

2005

# George M. Lee and Gerald Lee v. Miles Walter Langley : Brief of Appellant

Utah Supreme Court

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## Recommended Citation

Brief of Appellant, *Lee v. Langley*, No. 20050725.00 (Utah Supreme Court, 2005).

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**IN THE UTAH SUPREME COURT**

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**GEORGE M. LEE and GERALD  
LEE,**

**Plaintiffs and Appellants,**

**vs.**

**MILES WALTER LANGLEY,**

**Defendant,**

**ROBERT P. THORPE, and THE  
RANGER INSURANCE  
COMPANY,**

**Defendants and Appellees.**

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**Case No. 20050735-SC**

*20050725*

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**BRIEF OF APPELLANTS**

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**Appeal Upon the Granting of a Petition of Certiorari to the Utah Court of  
Appeals Concerning an Appeal from the Eighth District Court, Uintah County  
Judge A. Lynn Payne**

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**FILED  
UTAH APPELLATE COURTS  
DEC 30 2005**

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## STATEMENT OF JURISDICTION

This appeal arose under the original appellate jurisdiction of the Utah Supreme Court found in Section 78-2(j), U.C.A. The appeal was transferred to the Utah Court of Appeals under Section 78-2-2(4), U.C.A. Consideration of the appeal by certiorari is authorized by Section 78-2-3(5), U.C.A.

## STATEMENT OF THE ISSUES

Multiple issues were presented for consideration by the Utah Court of Appeals. In granting certiorari, this Court limited the issue for consideration to the following:

**A. Issue.** Whether a bail agreement violates public policy to the extent it purports to permit a bail enforcement agent not licensed in Utah to apprehend a fugitive.

**B. Standard of Review.** The trial court's application of law will be reviewed under a correctness standard with reversal justified if instructions to the jury were prejudicial in that they misadvised or misled the jury on the law. *Butler v. Naylor*, 1999 Ut. 86, 987 P.2d 41. Jury instructions are examined in their entirety and will be affirmed if the instruction taken as a whole fairly instructs the jury on the law applicable to the case. *Paulos v. Covenant Transport, Inc.*, 2004 Ut. App. 35 86 P.3d 752.

## DETERMINATIVE LAW

Plaintiffs claim the following controls resolution of the issues presented:

**A.** Section 31A-35-601, U.C.A. (1999).

B. Title 53, Chapter 11, U.C.A. (1999).

These statutes are reproduced in the Addendum.

### **STATEMENT OF THE CASE**

**A. NATURE OF THE CASE.** This is a tort action by two men for assault, false imprisonment, and negligence or reckless endangerment arising from an assault by a Colorado bail enforcement agent at the home of one of them in Utah.

**B. COURSE OF PROCEEDINGS.** The incident which is the subject of this suit occurred on April 2, 1999. The Plaintiffs filed a *pro se* complaint with the Eighth District Court in Uintah County on February 28, 2000. (R., p.3. Addendum A). All Defendants eventually answered the complaint with Defendant Langley answering *pro se*. (R., p. 22). Defendant, Ranger Insurance Company subsequently made a Cross-claim on March 7, 2002 against Defendants Thorpe and Langley. (R., p. 114).

In March, 2002, current counsel for Plaintiffs appeared for the first time. (R., p. 116). Counsel for Robert Thorpe withdrew. (R., p. 140). The case was configured thereafter with Plaintiffs and Ranger Insurance Company having legal counsel and Defendants Thorpe and Langley acting *pro se*.

Discovery proceeded but Thorpe failed to show for his deposition and sanctions were sought by the Plaintiffs in August, 2002. (R., p. 171). The sanctions were never imposed

after representations to the court by the wife of Thorpe that he had health problems. (R., p. 240). However, Thorpe also failed to respond to Requests for Admissions. (R., p. 356).

Trial was held before a jury for three days commencing February 2, 2004. During the course of the trial the court dismissed Plaintiffs' cause of action for false imprisonment. (Trial Transcript (TT) at R. p. 1187 at pp. 213-216). The assault and reckless endangerment claims were presented to the jury. (Jury Instructions R. pp. 1032-1034.)

Robert Thorpe failed to show for the trial. The court denied the request of Plaintiffs to enter his default. (TT at R. p. 1187, p. 34). The court did grant the motion at trial of Defendant Ranger Insurance Company to enter the default of Robert Thorpe on the cross-claim brought by Ranger and later entered a formal order. (R., p. 1261). Thorpe similarly did not respond to the appeal at the Utah Court of Appeals.

This Court entered final judgment upon Plaintiffs' claims on March 17, 2004. (R., p. 1067). A Notice of Appeal was filed April 14, 2004. (R., p. 1143). Subsequently, Ranger Insurance Company caused a formal judgment to be entered against Robert Thorpe upon its cross-claim on October 13, 2004. (R., p. 1261). To be cautious about being sure the new judgment against Thorpe long after trial did not create a new appeal time, a Second Notice of Appeal was filed by Plaintiffs on November 12, 2004.

Appeal was taken originally to the Utah Supreme Court. This Court transferred the appeal to the Utah Court of Appeals on April 16, 2004. The Court of Appeals issued its opinion after briefing and oral argument on August 4, 2005, affirming the result in the District Court. *Lee v. Langley*, 2005 Ut. App. 339, 121 P.3d 33. (Addendum “B”).

The Appellants petitioned for certiorari on August 25, 2005 and it was granted on November 16, 2005, with respect to the one primary issue stated above.

**C. DISPOSITION OF TRIAL COURT.** A jury verdict of no cause of action was entered against the Plaintiffs on February 4, 2004. (R., p. 1053). The formal judgment followed on March 17, 2004. (R., p. 1067). The judgment rendered was upon Plaintiffs causes for assault and reckless endangerment with the false imprisonment claim having been dismissed at trial as a matter of law.

## **RELEVANT FACTS**

### **A. THE PLAYERS.**

**George Lee**, plaintiff and appellant, is a resident of Uintah County, Utah. (Complaint, R., p. 3 at Addendum “A”).

**Gerald Lee**, plaintiff and appellant, is the brother of George Lee and also resides in Uintah County, Utah. (Complaint, R., p.3). He was the fugitive from the Colorado courts.

**Miles Langley** was a past police officer in the Grand Junction Colorado area, a sometimes bar bouncer, and a sometimes bail enforcement agent or bounty hunter. (TT, R., p. 1187 at pp. 58-62).

**Robert Thorpe** was the owner of A-1 Bail Bonds located in Grand Junction, Colorado. His wife, **Maria Thorpe**, was also an agent with him. (Plaintiff Exhibit 2, p. 1. R., p. 999 in Addendum “C”).

**Ranger Insurance Company** is an insurer operating as a bail bond surety in Colorado for A-1 Bail Bonds that had entered agency contracts with Robert and Maria Thorpe. Ranger Insurance Company was not licensed to be a bail bond surety within the state of Utah. (TT, R., p. 1187 at 266).

## **B. THE EVENTS.**

Gerald Lee was arrested for driving under the influence and driving without proof of insurance in late 1998 in the Grand Junction, Colorado area. He was jailed in Grand Junction Colorado and released on bail issued by A-1 Bail Bonds operated by Robert Thorpe. (Gerald Lee testimony at TT, R., p. 1187 at pp. 105-106). Despite posting bail, Gerald missed his court appearances in Colorado, claiming he was supposed to be in two courts at the same time. (Lee testimony at TT, R., p. 1187 at pp. 109-110). The bail contract provided Gerald consented to apprehension upon violation of the requirement to appear. (Addendum “H”).

Langley was hired by Robert Thorpe in Grand Junction to go get Gerald Lee for jumping bail. (Langley Testimony, TT, R., p. 1187 at pp. 73-78). Thorpe and Langley knew Gerald was in Utah. Langley left Colorado for Utah with the intent of enforcing a Colorado arrest warrant. He first checked in with local police in the Uintah County area and then went alone to the home of George Lee, the brother of Gerald, in Naples, Utah. (Langley testimony, TT, R., p. 1187 at pp. 83-84).

Langley knocked on the door and George answered. Langley said he was from Christian Brothers Construction Company and was looking for a good mechanic to hire and heard that Gerald was looking for work. George invited him into the house through a door into the kitchen area. Gerald came into the room and Langley again repeated he was from a construction company and had a job for Gerald and extended his hand as if to shake hands. Gerald extended his hand in response and Langley suddenly produced and placed a handcuff on Gerald's arm. Gerald reacted by pushing Langley back and Langley, a very large man, struck Gerald. George reacted to protect his brother and grabbed Langley. (Langley testimony, TT, R., p. 1187 at pp. 85-87). The facts diverge here but the Lees say that Langley never said he was a bail enforcement agent and Langley admitted to that in the Answer he filed with the court. (Langley Answer R., p.22). Lees were reacting to a stranger suddenly attacking Gerald. (Lee testimony TT, R., p. 1187 at pp. 111-118; 189-195).

A short fight followed in which Langley beat up Gerald pretty well and left George unconscious on the floor of the kitchen in a pool of blood. Gerald testified that Langley dragged him out of the house literally by the heels with his head banging on the floor and steps of the porch as he was taken outside to Langley's vehicle. (TT, R., p. 1187 at p. 117).

George testified that he awoke and called the sheriff's office to report a kidnaping, still unaware Langley claimed to act under any legal authority. The police responded and cited both Langley and the Lees for assault of each other. (TT, R., p. 1187 at p. 194).

Langley took Gerald to a hospital in Uintah County for examination. A neck brace was placed on him and a general examination of his bruises was made. Gerald was released to the custody of Langley who put Gerald in his pickup truck and took him through a terrible snow storm over dangerous roads back to Grand Junction. Gerald was examined again in a hospital in Grand Junction. (TT, R., p. 1187 at pp. 123-129).

Gerald bailed out of the jail again by using Robert Thorpe. Gerald testified out of the presence of the jury that he saw Thorpe hand Langley the cash for bringing him back to Utah and saw Thorpe execute a receipt for the prisoner and note payment to Langley. (TT, R., p. 1187 at pp. 276-278).

A trial was subsequently held in the Uintah County Justice Court for all three Defendants at the same time. Langley was convicted of assault. George and Gerald Lee were acquitted of any crime. (R. p. 45).

Ranger Insurance Company was the bond surety in Colorado for the Lee bail through A-1 Bail Bonds and Robert Thorpe. (Plaintiff Trial Exhibit 1, R., p. 999). Ranger is not licensed to underwrite bail bonds in Utah. (TT, R., p. 1187 at p. 266).

Plaintiffs brought this action against the Defendants for negligence or reckless conduct, false imprisonment, and assault. (Complaint, R., p. 3 and R., p. 322). Ranger Insurance was named a defendant under Utah's law making a bond surety liable for the acts of an enforcement agent, § 31A-35-601(2), U.C.A.

Other significant events occurred just before and during the trial of note. First, Miles Langley died so his testimony was presented by deposition. Second, Robert Thorpe failed to appear for trial. The court denied a motion by the Plaintiffs to have his default entered but granted the motion in favor of Ranger Insurance Company on their cross-claim for a default and judgment for failure to appear and defend. (TT. R., p. 1187 at pp. 34 and 227).

## **SUMMARY OF ARGUMENT**

This brief looks carefully at the law of arrest in Utah and the public policy behind it. The Lees recognize that there is a contract provision in the Colorado bail bond contract that



allows the bond surety to cause the apprehension of a fugitive. Also, federal case law creates a general right of the bail bondsman to pursue the fugitive and enforce the contract in other states. However, other states have considered and held that the right to enforce the bail bond contract from another state falls to the public policy of the state in which the contract is sought to be enforced.

An examination of the public policy expressed through the statutes of this state shows that Miles Langley had no legal authority to arrest Gerald Lee and assault his brother, George Lee, in Utah. The trial court erred its instruction of the law of arrest to the jury and by dismissing the false imprisonment claim.

## **ARGUMENT**

### **A. INTRODUCTION**

This appeal presents extraordinarily interesting legal questions that can safely be said do not arise very often at all. Plaintiffs believe that the primary cause of the adverse jury decision was the way the court interpreted and applied legal principles governing the power to make an arrest. Specifically, the trial court instructed the jury in a way that they had no choice but to conclude the Colorado bounty hunter Miles Langley had legal authority to make an arrest or apprehension of Gerald Lee in Utah. This brief explains why that fundamental proposition is simply not true.

## **B. PLAINTIFFS' THEORY OF THE CASE**

Plaintiffs presented at trial through the evidence, a trial brief, and jury instructions theories of liability which they believe to be consistent with applicable law. (R., p. 836 and 985). This Court needs to understand the Plaintiffs' theory of the case at trial in order to appreciate where the trial court went wrong.

Plaintiffs divided facts and legal concepts between each of them at trial because they had a significant difference in their legal status. Gerald Lee was a fugitive from the state of Colorado on misdemeanor warrants. George Lee had no pending charge in Colorado and the entry and assault took place in George's home. Langley, Thorpe, and Ranger Insurance had no legal authority to be operating in Utah. Consequently, the arrest by Langley was without lawful authority and, in fact, specifically contrary to Utah law. With no lawful authority, the seizure of at least Gerald Lee and, arguably, George Lee, by entering his home and knocking him unconscious, presented a valid claim of false imprisonment. Langley's acts without justification in law eliminated any defenses to his physical force constituting an assault.

Finally, Plaintiffs relied upon a Utah statute that makes a bond surety responsible for acts of the bail enforcement bond agent to impute liability to Ranger Insurance Company. The doctrine of respondeat superior would also apply.

## **C. FINDING AND APPLYING PUBLIC POLICY**

### **1. The Role of Public Policy**

This Court directed in granting the Writ of Certiorari that this appeal focus on whether enforcement of the bail contract made in Colorado violates the public policy of Utah. Appellants present here an objective discussion of the law concerning public policy and how it is to be applied. What follows the discussion of public policy is a specific look at why the contract at issue did not create arrest powers in Utah.

This Court stated in *Laney v. Fairview City*, 2002 Ut. 79, 57 P.3d 1007, that public policy is a term describing the principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society. Public policy is a guiding star for the courts in interpreting and applying the law. For example, when an appellate court has under consideration a statute whose language is uncertain, construction of that statute is done in a way to promote the public policy expressed by the statute and thereby achieve the objectives of the legislature. *Carlie v. Morgan*, 922 P.2d 1 (Utah 1996).

Put in the context of this appeal, the bail contract at issue is enforceable in Utah provided its terms are not contrary to Utah public policy. This is not a novel concept and has arisen many times in Utah law.

Examples of public policy affecting the enforceability of a contract include *Hawkins v. Peart*, 2001 Ut. 94, 37 P.3d 1062. There, this Court declined to enforce a liability release of a minor child and an attempt to require a parent to indemnify the releasee. The contractual release was found unenforceable because it violated public policy of the state of Utah favoring protection of minors with respect to contractual obligations and removing incentive to act with reasonable care.

Another example of the voiding of a contract for public policy reasons is *Peterson v. The Sunrider Corporation*, 2002 Ut. 43, 48 P.3d 918. At issue there was whether a contract relating to a marketing organization violated the Pyramid Scheme Act, Section 76-6a-1, U.C.A. This Court recognized that public policy could render a contract unenforceable that is contrary to law under an analysis of three steps. First, the court must determine what the terms of the contract are. Second, the court must determine what the statute at issue prohibits. Third, the court must determine whether the statute or public policy demands that the contract be deemed unenforceable.

## **2. Constitutional Considerations**

An analysis of the contract's enforceability in Utah cannot ignore Article I, Section 10 of the United States Constitution which prohibits the states from enacting a law "impairing the obligations of contract". This clause was long ago determined to not be

absolute and there are exceptions to the rule. *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398 (1934).

A primary recognized exception to the impairment of contracts clause is the public policy of the state in which the contract is carried out. If the state law barring enforceability of the contract is of a character appropriate to the public purpose behind the legislation, the contract may be found unenforceable. *Stillman v. Teachers Insurance & Annuity Association*, 343 F.3d 1311 (10<sup>th</sup> Cir. 2003). *See also In re: Walker*, 959 F.2d 894 (10<sup>th</sup> Cir. 1992), where the standard was applied that a state may impair a contract where supported by significant and legitimate purpose.

These cases tell us that public policy has such great weight in considering contracts that even the constitutional prohibition against the impairment of contracts falls in light of legitimate state purposes.

### **3. Public Policy of the Law of Arrest in Utah**

The apprehension or arrest of persons involves significant constitutional rights found in the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution governing search and seizure and Due Process. Article I, Section 7 of the Utah Constitution prohibits deprivation of liberty without due process of law. Section 8 of the same Article recognizes a right of bail and Section 14 prohibits unreasonable searches and seizures. What these Utah

and U.S. Constitution provisions make clear is that the public policy of the nation and of Utah is to recognize and protect the life and liberty of their respective citizens.

Utah had in place when this incident occurred in 1999 a comprehensive set of statutes governing who may make arrests in Utah and under what circumstances. (*See* Title 77, Chapter 7 of the Utah Code at Addendum “D”). (The version in effect in 1999 is included at Addendum “D”). As a general statement, an arrest can be made by peace officers and by private persons under certain listed circumstances.

A second source of arrest law is found in Rule 6, Utah Rules of Criminal Procedure. (Addendum “E”).

A review of the Utah Criminal Code and Rules of Criminal Procedure shows that arrests were tightly regulated by law in 1999 in recognition of constitutional rights to reasonable searches and seizure and in recognition of a general public policy that arrest power needs to be controlled.

What might be called a sub branch of arrest law in Utah in 1999 is the apprehension of persons free on bail. That branch of law governing the seizure of persons is also rife with public policy analyzed in detail next.

#### **4. Utah Legal Framework for Bail Apprehension**

The court's attention is drawn to certain specific statutes in the Utah Code that were in effect at the time of this incident found in Addendum "F". Note that there have been some revisions to Title 77, Chapter 20 since this incident. All references are to Utah Code Annotated, 1953, as amended, in effect in 1999 when the arrest took place.

Specifically, Section 77-20-8.5(2) provides that bond sureties may arrest a defendant at any time before exoneration at any place within the state. Note also that subsection (3) provides that a surety acting under this section is subject to the provisions of Title 53, Chapter 10, discussed below. (Addendum "G").

While Title 77 governs criminal arrest procedure, Title 53 governs the licensing and powers of bail enforcement agents. When one turns to Title 53, Chapter 10 as directed by Section 77-20-8.5, it is immediately observed that this statute is wrong in its reference. The appropriate chapter of Title 53 is Chapter 11. That chapter, known as the Bail Bond Recovery Act, gives a comprehensive legal framework for the business operations of bail bond agents. What jumps out immediately is the fundamental requirement in Section 53-11-107 that there are three classes of licenses and no person may act as a bail enforcement agent or bail recovery agent without holding a Utah license. Sections 53-11-108, 109 and 111 go

on to set the training and education requirements of bail enforcement agents and bail recovery agents. (Addendum “G”).

Title 53, Chapter 11, imposes requirements relevant to this appeal on bail enforcement agents in how they do their job. Section 53-11-120 requires a bail enforcement agent upon request to identify his employer. Section 53-11-122 states that in order to make an arrest a bail enforcement agent shall so identify himself to the person being arrested after notifying local police authority.

What these bail statutes tell us is that there is a very definite and comprehensive public policy by the legislature of how bail apprehensions or arrests are to be done. The legislature wants trained, qualified people who are licensed to do this kind of activity. The creation of absolute liability in the bond surety, who is also subject to licensing requirements, for the acts of the enforcement agent reflect another level of safeguarding this public policy by making sure bond sureties keep an eye on what the enforcement agents are doing. Finally, the creation of criminal penalties for violation of any of these bail enforcement laws makes clear beyond reasonable doubt there is a key public policy at work.

Common sense supports the policies being implemented by the legislature. Those being apprehended are alleged criminals and there is a tremendous potential for violence. While the image of a Clint Eastwood bounty hunter makes for great movies, the gunslinger



types make for terrible public safety. There is no conceptual stretch in the argument of appellants that people that make bail arrests ought to comply with the laws intended to make that activity as safe as possible for the public. The law is clear that no license equals no arrest by bail agents. In fact, arresting without a license is a crime.

**D. ENFORCEMENT OF THE COLORADO CONTRACT WAS CONTRARY TO UTAH LAW AND PUBLIC POLICY**

**1. Title 53 Prohibited Acts by Unlicensed Persons**

An examination of Title 53, Chapter 11, shows that there is no legal authority whatsoever for a person not licensed in Utah to make a bail related arrest. Put simply, there is no exception for Langley enforcing a Colorado warrant in Utah.

The best that could be said for Langley's legal status would that he acted in making a citizen's arrest. Section 77-7-3 provides that a private person may arrest another when there has been a public offense committed or attempted in his presence or when a felony has been committed and he has reasonable cause to believe the person arrested has committed it. No fact shows these events happened here. Section 77-7-7 declares that a peace officer can use force in making an arrest only after the person being arrested flees or forcibly resists after being informed of the intention to make the arrest. None of these circumstances are presented by the facts here. Langley was completely outside Utah law.

## **2. There is No Federal Authority to Make the Utah Arrest**

With no state authority for a Colorado bail enforcement agent to make an arrest in Utah, another potential source of authority for making the arrest is in federal law and was a major issue at the trial.

In *Taylor v. Taintor*, 89 U.S. 366 (1872) a person was arrested in Connecticut and released upon bail. His bail conditions allowed him to go to New York but, while there, he was arrested and extradited to Maine for a crime. The Connecticut court sought to collect on the bail bond and the surety attempted to avoid paying claiming that it was impossible to now bring the fugitive back. The court considered the nature of a bail bond contract and said in *dicta* that the bond principal or defendant is regarded as having been delivered by the state to the custody of the surety. The surety retains common law power under the bond contract to pursue the defendant into another state for return to the court, so there was no legal impossibility to excuse paying the bond.

An examination of the trial exhibits shows that the Ranger Insurance Company bond forms completed in connection with the Gerald Lee bail recite a contract right to apprehend Lee. (Plaintiff Trial Exhibit 2, at R., p. 999 in Addendum “H”).

What the trial court did conceptually is recognize the contract right to apprehend Gerald Lee and then apply *Taylor v. Taintor* to say that Langley could pursue Lee into Utah

to enforce that contract right of apprehension. In short, the trial judge found the bail contract trumps Utah statutes to the contrary.

The trial court ruled early on in the trial that the Utah licensing statute would not be used to determine whether Langley had authority to arrest. (TT, R., p. 1187 at 4-7, 9-12). This early ruling, before any evidence was presented, effectively mortally wounded the Plaintiffs' theory of the case, described above. Consistent with that ruling, Jury Instructions no. 25 and 26 were given over the objection of the plaintiff's counsel. (TT, R., p. 1187 at pp. 291, 238, 291-292). Jury instructions proffered by the Plaintiffs were rejected. (Addendum "I". R., pp. 901-906).

The instructions given essentially told the jury that the law was that if Ranger Insurance delegated authority to apprehend to Miles Langley, Langley had the power to lawfully make an arrest. (R., pp. 1028, 1029 in Addendum "I"). What the court did, in essence, was apply its understanding of *Taylor v. Taintor* to the effect that if Gerald Lee had entered a contract with the surety then the only issue was whether the surety had authorized Langley to go get Lee. (TT, R., p. 1187 at pp. 215-217).

This view by the court of the authority to arrest also caused the court to dismiss the claim for false imprisonment brought by both Plaintiffs. (TT, R., p. 1187 at 213-216). Lees could not be subject to false arrest/imprisonment by one having arrest authority.

There really is no doubt that Miles Langley did not have the power to arrest. As explained above, Utah has a comprehensive set of statutes in place which govern the licensing of a bail enforcement agent and even make it a Class A Misdemeanor to act as a bail enforcement agent without a license in Utah. Appellants are in a very difficult position because they are being asked to prove a negative. That is, when the court dismissed application of Title 53, it shifts conceptually the burden onto the plaintiff to show that there is no bar to an out-of-state person coming into Utah and making a bail arrest. Instead, the District Court should have applied the plain language of Title 53 and required Langley to have a license consistent with public policy of this state to regulate bail enforcement.

*Taylor v. Taintor* does not provide a refuge for defendants. That case was decided in the absence of any express statutes which were put into play in the decision. Instead, that case can be read as having said *in dicta* there is a common law right of bail bondsman to pursue fugitives into other states to enforce the bail contract.

That *Taylor* does not have application here is found by looking at several cases from other states. In *Walker v. Commonwealth*, 127 S.W.3d 596 (KY. 2004) the court considered the conviction of a bond enforcement agent from Ohio making an arrest in Kentucky without a warrant. The bondsman raised *Taylor v. Taintor* as a defense saying he had the right to come into Kentucky to make the arrest for the Ohio court. The Kentucky court rejected the

argument completely by finding that the Kentucky statute prohibiting the arrest of persons by bondsman without a warrant abolished the common law rule of *Taylor*. Similarly, the Utah Title 53 would abolish the *Taylor* common law rule.

In *McFarland v. State*, 666 N.W.2d 631 (Iowa App. 2003), a bounty hunter from Iowa made an arrest in Iowa out of which he was charged with assaulting the subject fugitive. The bounty hunter raised as a defense the *Taylor* case pointing out that the *dicta* in that case creates common law that the fugitive can be pursued just about anywhere and the bounty hunter may break and enter his home for that purpose. The Iowa court correctly pointed out that the *Taylor* case lends no support whatsoever for the proposition a bounty hunter has some authority to break into the home of an innocent party and assault him or her. Similarly, the *Taylor* case would give no authority for Langley to enter the home of George Lee and assault him while apprehending Gerald Lee.

In *Green v. State*, 829 S.W.2d 222 (Texas App. 1992), a defendant in a murder case raised *Taylor v. Taintor* in support of a mistake of law defense. The Texas court pointed out that Texas statutes governing sureties who seek to apprehend principals had replaced the common law of *Taylor*. Again, Utah has adopted Title 53 which also abrogates the application of *Taylor*.

In *Johnson v. County of Kittitas*, 11 P.3d 862 (Wash. App. 2001), the court considered a bail bondsman who seized a defendant simply because the bondsman felt threatened that the defendant may skip on the bond. The bondsman relied on *Taylor v. Taintor* to argue that a surety had a right to pick up the subject as they believed necessary to protect the bond contract. The court rejected the argument stating, as did the other states, that the adoption of a Washington state statute concerning the authority of a bail bondsman supplanted the common law rule of *Taylor v. Taintor*.

A case decided after this appeal was briefed to the Utah Court of Appeals has some significance here. In *State v. Burhans*, 89 P.3d 269 (Kan. 2004), the court considered the conviction of a bail bondsman of assault and trespass under facts strikingly similar to those presented here. *Burhans* did not involve an out of state bondsman but a local bondsman that entered the home of a relative of the fugitive on false pretenses to make a bail arrest and a fight ensued. The Kansas Supreme Court made an exhaustive analysis of the right (privilege) of a bail bondsman to enforce the bail contract and also considered the rule of *Taylor v. Taintor*. The Kansas court decided that even though the bail contract created a right to pursue the fugitive, that right of pursuit ended where it ran into other legal principles. Here, the court found the contract does not authorize entry to the residence of a third party in which the fugitive does not reside and entry must be by consent not induced by misrepresentation.

Putting the case law from other states concerning the right to enforce the bail contract into the language of this appeal, all of these other states have found that when the bail contract runs into state statutes these statutes and the public policy of the state override the federal common law.

### **3. The District Court Erred in Applying the Law**

No legal authority existed for Miles Langley to come into Utah and arrest Gerald Lee much less enter the home and assault George Lee. Utah has adopted an absolute requirement that those who seek to enforce bail bonds must have a license to do so after qualifying under Title 53, Chapter 11. With no offense committed in the presence of Langley in Utah, there was no right of citizen's arrest. The old federal common law right of a bail bondsman to pursue a fugitive in another state was eliminated by the adoption of Title 53.

With all of the predicate legal principles in mind, the reversible error of the district court can be brought into sharp focus. Plaintiffs' theory of the case under Utah law was that Langley had no legal authority to be in Utah making an arrest therefore he could be liable for false imprisonment through false arrest, he could be liable for assault because he was using force in a situation in which he had no right to assert force, and he could be liable for negligence or reckless endangerment because he was purporting to carry out a duty without legal authority. By holding that there was a common law right of interstate apprehension

pursuant to the contract documents, the trial court was wrong on the law and instructed the jury wrong when it said all they had to do to find lawful arrest authority was to find the contract authorized Langley to act for Ranger Insurance and Robert Thorpe.

There is no known authority for the proposition that parties can get together in one state and contract away the public policy and statutes of another state, yet that is what the court allowed in this trial. The law applied by the trial court simply gave away the public policy of the state that there should be order to bail arrests, that bail bondsmen should be trained and licensed, and that bail sureties should be licensed in Utah. In effect, the court's instruction to the jury said that what the Utah legislature does has no significance.

Returning to the three part test of this court stated in *Peterson v. The Sunrider Corporation*, there is no issue as to what the terms of the contract are. There is no question as to what Title 53 prohibits. Finally, the conflict between the right to enforce the contract and the specific statutes requiring licensing and training demand that the contract be found to be unenforceable by an unlicensed person in Utah.

No stretch of logic is necessary to conclude that if the jury had been properly instructed that Langley had no legal authority to be in Utah, that they could have found favorable for the Plaintiffs. A new trial with the jury instructed consistent with Utah law is justified.



## **E. FALSE IMPRISONMENT SHOULD NOT HAVE BEEN DISMISSED**

The elements of false imprisonment by false arrest were given long ago in *Hepworth v. Covey Bros. Amusement Company*, 91 P.2d 507 (Utah 1939). The court stated there that false imprisonment by false arrest occurs when any exercise of force, or express or implied threat of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain or go where he does not wish to go, is an imprisonment. These foundational elements were elaborated upon in *McFarland v. Skaggs Companies, Inc.*, 678 P.2d 298 (Utah 1984), wherein the court said that a lawful arrest must be done in accordance with “statutory dictates”.

Put simply, an arrest in Utah is a false arrest or false imprisonment where there is no specific authority to make the arrest.

As explained in the preceding section, Miles Langley had no authority to arrest Gerald Lee in Utah. Certainly, even if there was some authority found in the law to arrest Gerald Lee, Langley is not given any authority to falsely imprison George Lee in his own home. It is a question of fact that the jury could have found that George Lee, by exercise of force of Miles Langley, was deprived of his liberty or compelled to remain by the force.

The error of the trial court was to not even let the jury consider that false imprisonment claim through finding Miles Langley had a right to act under the common law

surrounding the bail bond contract. The district court was wrong on the law completely. Instead of instructing the jury that if Miles Langley was found to be acting within the contract there was legal authority, the jury should have been instructed that Langley had no authority to act in Utah and the Defendants needed to show a justification for force or detention.

This Court should reverse the trial court and remand for trial on the claim of false imprisonment.

## **CONCLUSION**

If one steps back and takes an objective look at the big picture of all of this, what emerges is a tale of complete disregard for law, Due Process, statutes, public policy, and common sense. The Lees have never said anything other than Gerald should have shown up for his court dates in Colorado. However, what resulted was a wild west bounty hunter story in which state sovereignty and carefully crafted public policy was thrown to the wind. Ranger Insurance Company could have avoided all of this simply by hiring a licensed Utah bail enforcement agent to deliver Gerald Lee to Colorado. The very problem which the Utah legislature tried to avoid happened because nobody followed the law. A melee with resulting physical injury took place with the Colorado defendants making a profit off the bail bond claiming no responsibility.

The trial court holding that Utah statutes do not apply to a contract made in another state has considerable significance. Affirming the trial court and the Utah Court of Appeals would be a clear message to a great variety of professions that Utah takes a minority position on the significance of its public policy. Created is a legal loophole to licensing requirements of any vocation so long as you agree to perform the work in Utah in a contract made in another place. This is not idle speculation. Currently before the Utah Court of Appeals is an appeal of multiple plaintiffs of a dismissal of dozens of asbestos claims because medical conclusions were made by a physician in Utah not licensed in Utah. *See Allred v. A C and S, Inc., et al.*, Docket No. 20050829-CA. The point being made here is if the gates to unlicensed activity are opened, the flood is ready to come to Utah. This court should stand holding the gate of state sovereignty expressed through public policy against that flood.

This Court is respectfully requested to hold as follows:

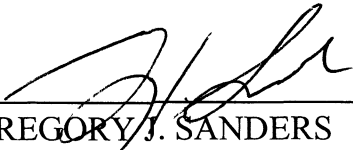
1. That under a standard of correctness the Eighth District Court erred in applying a federal common law right under the bail bond contract for a Colorado bail recovery agent to come into Utah and arrest and assault Gerald Lee and his innocent brother, thereby giving the jury a legal justification for Langley's assault on the Lees. The negligence and assault claims should be retried.

2. Plaintiffs request this Court remand the case under a standard of correctness because the Eighth District Court committed reversible error by dismissing the false imprisonment by false arrest claim under a finding that there was a common law right for enforcement agent Langley to apprehend Gerald Lee in Utah. Fact questions remain as to whether George Lee had been falsely imprisoned, also.

Taking all of the errors into account, this Court is respectfully requested to remand the case to the Eighth District Court for a new trial.

**DATED** this 30<sup>th</sup> day of December, 2005.

KIPP AND CHRISTIAN, P.C.

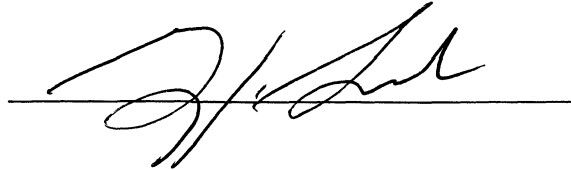
  
\_\_\_\_\_  
GREGORY J. SANDERS  
Attorneys for Plaintiffs and Appellees

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 30<sup>th</sup> day of December, 2005, two true and correct copies of the foregoing **BRIEF OF APPELLANTS** was mailed, first class, postage pre-paid to:

Julianne P. Blanch  
Snow Christensen & Martineau  
10 Exchange Place, Suite 1100  
Salt Lake City, UT 84111

Robert P. Thorpe  
3047½ A½ Road  
Grand Junction, CO 81503

A handwritten signature in black ink, appearing to read "R. P. Thorpe", is written over a horizontal line.

## **ADDENDUM**

A. COMPLAINT .....	A-1
B. COURT OF APPEALS DECISION .....	A-5
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D. TITLE 77, CHAPTER 7, U.C.A (1999) .....	A-29
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**ADDENDUM “A”**

**COMPLAINT**





EIGHTH DISTRICT COURT-VERNAL,UTAH  
UINTAH COUNTY,STATE OF UTAH

FILED  
DISTRICT COURT  
UINTAH COUNTY, UTAH

FEB 28 2000

JOANNE MCKEE, CLERK

BY *[Signature]* DEPUTY

GEORGE M LEE

\*

GERALD L LEE

\*

PLAINTIFFS

\*

vs.

\*

MILES WALTER LANGLEY

\*

ROBERT P THORPE

\*

RANGER INSURANCE CO.

\*

DEFENDANTS

\*

*Judge A Lynn Payne*  
CIVIL ACTION NO. 000800126 CR

Complaint

JURISDICTION

1. Jurisdiction is proper under U.R.S. 78-12-29

PARTIES

2.a. Plaintiff George M. Lee has had legal residence at 1434 E. 4500 S Vernal, Utah since October 1998.

b. Plaintiff Gerald L. Lee has had legal residence at 2281 E. 4500 S. Vernal, Utah since May, 1998.

2.a. Defendant Miles Walter Langley's last known address was 1264 Grand Avenue Delta, Colorado 81416 and was employed part time as a bounty hunter by A-1 Bail Bonds 225 W. Grand Avenue Grand Junction Colorado.

b. Defendant Robert P. Thorpe A-1 Bail Bonds 225 W. Grand Avenue Grand Junction, Colorado. Where he is a Bail bondsman.

c. Defendant Ranger Insurance Co. is a bond surety company P.O. Box 2807 Houston, Texas 77252-2807.

FACTS

4. Both plaintiffs were at 1434 E. 4500 S. Vernal, Utah

5. Plaintiff Gerald Lee was unemployed at the time and had been seeking employment.

6. At approximately 2:00 P.M. April 2, 1999. Defendant Miles Walter Langley, being an agent working for A-1 Bail Bonds, and Ranger Insurance, entered the Vernal, Utah area of Uintah County with the explicit purpose of arresting and returning plaintiff Gerald Lee to Colorado on supposed felony warrants.

7. At approximately 2:30 P.M. April 2, 1999. Defendant Miles Walter Langley approached the residence at 1434 E. 4500 S. representing himself

as Miles Langley of Christian Bros. Construction Co. to plaintiff George M. Lee, gained entry to the residence. Langley told plaintiff George M. Lee that he wanted to hire plaintiff Gerald L. Lee to work for his company. Upon being introduced to plaintiff Gerald L. Lee defendant Miles Walter Langley grabbed Gerald L. Lee around the neck and struck him in the head with handcuffs.

3. Plaintiff George M. Lee attempted to stop the attack on Gerald L. Lee, and was struck in the mouth and nose, with Langley's elbow then fist, which rendered plaintiff George M. Lee unconscious and seriously bleeding on the floor.

9. Defendant Miles Walter Langley drug plaintiff Gerald L. Lee from the residence, leaving plaintiff George M. Lee still unconscious and bleeding on the floor.

10. Defendant Miles Walter Langley at no time when he was in the residence identified himself as a bounty hunter, bond enforcement agent, or anything to do with a bond agency.

#### LEGAL CLAIMS

The defendants actions were/are a violation of law under U.R.S. #

76-5-103 Assault and Battery

76-5-302 Kidnap

76-5-112 Reckless Endangerment

31A-35-601 Acts and Conduct of Bail Bond Agents

Claims not limited to above statutes.

#### Relief Requested

1. Plaintiffs costs for this action.

2. Trial by jury on all issues triable by jury.

3. Damages in the amount of

Compensatory \$ 500,000 Per Defendant

Punitive \$ 500,000 Per Defendant

Respectfully Submitted,

*George M. Lee*

George M. Lee  
1434 E. 4500 S.  
Vernal, Utah 84078

DATE FEB. 28 2000

**ADDENDUM “B”**  
**COURT OF APPEALS DECISION**



AUG 04 2005

This opinion is subject to revision before  
publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

George M. Lee and Gerald Lee,	)	OPINION
	)	(For Official Publication)
Plaintiffs and Appellants,	)	
	)	Case No. 20040308-CA
v.	)	
	)	
Miles Walter Langley, Robert	)	F I L E D
P. Thorpe, and Ranger	)	(August 4, 2005)
Insurance Company,	)	
	)	2005 UT App 339
Defendants and Appellees.	)	

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Eighth District, Vernal Department, 000800126  
The Honorable A Lynn Payne

Attorneys: Gregory J. Sanders, Salt Lake City, for Appellants  
Julianne Blanch and Trystan B. Smith, Salt Lake City,  
for Appellees Langley and Ranger Insurance Company  
Robert P. Thorpe, Grand Junction, Colorado, Appellee  
Pro Se

-----

Before Judges Jackson, Orme, and Thorne.

THORNE, Judge:

¶1 George and Gerald Lee sued Miles Langley, Robert Thorpe, and Ranger Insurance Co. for false imprisonment, assault, and negligent or reckless endangerment. The trial court dismissed the false imprisonment claims and the jury found for the defendants on the other claims. The Lees appeal various trial court rulings. We affirm.

#### BACKGROUND

¶2 In 1998, Gerald Lee was twice arrested in Colorado for driving offenses including driving under the influence of alcohol. To obtain bail, Gerald purchased two bail bonds from A-1 Bail Bonds (A-1), a Colorado bail bonding agency owned by Robert P. Thorpe. For each bond, Gerald entered into an identical Bail Bond Application and Contract (collectively the bail contract) with Ranger Insurance Company (Ranger), a Texas

bail bond surety that insured the bonds. The bail contract contained the following provisions:

1. Ranger shall have control and jurisdiction over me during the term for which my bail bond(s) is executed and shall have the right to apprehend and surrender me to the proper officials at any time for violation of my bail bond(s) obligations to the Court and Ranger as provided by law.
2. It is understood and agreed that any one of the following actions by me shall constitute a breach of my obligations to Ranger and that Ranger and/or its Agent shall have the right to forthwith apprehend and surrender me in exoneration of my bail bond(s):
  - a. If I depart the jurisdiction of the court without written consent of the court and Ranger or its Agent.
3. If I depart the jurisdiction of the Court wherein my bail bond(s) is posted by Ranger for any reason, and I am captured by Ranger and/or its Agent . . . in a State other than the one in which my bail bond(s) is posted, I hereby agree to voluntarily return to the State of original jurisdiction, and I hereby waive extradition proceedings and further consent to the application of such reasonable force as may be necessary to effect such return.

Using the bonds, Gerald posted bail and was released from state custody.

¶3 Gerald violated the terms of his bail by failing to appear for court hearings and by leaving Colorado for Utah. A-1 hired Miles Langley to apprehend Gerald.<sup>1</sup> Langley was licensed as a

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1. Whether A-1 hired Langley was one of many contested issues at trial. As the primary question in this case involves the dismissal of the Lees' false imprisonment claims, we summarize the factual background of this case using the Lees' version of events. See Hatch v. Davis, 2004 UT App 378, ¶15, 102 P.3d 774 ("On appeal from a motion to dismiss, we review the facts as they are alleged in the complaint. We accept the factual allegations in the complaint as true and consider all reasonable inferences (continued...)

bail recovery agent in Colorado, but not in Utah. Suspecting that Gerald was in Utah, Langley verified that a Colorado arrest warrant existed for Gerald and proceeded to Utah to apprehend him. Langley checked in with the Vernal County Sheriff and obtained information that Gerald could be located at his brother George's home in Naples, Utah. Langley proceeded to Naples, where he checked in with Naples police and informed them of his intentions.

¶4 Langley went to George's home, where he obtained permission to enter the home by stating that he represented someone who was interested in employing Gerald as a mechanic. At some point Langley shook Gerald's hand, and while he did so he placed handcuffs on Gerald. An altercation broke out between Langley, Gerald, and George, resulting in physical injury to both Gerald and George. Langley took custody of Gerald and removed him from the home to his vehicle, leaving George unconscious on the floor. George awoke and called the police, who arrived while Langley and Gerald were still at the scene. The police issued assault citations to each of the three parties, but required Gerald to accompany Langley or face arrest by them. Langley took custody of Gerald, took him to a Uintah County hospital for examination, and ultimately returned him to Colorado.

¶5 The Lees sued Langley, Thorpe, and Ranger for assault and battery, reckless endangerment, and kidnap. The trial court allowed the Lees to present their kidnapping claim to the jury as a claim for false imprisonment, but granted a defense motion for directed verdict on that claim after the close of the Lees' case in chief. The jury ultimately determined that Langley did not assault or recklessly endanger the Lees, rendering the Lees' agency-based claims against Thorpe and Ranger moot. The Lees appeal.

#### ISSUES AND STANDARDS OF REVIEW

¶6 The Lees challenge the trial court's jury instructions pertaining to the law of arrest. "'Whether a jury instruction correctly states the law presents a question of law which we review for correctness.'" Martinez v. Wells, 2004 UT App 43, ¶14, 88 P.3d 343 (quoting State v. Houskeeper, 2002 UT 118, ¶11, 62 P.3d 444).

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1. (...continued)  
to be drawn from those facts in a light most favorable to the plaintiff." (quotations and citation omitted)).

¶7 The Lees argue that the trial court erred in granting a directed verdict on their false imprisonment claims. "We review a directed verdict under the same standard employed by the trial court." Carlson Distrib. Co. v. Salt Lake Brewing Co., 2004 UT 227, ¶13, 95 P.3d 1171 (quotations and citations omitted). A directed verdict is appropriate "'only if, examining all evidence in a light most favorable to the non-moving party, there is no competent evidence that would support a verdict in the non-moving party's favor.'" Id. (quoting Five F. L.L.C. v. Heritage Sav. Bank, 2003 UT App 373, ¶12, 81 P.3d 105).

¶8 The Lees also argue that the trial court erred when it refused to enter default against Thorpe for failing to appear at trial. We review a trial court's decisions on default under an abuse of discretion standard. Cf. Lund v. Brown, 2000 UT 75, ¶9, 11 P.3d 277 ("[A] trial court has broad discretion in deciding whether to set aside a default judgment.").

¶9 Finally, the Lees challenge two of the trial court's evidentiary rulings. "Trial courts are afforded broad discretion in determining the admissibility of evidence; thus we will not disturb a trial court's ruling whether to admit or exclude evidence absent an abuse of discretion." Vigil v. Division of Child & Family Servs., 2005 UT App 43, ¶8, 107 P.3d 716.

## ANALYSIS

### I. Jury Instructions

¶10 The Lees first argue that the trial court incorrectly instructed the jury on the law of arrest. According to the Lees, Langley had no legal authority to arrest Gerald Lee. We disagree. Langley's authority to arrest Lee arose from the bail contract, and that authority existed even if its exercise by Langley, an unlicensed bail enforcement agent, was illegal. Cf. Mosley v. Johnson, 22 Utah 2d 348, 453 P.2d 149, 152 (1969) (stating that an unlicensed well driller would be entitled to retain personal property obtained in payment on drilling contract, even though contract was void due to driller's lack of license).

¶11 Arrests by bail sureties are addressed in Utah Code section 77-20-8.5. See Utah Code Ann. § 77-20-8.5 (2003). That statute, as it existed at the time of Langley's arrest of Gerald Lee, stated that "[f]or the purpose of surrendering the defendant, the sureties may arrest him at any time before they are finally exonerated and at any place within the state." Id. § 77-20-8.5(2) (1999). However, the statute further provided that "[a]



surety acting under this section is subject to the provisions of Title 53, Chapter [11], Bail Bond Recovery." Id. § 77-20-8.5(3).

¶12 Utah's Bail Bond Recovery Act (the Act), see Utah Code Ann. §§ 53-11-101 to -124 (2002),<sup>2</sup> sets up a licensing scheme for bail enforcement agents and provides that a person may not "act or assume to act as, or represent himself to be, a licensee unless he is licensed[.]" Id. § 53-11-107(2). The act of arresting a person upon a bail bond without possessing a Utah bail enforcement agent's license is a class A misdemeanor. See id. § 53-11-124 (2002); State v. Norton, 2003 UT App 88, ¶¶1, 7, 67 P.3d 1050 (affirming convictions under the Act where defendant "was not licensed as a Bail Recovery Agent or Bail Enforcement Agent, as required under the Act"). It is undisputed for purposes of this appeal that Langley did not possess a Utah license pursuant to the Act.

¶13 In order for a statute to render an arrest lawful, the arrest "must be effected in accordance with statutory dictates." McFarland v. Skaggs Cos., 678 P.2d 298, 302 (Utah 1984). Because Langley was unlicensed in Utah, his arrest of Lee was illegal under the Act and therefore not authorized by section 77-20-8.5. See Utah Code Ann. § 77-20-8.5(3) (1999).

¶14 Despite this lack of statutory authority, the trial court properly instructed the jury that Langley had "the power to lawfully make an arrest" if it found that Langley was acting on Ranger's behalf. Lee contracted with Ranger to allow Ranger "to apprehend and surrender [him] to the proper officials at any time for violation of [his] bail bond(s) obligations." Lee's contractual submission to Ranger's authority to apprehend him, which was not limited in geographical scope and expressly contemplated Lee's apprehension outside of Colorado, did not condition Ranger's arrest authority on the state licensing status of any eventual enforcement agent.

¶15 While the bail contract would not relieve Langley from criminal liability under the Act, it does preclude Lee from arguing in this civil action that Ranger--and by extension Langley--had no authority to apprehend him in Utah. Cf. Snyder v. Lovercheck, 992 P.2d 1079, 1087 (Wyo. 1999) (holding that when a conflict arises between parties to a contract regarding the subject matter of that contract, "the contractual relationship controls, and parties are not permitted to assert actions in tort in an attempt to circumvent the bargain they agreed upon"). Lee

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2. The Act has not been amended in any relevant way since the date of Lee's arrest. We cite to the most current version for convenience.

personally and expressly authorized his apprehension by Ranger or its agent. Ranger relied on that authority to secure Lee's initial release from custody, and Langley relied on that authority to effectuate Lee's arrest. Under these circumstances, the trial court properly instructed the jury that Langley had the authority to arrest Lee if he was acting upon Ranger's delegation. This is particularly so when it is uncontested that Langley would have had statutory authority to arrest Lee but for his lack of a license. See also W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 36 at 226 (5th ed. 1984) (licensing statutes create no liability if the actor is competent but unlicensed).

¶16 The only potential error we can identify in the jury instructions involves the trial court's use of the legally significant word "arrest" rather than the contractual term "apprehend." Arrest implies the sanction of the state in a way that apprehend may not, and there may be certain privileges or defenses available to a party acting under statutory arrest authority that are not available to one merely acting under contract. However, the Lees do not argue that this distinction had any reasonable likelihood of affecting the jury's verdict, nor do we see any such likelihood. Accordingly, any misuse of the word arrest in the jury instructions is at most harmless error. See Covey v. Covey, 2003 UT App 380, ¶21, 80 P.3d 553 ("Harmless error is defined as an error that is sufficiently inconsequential that we conclude there is no reasonable likelihood that the error affected the outcome of the proceedings." (citation and alteration omitted)).

¶17 We conclude that Gerald Lee's express contractual agreement authorized Ranger or its agent to apprehend him and bars him from complaining that the apprehension in fact occurred. Accordingly, for purposes of this tort action, the trial court properly instructed the jury that Langley's arrest of Lee was lawful so long as it was on behalf of Ranger. Lee has alleged no other error in the jury instructions.

## II. Directed Verdict

¶18 The Lees further argue that the trial court erred in granting a directed verdict against each of their claims for false imprisonment. We disagree.

¶19 "False imprisonment is an act 'intending to confine the other . . . within boundaries fixed by the actor,' which 'results in such a confinement' while 'the other is conscious of the confinement or is harmed by it.'" Tiede v. State, 915 P.2d 500, 503 n.4 (Utah 1996) (alteration in original) (quoting Restatement (Second) of Torts § 35 (1965)). "[F]alse imprisonment occurs

whenever there is an unlawful detention or restraint of another against his will." Mildon v. Bybee, 13 Utah 2d 400, 375 P.2d 458, 459 (1962).

¶20 We have already concluded that Langley's apprehension of Gerald Lee was lawful so long as Langley was acting as an agent of Ranger. The Lees asserted that Langley was Ranger's agent in their complaint, and Langley's deposition testimony further established at trial that he was acting pursuant to Gerald Lee's contract with Ranger. Accordingly, the trial court did not err in concluding that Gerald Lee's detention was lawful and that his claim for false imprisonment could not proceed.<sup>3</sup>

¶21 The sole basis for George Lee's false imprisonment claim is his allegation that Langley knocked him unconscious during their struggle. Lee presents no authority for his proposition that a claim for false imprisonment arises any time an altercation results in unconsciousness. Even assuming that unconsciousness can be equated with confinement, Lee presented no evidence that Langley intended to confine him, as required to make out a claim of false imprisonment. See Tiede, 915 P.2d at 503 n.4. Under these circumstances, the trial court acted properly when it directed a verdict on George Lee's false imprisonment claim and allowed him to seek damages from the altercation under his other theories of assault and endangerment.

### III. Failure to Enter Default and Evidentiary Rulings

¶22 The Lees' remaining arguments challenge the trial court's refusal to enter default against Thorpe, its exclusion of Langley's prior admission that he was not licensed as a bail bondsman in Utah, and its exclusion of a receipt signed by Thorpe that evidenced Thorpe's hiring of Langley. We determine that these alleged errors amount to, at most, harmless error.

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3. Alternatively, the bail contract manifests Lee's consent to being apprehended, which necessarily includes the concepts of confinement, detention, and restraint. No intentional tort will lie where the plaintiff consents to otherwise tortious activity. See Lounsbury v. Capel, 836 P.2d 188, 192-196 (Utah Ct. App. 1992) (discussing intentional tort of battery as requiring a lack of consent). While we are aware that there might be circumstances under which public policy precludes consent as a tort defense, this case does not present such circumstances. Bail contracts do not violate public policy; to the contrary, they have become integral to the efficient administration of our criminal justice system.

¶23 An error is harmless when "there is no reasonable likelihood that it affected the outcome of the case." Price v. Armour, 949 P.2d 1251, 1255 (Utah 1997). There appears to have been no dispute in this case that Langley was licensed as a bail agent in Colorado, but not in Utah. Even if there was a factual dispute as to this issue, we have determined that Langley's Utah licensure status was irrelevant to the Lees' tort claims against him. We are unconvinced that any error in the exclusion of this evidence resulted in a reasonable likelihood of a different outcome for the Lees. Accordingly, any error is harmless.

¶24 The Lee's remaining arguments address issues relating to Thorpe and Ranger's vicarious liability for the actions of Langley. All of the Lees' tort claims against Langley were rejected either by the trial court or by the jury, and we have affirmed those decisions on appeal. Vicarious liability does not exist apart from the liability of some putative primary tortfeasor, in this case Langley. See Mann v. Wadsworth, 776 P.2d 926, 928-29 (Utah Ct. App. 1989) ("[S]ince Watkiss & Campbell's liability under respondeat superior is vicarious, it does not exist apart from Wadsworth's liability. The jury held Wadsworth not liable, and the same result must, therefore, also obtain for Watkiss & Campbell."). Accordingly, because the Lees could not establish liability against Langley, they could not establish vicarious liability against Thorpe or Ranger as a matter of law. Any error in the trial court's refusal to default Thorpe<sup>4</sup> or admit the receipt signed by Thorpe into evidence therefore could not have been reasonably likely to affect the outcome of the proceeding.

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4. "There is an important distinction between a default and a default judgment[,] and "the entry of a default does not automatically entitle a plaintiff to a default judgment for the damages claimed in the complaint." Skanchy v. Calcados Ortope SA, 952 P.2d 1071, 1076 (Utah 1998). "To enter a default judgment for unliquidated damages, a judge must review the complaint, determine whether the allegations state a valid claim for relief, and award damages in an amount that is supported by some valid evidence." Id. In this case, even if Thorpe had been defaulted, the Lees' complaint does not "state a valid claim for relief" against him in light of the jury's verdict in favor of his alleged agent, Langley. Id. Accordingly, no judgment would ever have been entered against Thorpe even if he had been defaulted.

CONCLUSION

¶25 The trial court properly concluded that Lee could not dispute Langley's authority to arrest him under the bail contract despite Langley's lack of a Utah bail enforcement agent license. The trial court also properly dismissed both George and Gerald Lee's claims for false imprisonment. The Lees' other claims of error constitute, at most, harmless error.

¶26 Accordingly, we affirm.


  
William A. Thorne Jr., Judge

-----

¶27 I CONCUR:

  
Norman H. Jackson Judge

¶28 I CONCUR IN THE RESULT:

  
Gregory K. Orme, Judge

CERTIFICATE OF MAILING


I hereby certify that on the 4th day of August, 2005, a true and correct copy of the attached DECISION was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

ROBERT P. THORPE  
3047 1/2 A1/2 ROAD  
GRAND JUNCTION CO 81503

GREGORY J SANDERS  
KIPP & CHRISTIAN  
10 EXCHANGE PL 4TH FLR  
SALT LAKE CITY UT 84111-2714

JULIANNE BLANCH  
TRYSTAN B SMITH  
SNOW CHRISTENSEN & MARTINEAU  
10 EXCHANGE PL 11TH FL  
PO BOX 45000  
SALT LAKE CITY UT 84145-5000

HONORABLE A. LYNN PAYNE  
EIGHTH DISTRICT, VERNAL DEPT  
920 E HWY 40  
VERNAL UT 84078

  
Judicial Secretary

TRIAL COURT: EIGHTH DISTRICT, VERNAL DEPT, 000800126  
APPEALS CASE NO.: 20040308-CA

**ADDENDUM “C”**

**BAIL BOND UNDERWRITING AGREEMENT**





## BAIL BOND UNDERWRITING AGREEMENT

THIS AGREEMENT entered into this 11th of March, 1998, by and between RANGER INSURANCE COMPANY, a Delaware Corporation duly licensed and authorized to issue surety bail bond powers of attorney in all bail states (hereinafter "RIC or "Company"), North American Bail Bond Services (hereinafter "General Agent") and Robert Paul Thorpe and Maria Elizabeth Thorpe dba A-1 Bail Bonds (hereinafter "Agent" or "Bail Agent").

FOR AND IN CONSIDERATION of the promises set forth hereinafter, the parties hereto agree as follows:

1. **DEFINITIONS.** As used herein, the terms "Company" and/or "RIC" shall be interchangeable and refer to RANGER INSURANCE COMPANY or its designee. As used hereinafter unless otherwise indicated the terms "Bail Agent" and "Agent" shall be interchangeable. As used herein, the terms "bail bond," "undertaking," "bond," and "power of attorney" shall be interchangeable unless otherwise indicated.

2. **GENERAL PURPOSES.** Subject to the following terms and conditions, company shall supply surety bail bonds to Agent. Agent shall at all times hereunder remain a duly licensed and qualified Bail Agent in Colorado as required by law. Agent may solicit and execute bonds in any area in which it is duly licensed, has been issued a qualifying power and been duly appointed by Company.

3. **RELATION OF COMPANY, GENERAL AGENT AND AGENT.** The relation of Company and Agent is that of principal and independent contractor. Agent shall have exclusive control over his retail bail business, shall set his/her own working hours, and shall retain or discharge employees or independent contractors in Agent's sole discretion. Agent shall not use the name of Company in any advertising for in any manner which induces a belief that Agent is an employee of, or in any way associated with Company other than Company supplying bonds to Agent in a wholesale manner. Agent shall receive no wages, salaries, or other compensation from Company. Agent is solely responsible for seeking out and obtaining any and all specialized knowledge and skills necessary in his or her professional function, and is similarly solely responsible for the proper screening, selection and hiring of all employees and/or independent contractors retained by Agent. Unless Company otherwise notifies Agent, General Agent will act as Company's authorized representative with regard to this contract and Agent will perform its contractual obligations with Company through General Agent. Also, unless Company otherwise notifies Agent, General Agent will have the same rights of indemnification as Company as specified in this Agreement.

018

A-19

Company U  
General Agent CB  
Agent AC  
Indemnitor \_\_\_\_\_

4. **POWERS OF ATTORNEY.** Company, through General Agent, shall furnish Agent with bail bond Powers of Attorney in such numbers, denominations and at such times as Company shall determine. Agent shall not allow any unlicensed or unauthorized person to possess such Powers of Attorney, and upon receipt of Powers shall be solely responsible for such Powers. Whenever demanded by Company or General Agent, Agent shall immediately surrender or deliver to Company or its authorized representative any and all unused Powers or Attorney. Should any Powers of Attorney be unaccounted for, stolen, or otherwise lost, Agent shall report same to Company as unaccounted for, stolen or lost and unless otherwise directed by Company, shall within seven (7) days, of obtaining knowledge of such deficiency, make full premium remittance as herein described, within fifteen (15) days of the issuance of each such Power of Attorney by Agent.

5. **REGULATION OF BOND EXECUTIONS.** Company may, at its discretion, direct Agent to refrain from executing, issuing or renewing Powers of Attorney on behalf of any defendant/bond principal. Company may, in its discretion, set a maximum single undertaking amount limit for Agent, and Agent agrees he will not issue any bond in excess of said limit without first obtaining the express approval of Company of each such bond.

6. **BOND COLLATERAL.** Agent shall solicit, collect, protect, insure, return, apply, deliver to Company and/or otherwise deal with such collateral, be it real or personal property, currency, securities or any other thing of value, as Company shall authorize and/or direct from time to time or as is required to protect the interests of Company hereunder. Company shall be named co-trustee on any build up fund/reserve account, indemnity account, client trust fund or collateral account, and is the intended beneficiary thereof. All cash collateral taken on Ranger bonds will be held in a separate cash collateral account and not be commingled with other surety funds. Company shall be entitled to inspect immediately all collateral taken and all such accounts of Agent, along with any general business account(s), upon request by an authorized representative of Company. Company may, in its discretion, direct Agent to immediately deliver any and all collateral of any sort taken by Agent at any time as bond security to Company, identified by bond number, indemnitor and principal, to be held in trust by Company until released to Agent or directly to the party who gave such collateral, and Company shall be the beneficiary of same. Agent will hold such collateral as a fiduciary in a manner which complies with all laws and administrative regulations of this state, and shall indemnify and hold Company harmless as to any action regarding the taking, maintenance or return of such collateral. Agent will provide collateral indemnitor with a properly completed collateral receipt for each bail bond issued. The signed collateral receipt given to the Indemnitor will show "Personal indemnification only, no physical collateral, no cash" if no collateral is taken. Receipt will only be the receipt form provided by Company as part of Power of Attorney form. Where Company receipt form is not allowed by law, Agent will use only Company approved form, which complies with state law.

7. **BOND PREMIUM RATES, BOND COSTS, COLLECTION, AND REMITTANCES.** Company shall have the right to fix and change bond premium rates to be charged the public. Any premium rate increase, or related fee increase to the public shall be collected by Agent in accord herewith and remitted to Company as herein provided. With respect to bond premiums the following shall apply:

(a) Unless otherwise authorized and/or directed by Company, and without regard to premium credit extended to customers, Agent shall remit to Company within seven (7) days of execution of each bond all premiums collected for the Company by the agent.

(b) The Agent's compensation shall be as may be agreed upon between the Agent and the General Agent per the attached "Schedule of Charges."

8. AGENT DUTIES WITH REGARD TO BOND PRINCIPALS. Agent shall be solely responsible for the negotiating, underwriting, securing and posting of bail bonds issued to secure the release from custody of criminal defendants, and for the apprehension, holding, movement, arrest, extradition and/or surrender of errant bond principals; court appearances of bond principals; and/or any and all other dealing with bond principals; all such actions and dealings by Agent shall be conducted properly and lawfully in compliance with all laws, statutes, regulations and prudent business practices utilized in the bail bond business. Agent shall be solely responsible for any damages arising from, occasioned by, or in the course of an arrest or apprehension, holding movement, extradition and/or surrender of bond principals. Should any damages or legal action for damages arise from Agent's actions in the absence of written consent from Company, Agent's contract collateral build up funds and/or indemnity funds shall be available for payment of any damages, defenses, or attorney's fees, and Agent shall hold Company free and harmless from any and all damages with respect to the handling, apprehension, arrest or surrender of any bond principal, or any other aspect of his or her bail bond business transactions. Agent shall exercise extreme care in all respects with regard to apprehension, arrest, or surrender of any bond principal, and shall exercise the utmost care and caution in the selection of person to assist Agent in accomplishing these various tasks.

9. AGENT'S DUTIES WITH REGARD TO BOND ADMINISTRATION. Agent shall be solely responsible for the satisfaction of bond forfeitures; investigation of bond principals and prospective bond principals; negotiation, settlement and/or satisfaction of claims against Agent by bond principals, courts and/or others; and/or any and all other matters of bond administration hereunder. Agent shall make, or cause to be made, any and all necessary and warranted legal motions to preserve, reinstate and exonerate bonds, at Agent's sole expense. Agent shall timely pay any and all cost assessments imposed by any court for bond exoneration, and shall be responsible for the payment of any and all judgments entered on bonds supplied by Company. Agent shall not bring legal action of any sort in the name of the Company or its designee without the prior express written consent of Company. All legal actions and/or motions related to bond forfeiture shall be brought in the name of Agent or his or her agency unless the laws of a particular jurisdiction require otherwise, in which case Agent shall clearly designate his/her agency status in such action(s).

10. NOTICE TO COMPANY OF PENDING ACTION. Agent shall notify Company in writing, within seven (7) days of Agent becoming aware of same, of the initiation or existence of any and all legal or administrative proceedings wherein Agent is named defendant or the subject of the administrative action or investigation. Upon request of Company, Agent shall supply Company with copies of all documents related thereto, and shall supply Company with all requested information. This provision does not apply to bail forfeiture or summary judgment matters.

11. **NON-LIABILITY OF COMPANY FOR SERVICE.** Company shall from time to time, as a courtesy, supply Agent with a listing of Agent's bond forfeiture and shall, in its discretion and upon terms it may set, provide for the posting of transfer bonds for Agent. Company in no way guarantees the accuracy of said forfeiture listing; Agent shall maintain his or her own listing upon which agent shall ultimately rely. Company assumes no responsibility or liability for the transfer bond process, or notice related thereto. Agent acknowledges the risks involved with the transfer bond process and fully accepts same, holding Company harmless for any and all losses related thereto.

12. **AGENT RECORDS AND REPORTS.** Agent shall maintain such documents and records and deliver to Company such documents, records and/or reports as shall be authorized and/or directed by Company, and all such documents, record or reports shall be open and available for inspection by Company at all times. If Agent and/or Company terminate their relationship hereunder, for any reason, upon request Agent acknowledges Company's superior claim to same and shall release to Company forthwith all records, documents and reports for photocopying purposes. Within a reasonable time thereafter, but in no event to exceed thirty (30) calendar days, Company shall return said documents, records or reports to Agent, either by original or copy in Company's discretion. Agent waives prior notice should Company seek court order to enforce this paragraph, and hereby stipulates Company is entitled to temporary, ex parte injunctive orders without notice to enforce these provisions. Agent will provide Company a copy of any form or written communication associated with the writing of Bonds. Said information will be supplied for information purposes only.

13. **TERMINATION OF BOND LIABILITY.** Agent shall report any and all terminations of bond liability, on a regular basis, but no later than fifteen (15) days after exoneration. Any and all bonds exonerated by operation of law or by Agent Initiated motion shall be reported, and the date of exoneration shall be noted. In Company's discretion, court documents evidencing liability discharge may be required of Agent. Agent shall comply with any request by Company for status reports/updates on any large undertakings or forfeitures at any time Company so requests.

14. **PRESERVATION OF COMPANY'S INTERESTS.** Agent shall comply with any and all procedural directions, rules, regulations and the like from time to time given and/or adopted by Company, and unless otherwise directed shall make no alteration, modification or amendment of any obligation or document of Company; enter into no settlement of claim in the name of Company; keep confidential any and all such Company instructions and information; make no reference to Company in any advertising; and do nothing whatsoever which may create additional obligations and liabilities for Company and/or impair Company's goodwill

15. **AGENT'S EXPENSES.** Except as otherwise set forth herein, Agent shall bear any and all expenses incurred in the conduct of Agent's business.

16. **GENERAL INDEMNIFICATION.** In addition to any and all liability the following may have at law and/or equity for nonperformance of this Agreement, they shall be jointly and severally responsible to Company as follows:

(a) General Agent shall indemnify, hold and save Company harmless for 100%

of the liability written and collateral attaching thereto; and/or

(b) Bail Agent shall indemnify, hold and save Company harmless from 100% of any and all costs, expenses and liabilities, including but not limited to, bond forfeitures, travel expenses (including food and lodging), telephone and postage expenses, special assistance fees, special employment expenses, investigators' fees, attorneys' fees, accountants' fees, experts' fees, collection fees, trial preparation expenses, court costs, penalties, judgments, judgment execution expenses and the like with Company may sustain or incur from time to time as a result of, arising from, or in connection with the subject matter of this Agreement, including but not limited to, execution and/or administration of bonds; collection of premiums; forfeiture of bonds, audits by Company of and concerning any part hereto; investigation of bonds; negotiation and settlement of bond claims; location, apprehension, holding movement, extradition and/or surrender of bond principals; collection, protection, investment, transmission and/or application of collateral; negotiation and settlement of charges, claims and demands of whatever type and nature; and participation in any judicial proceeding, voluntary and otherwise.

17. SPECIAL INDEMNIFICATION. In the event of breach of this Agreement by any party hereto and/or any action by Company to enforce compliance herewith by any party, notwithstanding anything else herein to the contrary and in addition to and not in derogation of any and all liability they or any of them otherwise may have at law and/or equity for nonperformance of this Agreement, each party hereto, jointly severally, shall indemnify, hold and save Company harmless from any and all damages, losses, injuries, costs, expenses and liabilities, including but not limited to, loss of profits, business assets and/or goodwill, liabilities to any party hereto, liabilities to third persons, travel expenses (including food and lodging), investigator's fees, attorney's fees, accountant's fees, expert's fees, collection fees, trial preparation expenses, court costs, penalties, judgment execution expenses and the like which Company may sustain or incur from time to time as a result of, arising from or in connection with such breach by any part hereto and/or such action by Company. This special Indemnification does expressly extend to and include any action brought for tortious and/or intentional misconduct by General Agent or Agent, or by any person acting as their agent or on their behalf.

18. INDEMNITY FUND.

(a) As security for any and all indemnifications set forth in paragraphs 16 and 17, and without limitation to scope thereof or liability therefor, Agent shall forthwith deliver to Company a cash sum equal to 1% (\$10.00 per \$1000.00) of the total amount of penal liability written for each bond. The initial and subsequent deposits into, and the income therefrom and the investment and reinvestment thereof, shall be known as the "Indemnity Fund."

(b) Neither said parties nor anyone else shall be entitled to notice of any action taken or to be taken by Company hereunder provided, however, that company shall subsequently account for and justify any such action taken in a manner consistent with proper fiduciary accounting procedure.

(c) Company may from time to time, in its sole discretion and for such values as it deems appropriate, convert non-cash assets, if any, to cash either by sale or otherwise, and shall, within a reasonable time thereafter, account for and describe such action to Agent.

(d) Any and all taxes due and payable with respect to income and/or principal of said fund shall be paid by the party making deposits thereto.

(e) Company may from time to time, withdraw, apply and/or reimburse itself with such part or all of the principal and/or income hereof as may be necessary (as determined solely by Company) to preserve and/or maintain said Indemnity Fund.

(f) If, when and as Company is elsewhere authorized under this Agreement to withdraw, apply and/or reimburse itself herefrom by reason of indemnification, it may do so with such part or all of the principal and/or income hereof as it shall determine.

(g) Upon termination of this Agreement and after each and every indemnification hereunder is finally exonerated, determined, and/or otherwise satisfied, that portion of said Indemnity Fund then remaining shall be delivered to General Agent, and/or Bail Agent free and clear of this Agreement.

19. **COLLATERAL.** As a condition of this Contract Agent, or if applicable, Agent's indemnitor shall provide to Company collateral which shall be agreed upon between the Agent and the General Agent per the attached "Schedule of Collateral" which shall name Company or its designee as beneficiary. This collateral shall be maintained by Company to secure and guarantee Agent's performance of all terms hereof, and shall be held, applied, liquidated and/or returned to depositor in a like manner as is described and called for in the above Paragraph 18 entitled "Indemnity Fund."

20. **INDEMNIFICATION REMEDIES OF COMPANY.** When and as Company is entitled to indemnification under this Agreement and except as provided elsewhere herein for bond forfeitures, in addition to any other rights and remedies it may have under this Agreement, at law and/or equity, Company shall have the right to do any one or more of the following:

(a) Direct any party hereto so indemnifying Company to pay any part or all of the underlying loss, expense or obligation.

(b) Pay any part or all thereof from the Indemnity Fund; and/or

(c) Pay any part or all thereof and direct and/or make reimbursement to itself in accordance with (a) and/or (b). All such rights of Company to reimbursement shall be primary to any such rights of any other party hereto.

(d) Direct any party hereto so indemnifying Company to defend any action to protect Company, or to refrain from defending Company in Company's sole discretion.

21. **BOND FORFEITURES** Agent shall give Company notice within seven (7) days of any and all bond forfeitures threatened and/or declared hereunder on bonds written hereunder unless Company has received direct notice from the court. Agent shall take any and all necessary and lawful steps to terminate forfeiture liability within the applicable statutory time frame. When and as it shall be necessary to pay any such forfeiture or resulting judgment and to the extent Company is indemnified therefrom, in addition to any other rights and remedies it may have under this Agreement, at law and/or equity, Company shall have the right to do any one or more of the following:

(a) Direct any party hereto indemnifying Company therefrom to pay any part or all thereof;

(b) Pay any part or all thereof from the Indemnity Fund;

(c) Pay and/or direct payment of any part or all thereof from any forfeiture collateral held for such bond;

(d) Direct the bond principal and/or anyone guaranteeing, assuring or indemnifying Company, and/or any other party hereto against loss by reason of the bond principal's noncompliance, to pay any part or all thereof; and/or

(e) Pay any part or all thereof and direct and/or make reimbursement thereof to itself in accordance with (a), (b), (c), and/or (d). All such rights of Company to reimbursement shall be primary to any such rights of any other party hereto; any holder of interests in and to collateral described in (c); and/or anyone described in (d).

22. **PRESERVATION OF INDEMNITY FUND.** The Indemnity Fund shall not be primarily liable for any Indemnification hereunder except insofar as Company may elect to satisfy same therefrom or as otherwise authorized hereunder. Should Indemnity Fund withdrawal be necessary for whatever reason hereunder, Company may, in its sole discretion, require Agent to reimburse said fund in the amount withdrawn, either forthwith or in installments as determined by Company.

23. **FINANCIAL INFORMATION.** Agent will provide personal financial statement to Company at Company's request. Agent also agrees that Company may, at its discretion, request and receive personal credit information on agent from consumer reporting agencies. Agent agrees to provide any reasonable personal financial information requested by Company.

24. **ASSIGNMENT OF RIGHTS AND DUTIES.** Company may, from time to time in its sole discretion, in whole or in part, partially or fully assign any and all right and/or duties established by this Agreement to any chosen assignee, with or without actual notice of such Agreement to Agent. Company may contact, substitute, or join with any other underwriter, surety and/or reinsured on any or all bonds hereunder. However, whenever possible, such agreement shall be evidenced by addendum hereto, executed by all parties to this agreement. No assignment of any right or obligation hereunder shall be made by Agent without the prior written consent of Company.

25. **SEVERABILITY.** If any provision or item of this Agreement or the application thereof is held invalid, such invalidity shall not affect other provisions, items or application of this Agreement which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Agreement are hereby declared severable.

26. **FAILURE TO DECLARE BREACH NOT A WAIVER.** The failure of Company to terminate or declare a breach of this Agreement on a particular occasion when such action is allowed hereunder shall not be construed, interpreted or pleaded as either an express or implied waiver of the right to do so at a later date, nor shall it be deemed an express or implied waiver of any right of obligation hereunder.

27. **APPLICABLE LAW, VENUE AND FORUM.** The Agreement is to be interpreted in accordance with the laws of the State of Texas. The parties hereto do hereby consent and stipulate to the jurisdiction of the courts of the State of Texas for any action brought under this Agreement.

28. **TERMINATION OF AGREEMENT.** Any party hereto may give written notice at any time, with or without cause, of his or its desire to terminate this Agreement. Upon such notice, Agent's right and duty to solicit and executed bail bonds hereunder shall immediately cease and terminate. All other rights and duties of each party hereto shall continue thereafter until final determination and satisfaction of the entire subject matter of this Agreement (including the exoneration of nay and all bonds executed hereunder prior to such notice) and thereupon this Agreement shall be finally terminated. Until all Company bonds issued by Agent hereunder are exonerated or paid, Agent shall remain obligated to fully perform and protect Company as described elsewhere herein.

29. **MODIFICATION OF AGREEMENT** Each of the parties hereto acknowledges that this Agreement expresses his or its entire understanding; that there have been no representations made by any party hereto except as set forth herein; and that this Agreement shall not be subject to change or modification except by execution of another instrument in writing subscribed to by each of the parties hereto.

30. **ATTORNEY'S FEES.** Should any litigation arise between the parties hereto related to this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs in addition to any other relief granted.

31. **WRITTEN NOTICES.** Any written notice given hereunder shall be deemed received by the addressee upon deposit of the same in the United State Mail with proper first class postage affixed thereto, addressed as follows:

- |  |  |
|--|--|
| (a) If to Company:<br>Ranger Insurance Company<br>Attention: David W. Grobmeier<br>PO Box 2807<br>Houston, Texas 77252-2807            | (b) If to General Agent Indemnitor:<br>North American Bail Bond Services<br>Attn: Darrell Sutherland<br>40087 Mission Blvd #386<br>Fremont, CA 94539 |
| (c) If to Agent and Agent Indemnitor:<br><br>Robert Paul Thorpe and Maria Elizabeth Thorpe<br>225 W. Grand<br>Grand Junction, CO 81501 |  |

32. **BENEFITS AND OBLIGATION OF SUCCESSORS.** This Agreement shall continue and run to the benefit of and be binding upon the estate, heirs, representatives, transferee, successors, and assigns of each party hereto unless such continuation conflicts with an express term contained elsewhere herein, or with the intent of the parties as determined from viewing this Agreement as a whole.



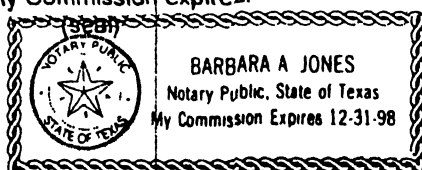
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

RANGER INSURANCE COMPANY

By: David W. Grobmeier  
David W. Grobmeier – Assistant Vice President

State of Texas County of Harris

Subscribed and sworn to before me this 23rd day of March, 1998  
My Commission expires:



Barbara A. Jones  
(Notary Public)

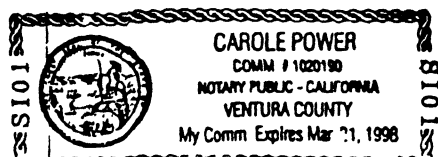
GENERAL AGENT

NORTH AMERICAN BAIL BOND SERVICES

By: Charles H. Fulmer

State of California County of Alameda

Subscribed and sworn to before me this 13 day of March, 1998.  
My Commission expires:  
(seal)



Carole Power  
(Notary Public)

BAIL AGENT

*Maria Thorpe*  
MARIA THORPE  
(print name)

BAIL AGENT

ROBERT THORPE  
*Robert Thorpe*  
(print name)

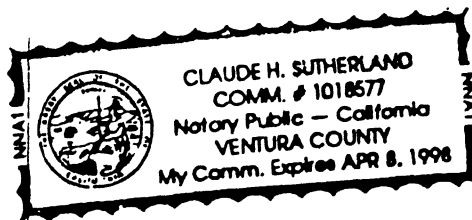
State of (California)  
County of Alameda ) ss.

On March 11, 1998, before me, Claude H. Sutherland  
The undersigned Notary Public, personally appeared Maria Thorpe and Robert Thorpe, personally known to me, or proved to me on the basis of satisfactory evidence to be the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Claude H. Sutherland*  
(signature of Notary Public)

(seal)



**ADDENDUM “D”**

**TITLE 77, CHAPTER 7, U.C.A (1999)**



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# **UTAH CODE UNANNOTATED 1998**

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## **VOLUME 4**

**Complete through the  
1998 GENERAL SESSION**

**LEXIS Law Publishing  
Charlottesville, Virginia**



**77-7-3. By private persons.**

A private person may arrest another:

- (1) For a public offense committed or attempted in his presence; or
- (2) When a felony has been committed and he has reasonable cause to believe the person arrested has committed it.

**1999**

**77-7-7. Force in making arrest.**

If a person is being arrested and flees or forcibly resists after being informed of the intention to make the arrest, the person arresting may use reasonable force to effect the arrest. Deadly force may be used only as provided in Section 76-2-404. **1999**





**ADDENDUM “E”**

**RULE 6, UTAH RULES OF CRIMINAL PROCEDURE**



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# **UTAH CODE UNANNOTATED 1998**

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## **VOLUME 4**

**Complete through the  
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Charlottesville, Virginia**



**Rule 6. Warrant of arrest or summons.**

(a) Upon the return of an indictment the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.

Upon the filing of an information, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused.

(b) If it appears to the magistrate that the accused will appear on a summons and there is no substantial danger of a breach of the peace, or injury to persons or property, or danger to the community, a summons may issue in lieu of a warrant of arrest to require the appearance of the accused. If the defendant is a corporation, a summons shall issue. A warrant of arrest may issue in cases where the defendant has failed to

appear in response to a summons or citation or thereafter when required by the court. When a warrant of arrest is issued, the magistrate shall state on the warrant:

(1) the amount of bail; and

(2) if the magistrate determines that the accused must appear in court, the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(c)(1) The warrant shall be executed by a peace officer. The summons may be served by a peace officer or any person authorized to serve a summons in a civil action.

(2) The warrant may be executed or the summons may be served at any place within the state.

(3) The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request shall show the warrant to the defendant as soon as practicable. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that the warrant has been issued. The summons shall be served as in civil actions, or by mailing it to the defendant's last known address.

(4) The person executing a warrant or serving a summons shall make return thereof to the magistrate as soon as practicable. At the request of the prosecuting attorney, any unexecuted warrant shall be returned to the magistrate for cancellation.



## **ADDENDUM “F”**

77-20-8.5(2), U.C.A. (1999)





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# **UTAH CODE UNANNOTATED 1999**

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## **VOLUME 4**

Complete through the  
1999 GENERAL SESSION

LEXIS Law Publishing  
Charlottesville, Virginia



**77-20-8.5. Sureties — Surrender of defendant — Arrest of defendant.**

(1) (a) The sureties may at any time prior to a forfeiture of their bail surrender the defendant and obtain exoneration of their bail by filing written requests at the time of the surrender.

(b) To effect surrender, certified duplicate copies of the undertaking shall be delivered to a peace officer, who shall detain the defendant in his custody as upon a commitment, and shall in writing acknowledge the surrender upon one copy of the undertaking. This certified copy of the undertaking upon which the acknowledgment of surrender is endorsed shall be filed with the court. The court may then, upon proper application, order the undertaking exonerated and may order a refund of any paid premium, or part of a premium, as it finds just.

(2) For the purpose of surrendering the defendant, the sureties may arrest him at any time before they are finally exonerated and at any place within the state.

(3) A surety acting under this section is subject to the provisions of Title 53, Chapter 10, Bail Bond Recovery. 1988



**ADDENDUM “G”**

**TITLE 53, CHAPTER 11**



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# **UTAH CODE UNANNOTATED 1999**

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## **VOLUME 2**

**Complete through the  
1999 GENERAL SESSION**

**LEXIS Law Publishing  
Charlottesville, Virginia**





**53-11-107. Licenses — Classifications — Prohibited acts.**

(1) Licenses under this chapter are issued in the classifications of:

- (a) bail enforcement agent;
- (b) bail recovery agent; or
- (c) bail recovery apprentice.

(2) A person may not:

- (a) act or assume to act as, or represent himself to be, a licensee unless he is licensed under this chapter; or
- (b) falsely represent that he is employed by a licensee.

(3) The commissioner shall issue licenses to applicants who qualify for them under this chapter.

(4) A license issued under this chapter is not transferable or assignable.

**1998**

**53-11-108. Licensure — Basic qualifications.**

An applicant for licensure under this chapter shall meet the following qualifications:

- (1) An applicant shall be:
  - (a) at least 21 years of age;
  - (b) a citizen or legal resident of the United States;and
  - (c) of good moral character.
- (2) An applicant may not:
  - (a) have been convicted of:
    - (i) a felony;
    - (ii) any act involving illegally using, carrying, or possessing a dangerous weapon;
    - (iii) any act of personal violence or force on any person or convicted of threatening to commit any act of personal violence or force against another person;
    - (iv) any act constituting dishonesty or fraud;
    - (v) impersonating a peace officer; or
    - (vi) any act involving moral turpitude;
  - (b) be on probation, parole, community supervision, or named in an outstanding arrest warrant; or
  - (c) be employed as a peace officer.
- (3) If previously or currently licensed in another state or jurisdiction, the applicant shall be in good standing within that state or jurisdiction.
- (4) (a) The applicant shall also have completed a training program of not less than 16 hours that is approved by the board and includes:
  - (i) instruction on the duties and responsibilities of a licensee under this chapter, including:
    - (A) search, seizure, and arrest procedure;
    - (B) pursuit, arrest, detainment, and transportation of a bail bond suspect; and
    - (C) specific duties and responsibilities regarding entering an occupied structure to carry out functions under this chapter;
  - (ii) the laws and rules relating to the bail bond business;
  - (iii) the rights of the accused; and
  - (iv) ethics.
- (b) The program may be completed after the licensure application is submitted, but shall be completed before a license may be issued under this chapter.
- (5) If the applicant desires to carry a firearm as a licensee, the applicant shall:
  - (a) successfully complete a course regarding the specified types of weapons he plans to carry. The course shall:
    - (i) be not less than 16 hours;
    - (ii) be conducted by any national, state, or local firearms training organization approved by the Criminal Investigations and Technical Services Division created in Section 53-10-103; and
    - (iii) provide training regarding general familiarity with the types of firearms to be carried, including:
      - (A) the safe loading, unloading, storage, and carrying of the types of firearms to be concealed; and
      - (B) current laws defining lawful use of a firearm by a private citizen, including lawful self-defense, use of deadly force, transportation, and concealment; and
  - (b) shall hold a valid license to carry a concealed weapon, issued under Section 53-5-704.

1999

**53-11-109. Licensure — Bail enforcement agent.**

(1) (a) In addition to the requirements in Sections 53-11-108 and 53-11-110, an applicant for licensure as a bail enforcement agent shall have a minimum of 2,000 hours of experience consisting of either actual bail recovery work, or work as a law enforcement officer for a federal, state, or local governmental agency.

(b) The applicant shall substantiate the experience claimed under Subsection (1) as qualifying experience and shall provide:

(i) the exact details as to the character and nature of the experience on a form prescribed by the department; and

(ii) certification by the applicant's employers, which is subject to independent verification by the board.

(c) If an applicant is unable to supply written certification of experience from an employer in whole or in part, an applicant may offer written certification from persons other than an employer covering the same subject matter for consideration by the board.

(d) The burden of proving completion of the required experience is on the applicant.

(2) An applicant for license renewal shall have completed not less than eight hours of continuing classroom instruction.

1996

**53-11-111. Licensure — Bail recovery agent — Requirements and limitations.**

(1) (a) In addition to the requirements in Sections 53-11-108 and 53-11-113, an applicant for licensure as a bail recovery agent shall meet all of the requirements under Section 53-11-109, but instead of the experience requirement under Subsection 53-11-109(1)(a), a bail recovery agent applicant shall have a minimum of 1,000 hours of experience consisting of either actual bail recovery work, or work as a law enforcement officer for a federal, state, or local governmental agency.

(b) The applicant shall substantiate the experience claimed under Subsection (1) as qualifying experience and shall provide:

(i) the exact details as to the character and nature of the experience on a form prescribed by the department; and

(ii) certification by the applicant's employers, which is subject to independent verification by the board.

(c) If an applicant is unable to supply written certification of experience from an employer in whole or in part, an applicant may offer written certification from persons other than an employer covering the same subject matter for consideration by the board.

(d) The burden of proving completion of the required experience is on the applicant.

(2) An applicant for license renewal shall have completed not less than eight hours of continuing classroom instruction.

(3) A bail recovery agent may work as a licensee under this chapter only as an employee of or as an independent contractor with a bail bond agency. A bail recovery agent may not:

(a) advertise his services;

(b) provide services as a licensee under this chapter directly for members of the public; or

(c) employ or hire as independent contractors bail enforcement agents, bail recovery agents, or bail recovery apprentices.

1996

**53-11-113. Bail recovery agent and bail recovery apprentice licensure — Liability insurance — Fee — Workers' compensation.**

(1) An applicant for licensure as a bail recovery agent or as a bail recovery apprentice shall provide as part of the application:

- (a) the full name and address of the applicant;
- (b) two passport-size color photographs of the applicant;
- (c) the name of the bail bond recovery agency for which the applicant will be an employee or with which the applicant will be an independent contractor;
- (d) written indication by a bail bond recovery agency or its designee that it intends to employ or contract with the applicant; and
- (e) a notarized statement of the applicant's experience and qualifications required under Section 53-11-111 or 53-11-112, as appropriate.

(2) The licensure application or renewal shall be accompanied by the fee required under Section 53-11-115.

(3) (a) A license or a license renewal for a bail recovery agent or a bail recovery apprentice may not be granted to an applicant unless the employing bail bond recovery agency has on file with the department evidence of current workers' compensation coverage.

(b) A bail recovery agent or bail recovery apprentice license may not be reinstated without providing verification of the reinstatement of the workers' compensation coverage and payment of the reinstatement fee required in Section 53-11-115.

(c) The provisions of this Subsection (3) do not apply to a bail recovery agent or bail recovery apprentice who is working for a bail bond recovery agency as an independent contractor.

1996

**53-11-120. Requirement to identify employing agency.**

Upon request, a licensee shall immediately identify the name, business address, and telephone number of the bail bond agency for which the licensee is an employee or an independent contractor.

1998

**53-11-122. Requirements during search and seizure —  
Notification of law enforcement agency.**

A bail enforcement agent, bail recovery agent, or bail recovery apprentice shall observe the following requirements before taking action authorized under this chapter:

(1) identify himself as a "bail enforcement agent," "bail recovery agent," or "bail recovery apprentice"; and

(2) comply with the notification requirements of Section 53-11-123.

1998

**53-11-124. Penalties.**

Any violation of this chapter is a class A misdemeanor, unless the circumstances of the violation amount to an offense subject to a greater criminal penalty under Title 76, Utah Criminal Code.

1998



**ADDENDUM “H”**

**BAIL CONTRACT**







10777 Westheimer Road 77042  
P O Box 2807  
Houston Texas 77252 2807  
(713) 954 8100  
(713) 954 8389 (FAX)

## BAIL BOND APPLICATION & CONTRACT

AGENT \_\_\_\_\_ DATE OF APPLICATION 4-3-99

Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Total Bond Amount _____			Total Prem _____	

Court \_\_\_\_\_ Appearance Date \_\_\_\_\_ Time \_\_\_\_\_

Defendant's Full Name (First Middle Last) GERARD L. LEE Phone 435-789-70

Alias/Nickname/Street Name JED.

Date of Birth 26 MAR 50 Place of Birth VERNAL UT. Social Security No 522-72-6891 Height 6' Weight 146

Eye Color BLUE Hair Color BROWN Race WHITE Scars/Tattoos/Marks, etc \_\_\_\_\_

Address 2281 EAST 4500 S. VERNAL Apt # \_\_\_\_\_ ( ) Own ( ) Rent Landlord PARENTS Hse. Hse.

City VERNAL UT. State/Zip Code 84078 Previous Address \_\_\_\_\_

Present Occupation(s) Heavy Equip Oper. Previous Occupation(s) \_\_\_\_\_

Employer NONE Now \_\_\_\_\_ Shift \_\_\_\_\_ How Long \_\_\_\_\_

Address \_\_\_\_\_ Job Title \_\_\_\_\_ Phone \_\_\_\_\_

Previous Employer MONTGOMERY RECYCLE - VERNAL UTAH. How Long \_\_\_\_\_

Union NO Local # \_\_\_\_\_

Spouse Full Name UNMARRIED Date of Birth \_\_\_\_\_ Social Security No \_\_\_\_\_

Maiden Name \_\_\_\_\_ Occupation(s) \_\_\_\_\_

Employer \_\_\_\_\_ Shift \_\_\_\_\_ How Long \_\_\_\_\_

Address \_\_\_\_\_ Job Title \_\_\_\_\_ Phone \_\_\_\_\_

Age	Child's Name/Address	School/ Employer	Phone
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<u>22</u>	<u>MICHAEL DAVID LEE</u>		
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Auto Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_ Tag# \_\_\_\_\_ State \_\_\_\_\_

Amount Owed \_\_\_\_\_ Lien Holder \_\_\_\_\_

Insurance Agent/Company \_\_\_\_\_

Driver's License # \_\_\_\_\_ State \_\_\_\_\_ Expiration \_\_\_\_\_

Previous Arrests for \_\_\_\_\_ Where \_\_\_\_\_

On Probation/Parole? \_\_\_\_\_ Where \_\_\_\_\_ Probation/Parole Officer \_\_\_\_\_

09-A



10777 Westheimer Road 77042  
P O. Box 2807  
Houston, Texas 77252-2807  
(713) 954-8100  
(713) 954-8389 (FAX)

## BAIL BOND APPLICATION & CONTRACT

AGENT MARIA Thorpe DATE OF APPLICATION 11-30-98

Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Total Bond Amount _____			Total Prem. _____	

Court \_\_\_\_\_ Appearance Date \_\_\_\_\_ Time \_\_\_\_\_  
Defendant's Full Name (First, Middle, Last) Gerard L. Lee Phone 789 7025  
Alias/Nickname/Street Name 2281 E. 4500 S.  
Date of Birth 3-26-50 Place of Birth Vernal, UT Social Security No. 522-726891 Height 6 Weight 150  
Eye Color Blue Hair Color Brown Race White Scars/Tattoos/Marks, etc. \_\_\_\_\_  
Address 2281 E 4500 S Apt. # 1 ( ) Own ( ) Rent Landlord \_\_\_\_\_  
City Vernal State/Zip Code Ut. 84078 Previous Address 2281 E 4500 S  
Present Occupation(s) Exp Operator Previous Occupation(s) Exp Operator  
Employer Martgomery Recycling Shift Days How Long 4 years  
Address \_\_\_\_\_ Job Title Exp Operator Phone 789 2136  
Previous Employer Bndy Const. How Long 6 years  
Union No Local # Nagely  
Spouse Full Name None Date of Birth \_\_\_\_\_ Social Security No. \_\_\_\_\_  
Maiden Name \_\_\_\_\_ Occupation(s) \_\_\_\_\_  
Employer \_\_\_\_\_ Shift \_\_\_\_\_ How Long \_\_\_\_\_  
Address \_\_\_\_\_ Job Title \_\_\_\_\_ Phone \_\_\_\_\_  
Age \_\_\_\_\_ Child's Name/Address \_\_\_\_\_ School/ Employer \_\_\_\_\_ Phone \_\_\_\_\_

Auto Year 79 Make Ford Model Pickup Color Blue Tags \_\_\_\_\_ State Calo  
Amount Owed None Lien Holder \_\_\_\_\_  
Insurance Agent/Company \_\_\_\_\_  
Driver's License # \_\_\_\_\_ State Utah Expiration \_\_\_\_\_  
Previous Arrests for No Inmate Where Nagely Calo  
On Probation/Parole? \_\_\_\_\_ Where \_\_\_\_\_ Probation/Parole Officer \_\_\_\_\_  
Credit Card Company \_\_\_\_\_ Account# \_\_\_\_\_  
Credit Card Company \_\_\_\_\_ Account# \_\_\_\_\_  
Attorney \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_

RELATIVES/FRIENDS		ADDRESS, CITY, STATE, ZIP	PHONE
Mother	<u>Mona Rael Lee</u>	<u>Same</u>	<u>789-7083</u>
Father	<u>George Lee</u>	<u>Same</u>	<u>789-7083</u>
Brother	<u>Berton Lee</u>	<u>4500 S Vernal Utah</u>	
Brother	<u>George Lee</u>	<u>4500 S Vernal Utah</u>	
Sister			
Sister	<u>Shawna McCabe</u>	<u>6rd Jct</u>	<u>257-7922</u>
Sister			
M. Law			
F. Law			
Gr. Parents			
Best Friend			
Ex Spouse			

I have read and had explained to me and understand the following terms and conditions of RANGER INSURANCE COMPANY (hereinafter called RANGER) executing the above listed Surety Bail Bonds on my behalf

- RANGER shall have control and jurisdiction over me during the term for which my bail bond(s) is executed and shall have the right to apprehend and surrender me to the proper officials at any time for violation of my bail bond(s) obligations to the Court and RANGER as provided by law.
- It is understood and agreed that any one of the following actions by me shall constitute a breach of my obligations to RANGER and that RANGER and/or its Agent shall have the right to forthwith apprehend and surrender me in exoneration of my bail bond(s):
  - If I depart the jurisdiction of the Court without the written consent of the Court and RANGER, or its Agent.
  - If I shall move from one address to another or change my phone number without notifying RANGER, and/or its Agent.
  - If I commit any act which shall constitute reasonable evidence of my intention to cause a forfeiture of my bail bond(s).
  - If I am arrested and incarcerated for any offense other than a minor traffic violation.
  - If I make any material false statement in my Bail Bond Application and Contract with RANGER.
- If I depart the jurisdiction of the Court wherein my bail bond(s) is posted by RANGER for any reason, and I am captured by RANGER and/or its Agent, or any law enforcement agency, in a State other than the one in which my bail bond(s) is posted, I hereby agree to voluntarily return to the State of original jurisdiction, and I hereby waive extradition proceedings and further consent to the application of such reasonable force as may be necessary to effect such return.

**You are assuming specific obligations - READ CAREFULLY!**

THIS AGREEMENT made between the undersigned Gerald Lee Wade Montgomery  
herein after called Indemnitor(s) and RANGER INSURANCE COMPANY (hereinafter called Company).

**WITNESSETH:**

WHEREAS the Company has executed, or is about to execute in behalf of and/or at the instance of the indemnitor(s), the bond or undertaking described in the foregoing application, upon the security and indemnity herein provided, which application is hereby referred to and made a part of the agreement.

NOW THEREFORE, in consideration of the execution by the Company of such bond or undertaking, the Indemnitor(s) covenants(s) and agrees(s) with the Company as follows:

1. The Indemnitor(s) will pay the Company, or its duly authorized agent, the premium(s) specified in said application at the times and in the amounts therein stated.
2. The Indemnitor(s) will at all times indemnify and keep indemnified the company and save harmless the Company from and against any and all claims, demands, liabilities, costs, charges, legal fees, disbursements and expenses of every kind and nature, which the Company shall at any time sustain or incur, and as well from all orders, decrees, judgments and adjudications against the Company by reason or in consequence of having executed such bond or undertaking in behalf of and/or at the instance of the Indemnitor(s) (or any of them) and will pay over, reimburse and make good to the Company, its successors and assigns all sums and amounts of money required to meet every claim, demand, liability, costs, expense, suit, order, decree, payment and/or adjudication against the Company by reason of the execution of such bond or undertaking and any other bonds or undertakings executed in behalf of and/or at the instance of the Indemnitor(s) and before the Company shall be required to pay thereunder. The liability for legal fees and disbursements includes all legal fees and disbursements that the Company may pay or incur in any legal proceedings, including proceedings in which the Company may assert or defend its right to collect or to charge for any legal fees and/or disbursements incurred in earlier proceedings.
3. The Indemnitor(s) will immediately notify the Company of the making of any demand or the paying of any notice or the commencement of any proceeding or the fixing of any liability which the Company may be required to discharge by reason of the execution of any such bond or undertaking.
4. The vouchers or other evidence of payment by the Company, in discharge of any liability under or incurred in connection with any such bond or undertaking, or incurred in connection with any collateral held by the Company, shall be conclusive evidence against the Indemnitor(s) of the fact and amount of the liability of the Indemnitor(s) to the Company.
5. In the event the Company executes any bond or undertaking with Co-Sureties, or reinsures any portion of any such bond or undertaking, or procures the execution of any such bond or undertaking, the Indemnitor(s) agree(s) that all of the terms and conditions of this instrument shall apply to and operate for the benefit of the Company, the procured sureties and/or co-sureties and/or reinsurers as their respective interests may appear.
6. The Company shall have the right at any time, without notice to the Indemnitor(s), to transfer and assign this agreement and/or the collateral pledged hereunder, to any person, Reinsurer, Co-Surety or Insurance Company which may take over and assume in whole or in part, the obligation of the Company under any such bond or undertaking and thereupon the transferee shall become vested with all the powers and rights given to the Company hereunder and the Company shall be relieved and fully discharged from any liability or responsibility for said collateral under this agreement.
7. The Indemnitor(s) agree(s) that the Company may at any time take such steps as it may deem necessary to obtain its release from any and all liability under any of said bonds or undertakings and it shall not be necessary for the Company to give the Indemnitor(s) notice of any fact or information coming to the Company's notice or knowledge concerning or affecting its rights or liability under any such bond or undertaking notice of all such being hereby expressly waived, and that the Company may secure and further indemnify itself against loss, damages and/or expenses in connection with any such bond or undertaking in any manner it may think proper including surrender of the defendant (either before or after forfeiture and/or payment) if the Company shall deem the same advisable, and all expenses which the Company may sustain or incur in obtaining such release or in further securing itself against loss, shall be borne and paid by the Indemnitor(s).
8. The Indemnitor(s) hereby authorize(s) any attorney of any court of record to appear for him or them in and before any court, in any action, suit or proceeding, and receive process on behalf of the Indemnitor(s) or waive the issuing and service of process, and enter or confess judgment, or permit judgment to be entered, against the Indemnitor(s), (jointly and/or jointly and severally) in favor of the Company for the amount of any forfeiture which may be taken against the Company on the said bond or undertaking and for the amount of any and all sums hereinabove in paragraphs 1, 2 and 7 referred to and to release all error and waive all right to stay of execution or appeal, and to do and perform all and execute all papers in the name of Indemnitor(s) in order to carry into effect the authority hereinabove given in as full and ample manner as the Indemnitor(s) might do if personally present, hereby ratifying and confirming all that the said attorney shall do or cause to be done by virtue thereof and the Indemnitor(s) hereby irrevocably waive(s) the benefit or advantage of any and all valuation, stay, appraisement or homestead exemption law or laws of any state of the United States, now in force or hereafter enacted.
9. This instrument shall be binding not only upon the Indemnitor (or Indemnitors, jointly and/or jointly and severally), but as well upon the heirs, executors, administrators, successors and assigns of the Indemnitor(s).
10. The Company reserves the right to decline to issue the bond for which application is hereby made, and no claim shall be made against the Company in consequence of its failure to execute such bond; nor shall any claim be made in case the bond, if executed, be not accepted by or on behalf of the obligee.
11. The Indemnitor(s) hereby warrant(s) that the foregoing declarations made and answers given are the truth without reservation and are made for the purpose of including the Company to become surety or to procure suretyship on the bond or undertaking applied for herein, with the intent and purpose that they be fully relied on.
12. The Company shall not be first obliged to proceed against the Principal(s) on any such bond or undertaking before having recourse against the Indemnitor(s) or any of them, the Indemnitor(s) hereby expressly waiving the benefit of any law requiring the Company to make claim upon or proceed or enforce its remedies against the Principal(s) before making demand upon or proceeding and/or enforcing its remedies against any Indemnitor.
13. The acceptance of this Agreement and of the Indemnitor(s) agreement to pay premiums on the execution and on the continuance of said bond(s) on undertaking(s), and/or the acceptance at any time by the Company of the other collateral security or agreement, shall not in any way abridge or limit the right of the Company to be subrogated to any right or remedy, or limit any right or remedy which the Company may otherwise have, acquire exercise or enforce under this or any other agreement or by law allowed, and the Company shall have every right and remedy which an individual surety acting without compensation would have, all such rights being construed to be cumulative and for the sole benefit of the Company, its successors and/or its assigns.
14. If any provision or provisions of this instrument be void or unenforceable under the laws of any place governing its construction or enforcement, this instrument shall not be void or vitiated thereby but shall be construed and enforced with the same effect as though such provision or provisions omitted.
15. In making application for the hereinabove described Bail Bond we warrant all of the statements made on the reverse of this instrument to be true and we agree to advise the Company or its agent of any change (especially change of address) within 48 hours after such change has occurred and agree that any failure to so notify shall be cause for the immediate surrender of the defendant without any liability for the return of any part of the premium.

IN TESTIMONY WHEREOF we have hereunto set our hand and affixed our seals this 30 day of Nov, 19 98

THE PREMIUM PAID ON THIS BOND IS NOT RETURNABLE

Defendant Signature

Gerald Lee

Indemnitor

Wade Montgomery

Employment

Montgomery Recycling Inc

Signature

Name

Wade Montgomery

Address

845 E. 2850 S.

City

Vernal UT

Zip

84078

Phone

435-781-2613

Driver's Lic.

7715046 UT

S.S. No.

363-72-1071

D.O.B.

6-1-61

Spouse

Donna

Employer

Reference (Personal or Credit)

Tom

Relation

2



**ADDENDUM “I”**  
**JURY INSTRUCTIONS**



## **Instructions Given**





**INSTRUCTION NO. 25**

You are instructed that if you find that Ranger delegated authority to apprehend Gerald Lee to Miles Langley, he had the power to lawfully make an arrest.

INSTRUCTION NO. 26

If you find the arrest was lawful, it was the obligation of the person being arrested to submit to that arrest.

## **Plaintiffs' Instructions Rejected**



**INSTRUCTION NO. 5**

**FALSE IMPRISONMENT INTRODUCTION**

The Plaintiff claims the Plaintiff was falsely imprisoned by the Defendant and suffered injuries as a result in one or more of the following respects: Gerald Lee claims that Miles Langley had no legal authority to act as a bail enforcement agent in the state of Utah. Mr. Lee further claims that when Miles Langley took custody of him by force that a false imprisonment occurred.

George Lee claims that Miles Langley had no legal authority to enforce a bail bond in the state of Utah and when he entered the home of George Lee and physically assaulted Mr. Lee that he acted with the intent to confine or restrain George Lee.

Miles Langley has denied that he acted wrongfully.

***Reference:***

MUJI 10.14

**INSTRUCTION NO. 6**

**FALSE IMPRISONMENT**

The Plaintiff has the burden of proving each of the following elements to prevail on a claim of false imprisonment:

- 1.** The Defendant acted, intending to confine or restrain the Plaintiff; and
- 2.** The Defendant's actions resulted in the confinement or restraint of the Plaintiff; and
- 3.** The Plaintiff was conscious of the confinement or restraint or was harmed by it; and
- 4.** The Defendant acted without having reasonable grounds to believe the Plaintiff committed an offense.

A person is restrained when that person is not free, or reasonably believes [he] [she] [they] person is not free, to leave a place to which that person has been confined and does not consent to the restraint.

***References:***

MUJI 10.15  
*Terry v. ZCMI*, 605 P.2d 314 (Utah 1979)  
*Haas v. Emmett*, 23 Utah 2d 138, 459 P.2d 432 (1969)  
*Mildon v. Bybee*, 13 Utah 2d 400, 375 P.2d 458 (1962)  
Restatement (Second) of Torts § 35 (1964)  
IJI § 42.34

**INSTRUCTION NO. 7**

Be advised that Utah law requires that a bail recovery agent operate only when licensed by the state of Utah.

***Reference:***

Title 53, Chapter 11, UCA.

**INSTRUCTION NO. 8**

Be advised that Utah law allows citizens without law enforcement authority to make arrests. The law provides, however, that such arrests may be made by private persons only where there has been a public offense committed or attempted in his presence or when a felony has been committed and he has reasonable cause to believe the person arrested has committed it.

***Reference:***

Section 77-7-3, UCA



**INSTRUCTION NO. 9**

**NEGLIGENCE - INTRODUCTORY INSTRUCTION**

In this case the Plaintiffs claim the Defendant was negligent in the following respects: Miles Langley, acting without benefit of a required license and legal authority entered the premises of George Lee to make an arrest without authority and engaged in a fight which caused the Plaintiffs' injuries.

To return a verdict for the Plaintiff, you must find by a preponderance of the evidence that:

1. The Defendant was negligent in one or more of the particulars alleged by the Plaintiff; and
2. The Defendant's negligence was a proximate cause of the Plaintiff's injuries.

If you find in favor of the Plaintiff on those two questions, you must then decide the amount of the damages suffered by the Plaintiff.

***References:***

MUJI 3.1  
JIFU No. 2.4 (1957)

**INSTRUCTION NO. 10**

**RIGHT TO RECOVER FOR NEGLIGENT CONDUCT**

A person has a duty to use reasonable care to avoid injuring other people or property. "Negligence" simply means the failure to use reasonable care. Reasonable care does not require extraordinary caution or exceptional skill. Reasonable care is what an ordinary, prudent person uses in similar situations.

The amount of care that is considered "reasonable" depends on the situation. You must decide what a prudent person with similar knowledge would do in a similar situation. Negligence may arise in acting or in failing to act.

A party whose injuries or damages are caused by another party's negligent conduct may recover compensation from the negligent party for those injuries or damages.

**References:**

MUJI 3.2

*Mitchell v. Pearson Enters.*, 697 P.2d 240 (Utah 1985)

*Meese v. Brigham Young Univ.*, 639 P.2d 720 (Utah 1981)

*Covert v. Kennecott Copper Corp.*, 23 Utah 2d 252, 461 P.2d 466 (1969)

*Whitman v. W.T. Grant Co.*, 16 Utah 2d 81, 395 P.2d 918 (1964)

JIFU Nos. 15.1, 15.2, 15.3, 15.4 (1957)

BAJI Nos. 3.00 (1986), 3.10 (1986), 3.11 (Supp. 1992), 3.12 (Supp. 1992)