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IN THE UTAH COURT OF APPEALS

VAL M. ELLISON, Plaintiff and Appellant, vs. UTAH COUNTY GOVERNMENT; and HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY, Defendants and Appellees.	**BRIEF OF APPELLEE HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY** Appeal No. 20080145-CA District Court No. 050402012

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, STATE OF UTAH, THE HONORABLE JAMES R. TAYLOR, DISTRICT JUDGE

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LIST OF PARTIES

All parties to this appeal and to the proceedings below are listed in the case caption.

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STATEMENT OF JURISDICTION

The Notice of Appeal filed by Appellant Val M. Ellison ("Ellison") was timely, and this Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78A-4-103(2)(j) (2008).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

As to Defendant Hartford Life and Accident Insurance Company ("Hartford"),[1] the issue before this Court is the following:

Did the district court correctly grant summary judgment on Plaintiff Ellison's four claims against Hartford on the grounds that Hartford established there was no genuine issue of material fact and that it was entitled to judgment as a matter of law on each of the claims, and that Ellison failed to submit admissible evidence sufficient to raise a genuine issue of material fact to preclude summary judgment for Hartford?

Ellison correctly notes that this Court is to review the district court's "legal conclusions and ultimate grant or denial of summary judgment for correctness, and view[] the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *Orvis v. Johnson*, 2008 UT 2, ¶ 6, 177 P.3d 600.

However, the Court is to review the district court's decisions regarding the admission or exclusion of evidence for abuse of discretion, despite the fact that those

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[1] In both the statement of the case and the argument section of his brief, Ellison combines the discussion of his claims against Hartford and Utah County Government ("Utah County"). Although there is some overlap between the facts pertinent to the claims against both Defendants, the claims are separate and distinct. Hartford will address only Ellison's failure to raise genuine issues of material fact as to the claims against it.

rulings led to the entry of summary judgment. *In re Rights to Use of All Water*, 1999 UT 39, ¶¶ 26-27, 982 P.2d 65 (holding trial court had not "overstepped its broad discretion" in ruling that evidence submitted in opposition to motion for partial summary judgment was inadmissible); *see also, e.g., Apple Park, L.L.C. v. Apple Park Condonimiums, L.L.C.*, 2008 MT 284, ¶ 12, 345 Mont. 359, 192 P.3d 232 ("We review the conclusions of law upon which the district court bases its decision to determine if they are correct. *In the context of a summary judgment ruling, we review the district court's admission or exclusion of evidence for an abuse of discretion.*") (emphasis added; citations omitted).

DETERMINATIVE PROVISIONS ON APPEAL

This appeal turns primarily on common-law principles. However, Utah Code Ann. § 31A-21-104(4)-(5) (2008) also bears on the issues in this appeal. A verbatim copy of that statute is attached hereto as Addendum A.

STATEMENT OF THE CASE

Hartford objects to Ellison's Statement of the Case, (Br. of Appellant at 2-8), because it omits or glosses over several factors that are important to the outcome of this appeal and because it contains characterizations of the evidence that unfairly distort the record below. Hartford offers the following Statement of the Case, which more accurately describes the facts of the case, the record materials considered by the district court, and the proceedings below.

A. Proceedings Below.

Ellison initiated this action in the district court with a Complaint asserting claims against Hartford for breach of contract (claim 3), breach of the covenant of good faith and

fair dealing (claim 4), fraud (claim 5), and estoppel (claim 6), as well as additional claims against Utah County. (R. 1-12.) Following discovery, both Hartford and Utah County moved for summary judgment. (R. 73-76, 502-504.) Hartford supported its motion with extensive citations to deposition transcripts (including primarily Ellison's own deposition), a verbatim transcript of the telephone conversation between Ellison and a Hartford employee that is the basis for his claims against Hartford, the pertinent policy documents and related papers, Ellison's Complaint and Initial Disclosures, court documents, and other materials. (R. 77-413.) Ellison opposed the motion (R. 416-35), but he admitted virtually all of Hartford's Statement of Undisputed Material Facts. (R. 432.) He submitted no evidence of his own and confined his opposition to a discussion of the evidentiary materials Hartford had submitted. (R. 416-35.)

After briefing was complete, the district court held oral argument on July 20, 2007 and granted both motions for summary judgment from the bench. (R. 644, 660.) At the district court's request, (R. 644), Hartford submitted a proposed order to implement the decision. Ellison objected to the proposed order, arguing that it "include[d] several items not discussed by the Court." (R. 645-46.) Nevertheless, after editing Hartford's proposed order by deleting some of the language, the district court adopted the proposed order as its own, granting summary judgment on all claims on January 23, 2008. (R. 647-57.)[2] Among other holdings, the district court held Ellison had failed to satisfy his

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[2] Copies of the Order Granting Summary Judgment in Favor of Defendants are attached hereto as Addendum B and to the Brief of Appellant as Appendix B. Ellison complains that the district court initially observed in a minute entry that the proposed order appeared

burden in opposing summary judgment because much of the evidence he proffered in support of essential elements of his claims was inadmissible. *Id.*

This appeal followed.

B. Statement of Facts.[3]

1. The Policy.

Ellison is a resident of Utah County, Utah and is an employee of Utah County Government. (R. 378, 376.) As a benefit to eligible employees, Utah County offered life insurance coverage to employees and their "Dependents." (R. 373, 292-93, 220-33.) During the time period relevant to this lawsuit, Utah County's life insurance plan was funded by a group insurance policy issued by Hartford—policy number GLT-674591 (the "Policy"). (R. 373, 292-93, 220-55.)

Ellison began working for Utah County in 1995. (R. 375.) In 1998, he elected dependent life insurance coverage in the amount of $200,000 for Sherrie Ellison, his then-wife. (R. 10 at ¶¶ 11-13.) Sherrie Ellison was at that time eligible for coverage under the Policy's Dependent Coverage provisions. (R. 229.)

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to be a more detailed document than the court had anticipated. (Br. of Appellant at 3.) Such quibbling is beside the point, since the district court adopted the proposed order after making revisions of its own.

[3] Much of the factual information set forth below closely tracks the Statement of Undisputed Material Facts in Hartford's memorandum in support of its motion for summary judgment below. That statement of facts is in the district court record at pages 401-08. This is important because Ellison expressly admitted virtually all of these facts in his memorandum opposing Hartford's summary judgment motion. (R. 432.) The statement that follows cites frequently to the pages in the parties' respective memoranda below in which Hartford asserted facts and Ellison admitted them. For the convenience of the Court, the following factual recitation also includes detailed citations to those portions of the record containing the underlying evidentiary support for the facts.

Utah County conducted an annual "benefits fair" during which employees signed up for, changed, or received information about their various employee benefit plans—including life insurance. (R. 267-68, 370-72.)

Utah County was responsible for administering many aspects of the Plan. Its duties included:

a. enrolling employees upon hiring, termination, or during open enrollment (R. 131, 168-71);

b. administering changes in beneficiaries (R. 131, 168-71);

c. collecting of premiums from employees via payroll deductions (R. 214, 168-71);

d. determining when an employee needed to submit a Personal Health Statement (R. 131, 168-71);

e. maintaining accurate records relating to enrollment (R. 131, 168-71); and

f. submitting premium payments to Hartford. (R. 131, 168-71.)

Hartford, on the other hand, was responsible for evaluating and paying claims for life insurance proceeds according to the terms of the Policy. (R. 132, 168-71.)

It was each employee's responsibility to provide to Utah County enrollment information related to his dependents. (R. 129, 168-71.) The Policy defines "Dependent" as "Your spouse" and "Your unmarried child." (R. 494, 599.) The Policy states that Dependent Coverage terminates on the date when, "the Dependent no longer meets the definition of Dependent." (R. 546, 223, 292-93.)

The Policy contains a conversion provision that permits a covered individual whose coverage is terminating to convert his/her life insurance coverage to a "conversion policy." The conversion provision states,

> **How does an individual convert coverage?**
> To convert life insurance, the individual must, within 31 days of the date group coverage terminates, make written application to Us and pay the premium for his age and class of risk.

(R. 221, 292-93.) Thus, the ex-dependent seeking to convert his/her policy must make application to Hartford to convert dependent coverage into an individual policy. Hartford had a preprinted form (the "Conversion Paperwork") that former dependents were required to use to make application for conversion coverage. (R. 122-27, 163-64.)

It is undisputed that under the terms of the Policy, Utah County bore the responsibility to inform employees like Ellison of the Policy's Conversion Privilege. The Policy's Administration Manual states, referring to Utah County, "Your responsibilities include: . . . Notifying employees of their right to exercise the Conversion Privilege." (R. 131, 168-71.) Utah County has admitted that it bore the responsibility to inform its employees of the Conversion Privilege. Peggy Poulsen, Utah County's Benefits Coordinator testified:

> Q Is it accurate that you understood that it was Utah County's obligation to notify employees of their right to exercise the conversion privilege?
>
> A Yes.

(R. 167.)

2. Sherrie Ellison.

In 2001, Sherrie Ellison was diagnosed with pancreatic cancer, a condition that was terminal. (R. 10 at ¶ 15, 405, 432, 605.)

During her illness, Ms. Ellison initiated divorce proceedings against Ellison. (R. 10 at ¶ 16, 330-31, 405, 432, 605.) On August 21, 2003, the divorce was finalized. (R. 10 at ¶ 16, 110-120, 327, 405, 432, 605.) The court entered a detailed, eleven-page Decree of Divorce. (R. 110-120, 327.)

Sherrie Ellison died shortly thereafter on October 19, 2003. (R. 9 at ¶ 23, 405, 432.)

3. Ellison's Alleged Interactions With Utah County Personnel.

Ellison alleged that, at approximately the beginning of 2002, he contacted someone in Utah County's personnel department, whom he could not identify, regarding continuing life insurance coverage on his wife after their divorce. (R. 364-65, 405, 432.) Ellison claimed that the personnel department told him that to continue the coverage he would need to continue to make the premium payments, but to contact Hartford to confirm. (R. 364, 405, 432.)

Ellison alleged that the unidentified Utah County employee did not inform him that his ex-wife had to complete additional paperwork to convert the dependent life insurance coverage into an individual policy. (R. 364, 405, 432.) Ellison further alleged that at no time did anyone at Utah County inform him of his ex-wife's conversion right or the procedures necessary for her to convert the policy. (R. 363-64, 405, 432.)

Ellison also alleged that he queried Utah County regarding continuing his ex-wife under the dependent terms of his employee health insurance plan. He alleged he was told that if he tried to leave her on his health insurance following their divorce, he would be committing insurance fraud. (R. 355, 405, 432.)

4. Ellison's One Alleged Telephone Call to Hartford.

All of Ellison's claims against Hartford are based exclusively on his allegation that he made a ***single call***[4] to Hartford to follow up on his alleged conversation with the unknown Utah County employee, during which he claimed to have spoken with two Hartford employees concerning whether life insurance coverage for Sherrie Ellison could continue following the couple's divorce. (R. 337.) Because Ellison's plea that his case should proceed to a jury rests exclusively on this single telephone call, Hartford will describe the actual evidence before the district court on this point in considerable detail.[5]

On January 30, 2002, Ellison called Hartford's Medical Underwriting customer service area. (R. 333-37, 404, 432; Add. C.) At his deposition over four years later, on May 19, 2006, Ellison recalled that he placed only this single phone call, as confirmed by Utah County phone records from his work extension at Utah County, during which he claims he spoke with two people. (R. 327-28, 333-36, 404, 432; Add. C.) He testified that the conversation with the first person was "probably pretty short. I asked her the

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[4] Ellison conceded in his deposition that he had no other communications with Hartford prior to his wife's death, after which he contacted Hartford about initiating the claims process. (R. 337, 332-33, 403, 432.)

[5] Ellison's entire testimony concerning the substance of this call is set forth in only five pages of his deposition transcript, pages 45-49. (R. 333-37.) For the convenience of the Court, copies of those five transcript pages are attached hereto as Addendum C.

question about *can you continue life insurance*, and she indicated that she *thought that I could* as long as I pay the premiums. But then she said she wanted to *transfer me to someone else just to make sure*." (R. 336, 404, 432; Add. C (emphasis added).) He further testified that the second person "confirmed what the first person said .... *That you can continue* the life insurance on my spouse if I divorce her, as long as you keep paying the premiums." (R. 334, 404, 432; Add. C (emphasis added).)[6]

Although Ellison could not recall at his deposition in May, 2006 the name(s) of the person(s) at Hartford with whom he spoke (R. 334, 336-37; Add. C), Hartford located a recording of the January 30, 2002 call. Hartford prepared and submitted to the district

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[6] Ellison's brief erroneously asserts that Ellison testified the Hartford employees expressly told him the ***only*** thing he needed to do to continue life insurance on his ex-wife was to continue paying the premiums, and ***affirmatively stated*** he did not need to do anything else. *See, e.g.,* Br. of Appellant at 7 ("This Hartford employee also told Mr. Ellison that the *only* thing he needed to do to continue coverage under the Policy after his divorce was to continue paying the required premiums.") (emphasis in original), 11 (stating Hartford had "informed Mr. Ellison that his anticipated divorce would in no way affect coverage if he simply continued to pay the premiums"), 15 (stating that "[a]ccording to Mr. Ellison's sworn testimony, this Hartford employee again confirmed that the Policy would not be affected by divorce so long as the premiums were paid"). These characterizations overstate and materially distort Ellison's actual testimony concerning the call, as well as the verbatim transcript of the conversation with the first of the two Hartford employees with whom he allegedly spoke. The actual evidence shows that Ellison did not attest to the categorical assurances he argues in his brief. Hartford urges the Court to inspect carefully the five deposition pages containing Ellison's ***actual testimony*** concerning the telephone call (R. 333-337; Add. C), as well as the two-page verbatim transcript of the first part of the call (R. 101-02; Add. D), rather than accepting the self-serving characterizations of that evidence contained in Ellison's brief. These materials are attached as Addenda C and D, respectively.

court a transcript of that call, which Ellison conceded below (and concedes further on appeal) is authentic. (R. 101-02, 404, 432, 573-74; Br. of Appellant at 14 and App. C.)[7]

As the transcript indicates, during the call, Ellison spoke with Linda Daly of Hartford's Medical Underwriting area. (R. 101-02, 404, 432; Add. D.) Ellison stated to Ms. Daly that Utah County informed him he *could* continue insurance on his spouse, even if he and his wife divorced. He asked Ms. Daly if this was accurate. Ms. Daly responded that she "believed" he could, but she did not affirmatively confirm that he could or even state that she knew the answer to the question. (R. 101-02; Add. D.)

Ellison next told Ms. Daly that he needed a letter for the court stating the coverage could continue. *Id.* Ms. Daly asked if Ellison had filled out a personal health statement, and he said he had. Ms. Daly then essentially told Ellison the question he had asked was outside her area of expertise, responding that she was in the medical underwriting area and that in her area they simply "underwrite the application" and "***don't administer the plan.***" *Id.* (emphasis added).

Ellison responded that his HR department had told him to call Hartford and said again that he needed something *in writing*. At that point, Ms. Daly responded that she was going to transfer Ellison to another number, to someone who hopefully would be better able to help him, and advised Ellison to call her back if the other person could not help him. Mr. Ellison asked for Ms. Daly's name to write down. She spelled her name for him and gave him another number to call. *Id.*

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[7] A copy of that transcript, which is also Appendix C to the Brief of Appellant, is attached hereto as Addendum D.

Ellison admitted he did not ask Ms. Daly or anyone else at Hartford what needed to be done, *e.g.* completion paperwork or otherwise, in order to effect the continuation of coverage on his ex-wife. (R. 101-02, 334, 403, 432; Add. D.)

Although the transcript suggests that the call then terminated (R. 101-02; Add. D), Ellison testified at his deposition that Ms. Daly transferred him to a second Hartford employee and that he had a conversation with her as well. (R. 334-35; Add. C.) However, Ellison offered no deposition testimony (and has not argued below or in his brief on appeal) that the second Hartford employee said anything materially different to him than Ms. Daly did during their conversation. To the contrary, when asked during his deposition what happened in this second conversation, Ellison testified, "She confirmed what the first person said." (R. 334; Add. C.) Thus, according to Ellison's own testimony, the verbatim transcript of his conversation with Ms. Daly (R. 101-02; Add. D) fairly reflects the sum and substance of his alleged conversation with the second employee as well.

The evidence before the district court concerning Ellison's single telephone call to Hartford was detailed and undisputed. The evidence was also undisputed that neither Ellison nor his wife did anything over the next one year and seven months leading up to the divorce to effect a continuation of her coverage.

5. Ellison's Claim for Life Insurance Proceeds.

Ellison never asked for or obtained a copy of the Policy until after his ex-wife's death. (R. 297-98, 403, 432.)

After Ms. Ellison died, Ellison made a claim to Hartford for life insurance proceeds. (R. 9 at ¶¶ 23-24, 402, 432.) Hartford denied Ellison's claim on the ground that his wife did not fit the policy's definition of "Dependent." (R. 9 at ¶ 25, 402, 432.)

Ellison appealed this decision, claiming he had talked to representatives of Hartford who told him that "life insurance *can* be continued even after a divorce." (R. 98-99, 301-02, 402, 432 (emphasis added).)

Ellison's appeal was assigned to Edna Golych, one of Hartford's appeals specialists. Ms. Golych investigated Ellison's claims regarding the representations that both Utah County and Hartford allegedly made. Specifically, Ms. Golych contacted Utah County to ascertain whether the County told Ellison he could continue his ex-wife's life insurance after their divorce. Utah County told Ms. Golych it was unaware of any such representation. (R. 77-83, 402, 432.)

Ms. Golych also contacted Hartford's group benefits call center to inquire whether it had any record of the call referenced in Ellison's appeal. The only call the center could verify was Ellison's October 23, 2003 call requesting a proof of death form. The center had no record of the call referenced in Ellison's appeal letter.[8] (R. 77-83, 402, 432.)

Given the Policy's terms, which unambiguously state that dependent coverage terminates when a dependent no longer meets the definition of dependent, Hartford denied Ellison's appeal. (R. 8-9 at ¶ 26, 401, 432.)

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[8] Hartford later located the Ellison/Daly call after it learned Ellison had called its medical underwriting department rather than the group benefits call center. (R. 402, 432.)

6. Ellison's Lack of Evidence of Damages.

The Ellisons' divorce decree did not address life insurance for Sherrie Ellison, despite her terminal illness. The court entered a detailed eleven-page Decree of Divorce that comprehensively addressed and resolved the financial issues between Ellison and his ex-wife (R. 110-20), including such matters as child support (R. 115 at ¶ 5), alimony (R. 115 at ¶ 6), disposition of the marital home (R. 115 ¶ 7), health and dental insurance for the couple's children (R. 115 ¶ 8), health insurance under COBRA for Ms. Ellison (R. 115 ¶ 8.A.), the disposition of the debts and obligations of the parties (R. 112-14), the disposition of retirement benefits (R. 112 at ¶ 13), attorneys fees (R. 112 ¶ 14), tax returns (R. 111-12 at ¶ 16), and the purchase of clothing for the children (R. 111 at ¶ 18). The Decree of Divorce contained a provision specifically requiring ***Ellison*** to maintain insurance on his life for the benefit of his minor children:

> It is reasonable and proper that [sic] for the Respondent [Ellison] to maintain a life insurance policy on his life as available through his place of employment at reasonable cost during the children's minority with as much coverage as possible, with the children listed as the sole beneficiaries and Wells Fargo Bank designated as the trustee. The trust shall provide with an emphasis on assisting the minor children during their minority years.

(R. 111 at ¶ 18.) The Decree of Divorce made no mention of life insurance coverage for Sherrie Ellison. (R. 110-20.) It contained no requirement for her to convert her dependent life insurance coverage through Ellison's employer to an individual policy, much less any requirement that she name her ex-husband (as opposed to her minor children, as with Ellison's policy) as the beneficiary. *Id.*

Further, Ellison could proffer no admissible evidence to the district court that Ms. Ellison would have agreed to submit the paperwork necessary to convert her dependent life insurance coverage prior to her death, naming the ex-husband she had recently divorced as her beneficiary.[9] Ellison testified,

> Q You were asked just prior to our taking a break whether or not you believe, or whether or not you have any evidence that Sherrie would have agreed to this conversion policy or the conversion. And you said, you don't have any written evidence, but you intimated that you might have other evidence.
>
> A No, what I—what I think what I said was that I'm quite sure that she would have, just knowing her. But I don't have anything written.
>
> Q Do you have any evidence other than your belief.
>
> A No.

(R. 287-88, 401, 432.) The district court accordingly held there was no admissible evidence to establish that Sherrie Ellison would have converted the dependent life insurance coverage to an individual policy or would have named Ellison as the beneficiary had she done so. (R. 649.)

SUMMARY OF ARGUMENT

The district court correctly granted summary judgment on Ellison's claims against Hartford because Hartford demonstrated that there were no genuinely disputed issues of

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[9] Ellison did state in his deposition that he had a conversation with Sherrie "when she first got ill" about the Policy and discussed using the proceeds "to help the kids with missions and schooling and so forth" (R. 287, 323), but that testimony was inadmissible hearsay, as explained below, and concerned an alleged conversation with Sherrie that occurred at least a year and half before the Decree of Divorce was negotiated and the divorce was finalized. (R. 10 at ¶¶ 15-16, 110-120, 327, 405, 432, 605.)

material fact and that it was entitled to judgment as a matter of law. Ellison completely failed to meet his burden to show genuine disputes of material fact sufficient to allow his case to proceed to trial.

First, Ellison failed to submit admissible evidence of damages, an essential element of all four of his claims. Specifically, Ellison failed to proffer admissible evidence showing that Sherrie Ellison, after divorcing Ellison while terminally ill with pancreatic cancer, would have converted her group coverage to an individual policy, named Ellison as the beneficiary, and paid premiums on that policy. Ellison's deposition testimony, which was the only evidence he submitted on this subject, was inadmissible speculation and hearsay. The district court acted within its discretion in disregarding Ellison's inadmissible testimony, and in the absence of any admissible evidence of damages, summary judgment was proper on all of Ellison's claims against Hartford. This Court can affirm the district court on this ground alone.

Second, summary judgment was proper on Ellison's fraud claim against Hartford because Ellison could not demonstrate a genuine dispute of material fact concerning several essential elements of his fraud claim. Most importantly, Ellison failed to show that Hartford made any false representation of material fact to Ellison. The undisputed facts show that the alleged statements of Hartford's employees, which were explicitly qualified with uncertainty, were true. Ellison also failed to submit evidence showing that the Hartford employees he spoke to "knew" or "recklessly disregarded" the alleged falsity of their statements. Finally, there was no evidence before the district court to establish that Hartford's employees induced Ellison to rely on their alleged

representations, or that Ellison's alleged reliance on those representations was reasonable in light of his failure to check the Policy document itself. These were all essential elements of Ellison's fraud claim, and his failure to show a genuine factual dispute on any one of them, let alone all of them, required summary judgment on the fraud claim.

Third, the district court properly entered summary judgment on Ellison's estoppel claims because it failed as a matter of law. Under the authority of this Court's decision in *Perkins v. Great-West Life Assurance Co.*, 814 P.2d 1125 (Utah Ct. App. 1991) and other similar case law, "the doctrine of estoppel . . . ***cannot be used to bring risks which were not covered by the terms of the policy within coverage of the policy.***" *Id.* at 1131. Because Ellison's estoppel claim improper sought to use estoppel to expand the scope of coverage under an existing policy (i.e., to expand the scope of group coverage on employees' dependents to include non-dependents as well), the district court properly held that the claim failed as a matter of law. Summary judgment was also correct because the alleged statements upon which the claim is based were insufficiently definite as a matter of law, and the Hartford employees who allegedly made the statements did not have authority to bind Hartford according to the undisputed facts.

Fourth, summary judgment was proper on Ellison's breach of contract claim against Hartford because the unambiguous terms of the Policy provided that life insurance coverage on Sherrie Ellison terminated when the Ellisons' divorce became final, at which point Sherrie Ellison ceased to be a "dependent" within the meaning of the Policy. On appeal, Ellison fails to explain why he believes his breach of contract claim

against Hartford has merit, and he appears essentially to have abandoned that claim on appeal.

Finally, summary judgment was proper on Ellison's claim for breach of the implied covenant of good faith and fair dealing because the undisputed facts demonstrated that Ellison's lack of entitlement to life insurance proceeds for his ex-wife was at very least "fairly debatable" as a matter of law. Also, the undisputed facts show that Hartford investigated Ellison's claim carefully, both originally and on appeal after Hartford initially denied it, and at all time dealt with him in good faith.

ARGUMENT

I. STANDARD OF ANALYSIS.

Ellison fails to address the key question on appeal: whether he proffered admissible evidence showing a ***genuine*** issue of ***material*** fact sufficient to require reversal of summary judgment for Hartford. Although Ellison complains that some of the facts before the district court were disputed, and lists several examples in which he claims the evidence conflicted or gave rise to competing inferences, he fails to tie them to the essential elements of his claims against Hartford. Br. of Appellant at 9-35. Rule 56 "does not preclude summary judgment simply whenever some fact remains in dispute, ***but only when a material fact is genuinely controverted***." *Heglar Ranch, Inc. v. Stillman*, 619 P.2d 1390, 1391 (Utah 1980) (emphasis added). Ellison's unfocused discussion of allegedly competing evidence and inferences fails to establish that a factual dispute was "genuine" or that it was "material."

Although all inferences that reasonably can be drawn from the facts should be drawn in favor of the party opposing summary judgment or urging its reversal on appeal, *Ho v. Jim's Enter., Inc.*, 2001 UT 63, ¶ 2, 29 P.3d 633; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), that party has the duty to "set forth specific facts showing there is a genuine issue for trial." *DLB Collection Trust by Helgesen & Waterfall v. Harris*, 893 P.2d 593, 597 (Utah Ct. App. 1995) (quoting Utah R.Civ.P. 56(e)). "[B]are contentions unsupported by any specification of facts in support thereof, raise no material questions of fact as will preclude entry of summary judgment." *Massey v. Utah Power & Light,* 609 P.2d 937, 938 (Utah 1980). Moreover, a party seeking reversal of summary judgment must show that he properly opposed summary judgment before the district court with admissible evidence. *Gary Porter Constr. v. Fox Constr., Inc.*, 2004 UT App 354, ¶ 20, 101 P.3d 371.[10] An alleged factual dispute based on bare contentions, speculation, or inadmissible evidence is not a "genuine" factual dispute.

Ellison also has made no serious attempt to show that the alleged factual issues were "material." "The mere existence of genuine issues of fact . . . does not preclude the entry of summary judgment if those issues are immaterial to resolution of the case." *Horgan v. Industrial Design Corp.*, 657 P.2d 751, 752 (Utah 1982). None of the alleged factual disputes described in Ellison's brief was "material" unless he proffered sufficient

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[10] As noted above, although this Court is to review the district court's ultimate grant of summary judgment de novo, the district court's evidentiary rulings in connection with its grant of summary judgment are not to be reversed absent an abuse of discretion.

evidence below to make a prima facie showing on all the essential elements of his claims that Hartford had challenged through its summary judgment motion:

> [S]ummary judgment should be entered against a party who fails to make a showing sufficient to establish the existence of ***an element*** essential to that party's case, . . . because ***the complete failure of proof on an essential element of the nonmoving party's case necessarily renders all other facts immaterial.***

Schafir v. Harrigan, 879 P.2d 1384, 1392-93 (Utah App. 1994) (emphasis added) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)).[11] It is not enough for Ellison merely to point to a bit of conflicting evidence in one place or argue for a competing inference in another place, as he does throughout his brief. Such alleged disputes are "immaterial" unless he clears all hurdles and shows this Court that he properly supported all essential elements of his claims below.

II. SUMMARY JUDGMENT WAS PROPER ON ALL CLAIMS AGAINST HARTFORD BECAUSE ELLISON FURNISHED NO ADMISSIBLE EVIDENCE OF DAMAGE TO THE DISTRICT COURT, WHICH WAS AN ESSENTIAL ELEMENT OF ALL FOUR CLAIMS AGAINST HARTFORD.

As a threshold matter, the Court can and should affirm summary judgment on all of Ellison's claims against Hartford because Ellison failed to submit any admissible evidence of damages to the district court. Damages are an essential element of all four of Ellison's claims against Hartford. *See Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 41, 56 P.3d 524 (listing damage as an element of fraud); *Perkins v. Great-West Life*

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[11] *See also Sanns v. Butterfield Ford*, 2004 UT App 203, ¶ 9, 94 P.3d 301 (same); *Burns v. Cannondale Bicycle Co.*, 876 P.2d 415, 420 (Utah App. 1994) (same); *Wilson v. Valley Mental Health*, 969 P.2d 416, 417 (Utah 1998) (affirming summary judgment where plaintiffs "could not prove ***an essential element*** of their negligence claim" (emphasis added)).

Assur. Co., 814 P.2d 1125, 1129-30 (Utah Ct. App. 1991) (must establish "detriment or damage" to recover on estoppel theory); *Bair v. Axiom Design, L.L.C.*, 2001 UT 20, ¶ 14, 20 P.3d 388 (must prove damages to recover for breach of contract); *Beck v. Farmers Ins. Exchange*, 701 P.2d 795, 801-02 (Utah 1985) (discussing damages as element of claim for breach of covenant of good faith and fair dealing). Ellison's failure to submit any admissible evidence of damages was fatal to all of his claims against Hartford, and the Court may affirm summary judgment for this reason alone. Under the authority set forth above, even if there were a genuine factual dispute concerning another element of Ellison's claims, which there is not, his failure to prove damages renders such a dispute immaterial. The Court need not proceed further in its analysis.

To make the necessary showing that he suffered damage, Ellison was required to submit admissible evidence showing that Sherrie Ellison, who was terminally ill with pancreatic cancer at the time she divorced him, would have converted her dependent coverage into an individual policy, would have paid the premiums on that policy, and would have named her ex-husband as the policy's beneficiary.[12] There was ***absolutely***

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[12] The fact that Sherrie Ellison, rather than her ex-husband, was the party required to execute the conversion paperwork to permit insurance to be taken out on her life was not merely a peculiarity of the Policy or a "loose end." There are obvious and important policy reasons why individuals should not be permitted in ordinary circumstances to take out insurance policies on the lives of other people, without the insureds' consent, and name themselves as beneficiaries. Indeed, Utah's insurance code provides that in most circumstances,

> an insurer may not knowingly issue an individual life or accident and health insurance policy to a person other than the one whose life or health is at risk unless that person . . . gives written consent to the issuance of the policy.

no admissible evidence to that effect presented to the district court, and the district court cited this ground as one of many independent reasons summary judgment was proper:

> [T]here is no connection between Mr. Ellison's alleged loss and his claimed damages in this case. There is no admissible evidence from which the fact-finder can reasonably infer that Sherrie Ellison would have converted her group insurance policy into an individual policy, and there is no evidence that Mr. Ellison, rather than Sherrie Ellison's estate or heirs, would have been the beneficiaries of that conversion policy.

(R. 649.)

Rather than offer admissible evidence to show that Sherrie Ellison would have completed the Conversion Paperwork for an individual policy and named him as the beneficiary, Ellison relied upon nothing but inadmissible speculation and hearsay to support the damages element of his claims. He speculated in his deposition that, "knowing his wife," she would have converted the dependent policy into an individual policy. (R. 287-88.) Such speculation is inadmissible under Rule 602 of the Utah Rules of Evidence, which precludes a witness from testifying on a matter "unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the

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Utah Code Ann. § 31A-21-104(4)(a) (2008). Prior to the Ellisons' divorce, this prohibition would not have applied because the statute contains certain exceptions to the consent requirement, including that "[a] person may obtain life and accident and health insurance on an immediate family member who is living with or dependent on the person." Utah Code Ann. § 31A-21-104(5)(a)(iii) (2008). After the divorce, however, when Sherrie Ellison was no longer a dependent of Ellison's, the strong policy rationale for preventing one from imposing life insurance coverage on an unconsenting insured became applicable, and Utah law would have prohibited the insurance. Thus, the Policy's requirement that Sherrie Ellison herself needed to complete the Conversion Paperwork was not merely red tape. It was a critical feature of the Policy designed to ensure that a conversion policy taken out by an employee's former spouse following a divorce would not violate applicable Utah law.

matter." This rule is designed to assure that witnesses testify as to facts "based on personal knowledge, rather than opinions inferred from such facts." Kenneth S. Broun, McCormick on Evidence § 10 (6th Ed. 2006). By Ellison's own admission, he has no personal knowledge of Sherrie Ellison's intention to convert the policy. (R. 287-88.) Instead, his opinion that she would have converted is classic speculation. *See* Utah R. Evid. 602; *Triesault v. Greater Salt Lake Business Dist.*, 2005 UT App 489, ¶ 14, 126 P.3d 781 (holding it is proper to affirm summary judgment where jury "would have had to engage in rank speculation" to reach verdict for plaintiff); *Poteet v. White*, 2006 UT 63, ¶ 7, 147 P.3d 439 (holding that "in order to raise a dispute of fact," the non-movant must present the court with "admissible evidence in the record"). The district court validly exercised its discretion in disregarding Ellison's speculative testimony.[13]

Ellison also claimed that when Sherrie Ellison first became ill (*i.e.* before she filed for divorce and at least a year and half before they negotiated the terms of the Divorce Decree and their divorce became final), they had conversations wherein they discussed the insurance and Sherrie she told him "to use the insurance to help the kids with

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[13] This is not an issue of "credibility," as Ellison contends in his Brief. (Br. of Appellant at 31.) It is an issue of admissibility. Ellison's testimony was inadmissible because it was impermissibly speculative on its face. The district court did not exclude the testimony because it did not believe what Ellison said (a "credibility" rationale); rather, it excluded the testimony because what Ellison said was speculative. Ellison similarly complains at pages 12-13 of his brief that the district court erred in holding there was no "credible" evidence to support numerous elements of his claims because "credibility" is an issue for the trier of fact. A review of the district court's order makes clear the court was merely holding that no admissible evidence had been admitted for the court to credit, not that the court disbelieved witnesses. Observing the absence of "credible evidence" is common, well-understood, and acceptable terminology to indicate the lack of admissible evidence. Ellison plainly misinterprets the district court's ruling.

missions and schooling and so forth." (R. 287, 323.) Ellison argues that this testimony about what the deceased former Mrs. Ellison allegedly said was sufficient evidence to create a fact question as to whether his ex-wife would have converted her dependent coverage, paid the premiums, and named him as the beneficiary when the parties divorced a year and half later. (Br. of Appellant at 30-31.)

Ellison's testimony is classic inadmissible hearsay, and the district court validly exercised its discretion in disregarding it. *See, e.g., Poteet*, 2006 UT 63, ¶ 10, (holding that "summary judgment may . . . not be denied based solely on inadmissible hearsay"); *Gary Porter Constr.*, 2004 UT App 354, ¶ 20 ("This testimony is inadmissible hearsay, . . . and therefore it cannot create a disputed issue of material fact."). Ellison seeks to have his deceased, ex-wife's supposed out of court statements admitted to prove the truth of the matter asserted. *See* Utah R. Evid. 801(c). Rule 804, which sets forth all of the hearsay exceptions relating to unavailable declarants, ***including deceased declarants***, contains no applicable exceptions. Utah R. Evid. 804.[14] The district court acted within its discretion in disregarding this inadmissible hearsay.

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[14] Ellison urges the Court essentially to reverse the district court's exclusion of Ellison's hearsay testimony concerning Sherrie Ellison's alleged statements by arguing that the "statement against interest" and/or "statement under belief of impending death" exceptions to the hearsay rule should have applied. (Br. of Appellant at 31 (citing Utah R. Evid. 804(b)(2) and (3).) But Ellison failed to establish the applicability of either of these exceptions below, so this Court should not disturb the district court's discretionary decision to disregard Ellison's hearsay testimony. In any event, the "statement against interest" exception simply does not apply to Sherrie Ellison's alleged out-of-court statements, Utah R. Evid. 804(b)(3), and Ellison does not explain why he thinks it does. Second, the "statement under belief of impending death" exception does not apply because as a threshold matter, it can apply only if the district court makes a finding that

The Ellisons' divorce decree also undermines Ellison's assertion that his ex-wife intended to convert her coverage, name Ellison as the beneficiary, and pay the premiums on her conversion policy. Ellison claims his conversation with Sherrie Ellison about the insurance occurred "[w]hen she first got ill." (R. 287.) It was only after that, during the period of her illness, that Sherrie Ellison filed for divorce. (R. 405, 432.) The Divorce Decree was not agreed to and entered by the court until more than a year and half after Sherrie Ellison "first got ill." (R. 10 at ¶¶ 15-16, 110-120, 327, 405, 432, 605.) The decree comprehensively addressed and resolved all financial issues between Ellison and his ex-wife. (R. 110-20.) It required ***Ellison*** to maintain insurance on his life for the benefit of his minor children (R. 111 at ¶ 18), but it did not require Sherrie Ellison to convert her dependent life insurance policy through Ellison's employer, let alone any requirement to name her ex-husband (as opposed to her estate, heirs, or minor children), as the beneficiary. (R. 110-20.) Even if Sherrie Ellison did discuss life insurance proceeds with her then-husband when she initially became ill, those statements (in

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the declarant made the statement "in good faith," believing her death was "imminent." Utah R. Evid. 804(b)(2). The district court made neither finding, and Ellison did not ask it to do so. Rather, the district court held that the evidence Ellison submitted in an effort to demonstrate Sherrie Ellison's intentions was inadmissible. (R. 649.) Moreover, even if Ellison had attempted to lay proper foundation for the "dying declaration" exception to the hearsay rule, it would not apply to his testimony about Sherrie Ellison's alleged statements. The requirement of a belief that death is "imminent" means "that the declarant must have made the declaration while believing death would occur ***almost immediately***, and ***not just as the ultimate result of an illness***." *Sternhagen v. Dow Co.*, 108 F. Supp. 2d 1113, 1117 (D. Mont. 1999) (holding that declarent's belief he would die several months later from incurable cancer did not constitute belief in "imminent" death under federal version of "dying declaration" exception) (emphasis added). Nothing in the record below suggests that Ellison's hearsay testimony concerning Sherrie Ellison's alleged statements about life insurance proceeds satisfied the requirements of Utah R. Evid. 804(b)(2).

addition to being inadmissible hearsay) were plainly superseded by her subsequent decision to file for divorce and the parties' comprehensive agreement as to all financial issues between them that is reflected in the Decree of Divorce.

The district court acted within its discretion in disregarding Ellison's hearsay testimony and speculation concerning Sherrie Ellison's intentions. In the absence of any admissible evidence proving her intentions, the court was correct to grant summary judgment because Ellison failed to establish the essential element of damages.

III. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT ON ELLISON'S FRAUD CLAIM BECAUSE THE UNDISPUTED FACTS SHOWED AS A MATTER OF LAW THAT HE COULD NOT ESTABLISH NUMEROUS ELEMENTS OF THAT CLAIM.

Plaintiff's fraud claim against Hartford is premised upon his allegation that Hartford told him his ex-wife's life insurance coverage "could" continue after their divorce as long as he continued to pay the premiums. The undisputed material facts, however, fail to amount to a claim for fraud as a matter of law, and the district court correctly granted summary judgment on that claim.

To overcome summary judgment on his fraud claim, Ellison was required to submit admissible ***clear and convincing evidence***[15] in opposition to Hartford's motion supporting ***all*** of the following essential elements:

> (1) That a representation was made; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor either (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge upon which to base such representation; (5) for the purpose of inducing the other party to act upon it; (6) that the other party,

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[15] *See Republic Group, Inc. v. Won-Door Corp.*, 883 P.2d 285, 292 (Utah Ct. App. 1994).

> acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his injury and damage.

Prince, 2002 UT 68, ¶ 41 (quoting *Franco v. Church of Jesus Christ of Latter-day Saints,* 2001 UT 25, ¶ 33, 21 P.3d 198). It is proper for a court to consider the heightened burden of proof applicable to fraud claims in deciding whether the evidence submitted in opposition to a summary judgment motion is sufficient to defeat the motion. *Andalex Resources, Inc. v. Myers*, 871 P.2d 1041, 1046-47 (Utah Ct. App. 1994) ("[A] party must prove a claim with clear and convincing evidence at the summary judgment stage if that is the burden required at trial.") (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)).

The district court properly entered summary judgment on Ellison's fraud claim because he failed to submit admissible evidence supporting elements (2), (3), (4), (5) (6) or (9). Ellison's failure to furnish admissible evidence of damages is discussed above. His failure to submit admissible evidence on several other essential elements of his fraud claim, discussed below, provides other grounds upon which the district court's grant of summary judgment was proper, each of which is a separate and independent basis upon which the Court should affirm summary judgment on the fraud claim.

A. <u>The Undisputed Facts Show Hartford Made No False Representation Concerning a Presently Existing Material Fact to Ellison.</u>

Ellison failed to raise a genuine issue of material fact as to his fraud claim because all he proffered, at best, was that Ms. Daly told him she ***thought*** it was ***possible*** to continue dependent life insurance coverage on his spouse after they divorced. (R. 101-

02, 333-337; Add. C; Add D.) Ellison repeatedly and consistently claimed, when making his claim for benefits, in the allegations of his Complaint, and at his deposition, that Hartford told him that he ***"could"*** continue life insurance coverage on his ex-wife (as opposed to affirmatively "did" or "had" continued), although he would need to pay the premiums. The recording of the critical phone call at issue (R. 101; Add. D) speaks for itself. Ellison therefore failed to create a genuine factual dispute as to the essential element of whether Hartford made a false representation concerning a presently existing material fact. This failure alone is sufficient to affirm summary judgment on the fraud claim.

It is undisputed that when Ellison called Hartford and talked to Linda Daly, he merely asked her to confirm what Utah County allegedly told him—that it was "possible" to, or that "you ***can***," continue life insurance coverage on a ex-spouse after a divorce. (R. 101-02, 333-337; Add. C; Add. D (emphasis added).) That is all he asked.[16] Ms. Daly merely responded that she "thought" the coverage "could" continue. She simply did not state that the coverage "did" or "would" continue. ***All of these statements were TRUE.*** Ms. Daly made no false representations, as required for a fraud claim, and there is no evidence that anyone at Hartford ever told Ellison anything to the contrary.

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[16] Ellison told Ms. Daly that the reason he was inquiring was so that he could inform the court of that option; he never told her that he wanted to continue the coverage. (R. 101-102; Add. D.) In his appeal letter to Hartford after the initial denial of his claim, which he wrote prior to this litigation, Ellison stated that Hartford told him that Sherrie Ellison's life insurance coverage "***can*** be continued" after the divorce. (R. 98-99, 302-02, 402, 432 (emphasis added).) Again in his deposition, Ellison testified that he asked Hartford whether his ex-wife's life insurance "could" continue after their divorce. (R. 336, 404, 432; Add. C).

A statement that life insurance "could" continue, as a theoretical matter, is significantly different than an affirmative representation that coverage *would* continue. It is undisputed that Sherrie Ellison "could have" continued insurance coverage had she followed the procedures outlined in the Policy and paid her premiums. Ellison, however, admitted to the district court that he did not inquire regarding the procedures required to continue coverage. He did not inquire whether he had to submit any additional paperwork in order to continue the coverage. (R. 101-02, 403, 432; Add. D.) He further admitted that he never requested nor read the Policy until after Sherrie Ellison died. (R. 297-98, 403, 432.) The undisputed material fact that Ellison did not ask Hartford, and was not told, whether his ex-wife's life insurance coverage ***would*** continue after she divorced him is fatal to his fraud claim.[17]

In addition, Ms. Daly's statement can hardly be considered representations of any sort in light of the explicit caveats she gave multiple times during the conversation, explaining that his question was not within her expertise, declining to agree to prepare the letter he requested confirming that coverage could continue, and finally referring him to another department. (R. 101-02; Add. D.)[18] There is no evidence, and no room for reasonable inference, that Hartford made false statements. Thus, Ellison's fraud claim fails as a matter of law, and the district court properly granted summary judgment.

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[17] It is also fatal to his estoppel claim, discussed below.

[18] Although the recording of the telephone call does not include Ellison's alleged conversation with the other employee, his only description of the second conversation was that the second employee "confirmed what the first person said." (R. 334; Add. C.)

B. The Undisputed Facts Fail To Establish That the Individuals Ellison Spoke to at Hartford Knew or Recklessly Disregarded the Alleged Falsity of their Representations.

To demonstrate a genuine dispute of material fact concerning his fraud claim, Ellison was required to submit evidence that Hartford made representations that it either (a) knew to be false, or (b) made recklessly. Ellison failed do so for two reasons: first, as explained above, Ms. Daly's "statement," or more accurately belief, that coverage could continue was in fact true. Under the explicit terms of the Policy, a former dependent can continue coverage under the conversion privilege. Thus, it is undisputed that Ms. Daly did not say anything she knew to be false.

Second, it is undisputed that Ms. Daly explicitly qualified her belief with uncertainty. The transcript of Ellison's call to Ms. Daly demonstrates that although she "believed" he could continue his ex-wife's dependent life coverage, she clearly informed Ellison that such questions were beyond her knowledge and expertise. She said, "we're in the medical underwriting area what we do is we simply underwrite the application, ***we don't administer the plan***." (R. 101-02; Add. D (emphasis added).) Finally, she declined to provide the letter he requested, instead referring him to another area. *Id.* Given the qualifiers Ms. Daly used in her conversation with Ellison, no reasonable jury could find that Hartford employees knowingly made false or reckless statements. Ellison clearly was on notice that Ms. Daly's statements were merely her "beliefs" and were outside the scope of her expertise.

C. Hartford's Employees Did Not Induce Ellison To Rely on Any Mispresentations.

To overcome summary judgment on his fraud claim, Ellison was required to furnish evidence sufficient to make a prima facie showing that Hartford made misrepresentations to him for the purpose of inducing him to act upon the misrepresentations. Ellison cannot prove this element of his claim as a matter of law for the reasons stated above. In addition, Ellison failed to prove this element because Ellison indicated in his call with Ms. Daly that he was merely seeking information regarding the *availability* of continued coverage for the court in his divorce action, not the actual existence of such coverage. During his conversation with Ms. Daly, Ellison stated, "[W]hat I need then is a letter stating so for the court, saying that it is possible and then I will tell them that I will continue." (R. 101-02; Add. D.) Ms. Daly declined to give such a letter, instead referring Ellison to another area. *Id.* In light of the unequivocal and qualified nature of Ms. Daly's statements, there was no evidence establishing, or permitting a reasonable inference, that Ms. Daly made the statements for the purpose of inducing Ellison to act upon them.

D. Ellison's Alleged Reliance on the Statements of Hartford's Employees Was Unreasonable as a Matter of Law.

Ellison's fraud claim also failed because the material undisputed facts showed that Ellison's alleged reliance upon the purported representations of Hartford's employees was reasonable. Utah courts, as well as courts in other jurisdictions, have held that a plaintiff's reliance on an alleged misrepresentation is unreasonable as a matter of law when the misrepresentation is contradicted by a writing that governs the parties'

relationship. For example, in *Perkins v. Great-West Life Assurance Co.*, 814 P.2d 1125 (Utah App. 1991), this Court held that the plaintiff's reliance upon misrepresentations regarding her insurance coverage was unreasonable as a matter of law given the unambiguous terms of her insurance policy. In so holding, the Court stated that a party cannot reasonably rely upon "representations or acts if they are contrary to his knowledge of the truth or if he had the means by which with reasonable diligence he could ascertain the truth." 814 P.2d at 1130 (citations omitted). Reversing a denial of summary judgment, the Court went on to state,

> Mrs. Perkins had the means by which she could have ascertained the contents of Great-West's policy. . . . . With reasonable diligence, Mrs. Perkins could have easily learned that she was not eligible for coverage under Great-West's insurance policy. Given Mrs. Perkins' failure to learn the terms of her insurance policy, her reliance thereon was not reasonable.

Id. at 1130-31.[19]

The Utah County Policy unambiguously states that Sherrie Ellison's dependent life insurance coverage ended when she no longer met the definition of dependent. (R. 223, 292-93.) Ellison easily could have discovered this fact by obtaining a copy of the policy from Utah County and reviewing its terms. However, Ellison testified that he never requested a copy of the policy, even though he and his wife were discussing

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[19] *See also Govt. Computer Sales, Inc. v. Dell Marketing, L.P.*, No. F04-0030 CV (RRB), 2005 WL 1713182 *3 (Alaska 2005) ("Plaintiff could not reasonably have relied on representations so clearly inconsistent with its written contract and agreements."); *Jim Walter Homes, Inc. v. Spraggins*, 853 So.2d 913, 916 (Ala. 2002) ("[A] party cannot reasonably rely on such a statement when the written . . . agreement signed by them clearly contradicts any such alleged statement." (citations omitted)).

divorce at least one year before the divorce occurred and even though she had a terminal illness during that entire time period. (R. 297-98, 403, 432.) Ellison's alleged reliance upon statements contrary to the terms of the Policy when he easily could have ascertained its terms was unreasonable as a matter of law.

Ellison's alleged reliance upon Ms. Daly's statements is rendered further unreasonable by the fact that the most Ms. Daly would say was that she *believed* coverage *could* continue. The possibility of coverage continuing and the mechanics of how to do so are two different things. Her statements were clearly qualified and equivocal. A review of the transcript of the phone call makes clear that no reasonable person would leave that call believing anything definite, much less that coverage would be in force if the premiums were simply paid. Because he did not reasonably rely upon Ms. Daly's purported representations, Ellison's fraud claim failed as a matter of law. This is yet another ground upon which the Court can and should affirm summary judgment on the fraud claim.

IV. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT ON ELLISON'S ESTOPPEL CLAIM BECAUSE THE UNDISPUTED FACTS SHOWED THAT ESSENTIAL ELEMENTS OF THAT CLAIM FAILED AS A MATTER OF LAW.

Citing the same alleged misrepresentations that form the basis of his failed fraud claim (i.e., that Sherrie Ellison's coverage could continue as long as he kept paying the premiums), Ellison next attempted to invoke equitable principles and allege that Hartford should be estopped from denying his claim for life insurance benefits. The district court correctly held that Ellison's estoppel claim failed as a matter of law because (1) estoppel

cannot be invoked to expand coverage to include risks that the policy does not explicitly cover; (2) the representations Hartford allegedly made were not sufficiently definite to sustain an estoppel claim; and (3) the Hartford representative to whom Ellison spoke did not have authority to bind the company.

A. As a Matter of Law, Ellison Cannot Use an Estoppel Claim To Expand the Scope of Coverage Provided Under the Written Policy.

The doctrine of estoppel is an equitable one. It permits a court "to modify a contract or prevent a party from denying the validity of a contract when one party has relied on another party's conduct." *Swan Creek Village Homeowners v. Warne*, 134 P.3d 1122, 1129 (Utah 2006). However, in the important 1991 case of *Perkins v. Great-West Life Assurance Co.*, 814 P.2d 1125 (Utah Ct. App. 1991), this Court explained and applied a crucial limitation on estoppel claims arising in the insurance context: "the doctrine of estoppel . . . ***cannot be used to bring risks which were not covered by the terms of the policy within coverage of the policy***." *Id.* at 1131 (emphasis added).[20] Therefore, as a matter of law, any representation by Ms. Daly that coverage on Ms.

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[20] Other jurisdictions have similarly held the doctrine of estoppel cannot be used to expand coverage to include risks the policy does not explicitly cover. *See McGowan v. State Farm Fire and Casualty Co.*, 100 P.3d 521, 526 (Colo. Ct. App. 2004) ("[T]he doctrines of waiver and of estoppel, based upon the conduct or action of the insurer, are not available to bring within the coverage of the policy risks not covered by its terms."); *Topeka Tent & Awning v. Glen Falls Ins.*, 774 P.2d 984, 986 (Kan. Ct. App. 1989) ("Waiver and estoppel . . . cannot be used to expand [a policy's] coverage."); *Boyer Metal Fab. v. Maryland Casualty Co.*, 750 P.2d 1195, 1198 (Or. Ct. App. 1988) ("Estoppel cannot, however, be employed to create coverage when none existed under the policy."); *Farmers Ins. Co. of Ariz. V. Zumstein*, 675 P.2d 729, 734-5 (Ariz. Ct. App. 1983) ("[E]vidence in the form of oral representations made subsequent to the accident will not create a claim of estoppel against the insurer because that doctrine cannot provide coverage for risks the policy does not cover by its terms.").

Ellison could continue following the Ellisons' divorce cannot, under *Perkins*, broaden the Policy to create coverage for a non-dependent.[21]

This Court reaffirmed the *Perkins* doctrine in 2005 in *Youngblood v. Auto-Owners Ins. Co.*, 2005 UT App 154, 111 P.3d 829. In *Youngblood*, the Court held that, although the doctrine of estoppel could be applied to representations an insurer makes ***before*** a policy is purchased, the doctrine cannot be applied to ***post-purchase*** representations:

> We adopt the view that estoppel ***may not generally be used to extend the terms of an insurance contract***. However, we hold that estoppel may bar an insurer's defense of noncoverage . . . when an insurance agent makes material misrepresentations to a ***prospective insured before*** or at the inception of the contract and the prospective insured reasonably relies upon such misrepresentations ***in purchasing the insurance.***

2005 UT App 154, ¶ 21 (emphasis added). In short, as this Court recognized in both *Youngblood* and *Perkins*, post-contract representations such as those Ellison alleges cannot be used to extend the coverage of an insurance policy under an estoppel theory.[22]

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[21] The important policy considerations underlying this rule of law are obvious. If a plaintiff such as Ellison could survive summary judgment on a claim seeking to expand coverage under an existing insurance policy by providing nothing more than his own testimony concerning an alleged telephone conversation with an insurance company employee, it is difficult to imagine how any insurer could have any confidence at all in the scope of the coverage it has written. Its written policy documents could be rendered meaningless based solely the self-serving testimony of an insured. The consequences to the insurance industry would be catastrophic.

[22] Ellison argues that the Utah Supreme Court's decision affirming this Court in *Youngblood* somehow alters the pertinent legal principles. (Br. of Appellant at 28.) It does not. The Supreme Court chose to focus in its *Youngblood* decision on the distinctions between the doctrines of equitable estoppel and promissory estoppel rather than analyzing the distinction between claims based on pre-contract conduct and those based on post-contract conduct, as this Court did in its *Youngblood* opinion. *Youngblood*

Perkins clearly bars Ellison's estoppel claim. The misrepresentations Ellison alleges as the basis for estoppel occurred, without exception, long ***after*** Ellison elected dependent coverage for Sherrie Ellison under his employer plan. Indeed, Ellison himself makes this point forcefully in his brief:

> The misrepresentations were about whether the Policy, ***at that specific moment in time***, provided that coverage for dependents continued, even after divorce, so long as the premiums continued to be paid. In other words, ***the misrepresentations concerned the provisions and procedures of the Policy in their then-existing form***. As such, the misrepresentations concerned material facts ***which were then in existence***.

(Br. of Appellant at 19 (emphasis added).) Thus, Ellison's own words show that this is a case about the interpretation of an "existing" policy in its "then-existing" form, and it thus falls within the scope of *Perkins*. It is not a case involving alleged precontractual representations, which would fall within the scope of *Youngblood*. As a matter of law, the post-election representations Ellison complains about, even if made, cannot form the

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v. Auto-Owners Ins. Co., 2007 UT 28, 158 P.3d 1088. Significantly, however, the Supreme Court ***affirmed*** this Court's *Youngblood* decision and did not criticize this Court's reasoning in any way or vacate any part of its opinion. Nothing about the Supreme Court's *Youngblood* opinion suggests that it disagreed with the *Perkins* holding that estoppel claims attempting to expand the scope of written insurance contracts based on post-contracting conduct fail as a matter of law. Indeed, the Supreme Court explicitly limited its review of this Court's *Youngblood* opinion to the "sole question" of whether estoppel can apply "when the company's agent misstated the scope of coverage ***prior to the insured's purchase of the policy.***" 2007 UT 28, ¶ 10 (emphasis added). Moreover, the Supreme Court cited *Perkins* with approval in its *Youngblood* opinion. 2007 UT 28, ¶ 33 n.18. There is no question that *Perkins* is still good law following the Supreme Court's *Youngblood* opinion.

basis of an estoppel claim to bring non-covered risks within the Policy's coverage.[23] For this reason alone, the district court was correct to grant summary judgment in favor of Hartford on Ellison's estoppel claim.

B. The Evidence Submitted by Ellison is Vague, Indefinite, and Lacking in Foundation, and it is Thus Inadmissible To Establish a Prima Facie Estoppel Claim for Trial.

Ellison's estoppel argument also fails because, as discussed above in part II.A., the statements made during Ellison's phone call to Hartford were not definite representations. A statement cannot form the basis of an estoppel claim unless it is sufficiently definite. *See Rodowicz v. Massachusetts Mut. Life Ins. Co.*, 192 F.3d 162, 177-78 (1st Cir. 1999) ("As stated, many of the alleged representations upon which plaintiffs claim to have relied were mere statements of opinion or belief, not definite representations concerning past or present facts."); Restatement (Second) of Torts § 872 (stating that liability under

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[23] Ellison attempts to distinguish *Perkins* by describing in cursory fashion a number of differences between the facts of this case and the *Perkins* facts. (Br. of Appellant at 26.) Yet he fails to explain why those distinguishing factors would have made any difference to the outcome of the *Perkins* case. The central legal doctrine established in *Perkins* applies in this case, notwithstanding any factual differences that may be present. The alleged distinctions Ellison lists are immaterial. For example, he argues *Perkins* is distinguishable because he is not attempting an expansion of coverage, but instead is attempting a "perpetuation" of coverage because his wife (before she was an ex-spouse) was, at one time, covered by the Policy. (Br. of Appellant at 26.) This is no distinction at all. Plainly, by arguing that his ex-wife, a non-dependent, is eligible for dependent life insurance coverage under the Policy, Ellison is attempting to "bring risks which were not covered by the terms of the policy within coverage of the policy." Other distinctions Ellison asserts simply are not supported by the record evidence. He argues *Perkins* is distinguishable because he, unlike the *Perkins* plaintiff, allegedly "made *multiple* attempts to obtain information about the Policy from the defendants." *Id.* (emphasis added). Even if this could be a pertinent distinction, the record below is clear that Ellison made ***no*** effort to obtain the policy from Defendants until after his ex-wife had died. (R. 297-98, 403, 432.)

theory of equitable estoppel must be based upon a "definite misrepresentation."). Utah law implicitly recognizes this proposition by requiring that a plaintiff's reliance upon an alleged misrepresentation be "reasonable." *Youngblood*, 2005 UT App 154, ¶¶ 21-24; *see also Dahl Inv. Co. v. Hughes*, 2004 UT App 391, ¶ 14, 101 P.3d 830. Alleged reliance on an indefinite statement is unreasonable as a matter of law.

The statements Ms. Daly made during her conversation with Ellison were not sufficiently definite to sustain an estoppel claim. Ms. Daly qualified her statements to Ellison, saying that she "believed" Sherrie Ellison's life insurance coverage could continue after the Ellison's divorce but was not sure, and she directed Ellison to speak with someone in another department. (R. 101-02; Add. D.) She also told Ellison her department did not administer the life insurance plan and declined to put her belief into writing. *Id.* In short, no reasonable person could find that Ms. Daly was making a definite statement regarding the ability to continue Ms. Ellison's coverage.

C. The Representative to Whom Ellison Spoke Did Not Have Authority To Bind Hartford.

Finally, Ms. Daly's statements were insufficient to give rise to a claim of estoppel because she did not have authority to bind Hartford. Under Utah law, the representations of an employee are not binding upon a company unless those representations concern a matter made within the scope of the employee's agency. *Wayment v. Clear Channel Broadcasting, Inc.*, 2005 UT 25, ¶ 46, 116 P.3d 271. In this case Ms. Daly ***told*** Ellison the questions he raised with her were ***outside the scope of her employment and agency***. She stated, "I'm trying to think who would be . . . we're in the medical underwriting area

what we do is we simply underwrite the application. We don't administer the plan. . . . I'm going to refer you to another number." (R. 101-02; Add. D.) Because Ms. Daly did not have authority to bind Hartford, and because Ellison was aware of that fact during their conversation, her statements are insufficient to bind Hartford and Ellison's reliance upon those statements was unreasonable as a matter of law.[24]

For all of these reasons, there was no genuine issue of material fact, and Ellison's estoppel claim failed as a matter of law. The Court should affirm the district court's grant of summary judgment in favor of Hartford.

V. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT ON ELLISON'S BREACH OF CONTRACT CLAIM AGAINST HARTFORD, AND ELLISON HAS ESSENTIALLY ABANDONED THAT CLAIM ON APPEAL.

Ellison alleged below that the dependent coverage provisions of the Policy constituted a contract between him and Hartford[25] and that Hartford breached this contract when it denied his claim for life insurance benefits after the death of his ex-wife. (R. 6 at ¶¶ 44-49.) Ellison, however, did not identify a single provision of the Policy that he claims was breached. This is because the clear terms of the Policy provide that Sherrie Ellison's life insurance coverage ended when she was no longer Ellison's dependent. Ms. Daly's statements could not vary the terms of the Policy, nor did they

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[24] Ellison provided no evidence whatsoever concerning identity, job description, or authority of the second Hartford employee he claims spoke to him during the phone call, so he failed to establish that she had authority to bind the corporation either.

[25] In fact, it was a group policy between Utah County and its employees. (R. 373, 292-93, 220-55.)

purport to. The undisputed material facts show that Hartford did not breach the terms of the Policy because it applied those provisions correctly to Ellison's claims.[26]

To establish his breach of contract claim, Ellison was required to demonstrate, "(1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages." *Bair v. Axiom Design, L.L.C.,* 2001 UT 20, ¶ 14, 20 P.3d 388. When interpreting an insurance policy, Utah courts look to the "four corners of the agreement" to determine the intent of the parties, and if that intent is clear and unambiguous, the court will give effect to it. *See Perkins*, 814 P.2d at 1129 (citing *Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist*, 773 P.2d 1382, 1385 (Utah 1989) and *Draughon v. CUNA Mutual Ins. Soc'y*, 771 P.2d 1105, 1108 (Utah Ct. App. 1989)).

In this case, the unambiguous language of the Policy supports Hartford's denial of Ellison's claim for life insurance benefits. Ellison's ex-wife was insured under the Policy's "Dependent Coverage" provisions. (R. 373, 292-93, 220-33.) The Policy defines Dependent as "(1) Your spouse and (2) Your unmarried child." (R. 494, 599.) The Policy's "Dependent Coverage" section states that dependent coverage terminates on the date that "the Dependent no longer meets the definition of Dependent." (R. 546, 223,

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[26] It is unclear how seriously Ellison contends on appeal that summary judgment was improper on his breach of contract claim against Hartford. In the pertinent section of his brief, Ellison complains primarily about co-defendant Utah County. The only part of his analysis of his breach of contract claim that could possibly apply to Hartford consists of the short assertion that "[t]here is a disputed issue of material fact as to whether the defendants are in breach of contract by making misrepresentations to Mr. Ellison and providing him with erroneous instructions regarding the Policy, as explained earlier." (Br. of Appellant at 33.) Although Ellison largely appears to have abandoned his breach of contract claim against Hartford, Hartford will explain why summary judgment on that claim was proper.

292-93.) These provisions of the Policy are unambiguous. When the Ellisons divorced, Sherrie Ellison was no longer Ellison's "spouse," and for this reason she no longer met the Policy's definition of "Dependent." Hence, her dependent life insurance coverage terminated on the date that her divorce became final, and Hartford correctly denied Ellison's claim for life insurance benefits. For this reason, Ellison's breach of contract claim fails as a matter of law, and the district court was correct to grant summary judgment.

VI. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT ON ELLISON'S CLAIM FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING BECAUSE HARTFORD'S DENIAL OF ELLISON'S CLAIM WAS, AT VERY LEAST, "FAIRLY DEBATABLE."

The Utah Supreme Court has held that an insurer cannot be liable for breach of the covenant of good faith and fair dealing for denying a claim that is "fairly debatable." *Prince* 2002 UT 68, ¶ 28 (citing *Morris v. Health Net of Calif., Inc.,* 988 P.2d 940 (Utah 1999); *Billings v. Union Bankers Ins. Co.,* 918 P.2d 461, 465 (Utah 1996); *Callioux v. Progressive Ins. Co.,* 745 P.2d 838, 842 (Utah Ct. App. 1987)). Ellison's lack of entitlement to life insurance proceeds is more than fairly debatable; it clearly is barred by the Policy's unambiguous language because after divorcing Ellison, Sherrie Ellison was no longer a "dependent" and hence not eligible for dependent life insurance coverage. Ellison's breach of the covenant of good faith and fair dealing claim fails as a matter of law, and summary judgment was proper.

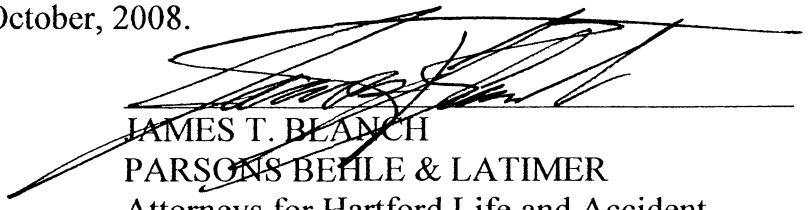
It is also undisputed that Hartford investigated and adjudicated Ellison's claim for life insurance benefits in good faith. For example, when Ellison appealed Hartford's

initial denial of his claim, Hartford assigned employee Edna Golych to the appeal, and she thoroughly investigated these claims. (R. 77-83, 402, 432.) After conducting a thorough investigation and analyzing the terms of the policy, which clearly provided that dependent care coverage terminated when Sherrie Ellison divorced Ellison, Ms. Golych concluded that Ellison's claim had been properly denied. (R. 8-9 at ¶ 26, 401, 432.) Hartford's thorough investigation of Ellison's claims, which was undisputed below, demonstrates that it dealt with him in good faith at all times. More significantly, Hartford cannot be accused of bad faith because it correctly applied the unambiguous terms of the Policy. For these reasons, summary judgment on Ellison's breach of the covenant of good faith and fair dealing claims was proper.

CONCLUSION

The district court was correct to grant summary judgment dismissing Ellison's claims against Hartford, and this Court should affirm that decision in all respects.

DATED this 31st day of October, 2008.



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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2008, I caused to be mailed by first-class mail, postage prepaid, two true and correct copies of the foregoing **BRIEF OF APPELLEE HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY** to the following:

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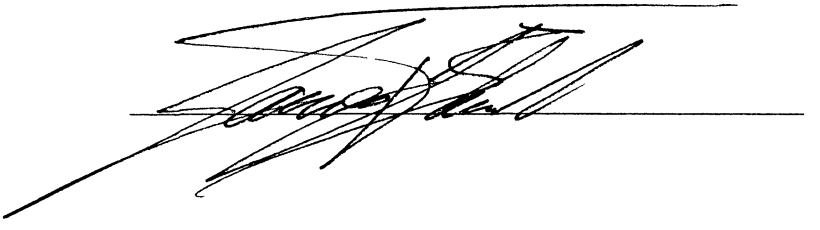

Tab A

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FILED
JAN 23 2008
4TH DISTRICT
STATE OF UTAH
UTAH COUNTY

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

VAL M. ELLISON, Plaintiff, vs. UTAH COUNTY GOVERNMENT and HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY, a Connecticut Corporation, Defendant.	**[PROPOSED] ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS** Case No. 050402012 Judge: Hon. James R. Taylor Division #7

INTRODUCTION

1. On July 20, 2007, the Court heard oral argument on Defendant Hartford Life and Accident Insurance Company's ("Hartford") Motion for Summary Judgment and on Defendant Utah County Government's ("Utah County") Motion for Summary Judgment. Plaintiff Val M. Ellison was represented by Kenneth Parkinson of Howard Lewis & Petersen. Defendant Hartford was represented by Erik A. Christiansen of Parsons Behle & Latimer. Defendant Utah

County was represented by Kristin A. VanOrman of Strong and Hanni. After careful review of the briefs, all admissible evidence and oral argument, the Court hereby rules and orders as follows:

FACTUAL BACKGROUND

2. Mr. Ellison's claims center around his contention that he is entitled to life insurance proceeds under an employee life insurance plan offered by Utah County ("the Plan"), his employer. The undisputed facts are that the Plan was offered by Utah County to its eligible employees and was funded by a group life insurance policy issued by Hartford to Utah County. The Plan permitted eligible Utah County employees to elect dependent life insurance coverage for their dependents. The Policy defines "Dependent" as "Your spouse" and "Your unmarried child." The Policy also states that dependent coverage terminates on the date when, "the Dependent no longer meets the definition of Dependent." A dependent whose coverage ends because he/she ceases to meet the definition of "Dependent" has the option under the Policy to convert his/her dependent coverage into a conversion policy. The Policy explains,

> **How does an individual convert coverage?**
> To convert life insurance, the individual must, within 31 days of the date group coverage terminates, make written application to Us and pay the premium for his age and class of risk.

3. It is undisputed that in about 1998, Mr. Ellison elected dependent life insurance coverage for Sherrie Ellison, his wife at that time. In 2001, Sherrie Ellison was diagnosed with pancreatic cancer, a condition that was terminal. During the period of her illness, Sherrie Ellison initiated divorce proceedings against Mr. Ellison. On August 21, 2003, the divorce was

finalized. Sherrie Ellison died on October 19, 2003. She never converted her group dependent life insurance coverage into an individual policy.

4. It also is undisputed that after Sherrie Ellison's death, Mr. Ellison made a claim for life insurance proceeds to Hartford. Hartford denied the claim on the grounds that Sherrie Ellison ceased to be eligible for dependent life insurance coverage after her divorce from Mr. Ellison, because she no longer met the definition of "Dependent."

5. Mr. Ellison claims, however, that prior to his and Sherrie Ellison's divorce, he had a conversation with someone at Utah County and that he believed that he spoke with two Hartford representatives wherein he was told that life insurance coverage for Sherrie Ellison could continue subsequent to their divorce. Mr. Ellison specifically identified in his interrogatory responses a call on January 30, 2003, and testified during his deposition that he was transferred to a second Hartford representative during that call. Mr. Ellison does not know the identity of the alleged other employee with whom he claims he spoke. Hartford has produced in discovery a recording of a single telephone conversation Mr. Ellison had with one of its representatives, Linda Daly.

6. Both plaintiffs and defendant's phone records revealed only one telephone call from plaintiff to Hartford. During that recorded phone call, Ellison spoke with Ms. Daly of Hartford's Medical Underwriting area. In that phone call with Ms. Daly, Ellison stated that Utah County informed him that he could continue insurance on his spouse, even if he and his wife divorced. He asked Ms. Daly if this was accurate. Ms. Daly responded,

> I ***believe*** so yes. . . . I don't . . . I haven't heard anything as to why, I think that's your option if you want to . . . They're going to be payroll deducting for her so if you want to keep her on there, that's fine.

7. Ellison next told Ms. Daly that he needed a letter for the court. Ms. Daly asked if he had filled out a personal health statement, and he said that he had. Ms. Daly then responded:

> I'm trying to think who would be . . . we're in the medical underwriting area and what we do is we simply underwrite the application, we really, ***we don't administer the plan***. . . . Did your benefits or HR department tell you to call us?

8. Ellison responded his HR department had told him to call Hartford and said again that he needed something *in writing*. At that point, Ms. Daly responded:

> You know what, I'm going to transfer you to another number that may be able to help you and hopefully they can, if they cannot, you know, feel free to call me back and we'll research it further to see who can help you.

At this point, Mr. Ellison asked for Ms. Daly's name to write down. She spelled her name for him and gave him another number to call.

9. According to the transcript, the call then terminated. There is no evidence on the transcript that Mr. Ellison was transferred to another person or number. The transcript also reveals that Mr. Ellison did not ask Ms. Daly what he needed to do, e.g. complete paperwork or otherwise, in order to effect the continuation of coverage on his ex-wife.

10. Neither Hartford, Utah County, nor Ellison has any documentary record or recording of any second phone call to Hartford.

11. At no time, as admitted by Mr. Ellison, did Mr. Ellison ask for or obtain a copy of the Policy.

CONCLUSIONS OF LAW

12. Summary judgment under Rule 56 of the Utah Rules of Civil Procedure is appropriate when the pleadings, depositions, and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Utah. R. Civ. Pro. 56(b). All inferences that reasonably can be drawn from the facts should be drawn in favor of the nonmoving party. *See Ho v. Jim's Enter., Inc.*, 29 P.3d 633, 634 (Utah 2001); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). The party opposing summary judgment has the duty to "set forth specific facts showing there is a genuine issue for trial." *DLB Collection Trust by Helgesen & Waterfall v. Harris*, 893 P.2d 593 (Utah Ct. App. 1995) (quoting Utah R.Civ.P. 56(e)). "[B]are contentions unsupported by any specification of facts in support thereof, raise no material questions of fact as will preclude entry of summary judgment." *Massey v. Utah Power & Light,* 609 P.2d 937, 938 (Utah 1980). Moreover, a party opposing summary judgment must do so with admissible evidence. *Gary Porter Constr. v. Fox Constr., Inc.*, 101 P.3d 371, 377 (Utah App. 2004).

13. As set forth in the pleadings and the undisputed admissible evidence before the Court, the Court holds that Mr. Ellison's claim for breach of contract against Hartford and Utah County fails as a matter of law because Sherrie Ellison was not covered by the Policy's unambiguous dependent coverage provisions once she divorced Mr. Ellison and no longer met the Policy's definition of "Dependent." *See Perkins v Great-West Life Assurance Co.*, 814 P.2d 1125, 1129 (Utah Ct. App. 1991) (citing *Ron Case Roofing & Asphalt Paving, Inc. v Blomquist*, 773 P.2d 1382, 1385 (Utah 1989) and *Draughon v. CUNA Mutual Ins. Soc'y*, 771 P.2d 1105,

1108 (Utah Ct. App. 1989)) (stating that when interpreting an insurance policy, Utah courts look to the "four corners of the agreement" to determine the intent of the parties, and if that intent is clear and unambiguous, the court will give effect to it).

14. As set forth in the pleadings and undisputed admissible evidence before the Court, the Court also holds that Ellison's breach of the covenant of good faith and fair dealing claim against Hartford fails as a matter of law because, in the insurance context, such a claim cannot be maintained if the insurer denied a claim that was "fairly debatable." *Prince v. Bear River Mut. Ins. Co.*, 56 P.3d 524, 533 (Utah 2002) (citing *Morris v. Health Net of Calif., Inc.,* 988 P.2d 940 (Utah 1999); *Billings v. Union Bankers Ins. Co.,* 918 P.2d 461, 465 (Utah 1996); *Callioux v. Progressive Ins. Co.,* 745 P.2d 838, 842 (Utah Ct. App. 1987)). The Policy states that dependent life insurance coverage ends on the date a dependent ceases to meet the Policy's definition of "Dependent." Sherrie Ellison ceased to meet the Policy's definition of "Dependent" when her divorce from Mr. Ellison became final. For this reason, the Court concludes that Hartford's denial of Mr. Ellison's claim on these grounds is "fairly debatable."

15. Based on the pleadings before the Court and the undisputed admissible facts before the Court, the Court concludes that Mr. Ellison's fraud claim against Utah County and Hartford fails as a matter of law for multiple and independent reasons as set forth herein:

16. A party asserting a fraud claim bears the burden of proving each of the elements of that claim by clear and convincing evidence. *Prince v. Bear River Mut. Ins. Co.*, 56 P.3d 524, 536 (Utah 2002) (quoting *Franco v. Church of Jesus Christ of Latter-day Saints,* 21 P.3d 198 (2001)).

17. Mr. Ellison's fraud claim fails because there is no admissible evidence that he reasonably relied upon the statements of Ms. Daly. The Court concludes, as a matter of law, that any reasonable person, after speaking to Ms. Daly, would have investigated further, obtained further paperwork, including a copy of the policy, and/or come back to Ms. Daly for more information. A reasonable person would not have done nothing, as Mr. Ellison admitted he did in this case.

18. Based on the undisputed facts and admissible evidence before the Court, the Court further concludes that there is no admissible evidence to support Mr. Ellison's assertion of a conversation with an unknown and unidentifiable Utah County employee regarding the continuation of life insurance benefits for Sherrie Ellison. Similarly, there is no admissible evidence to support Mr. Ellison's assertion of a separate conversation with an unknown and unidentifiable employee at Hartford.

19. The Court finds that, in the absence of any admissible evidence, Mr. Ellison's representations regarding his alleged communications with Hartford and Utah County are unreliable, inadmissible, and cannot be taken as a sufficient evidentiary and factual basis to establish the fact of or the content of those alleged conversations with unknown and unidentifiable persons.

20. Further, the only conversation that is documented, Mr. Ellison's January 30, 2002 conversation with Linda Daly of Hartford, is insufficient to establish reasonable reliance and extend the express terms of the life insurance policy.

21. The Court also concludes separately and independently that there was no reasonable reliance by Mr. Ellison as a matter of law because *Perkins v. Great-West Life Assurance Co.*, 814 P.2d 1125, 1129 (Utah Ct. App. 1991) controls the analysis of this issue. In *Perkins*, the Utah Court of Appeals held that an insured's reliance upon the post-contract representations of the insurers agent is not reasonable when those representations contradict the plain terms of the insurance policy and the insured has access to that policy. *Id.* at 1130; *see also Internet Law Library, Inc. v. Southridge Capital Management, LLC,* 223 F. Supp.2d 474, 485 (S.D.N.Y. 2002) (stating that reliance is unreasonable "as a matter of law" "where the statements relied upon are explicitly contradicted by a written agreement between the parties involved."); *Govt. Computer Sales, Inc. v. Dell Marketing, L.P.*, No. F04-0030 CV (RRB), 2005 WL 1713182 *3 (Alaska 2005) ("Plaintiff could not reasonably have relied on representations so clearly inconsistent with its written contract and agreements."); *Jim Walter Homes, Inc v. Spraggins*, 853 So.2d 913, 916 (Ala. 2002) ("[A] party cannot reasonably rely on such a statement when the written . . . agreement signed by them clearly contradicts any such alleged statement." (citations omitted)). Because Mr. Ellison, with reasonable diligence, could have obtained a copy of his policy and discovered the requirements of the conversion provisions, his reliance on post-contract representations, if any, was unreasonable as a matter of law.

22. The Court also finds that no reasonable fact-finder could conclude that the transcript of the recording of the Daly call manifests an intent by Ms. Daly to deceive or misrepresent a fact. Thus, Mr. Ellison's fraud claim fails for this separate and independent reason as well.

23. The Court also finds that there was no misrepresentation regarding in existing material fact in this case, and that Mr. Ellison's fraud claim also fails for this separate and independent reason. "~~[A] misrepresentation of intended future performance is not a representation concerning a 'presently existing fact' upon which a claim for fraud can be based unless [the plaintiff] can prove that [the defendant], at the time of the representation, did not intend to perform the promise and made the representation for the purpose of deceiving [the plaintiff].~~" ~~*Republic Group, Inc. v. Won Door Corp.*, 883 P.2d 285, 292 (Utah Ct. App. 1994) (citing *Cerritos Trucking Co. v. Utah Venture No. 1*, 645 P.2d 608, 611 (Utah 1982). The representations alleged by Mr. Ellison in this case were all representations of future performance and, for this reason, cannot support Mr. Ellison's fraud claim.~~

24. The Court finds that Mr. Ellison's fraud claim fails separately and independently as a matter of law because there is no admissible evidence of damages. Specifically, there is no connection between Mr. Ellison's alleged loss and his claimed damages in this case. There is no admissible evidence from which the fact-finder can reasonably infer that Sherrie Ellison would have converted her group insurance policy into an individual policy, and there is no evidence that Mr. Ellison, rather than Sherrie Ellison's estate or heirs, would have been the beneficiaries of that conversion policy.

25. Mr. Ellison's estoppel claim against Hartford fails for many of the same reasons that his fraud claim fails as set forth herein:

26. First, to establish a claim of estoppel, a plaintiff must demonstrate reasonable reliance. As discussed above, Mr. Ellison's reliance was not reasonable as a matter of

undisputed fact or law. *See Perkins*, 814 P.2d 1125; *Internet Law Library*, 223 F. Supp. 2d 474; *Govt. Computer Sales*, No. F04-0030 CV (RRB), 2005 WL 1713182; *Jim Walter Homes*, 853 So. 2d 913.

27. Second, for the reasons set forth above, there is no admissible evidence of any misrepresentation by an employee of Hartford. Similarly, there is no admissible evidence of any misrepresentation by an employee of Hartford who had legal authority to bind Hartford. The representations of an employee are not binding upon a company unless those representations concern a matter made within the scope of the employee's agency. *See Wayment v. Clear Channel Broadcasting, Inc.*, 116 P.3d 271, 287 (Utah 2005). Based on the undisputed admissible facts before the Court, that is not the case here.

28. Finally, and most of all, for the reasons set forth above, there is no admissible evidence of damages to give rise to a claim of estoppel.

29. Mr. Ellison's negligence claim against Utah County fails as a matter of law because, as discussed above, there is no admissible evidence of any conversation between Mr. Ellison and Utah County wherein the County negligently represented to Mr. Ellison that life insurance coverage for Sherrie Ellison would continue after their divorce.

30. Mr. Ellison's negligence claim also fails because it is premised primarily upon Utah County's alleged failure to inform him of the Policy provisions and procedures, particularly the Policy's conversion procedures. However, Mr. Ellison could have, with reasonable diligence, obtained a copy of the Policy and informed himself regarding the Policy's provisions

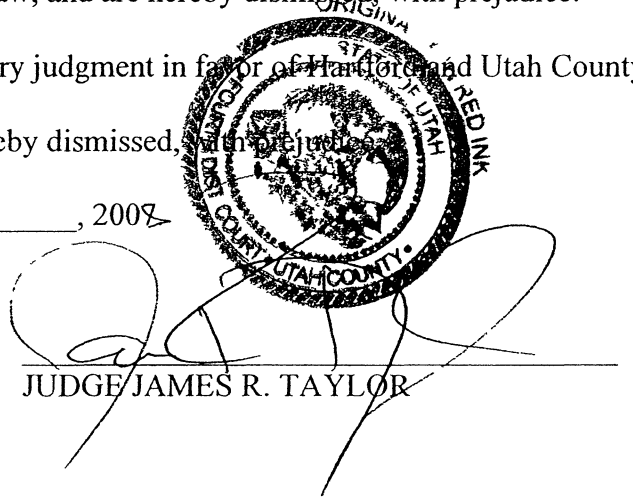
and procedures. Mr. Ellison, however, admits that he took no steps to obtain a copy of the Policy during the relevant time period.

GRANTING OF MOTION FOR SUMMARY JUDGMENT

31. For all of the reasons set forth above, the Court concludes that Mr. Ellison has failed to present any genuine factual disputes sufficient to forestall summary judgment in favor of Defendants under Rule 56 of the Utah Rules of Civil Procedure. The Court therefore finds that all of Plaintiff's claims fail as a matter of law, and are hereby dismissed, with prejudice.

32. The Court hereby grants summary judgment in favor of Hartford and Utah County on all of Plaintiff's claims, all of which are hereby dismissed, with prejudice.

DATED this 22 day of Jan, 2008



JUDGE JAMES R. TAYLOR

Approved as to form:

Kenneth Parkinson
Counsel for Plaintiff

Kristin A. Van Orman
Counsel for Utah County Government

Tab B

West's Utah Code Annotated Currentness
Title 31A. Insurance Code
Chapter 21. Insurance Contracts in General
Part 1. General Rules

§ 31A-21-104. Insurable interest and consent--Scope

(1) As used in this chapter:

(a) For purposes of this section, "exchange" means an exchange made pursuant to Section 1035, Internal Revenue Code, as may be amended.

(b) "Insurable interest" in a person means the following, including a circumstance described in Subsection (3):

(i) for a person closely related by blood or by law, a substantial interest engendered by love and affection; or

(ii) in the case of a person not described in Subsection (1)(b)(i), a lawful and substantial interest in having the life, health, and bodily safety of the person insured continue.

(c) "Insurable interest" in property or liability means any lawful and substantial economic interest in the nonoccurrence of the event insured against.

(d) "Viatical settlement" is as defined in Section 31A-36-102.

(2)(a) An insurer may not knowingly provide insurance to a person who does not have or expect to have an insurable interest in the subject of the insurance.

(b) A person may not knowingly procure, directly, by assignment, or otherwise, an interest in the proceeds of an insurance policy unless that person has or expects to have an insurable interest in the subject of the insurance.

(c) In the case of life insurance, the insurable interest requirements of Subsections (2)(a) and (b):

(i) are satisfied if the requirements are met:

(A) at the effective date of the insurance policy; and

(B) at the time of a later procurement, if any, of an interest in the proceeds of an insurance policy; and

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(ii) do not need to be met at the time that proceeds of an insurance policy are payable if the requirements are met at the times specified in Subsection (2)(c)(i).

(d) Except as provided in Subsections (7) and (8), insurance provided in violation of this Subsection (2) is subject to Subsection (6).

(e) A policy holder in a group insurance policy does not need an insurable interest if a certificate holder or a person other than the group policyholder who is specified by the certificate holder is the recipient of the proceeds of the group insurance policy.

(3) The following is a nonexhaustive list of insurable interests:

(a) Each person has an unlimited insurable interest in that person's own life and health.

(b) A shareholder, member, or partner has an insurable interest in the life of another shareholder, member, or partner for purposes of an insurance contract that is an integral part of a legitimate buy-sell agreement respecting shares, membership interests, or partnership interests in the business.

(c) A trust has an insurable interest in the subject of the insurance to the extent that a beneficiary of the trust has the insurable interest.

(d)(i) Subject to Subsection (3)(d)(v), an employer or an employer sponsored trust:

(A) has an insurable interest in the lives of the employer's:

(I) directors;

(II) officers;

(III) managers;

(IV) nonmanagement employees; and

(V) retired employees; and

(B) may insure a life listed in Subsection (3)(d)(i)(A):

(I) on an individual or group basis; and

(II) with the written consent of the insured.

(ii)(A) A trustee of a trust established by an employer for the sole benefit of the employer has the same insurable interest in the life and health of any person as does the employer.

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(B) Without limiting the general principle in Subsection (3)(d)(ii)(A), a trustee of a trust established by an employer that provides life, health, disability, retirement, or similar benefits to an individual identified in Subsection (3)(d)(i)(A) has an insurable interest in the life of the individual described in Subsection (3)(d)(i)(A) for whom the benefits are provided.

(iii)(A) For the purpose of exchanging life insurance, an individual described in Subsection (3)(d)(i)(A) includes an individual who was formerly included under Subsection (3)(d)(i)(A) if the life insurance to be exchanged:

(I) is purchased or acquired while the individual is a current director, officer, manager, or employee; and

(II) is exchanged for life insurance in an amount that does not exceed the amount of the insurance being exchanged.

(B) Written consent of an individual described in this Subsection (3)(d)(iii) is not required at the time of the exchange of the life insurance.

(C) This Subsection (3)(d)(iii) shall be interpreted in a manner consistent with Subsection (2)(c).

(iv)(A) If an employer or trustee establishes an insurable interest as provided in this Subsection (3)(d) and all of the employer's business is acquired, purchased, merged into, or otherwise transferred to a subsequent employer, the insurable interest of the original employer or trustee in an individual described in Subsection (3)(d)(i)(A) is automatically transferred to:

(I) the subsequent employer; or

(II) the trustee of a trust established by the subsequent employer for the subsequent employer's sole benefit.

(B) A subsequent employer or a trustee of a trust described in Subsection (3)(d)(iv)(A)(II) may exchange life insurance that is purchased or acquired in an individual described in Subsection (3)(d)(i)(A) by the original employer or trustee without establishing a new insurable interest at the time of the exchange of the insurance.

(v) The extent of an employer's or employer sponsored trust's insurable interest for a nonmanagement or retired employee under Subsection (3)(d)(i) is limited to an amount commensurate with the employer's unfunded liabilities at the time insurance on the nonmanagement or retired employee is procured.

(4)(a) Except as provided in Subsection (5), an insurer may not knowingly issue an individual life or accident and health insurance policy to a person other than the one whose life or health is at risk unless that person:

(i) is 18 years of age or older;

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(ii) is not under guardianship under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property; and

(iii) gives written consent to the issuance of the policy.

(b) A person shall express consent:

(i) by signing an application for the insurance with knowledge of the nature of the document; or

(ii) in any other reasonable way.

(c) Insurance provided in violation of this Subsection (4) is subject to Subsection (6).

(5)(a) A life or accident and health insurance policy may be taken out without consent in a circumstance described in this Subsection (5)(a).

(i) A person may obtain insurance on a dependent who does not have legal capacity.

(ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an amount reasonably related to the amount of the debt.

(iii) A person may obtain life and accident and health insurance on an immediate family member who is living with or dependent on the person.

(iv) A person may obtain an accident and health insurance policy on others that would merely indemnify the policyholder against expenses the person would be legally or morally obligated to pay.

(v) The commissioner may adopt rules permitting issuance of insurance for a limited term on the life or health of a person serving outside the continental United States who is in the public service of the United States, if the policyholder is related within the second degree by blood or by marriage to the person whose life or health is insured.

(b) Consent may be given by another in a circumstance described in this Subsection (5)(b).

(i) A parent, a person having legal custody of a minor, or a guardian of a person under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to the issuance of a policy on a dependent child or on a person under guardianship under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property.

(ii) A grandparent may consent to the issuance of life or accident and health insurance on a grandchild.

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(iii) A court of general jurisdiction may give consent to the issuance of a life or accident and health insurance policy on an ex parte application showing facts the court considers sufficient to justify the issuance of that insurance.

(6)(a) An insurance policy is not invalid because:

(i) the insurance policy is issued or procured in violation of Subsection (2); or

(ii) consent has not been given.

(b) Notwithstanding Subsection (6)(a), a court with appropriate jurisdiction may:

(i) order the proceeds to be paid to some person who is equitably entitled to the proceeds, other than the one to whom the policy is designated to be payable; or

(ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of a person who is equitably entitled to the proceeds, subject to all the valid terms and conditions of the policy other than those relating to insurable interest or consent.

(7) This section does not prevent an organization described under Section 501(c)(3), (e), or (f), Internal Revenue Code, as amended, and the regulations made under this section, and which is regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting and procuring, by assignment or designation as beneficiary, a gift or assignment of an interest in life insurance on the life of the donor or assignor or from enforcing payment of proceeds from that interest.

(8) An insurance policy transferred pursuant to Chapter 36, Viatical Settlements Act, is not subject to Subsection (6)(b) and nothing else in this section shall prevent:

(a) a policyholder of life insurance, whether or not the policyholder is also the subject of the insurance, from entering into a viatical settlement;

(b) a person from soliciting a person to enter into a viatical settlement;

(c) a person from enforcing payment of proceeds from the interest obtained under a viatical settlement; or

(d) a viatical settlement provider, a viatical settlement purchaser, a financing entity, a related provider trust, or a special purpose entity from executing any of the following with respect to the death benefit or ownership of any portion of a viaticated policy as provided for in Section 31A-36-109:

(i) an assignment;

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(ii) a sale;

(iii) a transfer;

(iv) a devise; or

(v) a bequest.

(9) (a) The insurable interests described in this section:

(i) are not exclusive;

(ii) are cumulative of an insurable interest that is not expressly included in this section but exists in common law; and

(iii) are not in lieu of an insurable interest that is not expressly included in this section but exists in common law.

(b) The inclusion of an insurable interest in this section may not be considered to be excluding another insurable interest that is similar to the insurable interest included in this section.

(c)(i) The recognition of an insurable interest in this section by Chapter 89, Laws of Utah 2007, does not imply or create a presumption that the insurable interest did not exist before April 30, 2007.

(ii) An insurable interest shall be presumed with respect to a life insurance policy issued before April 30, 2007 to a person whose insurable interest is recognized in this section by Chapter 89, Laws of Utah 2007.

Laws 1985, c. 242, § 26; Laws 1986, c. 204, § 137; Laws 1991, c. 21, § 1; Laws 1993, c. 305, § 27; Laws 1994, c. 60, § 1; Laws 1996, c. 190, § 1, eff. April 29, 1996; Laws 2001, c. 116, § 54, eff. April 30, 2001; Laws 2002, c. 308, § 30, eff. May 6, 2002; Laws 2003, c. 81, § 1, eff. May 5, 2003; Laws 2007, c. 89, § 1, eff. April 30, 2007; Laws 2007, c. 307, § 4, eff. April 30, 2007; Laws 2008, c. 263, § 1, eff. May 5, 2008.

HISTORICAL AND STATUTORY NOTES

Laws 2007, c. 89, § 1, provides:

"It is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall replace the references in Subsection **31A-21-104**(10)(c) from 'this bill' to the bill's designated chapter number in the Laws of Utah."

Composite section by the Office of Legislative Research and General Counsel of Laws 2007, c. 89, § 1 and Laws 2007, c. 307, § 4.

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U.C.A. 1953 § **31A-21-104**, UT ST § **31A-21-104**

Current through 2008 General Session.

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END OF DOCUMENT

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Tab C

1 that correct?
2 A. Correct.
3 Q. Switching gears to a different party. You
4 know I represent Hartford Life Insurance; correct?
5 A. Yes.
6 Q. How many times on the telephone did you
7 speak with someone at Hartford about life insurance
8 for Sherri Ann Payne-Ellison?
9 A. I spoke to two different people on the
10 same day.
11 Q. So one call, but two different people, or
12 two calls?
13 A. One call, two different people.
14 Q. So did you initially talk to somebody,
15 then they transferred you to somebody else?
16 A. Correct.
17 Q. Those are the only communications you had
18 by telephone with Hartford; correct?
19 A. Those are the only ones I recall.
20 Q. Do you recall what year?
21 A. Let's see, as I said earlier, I think it
22 was the end of '02, beginning -- no, the end of '01,
23 beginning '02.
24 Q. Let's break the calls down. The first
25 telephone call, who did you speak with?

1 A. I don't know. I didn't record the names.
2 Q. Do you have any notes from that call?
3 A. I don't.
4 Q. How long did the call last?
5 A. It was a short --
6 Q. First call?
7 A. It's only one call. But --
8 Q. First person.
9 A. First person, it was probably pretty
10 short. I asked her the question about can you
11 continue life insurance, and she indicated that she
12 thought that I could as long as I pay the premiums.
13 But then she said she wanted to transfer me to
14 someone else just to make sure.
15 Q. One minute, two minutes, three minutes,
16 how long?
17 A. The first person was probably, maybe, I
18 don't know, probably less than 30 seconds, I would
19 guess.
20 Q. You had the sense from this first person
21 that she thought you could maintain insurance, but
22 wasn't sure, so she transferred you to somebody else
23 to make sure?
24 A. No, she actually seemed pretty sure, but I
25 think she wanted to confirm it with somebody else.

1 Q. Did anything else happen during this first
2 discussion with this first person?
3 A. No.
4 Q. We've exhausted your recollection of that
5 discussion?
6 A. Yeah, it's about like what I've said.
7 Q. So other than you asking about whether you
8 could continue life insurance on your about-to-be
9 ex-wife --
10 A. Yes.
11 Q. -- and her response, you don't recall
12 discussing any other subjects?
13 A. True.
14 Q. Do you know what department this person
15 was in?
16 A. I don't. It's just the phone numbers that
17 personnel gives you to call Hartford.
18 Q. Where did you get the phone numbers?
19 A. They have it on a sheet that was handed
20 out along with other paperwork that they give to
21 people.
22 Q. At one of these benefits fairs?
23 A. Yeah.
24 Q. So she transferred you, was it a woman?
25 A. Yes.

1 Q. She transferred you to another person; is
2 that correct?
3 A. To another woman.
4 Q. Do you know the name of the second person
5 you spoke with?
6 A. I don't. I didn't write it down.
7 Q. Do you have any notes of that
8 conversation?
9 A. I don't.
10 Q. What happened in this second conversation?
11 A. She confirmed what the first person said.
12 Q. What's your best recollection of what this
13 person said to you?
14 A. That you can continue the life insurance
15 on my spouse if I divorce her, as long as you keep
16 paying the premiums.
17 Q. Did you ask about whether there was any
18 paperwork you had to fill out?
19 A. I did not.
20 Q. Anything else about that second discussion
21 with the second Hartford person you recall?
22 A. No.
23 Q. After you got off this one phone call with
24 the two Hartford representatives, did you contact the
25 county?

1 A. No, I talked to the county prior, and then
2 I contacted Hartford, because I wanted to make sure
3 that what the county told me was accurate. The
4 conversation that I had with the person at the
5 county, they said, call Hartford if you have any
6 questions. Well, so I called Hartford just to make
7 sure that what the county was telling me was
8 accurate. So I got a confirmation from three people
9 that I could just continue the insurance, so I
10 didn't -- it didn't raise any questions in my mind.
11 Q. And nobody from the county mentioned to
12 you any paperwork you had to fill out?
13 A. No.
14 MR. PARKINSON: Counsel, when you're at a
15 good place for a break, can we take one?
16 MR. CHRISTIANSEN: We can take a break
17 right now if you'd like.
18 MR. PARKINSON: Okay, thank you.
19 (Break.)
20 Q. (By Mr. Christiansen) Do you ever recall
21 contacting Hartford after your ex-wife passed away?
22 A. Yes.
23 Q. By telephone?
24 A. Yeah.
25 Q. Was that for purposes of what?

Tab D

TRANSCRIPTION OF ELLISON PHONE CALL

Daly: Medical Underwriting, this is Linda, how can I help you?

Ellison: Hi Linda, Val Ellison calling, from uh Utah.

Daly: Okay.

Ellison: Where are you guys at?

Daley: Connecticut.

Ellison: Connecticut? Okay, I guess so, Hartford, right?

Daly. Yeah.

Ellison: Um, I guess, uh, I work for Utah County Government.

Daly: Okay.

Ellison: And so you guys apparently have taken over for our life insurance, for this year. And My wife and I are getting a divorce, but personnel told me that you can continue insurance on your spouse even if you get divorced, is this accurate?

Daly: I believe so yes. I don't ... I haven't heard anything as to why. I think that's your option if you want to and you continue to ... they're going to be payroll deducting for her so if you want to keep her on there, that's fine.

Ellison: Now, uh, what I will need then is just a letter stating so for the court, saying that it is possible and then I will tell them that I will continue it.

Daly: What did ... Have you filled out a personal health statement yet, or no?

Ellison: Well, yeah, from way back, ya know. I've been with the County for a long time so it's just been coming out of my payroll forever but it changes life insurance company from year to year ... or maybe every couple years ... so yeah, we did, a long time ago.

Daly: I'm trying to think who would be ... we're in the medical underwriting area and what we do is we simply underwrite the application – we really, we don't administer the plan.

Ellison: Okay.

Daly: So, did your benefits or you HR department tell you to call us?

Ellison: They did. They gave me your phone number, they said, yes it is true that it can continue, but I said I needed something in writing, and they said, well, call the insurance company.

Daly: You know what, I'm going to transfer you to another number that may be able to help you, um, and hopefully they can. If they cannot, you know, feel free to call me back and we'll research it further to see who can help you ...

Ellison: Okay, let me write down your name again ...

Daly: Okay.

Ellison: What was it ...

Daly: Linda and my last name is Daly, D-A-L-Y. The number I'm going to give you, I'm not sure if anybody's going to be there because it's 6:00 here and you came in right before the phones get shut off.

Ellison: Gotcha, okay.

Daley So the number is 1-800-523-2233 and they're more on the administrative side of it, the billing side, so they may be able to help you. If they can't, you can call me back and my number is 1-800-331-7234 and I'll give you my extension, which is 39642, and I'll try to research it here and see what I can find out if they're unable to help you. And again, the same thing stands for here, though our phone gets shut off at 6:00, so I don't know if you'll be able to get back in.

Ellison: Good.

Daly: Okay.

Ellison Thank you Linda.

Daly: You're welcome.

Ellison: Bye.

Daly: Bye, bye.