

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DOUGLAS ASHBY, CAROL PORTO,
GRANT WENZLICK, LEO NEWBERRY,
and EVELYN BROEFFLE,

01-CV-1446-BR

ORDER

Plaintiffs,

v.

FARMERS INSURANCE COMPANY OF
OREGON and FARMERS GROUP, INC.,

Defendants.

N. ROBERT STOLL
STEVEN D. LARSON
DAVID F. REES
MARK A. FRIEL

Stoll Stoll Berne Lokting & Schlachter, P.C.
209 S.W. Oak St., Fifth Floor
Portland, OR 97204
(503) 227-1600

CHARLES A. RINGO
974 N.W. Riverside Blvd.
Bend, OR 97701
(503) 330-6447

Attorneys for Plaintiffs

BARNES H. ELLIS
STEPHEN A. REDSHAW
TIMOTHY W. SNIDER
Stoel Rives, LLP
900 S.W. Fifth Ave., Suite 2600
Portland, OR 97204-1268
(503)224-3380

Attorneys for Defendants

BROWN, Judge.

Plaintiffs allege Defendants violated the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, *et seq.* This matter comes before the Court on Plaintiffs' Motion to Amend the Class Definition and Appoint Additional Class Representatives (#390) and Defendants' Motion to Amend Class Definition (#416).

For the following reasons, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' Motion and **GRANTS in part** and **DENIES in part** Defendants' Motion.

DISCUSSION

On June 20, 2008, the Court issued an Opinion and Order in which it resolved the remaining issues that are relevant to the definition of the class that ultimately will be certified in this action. The applicable rulings are as follows:

1. **FACTA.**

The Fair and Accurate Credit Transactions Act (FACTA),

15 U.S.C. § 1681m(h)(8), does not bar the maintenance of a class action against Defendants based on Defendants' failure to comply with FCRA's adverse-action notice requirement. Opin. and Order at 5-8.

2. Statute of Limitations.

The class period starting date as to Plaintiffs' claims against Defendant Farmers Group, Inc. (FGI) is October 28, 1999. The class period starting date as to Plaintiffs' claims against Defendant Farmers Insurance Company of Oregon (FICO) is February 26, 2001. Opin. and Order at 11-14.

3. New Insureds.

Defendants did not act in an objectively unreasonable manner when they determined which new insureds should receive adverse-action notices, and, therefore, Defendants are not liable to new insureds under FCRA for failing to send them adverse-action notices or for sending some of them adverse-action notices that did not comply with FCRA's notice requirements. Opin. and Order at 18-22, 40-42.

4. Renewal Insureds.

The adverse-action notices that Defendants sent to renewal insureds whose premiums increased based on information in their consumer-credit reports were objectively unreasonable in light of FCRA's adverse-action notice requirements. A genuine issue of

material fact exists as to whether Defendants' resulting FCRA violation was willful. Opin. and Order at 42-62.

5. Adverse Actions - Plaintiffs/Class Representatives.

As noted, only those Plaintiffs who suffered adverse actions based on information in their consumer-credit reports upon renewal of insurances policies issued by Defendants are appropriate class representatives.

a. Douglas Ashby.

Ashby did not suffer an adverse action on any renewal of his automobile insurance policy. Opin. and Order at 24-25.

b. Carol Porto.

Porto did not suffer an adverse action on any renewal of her automobile insurance policy. Porto, however, suffered an adverse action on the renewal of her homeowners insurance policy in November 2001. Opin. and Order at 25-27.

c. Grant Wenzlick.

Wenzlick did not suffer adverse actions on any renewal of his homeowners insurance policy. Opin. and Order at 27-28.

d. Leo Newberry.

Newberry suffered an adverse action on the renewal of his automobile insurance policy in July 2000. Opin. and Order at 28-30.

e. Evelyn Broeffle.

Evelyn Broeffle has standing as a class representative in this case notwithstanding the fact that Defendants relied on information in her husband's consumer-credit report to determine the premium Defendants charged on the renewal of insurance policies issued jointly to Evelyn Broeffle and her husband.

Evelyn Broeffle suffered an adverse action on renewal of her automobile insurance policy in June 2000. She also suffered an adverse action on renewal of her homeowners' insurance policy in April 2001. Opin. and Order at 31-36.

In summary, Plaintiffs Porto, Newberry, and Evelyn Broeffle are appropriate class representatives.

CONCLUSION

Based on the foregoing, some of the proposed amendments to the class definition offered by each party are consistent with the Court's Opinion and Order issued June 20, 2008, and some are not. Accordingly, the Court **GRANTS in part** and **DENIES in part** Plaintiffs' Motion to Amend the Class Definition and Appoint Additional Class Representatives (#390) and **GRANTS in part** and **DENIES in part** Defendants' Motion to Amend the Class Definition (#416).

The Court directs the parties to confer and to submit to the Court no later than July 11, 2008, a Joint Proposed Class

Definition with identified class representatives that is consistent with the Court's rulings in its Opinion and Order issued June 20, 2008.

IT IS SO ORDERED.

DATED this 26th day of June 2008.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge