meil, 125 Urbine Circle, Rockwall, Texas 75032.

79. Fred and Ruth Locker, P.O. Box 68, Muleshoe, Texas 79347.

80. Jerry and Raye Jene London, 1210 Jackson, Friona, Texas 79035.

81. London Farms, a Texas partnership, 1210 Jackson, Friona, Texas 79035.

82. Hub Farms, Inc., a Texas corporation, 1210 Jackson, Friona, Texas 79035.

83. M'Lynda, Inc., a Texas corporation, 1210 Jackson, Friona, Texas 79035.

84. McLellan Farms, a partnership, P.O. Box 102, Friona, Texas 79035.

85. Mayfield Brothers, a joint venture, 540 CR B, Texico, New Mexico 88135.

86. Wanda Mayfield, 419 FM 1731, Farwell, Texas 79325.

87. William Sam Mears, 1215 Elm St., Friona, Texas 79035.

88. C.W. and Tim Meeks, a partnership, 2975 CR 2, Friona, Texas 79035.

89. Leon Meeks, P.O. Box 444, Farwell, Texas 79325.

90. John Miller Farms, a partnership, 2989 CR BB, Muleshoe, Texas 79347.

91. Crooked Gate, Inc., a Texas corporation, 2308 W. 5th Street, Plainview, Texas 79072-7612.

92. Alan and Leigh Monroe, 1970 FM 2397, Friona, Texas 79035.

93. Friona Hub Farms, Inc., a Texas corporation, 1202 W. 8th, Friona, Texas 79035.

94. Clarence Monroe Family, Ltd., a Texas limited partnership, 1202 W. 8th, Friona, Texas 79035.

95. Monroe Partners, a partnership, 1202 W. 8th, Friona, Texas 79035.

96. Guy Wayne and Kimberly Nickels, 2010 FM 145, Muleshoe, Texas 79347.

97. E.W. Nickels Farms, Inc., a Texas corporation, 1715 West Ave. I, Muleshoe, Texas 79347.

98. Nicky Kim and Deborah Nickels, individually, and d/b/a Nicky Nickels Farms, 2130 FM 145, Muleshoe, Texas 79347.

99. Jered Trey Nickels, 2130 FM 145, Muleshoe, Texas 79347.

100. D&P Norton Farms, Inc., a Texas corporation, 401 US Hwy 60, Farwell, Texas 79325.

101. Norton Partnership, a partnership, 401 US Hwy 60, Farwell, Texas 79325.

102. Don and Joi Oppliger, P.O. Box 669, Farwell, Texas 79325.

103. Carol Reeve Perry, 7414 93rd St., Lubbock, Texas 79424.

104. Donald and Judy Puckett, 540 CR 30, Muleshoe, Texas 79347.

105. Floyd S. Reeve, P.O. Box 876, Friona, Texas 79035.

106. Rocking D Farms, Inc., a Texas corporation, P.O. Box 876, Friona, Texas 79035.

107. Marie Axelson, 9304 Admiral Lowell Ave., NE, Albuquerque, New Mexico 87111.

108. Erma Brownd, 703 Arrah, Friona, Texas 79035.

109. Yancey Farms, Inc., a Texas corporation, P.O. Box 876, Friona, Texas 79035.

110. Valoris Osborn, 903 Arrah, Friona, Texas 79035.

111. H. Hollis and Myrna L. Horton, 1001 W. 11th Street, Friona, Texas 79035.

112. Michael R. and Becky Riethmayer, 1711 West 9th, Friona, Texas 79035.

113. 4R's Land & Cattle, Inc., a Texas corporation, 1711 West 9th, Friona, Texas 79035.

114. Harold D. Southward, 1308 Evelyn Court, NE, Albuquerque, New Mexico 87112.

115. J.R. Southward Estate Partnership, a partnership, 405 W. 14th, Friona, Texas 79035.

116. Geneiva Stanley, 1980 FM 2397, Friona, Texas 79035.

117. GMKJ Partnership, 1980 FM 2397, Friona, Texas 79035.

118. Robbie Boggess, trustee of the Boggess Family Trust, 620 Front Ave., Columbus, Georgia 31901.

119. Mimro Farms, LLC, a Texas limited liability company, P.O. Box 9158, Amarillo, Texas 79105.

120. Alan Rhodes and Lynn Tate, individually, and d/b/a T&R Farms, P.O. Box 9158, Amarillo, Texas 79105.

121. Art Schaap d/b/a Highland Farms, 650 CR O, Clovis, New Mexico 88101.

122. Joe and Esther Steelman, a joint venture, 1319 FM 1731, Bovina, Texas 79009.

123. Timothy Luke Steelman, 1947 CR 14, Friona, Texas 79035.

124. E.G. Steelman, 1303 FM 1731, Bovina, Texas 79009.

125. Dennis and Tanya Steinbock, individually, and Dennis Steinbock d/b/a Dennis Steinbock Farms, 1097 CR 17, Muleshoe, Texas 79347.

126. Shirley Steinbock, 582 CR 28, Muleshoe, Texas 79347.

127. Tommy and Dianne Tatum, individually, and d/b/a Tatum Cattle, 2544 FM 3140, Friona, Texas 79035.

128. Garvin Thorn d/b/a Garvin and Janette Thorn, 2700 CR T, Friona, Texas 79035.

129. Wenonah Hunton, trustee of the Hunton Family Trust, P.O. Box 104, Farwell, Texas 79325.

130. B and Z Thorn, Inc., a Texas corporation, 2400 CR R, Friona, Texas 79035.

131. Welch Farms, a Texas partnership, 2328 CR 7, Friona, Texas 79035.

132. Gene and Mildred Welch, a joint venture, 2328 CR 7, Friona, Texas 79035.

133. Bill and Jeri Lynn White, P.O. Box 926, Friona, Texas 79035.

134. Rosie Vasek, 600 Crescent Drive, Littlefield, Texas 79339.

135. Teddy and Sharon White, 1996 CR 15, Friona, Texas 79035.

136. Mildred Mingus, 1210 White Ave., Friona, Texas 79035.

137. Mark and Joyce Williams, 358 CR 1, Farwell, Texas 79325.

138. MW Farms, Inc., a Texas corporation, 358 CR 1, Farwell, Texas 79325.

139. Robert Vanderdussen, 449 CR I, Clovis, New Mexico 88101.

140. Pheasant Ridge Farms, Inc., a Texas corporation, 358 CR 1, Farwell, Texas 79325.

141. Ryan and Annie Williams, P.O. Box 736, Farwell, Texas 79325.

142. Endurance Farms, Inc., a Texas corporation, P.O. Box 736, Farwell, Texas 79325.

B. Defendants

The Defendants are identified below:

1. The Federal Crop Insurance Corporation is a corporation established by the United States of America to oversee and administer, among other things, crop insurance for American farmers. The Corporation may be served by serving Richard B. Roper, U.S. Attorney for the Northern District of Texas, Earle Cabell Federal Building, 1100 Commerce Street, Suite 300, Dallas, Texas 75242-1699; and by serving Michael Mukasey, Attorney General of the United States, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001; and by serving the Federal Crop Insurance Corporation, United States Department of Agriculture/Federal Crop Insurance Corporation, Risk Management Agency, Stop 0801, 1400 Independence Ave., SW, Room 6092-South, Washington, D.C. 20250-0801.

2. Producers Ag Insurance Group, Inc., also doing business as PA Insurance Group, Inc., is a Delaware corporation and may be served by serving its registered agent, C T Corporation System, 350 North St. Paul St., Dallas, Texas 75201.

3. NAU Country Insurance Company is a Minnesota Company and may be served by serving its registered agent, Naman, Howell, Smith & Lee, c/o Chris Kling, 111 University Drive East, Suite 210, College Station, Texas 77840-1700.

4. Rural Community Insurance Agency, Inc., also doing business as Rural Community Insurance Services, is a Minnesota corporation and may be served by serving its registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company, 701 Brazos St., Suite 1050, Austin, Texas 78701.

5. ARMtech Insurance Services, Inc. is a Texas corporation and may be served by serving its registered agent, Sam Scheef, 7101 82nd St., Lubbock, Texas 79424.

6. Rain and Hail, L.L.C. is an Iowa limited liability corporation and may be served by serving its registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company, 701 Brazos St., Suite 1050, Austin, Texas 78701.

7. Crop 1 Insurance Direct, Inc., also doing business as Crop 1 Insurance Agency, Inc., is a Wyoming corporation and may be served by serving its registered agent, Joseph R. Heffington, 1614 Sidney Baker St., Kerrville, Texas 78028.

8. To the extent Defendants have no registered agent for service of process in Texas, and to the extent any Defendant does not maintain a regular place of business in Texas, this Court has personal jurisdiction over each of the Defendants pursuant to the Long Arm Statutes of Texas and the Federal Court's application thereof. Fed. R. Civ. P. Rule 4; Tex. Civ. Prac. & Rem. Code § 17.041, *et. seq*. The claims made in this case arise out of or are connected with business that Defendants transacted in the State of Texas. Defendants have conducted significant business in the State of Texas and have sufficient contacts with the State of Texas such that this Court's exercise of personal jurisdiction over said Defendants would not offend traditional notions of fair play and substantial justice. Such Defendants have, therefore, appointed the

Texas Secretary of State as their registered agent for service of process. Service of process may be had on the Secretary of State by serving the Texas Secretary of State, Statutory Documents Section – Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079.

II. JURISDICTION AND VENUE

A. Jurisdiction

Jurisdiction in this Court is mandatory and is based on the Court's original jurisdiction, pursuant to 28 U.S.C. § 1331, because this matter arises under the Constitution, laws, or treaties of the United States of America. This matter involves the denial and/or reduction of GRIP crop insurance indemnity payments based on a "good farming practices" determination made by the Federal Crop Insurance Corporation for insured corn crops planted in the Northern District of Texas.

7 U.S.C. § 1508(j)(2) requires that a claim arising from a denial of a crop insurance indemnity claim by the Federal Crop Insurance Corporation or an approved provider be brought in the United States District Court for the district in which the insured farm is located. All of Plaintiffs' farms that are the subject of this litigation are located in the Northern District of Texas.

Defendants' wrongful application of the "good farming practices" exclusion to deny and/or reduce Plaintiffs' GRIP indemnity claims is a substantial, disputed question of federal law that governs the outcome of Plaintiffs' federal and state law claims. Section 16(d) of the GRIP policies provides for judicial review in this Court.

The Federal Crop Insurance Corporation's determination that Plaintiffs failed to follow "good farming practices" and the Companies' denials and/or reductions of GRIP indemnity payments based upon that determination form part of the same case or controversy. Because all of Plaintiffs' claims against all Defendants arise out of a common nucleus of operative facts, this

Court has supplemental jurisdiction over the claims against all Defendants in their entirety pursuant to 28 U.S.C. § 1367. Because this Court has original jurisdiction over the federal question of "good farming practices" determinations, this Court also has supplemental jurisdiction over all other claims that are related to that federal question, including Plaintiffs' state law claims and causes of action.

B. No Need to Exhaust Administrative Remedies

Pursuant to the crop insurance enabling legislation, 7 U.S.C. § 1508(a)(3)(B)(iii)(I), a producer has the right to judicial review in the United States District Court of a "good farming practices" determination without exhausting any administrative processes. In its Final Agency Determination 044, issued April 18, 2005, the Federal Crop Insurance Corporation has acknowledged that exhaustion of administrative remedies is unnecessary.

C. Venue

Venue is proper in this Court, pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claims occurred in this district and because all of the Plaintiffs' farms that are the subject of this litigation are located within the Northern District of Texas.

III. TERMINOLOGY

For convenience of reference, the following terms will be used throughout this Complaint:

Reference to Plaintiffs will be made as "Plaintiffs," "farmer(s)," "landlord(s)," "insured(s)," and/or "producers," as the context may require.

Reference to Defendant Insurance Companies will be made as the "Companies" or individually by name. Any time it is alleged herein that the Companies acted or failed to act, it is

alleged that they did so through their employees, authorized agents, ostensible agents and/or other representatives.

Reference to the Federal Crop Insurance Corporation will be made as "FCIC." Any time it is alleged herein that FCIC acted or failed to act, it is alleged that it did so through its administrating agency, the Risk Management Agency.

Reference to the Risk Management Agency will be made as "RMA."

Reference to Group Risk Income Protection will be made as "GRIP," and such reference shall include the Harvest Revenue Option (HRO) endorsement purchased by and issued to Plaintiffs.

Reference to the National Agricultural Statistics Service will be made as "NASS."

"Good farming practice(s)" shall have that meaning assigned by paragraph 3(c)(2) of the Basic Provisions of the GRIP policies.

IV. FACTS

A. Relationship of Parties

1. Plaintiffs are engaged in farming in the Panhandle or South Plains of Texas and/or are landlords for those who are engaged in farming. Plaintiffs contracted with Companies engaged in the business of insurance in the State of Texas for insurance covering their respective corn crops for the 2006 crop year.

2. The Companies are private insurance companies who have contracted with FCIC to, among other things, sell and service crop insurance policies that are reinsured by FCIC. FCIC reinsures the Companies pursuant to a standard reinsurance agreement. FCIC is administered by RMA.

B. Background

1. Beginning in 2004, a particular type of crop insurance, GRIP, was marketed, sold, and issued by the Companies for field corn planted in the Panhandle and South Plains of Texas. GRIP is a product of federal legislation, regulation, and agency rules, and is designed to protect farmers against a decline in revenues, whether due to low yields on a county-wide basis, low prices, or some combination thereof. GRIP indemnity payments are based, in part, on yield estimates published by NASS, an agency within the United States Department of Agriculture. The HRO endorsement to the GRIP policies provides upward price protection.

2. Although corn grown in the Panhandle and the South Plains of Texas has historically been irrigated, non-irrigated corn has been grown for a number of years. Planting of non-irrigated corn has increased in conjunction with the advent of new corn hybrids and varieties, improved farming practices, and the availability of risk management tools such as GRIP.

3. The 2004 and 2005 GRIP policies were marketed, sold, and issued by Defendants as "no practice specified." Therefore, both irrigated and non-irrigated corn crops were insured. Corn acres planted for all purposes, including for silage, were used to calculate indemnity payments. Defendants complied with the terms and conditions of the 2004 and 2005 GRIP policies by correctly calculating and tendering the contracted for indemnity payments to all insureds regardless of whether such insureds planted irrigated or non-irrigated corn.

4. As in 2004 and 2005, the Companies marketed, sold, and issued to Plaintiffs GRIP insurance for their field corn crops for the 2006 crop year, "no practice specified," with indemnity payments derived, in part, from the total acres of corn planted for all purposes. Although corn in the Panhandle and the South Plains of Texas is traditionally planted from the last week in April until the end of June, the sales closing date for the purchase of GRIP for the

2006 crop year was March 15, 2006. Consequently, farmers were required to decide whether to purchase GRIP prior to planting.

5. Because GRIP was marketed, sold, and issued by Defendants as insuring "all field corn," "no practice specified," and because indemnity payments were to be based, in part, on planted acreage rather than harvested acreage, Plaintiffs decided to purchase GRIP insurance for crop year 2006 to insure both irrigated and non-irrigated corn. Plaintiffs duly and timely executed applications, and reported their planted corn acres to the Companies, as required by Defendants. In turn, Plaintiffs were each provided a Summary of Protection by the Companies. Once Defendants accepted Plaintiffs' applications by issuing Summaries of Protection, the GRIP policies became binding and could not be changed except by written agreement of the parties. Plaintiffs never agreed to any changes of the crop year 2006 GRIP policies.

6. RMA was aware that the Companies were marketing GRIP for crop year 2006 to non-irrigated corn farmers in the Panhandle and South Plains of Texas, just as the Companies had in crop years 2004 and 2005. At the same time, RMA was aware that non-irrigated corn had not been previously insured under other forms of crop insurance and was not, therefore, according to FCIC, a generally recognized farming practice for the area. Nevertheless, RMA did nothing to dissuade the Companies from selling GRIP to non-irrigated corn farmers nor did RMA advise the farmers that if too many non-irrigated corn acres were insured, RMA would enact and enforce a new, contrived rule requiring a certain soil water profile at planting in order to avoid exclusion from GRIP coverage. Rather, just the opposite occurred. The representations and conduct of RMA and the Companies encouraged farmers to plant non-irrigated corn. In fact, RMA eventually notified the Companies and their agents that planting non-irrigated corn was, under certain circumstances, a "good farming practice." However, those "certain circumstances"

were not communicated to Plaintiffs at a point in time that would have permitted Plaintiffs to plant an alternative crop or to not plant at all.

7. At some point in time, RMA became aware that planted, non-irrigated corn acreage had substantially increased in some areas of the Panhandle and South Plains of Texas for crop year 2006. RMA then began to contrive ways to deny GRIP coverage for non-irrigated corn. However, because the GRIP policies clearly covered non-irrigated corn, because the Companies had issued GRIP policies covering non-irrigated corn for crop years 2004 and 2005, because the Companies paid indemnity payments for crop years 2004 and 2005, and because the Companies were marketing and selling GRIP as covering non-irrigated corn for crop year 2006, the Companies were unable to deny indemnity payments, for the most part, on the simple and straightforward basis that planting non-irrigated corn was, in and of itself, not a "good farming practice." Accordingly, RMA devised the theory that growing non-irrigated corn could be a "good farming practice" but only under the correct circumstances. Following a cursory investigation, RMA instructed the Companies that planting non-irrigated corn would be considered a "good farming practice" only if each farmer had a "full soil water profile" at the time of planting. RMA's instruction was given after most of the Plaintiffs had planted their corn and was not communicated to Plaintiffs by either RMA or the Companies.

8. On or about September 14, 2006, the GRIP corn policies to be marketed, sold, and issued in the Panhandle and South Plains of Texas for crop year 2007 were changed. The specified practice to be insured for crop year 2007 was changed from "no practice specified" to "irrigated." In addition, the Crop Provisions, via the actuarial documents, were changed such that indemnity payments would be based on "harvested" acres rather than "planted" acres. RMA, among other things, wrongfully and improperly attempted to retroactively apply the 2007 changes to the 2006 GRIP policies by way of the "good farming practices" exclusion contained

in the Basic Provisions despite the fact that November 30, 2005 was the contract change date for the 2006 GRIP policies.

C. Defendants' Broken Promises

1. On or about November 20, 2006, Rural Community Insurance Services (RCIS), one of the Defendants herein, refused to honor its insurance contracts, breached the terms of its GRIP policies, and attempted to rescind such policies on the grounds that RMA had determined that its insureds had failed to follow "good farming practices," as set forth in Paragraph 3(c)(2) of the Basic Provisions of the GRIP policies, by planting non-irrigated corn. RCIS quoted experts as opining that "growing dry land corn is not a generally recognized practice for the area and is considered to be a good farming practice only in a year in which an insured has a full soil water profile at the beginning of the growing season."

2. Thereafter, each Company breached the terms of the GRIP policies it had issued and either attempted to rescind such policies on the same or similar grounds or simply refused to pay according to the terms of their contracts. The Companies returned premium payments to those insureds who had planted non-irrigated corn, with little or no explanation, and issued new, altered Summaries of Protection listing non-irrigated corn as "UI" or uninsured.

3. Indemnity payments were denied to those Plaintiffs who planted non-irrigated corn on the basis that such Plaintiffs failed to follow "good farming practices." Indemnity payments owed to those Plaintiffs who planted irrigated corn were denied and/or reduced because the non-irrigated acres were held to be uninsurable by RMA and those acres were not included in the indemnity payment calculation.

4. Plaintiffs are entitled to and would have received GRIP indemnity payments for the 2006 crop year but for the broken promises of Defendants.

D. GRIP Policy Provisions

1. The GRIP policies consist of the accepted applications, the Basic Provisions, the Crop Provisions, the Special Provisions, other applicable amendments, endorsements or options, the actuarial documents, and the applicable regulations published in 7 CFR chapter IV. If there is a conflict between policy provisions, the order of priority is Special Provisions, Crop Provisions, and Basic Provisions, i.e., Special Provisions control Crop Provisions and Basic Provisions, and Crop Provisions control Basic Provisions. The HRO endorsement controls conflicting provisions in the Special Provisions, Crop Provisions and the Basic Provisions of the GRIP policies.

2. The Special Provisions of the GRIP policies marketed, sold, and issued to Plaintiffs delineate the "insurable types and practices" for corn as "no type specified" and "no practice specified." Because the Special Provisions do not specify a type or practice, all types of corn and all practices are insured, including irrigated and non-irrigated corn. To the extent there is a conflict between the coverage created by the Special Provisions and the exclusion for failure to follow "good farming practices" as contained in the Basic Provisions, the Special Provisions control. Accordingly, the GRIP policies insured both irrigated and non-irrigated corn.

3. The Crop Provisions of the GRIP policies marketed, sold, and issued to Plaintiffs identify the insured crop as "all field corn." Consistent with the Special Provisions and the Crop Provisions, and despite any contrary language in the Basic Provisions, the GRIP policies insured both irrigated and non-irrigated corn.

4. The Crop Provisions, through incorporation of the actuarial documents, state that the NASS yield is to be used in determining indemnity payments and is to be calculated by dividing the NASS estimate of corn for grain production in the county by the NASS estimate of corn planted acres for all purposes in the county. Accordingly, and despite any contrary

language in the Basic Provisions, corn planted for all purposes, whether irrigated, non-irrigated, or grown for silage, must be used in calculating indemnity payments owed.

5. The Special Provisions, Crop Provisions, and the actuarial documents, via incorporation in the Crop Provisions, create coverage for non-irrigated corn. However, RMA's application of the "good farming practices" exclusion creates a conflict between those provisions and the Basic Provisions. Because the Special Provisions and Crop Provisions control the Basic Provisions, non-irrigated corn was insured.

6. RMA attempted to use the "good farming practices" exclusion as a condition precedent to coverage. However, such use directly conflicts with the controlling provisions of the GRIP policies and is contrary to 7 U.S.C. § 1508(a)(3) which describes "good farming practices" as an exclusion from coverage. Because "good farming practices" is an exclusion from coverage, RMA and the Companies have the burden to prove that each insured, separately and independently, failed to follow "good farming practices." The untimeliness of RMA's determination that a "full soil water profile" was required at planting to constitute a "good farming practice" has rendered it impossible for RMA to carry its burden as it is now impossible to ascertain the actual soil water profile available at planting for each and every field of non-irrigated corn planted and insured.

7. Plaintiffs have complied with all procedures required by Defendants and/or by the terms of their respective GRIP policies and have met all conditions precedent to recover on said policies of insurance.

V. CAUSES OF ACTION

A. Federal Crop Insurance Corporation

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

Based upon the GRIP policies incorporated herein by reference along with the rules, regulations, bulletins promulgated by FCIC, and Final Agency Determinations, Plaintiffs assert that RMA acted improperly, wrongfully, and retroactively by its determination that each Plaintiff who planted and insured non-irrigated corn for crop year 2006 failed to follow "good farming practices."

1. Improper Rule Making

FCIC, through RMA, engaged in improper, wrongful, and retroactive rule making, as follows:

a. Neither FCIC nor RMA had authority to change the terms of the 2006 crop year GRIP policies as they did or to engage in the conduct described above. FCIC and RMA exceeded the powers conveyed unto them by the United States Congress.

b. The GRIP policy is a regulation. RMA did not follow established procedures for changing its own rules and regulations.

c. RMA applied the 2007 GRIP Special Provisions and Crop Provisions to the 2006 GRIP policies.

d. RMA changed its rules, regulations and the GRIP policies by attempting to change the GRIP Special Provisions from "no practice specified" to "irrigated."

e. RMA changed its rules, regulations and the GRIP policies by attempting to change the Crop Provisions such that indemnity payments were calculated based on harvested acres rather than planted acres.

f. RMA changed its rules, regulations and the GRIP policies such that "all field corn" was not insured.

g. RMA attempted to change the GRIP policies after the contract change date of November 30, 2005, after the policies had been marketed, sold, and issued to Plaintiffs, after Plaintiffs had planted their crops and, in some instances, after the insured corn crops had failed.

h. RMA attempted to change the terms of the GRIP policies after Plaintiffs' premiums had been paid and accepted.

i. RMA's requirement that a "full soil water profile" exist at planting for non-irrigated corn to be a "good farming practice" was an attempt to redefine the phrase "good farming practices" in the Basic Provisions.

j. RMA's requirement of a "full soil water profile" was an attempt to change the terms of the GRIP policies to prevent the inclusion of non-irrigated corn in the calculation of indemnity payments owed to those insureds who grew irrigated corn.

k. RMA attempted to change the Crop Provisions in such a way that indemnity payments would be based upon harvested as opposed to planted acreage by improperly concluding that planting non-irrigated corn was not a "good farming practice" and by excluding those acres and acres planted for silage from the indemnity calculation.

l. RMA, via its misapplication of the "good farming practices" exclusion, attempted to change the Crop Provisions in such a way that only irrigated corn would be insured and only harvested acreage would be used in calculating indemnity payments.

m. The requirement that there be a "full soil water profile" at planting was a mere pretext for RMA's "good farming practices" determination that resulted in the Companies denying coverage to Plaintiffs who planted non-irrigated corn and for refusing to pay, according to the terms of the GRIP policies, those Plaintiffs who planted irrigated corn.

n. All of the foregoing, individually or collectively, leads to the inescapable conclusion that the actions and determinations of FCIC, through RMA, were improper, wrongful,

and retroactive and were in excess of its granted authority and were a cause of damage to the Plaintiffs.

2. FCIC's Arbitrary and Capricious Actions

FCIC's determination that planting non-irrigated corn for crop year 2006 was not a "good farming practice" was arbitrary and capricious because FCIC relied upon factors that Congress had not intended it to consider, failed to consider important aspects of the issue, offered an explanation for its decision that runs counter to the evidence for it or made a decision so implausible that it cannot be ascribed to a difference in view or the product of its expertise, as follows:

a. RMA failed to follow its own guidelines for determining whether "good farming practices" were used by Plaintiffs.

b. There was no evidence to support RMA's "good farming practices" determination for each individual field.

c. RMA fabricated a basis for its "good farming practices" determination that there was not a "full soil water profile" available at the time of planting. Such actions were pretextual and were used to avoid the obligations created by the GRIP policies.

d. RMA's "good farming practices" determination was made globally and was not based upon the actual soil water profile available for each field at the time of planting.

e. RMA's "good farming practices" determination was made in an untimely manner. At the time the determination was made known to Plaintiffs, it was impossible for RMA to establish the soil water profile available for each field at the time of planting. The crops had been planted and many of them had failed prior to RMA's determination.

f. RMA inconsistently applied the "good farming practices" exclusion throughout the Panhandle and South Plains of Texas. In some counties, RMA excluded non-

irrigated corn acres as well as corn planted for silage from the calculation used to determine GRIP indemnity payments to irrigated corn producers. In other counties, RMA simply denied GRIP indemnity payments to non-irrigated corn producers on the grounds that the failure to irrigate corn was, in and of itself, a failure to use "good farming practices," yet in those same counties RMA utilized the non-irrigated corn acres in calculating the GRIP indemnity payments owed to irrigated corn farmers.

g. The requirement of a "full soil water profile" was not a requirement of the GRIP policies, was not timely communicated to Plaintiffs, and was contrived at such a time as to prevent Plaintiffs from being able to establish their actual soil water profiles. RMA made no investigation as to whether each farmer who had certified to the Farm Service Agency their intent to plant non-irrigated corn for crop year 2006 had a "full soil water profile" at the time of planting. Similarly, for crop years 2004 and 2005, no underwriting investigation was made by RMA or the Companies regarding whether any farmer had a "full soil water profile" at the time of planting non-irrigated corn. During the critical times for crop year 2006, no one notified any of the farmers that a "full soil water profile" was required for the planting of non-irrigated corn to be considered a "good farming practice." The requirement of a "full soil water profile" has never been used by RMA as an underwriting basis for a "good farming practices" determination with respect to any crop FCIC insures or reinsures. In fact, RMA did not even ask Plaintiffs to produce information regarding their respective soil water profiles at any stage of the claims process.

h. The phrase "full soil water profile" was never defined. The phrase is so vague and subjective that it does not provide an objective standard from which a denial can be based.

i. RMA did not rely upon reliable and relevant scientific evidence regarding whether there was a "full soil water profile" available at planting to make its "good farming practices" determination.

j. RMA's retroactive application of the "good farming practices" exclusion, in conjunction with RMA's undisclosed requirement of a "full soil water profile," was an attempt to render it impossible for Plaintiffs to prove whether a sufficient soil water profile existed for each field at the time of planting.

k. RMA failed to timely determine county revenues for crop year 2006 as required by the GRIP policies.

l. RMA removed from publication the original NASS numbers to be used to calculate indemnity payments and attempted to conceal those numbers from Plaintiffs. Indemnity payments were required by the GRIP policies to be calculated based upon the original NASS numbers published even though the NASS numbers may have been subsequently revised.

m. All of the foregoing, individually or collectively, leads to the inescapable conclusion that the actions and determinations of FCIC, through RMA, were arbitrary and capricious and caused damages to Plaintiffs.

3. No Remand to Agency Required

Based on the foregoing, this Court should overturn the "good farming practice" determination of RMA. Moreover, this Court is not required to remand this matter to FCIC because there is no basis upon which FCIC can reconsider whether there was a "full soil water profile" available at planting for each field of non-irrigated corn insured nor is FCIC in a better position than this Court to judge the propriety of RMA's actions and determination. Therefore, upon reversal of FCIC's determination of "good farming practices" because of either (a) improper retroactive rulemaking or (b) arbitrary and capricious decision-making, this Court will

have before it sufficient evidence to determine the amount of indemnity payments that are due and owing to Plaintiffs under the terms of the GRIP policies and will have the ability to issue a judgment thereon.

B. Companies

1. Claims are Not Arbitratable

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

a. The Companies relied upon a "factual" determination allegedly made by RMA that the planting of non-irrigated corn in the Panhandle and South Plains of Texas was not a "good farming practice." No Company made any such "factual" determination or any other "determination" as that phrase is used in the GRIP policies. Consequently, based upon the relevant provisions of the GRIP policies, the claims against the Companies are not based upon "any determination made by us" and are, therefore, not claims required to be arbitrated.

b. Section 16(a) of the GRIP policies specifically excludes from the requirement of arbitration "good farming practices" determinations as specified in Section 16(d) of the Basic Provisions. Because all of the Companies made decisions and took action based upon RMA's wrongful application of the "good farming practices" exclusion, the claims asserted by Plaintiffs against the Companies are not subject to arbitration.

c. Alternatively, the GRIP policies in question are ambiguous because the word "determination" is not defined in the policies and is susceptible of more than one meaning. In the context of this case, a "determination" was made by RMA that planting non-irrigated corn was not a "good farming practice." It was that "determination" that resulted in Plaintiffs not being paid a GRIP indemnity payment. Any ambiguity in the policies must be strictly construed in favor of the insureds.

d. Alternatively, without waiving the foregoing, and specifically denying that any claims asserted herein are subject to arbitration, to the extent any claims asserted herein arise out of determinations made by the Companies and are found by the Court to be arbitratable, Plaintiffs have initiated arbitration with one or more companies to comply with the Basic Policy Provisions. However, Plaintiffs contend that arbitration with the Companies is not ripe for adjudication until such time as the Court considers the "good farming practice" determination made by RMA. Plaintiffs anticipate filing a Motion to Abate any such arbitrations until such time as this Court considers the determination of RMA.

2. Breach of Contract

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

The Companies breached their contracts with Plaintiffs by failing to pay according to the terms of the GRIP policies.

3. Promissory Estoppel

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

Alternatively, and without waiver of any of the foregoing theories of recovery, the Companies represented and promised to Plaintiffs that non-irrigated corn would be a covered crop under the GRIP policies for crop year 2006. Plaintiffs foreseeably, substantially, and detrimentally relied upon such representations and promises by planting their corn crops for crop year 2006. The representation that non-irrigated corn would be covered was false. Plaintiffs sue under the theory of promissory estoppel for all damages incurred by their detrimental reliance. Injustice can only be avoided by enforcement of Defendants' promises.

4. Estoppel and Quasi-Estoppel

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

Alternatively, and without waiver of any of the foregoing theories of recovery, the Companies represented and promised to Plaintiffs that non-irrigated corn would be a covered crop under GRIP policies for crop year 2006. Indemnity payments were paid under the same GRIP policies for non-irrigated corn insured for crop years 2004 and 2005. Plaintiffs foreseeably relied upon such representations, promises, and conduct to their detriment by planting their corn crops for crop year 2006. The Companies' material representations that non-irrigated corn would be covered in 2006 were false, or such material facts were concealed from Plaintiffs that should have been disclosed. Defendants knew or should have known, prior to planting, that non-irrigated corn would be excluded from coverage for crop year 2006 and/or that there would be limited conditions under which such crops would be insured even though Defendants promised and represented the opposite in order to induce Plaintiffs to purchase GRIP coverage. Defendants are equitably estopped from changing their position *post facto* and are absolutely precluded, both at law and in equity, from denying or asserting a lack of coverage in 2006, whether intentionally or negligently. Plaintiffs had no knowledge of the true facts and had a right to rely on the representations and conduct of Defendants. Such reliance worked to Plaintiffs' prejudice as Plaintiffs were induced to change their position for the worse by planting non-irrigated corn in 2006 and/or by refraining from planting an alternative crop. Furthermore, based on the above-referenced facts, under the principles of quasi-estoppel, Defendants are estopped from obtaining or retaining the benefit of non-payment of indemnity losses by asserting the alleged exclusion to coverage contrary to Defendants' representations and previous position.

5. Negligent Misrepresentation

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

The Companies misrepresented, in the course of their business and in a transaction in which they had an interest, that non-irrigated corn would be covered by the GRIP policies and such false information was supplied by the Companies for the guidance of Plaintiffs. The Companies knew at the time such representations were made that the information supplied would be disseminated to all of the farmers in the county and, because of their reliance on those representations, Plaintiffs were damaged. The Companies did not exercise reasonable care or competence in obtaining or communicating the information, Plaintiffs justifiably relied on the Companies' representations, and such actions were a proximate cause of damages to the Plaintiffs.

6. Breach of Duty of Good Faith and Fair Dealing

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

The Companies had valid, enforceable insurance policy contracts with each of their respective insureds along with a duty of good faith and fair dealing. The Companies breached their duty of good faith and fair dealing by denying and delaying indemnity payments when liability was reasonably clear and by denying indemnity payments without a reasonable basis. The Companies failed to advise Plaintiffs that a "full soil moisture profile" would be required at planting for non-irrigated corn to be insured and failed to notify Plaintiffs that they should test and document their respective soil water profiles so that Plaintiffs could substantiate a "good farming practice" if called upon to do so. The breach of the duty of good faith and fair dealing by the Companies was a proximate cause of damage to Plaintiffs.

7. Waiver

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

The "good farming practices" provision is an exclusion from the coverage otherwise created by the GRIP policies issued by the Companies. The Companies waived the "good farming practices" exclusion with respect to the planting of non-irrigated corn when the Companies issued the GRIP policies with full knowledge that RMA would only consider the planting of non-irrigated corn to be a "good farming practice" if there was a "full soil water profile" available at planting. Because the Companies and RMA knew that certain undisclosed limiting conditions would be placed on the insurability of non-irrigated corn prior to such crops being planted by Plaintiffs, yet nevertheless issued the GRIP policies and accepted the premiums, Defendants have intentionally and knowingly, by words and/or conduct, given up any right they may have otherwise had to assert and apply the "good farming practices" exclusion to the planting of non-irrigated corn.

8. Violations of the Texas Deceptive Trade Practices Act

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

Plaintiffs were consumers who sought or acquired goods or services by the purchase of GRIP policies from the Companies. The Companies violated the Texas Deceptive Trade Practices Act (hereafter "DTPA"), Tex. Bus. & Com. Code §§ 17.41-17.63, by their false, misleading, and deceptive acts and practices as follows:

(a) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(b) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(c) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(d) advertising goods or services with intent not to sell them as advertised;

(e) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(f) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(g) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve;

(h) failing to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(i) the Companies' exclusion of non-irrigated corn from GRIP coverage, at the time and in the manner in which it was done, was an unconscionable act or practice, that, to Plaintiffs' detriment, took advantage of Plaintiffs' lack of knowledge, ability, experience, or capacity to a grossly unfair degree. Such unfairness, in retrospect, is glaringly noticeable, flagrant, complete and unmitigated;

(j) the Companies violated Texas Insurance Code Art. 541.051-541.061, both independently and as a tie-in to the DTPA, by their misrepresentations of the

terms, benefits, advantages, dividends, shares of surplus and the aspects and nature of the GRIP insurance policies;

(k) the Companies violated Texas Insurance Code Art. 541.051-541.061, both independently and as a tie-in to the DTPA, by making the following misrepresentations about the GRIP insurance policies: (i) making untrue statements of material fact; (ii) leaving out material facts which make other statements misleading; (iii) making statements in a way that would lead a reasonably prudent person to a false conclusion of material fact; (iv) making a material misrepresentation of law; or (v) not disclosing any matter required by law to be disclosed;

(l) the Companies violated Texas Insurance Code Art. 541.051-541.061, both independently and as a tie-in to the DTPA, by the following unfair settlement practices: (i) misrepresenting to Plaintiffs a material fact or policy provision relating to the GRIP insurance coverage; (ii) not attempting in good faith to bring about a prompt, fair, and equitable settlement of a claim; (iii) not promptly giving Plaintiffs a reasonable explanation for the denial of the claim; or (iv) refusing to pay a claim without conducting a reasonable investigation.

Plaintiffs relied upon the above-referenced false, misleading, and deceptive acts or practices to their detriment and such acts or practices were a producing and proximate cause of actual loss and injury to Plaintiffs.

9. Violations of Texas Insurance Code Arts. 542.055-542.060

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

Plaintiffs gave proper notice of their claims to the respective Companies. The Companies did not timely (1) acknowledge, investigate, or request information about the claim; (2) accept or reject the claim; or (3) pay the claim for which the Companies are liable.

VI. EXCUSED CONDUCT BY THE FARMERS

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

A. The Companies forwarded checks to Plaintiffs who planted irrigated corn that purported to be GRIP indemnity payments. However, the Companies did not provide any explanation as to how the amount of such payments were calculated nor was the amount of those payments the amount required to be paid by the GRIP policies. Some Plaintiffs mistakenly deposited those checks without knowing that the Companies intended to claim that negotiation of those checks served as satisfaction of the Companies' obligation to pay any different amount under the terms of the GRIP policies for crop year 2006. Such mistaken conduct, under the facts of this case, should have no legal implication with respect to the claims asserted herein.

B. The Companies returned paid policy premiums to those Plaintiffs who planted non-irrigated corn. Some Plaintiffs mistakenly deposited those return premium checks without knowing that the Companies intended to claim that negotiation of those checks served as a rescission of the GRIP policies. In some cases when Plaintiffs did not negotiate the return premium checks, some Companies, without the consent or acquiescence of their insured, have now credited the amount of those checks to the premium owed for the 2007 crop insurance premium. To the extent any Plaintiff negotiated the premium return, such mistaken conduct, under the facts of this case, should have no legal implication with respect to the claims asserted herein. Further, the unilateral action of any Company in crediting the premium to the following year's crop insurance has no legal impact on any recovery sought herein by Plaintiffs.

C. To the extent Plaintiffs received checks for alleged GRIP indemnity payments, those checks will be and are hereby tendered to each of their respective Companies. To the extent that any such checks were cashed, the amount of any such alleged payment is hereby tendered to each of the Companies, and will be paid to such Companies or paid into the registry of this Court if so required.

D. To the extent Plaintiffs received checks that purported to be a return of insurance premium, the actual checks are hereby tendered to the Companies that issued such checks. To the extent any such checks were mistakenly negotiated, the amount of any such instrument is hereby tendered to the Company issuing any such check. If required, Plaintiffs will pay any such sums into the registry of this Court pending the outcome of this litigation.

VII. DAMAGES

Plaintiffs incorporate herein by reference the factual allegations set forth in Sections III and IV of this Complaint.

A. Plaintiffs seek recovery of the indemnity payments that would have been paid pursuant to the GRIP policies but for the misconduct of Defendants;

B. Plaintiffs seek recovery for any consequential damages arising from Defendants' misconduct;

C. Plaintiffs seek recovery for pecuniary losses and losses suffered as a consequence of the Plaintiffs' reliance on the Defendants' misrepresentations;

D. Plaintiffs seek recovery for any loss of benefits caused by Defendants' misconduct and misrepresentations arising out of Plaintiffs' ineligibility for the current Crop Disaster Program. The Crop Disaster Program covers losses from natural disasters for 2005, 2006 or 2007 crops. Only farmers who obtained crop insurance coverage and planted an

insurable crop are eligible for benefits. The determination that non-irrigated corn was uninsurable disqualifies Plaintiffs who grew non-irrigated corn from receiving benefits;

E. Plaintiffs seek recovery under the Texas Deceptive Trade Practices Act, including actual damages under the DTPA and tie-in statutes Arts. 541.051-541.061. Such damages include out-of-pocket damages, benefit of the bargain damages, lost profits both in the failed crops and lost income in the profits Plaintiffs would have made had they not relied on Defendants' misrepresentations, and the policy proceeds under the GRIP policy;

F. Arts. 541.051-541.061 damages, including the amount of the indemnity claim plus 18% per annum;

G. Treble damages for Defendants' knowing and intentional violation of the DTPA and related tie-in statutes;

H. Exemplary damages;

I. Pre-judgment interest;

J. Post-judgment interest;

K. Court costs;

L. It has become necessary for Plaintiffs to retain the undersigned attorneys to pursue the claims set forth herein, and Plaintiffs have agreed to pay reasonable attorneys' fees. Plaintiffs seek recovery of reasonable attorneys' fees against Defendants as may be permitted by law based on the legal theories asserted in this Complaint, including, in particular, any attorneys' fees that may be recoverable because of the breach of contract and attorneys' fees recoverable under the Texas Deceptive Trade Practices Act and related tie-in statutes.

VII. JURY DEMAND

Plaintiffs demand a trial by jury of all fact issues in this case.

VIII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs holding that the manner, method, and/or means by which RMA made its "good farming practice" determination constituted impermissible retroactive rulemaking; alternatively, that RMA's "good farming practice" determination was arbitrary and capricious; that there is no basis to remand these issues to FCIC for additional consideration; that Plaintiffs have and recover those indemnity payments to which they are entitled and which they would have been paid but for Defendants' misconduct; that Plaintiffs have and recover those damages proximately caused or caused by the misconduct of the Companies; that Plaintiffs have and recover pre-judgment and post-judgment interest, punitive and exemplary damages, reasonable attorneys' fees, statutory damages; and that Plaintiffs have and recover such other and further relief to which they are entitled, whether at law or in equity.

Respectfully submitted,

PETERSON FARRIS PRUITT & PARKER
A Professional Corporation
Thomas D. Farris, SB# 06844700
tfarris@pf-lawfirm.com
Chris D. Parker, SB# 15479100
cparker@pf-lawfirm.com
P. O. Box 9620
Amarillo, TX 79105-9620
(806) 374-5317; FAX: 372-2107

Keith Davis, SB# 05572900
davislaw@adobewallsinternet.com
P. O. Box 446
Wellington, TX 79095
(806) 447-2518

By _____
Chris D. Parker, SB# 15479100

ATTORNEYS FOR PLAINTIFFS