

CAUSE NO. C-582-107

WESLACO INDEPENDENT SCHOOL DISTRICT

Plaintiff

V.

AETNA LIFE INSURANCE COMPANY, AETNA HEALTH, INC., and ROBERT J. GARZA

Defendants

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IN THE DISTRICT COURT **FILED**
AT _____ O'CLOCK _____ M
FEB 25 2010
OF HIDALGO COUNTY, TEXAS
LAURA HINOJOSA, CLERK
District Courts, Hidalgo County
By _____ Deputy
JFB JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **Weslaco Independent School District**, Plaintiff in the above styled and numbered cause, complaining of **Defendants, Aetna Life Insurance Company, Aetna Health, Inc., and Robert J. Garza** and for causes of action would plead as follows:

I. Parties

1.1 **Plaintiff, Weslaco Independent School District**, ("WISD"), is a political subdivision located in Weslaco, Hidalgo County, Texas.

1.2 **Defendant, Aetna Life Insurance Company**, ("Aetna") is a foreign insurance company, licensed and admitted to do business in the State of Texas, with its home office and principal place of business at 151 Farmington Avenue, Hartford, Connecticut 06156. It can be served with process by serving its registered agent for service of process: CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

1.3 **Defendant, Aetna Health, Inc.**, ("Aetna") is a Texas corporation, licensed and admitted to do business in the State of Texas, with its home office and principal place of business at 2777 Stemmons Freeway, Suite 400, Dallas, Texas 75356. It can be served with process by serving its registered agent for service of process: CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

1.4 **Defendant, Robert J. Garza**, is an individual who resides in Weslaco, Hidalgo County, Texas. Defendant Garza may be served with process at his place of business, McAfee Insurance Agency, 321 West Second Street, Mercedes, Texas 78570, or wherever he may be found.

II. Venue

2.1 The acts complained of that give rise to these claims occurred in whole or in part in Hidalgo County, Texas, and the events and omissions that gave rise to these claims occurred entirely in Hidalgo County, Texas. Any agreements executed between and among WISD and Defendants were executed in Hidalgo County, Texas. Further, Hidalgo County is the residence of Defendant Garza, the Plaintiff, and is also the county wherein most of the witnesses and other evidentiary material germane to this case are located. There are no mandatory venue provisions applicable to this case. Therefore, pursuant to Texas Civil Practice and Remedies Code §§15.002(a)(1), 15.002(a)(2), 15.005, and 15.035(b), venue is proper in Hidalgo County, Texas.

III. Subject Matter Jurisdiction

3.1 This suit involves an amount in controversy that exceeds the minimum jurisdictional amount for a District Court in Hidalgo County, Texas, but does not exceed its maximum allowable limit for jurisdictional purposes. This Court, therefore, has subject matter jurisdiction over this case.

IV. No Federal Jurisdiction

4.1 The Federal Courts lack subject matter jurisdiction over this action, as there is no federal question and incomplete diversity of citizenship. Removal would be improper under 28 USC § 1441(b), because at least one of the Defendants is a citizen of the state in which this action is brought. Every claim arising under the Constitution, treaties, or laws of the United States is expressly disclaimed (including any claim arising from an act or omission on a federal enclave, or of any officer of the U.S. or any agency or person acting under him occurring under color of such office). No claim of admiralty or maritime law is raised. Plaintiffs sue no foreign state or

agency. Further, in accordance with the ruling of the United States Court of Appeals, Fifth Circuit, none of WISD's claims are preempted by ERISA. See *Bank of Louisiana v. Aetna U.S. Healthcare, Inc., et al.*, 468 F.3d 237 (5th Cir., 2006). Finally, because WISD is a governmental entity, its plan is exempt from ERISA coverage, meaning that there exists no federal question as a basis for any Defendant to claim that the federal courts have subject matter jurisdiction over these claims. See 29 USC 1003(b); see also *Shirley v. Maxicare Tex., Inc.*, 921 F.2d 565, 567 (5th Cir., 1991).

V. Discovery

5.1 Plaintiff intends to conduct discovery under level 3 as provided for in the Texas Rules of Civil Procedure unless and until the Court enters a docket control order that otherwise alters the sequence and parameters of discovery for this case.

VI. Statement of Facts

6.1 In September, 2003, WISD elected to become a self-funded political subdivision and began offering its employees benefits through direct contributions. These contributions were administered by a Third Party Administrator ("TPA"), who was retained by the District to distribute benefit payments to providers. The employees were encouraged to add dependents to the program on a reduced cost basis. As part of this scheme, the WISD board of trustees acted as the plan fiduciary, and the Superintendent of the WISD acts as the plan sponsor.

6.2 For the plan year of 2007-2008, WISD solicited proposals by advertising in the local newspaper. In that advertisement, the district asked for fully-funded and self-funded quotes with Stop Loss Reinsurance amounts of \$100,000.00 or \$125,000.00 with a contractual period of twelve months incurred and paid in fifteen months of contract. There were eight respondents to WISD's request, and its administrators evaluated each proposal submitted by the eight vendors based on the price of administration services and stop loss submittals. The WISD then solicited the "best and final" offers from those eight vendors. This process, which allows vendors to add benefits or reduce their overall cost in an effort to gain favorable rankings, is commonly

employed by school districts across Texas. WISD used the representations made in the vendors' best and final offers to determine with whom they would contract as its TPA.

6.3 In the proposal first submitted by Aetna, it disclosed the fees that it would charge the District both to serve as its TPA and to provide stop loss insurance. The proposal stated that Aetna would charge \$8.00 per person per month ("PEPM") as the "Total Fee Cost." At the time, WISD's enrollment numbered approximately 2,300 employees. It disclosed this fee as a broker fee, even though WISD had not authorized the payment of a broker fee or commission. Despite the fact that WISD had requested a proposal for a 12/15 contract, Aetna offered a 12/12 paid contract with a \$125,000.00 specific deductible, along with a medical network access fee ("VBM") of 9.7% of savings. WISD acknowledges that this initial proposal was not a final quote, and WISD never accepted the offer. Thus, WISD does not assert that any party was bound by it. As will be seen, some of the information is relevant to cast the negotiation in its appropriate context.

6.4 WISD does assert, however, that Aetna should be bound and be held responsible for the best and final offer it made to the District. The form of the spreadsheet that contained this offer, titled "Weslaco Independent School District / Self-Funded Health Insurance – Proposal # 07-04-21 / Proposed Funding Rates 2007-2008 / *To Cover Cost of Claims, Insurance, Administrative and Any Other Costs Involved* / (With R/X Coverage on Aggregate Stop Loss)," was drafted by the District and was intended to require the potential vendor to disclose all fees associated with its services and the maximum potential cost to WISD as the plan sponsor. [Emphasis added]. The offer sheet was not restrictive, and, in fact, allowed the vendor to add any language necessary to disclose any fees that were not included by the format of the spreadsheet itself. In that offer, Aetna represented that it would charge WISD a total of \$8.00 PEPM as the administrative fee. In the portion of the offer sheet that asked Aetna to itemize or break down the administrative fee, Aetna stated that all fee items were "included." It also inserted the following cryptic language in extremely fine print next to "Claims Administration": "percent of discount

will be included in this fee.” Finally, Aetna represented that the total fixed cost was going to be \$1,041,844.32 and the maximum potential cost to the district for administrative fees, claim costs, and stop loss insurance was \$10,147,872.00. Of the eight best and final offers submitted to WISD, Aetna’s was the most competitive.

6.5 Significantly, Aetna never disclosed in its best and final offer that it would charge any of the following fees: (1) a VBM fee; (2) a life insurance premium; (3) a fee for pharmaceutical prescriptions, also known as a pharmacy fee; or (3) a commission of any sort payable to a broker.

6.6 On May 14, 2007, at a regular meeting of the WISD board of trustees, Aetna’s best and final offer was accepted by WISD. Aetna representatives who attended the meeting, would have presumably read the agenda that spelled out the offer that WISD understood had been made by Aetna. They would have also heard the school board discuss their offer, along with those of the rival vendors. Aetna’s offer constituted the fees disclosed in the best and final spreadsheet, described in Paragraph 6.4, as well as the following additional provisions: (1) that Aetna would provide a \$10,000.00 life insurance policy per employee at no extra cost; and Aetna’s plan was a 12/15 plan, meaning that coverage was for claims incurred during the twelve month period from September 1, 2007 through August 31, 2008, and that any claims received from September 1, 2008 through November 30, 2008 (“the run-off period”) for medical services performed during the twelve month period would be paid as well. When the board of trustees voted to accept Aetna’s best and final offer, it did so with full, justifiable reliance upon Aetna’s representations as reflected in the best and final offer spreadsheet and as presented to the board that evening. Despite the fact that no administrative services contract (“ASC”) with Aetna was signed, the board of trustees expected that WISD would be charged only for the TPA services and stop-loss insurance costs that they authorized at that meeting. Significantly, no broker had been involved in procuring any of Aetna’s TPA services, life insurance coverage, or stop loss

insurance coverage, nor did the WISD board of trustees authorize Aetna to pay a commission to any broker.

6.7 On or about August 9, 2007, Aetna representative Nicholas Long sent WISD correspondence titled "Letter of Understanding" ("LOU"), in which Mr. Long attempted to summarize the list of TPA and stop loss insurance services that Aetna will provide for the 2007-2008 school year, along with the fees associated with those services. Mr. Long stated that the LOU "relates to the final contractual documents that will be entered into by Weslaco Independent School District and Aetna Life Insurance Company effective September 1, 2007." Importantly, after the summary of services and costs, Mr. Long's LOU stated "Please note: This letter is not meant to supersede the final contract or any item in our proposal that is not mentioned here." This statement constituted an unequivocal ratification and affirmation of the costs reflected in Aetna's best and final proposal accepted by the WISD board of trustees on May 14, 2007. Unfortunately, the body of the LOU misrepresented those costs in numerous respects.

6.8 First, Aetna stated that the administrative service fee is \$24.69 PEPM, rather than the \$8.00 PEPM quoted in their best and final offer. Next, Aetna listed a fee of \$.65 PEPM as a pharmacy fee, which was also not previously disclosed, authorized, or approved. Aetna then listed a fee of \$8.00 PEPM as a broker's commission, which was also not previously disclosed, authorized, or approved. Further, Aetna stated that any pharmaceutical rebates for which WISD may have qualified would be retained by Aetna, which, again, was not previously authorized, disclosed, or approved. Finally, Aetna changed the term of the stop loss insurance policy it had previously disclosed from 12/15 to 12/12 and included a broker commission for that policy of 15%. Again, the WISD board of trustees never approved these changes, an assertion corroborated by the fact that no representative of WISD countersigned the document in the blank that would indicate acceptance of the terms and charges. Aetna soon recognized its errors. Rather than rectifying them, however, it perpetuated different misrepresentations, which

eventually served as the basis for its billing scheme and, therefore, for WISD's claims as asserted herein.

6.9 On September 17, 2007, Aetna representative Linda Silva sent an email to WISD employee Adan Perez, in which she acknowledged that Aetna misrepresented the TPA fees in the LOU sent by Mr. Long. In her effort to reconfirm the original agreement, Ms. Silva stated that the administrative fee was \$0.00 PEPM, but then quoted an unauthorized broker fee to be paid to McAfee Insurance Agency rather than as a direct charge to WISD. Ms. Silva then correctly represented that WISD had not agreed to pay any pharmacy fee, but later affirmed Mr. Long's previous misrepresentations about the term of the stop loss policy, i.e. 12/12, with broker commission of 15%. Finally, Ms. Silva listed a "Total medical/dental/commission" of \$39.36. Mr. Long then issued a "final" LOU, dated September 17, 2007, that contained the changes cited in Ms. Silva's email. Significantly, this final LOU stated that Aetna would notify WISD of any fee change within 31 days of the fee change and failed to mention a VBM charge. WISD was charged on a VBM basis the entire year, however, despite never receiving notification of any fee changes or an invoice or accounting reflecting the VBM charge.

6.10 Subsequently, Aetna generated an ASC that attempted to memorialize all the terms and conditions of the agreement between WISD and Aetna, as expressed in the integration clause, which stated:

This Services Agreement (including incorporated attachments) constitutes the complete and exclusive contract between the parties and supersedes any and all prior or contemporaneous oral or written communications or proposals not expressly included herein. No modification or amendment of this Services Agreement shall be valid unless in a writing signed by a duly authorized representative of Aetna and a duly authorized representative of Customer.

Among the attachments incorporated by reference in the ASC is the "Service and Fee Schedule," which stated, "Customer hereby elects to receive the Services for Products/Programs designated below. The corresponding Service Fees effective for the period beginning September 1, 2007 and ending August 31, 2008 are specified below." The only fees included in the fee schedule were

(1) an administrative fee of \$0.00; and (2) a VBM of 9.7%. Noticeably absent from the Fee Schedule were any of the following types of fees: (1) an \$8.00 PEPM charge for administrative fees; (2) a pharmacy fee; and (3) a commission of any sort payable to any broker. Quotes and/or proposals for all of these fees, if any, predated the signing of the ASC and, according to its integration clause, could not constitute terms of the contract. The integration clause, expressly set out in Section 3 of the "General Conditions Addendum" to the ASC, stated as follows:

Service Fees; Renewals. The Service Fees payable by Customer to Aetna for the Services shall be determined in accordance with the Service and Fee Schedule identified in the Services Agreement. No Services other than those identified in the Service and Fee Schedule are included in the Service Fees.

Thus the ASC required that any changes be made only by mutual written agreement of the parties. The agreement was signed by Aetna CEO Ronald A. Williams on October 26, 2007. In justifiable reliance upon Aetna's representations regarding the fees that were expressed in their best and final offer, WISD Superintendent Dr. Richard Rivera signed the document on March 3, 2008. Unfortunately, rather than clarifying the payment terms under the agreement, the ASC laid another foundation for the misrepresentation of these terms, as the fees ultimately charged failed to conform to any of Aetna's formal offers.

6.11 On September 21, 2007, Aetna generated its first invoice for September, 2007, the first month of services under the parties' agreement. Aetna charged WISD \$25.34 PEPM, or a total of \$61,449.50, for its TPA services, despite the fact that the Fee Schedule and the final LOU listed \$0.00 PEPM as its administrative charge. Further, Aetna invoiced an unauthorized broker commission of \$8.00 PEPM, totaling \$19,408.00, which was collected by Aetna and paid to Robert J. Garza. None of these fees were disclosed in either Aetna's best and final offer that was approved and accepted by the WISD board of trustees on May 14, 2007 or in the ASC signed by Dr. Rivera on March 3, 2008. Likewise, the \$25.34 PEPM administrative fee directly contradicts the final LOU generated by Aetna sales executive Nicholas Long. Taking its

fraudulent billing scheme to another level of impropriety, Aetna generated invoices, beginning November 22, 2007, that paid a commission based on an enrollment of approximately 4,800 employees, which was *more than double* the actual number. Again, Aetna collected the funds procured by its fraudulent invoices and paid it to Defendant Robert J. Garza. Because Robert J. Garza received the commission, WISD asserts that the unauthorized and fraudulent charge based on the inflated enrollment was created at his behest and in conspiracy with Aetna. This charge continued the entire term of the relationship between WISD and Aetna.

6.12 Aetna's final act of deceit in for the 2007-2008 period involved the life insurance policy it issued on behalf of WISD's employees. Again, the first time that a life policy was mentioned to the board was at the May 14, 2007 meeting, when Aetna representatives offered an incentive of a \$10,000 per employee life benefit at no cost to WISD, which the board of trustees accepted. In July, 2007, however, Aetna Senior Implementation Manager Jeanne Dahl sold WISD a life policy at a \$3,540.00 per month premium. Equally inexplicable is the fact that Aetna involved broker Robert J. Garza in the transaction, to the point of instructing WISD to include his signature on the life application, despite the fact that the WISD board of trustees had never authorized a broker fee. Aetna then included a 15% commission for Defendant Robert J. Garza as part of the deal, which Defendant Garza improperly accepted. Defendant Garza's unauthorized activity became more obtrusive when he actually contacted Linda Silva at Aetna, purportedly on WISD's behalf, to instruct her to bill WISD for its TPA services on a VBM basis, rather than a fixed cost administration fee. This was despite the fact that as of October, 2007, Aetna had not proposed charging a VBM fee as part of its TPA agreement. WISD asserts that this act is one of many that evidence the conspiracy between Defendant Robert J. Garza and Aetna to bill WISD for unauthorized and fraudulent commissions to his benefit.

6.13 Simply put, had WISD known what Aetna would bill for its TPA, insurance services, and broker commissions for the 2007-2008 period, it would have selected a cheaper alternative vendor. Aetna's best and final offer that WISD accepted at the May 14, 2007 regular

meeting of the board of trustees was very different from what Aetna represented in its LOU (either the first admittedly incorrect one or in the revised, incorrect and final version), what it represented in the Fee Schedule attachment to the ASC, or what WISD actually paid by the end of the service and policy period. In fact, Aetna's numerous representations regarding its TPA fees, in combination with the unauthorized broker fee schemes it hatched with Defendant Robert J. Garza, cost WISD \$1,728,255.33, well over the \$1,041,844.32 total fixed cost it guaranteed WISD in the offer accepted by the board of trustees. Unfortunately, Aetna's duplicity was not limited to the 2007-2008 school year. It proved much more costly to WISD in 2008-2009.

6.14 In March, 2008, well before WISD understood the extent of Aetna's wrongdoing, it received Aetna's renewal offer, dated March 31, 2008. A portion of the offer disclosed the fees that Aetna charged for 2007-2008, including the unauthorized \$8.00 PEPM broker commission, which it now labels a "consulting fee," that cost WISD \$227,328.00. The renewal proposed the same disguised broker fee, along with \$0.00 PEPM as the administration cost, and a VBM charge, which Aetna in one place listed as \$32.05 PEPM and, in another, as 9.7% with a cap of \$36.64. WISD rejected the offer and provided notice to Aetna of its intent to terminate the 2007-2008 agreement by issuing a request for proposals for these services.

6.15 WISD solicited proposals for the 2008-2009 plan year by again advertising in the local newspaper. In that advertisement and through a proposal outline, WISD asked for fully-funded and self-funded quotes with stop loss reinsurance amounts of \$100,000.00 or \$125,000 with a contractual period of twelve months incurred and paid in fifteen months of contract. There were five respondents to the request, and WISD evaluated the costs of TPA services and stop loss premiums of each. WISD then asked each of those vendors to submit best and final offers, using the same spreadsheet format from the year before.

6.16 In its best and final offer, which purported to constitute "Funding for All Medical Costs Including Claims, Rx, Insurance and Administrative Fees," Aetna represented that the expected cost to WISD would be \$8,230,857.00, the midpoint cost would be \$8,908,436.00, and

the maximum cost would be \$9,586,015.00. In his breakdown of the administrative fees and insurance, Joe Braley, Aetna's Vice President of Sales and Service, listed an administrative fee of \$8.00 PEPM and stop loss premiums of \$38.65 PEPM, for a total fixed cost of \$50.01 PEPM. On May 27, 2008, at a regular meeting he WISD board of trustees, WISD voted to accept Aetna's best and final offer. What it could not have known at the time was that Mr. Braley, who represented that the best and final offer made to the district was "firm" by signing the actual offer spreadsheet, failed to include the fixed cost amounts in their best and final offer. Therefore, when WISD accepted Aetna's proposal and funded the plan, they did so at less than the actual expected cost, resulting in increased exposed amounts for WISD. Absent from Aetna's best and final offer were the following fees: (1) any VBM fee; (2) a fee for pharmaceutical prescriptions, a.k.a, a pharmacy fee; and (3) a commission of any sort payable to a broker, which, again, the WISD board of trustees did not authorize. Significantly, WISD and Aetna never executed an ASC for 2008-2009, meaning that the only payment terms agreed upon were reflected in the best and final offer approved by the WISD board of trustees. As in the 2007-2008 plan year, Aetna violated the terms of its agreement by charging WISD these undisclosed and unauthorized fees, including the commissions paid to Robert J. Garza, which WISD alleges he procured in concert with Aetna. Aetna again generated fraudulent invoices with inflated enrollment numbers, which allowed it again to collect and pay unauthorized commissions to Defendant Robert J. Garza. Finally, as in the 2007-2008 plan year, Aetna offered WISD a free \$10,000.00 per employee life benefit as an incentive, which WISD accepted. In violation of the agreement, Aetna then charged WISD \$3,593.97 per month as a premium.

VII. CAUSES OF ACTION

7.1 Plaintiff incorporates paragraphs 6.1 through 6.16 as if fully set out herein under and in addition, or in the alternative, would plead as follows:

A. FRAUD AND NEGLIGENT MISREPRESENTATION AGAINST AETNA AND ROBERT J. GARZA

7.2 The best and final offers for both plan years, the LOU's for 2007-2008, and the ASC for 2007-2008 contained numerous representations regarding the cost of the administrative fees, stop loss insurance, pharmacy fees, and life insurance premiums. Aetna intended that WISD would rely upon those representations in accepting its services. WISD did rely upon those representations in accepting Aetna's services. These representations, on numerous occasions, were not true and did not reflect the actual cost of Aetna's services. Aetna either knew they were false at the time they were made, or made them in such a negligent manner that they failed to verify the truth of the representations. As a proximate cause of its reliance, WISD has suffered damages as a result in an amount well over the Court's jurisdictional limit as set out hereinabove for which it prays relief.

7.3 Further, WISD never authorized the payment of a broker fee, commission, or consultant's fee to anyone. Defendant Robert J. Garza had no authority to act as WISD's representative or broker, and any fees paid to him were improperly invoiced by Aetna. These unauthorized payments were solicited and accepted by Defendant Robert J. Garza as a result of his intentional misrepresentation to WISD, through Aetna's billing, that he was entitled to these fees. Defendant Robert J. Garza's false representations regarding his entitlement to these fees were made with his knowledge of their falsity or made in a negligent manner. Aetna communicated and ratified these misrepresentations through its billing scheme. As a proximate cause of its reliance upon these misrepresentations, WISD has suffered damages as a result in an amount well over the Court's jurisdictional limit as set out hereinabove for which it prays relief.

B. BREACH OF CONTRACT AGAINST AETNA

7.4 WISD had valid and enforceable agreements with Aetna when its board of trustees accepted Aetna's offers, respectively, for the 2007-2008 plan year on May 14, 2007 and

for the 2008-2009 plan year on May 27, 2008. Aetna subsequently charged WISD in a manner contrary to those offers, which constituted a breach of the agreements for each respective plan year. Further, and in the alternative, the ASC executed by Aetna and WISD for the 2007-2008 plan year constituted an enforceable agreement. When Aetna invoiced WISD for fees and costs that were not included in the ASC's Fee Schedule and accepted those payments, it breached that contract. As a proximate result of Aetna's breaches of contract, WISD has suffered damages as a result in an amount well over the Court's jurisdictional limit for which it prays relief.

C. BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING AND FIDUCIARY DUTIES AGAINST AETNA

7.5 Aetna agreed to provide stop loss and life insurance services to WISD as its insurer. As such, Aetna assumed the duty of good faith and fair dealing with its insured. By overcharging WISD for its stop loss insurance and by charging a premium for its life insurance policy that it represented was fee of charge, Aetna breached its duty to deal fairly and in good faith with the Plaintiff. This duty was further breached by Aetna's invoicing and payment of broker fees and commissions that were fraudulent and never authorized by, or disclosed to, WISD. Aetna's breach was a proximate cause of the losses, expenses, and damages suffered by the WISD. Aetna's wrongdoing further constituted a breach of its fiduciary duties to WISD that arose out of the special insurer-insured relationship that existed between the parties, which proximately caused damages to WISD.

D. TORTIOUS INTERFERENCE WITH A CONTRACTUAL RELATIONSHIP AGAINST ROBERT J. GARZA

7.6 WISD had valid and enforceable agreements with Aetna when its board of trustees accepted Aetna's offers, respectively, for the 2007-2008 plan year on May 14, 2007 and for the 2008-2009 plan year on May 27, 2008. Defendant Robert J. Garza had actual knowledge of WISD's contractual agreements with Aetna for both plan years. By procuring unauthorized commissions for himself, Defendant Robert J. Garza willfully and intentionally interfered with WISD's contractual agreements with Aetna. Defendant Robert J. Garza's interference involved

deliberate efforts to alter the payment terms of each agreement to his benefit and, therefore, constituted an active effort to persuade Aetna to violate the payment terms of each. Defendant Robert J. Garza thus proximately caused Aetna's breach of the contracts and hindered WISD's performance of the contracts by making it more burdensome, difficult, and expensive. As a result, WISD suffered monetary damages well above the jurisdictional limits of this Court.

E. VIOLATION OF THE TEXAS THEFT LIABILITY ACT BY ROBERT J. GARZA AND AETNA

7.7 By charging and procuring unauthorized and fraudulent commissions in violation of Aetna's agreements with WISD for the 2007-2008 and 2008-2009 plan years, both Aetna and Defendant Robert J. Garza unlawfully appropriated WISD funds in violation of Texas Penal Code Section 31.03. WISD had a possessory interest and right to any unauthorized commissions that Aetna charged, collected, and paid to Defendant Robert J. Garza. Those commissions, which constitute personal property under the Theft Liability Act, were appropriated by Aetna and Defendant Robert J. Garza through deception and, therefore, without the effective consent of WISD. At the time Aetna and Robert J. Garza charged the unlawful, unauthorized, and illegal commissions and obtained them deceptively, they intended to deprive WISD of its funds. This deprivation, which WISD asserts constitutes theft of property under the Theft Liability Act, has proximately caused damages to WISD in the amount of all commissions paid to Aetna and Defendant Robert J. Garza, which are in excess of the minimum jurisdictional amount of this Court.

VIII. AGENCY AND VICARIOUS LIABILITY

8.1 At all relevant times, Aetna Life Insurance Company contracted with WISD on behalf of itself and Aetna Health, Inc., its health maintenance organization in the state of Texas, as established in the ASC executed between Aetna Life Insurance Company and WISD. As such, Aetna Life Insurance Company had actual and apparent authority to serve as an agent for Aetna

Health, Inc. Aetna Health, Inc., therefore, as the principal in the relationship, is vicariously liable to WISD for Aetna Life Insurance Company's wrongdoing.

8.2 At all relevant times, Defendant Robert J. Garza served as an agent for Aetna Life Insurance Company and Aetna Health, Inc. Thus, as his principals, these Aetna entities are vicariously liable for the wrongful acts of Defendant Robert J. Garza.

IX. ATTORNEY'S FEES

9.1 Defendants' conduct as described in this petition and the resulting damage and loss to Plaintiff has necessitated Plaintiff's retention of the attorneys whose names are subscribed to this petition. Plaintiff is, therefore, entitled to recover from Defendants an additional sum to compensate Plaintiff for a reasonable fee for such attorney's necessary services in the preparation and prosecution of this action, as well as a reasonable fee for any and all necessary appeals to other courts. Plaintiff has presented their claim for attorney's fees, but Aetna chose to ignore it. Thus, Plaintiff requests attorneys fees under Texas Civil Practice and Remedies Code §38.001, et seq. Plaintiff further pleads its entitlement to attorneys fees against Defendants for violation of the Texas Theft Liability Act under Texas Civil Practice and Remedies Code §134.005(b).

X. EXEMPLARY DAMAGES

10.1 Plaintiff incorporates each of the previous allegations set forth herein.

10.2 The conduct, occurrences, representations, acts, omissions, fraud, and all other allegations against Defendants stated in this petition rise to the level that exemplary damages are warranted under Section 41.003 of the Texas Civil Practice and Remedies Code.

XI. CONDITIONS PRECEDENT

11.1 All of the conditions precedent to bringing this suit and to Defendants' liability for the claims alleged have been performed or have occurred.

XII. JURY DEMAND

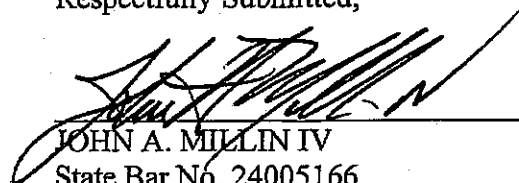
12.1 Plaintiff respectfully requests trial of this cause before a Hidalgo County, Texas jury.

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Weslaco Independent School District prays that after notice and hearing that Defendants be cited to appear and answer herein, and that after trial on the merits, it be awarded judgment as follows:

- a. Judgment against Defendants for actual damages and exemplary damages in excess of the minimum jurisdictional limits of this Court;
- b. Prejudgment interest as provided by law;
- c. Post-judgment interest as provided by law;
- d. Attorneys fees;
- e. Costs of suit; and
- f. All other relief to which Plaintiff may show itself entitled, either at law or in equity, either general or special, under the facts set forth in its claims.

Respectfully Submitted,



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