

2000

Jay L. Wood, Darrell K. Tanner, Scott A. Stokes, and  
Leo Syphus v. Utah Farm Bureau Insurance  
Company, a Utah corporation, Farm Bureau Life  
Insurance Company, an Iowa Corporation, and  
FBL Insurance Company, an Iowa Corporation:  
Brief of Appellee

Utah Court of Appeals

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JAY L. WOOD, DARRELL K. TANNER,  
SCOTT A. STOKES, and LEO SYPHUS,

VS.

**Defendants/Appellees.**

Case No. 20000349-CA  
District Court No. 970906166CV

Priority No. 15

APPEAL FROM SUMMARY JUDGMENT ENTERED BY THE  
SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY,  
HONORABLE MICHAEL D. LYON, DISTRICT COURT JUDGE

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IN THE UTAH COURT OF APPEALS

JAY L. WOOD, DARRELL K. TANNER,  
SCOTT A. STOKES, and LEO SYPHUS,

Case No. 20000349-CA

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District Court No. 970906166CV

### Priority No. 15

UTAH FARM BUREAU INSURANCE  
COMPANY, a Utah corporation, FARM  
BUREAU LIFE INSURANCE COMPANY,  
an Iowa Corporation, and FBL INSURANCE  
COMPANY, an Iowa Corporation,

•

**BRIEF OF APPELLEES**

APPEAL FROM SUMMARY JUDGMENT ENTERED BY THE  
SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY,  
HONORABLE MICHAEL D. LYON, DISTRICT COURT JUDGE

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## **STATEMENT OF JURISDICTION**

This Court has jurisdiction over this case pursuant to UTAH CODE ANN. § 78-2a-3(2)(j) (1996).

## **STATEMENT OF ISSUES**

1. Did the trial court properly determine that there were no genuine issues of material fact and that Utah Farm Bureau Insurance Company, Farm Bureau Life Insurance Company, and FBL Insurance Company (collectively referred to throughout as “Farm Bureau”) were entitled to summary judgment as a matter of law?

**STANDARD OF REVIEW:** This Court reviews the entry of summary judgment for correctness, with no deference accorded to the legal conclusions of the trial court.

*Thompson v. Jess*, 1999 UT 22, ¶ 12, 979 P.2d 322, 325.

## **DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES OR REGULATIONS.**

There are no controlling constitutional provisions, statutes, ordinances, rules or regulations relevant to the disposition of this appeal.

## **STATEMENT OF THE CASE**

**A. NATURE OF THE CASE.** This case arises from the termination of four agents by Farm Bureau in 1993. Although stated in six different causes of action, the essential allegations are that Farm Bureau wrongfully terminated their contracts and that Farm Bureau wrongfully took possession of certain records and terminated the payment of renewal commissions.

**B. COURSE OF PROCEEDINGS:** This action was filed on September 29, 1997, in the Second Judicial District Court in Weber County, Utah. R.1. After substantial discovery, Farm Bureau moved for summary judgment on all claims on January 11, 1999. R.57-59.

On April 5, 1999, the Court heard oral argument on the motion for summary judgment. On May 3, 1999, the Court entered summary judgment on all claims except for the claim of wrongful termination brought by Leo Syphus and the claims for intentional interference with prospective economic relations. R.557. With respect to these two issues, the Court granted the parties time to submit additional briefing. On February 8, 2000, the Court entered summary judgment on these final two claims, thereby dismissing the case in its entirety. R.563. The Order reflecting the ruling was entered on March 21, 2000. R.567. The Agents filed their notice of appeal on April 18, 2000. R.571.

**C. STATEMENT OF FACTS.**

1. The Agents are former agents of Utah Farm Bureau, and this action arises out of the termination of these agents.

2. Jay Wood began working as an agent for Utah Farm Bureau in 1966. R.2.  
(Complaint, ¶ 6).

3. Darrell Tanner began working as an agent for Utah Farm Bureau in 1982. R.2.  
(Complaint, ¶ 7).

4. Scott Stokes began as an agent for Utah Farm Bureau in 1984. R.3. (Complaint, ¶ 8).

5. Leo Syphus began as an agent for Utah Farm Bureau in 1953. R.3. (Complaint, ¶ 9).

6. Farm Bureau is engaged primarily in providing insurance products to members of the Utah Farm Bureau. Once a Utah Farm Bureau member purchases a policy with the company, that account is assigned to an agent for servicing. Mr. Wood described the process of servicing the account:

Q. What was involved in servicing them?

A. Well, you'd have to contact them. You know, there were fact finders. Review their account, you know, this type of thing.

Q. And see if their insurance was up to date?

A. And, of course, approach them for additional business.

Q. And were you designated as their agent if they needed to call somebody to make a claim? Was that part of servicing?

A. Right. They would call us. We were definitely responsible for giving them the service needed. We understood it was just on a temporary basis. I don't know all the details, but –

R.94. (Deposition of Jay Wood, p. 20, attached as Exhibit "A").

7. While an agent was assigned an account, he or she would receive the renewal commission:

Q. Okay. And was it your understanding that you were receiving those renewal commissions off those accounts?

A. Yes. If we serviced them, which we did, you know.

R.93-94. (*Id.* at 19-20).<sup>1</sup>

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<sup>1</sup> For the Court's general information, when an agent writes an initial policy, he or she receives a commission as the writing agent. As long as the policy remains in force, a renewal commission, constituting part of the premium paid by the insured, is generated, the amount of which is determined by the Commission Schedule in force at the time the commission is earned. As indicated by Mr. Wood, the renewal commission is paid to the agent who is assigned the

8. At various times during their appointment by Utah Farm Bureau, all four agents were assigned accounts that were either unassigned, or which had previously been assigned to another agent, and the agents received the renewal commissions from those accounts. (Deposition of Darrell Tanner, pp. 18, 23, attached as Exhibit “B” R.97-98; Deposition of Scott Stokes, p. 11, attached as Exhibit “C” R.100-101; Deposition of Jay Wood, pp. 18-20, attached as Exhibit “A” R.92-94; Deposition of Leo Syphus, pp. 16-20, attached as Exhibit “D”).

9. Plaintiff Jay Wood signed a Career Agent Contract with Defendants on February 22, 1994. R.114. (See Career Agent Contract, attached as Exhibit “E”).<sup>2</sup>

10. Plaintiff Scott Stokes signed a Career Agent Contract with Defendants on March 7, 1994. R.118. (See Career Agent Contract, attached as Exhibit “F”).

11. Plaintiff Darrell Tanner signed a Career Agent Contract with Defendants on January 27, 1993. R.122. (See Career Agent Contract, attached as Exhibit “G”).

12. Plaintiff Leo Syphus signed a Career Agent Contract with Defendants on February 22, 1994. R.126. (See Career Agent Contract, attached as Exhibit “H”).

13. The Contract signed by each agent provides that either the agent or the company may terminate the agreement at any time, with or without cause:

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account for servicing.

<sup>2</sup> Each agent would periodically sign an updated contract. Although each agent had signed prior contracts, these were the contracts in force at the time of termination.



**11. TERMINATION.** This Contract may be terminated by Companies or Career Agent at any time, with or without cause, by giving notice of termination, in writing, to the other party. Notice of Termination need not include the reason or reasons, if any, for such termination.

Career Agent acknowledges that Companies have not, either expressly or otherwise, agreed to continue the term of this Contract, for any definite period of time.

R.128. (See Career Agent Contract, p. 3, attached as Exhibit "H").

14. The Career Agent Contract signed by each agent also provides that the account folders, policyholder lists, and other records relating to policies belong to Farm Bureau:

**(b) ACCOUNTS AND RECORDS.** Career Agent shall keep accurate accounts and records of all business transactions including without limitations, account service records, which will be open at all times to inspection and examination by authorized representatives of Companies. *All accounts, account records, policyholder files, policyholder lists, rate books or manuals, applications and other forms and all other records in Career Agent's possession pertaining to Companies' business will be the property of Companies and will be returned to Companies upon demand.*

R. 127. (See Career Agent Contract, p. 2, attached as Exhibit "H") (Emphasis added).

15. The Career Agent Contract signed by each agent also provides that the payment of renewal commissions will cease upon termination of the agent:

## **6. LIFE, DISABILITY INCOME AND ANNUITY COMMISSIONS.**

\* \* \*

**(c) RENEWAL COMMISSIONS.** . . . Renewal commissions will be paid to the Career Agent who personally produced the policy until (1) *that Career Agent's contract with the Companies is terminated or (2) the policy on which the renewal commission is payable is assigned to another Career Agent, whichever occurs first.*

\* \* \*

## **7. PROPERTY AND CASUALTY COMMISSIONS.**

\* \* \*

**(b) PROPERTY AND CASUALTY RENEWAL COMMISSIONS.**

Renewal commissions will be paid to Career Agent *while this agreement is in force*, on property and casualty premiums received and retained after the first term of the policy on all accounts assigned to the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

R.127. (See Career Agent Contract, p. 2, attached as Exhibit “H”) (Emphasis added).

16. The Career Agent Contract signed by each agent also provides that the contract is the sole agreement between the parties

**13. SOLE AGREEMENT.** This Contract constitutes the sole agreement and supercedes all prior contracts between the parties hereto, but this Contract will not impair the Agent’s right to commissions or fees, if any, earned under a prior contract or contracts with the Companies.

R.128. (See Career Agent Contract, p. 3, attached as Exhibit “H”).

17. The Career Agent Contract also provides that the contract may only be amended or modified in writing, signed by both parties:

**14. MODIFICATION OR AMENDMENT.** Any modification or amendment of this Contract must be in writing and duly executed by the parties hereto; provided, however, that the Companies may by written notice unilaterally amend any Schedule or Supplement referred to in this Contract to affect policies to be issued or commissions earned after the date of the amendment.

**15. WAIVERS.** No act of forbearance on the part of the Companies to enforce any of the provisions of this Contract will be construed as a modification of this Contract, nor will the failure of either party to exercise any right or privilege herein granted be considered a waiver of such right or privilege.

R. 128. (See Career Agent Contract, p. 3, attached as Exhibit “H”).

18. Plaintiff Leo Syphus contends that a letter written to him on June 30, 1994, by Byron DeLair modified his written Career Agent Contract. The body of that letter states as follows:

As per our meeting, the following has been determined as a action plan to both bring your loss ratio under control and bring your production to necessary levels to meet standards.

We will have a regular P.E.P. session every Friday starting 7/8/94.

Ten client reviews per week for the next 3 months; 130 total with Review Forms filled out and signed by the client.

Production levels on Life & P&C need to be maintained at \$335 per week for life and \$1107 per week for P&C. This will be \$13,280 in P&C production.

Knowing these requirements and expectations to be necessary; if they are not met, retirement or career contract termination will be the alternative as of 9/30/94.

R.130. (See Letter to Leo Syphus, attached as Exhibit "I").

19. Mr. Syphus concedes that he did not meet his goal of \$330.00 per week in life insurance sales:

Q. Do you know whether you met your goal, which was set out in the June 30th, 1994, letter, of getting \$330 per week in life?

A. No.

Q. Did you make it?

A. No.

R.111. (Deposition of Leo Syphus, p. 35, attached as Exhibit "D").

20. However, Mr. Syphus further concedes that he did not meet the goals set forth in the letter for client reviews:

THE WITNESS: They had us doing these review sheets, you know, concerning their whole insurance, like an annual fact finder, and as I recall, I had about 85 to 90 of those signed, and as I'd go around the community or

through the farm areas, why, if I'd see one of my insureds, I'd stop and say, "I've got to do this," and I'd say, "Just sign this and I'll take it back to the office and fill in the rest of the information on your insurance." And so I don't know what happened to it, but I figured I had around 85 or 90 of them. And that would be in 60 days.

Q. (By Mr. Minnock) Well, and you needed 130, according to this letter?

A. Yeah.

Q. So you were still 40 short. Forty to 50 short?

A. Yeah.

R.109-110. (Deposition of Leo Syphus, pp. 32-33, attached as Exhibit "D").

21. On September 30, 1994, Farm Bureau terminated the Career Agent Contract of Mr. Syphus. R.5. (Complaint, ¶ 18); *see also*, R.552. Letter from Ron Palmer to Leo Syphus, attached as Exhibit "J".

22. The Agents Darrell Tanner, Scott Stokes, and Jay Wood contend that their written Career Agent Contracts were modified by letters dated October 15, 1993. R.134-137. (A copy of each letter is attached as Exhibit "K").<sup>3</sup> The substance of these letters was to set minimum goals for each agents' production for 1994, and these three Agents contend that this letter constitutes an agreement by Farm Bureau not to terminate them if they met these goals.

23. On March 25, 1994, Farm Bureau terminated the Career Agent Contracts of Jay Wood, Scott Stokes, and Darrell Tanner. R.3. (Complaint, ¶ 15); *See, also*, R.141-

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<sup>3</sup> In the Agent's "Facts Regarding Jay Wood, Scott Stokes, and Darrell Tanner," paragraph 11, the Agent's place these meetings and letters in October, 1994, which appears to be one year later than the events occurred. (Agent's Brief, p. xiii).

143. Letters from Ron Palmer to Scott Stokes, Darrell Tanner and Jay Wood, attached as Exhibit “L”.

## **SUMMARY OF THE ARGUMENT**

**I.** Although the Agents claim that Farm Bureau improperly confiscated their “books of business”, the evidence reflects that Farm Bureau only took possession of those items which the Career Agent Contract signed by each agent expressly provided belonged to Farm Bureau. While the Agents have attempted to create ambiguity by varying the definition of “book of business,” their interrogatory answers and deposition testimony reflects that they define the term to include the client lists, policyholder files and accounts, and right to renewal commissions. The Career Agent Contract expressly addresses each of these categories and vests the right to possess the records with Farm Bureau.

**II.** Farm Bureau did not breach the contract by terminating the Agents. The Career Agent Contract gives either party the right to terminate the contract with or without cause. The Agents claim that this provision was modified by statements and correspondence made by the Agents’ manager. However, with respect to Mr. Tanner, Mr. Stokes and Mr. Wood, these alleged comments were made before the Agents renewed their contracts with Farm Bureau—contracts that contained the right of either party to terminate the contract at any time. Under Utah law, the prior alleged statements are no longer enforceable as a contract. With respect to Leo Syphus, even if the statements made to him after execution

of his contract qualified as an “implied contract,” Farm Bureau complied with the contract and terminated Mr. Syphus pursuant to its terms.

**III.** As Farm Bureau only exercised its contractual rights with respect to the documents, renewal commissions and termination of the Agents, it cannot be held liable for breach of the implied covenant of good faith and fair dealing.

**IV.** The trial court properly granted summary judgment on the claims of unjust enrichment. Although the Agents rely upon cases from Iowa purportedly holding that a claim of unjust enrichment can be found even in the presence of an express contract, more recent case law from the Iowa Supreme Court is to the contrary. Moreover, it seems inconsistent to suggest that where a party has fully complied with the terms of the agreement between the parties, the party can be held liable for additional compensation not contemplated by the parties by means of a claim for unjust enrichment.

**V.** The trial court properly dismissed the claims for intentional interference with economic relations. The Agents have not contested this finding by the trial court with any analysis or argument and, therefore, it may be affirmed. Furthermore, because the claim for intentional interference with economic relations was the sole tort alleged, the claim for punitive damages must also be dismissed as such damages are not appropriate in contract claims.

## ARGUMENT

### I.

#### **THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE AGENTS' CLAIMS FOR THE "BOOKS OF BUSINESS."**

In the First Claim for Relief, the Agents claimed that Farm Bureau "confiscated Plaintiffs' Books of Business in violation of Plaintiffs' contracts with Defendants." R.5. (Complaint, ¶ 23).<sup>4</sup> As before the trial court, Farm Bureau is reluctant to use the phrase "book of business" because notwithstanding the Agents' suggestions to the contrary, the phrase is not subject to precise definition.

This confusion is reflected within the Agent's own brief. For example, the Agents have relied upon case law construing the term "book of business" as follows:

In the insurance industry, the term "book of business: or "expirations" has a definite and well-recognized meaning. It refers to a copy of the policy issued to the insured and contains "the date of the insurance policy, the name of the insured, the date of its expiration, the amount of insurance, premiums, property covered and terms of insurance." (*Phillips & Co. v. Pennsylvania Thresherman & Farmers' Mut. Cas. Ins. Co.*, 199 F.2d 244, 246 *cert. denied*, 345 U.S. 906).

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<sup>4</sup> The Agents include in their brief approximate values of the "books of business" at between \$300,000 for Mr. Wood to \$680,000 for Mr. Syphus. (Agent's Brief, p. xvi). Although not relevant to the issues before the Court, It should be noted that this "value" represents the annualized premium of the policies assigned to that agent. This amount would not represent the "value" of those policies were they to be sold by Farm Bureau to another insurer but rather, as stated previously, solely provides the annualized premium value of those policies.

*In the Matter of Corning*, 488 N.Y.S.2d 477, 480 (1985). Another case defines “book of business” more simply as “the records of an insurance agency.” *In the Matter of Dunham*, 110 F.3d 286, 287 n. 1 (5<sup>th</sup> Cir. 1997).

However, when discussing the Career Agent Contract between the parties, the Agents state that “the ‘Accounts and Records’ provision does not use the term book of business, *which embodies much more than mere accounts and records.*” (Agents’ Brief, p. 7). The Fifth Circuit’s definition that the “book of business” as “the records of an insurance agency” is thus abandoned.

To eliminate this uncertainty in the Agents’ claims, Farm Bureau asked each Agent in interrogatories to define precisely what is encompassed in the phrase “book of business” as used in the Complaint. Each Agent responded as follows:

3. With respect to the allegation in the Complaint, that you developed a “Book of Business,” please state the following:

- a. describe with particularity the items which you contend were confiscated which constituted the “Book of Business;”

**ANSWER:** Client lists, client folders, policy records, policy holders and commissions off of their premiums.

(See Answers to Defendant’s First Set of Interrogatories to Darrell Tanner, p. 3, attached as Exhibit “M” R.145; Answers of Jay Wood, p. 3, attached as Exhibit “N” R.158; Answers of Scott Stokes, p. 3, attached as Exhibit “O” R.171; Answers of Leo Syphus, p. 3, attached as Exhibit “P” R.183).



The Agents' brief seems to suggest that perhaps there is "something else" which is not embodied in the records. client lists, and renewal commissions. However, the Agents have never described what tangible property was confiscated in addition to the account records, policyholder lists and other records relating to Farm Bureau insureds.

For purposes of this brief, we assume the Agents were truthful in responding to the interrogatories and in describing the components of the "book of business." Therefore, we examine the contractual provisions relating to the "client lists, client folders, policy records, policy holders and commissions off of their premiums."

Farm Bureau's ownership of the client lists, client folders, and policy records is established by the Career Agent Contract, which provides as follows:

**(b) ACCOUNTS AND RECORDS.** Career Agent shall keep accurate accounts and records of all business transactions including without limitations, account service records, which will be open at all times to inspection and examination by authorized representatives of Companies. *All accounts, account records, policyholder files, policyholder lists, rate books or manuals, applications and other forms and all other records in Career Agent's possession pertaining to Companies' business will be the property of Companies and will be returned to Companies upon demand.*

R.127. (See Career Agent Contract, p. 2, attached as Exhibit "H") (Emphasis added). This provision unambiguously states that the policyholder records, lists and files claimed to be part of the "book of business" belong to Farm Bureau and not the Agents.

The Career Agent Contract also provided that any right to renewal commissions would cease once the Agent was terminated:

## **6. LIFE, DISABILITY INCOME AND ANNUITY COMMISSIONS.**

\* \* \*

**(c) RENEWAL COMMISSIONS.** . . . Renewal commissions will be paid to the Career Agent who personally produced the policy until (1) *that Career Agent's contract with the Companies is terminated* or (2) *the policy on which the renewal commission is payable is assigned to another Career Agent, whichever occurs first.*

\* \* \*

## **7. PROPERTY AND CASUALTY COMMISSIONS.**

\* \* \*

### **(b) PROPERTY AND CASUALTY RENEWAL COMMISSIONS.**

Renewal commissions will be paid to Career Agent *while this agreement is in force*, on property and casualty premiums received and retained after the first term of the policy on all accounts assigned to the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

R.127. (See Contract, p. 2, attached as Exhibit "H") (Emphasis added).

Thus, the Career Agent Contract unambiguously addressed each component of the Agents' claimed "book of business," and vested ownership in the records, client lists, and accounts with Farm Bureau and granted Farm Bureau the right to terminate renewal commissions paid to the Agents after their contracts were canceled.

The Agents contend that these unambiguous provisions do not govern the present dispute for two reasons: (1) their contracts specify that they are "independent contractors"; and (2) they received indications that they owned "your Book of Business." However, neither of these explanations will permit the Agents to avoid the plain language of the Career Agent Contract.

With respect to the first contention, it is true that the Career Agent Contract contains the following provision relating to the status of the agents:

**4. INDEPENDENT CONTRACTOR.** It is the intent of the parties hereto that for all purposes and in all situations governed by the provisions of this agreement, Career Agent will be, and is hereby declared to be, an independent contractor and not an employee, and that the relationship between Career Agent and Companies created by this agreement, will be governed by those rules of law governing the status and relations of independent contractors and not those rules of law governing employer-employee relations. Accordingly, *Career Agent has the right to control the activities and means by which the provisions of this agreement are carried out, the right to exercise independent judgment as to the persons from whom applications for insurance policies will be solicited, and the right to determine the time, place and manner of soliciting and servicing policyholders of the Companies.*

R.128. (Career Agent Contract, attached as Exhibit “H”) (Emphasis added). This provision does no more than state that the Career Agent has the right to set his own working hours and the manner in which he solicits applications. There is nothing in this provision which suggests that the Agents own the account records or policyholder lists, or that they are entitled to receive renewal commissions after their termination.

Moreover, even if a general right can be inferred from this provision, such an inference would be insufficient to overcome the effect of the more specific provisions of the Career Agent Contract. It is a standard principle of contract interpretation that “when there is an inconsistency between a general and a specific provision, the specific provision ordinarily qualifies the meaning of the general provision.” *Mayer v. Pierce County Medical Bureau*, 909 P.2d 1323, 1327 (Wash. Ct.App. 1995); *Holland v. Board of*

*County Comm'rs*, 883 P.2d 500 (Colo.Ct.App. 1994). In this case, the express, unambiguous terms of the Career Agent Contract provide that Farm Bureau owns the account records and policyholder lists, and has the right to terminate renewal commission payments upon termination of the agent.

The Agents have also suggested that the Accounts and Records provision is ambiguous because it does not differentiate between records “pertaining to the Companies’ business” and those “pertaining to the Agent’s business.” However, there is no need to determine whether the Career Agent Contract is ambiguous in this respect because the Agents are not suggesting that Utah Farm Bureau confiscated records “pertaining to the Agent’s business.” They do not claim that Farm Bureau took records unrelated to Farm Bureau insureds or pertaining to businesses maintained by the agent unaffiliated with work they performed for Farm Bureau. Rather, they are quite evidently seeking to recover the policy lists, records and accounts of Farm Bureau insureds which clearly are records “pertaining to the Companies’ business.”

Black’s Law Dictionary defines the word “pertain” as follows: “**Pertain.** To belong or relate to, whether by nature, appointment or custom.” BLACK’S LAW DICTIONARY, (6th ed. 1991). Thus, under the terms of the Accounts and Records provision, all policyholder files, policyholder lists, accounts, account records, and other documents “relating” to Farm Bureau’s business of insurance belong to Farm Bureau.

The Agents have generated no evidence that Farm Bureau took possession of records which do not relate to its own policyholders and, therefore, pertain to its business. Consequently, the trial court properly determined that the records and documents sought by the Agents belonged to Farm Bureau and it did not breach the contracts by regaining possession of the records after the Agents were terminated.

Finally, the Agents contend that although the contract expressly gave Farm Bureau the right to retain the records and terminate the payment of renewal commissions, certain documents sent by Utah Farm Bureau referred to “your Book of Business,” and this infers an ownership interest in the account records and policyholder lists. Utah Farm Bureau, of course, disputes that such statements create an ownership interest any more than when a judge states that a hearing will be in “my courtroom” he or she is asserting an ownership of the courtroom and a right to sell, lease or otherwise dispose of it.

However, such evidence is irrelevant and inadmissible to the issues before the Court. The Utah Supreme Court has held that “[t]he interpretation of a contract is a matter of law for the court to determine unless the contract is ambiguous and evidence of the parties’ intent (which is a matter of fact) is necessary to establish the terms of the contract.” *Saunders v. Sharp*, 806 P.2d 198, 200 (Utah 1991). The Utah Supreme Court has likewise stated:

It is well settled by our prior case law that when a contract is in writing and the language is unambiguous, the intention of the parties must be

determined from the words of the agreement and that a contract interpreted without regard to extrinsic evidence is a question of law.

*R & R Energies v. Mother Earth Indus.*, 936 P.2d 1068, 1074 n. 5 (Utah 1997), *see, also*, *Turner v. Hi-Country Homeowners Ass'n*, 910 P.2d 1223, 1225-26 (Utah 1996) (“If contract is in writing and its language is not ambiguous, the parties’ intention should be determined from the words of the agreement”).

In this case, the Career Agent Contracts between the parties expressly provide that the records and policyholder lists belonged to Farm Bureau and that the Agents would no longer be entitled to renewal commissions after they were terminated. Even if evidence contradicting the written agreement exists, it did not preclude the entry of summary judgment for Farm Bureau because such evidence would be inadmissible at trial.<sup>5</sup>

In closing, there is nothing extraordinary about Farm Bureau retaking possession of their records after termination of these agents. The law has been summarized as follows:

Information acquired by an insurance agent in the course of his or her business as such and pertaining thereto belongs to the principal. An insurance agent, on the lawful termination of his or her contract of agency, has no right to retain the company’s books, or to make copies thereof for his

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<sup>5</sup> The Utah Supreme Court has held that “inadmissible evidence cannot be considered in ruling on a motion for summary judgment.” *D & L Supply v. Saurini*, 775 P.2d 420, 421 (Utah 1989); *GNS Partnership v. Fullmer*, 873 P.2d 1157 (Utah Ct.App. 1994). Pursuant to the authority set forth above, any evidence which contradicts the written agreement of the parties is inadmissible and cannot be used to create a genuine issue of material fact to avoid summary judgment.

or her own use, or to disclose trade secrets or confidences, and where the agent attempts to do so, equity may enjoin such an action.

Lee R. Russ & Thomas F. Segalla, *Couch on Insurance 3d*, ¶ 57:60 (1996). While the Agents rely upon contrary case law, it is apparent that they have misconstrued the terms “independent contractor” with “independent agent.” An independent agent typically writes for multiple companies and essentially represents the policyholder. This Court has discussed the difference between these two concepts:

“An insurance agent, so far as the company is concerned, is a person expressly or impliedly authorized to represent it in dealing with third persons . . . [and] is commissioned and employed by an insurance company to solicit and write insurance by and in the name of the company.” 3 *Couch on Insurance 2d* § 26:1 (1984).

\* \* \*

Further, “an independent agent who solicits insurance for the insured and places that insurance with an insurance company is, if anyone’s agent, the agent of the insured and not of the insurance company.” 16 *Appleman, Insurance Law & Practice* § 877 (1981).

*Vina v. Jefferson Ins. Co. of New York*, 761 P.2d 581, 585 (Utah Ct. App. 1988)(brackets and ellipses in original). In this case, there can be no question that the Agents were agents of Farm Bureau and not “independent agents” as that term was used in the insurance industry. Thus, their reliance on case law relating to independent agents and their “books of business” is not relevant here.

At any rate, an agent and insurer may freely contract to define the relationship between themselves. Some insurers may well grant the right to renewal commissions after termination. Others may not require return of the records. However, in this case, the

Agents expressly agreed that the records and accounts would be returned to Farm Bureau upon termination and that renewal commissions would cease. There is no justifiable reason to re-write the contract and the trial court properly granted Utah Farm Bureau summary judgment on the First Claim for Relief.

## **II.**

### **THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE SECOND CAUSE OF ACTION ALLEGING WRONGFUL TERMINATION.**

In the Second Cause of Action, each agent claimed that Farm Bureau improperly terminated their Career Agent Contract. As set forth below, each Agent signed a contract permitting either party to terminate the relationship with or without cause. Three of the Agents, claim that this provision was modified by oral discussions with their agency manager in October, 1993, or prior to signing a new contract in March, 1994. The final agent, Leo Syphus, claims that his contract was modified after signing a new contract. Due to the distinction between when the alleged conversations took place in relation to the new contracts, Farm Bureau will address the wrongful termination claims of Mr. Tanner, Mr. Stokes and Mr. Wood in Section A and the claims of Mr. Syphus in Section B.



**A. DEFENDANTS DID NOT BREACH THEIR AGREEMENTS BY TERMINATING DARRELL TANNER, JAY WOOD, AND SCOTT STOKES.**

In the Second Cause of Action, the Agents contend that Farm Bureau breached the Career Agent Contracts by terminating them. Farm Bureau responded that the terminations were proper and in accordance with the express language of the Career Agent Contract, which provided as follows:

**11. TERMINATION.** This Contract may be terminated by Companies or Career Agent at any time, with or without cause, by giving notice of termination, in writing, to the other party. Notice of Termination need not include the reason or reasons, if any, for such termination.

Career Agent acknowledges that Companies have not, either expressly or otherwise, agreed to continue the term of this Contract, for any definite period of time.

R.128. (Contract, p. 3, attached as Exhibit “H”).

The Agents do not dispute that they signed these contracts or that the Career Agent contract governs the relationship between the parties. However, the Agents contend that the Career Agent Contracts were modified during conversations with their Agency Manager, Darren Ivie, in October, 1993. Specifically, the Agents rely upon letters from Mr. Ivie to each agent dated October 15, 1993, memorializing the Annual Check-up Meeting with each agent and setting goals for the new year. R.134-139. (A copy of these letters are attached as Exhibit “K”). Based upon these letters, the Agents conclude that so long as they met the goals stated in these letters, they could not be terminated.

However, the October, 1993, letters which form the basis for the Agent's claim were written prior to the execution of new contracts in March, 1994. These contracts included the provision permitting Farm Bureau to terminate the Agents with or without cause.<sup>6</sup> Significantly, the Career Agent Contract provides that "Career Agent acknowledges that Companies have not, either expressly or otherwise, agreed to continue the term of this Contract, for any definite period of time," R.128. (Contract, p. 3), a statement the Agents now disavow.

In *Trembly v. Mrs. Fields Cookies*, 884 P.2d 1306 (Utah Ct. App. 1994), this Court held that where a clear contract is entered into between the parties, all prior contrary contractual terms are extinguished. In *Trembly*, the employee, Trembly, was hired by Mrs. Fields Cookies in 1986. During training meetings, he was told that an employee would be permitted "X number of mistakes," and "will not be terminated for things unless they've been . . . completely investigated." *Id.* at 1309. After these meetings, in 1989, Mrs. Fields Cookies issued an employee handbook which stated that "any and all team members are subject to termination at anytime with or without cause." *Id.* In affirming summary judgment dismissing the breach of contract provision, the Utah Court of Appeals stated:

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<sup>6</sup> The Agents' prior contracts contained identical provisions so the concept of mutual right to terminate was not new. We address only the March, 1994, contract as it served as the contract at the time of termination.

Trembly claims that the statements made to him by Mitchell Dorin are sufficiently definite to operate as a “contract provision.” However, even if we agree with Trembly, if an employee has knowledge of a distributed handbook that changes a condition of the employee’s employment, and the employee remains in the company’s employ, the modified conditions become part of the employee’s employment contract. *Id. see also Sorenson v. Kennecott-Utah Copper Corp.*, 873 P.2d 1141, 1148 (Utah App. 1994)(earlier version of company’s code of conduct arguable modifying employee’s at-will status was expressly superceded by later version.) Further

“[i]n this manner, an original employment contract may be modified or replaced by a subsequent unilateral contract. The employee’s retention of employment constitutes acceptance of the offer of a unilateral contract; by continuing to stay on the job, although free to leave, the employment supplies the necessary consideration for the offer.”

*Johnson*, 818 P.2d at 1002 (quoting *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 627 (Minn. 1983)).

*Id.* at 1312-13. The Court of Appeals ultimately concluded that:

Summary judgment was correct because, as a matter of law, even if Trembly’s initial employment contract provided that he would be terminated only after Mrs. Fields followed certain disciplinary procedures, this employment status was later modified by the handbook, which provided that Trembly was an at-will employee. Trembly accepted this contract provision by remaining in Mrs. Field’s employ after he had knowledge of the company’s at-will employment policy. Accordingly, we affirm.

*Trembly*, 884 P.2d at 1313-14.

Similarly, in *Ryan v. Dan’s Food Stores, Inc.*, 972 P.2d 395 (Utah 1998), the employee, Ryan, alleged that when he was hired, he was told he would not be fired for “following the law.” He was later fired after several consumer complaints, and he

contended that the prior statements altered the “at will” employment contract. In rejecting these claims, the Utah Supreme Court stated:

We conclude that even if Gardiner’s statement that Dan’s would not terminate Ryan for following the law created an express or implied contract, as a matter of contract law, Ryan’s receipt of the Dan’s employee handbook and his signing of the acknowledgment form modified and superceded any previous conditions of that contract. On this point, we adopt the reasoning of the court of appeals in *Trembly v. Mrs. Fields Cookies*, 884 P.2d 1306 (Utah Ct. App. 1994).

*Id.* at 401. The Supreme Court also held that “in many circumstances, a fact question will exist as to whether the parties intended to modify an at-will employment contract. *See id.* at 1001. *However, when an employee admittedly has knowledge of a distributed handbook’s provision that modifies the employment contract and continues to work for the employer after gaining such knowledge, the modified contract prevails, and previous, contradictory conditions have no effect.*” *Id.* (emphasis added).

The present case is far more compelling than either *Trembly* or *Ryan*, which involved a conflict between an earlier alleged statement and a subsequently issued handbook. In this case, the Career Agents each signed *a new contract* within months of their termination and after the alleged statements that the agents would not be terminated except for cause. These contracts not only expressly stated that “this contract can be terminated by Companies or Career Agent at any time, with or without cause,” but each agent acknowledged that “the Companies have not, either expressly or otherwise, agreed to continue the term of this Contract for a definite period of time.” R.128. (See Contract,

p. 3, attached as Exhibit “H”). Moreover, in case there was any doubt that the prior alleged representations would not alter the contract, the Contract states that “[t]his Contract constitutes the *sole agreement and supercedes all prior contracts.*” *Id.*

Unlike *Ryan* and *Trembly*, where the employees were unable to overcome the presumption of at-will employment, Mr. Tanner, Mr. Stokes, and Mr. Wood *specifically agreed* that their contracts would be at-will, and that no other representations had been made to the contrary. As in *Ryan*, “the modified contract prevails, and previous, contradictory conditions have no effect.” *Ryan*, 972 P.2d at 401. Based upon the foregoing, the trial court properly determined that Farm Bureau was entitled to summary judgment on the Second Claim for Relief:

2. With respect to the Agents’ Second Cause of Action, for Breach of Contract regarding the termination of the agents, the Court finds that the Career Agent Contracts signed by each agent in 1994 governed the relationship between the parties and that these agreements superseded any prior agreements, understandings, or conditions which may have existed prior to the 1994 contracts.

A. With respect to Plaintiffs Darrell Tanner, Jay Wood, and Scott Stokes, the Court finds that the 1994 Career Agent Contract clearly and unambiguously grants Defendants the right to terminate the agreement at any time, with or without cause. Therefore, the Court grants Defendants’ Motion for Summary Judgment with respect to the Second Cause of Action against Jay Wood, Darrell Tanner, and Scott Stokes.

R.558-59. (Order, p. 2-3).

The Agents generally do not dispute the correctness of this position, but rather suggest that even after the March, 1994, contracts were signed, their Career Agents

Contracts were again modified because Mr. Ivie continued to discuss their goals with them:

After signing the 1994 Career Agent Contract, I continued to have weekly meetings with Darrin Ivie. I was given reports indicating whether I was meeting the goals set forth in the letter he gave me dated October 15, 1993.

R.463. (Affidavit of Darrell Tanner, ¶ 4). Jay Wood filed an affidavit stating as follows:

After signing the 1994 Career Agent Contract, I continued to have weekly meetings with Darrin Ivie. I was under the impression that the October 15 letter continued to govern our relationship.

R.472. (Affidavit of Jay Wood, ¶ 4).

The Utah Supreme Court has established the standard a party must meet to show a modification to a written contract:

Courts may not impose a modification of a lease to which the parties have not agreed and, a fortiori, may not do so when the parties have explicitly disagreed as to the essential terms thereof. A valid modification of a contract or lease requires “a meeting of the minds of the parties, which must be spelled out, either expressly or impliedly with sufficient definiteness.” *Vecarce v. Bitters*, 12 Utah 2d 61, 63, 362 P.2d 427 (1961).

*Richard Barton Enterprises, Inc. v. Tsern*, 928 P.2d 368, 373 (Utah 1996). The trial court was correct to conclude that the affidavits filed by the Agents were inadequate to establish a implied contract separate from the written contract. Even if Mr. Ivie continued to discuss the goals, there is no evidence to suggest that there was a “meeting of the minds” that Farm Bureau was waiving the right to terminate the agents at any time pursuant to the terms of their written Career Agent Contracts.

The Utah Supreme Court has applied these principles to the employment setting, holding that:

This court must interpret any conduct, oral statement, or written sentence asserted to be a term in a contract in a manner harmonious to the overall meaning of the contract. *Jones v. Hinkle*, 611 P.2d 733, 735 (Utah 1980). Accordingly, this court has held that when an employee handbook contains a clear and conspicuous disclaimer of contract liability, any other agreements or terms must be construed in light of the disclaimer.

*Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331, 334 (Utah 1992). In *Hodgson*, the Court addressed contentions that statements made after hiring created an employment contract other than “at-will”:

Additionally, Frank explained to Hodgson during her preemployment interview that employment was at will, and Hodgson signed the “New Employee Checklist,” which stated that employment was at will. Given these circumstances, Hodgson could not reasonably have concluded that employment was other than at will on the basis that she heard oral remarks concerning disciplinary procedures and knew of four other employees who received warnings. Bunzl clearly intended to eliminate any employee misunderstandings about the status of employment.

*Id.* at 334. *See, also, Trembly v. Mrs. Fields Cookies*, 884 P.2d 1306 (Utah Ct. App. 1994)(“Mrs. Fields eliminated any confusion regarding employment status by the clear and conspicuous disclaimers contained in the handbook, which was distributed *after* Dorin made his comments to Trembly.”)

Whatever doubt that may have existed as to whether the October, 1993, letters altered these Agents’ status with Farm Bureau was clarified in the Career Agent Contract which gave either party the right to terminate the contract for any reason. The Agents

have presented no evidence showing that Mr. Ivie's actions thereafter were inconsistent with the Career Agent Contract.

Mr. Stokes has submitted an affidavit to this Court wherein he makes the statement that "Mr. Ivie, in our weekly review sessions after I signed the 1994 Career Agent Contract, affirmed to me that I would not be terminated unless I failed to meet the goals in the October 15, 1993, letter." R.466. (See Affidavit of Scott A. Stokes, ¶ 4). This statement in his affidavit is directly contrary to Mr. Stokes' deposition testimony where Mr. Stokes testified that he was never told by Mr. Ivie that he would not be terminated if he met the goals stated in the letter:

Q. Did he ever tell you, if you do not meet the goals I'm not going to terminate you ever?

A. *If I met these goals. No. He said I'd have goals every year.*

R.530. (Deposition of Scott Stokes, p. 54, attached as Exhibit "C"). The Utah Supreme Court has long held:

But when a party takes a clear position in a deposition, that is not modified on cross-examination, he may not thereafter raise an issue of fact by his own affidavit which contradicts his deposition, unless he can provide an explanation of the discrepancy.

*Webster v. Sill*, 675 P.2d 1170, 1173 (Utah 1983). Mr. Stokes has provided no explanation of the reason for this abrupt change in his testimony, and his subsequent affidavit cannot be used to avoid summary judgment.



Based on the foregoing, Farm Bureau did not breach any agreement by terminating the Agents and the trial court properly entered summary judgment against Mr. Wood, Mr. Tanner, and Mr. Stokes.

**B. DEFENDANTS DID NOT BREACH THE AGREEMENT BY TERMINATING LEO SYPHUS.**

As with the other agents, Leo Syphus signed an Career Agent Contract on February 22, 1994, which provided that “this Contract may be terminated by Companies or Career Agent at any time, with or without cause.” (See Contract, p. 3, attached as Exhibit “H”). However, Mr. Syphus contends that this contract was modified by a letter dated June 30, 1994, which states as follows:

As per our meeting, the following has been determined as a action plan to both bring your loss ratio under control and bring your production to necessary levels to meet standards.

We will have a regular P.E.P. session every Friday starting 7/8/94.

Ten client reviews per week for the next 3 months; 130 total with Review Forms filled out and signed by the client.

Production levels on Life & P&C need to be maintained at \$335 per week for life and \$1107 per week for P&C. This will be \$13,280 in P&C production.

Knowing these requirements and expectations to be necessary; if they are not met, retirement or career contract termination will be the alternative as of 9/30/94.

R.130. (See Letter to Leo Syphus, attached as Exhibit “J”).

As with the other agents, Farm Bureau denies that this letter creates a binding modification to the Career Agent Contract provision. However, even if it can be so construed, the evidence was undisputed that Mr. Syphus failed to meet the goals set forth

in this letter and he was terminated as described in the letter on September 30, 1994.

Thus, Farm Bureau did not breach the alleged modified contract and summary judgment was appropriately granted.

However, Mr. Syphus concedes that he did not meet the goals set forth in the letter for client reviews:

THE WITNESS: They had us doing these review sheets, you know, concerning their whole insurance, like an annual fact finder, and as I recall, I had about 85 to 90 of those signed, and as I'd go around the community or through the farm areas, why, if I'd see one of my insureds, I'd stop and say, "I've got to do this," and I'd say, "Just sign this and I'll take it back to the office and fill in the rest of the information on your insurance." And so I don't know what happened to it, but I figured I had around 85 or 90 of them. And that would be in 60 days.

Q. (By Mr. Minnock) Well, and you needed 130, according to this letter?

A. Yeah.

Q. So you were still 40 short. Forty to 50 short?

A. Yeah.

R.109-10. (Deposition of Leo Syphus, pp. 32-33, attached as Exhibit "D"). He also concedes that he did not meet the requirements set forth in the letter with respect to life insurance production:

Q. Do you know whether you met your goal, which was set out in the June 30th, 1994 letter, of getting \$330 per week in life?

A. No.

Q. Did you make it?

A. No.

Q. You didn't make it?

A. No.

R.111-12. (*Id.* at 35-36).

Thus, on September 12, 1994, Ronald Palmer prepared a letter of termination for Mr. Syphus effective September 30, 1994--the date Mr. Syphus was required to either meet his goals or be terminated. Although the letter upon which Mr. Syphus relies in the Agent's brief is dated September 12, 1994, attached as Exhibit "J" is a copy of that letter which was provided by Mr. Syphus during discovery and attached to his answers to the Defendants' First Set of Interrogatories and Requests for Production of Documents.

R.552. (See Letter from Ron Palmer to Leo Syphus, attached as Exhibit "J"). Mr. Syphus' written note indicates that Byron DeLair, his agency manager, did not hand-deliver the letter until September 27, 1994.

At any rate, Mr. Syphus contends that his termination three days prior to the September 30, 1994, deadline was a breach of the contract entitling him to damages. At the initial hearing on the motion for summary judgment held on April 5, 1999, the trial court granted the parties additional time to present briefing on whether Farm Bureau's conduct was an "anticipatory breach" assuming the letter did form a contractual provision:

B. With respect to Leo Syphus, the Court takes under advisement the issue of whether the June 30, 1994, letter modified his 1994 Career Agent Contract, and has invited the parties to submit additional briefing on the issue of whether the September 12, 1994, letter to Mr. Syphus constituted an anticipatory breach by Defendants. Upon receipt of these memoranda, the Court will issue a final ruling with respect to Mr. Syphus.

R.559. (Order, p. 2). In his supplemental memorandum, Mr. Syphus presented argument that suggested he had no duty to show that he could fulfill his part of the bargain before

being entitled to damages. Mr. Syphus presented no evidence showing that given the extra three days, he could have fulfilled the goals set forth in the June, 1994, letter.

The Utah Supreme Court has held that a party claiming anticipatory breach has a duty to show that he or she had the ability to perform his or her own promise:

In an action for breach by an unconditional repudiation it is still a condition precedent to the plaintiffs' right to a judgment for damages that he should have the ability to perform all such conditions. If he could not or would not have performed the substantial equivalent for which the defendant's performance was agreed to be exchanged, he is given no remedy in damages for the defendant's non-performance or repudiation. . . .

*Petersen v. Intermountain Capital Corporation*, 508 P.2d 536, 538 (Utah 1973)(quoting Corbin on Contracts, § 978).

In order to avoid summary judgment on this essential element of his claim, Mr. Syphus had the burden of showing that in those remaining three days he could have produced all of the insurance business identified in the June 30, 1994, letter. *Schafir v. Harrigan*, 879 P.2d 1384, 1391 (Utah Ct. App. 1994). To meet his goals would have required Mr. Syphus to complete in three days the forty to fifty "client reviews" he had not yet performed (when he had done only 85 to 90 in the preceding 87 days). R.110. (Deposition of Leo Syphus, p. 33, attached as Exhibit "D"). Mr. Syphus also would have been required to write \$3,164 in life insurance production credit. R.109. (*Id.* at 32). (According to Farm Bureau's records, Mr. Syphus had written \$932 in life production credit during the preceding 87 days).

Although given the opportunity to present evidence that Mr. Syphus could meet the goals and, therefore, state a claim for anticipatory breach, Mr. Syphus presented no evidence before the trial court that he could have met these goals. Thus, the trial court entered summary judgment in favor of Utah Farm Bureau:

Next, in order to collect damages for an anticipatory breach, plaintiff must also present admissible evidence that he had the ability to perform his side of the contract. *Peterson v. Intermountain Capital Corp.* 508 P.2d 536 (Utah 1973) (citations omitted). In other words, plaintiff must present some admissible evidence that he had the ability on September 27, 1994, to meet the performance requirements in the next three days. Plaintiff's deposition testimony reveals that he was substantially short of the performance requirements and that he may have obtained more contacts during the three remaining days to meet part of the evidence, however, that plaintiff had the ability to actually or substantially meet the performance criteria in the next three days. Accordingly, summary judgment is properly granted as to the breach of contract claim.

R.564-65. (Ruling, pp. 2-3).

In the Agent's brief, Mr. Syphus does not challenge the trial court's conclusion that he had to show an ability to perform in order to claim anticipatory breach or that he failed to do so. In fact, Mr. Syphus has presented no argument in his brief showing that given the three extra days, he could have fulfilled the terms of the alleged agreement.

This Court "has routinely declined to consider arguments which are not adequately briefed on appeal." *Burns v. Summerhays*, 927 P.2d 197, 199 (Utah Ct. App. 1996)(quoting *State v. Yates*, 834 P.2d 599, 602 (Utah Ct.App. 1992)). In this case, Mr. Syphus has presented no argument, analysis, legal authority, or briefing challenging the trial court's conclusion that he is not entitled to relief because he cannot show that he

could have performed his side of the alleged contract. Therefore, the summary judgment granted in favor of Farm Bureau on this issue should be affirmed.

### III.

#### **THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE THIRD CAUSE OF ACTION FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.**

In the Third Claim for Relief, the Agents allege that “Defendants’ confiscation of Plaintiffs’ Books of Business violated the implied covenant of good faith and fair dealing contained in Plaintiffs’ Contracts.” (Amended Complaint, ¶ 31). The Utah Supreme Court has held:

However, we have also stated that “we will not interpret the implied covenant of good faith and fair dealing to make a better contract for the parties than they made for themselves. Nor will we construe the covenant ‘to establish new, independent rights or duties not agreed upon by the parties.’” *Brown v. Moore*, 973 P.2d 950, 954 (Utah 1998)(quoting *Brehany v. Nordstrom, Inc.*, 812 P.2d 49, 55 (Utah 1991)).

*Malibu Investment Co. v. Sparks*, 2000 UT 30, ¶ 19, 996 P.2d 1043, 1048. *Brehany v. Nordstrom, Inc.*, 812 P.2d 49, 55 (Utah 1991). *See, also, Howe v. Professional Manivest, Inc.*, 829 P.2d 160, 163 (Utah Ct. App. 1992)(“However, there is no violation of the duty of good faith, as a matter of law, when a party is simply exercising its contractual rights.”) As set forth above, Farm Bureau took possession of the account records and policyholder lists, and terminated the Agents’ right to renewal commissions, pursuant to the clear and unambiguous language of the contracts each agent signed.

In this case, the Agents' contention that they owned a "Book of Business" consisting of account or client folders and lists, as well as a right to continue to receive renewal commissions from policies, is contrary to the plain language of the Career Agent Contract and imposes a duty upon Farm Bureau which is entirely new and inconsistent with the intention of the parties as reflected in the written contract. Moreover, the Agents' claim that they are entitled to employment for a definite period of time and may not be terminated at any time is directly contrary to the contracts they signed within months of their termination.

While the Agents claim a litany of "bad acts" which they contend suggest a lack of good faith on the part of Farm Bureau, they have yet to show that Farm Bureau acted in a manner inconsistent with the contractual rights. Thus, the trial court properly entered summary judgment in favor of Farm Bureau.

#### **IV.**

#### **THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT ON THE CLAIMS OF UNJUST ENRICHMENT.**

The trial court entered summary judgment on the Fifth Cause of Action alleging "unjust enrichment" on the grounds that whatever right of recovery the Agents may have had was governed by the contract and that quasi-contractual theories would not apply where a written contract existed:

With respect to the Fifth Cause of Action for Unjust Enrichment, the Court grants Defendants' Motion for Summary Judgment as against all Plaintiffs

on the grounds that the Career Agent Contract governs the relationship between the parties.

R.560. (Order, p. 3). This finding was entirely consistent with this Court's holding that "recovery in quantum meruit typically presupposes that no enforceable written or oral contract exists." *Bailey-Allen Co. v. Kurzet*, 876 P.2d 421, 425 (Utah Ct. App. 1994). *See, also, Mann v. Utah Farm Bureau*, 586 P.2d 461, 465 (Utah 1978)("recovery in quasi contract is not available where there is an express contract covering the subject matter of the litigation.")

In response, the Agents rely upon two cases from the Iowa Supreme Court holding that a right to renewal commissions can be based upon quasi-contractual principles as well. *Preferred Marketing v. Hawkeye Nat. Life*. 452 N.W.2d 389, 394 (Iowa 1990); *Glass v. Minnesota Protective Life Ins. Co.*, 314 N.W.2d 393, 397 (Iowa 1982). In neither case did the Iowa Supreme Court explain how one party can be "unjustly enriched" when it is merely exercising the rights defined by the contract. Perhaps more importantly, the suggestion that a right to renewal commissions can arise from quantum meruit as opposed to express contract appears to have lost favor in Iowa. In 1994, the Iowa Supreme Court held:

The weight of authority clearly indicates that an independent insurance agent's right to renewal commissions must arise from a contract:

Generally an insurance agent is considered to have no vested right in commissions on renewal premiums, but rather his right to be paid such commissions must be based entirely upon the terms of his contract. . . .



16B J. Appelman, Insurance Law and Practice, § 9001, at 236 (1981). We adhered to this rule in *McPherrin v. Sun Life Assurance Company of Canda*, 219 Iowa 159, 257 N.W. 316 (1934), where we stated:

[The agent's] right to renewal commissions is in no sense a vested right. It is a contractual right and can be enforced only upon an affirmative showing by appellant that he has fulfilled and carried out the terms of the contract relied upon. . .

*Id.* at 160, 257 N.W. at 317, *accord Preferred Marketing Assoc. Co. v. Hawkeye Nat'l Life Ins. Co.*, 452 N.W.2d 389, 394 (Iowa 1990).

*Burke v. Hawkeye National Life Ins. Co.*, 474 N.W.2d 110, 113 (Iowa 1994)(ellipses and brackets in original).

The Iowa Supreme Court's view in *Burke* is certainly not only practical but fair. After all, where the parties have expressly agreed as to the rights, obligations and duties owed to one another, it would be truly unjust to then award a party a monetary judgment where that party expressly agreed in the contract that no such entitlement exists.

Whatever rights the Iowa Supreme Court felt existed in *Preferred Marketing* and *Glass* have not survived scrutiny and should not form the basis for a cause of action in Utah. The trial court properly determined that unjust enrichment was not a viable theory where a contract expressly defines the relationship between the parties.

## V.

### **THE TRIAL COURT'S ENTRY OF SUMMARY JUDGMENT ON CLAIMS FOR INTENTIONAL INTERFERENCE WITH ECONOMIC RELATIONS AND PUNITIVE DAMAGES SHOULD BE AFFIRMED.**

The Utah Supreme Court has held that “[i]t is the general rule in this forum that punitive damages cannot be awarded for a breach of contract unless the breach amounts

to an independent tort.” *Highland Constr. Co. v. Union Pacific R. Co.*, 683 P.2d 1042, 1049 (Utah 1984). The Court has also held that punitive damages are not available for a breach of the implied covenant of good faith and fair dealing:

The amount of a punitive damages award is not at issue in this appeal, however. Under *Beck*, punitive damages are not available. Allegations of a breach of the implied covenant of good faith and fair dealing owed first party insurers and their insured sound in contract, not tort.

*Canyon Country Store v. Bracey*, 781 P.2d 414, 423 (Utah 1989).

In this case, the only tort alleged was intentional interference with economic relations contained in the Fourth Cause of Action. This claim was dismissed by the trial court for two reasons: (1) any interference caused by the retention of the records and renewal commissions (“the books of business”) was proper under the terms of the contract, R.559. (Order p. 3); and (2) the Agents have not shown any damages relating to alleged misrepresentations made after the Agents were terminated, although the trial court granted an opportunity to present such evidence. R.565-66. (Ruling, p. 3-4).

The first basis for dismissal is discussed in more detail in Section I and supports affirming the trial court. With respect to the second ground for dismissal, the Agents have presented no argument or briefing as to why the trial court erred in dismissing the claim for intentional interference with economic relations. Consequently, such arguments should not be considered. *Burns v. Summerhays*, 927 P.2d 197, 199 (Utah Ct. App. 1996). Because the trial court properly granted summary judgment on the claim of intentional

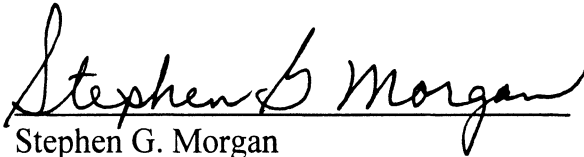
interference with prospective economic damages, the punitive damages claim fails as a matter of law.

### CONCLUSION

Based on the foregoing, Farm Bureau respectfully requests that the summary judgment entered by the trial court be affirmed.

DATED this 18 day of August, 2000.

MORGAN, MEYER & RICE

A handwritten signature in cursive script, reading "Stephen G. Morgan", written over a horizontal line.

Stephen G. Morgan

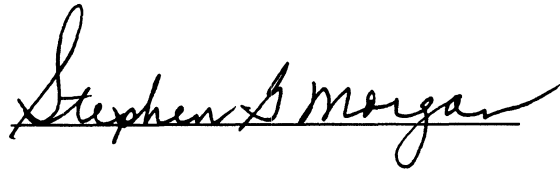
Joseph E. Minnock

Attorneys for Appellants/Defendants

## CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing document was mailed, postage prepaid, on this 18 day of August, 2000, to the following:

John E. Robson  
Robert A. Garda  
Todd C. Emerson  
FABIAN & CLENDENIN  
Twelfth Floor  
215 South State Street  
P.O. Box 510210  
Salt Lake City, UT 84151

A handwritten signature in black ink, reading "Stephen S. Morgan", written over a horizontal line.

Tab A

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR WEBER COUNTY, STATE OF UTAH

JAY L. WOOD, DARRELL K.  
TANNER, SCOTT A. STOKES  
and LEO SYPHUS,  
individuals,

Plaintiffs,

vs.

UTAH FARM BUREAU  
INSURANCE COMPANY, a Utah  
corporation, FARM BUREAU  
LIFE INSURANCE COMPANY,  
an Iowa corporation, and  
FBL INSURANCE COMPANY, an  
Iowa corporation,

Defendants.

CIVIL NO. 970906166CV

DEPOSITION OF:  
JAY L. WOOD

Held March 5, 1998

REPORTED BY:  
RENEE L. STACY, CSR, RPR

COPY

Deposition of JAY L. WOOD, taken on behalf of  
the Defendants, at Eighth Floor, Kearns Building, 136  
South Main Street, Salt Lake City, Utah, commencing  
at 9:00 a.m. on March 5, 1998, before RENEE L. STACY,  
Certified Shorthand Reporter, Registered Professional  
Reporter and Notary Public in and for the State of  
Utah, pursuant to Notice.

**Depomax**

REPORTING SERVICES, LLC

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SALT LAKE CITY UTAH 84101  
(801) 328-1188 1-800-DEPOMAX  
FAX 328-1189



1           Q     Now, when you initially joined Utah Farm  
2 Bureau were you given any accounts to service?

3           A     My first check -- we didn't have any  
4 guaranteed contracts back then. My first check after  
5 a month -- I'll never forget it. I handed it to my  
6 wife in an envelope and she opened it, and after a  
7 month's work, my first check totalled \$58, and she  
8 stood there crying. I'll never forget the tears.  
9 And she said, "Why don't you get a real job," you  
10 know. And, of course, for 28 years we continually  
11 improved on that and I never heard her complain  
12 again, you know. But no, we didn't have guaranteed  
13 contracts.

14          Q     Well, I meant during your period while you  
15 were with Utah Farm Bureau, did you ever get assigned  
16 accounts?

17          A     There were some given to me, but not like  
18 the agents that came later. You know, they'd assign  
19 them a pretty good book of business, but that was  
20 never the case with myself.

21          Q     Do you know what the total value that had  
22 been assigned to you over the years was?

23          A     It couldn't have been very large because --  
24 you know, my next month's check, because a lot of the  
25 policies had issued, was 300. Okay? I'd have no

1 idea of estimating, but they'd give me some if  
2 someone wasn't being serviced by another agent or  
3 something like that, rather than just have somebody  
4 out there in limbo, but no, they never give me a  
5 considerable book of business, no.

6 Q Okay. In 1991, were you assigned one-third  
7 of the unassigned accounts in Weber County?

8 A For a time period, because they had  
9 nobody -- I'm talking about John Thigpen here. He  
10 made us an offer. We had a bunch of business that  
11 wasn't assigned, and if we was to take it, we could  
12 have it for a certain period of time if we serviced  
13 it, and that -- yes, we did service that.

14 Q How long did you have those accounts?

15 A I don't know. It was a year, maybe. Six  
16 months to a year, I imagine. They took them back,  
17 you know.

18 Q And do you know approximately what the  
19 value of those one-third of accounts were?

20 A No, I don't have an amount. In fact, they  
21 just transferred them and we serviced them and they  
22 took them back.

23 Q Okay. And was it your understanding that  
24 you were receiving the renewal commissions off of  
25 those accounts?



1           A     Yes.  If we serviced them, which we did,  
2     you know.

3           Q     What was involved in servicing them?

4           A     Well, you'd have to contact them.  You  
5     know, there were fact finders.  Review their account,  
6     you know, this type of thing.

7           Q     And see if their insurance was up to date?

8           A     And, of course, approach them for  
9     additional business, you know.

10          Q     And were you designated as their agent if  
11     they needed to call somebody to make a claim?  Was  
12     that part of servicing?

13          A     Right.  They would call us.  We were  
14     definitely responsible for giving them the service  
15     needed.  We understood it was just on a temporary  
16     basis.  I don't know all the days details, but --

17          Q     Okay.  Do you recall your first meeting  
18     with Darrin Ivie when he was introduced to you?

19          A     Well, all I can remember is he came down  
20     from Logan as an assistant manager to be our manager,  
21     but as far as the first meeting, I don't remember,  
22     no.  I think he'd been an agent prior to that over in  
23     Heber City which is where he was from.

24          Q     Was it your understanding that the terms of  
25     his agency manager position was he wasn't allowed to

Tab B

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR WEBER COUNTY, STATE OF UTAH

JAY L. WOOD, DARRELL K.  
TANNER, SCOTT A. STOKES  
and LEO SYPHUS,  
individuals,

Plaintiffs,

vs.

UTAH FARM BUREAU  
INSURANCE COMPANY, a Utah  
corporation, FARM BUREAU  
LIFE INSURANCE COMPANY,  
an Iowa corporation, and  
FBL INSURANCE COMPANY, an  
Iowa corporation,

Defendants.

CIVIL NO: 970906166CV

DEPOSITION OF:  
DARRELL K. TANNER

Held March 4, 1998

REPORTED BY:  
RENEE L. STACY, CSR, RPR

COPY

Deposition of DARRELL K. TANNER, taken on behalf  
of the Defendants, at Eighth Floor, - Kearns Building,  
136 South Main Street, Salt Lake City, Utah,  
commencing at 9:05 a.m. on March 4, 1998, before  
RENEE L. STACY, Certified Shorthand Reporter,  
Registered Professional Reporter and Notary Public in  
and for the State of Utah, pursuant to Notice.

**Depomax**<sup>SM</sup>

REPORTING SERVICES, LLC

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SALT LAKE CITY, UTAH 84101  
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Fax 328-1189



1 for Farm Bureau, were there times where you were  
2 assigned either unassigned accounts or accounts that  
3 were assigned to other agents that were transferred  
4 to you to service?

5 A Yes.

6 Q Do you know the approximate annualized  
7 premiums of those accounts?

8 A No.

9 Q How many occasions did you get accounts  
10 transferred to you that have been either unassigned  
11 or with another agent?

12 A Three, as I recall.

13 Q Three? When was the first time?

14 A In my first year, within about three  
15 months.

16 Q Okay. Do you know approximately how many  
17 accounts you were assigned?

18 A If I recall, it was about \$80,000 worth.

19 Q And did that encompass property/casualty  
20 and life accounts?

21 A Yes.

22 Q And what was the reason that they were  
23 transferred to you?

24 MR. GARDA: Objection. Foundation. Go  
25 ahead and answer.

1           A     Carl Gallup.

2           Q     And was this at the point he became agency  
3 manager and you went back to being an agent?

4           A     That's correct.

5           Q     Okay. Did you ever have occasion to  
6 actually assign an account that had been with one  
7 agent in the Weber agency to another agent in the  
8 Weber agency?

9           A     While both agents were still there?

10          Q     Yeah.

11          A     Only upon the request of a client.

12          Q     Okay. And do you know about how many times  
13 that occurred?

14          A     I don't. Infrequent.

15          Q     Did you have occasion to reassign accounts  
16 when an agent left while you were agency manager?

17          A     I don't recall.

18          Q     Now, as I understand it, when these  
19 accounts were assigned to you on these three  
20 occasions, you received the renewal commissions?

21          A     That's correct.

22          Q     And was part of your responsibility to  
23 contact the Farm Bureau member who had these accounts  
24 to try to sell them new business relating to other  
25 risks?

Tab C

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR WEBER COUNTY, STATE OF UTAH

JAY L. WOOD, DARRELL K.  
TANNER, SCOTT A. STOKES  
and LEO SYPHUS,  
individuals,

Plaintiffs,

vs.

UTAH FARM BUREAU  
INSURANCE COMPANY, a Utah  
corporation, FARM BUREAU  
LIFE INSURANCE COMPANY,  
an Iowa corporation, and  
FBL INSURANCE COMPANY, an  
Iowa corporation,

Defendants.

CIVIL NO. 970906166CV

DEPOSITION OF:  
SCOTT A. STOKES

Held March 4, 1998

REPORTED BY:  
RENEE L. STACY, CSR, RPR

COPY

Deposition of SCOTT A. STOKES, taken on behalf  
of the Defendants, at Eighth Floor, Kearns Building,  
136 South Main Street, Salt Lake City, Utah,  
commencing at 1:00 p.m. on March 4, 1998, before  
RENEE L. STACY, Certified Shorthand Reporter,  
Registered Professional Reporter and Notary Public in  
and for the State of Utah, pursuant to Notice.

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Fax 323-1189



1           A     I guess I misheard the question. Those  
2 were the agents when I left.

3           Q     Oh. Who were the agents there when you  
4 started?

5           A     Okay. Galen Bills, Rick Nelson, John  
6 Uscilka, Betty Armstrong, Jim Contos. I believe  
7 that's all.

8           Q     Now, when you joined Utah Farm Bureau, were  
9 you assigned any accounts to service?

10          A     When I first joined them, I was not.

11          Q     During the period you were an agent for  
12 Utah Farm Bureau, were you assigned --

13          A     I was assigned a small block of business  
14 from when Mike Stokes terminated. He's no relation  
15 to myself.

16          Q     Oh, okay. Do you know when that was?

17          A     I would say it was within the first year.

18          Q     And do you know what the -- how many  
19 policies that was or what the approximate premium  
20 that was?

21          A     I would guestimate the book value under  
22 10,000.

23          Q     Okay. Do you know of any other instances  
24 where you were assigned accounts that had been with  
25 other agents?



1 he says, "It's got to be issued by June." "Okay."  
2 You know, "We'll get it in there." And if it's not  
3 by June -- I mean, he flat told me, he said, "It's  
4 going to take me nine months to twelve months to even  
5 get around to hiring anybody to replace you," you  
6 know, "so you've got plenty of time to get out there  
7 and write your business." "Okay. I will. I'll get  
8 out there and do it."

9 Q Now, I mean, it looks like when you read  
10 through this letter -- tell me if I'm wrong, but this  
11 letter suggests to me that he is telling you, if you  
12 don't meet these goals, I'll terminate you. Isn't  
13 that what that letter says?

14 MR. GARDA: Objection. Document speaks for  
15 itself. Go ahead and answer.

16 Q (BY MR. MINNOCK) Well, was that your  
17 understanding, is that he was telling you, if you do  
18 not meet these goals, he would termination you?

19 A That's what it looks like.

20 Q Did he ever tell you, if you do meet the  
21 goals I'm not going to terminate you ever?

22 A If I meet these goals? No. He said I'd  
23 have goals every year.

24 Q But he never told you, I won't terminate  
25 you if you meet these goals? As long as you meet

Tab D

IN THE SECOND JUDICIAL DISTRICT COURT  
IN AND FOR WEBER COUNTY, STATE OF UTAH

JAY L. WOOD, DARRELL K.  
TANNER, SCOTT A. STOKES  
and LEO SYPHUS,  
individuals,

Plaintiffs,

vs.

UTAH FARM BUREAU  
INSURANCE COMPANY, a Utah  
corporation, FARM BUREAU  
LIFE INSURANCE COMPANY,  
an Iowa corporation, and  
FBL INSURANCE COMPANY, an  
Iowa corporation,

Defendants.

CIVIL NO. 970906166CV

DEPOSITION OF:  
LEO SYPHUS

Held March 5, - 1998

REPORTED BY:  
RENEE L. STACY, CSR, RPR

COPY

Deposition of LEO SYPHUS, taken on behalf of the  
Defendants, at 215 South State Street, 12th Floor,  
Salt Lake City, Utah, commencing at 2:05 p.m. on  
March 5, 1998, before RENEE L. STACY, Certified  
Shorthand Reporter, Registered Professional Reporter  
and Notary Public in and for the State of Utah,  
pursuant to Notice.

**Depomax**<sup>SM</sup>

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1           A     I guess Errol Nelson, and I'm not even sure  
2 of that.

3           Q     How many offices did the Davis County area  
4 have for Utah Farm Bureau?

5           A     They had two.

6           Q     One was yours?

7           A     Uh-huh.

8           Q     And where was the other one located?

9           A     Another one was over in Layton.

10          Q     Now, during the time that you were an agent  
11 with Utah Farm Bureau, were you assigned accounts  
12 that had been previously serviced by other agents?

13          A     Yes. Some life insurance accounts, and  
14 when this whole group of guys quit, 25 agents all at  
15 once, why, that really, you know, hurt the company,  
16 and so, as an incentive to try to get as many of us  
17 agents to stay with the company as they could, Gene  
18 Carroll told us that he would assign all the life  
19 policies in each area to the agent there to give them  
20 an incentive to stay with the company, which he did,  
21 and then -- oh, I think we got renewals on them for  
22 -- it didn't amount to much, but maybe we got  
23 renewals on them for about a year, year-and-a-half,  
24 and then they took those away from us.

25          Q     Okay. Were there other times in which you

1 were given accounts that had previously been with  
2 other agents?

3 A No.

4 Q Now, your daughter Karen, she left Utah  
5 Farm Bureau at some point, right?

6 A Yes.

7 Q And were those accounts assigned to you?

8 A Yes.

9 Q Okay. Do you know what the annualized  
10 premium of those policies was?

11 A I wouldn't -- and this is a wild guess.  
12 I'd say maybe 100,000, at the most.

13 Q Did you have to pay anything for those  
14 accounts?

15 A No.

16 Q Did Karen receive any payments?

17 A No.

18 Q For transferring those?

19 A No.

20 Q Why did she stop being an agent?

21 A She was just unhappy with Farm Bureau and  
22 the way things were going, until she got her job up  
23 to Hill field.

24 Q Now, I understand at another time your wife  
25 was an agent.

1           A     Yes.

2           Q     Now, let me just -- you had a first wife  
3           you mentioned you divorced?

4           A     Yes.

5           Q     What was her name?

6           A     Irma.

7           Q     Irma? And this second -- or this other  
8           wife -- how many times have you been married?  
9           Twice?

10          A     Seven.

11          Q     Seven? Okay. Well, what was the name of  
12          the agent who worked with you in the business?

13          A     Well, I told you there was Errol Nelson,  
14          Allen Stephens, Karen --

15          Q     No, no. What was the name of your wife?

16          A     Arlene.

17          Q     Arlene. Okay. And she was the one that  
18          worked at Hill Field?

19          A     Yes.

20          Q     Okay.

21          A     And then she quit there and --

22          Q     Now, did Arlene have her own agent number?

23          A     No.

24          Q     There was never a point she had her own  
25          agent number?

1           A     Well, later on when they -- at first they  
2     told us that everything -- it was written in my  
3     number, which was 114, and they said that anything  
4     that she wrote would have my number on it, and no  
5     matter if she quit or anything, the business she  
6     wrote would remain in my office.

7           Q     Did she ultimately get her own number?

8           A     I think eventually, and that was when  
9     she -- just before she quit. And they -- like I say,  
10    they promised us that it would stay in my office, and  
11    then they took it. And there was a lot of  
12    correspondence in there back and forth between her  
13    and the manager of the company over the fact that  
14    they took all of the business she had written away  
15    from me.

16          Q     Now, when you say they took the business  
17    she had written, the business she had written under  
18    her own number or under your number?

19          A     Under my number.

20          Q     Under your number?

21          A     Uh-huh.

22          Q     Well, how would they know who wrote the  
23    policy if it was under your number?

24          A     Well, just common knowledge. We'd know who  
25    it was.

1           Q     Well, I mean, how would Utah Farm Bureau be  
2     able to tell on their files or computers that this  
3     one was written by your wife and this one was written  
4     by you when they both have the same number?

5           A     That I don't know, but they must have kept  
6     them separate, I mean, where they knew which was  
7     which, and they just kept those.

8           Q     Do you know what they did with them?

9           A     I think then Errol Nelson left my office,  
10    and he was assigned as an area manager, and I don't  
11    know who he gave them to or assigned them to.

12          Q     Okay. Now, were there any other periods  
13    where you were given either unassigned accounts or  
14    accounts that were assigned to other agents?

15          A     No.

16          Q     Did you periodically receive accounts, like  
17    on a single basis, like, "Here's another account I  
18    want you to service, Leo"?

19          A     No. I -- pardon me.

20          Q     Were you finished with your answer?

21          A     Well, I was going to elaborate, but I  
22    decided against it.

23          Q     Okay. Now, as I understand it, you had a  
24    dispute with Utah Farm Bureau a year or so before  
25    your termination.



1           A     I couldn't say for sure.

2           Q     Can you look through this set of printouts  
3 and tell me whether any of those policies were life?

4           MR. GARDA:  Objection.  Foundation.  But go  
5 ahead and answer the question.

6           THE WITNESS:  It seemed like there was one  
7 there Yukio Miya, a Japanese.  We were working on a  
8 life policy for his family.  It was quite a large  
9 one.  And then -- let's see.  That was on 9-8.  And  
10 then I had Walt Warneka with me, and then just the  
11 next day he backed out on it.

12          Q     (BY MR. MINNOCK)  Well, I mean, did you  
13 disagree -- on the front page Byron has written,  
14 "Leo, need life, \$3,164.  Need property and casualty,  
15 \$5,015.  Reviews needed, 55."  Do you have any reason  
16 to dispute that that's the amount that you still  
17 needed to meet the goals set forth in the June 30th  
18 letter?

19          MR. GARDA:  Objection.  Foundation.  But go  
20 ahead and answer, Leo.

21          THE WITNESS:  They had us doing these  
22 review sheets, you know, concerning their whole  
23 insurance, like an annual fact finder, and as I  
24 recall, I had about 85 to 90 of those signed, and as  
25 I'd go around the community or through farm areas,

1        why, if I'd see one of my insureds, I'd stop and say,  
2        "I've got to do this," and I'd say, "Just sign this  
3        and I'll take it back to the office and fill in the  
4        rest of the information on your insurance." And so I  
5        don't know what happened to it, but I figured I had  
6        around 85 or 90 of them. And that would be in 60  
7        days.

8                Q        (BY MR. MINNOCK) Well, and you needed 130,  
9        according to the letter?

10              A        Yeah.

11              Q        So you were still 40 short? Forty to 50  
12       short?

13              A        Yeah.

14              Q        Okay. Would you agree with me that you  
15       were not on pace to make your life goal?

16              A        Well, that one big life -- if I got that,  
17       that would have made a lot of it, but I don't even  
18       remember any of the details on that.

19              Q        Do you know what the face amount of that  
20       was going to be?

21              A        No.

22              Q        Now, were you on track to make your  
23       property and casualty?

24              A        Oh, I think I was always ahead on that.

25              Q        Well, he says you still need 5,015 as of

1 sent you on June the 30th of 1994. "Knowing these  
2 requirements and expectations to be necessary, if  
3 they are not met, retirement or career contract  
4 termination will be the alternative as of 9-30-94."

5 A Yes.

6 Q And your contract was terminated as of  
7 September 30th, 1994?

8 A Yes.

9 Q Right?

10 A Yes. That letter was written three weeks  
11 before that.

12 Q Did you sell any insurance between  
13 September the 12th and September the 30th of 1994?

14 A I couldn't remember.

15 Q Did any of those life policies come in that  
16 you mentioned were possibles?

17 A I sold some life insurance during that  
18 period of time, but I couldn't name them without  
19 seeing the files or records.

20 Q Do you know whether you met your goal,  
21 which was set out in the June 30th, 1994 letter, of  
22 getting \$330 per week in life?

23 A No.

24 Q Did you make it?

25 A No.

1           Q     You didn't make it?

2           A     No.

3           Q     Okay. Did you make it on property and  
4 casualty?

5           A     I can't remember.

6           Q     Okay. Well, I mean, based on that, what is  
7 it that you contend Utah Farm Bureau did wrong in  
8 terminating you?

9           A     Well, in addition to the income I lost and  
10 then that promised office expense I lost, and then I  
11 think the way it hurt me the worst is my reputation.

12          Q     All right. Well, we'll talk about all that  
13 in a minute. I'm just asking, according to this --  
14 why don't you turn to Exhibit A under No. 1, to this  
15 career agent contract. And on page three under  
16 Termination, it says, "This contract may be  
17 terminated by Companies or career agent at any time,  
18 with or without cause, by giving notice of  
19 termination in writing to the other party."

20          A     Uh-huh.

21          Q     "Notice of termination need not include the  
22 reason or reasons, if any, for such termination." Is  
23 that right?

24          A     Yeah.

25          Q     Now, you allege in your complaint and your

Tab E

**UTAH FARM BUREAU INSURANCE COMPANY  
FARM BUREAU LIFE INSURANCE COMPANY  
FBL INSURANCE COMPANY**

**EXHIBIT**

1  
Wood

**CAREER AGENT CONTRACT**

THIS CONTRACT, made and entered into by and between Jay L. Wood,  
of Ogden, UT; hereinafter referred  
to as "Career Agent," and UTAH FARM BUREAU INSURANCE COMPANY, a Utah corporation with its principal place of business at  
5300 S 360 West, Salt Lake City, Salt Lake County, Utah; FARM BUREAU LIFE INSURANCE COMPANY, and FBL INSURANCE  
COMPANY, Iowa corporations with their principal place of business at 5400 University Avenue, West Des Moines, Polk County, Iowa,  
hereinafter collectively referred to as "Companies."

NOW, THEREFORE, in consideration of the mutual obligations, covenants and agreements contained herein, to be kept and  
performed by the parties hereto, it is agreed as follows:

**1. EFFECTIVE DATE OF CONTRACT.** This Contract will become effective on the 1 day of January, 19 94 and  
will remain in full force and effect until cancelled or terminated as provided herein.

**2. AGENCY.** The Agency will be comprised of the Agency Manager, an Assistant Agency Manager, if one has been assigned,  
together with all Financed Career Agents and Career Agents for whom the Agency Manager has approved appointment as evidenced  
by Agency Manager's endorsement on the Financed Career Agent's and Career Agent's Contracts.

**3. CAREER AGENT'S AUTHORITY.** Companies hereby authorize Career Agent to solicit applications on behalf of Companies for  
any and all insurance policies, insurance contracts, and annuities, written or sold by or through Companies, provided that Agent is at all  
times properly licensed as required by any federal or state law or governmental authority.

Career Agent shall not make, alter, or discharge any contracts for the Companies; waive any forfeitures; name special rates;  
guarantee dividends in excess of those provided for in a policy; waive payment in cash; extend the time of payment of any premium;  
accept payment of any past-due premium; extend any credit; or approve evidence of good health.

All applications for insurance and annuities are subject to acceptance or rejection by the Companies. Career Agent shall not incur  
any indebtedness or liability on behalf of the Companies in any manner whatsoever.

Career Agent may not bind the Companies on his own behalf. On an application for insurance written by Career Agent covering a  
risk on his own property or on property in which he has a vested interest, coverage will be in effect on the date the application is  
countersigned and dated by Agency Manager or in the event Career Agent has no Agency Manager, then coverage will be in effect on  
the date application is received in the company's Home Office or earlier if verbal approval is given by telephone by a company Home  
Office Underwriter responsible for the line of insurance being applied for.

Career Agent shall exercise the authority given him under this Contract within the territory of the Agency designated in paragraph  
17. This territory is not assigned exclusively to Career Agent.

Applications for the purchase of flexible or fixed premium variable life insurance policies or annuities shall be solicited only within  
the territory in which such policies or annuities are qualified for sale and in which the Companies and the Career Agent are authorized  
to do business in accordance with licensing requirements and other applicable laws and regulations. Applications for the purchase of  
flexible or fixed premium variable life insurance policies or annuities will be accepted only by the Companies at their Home Office in West  
Des Moines, Iowa.

**4. INDEPENDENT CONTRACTOR.** It is the intent of the parties hereto that for all purposes and in all situations governed by the  
provisions of this agreement, Career Agent will be, and is hereby declared to be, an independent contractor and not an employee, and  
that the relationship between Career Agent and Companies created by this agreement, will be governed by those rules of law governing  
the status of and relationships with independent contractors and not those rules of law governing employer-employee relations.  
Accordingly, Career Agent has the right to control the activities and means by which the provisions of this agreement are carried out, the  
right to exercise independent judgment as to the persons from whom applications for insurance policies will be solicited, and the right to  
determine the time, place, and manner of soliciting and servicing policyholders of the Companies.

If training courses, sales methods and material or similar aids and services are extended or made available to the Agent, it is agreed  
that the purpose and effect thereof will not be to give the Company control over the Agent's time or direction or control over the manner  
or means by which he will conduct his business, but only to assist the Agent in his business.

**5. CAREER AGENT'S RESPONSIBILITIES.** Career Agent agrees to comply with the Companies' rules and regulations pertaining to the policies and products covered by this Contract, provided, however, that such rules and regulations will not interfere with Career Agent's status as an independent contractor as described in paragraph 4 above.

(a) **SERVICE.** Career Agent agrees to use Career Agent's best efforts to provide service to Companies' policyholders and Fair Bureau members consistent with Companies' "Service to members" philosophy and to maintain in force any business placed with Companies. Career Agent further agrees to become fully informed as to the provisions and benefits of each product offered by Companies for which Career Agent is authorized to solicit applications and to represent such products adequately and fairly to policyholders and prospective policyholders.

(b) **ACCOUNTS AND RECORDS.** Career Agent shall keep accurate accounts and records of all business transactions including, without limitation, account service records, which will be open at all times to inspection and examination by authorized representatives of Companies. All accounts, account records, policyholder files, policyholder lists, rate books or manuals, applications and other forms, and all other records in Career Agent's possession pertaining to Companies' business will be the property of Companies and will be returned to Companies upon demand.

(c) **PREMIUM TRANSMITTAL.** Career Agent agrees that all cash, checks, or funds in any form, received by Career Agent for or on behalf of Companies will be held in trust for Companies, and Career Agent shall transmit to Companies immediately upon receipt all applications solicited and all monies received in connection therewith.

(d) **EXPENSES.** Career Agent agrees to pay all expenses incurred by Career Agent in the performance of this Contract including, but not limited to, expenses for office space, secretarial help, and telephone facilities.

(e) **ASSIGNMENT OF COMMISSIONS.** Career Agent agrees not to assign this Contract or any commission or other compensation payable under it without the prior written consent of Companies, and no such assignment will be effective without such consent.

(f) **BOND.** Career Agent shall apply for and be accepted as a participant in the Blanket Position Bond furnished by the Companies.

## **6. LIFE, DISABILITY INCOME, AND ANNUITY COMMISSIONS.**

(a) **LIFE, DISABILITY INCOME, AND ANNUITY COMMISSIONS.** First-year commissions will be paid to Career Agent on all first-year life insurance, disability income insurance, and annuity premium received and retained by the Companies on issued and paid-for business produced personally by the Career Agent in accordance with the Career Agent Life, Disability Income, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

(b) **MINIMUM POLICY.** No first-year commissions will be paid or premium credit allowed on any new life insurance policy with a face amount of less than \$5,000 except new life insurance on the Childrens Term Policy.

(c) **RENEWAL COMMISSIONS.** Renewal commissions on life insurance, disability income, and annuity premium (other than first-year premium) received and retained by the Companies will be paid according to the rules and at the rates set forth in the Career Agent Life, Disability Income, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

Renewal commissions will be paid to the Career Agent who personally produced the policy until (1) that Career Agent's contract with the Companies is terminated, or (2) the policy on which the renewal commission is payable is assigned to another Career Agent, whichever occurs first.

(d) **PRODUCTIVITY/PERSISTENCY COMMISSION BONUS.** A monthly commission bonus will be paid to qualifying Career Agents in accordance with the terms of the Life Production and Persistency Bonus Schedule in effect on the effective date of this contract or as amended by Companies from time to time hereafter.

(e) **BENEFIT BONUS.** A monthly benefit bonus will be paid to qualifying Career Agents in accordance with the terms of the Benefit Bonus Schedule in effect in the month for which the bonus is payable.

(f) **COMMISSIONS.** Commissions on flexible or fixed premium variable life insurance policies or annuities can only be paid or credited to a Career Agent who is supervised by, and a registered representative of, a broker/dealer affiliated with Companies or a registered representative of a broker/dealer who has a sales agreement with a broker/dealer affiliated with Companies, and who holds any required state licenses when the sale is made and when each premium is paid.

(g) **LIFE PREMIUMS.** For the purpose of all commission payments, "Premiums" shall not include premiums collected for Temporary Flat Extra Premiums.

## **7. PROPERTY AND CASUALTY COMMISSIONS.**

(a) **PROPERTY AND CASUALTY NEW BUSINESS COMMISSIONS.** New business commission will be paid to Career Agent on the first term premium on property and casualty insurance issued and paid-for business produced personally by the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(b) **PROPERTY AND CASUALTY RENEWAL COMMISSIONS.** Renewal commissions will be paid to Career Agent while this agreement is in force, on property and casualty premiums received and retained after the first term of the policy on all accounts assigned to the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(c) **LOSS RATIO ADJUSTMENT.** The commission rates otherwise payable under the Career Agent Property and Casualty Commission Schedule may be increased or decreased based on Career Agent's individual Loss Ratio in accordance with the Loss Ratio Schedule in effect at the time such commissions are payable.

(d) **ASSIGNED RISK PLANS.** Any policy issued by the company on the assigned risk plan or automobile insurance plan of any state will be excluded from all the terms and provisions of this agreement.

**8. ASSIGNMENT OF ACCOUNTS.** Upon cancellation of this Contract, or termination or transfer of the Career Agent to another agency, or in any case to better serve an account, credit for renewal commissions and the responsibility for servicing the account may be assigned to another agent. It will be the responsibility of the Career Agent to maintain service records as required by the Companies on each of Career Agent's assigned accounts. The Companies reserve the right to review at least annually the account service records maintained by the Career Agent. If the Companies in their sole discretion determine that satisfactory service has not been given to an account, Companies reserve the right to withdraw the account from the Career Agent for purposes of renewal commissions and service responsibility.

9. **REFUNDS AND CREDITS.** Commissions will be earned and production credit given when premium is received and retained by the Companies and when credited on Companies' books. Commissions will be recovered and production credit reversed should Companies for any reason fail to retain any premium or consideration on any policy or contract.

10. **RESERVED RIGHT.** Companies reserve the right to amend existing rules and procedures and to adopt new rules and procedures relating to the solicitation and sale by Career Agent of any of Companies' existing or future products or policies and to change the production credit given and the commissions, bonuses, and other compensation payable to Career Agent with respect to any or all such products or policies.

11. **TERMINATION.** This Contract may be terminated by Companies or Career Agent at any time, with or without cause, by giving notice of termination, in writing, to the other party. Notice of Termination need not include the reason or reasons, if any, for such termination.

Career Agent acknowledges that Companies have not, either expressly or otherwise, agreed to continue the term of this Contract for any definite period of time.

This Contract will terminate automatically, without Notice of Termination, upon Career Agent's death.

12. **LIEN PROVISION.** Companies will be entitled to a first lien on any payment due or hereafter becoming due Career Agent under this Contract in an amount equal to any current or future indebtedness of Career Agent to Companies, their subsidiaries or affiliates. Career Agent authorizes Companies to deduct the amount of any such indebtedness from any payment otherwise due Career Agent and to pay such amount on behalf of Career Agent to the Company entitled thereto.

13. **SOLE AGREEMENT.** This Contract constitutes the sole agreement and supersedes all prior contracts between the parties hereto, but this Contract will not impair the Agent's right to commissions or fees, if any, earned under a prior contract or contracts with the Companies.

14. **MODIFICATION OR AMENDMENT.** Any modification or amendment of this Contract must be in writing and duly executed by the parties hereto; provided, however, that the Companies may by written notice unilaterally amend any Schedule or Supplement referred to in this Contract to affect policies to be issued or commissions earned after the date of the amendment.

15. **WAIVERS.** No act of forbearance on the part of the Companies to enforce any of the provisions of this Contract will be construed as a modification of this Contract, nor will the failure of either party to exercise any right or privilege herein granted be considered as a waiver of such right or privilege.

16. **GENDER AND NUMBER.** Any reference in this Contract to the masculine gender will include the feminine gender as applicable. References to the singular will include the plural where appropriate, and vice versa.

17. **AGENCY WILL BE DESIGNATED AS** Weber Agency

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the date set opposite their signatures.

Date of Signing 3-17-94

By   
Authorized Representative of Companies

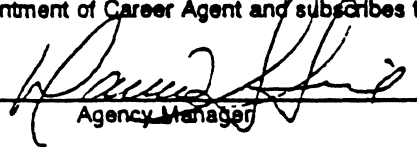
Utah Farm Bureau Insurance Company  
Farm Bureau Life Insurance Company  
FBL Insurance Company

Date of Signing 2/22/94

 133  
Signature of Career Agent Agent No.

The undersigned, as Agency Manager, hereby approves the appointment of Career Agent and subscribes to the provisions of the foregoing agreement affecting the undersigned.

Date 2/22/94

  
Agency Manager



Tab F

**UTAH FARM BUREAU INSURANCE COMPANY  
FARM BUREAU LIFE INSURANCE COMPANY  
FBL INSURANCE COMPANY**

**EXHIBIT**

1  
Stokes

**CAREER AGENT CONTRACT**

THIS CONTRACT, made and entered into by and between Scott Stokes  
of Ogden, UT; hereinafter referred  
to as "Career Agent," and UTAH FARM BUREAU INSURANCE COMPANY, a Utah corporation with its principal place of business at  
5300 S 360 West, Salt Lake City, Salt Lake County, Utah; FARM BUREAU LIFE INSURANCE COMPANY, and FBL INSURANCE  
COMPANY, Iowa corporations with their principal place of business at 5400 University Avenue, West Des Moines, Polk County, Iowa,  
hereinafter collectively referred to as "Companies."

NOW, THEREFORE, in consideration of the mutual obligations, covenants and agreements contained herein, to be kept and  
performed by the parties hereto, it is agreed as follows:

1. **EFFECTIVE DATE OF CONTRACT.** This Contract will become effective on the 1 day of January, 1994 and  
will remain in full force and effect until cancelled or terminated as provided herein.

2. **AGENCY.** The Agency will be comprised of the Agency Manager, an Assistant Agency Manager, if one has been assigned,  
together with all Financed Career Agents and Career Agents for whom the Agency Manager has approved appointment as evidenced  
by Agency Manager's endorsement on the Financed Career Agent's and Career Agent's Contracts.

3. **CAREER AGENT'S AUTHORITY.** Companies hereby authorize Career Agent to solicit applications on behalf of Companies for  
and all insurance policies, insurance contracts, and annuities, written or sold by or through Companies, provided that Agent is at all  
times properly licensed as required by any federal or state law or governmental authority.

Career Agent shall not make, alter, or discharge any contracts for the Companies; waive any forfeitures; name special rates;  
guarantee dividends in excess of those provided for in a policy; waive payment in cash; extend the time of payment of any premium;  
accept payment of any past-due premium; extend any credit; or approve evidence of good health.

All applications for insurance and annuities are subject to acceptance or rejection by the Companies. Career Agent shall not incur  
any indebtedness or liability on behalf of the Companies in any manner whatsoever.

Career Agent may not bind the Companies on his own behalf. On an application for insurance written by Career Agent covering a  
risk on his own property or on property in which he has a vested interest, coverage will be in effect on the date the application is  
countersigned and dated by Agency Manager or in the event Career Agent has no Agency Manager, then coverage will be in effect on  
the date application is received in the company's Home Office or earlier if verbal approval is given by telephone by a company Home  
Office Underwriter responsible for the line of insurance being applied for.

Career Agent shall exercise the authority given him under this Contract within the territory of the Agency designated in paragraph  
17. This territory is not assigned exclusively to Career Agent.

Applications for the purchase of flexible or fixed premium variable life insurance policies or annuities shall be solicited only within  
the territory in which such policies or annuities are qualified for sale and in which the Companies and the Career Agent are authorized  
to do business in accordance with licensing requirements and other applicable laws and regulations. Applications for the purchase of  
flexible or fixed premium variable life insurance policies or annuities will be accepted only by the Companies at their Home Office in West  
Des Moines, Iowa.

4. **INDEPENDENT CONTRACTOR.** It is the intent of the parties hereto that for all purposes and in all situations governed by the  
provisions of this agreement, Career Agent will be, and is hereby declared to be, an independent contractor and not an employee, and  
that the relationship between Career Agent and Companies created by this agreement, will be governed by those rules of law governing  
the status of and relationships with independent contractors and not those rules of law governing employer-employee relations.  
Accordingly, Career Agent has the right to control the activities and means by which the provisions of this agreement are carried out, the  
right to exercise independent judgment as to the persons from whom applications for insurance policies will be solicited, and the right to  
determine the time, place, and manner of soliciting and servicing policyholders of the Companies.

If training courses, sales methods and material or similar aids and services are extended or made available to the Agent, it is agreed  
that the purpose and effect thereof will not be to give the Company control over the Agent's time or direction or control over the manner  
or means by which he will conduct his business, but only to assist the Agent in his business.

**5. CAREER AGENT'S RESPONSIBILITIES.** Career Agent agrees to comply with the Companies' rules and regulations pertaining to the policies and products covered by this Contract, provided, however, that such rules and regulations will not interfere with Career Agent's status as an independent contractor as described in paragraph 4 above.

(a) **SERVICE.** Career Agent agrees to use Career Agent's best efforts to provide service to Companies' policyholders and Field Bureau members consistent with Companies' "Service to members" philosophy and to maintain in force any business placed with Companies. Career Agent further agrees to become fully informed as to the provisions and benefits of each product offered by Companies for which Career Agent is authorized to solicit applications and to represent such products adequately and fairly to policyholders and prospective policyholders.

(b) **ACCOUNTS AND RECORDS.** Career Agent shall keep accurate accounts and records of all business transactions including, without limitation, account service records, which will be open at all times to inspection and examination by authorized representatives of Companies. All accounts, account records, policyholder files, policyholder lists, rate books or manuals, applications and other forms, and all other records in Career Agent's possession pertaining to Companies' business will be the property of Companies and will be returned to Companies upon demand.

(c) **PREMIUM TRANSMITTAL.** Career Agent agrees that all cash, checks, or funds in any form, received by Career Agent for or on behalf of Companies, will be held in trust for Companies, and Career Agent shall transmit to Companies immediately upon receipt all applications solicited and all monies received in connection therewith.

(d) **EXPENSES.** Career Agent agrees to pay all expenses incurred by Career Agent in the performance of this Contract including, but not limited to, expenses for office space, secretarial help, and telephone facilities.

(e) **ASSIGNMENT OF COMMISSIONS.** Career Agent agrees not to assign this Contract or any commission or other compensation payable under it without the prior written consent of Companies, and no such assignment will be effective without such consent.

(f) **BOND.** Career Agent shall apply for and be accepted as a participant in the Blanket Position Bond furnished by the Companies.

## **6. LIFE, DISABILITY INCOME, AND ANNUITY COMMISSIONS.**

(a) **LIFE, DISABILITY INCOME, AND ANNUITY COMMISSIONS.** First-year commissions will be paid to Career Agent on all first-year life insurance, disability income insurance, and annuity premium received and retained by the Companies on issued and paid-for business produced personally by the Career Agent in accordance with the Career Agent Life, Disability Income, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

(b) **MINIMUM POLICY.** No first-year commissions will be paid or premium credit allowed on any new life insurance policy with a face amount of less than \$5,000 except new life insurance on the Childrens Term Policy.

(c) **RENEWAL COMMISSIONS.** Renewal commissions on life insurance, disability income, and annuity premium (other than first-year premium) received and retained by the Companies will be paid according to the rules and at the rates set forth in the Career Agent Life, Disability Income, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

Renewal commissions will be paid to the Career Agent who personally produced the policy until (1) that Career Agent's contract with the Companies is terminated, or (2) the policy on which the renewal commission is payable is assigned to another Career Agent, whichever occurs first.

(d) **PRODUCTIVITY/PERSISTENCY COMMISSION BONUS.** A monthly commission bonus will be paid to qualifying Career Agents in accordance with the terms of the Life Production and Persistency Bonus Schedule in effect on the effective date of this contract or as amended by Companies from time to time hereafter.

(e) **BENEFIT BONUS.** A monthly benefit bonus will be paid to qualifying Career Agents in accordance with the terms of the Benefit Bonus Schedule in effect in the month for which the bonus is payable.

(f) **COMMISSIONS.** Commissions on flexible or fixed premium variable life insurance policies or annuities can only be paid or credited to a Career Agent who is supervised by, and a registered representative of, a broker/dealer affiliated with Companies or a registered representative of a broker/dealer who has a sales agreement with a broker/dealer affiliated with Companies, and who holds any required state licenses when the sale is made and when each premium is paid.

(g) **LIFE PREMIUMS.** For the purpose of all commission payments, "Premiums" shall not include premiums collected for Temporary Flat Extra Premiums.

## **7. PROPERTY AND CASUALTY COMMISSIONS.**

(a) **PROPERTY AND CASUALTY NEW BUSINESS COMMISSIONS.** New business commission will be paid to Career Agent on the first term premium on property and casualty issued and paid-for new business produced personally by the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(b) **PROPERTY AND CASUALTY RENEWAL COMMISSIONS.** Renewal commissions will be paid to Career Agent while this agreement is in force, on property and casualty premiums received and retained after the first term of the policy on all accounts assigned to the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(c) **LOSS RATIO ADJUSTMENT.** The commission rates otherwise payable under the Career Agent Property and Casualty Commission Schedule may be increased or decreased based on Career Agent's individual Loss Ratio in accordance with the Loss Ratio Schedule in effect at the time such commissions are payable.

(d) **ASSIGNED RISK PLANS.** Any policy issued by the company on the assigned risk plan or automobile insurance plan of any state will be excluded from all the terms and provisions of this agreement.

**8. ASSIGNMENT OF ACCOUNTS.** Upon cancellation of this Contract, or termination or transfer of the Career Agent to another agency, or in any case to better serve an account, credit for renewal commissions and the responsibility for servicing the account will be assigned to another agent. It will be the responsibility of the Career Agent to maintain service records as required by the Companies on each of Career Agent's assigned accounts. The Companies reserve the right to review at least annually the account service records maintained by the Career Agent. If the Companies in their sole discretion determine that satisfactory service has not been given to an account, Companies reserve the right to withdraw the account from the Career Agent for purposes of renewal commissions and service responsibility.

9. **REFUNDS AND CREDITS.** Commissions will be earned and production credit given when premium is received and retained by the Companies and when credited on Companies' books. Commissions will be recovered and production credit reversed should Companies for any reason fail to retain any premium or consideration on any policy or contract.

10. **RESERVED RIGHT.** Companies reserve the right to amend existing rules and procedures and to adopt new rules and procedures relating to the solicitation and sale by Career Agent of any of Companies' existing or future products or policies and to change production credit given and the commissions, bonuses, and other compensation payable to Career Agent with respect to any or all such products or policies.

11. **TERMINATION.** This Contract may be terminated by Companies or Career Agent at any time, with or without cause, by giving notice of termination, in writing, to the other party. Notice of Termination need not include the reason or reasons, if any, for such termination.

Career Agent acknowledges that Companies have not, either expressly or otherwise, agreed to continue the term of this Contract for any definite period of time.

This Contract will terminate automatically, without Notice of Termination, upon Career Agent's death.

12. **LIEN PROVISION.** Companies will be entitled to a first lien on any payment due or hereafter becoming due Career Agent under this Contract in an amount equal to any current or future indebtedness of Career Agent to Companies, their subsidiaries or affiliates. Career Agent authorizes Companies to deduct the amount of any such indebtedness from any payment otherwise due Career Agent and to pay such amount on behalf of Career Agent to the Company entitled thereto.

13. **SOLE AGREEMENT.** This Contract constitutes the sole agreement and supersedes all prior contracts between the parties hereto, but this Contract will not impair the Agent's right to commissions or fees, if any, earned under a prior contract or contracts with the Companies.

14. **MODIFICATION OR AMENDMENT.** Any modification or amendment of this Contract must be in writing and duly executed by the parties hereto; provided, however, that the Companies may by written notice unilaterally amend any Schedule or Supplement referred to in this Contract to affect policies to be issued or commissions earned after the date of the amendment.

15. **WAIVERS.** No act of forbearance on the part of the Companies to enforce any of the provisions of this Contract will be construed as a modification of this Contract, nor will the failure of either party to exercise any right or privilege herein granted be considered as a waiver of such right or privilege.

16. **GENDER AND NUMBER.** Any reference in this Contract to the masculine gender will include the feminine gender as applicable. References to the singular will include the plural where appropriate, and vice versa.

17. **AGENCY WILL BE DESIGNATED AS** Weber Agency

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the date set opposite their signatures.

Date of Signing 3-17-97

By Donald L. Olsen  
Authorized Representative of Companies

Utah Farm Bureau Insurance Company  
Farm Bureau Life Insurance Company  
FBL Insurance Company

Date of Signing 3-7-94

[Signature] 373  
Signature of Career Agent Agent No.

The undersigned, as Agency Manager, hereby approves the appointment of Career Agent and subscribes to the provisions of the foregoing agreement affecting the undersigned.

Date 3-7-94

[Signature]  
Agency Manager

Tab G

**UTAH FARM BUREAU INSURANCE COMPANY  
FARM BUREAU LIFE INSURANCE COMPANY  
FBL INSURANCE COMPANY**

**CAREER AGENT CONTRACT**

THIS CONTRACT, made and entered into by and between Darrell K. Tanner  
of Ogden, Utah; hereinafter referred  
to as "Career Agent," and UTAH FARM BUREAU INSURANCE COMPANY, a Utah corporation with its principal place of business at  
5300 S 360 West, Salt Lake City, Salt Lake County, Utah; FARM BUREAU LIFE INSURANCE COMPANY, and FBL INSURANCE  
COMPANY, Iowa corporations with their principal place of business at 5400 University Avenue, West Des Moines, Polk County, Iowa,  
hereinafter collectively referred to as "Companies."

NOW, THEREFORE, in consideration of the mutual obligations, covenants and agreements contained herein, to be kept and  
performed by the parties hereto, it is agreed as follows:

1. **EFFECTIVE DATE OF CONTRACT.** This Contract will become effective on the 1 day of February, 1993  
and will remain in full force and effect until cancelled or terminated as provided herein.

2. **AGENCY.** The Agency will be comprised of the Agency Manager, an Assistant Agency Manager, if one has been assigned,  
together with all Financed Career Agents and Career Agents for whom the Agency Manager has approved appointment as evidenced  
by Agency Manager's endorsement on the Financed Career Agent's and Career Agent's Contracts.

3. **CAREER AGENT'S AUTHORITY.** Companies hereby authorize Career Agent to solicit applications on behalf of Companies  
for any and all insurance policies, insurance contracts, and annuities, written or sold by or through Companies, provided that Agent is  
at all times properly licensed as required by any federal or state law or governmental authority.

Career Agent shall not make, alter, or discharge any contracts for the Companies; waive any forfeitures; name special rates; guarantee  
dividends in excess of those provided for in a policy; waive payment in cash; extend the time of payment of any premium; accept payment  
of any past-due premium; extend any credit; or approve evidence of good health.

All applications for insurance and annuities are subject to acceptance or rejection by the Companies. Career Agent shall not incur  
any indebtedness or liability on behalf of the Companies in any manner whatsoever.

Career Agent may not bind the Companies on his own behalf. On an application for insurance written by Career Agent covering  
a risk on his own property or on property in which he has a vested interest, coverage will be in effect on the date the application is  
countersigned and dated by Agency Manager or in the event Career Agent has no Agency Manager, then coverage will be in effect  
on the date application is received in the company's Home Office or earlier if verbal approval is given by telephone by a company Home  
Office Underwriter responsible for the line of insurance being applied for.

Career Agent shall exercise the authority given him under this Contract within the territory of the Agency designated in paragraph  
17. This territory is not assigned exclusively to Career Agent.

Applications for the purchase of flexible or fixed premium variable life insurance policies or annuities shall be solicited only within  
the territory in which such policies or annuities are qualified for sale and in which the Companies and the Career Agent are authorized  
to do business in accordance with licensing requirements and other applicable laws and regulations. Applications for the purchase of  
flexible or fixed premium variable life insurance policies or annuities will be accepted only by the Companies at their Home Office in  
West Des Moines, Iowa.

4. **INDEPENDENT CONTRACTOR.** It is the intent of the parties hereto that for all purposes and in all situations governed by the  
provisions of this agreement, Career Agent will be, and is hereby declared to be, an independent contractor and not an employee, and  
that the relationship between Career Agent and Companies created by this agreement, will be governed by those rules of law governing  
the status of and relationships with independent contractors and not those rules of law governing employer-employee relations. Accord-  
ingly, Career Agent has the right to control the activities and means by which the provisions of this agreement are carried out, the right  
to exercise independent judgment as to the persons from whom applications for insurance policies will be solicited, and the right to  
determine the time, place, and manner of soliciting and servicing policyholders of the Companies.

If training courses, sales methods and material or similar aids and services are extended or made available to the Agent, it is agreed  
that the purpose and effect thereof will not be to give the Company control over the Agent's time or direction or control over the manner  
or means by which he will conduct his business, but only to assist the Agent in his business.

REC'D

FEB 02 1993

**5. CAREER AGENT'S RESPONSIBILITIES.** Career Agent agrees to comply with the Companies' rules and regulations pertaining to the policies and products covered by this Contract, provided, however, that such rules and regulations will not interfere with Career Agent's status as an independent contractor as described in paragraph 4 above.

(a) **SERVICE.** Career Agent agrees to use Career Agent's best efforts to provide service to Companies' policyholders and Farm Bureau members consistent with Companies' "Service to members" philosophy and to maintain in force any business placed with Companies. Career Agent further agrees to become fully informed as to the provisions and benefits of each product offered by Companies for which Career Agent is authorized to solicit applications and to represent such products adequately and fairly to policyholders and prospective policyholders.

(b) **ACCOUNTS AND RECORDS.** Career Agent shall keep accurate accounts and records of all business transactions including, without limitation, account service records, which will be open at all times to inspection and examination by authorized representatives of Companies. All accounts, account records, policyholder files, policyholder lists, rate books or manuals, applications and other forms, and all other records in Career Agent's possession pertaining to Companies' business will be the property of Companies and will be returned to Companies upon demand.

(c) **PREMIUM TRANSMITTAL.** Career Agent agrees that all cash, checks, or funds in any form, received by Career Agent for or on behalf of Companies, will be held in trust for Companies, and Career Agent shall transmit to Companies immediately upon receipt all applications solicited and all monies received in connection therewith.

(d) **EXPENSES.** Career Agent agrees to pay all expenses incurred by Career Agent in the performance of this Contract including, but not limited to, expenses for office space, secretarial help, and telephone facilities.

(e) **ASSIGNMENT OF COMMISSIONS.** Career Agent agrees not to assign this Contract or any commission or other compensation payable under it without the prior written consent of Companies, and no such assignment will be effective without such consent.

(f) **BOND.** Career Agent shall apply for and be accepted as a participant in the Blanket Position Bond furnished by the Companies.

#### **6. LIFE, DISABILITY INCOME, GROUP HEALTH, AND ANNUITY COMMISSIONS.**

(a) **LIFE, DISABILITY INCOME, GROUP HEALTH AND ANNUITY COMMISSIONS.** First-year commissions will be paid to Career Agent on all first-year life insurance, disability income insurance, group health insurance and annuity premium received and retained by the Companies on issued and paid-for business produced personally by the Career Agent in accordance with the Career Agent Life, Disability Income, Group Health, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

(b) **MINIMUM POLICY.** No first-year commissions will be paid or premium credit allowed on any new life insurance policy with a face amount of less than \$5,000 except new life insurance on the Childrens Term Policy.

(c) **RENEWAL COMMISSIONS.** Renewal commissions on life insurance, disability income, and annuity premium (other than first-year premium) received and retained by the Companies will be paid according to the rules and at the rates set forth in the Career Agent Life, Disability Income, Group Health, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

Renewal commissions will be paid to the Career Agent who personally produced the policy until (1) that Career Agent's contract with the Companies is terminated, or (2) the policy on which the renewal commission is payable is assigned to another Financed Career Agent or Career Agent, whichever occurs first.

(d) **PRODUCTIVITY/PERSISTENCY COMMISSION BONUS.** A monthly commission bonus will be paid to qualifying Career Agents in accordance with the terms of the Life Production and Persistency Bonus Schedule in effect from time to time hereafter.

(e) **COMMISSIONS.** Commissions on flexible or fixed premium variable life insurance policies or annuities can only be paid or credited to a Career Agent who is supervised by, and a registered representative of, a broker/dealer affiliated with Companies or a registered representative of a broker/dealer who has a sales agreement with a broker/dealer affiliated with Companies, and who holds any required state licenses when the sale is made and when each premium is paid.

(f) **LIFE AND HEALTH PREMIUMS.** For the purpose of all commission payments, "Premiums" shall not include premiums collected for Temporary Flat Extra Premiums.

(g) **GROUP HEALTH RENEWAL COMMISSION.** Commissions on Group Health products will be paid in accordance with the Career Agent Life, Disability Income, Group Health and Annuity Commission Schedule in effect on the date of this contract or as amended by Companies from time to time hereafter.

#### **7. PROPERTY AND CASUALTY COMMISSIONS.**

(a) **PROPERTY AND CASUALTY NEW BUSINESS COMMISSIONS.** New business commission will be paid to Career Agent on the first term premium on property and casualty issued and paid-for new business produced personally by the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(b) **PROPERTY AND CASUALTY RENEWAL COMMISSIONS.** Renewal commissions will be paid to Career Agent while this agreement is in force, on property and casualty premiums received and retained after the first term of the policy on all accounts assigned to the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(c) **LOSS RATIO ADJUSTMENT.** The commission rates otherwise payable under the Career Agent Property and Casualty Commission Schedule may be increased or decreased based on Career Agent's individual Loss Ratio in accordance with the Loss Ratio Schedule in effect at the time such commissions are payable.

(d) **ASSIGNED RISK PLANS.** Any policy issued by the company on the assigned risk plan or automobile insurance plan of any state will be excluded from all the terms and provisions of this agreement.

**8. ASSIGNMENT OF ACCOUNTS.** Upon cancellation of this Contract, or termination or transfer of the Career Agent to another agency, or in any case to better serve an account, credit for renewal commissions and the responsibility for servicing the account may be assigned to another agent. It will be the responsibility of the Career Agent to maintain service records as required by the Companies on each of Career Agent's assigned accounts. The Companies reserve the right to review at least annually the account service records maintained by the Career Agent. If the Companies in their sole discretion determine that satisfactory service has not been given to an account, Companies reserve the right to withdraw the account from the Career Agent for purposes of renewal commissions and service responsibility.

9. **REFUNDS AND CREDITS.** Commissions will be earned and production credit given when premium is received and retained by the Companies and when credited on Companies' books. Commissions will be recovered and production credit reversed should Companies for any reason fail to retain any premium or consideration on any policy or contract.

10. **RESERVED RIGHT.** Companies reserve the right to amend existing rules and procedures and to adopt new rules and procedures relating to the solicitation and sale by Career Agent of any of Companies' existing or future products or policies and to change the production credit given and the commissions, bonuses, and other compensation payable to Career Agent with respect to any or all such products or policies.

11. **TERMINATION.** This Contract may be terminated by Companies or Career Agent at any time, with or without cause, by giving notice of termination, in writing, to the other party. Notice of Termination need not include the reason or reasons, if any, for such termination.

Career Agent acknowledges that Companies have not, either expressly or otherwise, agreed to continue the term of this Contract for any definite period of time.

This Contract will terminate automatically, without Notice of Termination, upon Career Agent's death.

12. **LIEN PROVISION.** Companies will be entitled to a first lien on any payment due or hereafter becoming due Career Agent under this Contract in an amount equal to any current or future indebtedness of Career Agent to Companies, their subsidiaries or affiliates. Career Agent authorizes Companies to deduct the amount of any such indebtedness from any payment otherwise due Career Agent and to pay such amount on behalf of Career Agent to the Company entitled thereto.

13. **SOLE AGREEMENT.** This Contract constitutes the sole agreement and supersedes all prior contracts between the parties hereto, but this Contract will not impair the Agent's right to commissions or fees, if any, earned under a prior contract or contracts with the Companies.

14. **MODIFICATION OR AMENDMENT.** Any modification or amendment of this Contract must be in writing and duly executed by the parties hereto; provided, however, that the Companies may by written notice unilaterally amend any Schedule or Supplement referred to in this Contract to affect policies to be issued or commissions earned after the date of the amendment.

15. **WAIVERS.** No act of forbearance on the part of the Companies to enforce any of the provisions of this Contract will be construed as a modification of this Contract, nor will the failure of either party to exercise any right or privilege herein granted be considered as a waiver of such right or privilege.

16. **GENDER AND NUMBER.** Any reference in this Contract to the masculine gender will include the feminine gender as applicable. References to the singular will include the plural where appropriate, and vice versa.

17. **AGENCY WILL BE DESIGNATED AS** Weber Agency

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the date set opposite their signatures.

Date of Signing 2-2-93

By Ronald Z. Palmer  
Authorized Representative of Companies

Utah Farm Bureau Insurance Company  
Farm Bureau Life Insurance Company  
FBL Insurance Company

Date of Signing 1/27/1993

Donald K. Lamm 318  
Signature of Career Agent Agent No.

The undersigned, as Agency Manager, hereby approves the appointment of Career Agent and subscribes to the provisions of the foregoing agreement affecting the undersigned.

Date 1-27-93

David H. Lamm  
Agency Manager



Tab H

**UTAH FARM BUREAU INSURANCE COMPANY  
FARM BUREAU LIFE INSURANCE COMPANY  
FBL INSURANCE COMPANY**

**CAREER AGENT CONTRACT**

THIS CONTRACT, made and entered into by and between Leo T. Syphus,  
of Clearfield, UT; hereinafter referred  
to as "Career Agent," and UTAH FARM BUREAU INSURANCE COMPANY, a Utah corporation with its principal place of business at  
5300 S 360 West, Salt Lake City, Salt Lake County, Utah; FARM BUREAU LIFE INSURANCE COMPANY, and FBL INSURANCE  
COMPANY, Iowa corporations with their principal place of business at 5400 University Avenue, West Des Moines, Polk County, Iowa,  
hereinafter collectively referred to as "Companies."

NOW, THEREFORE, in consideration of the mutual obligations, covenants and agreements contained herein, to be kept and  
performed by the parties hereto, it is agreed as follows:

1. **EFFECTIVE DATE OF CONTRACT.** This Contract will become effective on the 1 day of January, 19 94 and  
will remain in full force and effect until cancelled or terminated as provided herein.

2. **AGENCY.** The Agency will be comprised of the Agency Manager, an Assistant Agency Manager, if one has been assigned,  
together with all Financed Career Agents and Career Agents for whom the Agency Manager has approved appointment as evidenced  
by Agency Manager's endorsement on the Financed Career Agent's and Career Agent's Contracts.

3. **CAREER AGENT'S AUTHORITY.** Companies hereby authorize Career Agent to solicit applications on behalf of Companies for  
any and all insurance policies, insurance contracts, and annuities, written or sold by or through Companies, provided that Agent is at all  
times properly licensed as required by any federal or state law or governmental authority.

Career Agent shall not make, alter, or discharge any contracts for the Companies; waive any forfeitures; name special rates;  
guarantee dividends in excess of those provided for in a policy; waive payment in cash; extend the time of payment of any premium;  
accept payment of any past-due premium; extend any credit; or approve evidence of good health.

All applications for insurance and annuities are subject to acceptance or rejection by the Companies. Career Agent shall not incur  
any indebtedness or liability on behalf of the Companies in any manner whatsoever.

Career Agent may not bind the Companies on his own behalf. On an application for insurance written by Career Agent covering a  
risk on his own property or on property in which he has a vested interest, coverage will be in effect on the date the application is  
countersigned and dated by Agency Manager or in the event Career Agent has no Agency Manager, then coverage will be in effect on  
the date application is received in the company's Home Office or earlier if verbal approval is given by telephone by a company Home  
Office Underwriter responsible for the line of insurance being applied for.

Career Agent shall exercise the authority given him under this Contract within the territory of the Agency designated in paragraph  
17. This territory is not assigned exclusively to Career Agent.

Applications for the purchase of flexible or fixed premium variable life insurance policies or annuities shall be solicited only within  
the territory in which such policies or annuities are qualified for sale and in which the Companies and the Career Agent are authorized  
to do business in accordance with licensing requirements and other applicable laws and regulations. Applications for the purchase of  
flexible or fixed premium variable life insurance policies or annuities will be accepted only by the Companies at their Home Office in West  
Des Moines, Iowa.

4. **INDEPENDENT CONTRACTOR.** It is the intent of the parties hereto that for all purposes and in all situations governed by the  
provisions of this agreement, Career Agent will be, and is hereby declared to be, an independent contractor and not an employee, and  
that the relationship between Career Agent and Companies created by this agreement, will be governed by those rules of law governing  
the status of and relationships with independent contractors and not those rules of law governing employer-employee relations.  
Accordingly, Career Agent has the right to control the activities and means by which the provisions of this agreement are carried out, the  
right to exercise independent judgment as to the persons from whom applications for insurance policies will be solicited, and the right to  
determine the time, place, and manner of soliciting and servicing policyholders of the Companies.

If training courses, sales methods and material or similar aids and services are extended or made available to the Agent, it is agreed  
that the purpose and effect thereof will not be to give the Company control over the Agent's time or direction or control over the manner  
or means by which he will conduct his business, but only to assist the Agent in his business.

**5. CAREER AGENTS RESPONSIBILITIES.** Career Agent agrees to comply with the Companies' rules and regulations pertaining to the policies and products covered by this Contract, provided, however, that such rules and regulations will not interfere with Career Agent's status as an independent contractor as described in paragraph 4 above.

(a) **SERVICE.** Career Agent agrees to use Career Agent's best efforts to provide service to Companies' policyholders and Farm Bureau members consistent with Companies' "Service to members" philosophy and to maintain in force any business placed with Companies. Career Agent further agrees to become fully informed as to the provisions and benefits of each product offered by Companies for which Career Agent is authorized to solicit applications and to represent such products adequately and fairly to policyholders and prospective policyholders.

(b) **ACCOUNTS AND RECORDS.** Career Agent shall keep accurate accounts and records of all business transactions including, without limitation, account service records, which will be open at all times to inspection and examination by authorized representatives of Companies. All accounts, account records, policyholder files, policyholder lists, rate books or manuals, applications and other forms, and all other records in Career Agent's possession pertaining to Companies' business will be the property of Companies and will be returned to Companies upon demand.

(c) **PREMIUM TRANSMITTAL.** Career Agent agrees that all cash, checks, or funds in any form, received by Career Agent for or on behalf of Companies, will be held in trust for Companies, and Career Agent shall transmit to Companies immediately upon receipt all applications solicited and all monies received in connection therewith.

(d) **EXPENSES.** Career Agent agrees to pay all expenses incurred by Career Agent in the performance of this Contract including, but not limited to, expenses for office space, secretarial help, and telephone facilities.

(e) **ASSIGNMENT OF COMMISSIONS.** Career Agent agrees not to assign this Contract or any commission or other compensation payable under it without the prior written consent of Companies, and no such assignment will be effective without such consent.

(f) **BOND.** Career Agent shall apply for and be accepted as a participant in the Blanket Position Bond furnished by the Companies.

## **6. LIFE, DISABILITY INCOME, AND ANNUITY COMMISSIONS.**

(a) **LIFE, DISABILITY INCOME, AND ANNUITY COMMISSIONS.** First-year commissions will be paid to Career Agent on all first-year life insurance, disability income insurance, and annuity premium received and retained by the Companies on issued and paid-for business produced personally by the Career Agent in accordance with the Career Agent Life, Disability Income, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

(b) **MINIMUM POLICY.** No first-year commissions will be paid or premium credit allowed on any new life insurance policy with a face amount of less than \$5,000 except new life insurance on the Childrens Term Policy.

(c) **RENEWAL COMMISSIONS.** Renewal commissions on life insurance, disability income, and annuity premium (other than first-year premium) received and retained by the Companies will be paid according to the rules and at the rates set forth in the Career Agent Life, Disability Income, and Annuity Commission Schedule in effect on the effective date of the policies to which they relate.

Renewal commissions will be paid to the Career Agent who personally produced the policy until (1) that Career Agent's contract with the Companies is terminated, or (2) the policy on which the renewal commission is payable is assigned to another Career Agent, whichever occurs first.

(d) **PRODUCTIVITY/PERSISTENCY COMMISSION BONUS.** A monthly commission bonus will be paid to qualifying Career Agents in accordance with the terms of the Life Production and Persistency Bonus Schedule in effect on the effective date of this contract or as amended by Companies from time to time hereafter.

(e) **BENEFIT BONUS.** A monthly benefit bonus will be paid to qualifying Career Agents in accordance with the terms of the Benefit Bonus Schedule in effect in the month for which the bonus is payable.

(f) **COMMISSIONS.** Commissions on flexible or fixed premium variable life insurance policies or annuities can only be paid or credited to a Career Agent who is supervised by, and a registered representative of, a broker/dealer affiliated with Companies or a registered representative of a broker/dealer who has a sales agreement with a broker/dealer affiliated with Companies, and who holds any required state licenses when the sale is made and when each premium is paid.

(g) **LIFE PREMIUMS.** For the purpose of all commission payments, "Premiums" shall not include premiums collected for Temporary Flat Extra Premiums.

## **7. PROPERTY AND CASUALTY COMMISSIONS.**

(a) **PROPERTY AND CASUALTY NEW BUSINESS COMMISSIONS.** New business commission will be paid to Career Agent on the first term premium on property and casualty issued and paid-for new business produced personally by the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(b) **PROPERTY AND CASUALTY RENEWAL COMMISSIONS.** Renewal commissions will be paid to Career Agent while this agreement is in force, on property and casualty premiums received and retained after the first term of the policy on all accounts assigned to the Career Agent in accordance with the Career Agent Property and Casualty Commission Schedule in effect on the date the premium on such policies is credited and recorded by the company in the appropriate premium account.

(c) **LOSS RATIO ADJUSTMENT.** The commission rates otherwise payable under the Career Agent Property and Casualty Commission Schedule may be increased or decreased based on Career Agent's Individual Loss Ratio in accordance with the Loss Ratio Schedule in effect at the time such commissions are payable.

(d) **ASSIGNED RISK PLANS.** Any policy issued by the company on the assigned risk plan or automobile insurance plan of any state will be excluded from all the terms and provisions of this agreement.

**8. ASSIGNMENT OF ACCOUNTS.** Upon cancellation of this Contract, or termination or transfer of the Career Agent to another agency, or in any case to better serve an account, credit for renewal commissions and the responsibility for servicing the account may be assigned to another agent. It will be the responsibility of the Career Agent to maintain service records as required by the Companies on each of Career Agent's assigned accounts. The Companies reserve the right to review at least annually the account service records maintained by the Career Agent. If the Companies in their sole discretion determine that satisfactory service has not been given to an account, Companies reserve the right to withdraw the account from the Career Agent for purposes of renewal commissions and service responsibility.

9. **REFUNDS AND CREDITS.** Commissions will be earned and production credit given when premium is received and retained by the Companies and when credited on Companies' books. Commissions will be recovered and production credit reversed should Companies for any reason fail to retain any premium or consideration on any policy or contract.

10. **RESERVED RIGHT.** Companies reserve the right to amend existing rules and procedures and to adopt new rules and procedures relating to the solicitation and sale by Career Agent of any of Companies' existing or future products or policies and to change the production credit given and the commissions, bonuses, and other compensation payable to Career Agent with respect to any or all such products or policies.

11. **TERMINATION.** This Contract may be terminated by Companies or Career Agent at any time, with or without cause, by giving notice of termination, in writing, to the other party. Notice of Termination need not include the reason or reasons, if any, for such termination.

Career Agent acknowledges that Companies have not, either expressly or otherwise, agreed to continue the term of this Contract for any definite period of time.

This Contract will terminate automatically, without Notice of Termination, upon Career Agent's death.

12. **LIEN PROVISION.** Companies will be entitled to a first lien on any payment due or hereafter becoming due Career Agent under this Contract in an amount equal to any current or future indebtedness of Career Agent to Companies, their subsidiaries or affiliates. Career Agent authorizes Companies to deduct the amount of any such indebtedness from any payment otherwise due Career Agent and to pay such amount on behalf of Career Agent to the Company entitled thereto.

13. **SOLE AGREEMENT.** This Contract constitutes the sole agreement and supersedes all prior contracts between the parties hereto, but this Contract will not impair the Agent's right to commissions or fees, if any, earned under a prior contract or contracts with the Companies.

14. **MODIFICATION OR AMENDMENT.** Any modification or amendment of this Contract must be in writing and duly executed by the parties hereto; provided, however, that the Companies may by written notice unilaterally amend any Schedule or Supplement referred to in this Contract to affect policies to be issued or commissions earned after the date of the amendment.

15. **WAIVERS.** No act of forbearance on the part of the Companies to enforce any of the provisions of this Contract will be construed as a modification of this Contract, nor will the failure of either party to exercise any right or privilege herein granted be considered as a waiver of such right or privilege.

16. **GENDER AND NUMBER.** Any reference in this Contract to the masculine gender will include the feminine gender as applicable. References to the singular will include the plural where appropriate, and vice versa.

17. **AGENCY WILL BE DESIGNATED AS** Wasatch Front Agency

IN WITNESS WHEREOF, the parties hereto have affixed their signatures on the date set opposite their signatures.

Date of Signing 3-22-94

By Donald R. Palmer  
Authorized Representative of Companies

Utah Farm Bureau Insurance Company  
Farm Bureau Life Insurance Company  
FBL Insurance Company

Date of Signing 2-22-1994

Leo T. Lyphus 114  
Signature of Career Agent Agent No.

The undersigned, as Agency Manager, hereby approves the appointment of Career Agent and subscribes to the provisions of the foregoing agreement affecting the undersigned.

Date 2-24-94

Joseph A. Anderson  
Agency Manager

Tab I



Leo T. Syphus  
Career Agent  
Farm Bureau Ins.  
Wasatch Front Agency  
Davis Office

June 30, 1994

Dear Leo:

As per our meeting, the following has been determined as a action plan to both bring your loss ratio under control and bring your production to necessary levels to meet standards.

We will have a regular P.E.P. session every Friday starting 7/8/94.

Ten client reviews per week for the next 3 months; 130 total with Review Forms filled out and signed by the client.

Production levels on Life & P&C need to be maintained at \$335 per week for life and \$1107 per week for P&C. This will be \$13,280 in P&C production.

Knowing these requirements and expectations to be necessary; if they are not met, retirement or career contract termination will be the alternative as of 9/30/94.

Regards,

Byron L. DeLair  
Associate Manager  
Wasatch Front Agency  
Farm Bureau Insurance

cc: Joseph R. Andrews CLU, CHFC

Tab J

FARM BUREAU MUTUAL INSURANCE COMPANY  
FARM BUREAU LIFE INSURANCE COMPANY  
FARM BUREAU INSURANCE COMPANY  
FARM BUREAU MUTUAL FUNDS  
FARM BUREAU BROKERAGE, INC.  
WEST DES MOINES IOWA



SOUTH DAKOTA FARM BUREAU MUTUAL  
INSURANCE COMPANY  
HURON SOUTH DAKOTA

UTAH FARM BUREAU INSURANCE COMPANY  
SALT LAKE CITY UTAH

September 12, 1994

*Received 9-27-94 from Byro.*

*Leo*

Leo Syphus  
1580 S State Street  
Clearfield, Utah 84015

Dear Leo:

This letter is to inform you that we are cancelling your contracts as a career agent in the Wasatch Front Agency for the Utah Farm Bureau Insurance Company, Farm Bureau Life Insurance Company, and the FBL Insurance Company. Pursuant to the terms of said contracts, this cancellation is to be effective September 30, 1994.

Please turn in your rate books, policy records and supplies to the agency office in order that both you and the companies will be in compliance with Utah State Insurance Department directives.

While under contract with the Companies, you were covered under a group Error & Omission policy in force with National Union Fire Insurance Company of Pittsburgh, Pennsylvania. You may purchase, within ninety days of contract termination, a one year extended reporting period for an additional premium of \$360 or a three year extended reporting period, additional premium of \$720. Should you desire this additional protection, please give me a call at (515) 225-5780 and I will be happy to discuss this program in further detail.

Your contribution to the Utah Farm Bureau Federation and its Affiliated Companies is appreciated. We wish you much success in your future endeavors.

Sincerely,

Ronald L. Palmer  
Agency Services Vice President

cc: Ronald C. Price, Al Schultz, John Thigpen, Joe Andrews, Byron DeLair  
Claude Hicken, President, Wasatch County Farm Bureau



Tab K



**UTAH FARM BUREAU INSURANCE COMPANY**

**Weber Agency**

Darrin Ivie, LUTCF, Agency Manager  
1915 West 5200 South, Suite 2, Roy, Utah 84067  
Roy Office: (801) 773-2696 Fax: (801) 773-2697  
Ogden Office: (801) 399-5868

October 15, 1993

TO: Darrell K. Tanner

FROM: Darrin S. Ivie

Re: Annual Check Up Meeting

I just wanted to follow up on our meeting, the goals we set and the commitments we made.

I believe the course of action of having Eilene keep you busy with 10 pre-set appointments weekly will greatly improve your results. You are right in believing that your book of business is not only an asset to your current income, but also houses a great deal of potential for future service (sales).

Mastering the Multi-Line Sales System, implementing the agency sales system will prove to be the process you will need to use to increase your productivity, strengthen your book of business and develop greater security. Implementing the agency sales system will cause you to exert more effort and activity, but I am positive that you are up to the task. It is critical that you utilize your production assistant's activity and have her do what she should be doing thus freeing you up TO SEE THE PEOPLE.

Since November of 1992 I have repeatedly emphasized the importance of the goals you set that they must be met. As we found there needs to be recommitment and focus on these goals. As discussed

L/D/A	\$2,700	per month
Memberships	8	per month
Countrry Squire	3	In October
	2	In November
	1	In December
Group Health	1	per month for the remainder of the year
Commercial (CPP)		An additional premium of \$3,000

Enroll in the LUTC Business Course starting the last week of October  
Maintain membership in the Road Runners Club and  
Increase persistency to 1.20

Please send to me your Action Plan with deadlines on how and when Eilene will have her licenses. It would also be wise for you and I to revisit the situation with Eilene within the next month or so. I want to be kept informed as to the progress of her getting licensed and trained.

The 1994 minimum production standards you have chosen for me to monitor are:

L/D/A	\$14,400
Casualty	\$17,400
Property	\$ 7,800

As discussed at the end of the first quarter of 1994 1/4 of these production standards must be written and transmitted to the home office. At the end of the second quarter 1/2 of these production standards must be issued (these numbers will be reflected on the 12 month rolling average production report). At that time if the numbers are less than expected I will begin recruiting to find your replacement. It will take me approximately 90-120 days to prepare someone to take your place. At the end of the third quarter I will once again revisit your results. At that time one of two things could happen:

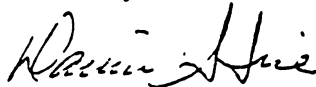
1. I see that your numbers meet the expected result at that time I will simply hire the new agent and increase our compliment or
2. If after I look at the numbers the results are still not there the new agent will move into your office.

Also we discussed the fact that this is a progressive expectation and that each year this minimum production standard will progress accordingly. I also indicated in our visit I will not manage to minimums. Our visit and this correspondence will be the only time that I will discuss with you these minimum expectations. As you requested I will visit with you monthly to review the goals that you have set for yourself for 1994.

It is my understanding that we have agreed upon these standards and that if the time comes and these expectations/results are not achieved you will simply resign. It is exciting for me to see the growth and the progress of our companies. This method of keeping score in my eyes is seen to be a great opportunity for future progress. You are definitely an asset to our agency, state and company and I look forward to assisting you build your business.

Your time with the company is valuable in the sense that as you embark on this new phase of your career you have available 11 + years of experience, knowledge and relationships to position you for true success. As I see it, implementing these new programs and adapting to the changes now and in the future Darrell will be a Master Agent.

Sincerely,



Darrin S. Ivie  
Agency Manager

DSI:jn

cc: John Thigpen



**Utah Farm Bureau Insurance Company**

**Weber Agency**

Darrin Ivie, LUTCF, Agency Manager  
1915 West 5200 South, Suite 2, Roy, Utah 84067  
Roy Office: (801) 773-2696 Fax: (801) 773-2697  
Ogden Office: (801) 399-5868

October 15, 1993

TO: Scott A. Stokes

FROM: Darrin S. Ivie

Re: Annual Check Up Meeting

I appreciate the opportunity to visit with our agency's most talented agent even though it was an inconvenience to come to Roy. I just wanted to put in writing what we had discussed so there was no chance of miscommunication.

Scott Stokes must have passed the tests and completed the necessary activities to enable him to market Farm Bureau Variable Universal Life and Mutual Funds by January 1, 1994.

We discussed the importance of ~~establishing~~ establishing minimum guideline production standards for 1994 and in the future. During our visit you chose the following minimums for 1994:

L/D/A	\$14,400
Casualty	\$17,400
Property	\$ 7,800

As discussed at the end of the first quarter of 1994 1/4 of these production standards must be written and transmitted to the home office. At the end of the second quarter 1/2 of these production standards must be issued (these numbers will be reflected on the 12 month rolling average production report). At that time if the numbers are less than expected I will begin recruiting to find your replacement. It will take me approximately 90-120 days to prepare someone to take your place. At the end of the third quarter I will once again revisit your results. At that time one of two things could happen:

1. I see that your numbers meet the expected result at that time I will simply hire the new agent and increase our compliment or
2. If after I look at the numbers the results are still not there the new agent will move into your office.

Also we discussed the fact that this is a progressive expectation and that each year this minimum production standard will progress accordingly. I also indicated in our visit I will not manage to minimums. Our visit and this correspondence will be the only time that I will discuss with you these minimum expectations. I will manage and will visit with you monthly at your request the goals that you have set for yourself in 1994.

So it should be clearly understood that if the production standards are not met you will resign from the company. Your 9 + years of experience in addition to your talent will prove to be a tremendous asset as you recommit to your business in the future.

It is crucial, critical, a must, imperative that your persistancy increase in the next 6 months to no lower than 80%. As we planned, the best way to improve persistancy is to increase LD Production. As we discussed and I repeatedly emphazied the goals you set for 1993 will be monitored, measured and expected. In reviewing the numbers we identified several areas of needed improvement. I am sure that you have already planned on how to make these reality.

Scott, you are an asset to our agency and I am positive that if you utilize your abilities, adapt to these changes, refocus and recommit you will experience not only an increase in production but increase security in your business. You are fortunate in the sense that you understand that we get paid for results not for staying busy. I look forward to watching Scott continually grow and build his business.

Sincerely,



Darrin S. Ivie  
Agency Manager

DSI:jn

cc: John Thigpen



**UTAH FARM BUREAU INSURANCE COMPANY**

**Weber Agency**

Darrin Ivie, LUTCF, Agency Manager  
1915 West 5200 South, Suite 2, Roy, Utah 84067  
Roy Office (801) 773-2696 Fax: (801) 773-2697  
Ogden Office: (801) 399-5868

October 15, 1993

TO: Jay L. Wood

FROM: Darrin S. Ivie

Re: Annual Check Up Meeting

As a follow up to our visit I wanted to give you in written form a recap of our discussion.

I compliment you on where you stand issued verses your goal. During our visit I recognized that what Jay told him he would produce is as good as his word. Thank you for your efforts and hard work in achieving these goals.

I also appreciate your good attitude towards adopting the new Profit Improvement Program. I firmly believe that adhering to the requirements and implementing the recommendations you will see immediate increases in production, higher quality clientele and improve profitability for both you and our companies. I am sure you would agree that being given the opportunity to participate in this program is a compliment in that the company is willing to put forth a great deal of time, effort and money on helping you improve your business. Please have to me in written form your Action Plan no later than the 27th of October.

We discussed the importance of setting minimum guideline production standards for 1994 and the years to come. In our discussion I would hope that your understanding is that these are progressive expectations and will increase accordingly each year. The production standards you have chosen for 1994 are:

L/D/A	\$14,400
Casualty	\$17,400
Property	\$ 7,800

As discussed at the end of the first quarter of 1994 1/4 of these production standards must be written and transmitted to the home office. At the end of the second quarter 1/2 of these production standards must be issued (these numbers will be reflected on the 12 month rolling average production report). At that time if the numbers are less than expected I will begin recruiting to find your replacement. It will take me approximately 90-120 days to prepare someone to take your place. At the end of the third quarter I will once again revisit your results. At that time one of two things could happen:

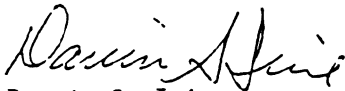
1. I see that your numbers meet the expected result, at that time I will simply hire the new agent and increase our compliment or
2. If after I look at the numbers the results are still not there the new agent will move into your office.

As you have read in our agency philosophy and have heard me say many many times, supporting the NALU is critical to an agent's success. I am sure you will find time to review seriously the importance of joining the association. You asked that I would visit with you and review your results quarterly. It is important for you to know and understand that during these visits I will be managing your goals established in our November 1993 for 1994 goals session and not the minimums you have set. I have promised these minimums will not be discussed between us any further outside of our visit and this correspondence. It is simply agreed to that if the results are not there You will resign.

Your 27 + years of experience is indeed an asset to our agency, state and company. I can think of nothing greater in this business than to watch Farm Bureau acknowledge and admire their newest Master Agent. You have what it takes to become one of our best--don't sell yourself short by not adjusting to positive progressive change.

I can understand and appreciate your income goals and dreams and look forward to assisting you reach them. Thank you for being a member of our agency.

Sincerely,



Darrin S. Ivie  
Agency Manager

DSI:jn

cc: John Thigpen

Tab L



FARM BUREAU MUTUAL INSURANCE COMPANY  
FARM BUREAU LIFE INSURANCE COMPANY  
FBL INSURANCE COMPANY  
FARM BUREAU MUTUAL FUNDS  
FBL INSURANCE BROKERAGE, INC  
WEST DES MOINES IOWA

SOUTH DAKOTA FARM BUREAU MUTUAL  
INSURANCE COMPANY  
HURON SOUTH DAKOTA

UTAH FARM BUREAU INSURANCE COMPANY  
SALT LAKE CITY UTAH



March 23, 1994

Scott Stokes  
727 Simoron  
Ogden, Utah 84404-6822273

Dear Scott:

This letter is to inform you that we are cancelling your contracts as a career agent in the Weber Agency for the Utah Farm Bureau Insurance Company, Farm Bureau Life Insurance Company, and the FBL Insurance Company. Pursuant to the terms of said contracts, this cancellation is to be effective March 25, 1994.

Please turn in your rate books, policy records and supplies to the agency office in order that both you and the companies will be in compliance with Utah State Insurance Department directives.

While under contract with the Companies, you were covered under a group Error & Omission policy in force with National Union Fire Insurance Company of Pittsburgh, Pennsylvania. You may purchase, within ninety days of contract termination, a one year extended reporting period for an additional premium of \$360 or a three year extended reporting period, additional premium of \$720. Should you desire this additional protection, please give me a call at (515) 225-5780 and I will be happy to discuss this program in further detail.

Your contribution to the Utah Farm Bureau Federation and its Affiliated Companies is appreciated. We wish you much success in your future endeavors.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Ronald L. Palmer', with a stylized flourish at the end.

Ronald L. Palmer  
Director of Agency Services

cc: Ronald C. Price, Al Schultz, John Thigpen, Darrin Ivie  
Vern Taylor, President, Weber County Farm Bureau

FARM BUREAU MUTUAL INSURANCE COMPANY  
FARM BUREAU LIFE INSURANCE COMPANY  
FBL INSURANCE COMPANY  
FARM BUREAU MUTUAL FUNDS  
FBL INSURANCE BROKERAGE, INC.  
WEST DES MOINES IOWA

SOUTH DAKOTA FARM BUREAU MUTUAL  
INSURANCE COMPANY  
HURON SOUTH DAKOTA

UTAH FARM BUREAU INSURANCE COMPANY  
SALT LAKE CITY UTAH



March 23, 1994

Darrell Tanner  
1973 North 500 East  
Ogden, Utah 84404-6822273

Dear Darrell:

This letter is to inform you that we are cancelling your contracts as a career agent in the Weber Agency for the Utah Farm Bureau Insurance Company, Farm Bureau Life Insurance Company, the FBL Insurance Company, and as a registered representative of the FBL Marketing Services, Inc. Pursuant to the terms of said contracts, this cancellation is to be effective March 25, 1994.

Please turn in your rate books, policy records and supplies to the agency office in order that both you and the companies will be in compliance with Utah State Insurance Department directives.

While under contract with the Companies, you were covered under a group Error & Omission policy in force with National Union Fire Insurance Company of Pittsburgh, Pennsylvania. You may purchase, within ninety days of contract termination, a one year extended reporting period for an additional premium of \$360 or a three year extended reporting period, additional premium of \$720. Should you desire this additional protection, please give me a call at (515) 225-5780 and I will be happy to discuss this program in further detail.

Your contribution to the Utah Farm Bureau Federation and its Affiliated Companies is appreciated. We wish you much success in your future endeavors.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Ronald L. Palmer'.

Ronald L. Palmer  
Director of Agency Services

cc: Ronald C. Price, Al Schultz, John Thigpen, Darrin Ivie  
Vern Taylor, President, Weber County Farm Bureau

**FARM BUREAU MUTUAL INSURANCE COMPANY**  
**FARM BUREAU LIFE INSURANCE COMPANY**  
**FBL INSURANCE COMPANY**  
**FARM BUREAU MUTUAL FUNDS**  
**FBL INSURANCE BROKERAGE, INC**  
**WEST DES MOINES IOWA**

**SOUTH DAKOTA FARM BUREAU MUTUAL**  
**INSURANCE COMPANY**  
**HURON SOUTH DAKOTA**

**UTAH FARM BUREAU INSURANCE COMPANY**  
**SALT LAKE CITY UTAH**

**F.B.**  
**Farm Bureau**  
FAMILY OF FINANCIAL PLANNING SERVICES

EXHIBIT

3

Wood

March 23, 1994

Jay Wood  
477 East 2050 North  
Ogden, Utah 84404-6822273

*Ray office*  
*801-775-6197*  
*dated per A.L.*  
*3/24/94*

Dear Jay:

This letter is to inform you that we are cancelling your contracts as a career agent in the Weber Agency for the Utah Farm Bureau Insurance Company, Farm Bureau Life Insurance Company, the FBL Insurance Company, and as a registered representative of the FBL Marketing Services, Inc. Pursuant to the terms of said contracts, this cancellation is to be effective March 25, 1994.

Please turn in your rate books, policy records and supplies to the agency office in order that both you and the companies will be in compliance with Utah State Insurance Department directives.

While under contract with the Companies, you were covered under a group Error & Omission policy in force with National Union Fire Insurance Company of Pittsburgh, Pennsylvania. You may purchase, within ninety days of contract termination, a one year extended reporting period for an additional premium of \$360 or a three year extended reporting period, additional premium of \$720. Should you desire this additional protection, please give me a call at (515) 225-5780 and I will be happy to discuss this program in further detail.

Your contribution to the Utah Farm Bureau Federation and its Affiliated Companies is appreciated. We wish you much success in your future endeavors.

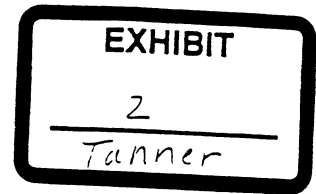
Sincerely,

*Ronald L. Palmer*

Ronald L. Palmer  
Director of Agency Services

cc: Ronald C. Price, Al Schultz, John Thigpen, Darrin Ivie  
Vern Taylor, President, Weber County Farm Bureau

Tab M



John E. S. Robson, A4130  
Robert A. Garda, A7055  
FABIAN & CLENDENIN,  
A Professional Corporation  
Twelfth Floor  
215 South State Street  
P.O. Box 510210  
Salt Lake City, Utah 84151  
Telephone: (801) 531-8900

Attorneys for Plaintiffs

IN THE SECOND DISTRICT COURT, WEBER COUNTY

STATE OF UTAH

JAY L. WOOD, DARRELL K. TANNER,  
SCOTT A. STOKES and LEO SYPHUS,  
individuals,  
  
Plaintiffs,

vs.

UTAH FARM BUREAU INSURANCE  
COMPANY, a Utah corporation, FARM  
BUREAU LIFE INSURANCE  
COMPANY, an Iowa corporation and FBL  
INSURANCE COMPANY, an Iowa  
corporation,  
  
Defendants.

PLAINTIFF DARRELL K. TANNER'S  
ANSWERS TO DEFENDANTS' FIRST  
SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS

Case No. 970906166CV

Judge Michael D. Lyon

Plaintiff, Darrell K. Tanner ("Tanner"), by and through his counsel, answer  
Defendants' First Interrogatories and Requests for Production of Documents as follows:

**General Objection:** Discovery is still ongoing in this lawsuit and Plaintiffs are not in  
possession of all information needed to answer these interrogatories. Plaintiffs have answered

all interrogatories to the best of their ability with the limited information and documents they possess.

### INTERROGATORIES

1. Please state the following with respect to each Plaintiff:

a. date of birth:

ANSWER: December 13, 1941.

b. the name, address and telephone number of your current employer:

ANSWER: Prudential Insurance, 4185 Harrison Boulevard, #300, Ogden, Utah 84403, (801) 621-6691.

c. the name of your current supervisor:

ANSWER: Linda Saberon.

d. your current duties with said employer:

ANSWER: Insurance agent.

e. whether each Plaintiff is married:

ANSWER: Married.

f. the names and ages of Plaintiff's children:

ANSWER: Kristin Stocker 29; Terri Lyn Tanner 24; Brooke Tanner 23; and Matthew A. Tanner 21.

2. Please state whether each Plaintiff currently maintains a license issued by the State of Utah to sell (1) life insurance and (2) property and casualty insurance? If not, please state the last date said Plaintiff was licensed to sell each type of insurance.

**ANSWER:** Maintains current license for life insurance and property/casualty.

3. With respect to the allegation in the Complaint that you developed a "Book of Business," please state the following:

- a. describe with particularity the items which you contend were confiscated which constituted the "Book of Business;"

**ANSWER:** Client lists, client folders, policy records, clients, policy holders and commissions off of their premiums.

- b. how you determined the value of the "Book of Business" as set forth in paragraphs 6-9 of the Complaint;

**ANSWER:** As reported by Farm Bureau at time of termination.

4. Please state with specificity all facts which you believe support your contention that the items described in your answer to Interrogatory Number 3 constituting the "Book of Business" belonged to you. If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** I created the Book of Business by enrolling, contacting and servicing the clients within the Book of Business. Many of the people in my Book of Business were my family and friends. Furthermore, my contract with Farm Bureau states I am an independent contractor therefore I own my Book of Business.

Farm Bureau also treated the Book of Business as owned by the agents. Farm Bureau could not arbitrarily remove or transfer clients from my Book of Business. \*Farm Bureau policy was to not remove a client from my Book of Business unless the client requested

removal, I failed to fill out a fact-finding sheet, or the client's policy was canceled. Finally, other agents treated the Book of Business as their own and Farm Bureau never contested these actions.

- a. if a conversation, the date of the conversation or document;

**ANSWER:** April 1982.

- b. if a conversation, the person with whom you had the conversation;

**ANSWER:** Kay Williams.

- c. if a conversation, the location of the conversation;

**ANSWER:** Cannot remember.

- d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** At time of my appointment with the company Kay Williams stated that clients that purchased insurance from me, transfers to my Book of Business, and assigned accounts were my Book of Business.

- e. if a document the author of the document;

**ANSWER:** See documents produced pursuant to Request for Production of Documents Nos. 1 and 5, attached as Exhibits A and C.

- f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents produced pursuant to Request for Production of Documents Nos. 1 and 5, attached as Exhibits A and C.



5. Please state with specificity all facts which you believe support your contention that “Defendants agree to pay to Plaintiffs incentive bonuses and other compensation which was, from time to time, defined by Defendants and which included, but was not limited to, the reasonable value of the Plaintiffs’ “Book of Business” upon death, termination, or change of status?” If your answer includes reference to conversations with other or documents, please state:

**ANSWER:** The Career Incentive Plan was based on total commissions from my book of business. The production/loss ratio incentive plan also based on my commissions on my entire book of business. Finally, I received renewal commissions from my book of business.

a. if a conversation, the date of the conversation or document;

**ANSWER:**

b. if a conversation, the person with whom you had the conversation;

**ANSWER:**

c. if a conversation, the location of the conversation

**ANSWER:**

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:**

e. if a document, the author of the document;

**ANSWER:** Farm Bureau.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** A copy of the Career Incentive Plan is attached as Exhibit C.

Documents regarding production/loss ratios and renewal business are attached as Exhibits A and C.

6. There is no Interrogatory No. 6.

7. Please state with specificity all facts which you believe support your contention that "Defendants informed Plaintiffs that if Plaintiffs went to work as insurance agents for any other company within a two year period, Plaintiffs would forfeit certain pension contributions previously made by Defendants?" If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** Previous agents have been denied retirement benefits for going into competition with Farm Bureau. It is also Farm Bureau policy and part of a written Career Incentive Plan.

a. if a conversation, the date of the conversation or document;

**ANSWER:** None.

b. if a conversation, the person with whom you had the conversation;

**ANSWER:** None.

c. if a conversation, the location of the conversation;

**ANSWER:** None.

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** None.

e. if a document, the author of the document;

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 5, attached as Exhibit C.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 5, attached as Exhibit C.

8. Please state with specificity all facts which you believe support your contention that the terms of the Career Agent Contract entered into by each Plaintiff effective January 1, 1994, was modified? If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** A conversation with Darren Ivie and a letter written by Darren Ivie indicating production requirements.

a. if a conversation, the date of the conversation or document;

**ANSWER:** Late September / early October, 1993.

b. if a conversation, the person with whom you had the conversation;

**ANSWER:** Darren Ivie.

c. if a conversation, the location of the conversation;

**ANSWER:** Darren Ivie's office.

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** The substance of the conversation is memorialized in the October 15, 1993 letter from Darren Ivie, attached as Exhibit B.

e. if a document, the author of the document;

**ANSWER:** Darren Ivie.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 4, attached as Exhibit B.

9. Please state with specificity all facts which you believe support your contention that "Defendants misrepresented the reason why Plaintiffs were no longer in the insurance business to clients of the Plaintiffs?" If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** Of all former clients that I have had conversations with, none were told by Farm Bureau that I had been terminated by Farm Bureau. Farm Bureau led my clients to believe that I resigned.

10. Please set forth the precise language of the Career Agent Contract or other contract between Defendants and Plaintiffs you contend Defendants violated when they "confiscated Plaintiffs' Books of Business" as alleged in paragraph 23 of the Complaint.

**ANSWER:** Paragraph 4. I am a self employed independent contractor therefore I own my Book of Business. The implied covenant of good faith and fair dealing was also breached.

11. Please state all acts which you contend Defendants performed which “intentionally interfered with Plaintiffs’ existing and prospective business relationship” as alleged in paragraph thirty five of the Complaint.

**ANSWER:** Wrongfully terminating my contract, confiscating my Book of Business to give to new agents, and informing my clients that I quit as an insurance salesman to pursue other employment.

12. Please identify the name, address, and telephone number of each person with whom you claim a business relationship which you contend Defendants interfered with. and for each said person, please state the specific acts which you contend Defendants engaged in to interfere with that relationship.

**ANSWER:** Every individual listed in my Book of Business, which is in possession of Farm Bureau. See Answer to Interrogatory No. 11.

13. Are you contending that no enforceable contract governed the relationship between the Defendants and the Plaintiffs?

**ANSWER:** No.

14. Please state with specificity the damages which you allegedly suffered as a result of the actions alleged in your Complaint. With respect to said damages, please state:

a. the total amount of damages claimed;

**ANSWER:** Plaintiffs are in the process of determining the total amount of damages suffered with specificity.

b. the method used to calculate said damages;

**ANSWER:** The Plaintiffs are in the process of determining the method used to calculate their damages.

c. the person who will testify at trial concerning said damages.

**ANSWER:** The Plaintiffs are in the process of retaining an expert to testify as to damages.

15. Please state the effective date of the last Career Agent Contract which you entered into with Defendants?

**ANSWER:** February 1, 1993.

16. In paragraph 14 of the Complaint, the Plaintiffs allege that "Mr. Ivie told Plaintiffs that as long as certain production goals were met, Defendants would not cancel their contracts." Please state the certain production goals Plaintiffs were told to meet.

**ANSWER:** See letter dated October 15, 1993, produced pursuant to Request for Production of Documents No. 4, attached as Exhibit B.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please produce a copy of the last Career Agent Contract entered into between you and the Defendants.

**ANSWER:** See Exhibit A.

2. Please produce a copy of the June 30, 1994, letter referenced in paragraph 16 of the Plaintiff's Complaint.

**ANSWER:** See Leo Syphus' Answers to Defendant's First Set of Interrogatories and Request for Production of Documents.

3. Please produce copies of the letters referred to in paragraph twelve of the Plaintiff's Complaint.

**ANSWER:** No letters are referenced in paragraph 12 of Plaintiffs' Complaint.

4. Please produce any and all documents which you contend support your conclusion that the contract between you and Defendants was modified or amended, either expressly or impliedly.

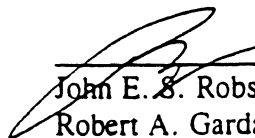
**ANSWER:** See Exhibit B.

5. Please produce any documents referred to or reviewed during preparation of the answers to the preceding interrogatories.

**ANSWER:** See Exhibit C.

DATED this 2<sup>nd</sup> day of January, 1998.

As to Objections:

  
\_\_\_\_\_  
John E. S. Robson  
Robert A. Garda  
FABIAN & CLENDENIN,  
A Professional Corporation  
Attorneys For Plaintiffs

Darrell K. Tanner

STATE OF UTAH

: SS.

COUNTY OF SALT LAKE

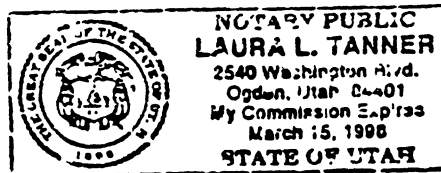
On this 30 day of January, 1998, personally appeared before me Darrell K. Tanner,

personally known to me or proved to me on the basis of satisfactory evidence to be the person

whose name is signed on the preceding document, and acknowledged to me that he signed it

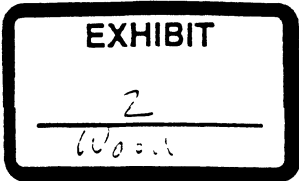
voluntarily for its stated purpose.

NOTARY PUBLIC





Tab N



John E. S. Robson, A4130  
Robert A. Garda, A7055  
FABIAN & CLENDENIN,  
A Professional Corporation  
Twelfth Floor  
215 South State Street  
P.O. Box 510210  
Salt Lake City, Utah 84151  
Telephone: (801) 531-8900

Attorneys for Plaintiffs

IN THE SECOND DISTRICT COURT, WEBER COUNTY

STATE OF UTAH

JAY L. WOOD, DARRELL K. TANNER,	)	PLAINTIFF JAY WOOD'S ANSWERS
SCOTT A. STOKES and LEO SYPHUS,	)	TO DEFENDANTS' FIRST SET OF
individuals,	)	INTERROGATORIES AND REQUESTS
	)	FOR PRODUCTION OF DOCUMENTS
Plaintiffs,	)	
	)	
vs.	)	Case No. 970906166CV
	)	
UTAH FARM BUREAU INSURANCE	)	
COMPANY, a Utah corporation, FARM	)	Judge Michael D. Lyon
BUREAU LIFE INSURANCE	)	
COMPANY, an Iowa corporation and FBL	)	
INSURANCE COMPANY, an Iowa	)	
corporation,	)	
	)	
Defendants.	)	
	)	

Plaintiff, Jay Wood ("Wood"), by and through his counsel, answer Defendants' First Interrogatories and Requests for Production of Documents as follows:

General Objection: Discovery is still ongoing in this lawsuit and Plaintiffs are not in possession of all information needed to answer these interrogatories. Plaintiffs have answered

all interrogatories to the best of their ability with the limited information and documents they possess.

### INTERROGATORIES

1. Please state the following with respect to each Plaintiff:

a. date of birth:

ANSWER: November 11, 1941.

b. the name, address and telephone number of your current employer:

ANSWER: Grass Plus Landscaping, 542 Washington Boulevard, Ogden, Utah 84404, (801) 394-2244.

c. the name of your current supervisor:

ANSWER: V. Travis Poulson.

d. your current duties with said employer:

ANSWER: Labor and sales.

e. whether each Plaintiff is married:

ANSWER: Married.

f. the names and ages of Plaintiff's children:

ANSWER: Don 31; Brent 29; Christine 27; Malaney 26.

2. Please state whether each Plaintiff currently maintains a license issued by the State of Utah to sell (1) life insurance and (2) property and casualty insurance? If not, please state the last date said Plaintiff was licensed to sell each type of insurance.

**ANSWER:** Yes, I maintain a license to sell life insurance and property and casualty insurance.

3. With respect to the allegation in the Complaint that you developed a "Book of Business," please state the following:

- a. describe with particularity the items which you contend were confiscated which constituted the "Book of Business;"

**ANSWER:** Client lists, client folders, policy records, clients, policy holders and commissions off of their premiums.

- b. how you determined the value of the "Book of Business" as set forth in paragraphs 6-9 of the Complaint;

**ANSWER:** Value at time of termination as reported to me by Farm Bureau Insurance.

4. Please state with specificity all facts which you believe support your contention that the items described in your answer to Interrogatory Number 3 constituting the "Book of Business" belonged to you. If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** I created the Book of Business by enrolling, contacting and servicing the clients within the Book of Business. Many of the people in my Book of Business were my family and friends. Furthermore, my contract with Farm Bureau states I am an independent contractor therefore I own my Book of Business.

Farm Bureau also treated the Book of Business as owned by the agents. Farm Bureau could not arbitrarily remove or transfer clients from my Book of Business. Farm Bureau policy was to not remove a client from my Book of Business unless the client requested removal, I failed to fill out a fact-finding sheet, or the client's policy was canceled. Finally, other agents treated the Book of Business as their own and Farm Bureau never contested these actions.

- a. if a conversation, the date of the conversation or document;

**ANSWER:**

- b. if a conversation, the person with whom you had the conversation;

**ANSWER:**

- c. if a conversation, the location of the conversation;

**ANSWER:**

- d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:**

- e. if a document the author of the document;

**ANSWER:** Farm Bureau.

- f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents attached as Exhibits A and C.

5. Please state with specificity all facts which you believe support your contention that "Defendants agree to pay to Plaintiffs incentive bonuses and other compensation which

was, from time to time, defined by Defendants and which included, but was not limited to, the reasonable value of the Plaintiffs' "Book of Business" upon death, termination, or change of status?" If your answer includes reference to conversations with other or documents, please state:

**ANSWER:** The Career Incentive Plan was based on total commissions from my book of business. The production/loss ratio incentive plan also based on my commissions on my entire book of business. Finally, I received renewal commissions from my book of business.

- a. if a conversation, the date of the conversation or document;

**ANSWER:**

- b. if a conversation, the person with whom you had the conversation;

**ANSWER:**

- c. if a conversation, the location of the conversation

**ANSWER:**

- d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:**

- e. if a document, the author of the document;

**ANSWER:** Farm Bureau.

- f. if a document, the substance of the document as best you can recall.

**ANSWER:** A copy of the Career Incentive Plan is attached as Exhibit C.

Documents regarding production/loss ratios and renewal business are attached as Exhibits A and C.

6. There is no Interrogatory No. 6.

7. Please state with specificity all facts which you believe support your contention that "Defendants informed Plaintiffs that if Plaintiffs went to work as insurance agents for any other company within a two year period, Plaintiffs would forfeit certain pension contributions previously made by Defendants?" If your answer includes reference to conversations with others or documents, please state:

a. if a conversation, the date of the conversation or document;

**ANSWER:** Numerous dates.

b. if a conversation, the person with whom you had the conversation;

**ANSWER:** Kay Williams, Darren Ivie, and Walt Warneka.

c. if a conversation, the location of the conversation;

**ANSWER:** Numerous locations.

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** Discussed commission and career incentive program. I was told I would lose my career incentive bonus if I worked for a competitor within two years of termination from Farm Bureau.

e. if a document, the author of the document;

**ANSWER:** Farm Bureau Insurance.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** Career Incentive Program. Farm Bureau also has a policy which says this. See documents produced pursuant to Request for Production of Documents No. 5, attached as Exhibit C.

8. Please state with specificity all facts which you believe support your contention that the terms of the Career Agent Contract entered into by each Plaintiff effective January 1, 1994, was modified? If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** The October 15, 1993 letter to me from Darren Ivie. Also meetings and conversations with Darren Ivie.

a. if a conversation, the date of the conversation or document;

**ANSWER:** Late September / early October.

b. if a conversation, the person with whom you had the conversation;

**ANSWER:** Darren Ivie.

c. if a conversation, the location of the conversation;

**ANSWER:** Darren Ivie's office.

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** Mr. Ivie explained the minimum goals and said I have three months to write the production needed for the quarter. If by the end of the next quarter 50% of annual



production needed was not issued he would start looking for someone to replace me and this would take three to six months. The substance of the conversation is memorialized in the October 15, 1993 letter from Mr. Ivie.

e. if a document, the author of the document;

ANSWER: Darren Ivie.

f. if a document, the substance of the document as best you can recall.

ANSWER: See document produced pursuant to Request for Production of Documents No. 4, attached as Exhibit B.

9. Please state with specificity all facts which you believe support your contention that "Defendants misrepresented the reason why Plaintiffs were no longer in the insurance business to clients of the Plaintiffs?" If your answer includes reference to conversations with others or documents, please state:

ANSWER: Numerous conversations with my insureds wherein they stated that Farm Bureau employees told them that I had quit to go to work with my son-in-law at Grass Plus Landscapers.

10. Please set forth the precise language of the Career Agent Contract or other contract between Defendants and Plaintiffs you contend Defendants violated when they "confiscated Plaintiffs' Books of Business" as alleged in paragraph 23 of the Complaint.

ANSWER: Paragraph 4. I am a self employed independent contractor therefore I own my Book of Business. The implied covenant of good faith and fair dealing was also breached.

11. Please state all acts which you contend Defendants performed which “intentionally interfered with Plaintiffs’ existing and prospective business relationship” as alleged in paragraph thirty five of the Complaint.

**ANSWER:** Wrongfully terminating my contract, confiscating my Book of Business ;  
to give to new agents, and informing my clients that I quit as an insurance salesman to pursue construction.

12. Please identify the name, address, and telephone number of each person with whom you claim a business relationship which you contend Defendants interfered with, and for each said person, please state the specific acts which you contend Defendants engaged in to interfere with that relationship.

**ANSWER:** Every individual listed in my Book of Business, which is in possession of Farm Bureau. See Answer to Interrogatory No. 11.

13. Are you contending that no enforceable contract governed the relationship between the Defendants and the Plaintiffs?

**ANSWER:** No.

14. Please state with specificity the damages which you allegedly suffered as a result of the actions alleged in your Complaint. With respect to said damages, please state:

a. the total amount of damages claimed;

**ANSWER:** Plaintiffs are in the process of determining the total amount of damages suffered with specificity.

b. the method used to calculate said damages;

**ANSWER:** The Plaintiffs are in the process of determining the method used to calculate their damages.

c. the person who will testify at trial concerning said damages.

**ANSWER:** The Plaintiffs are in the process of retaining an expert to testify as to damages.

15. Please state the effective date of the last Career Agent Contract which you entered into with Defendants?

**ANSWER:** January 1, 1994.

16. In paragraph 14 of the Complaint, the Plaintiffs allege that "Mr. Ivie told Plaintiffs that as long as certain production goals were met, Defendants would not cancel their contracts." Please state the certain production goals Plaintiffs were told to meet.

**ANSWER:** See letter dated October 15, 1993, produced pursuant to Request for Production of Documents No. 4, attached as Exhibit B.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please produce a copy of the last Career Agent Contract entered into between you and the Defendants.

**ANSWER:** See Exhibit A.

2. Please produce a copy of the June 30, 1994, letter referenced in paragraph 16 of the Plaintiff's Complaint.

**ANSWER:** See documents produced by Leo Syphus pursuant to Request for Production of Documents No. 2.

3. Please produce copies of the letters referred to in paragraph twelve of the Plaintiff's Complaint.

**ANSWER:** There are no letters referred to in paragraph 12 of Plaintiffs' Complaint.

4. Please produce any and all documents which you contend support your conclusion that the contract between you and Defendants was modified or amended, either expressly or impliedly.

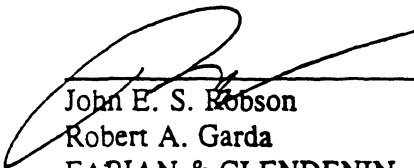
**ANSWER:** See Exhibit B.

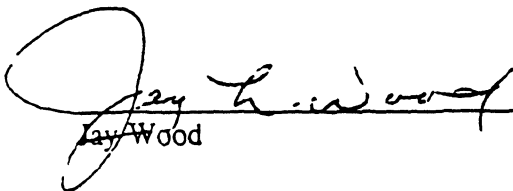
5. Please produce any documents referred to or reviewed during preparation of the answers to the preceding interrogatories.

**ANSWER:** See Exhibit C.

DATED this 29 day of January, 1998.

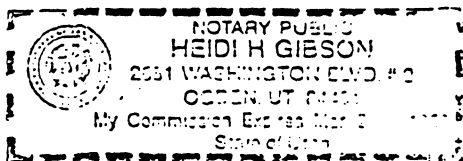
As to Objections:

  
\_\_\_\_\_  
John E. S. Robson  
Robert A. Garda  
FABIAN & CLENDENIN,  
A Professional Corporation  
Attorneys For Plaintiffs

  
\_\_\_\_\_  
Jay Wood

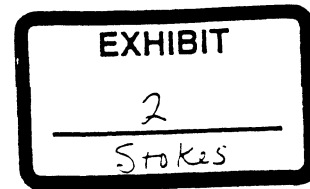
STATE OF UTAH )  
 )  
 ) *Weber* : ss.  
COUNTY OF SALT LAKE )

On this 27<sup>th</sup> day of January, 1998, personally appeared before me Jay Wood,  
personally known to me or proved to me on the basis of satisfactory evidence to be the person  
whose name is signed on the preceding document, and acknowledged to me that he signed it  
voluntarily for its stated purpose.



*Heidi H. Gibson*  
\_\_\_\_\_  
NOTARY PUBLIC

Tab O



John E. S. Robson, A4130  
Robert A. Garda, A7055  
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Twelfth Floor  
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Salt Lake City, Utah 84151  
Telephone: (801) 531-8900

Attorneys for Plaintiffs

IN THE SECOND DISTRICT COURT, WEBER COUNTY

STATE OF UTAH

JAY L. WOOD, DARRELL K. TANNER, )  
SCOTT A. STOKES and LEO SYPHUS, )  
individuals, )  
Plaintiffs, )

vs. )

UTAH FARM BUREAU INSURANCE )  
COMPANY, a Utah corporation, FARM )  
BUREAU LIFE INSURANCE )  
COMPANY, an Iowa corporation and FBL )  
INSURANCE COMPANY, an Iowa )  
corporation, )  
Defendants. )

**PLAINTIFF SCOTT A. STOKES'  
ANSWERS TO DEFENDANTS' FIRST  
SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Case No. 970906166CV

Judge Michael D. Lyon

Plaintiff, Scott A. Stokes ("Stokes"), by and through his counsel, answer Defendants'

First Interrogatories and Requests for Production of Documents as follows:

**General Objection:** Discovery is still ongoing in this lawsuit and Plaintiffs are not in possession of all information needed to answer these interrogatories. Plaintiffs have answered

all interrogatories to the best of their ability with the limited information and documents they possess.

### INTERROGATORIES

1. Please state the following with respect to each Plaintiff:

a. date of birth:

**ANSWER:** May 2, 1961.

b. the name, address and telephone number of your current employer:

**ANSWER:** Self employed.

c. the name of your current supervisor:

**ANSWER:** Self.

d. your current duties with said employer:

**ANSWER:** Construction.

e. whether each Plaintiff is married:

**ANSWER:** Married.

f. the names and ages of Plaintiff's children:

**ANSWER:** James 10; Brandon 16.

2. Please state whether each Plaintiff currently maintains a license issued by the State of Utah to sell (1) life insurance and (2) property and casualty insurance? If not, please state the last date said Plaintiff was licensed to sell each type of insurance.

**ANSWER:** I am licensed to sell both life and property and casualty insurance.



3. With respect to the allegation in the Complaint that you developed a "Book of Business," please state the following:

- a. describe with particularity the items which you contend were confiscated which constituted the "Book of Business;"

ANSWER: Client lists, client folders, policy records, clients, policy holders and commissions off of their premiums.

- b. how you determined the value of the "Book of Business" as set forth in paragraphs 6-9 of the Complaint;

ANSWER: Value at time of termination as reported to me by Farm Bureau Insurance.

4. Please state with specificity all facts which you believe support your contention that the items described in your answer to Interrogatory Number 3 constituting the "Book of Business" belonged to you. If your answer includes reference to conversations with others or documents, please state:

ANSWER: I created the Book of Business by enrolling, contacting and servicing the clients within the Book of Business. Many of the people in my Book of Business were my family and friends. Furthermore, my contract with Farm Bureau states I am an independent contractor therefore I own my Book of Business.

Farm Bureau also treated the Book of Business as owned by the agents. Farm Bureau could not arbitrarily remove or transfer clients from my Book of Business. Farm Bureau policy was to not remove a client from my Book of Business unless the client requested

removal, I failed to fill out a fact-finding sheet, or the client's policy was canceled. Finally, other agents treated the Book of Business as their own and Farm Bureau never contested these actions. Example #1: Reese Carter bought his Book of Business from his grandfather. Example #2: Ken Cardon offered to sell his Book of Business and had it approved by Farm Bureau to sell to Galen Bills.

- a. if a conversation, the date of the conversation or document;

**ANSWER:** In June/July of 1984.

- b. if a conversation, the person with whom you had the conversation:

**ANSWER:** Kay Williams.

- c. if a conversation, the location of the conversation;

**ANSWER:** 12<sup>th</sup> Street Ogden Office Ogden, Utah.

- d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** "You own your Book of Business" then he gave examples of other agent who sold or bought their books of business.

- e. if a document the author of the document;

**ANSWER:** See documents produced pursuant to Request for Production of Documents Nos. 1 and 5, attached as Exhibits A and C.

- f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 1, attached as Exhibit A.

5. Please state with specificity all facts which you believe support your contention that “Defendants agree to pay to Plaintiffs incentive bonuses and other compensation which was, from time to time, defined by Defendants and which included, but was not limited to, the reasonable value of the Plaintiffs’ “Book of Business” upon death, termination, or change of status?” If your answer includes reference to conversations with other or documents, please state:

**ANSWER:** The Career Incentive Plan was based on total commissions from my book of business. The production/loss ratio incentive plan also based on my commissions on my entire book of business. Finally, I received renewal commissions from my book of business.

a. if a conversation, the date of the conversation or document;

**ANSWER:**

b. if a conversation, the person with whom you had the conversation;

**ANSWER:**

c. if a conversation, the location of the conversation;

**ANSWER:**

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:**

e. if a document, the author of the document;

**ANSWER:** Farm Bureau.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** A copy of the Career Incentive Plan is attached as Exhibit C.

Documents regarding production/loss ratios and renewal business are attached as Exhibits A and C.

6. There is no Interrogatory No. 6.

7. Please state with specificity all facts which you believe support your contention that "Defendants informed Plaintiffs that if Plaintiffs went to work as insurance agents for any other company within a two year period, Plaintiffs would forfeit certain pension contributions previously made by Defendants?" If your answer includes reference to conversations with others or documents, please state:

a. if a conversation, the date of the conversation or document;

**ANSWER:** End of March, 1994.

b. if a conversation, the person with whom you had the conversation;

**ANSWER:** Gary Harms.

c. if a conversation, the location of the conversation;

**ANSWER:** Telephone.

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** Discussed commission and career incentive program.

e. if a document, the author of the document;

**ANSWER:** Farm Bureau Insurance.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** Career Incentive Program. Farm Bureau also has a policy which says this. See documents produced pursuant to Request for Production of Documents No. 5, attached as Exhibit C.

8. Please state with specificity all facts which you believe support your contention that the terms of the Career Agent Contract entered into by each Plaintiff effective January 1, 1994, was modified? If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** The October 15, 1993 letter to me from Darren Ivie. Also meetings and conversations with Darren Ivie.

a. if a conversation, the date of the conversation or document;

**ANSWER:** Late September / early October.

b. if a conversation, the person with whom you had the conversation;

**ANSWER:** Darren Ivie.

c. if a conversation, the location of the conversation;

**ANSWER:** Darren Ivie's office.

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** Mr. Ivie explained the minimum goals and said I have three months to write the production needed for the quarter. If by the end of the next quarter 50% of annual production needed was not issued he would start looking for someone to replace me and this

would take three to six months. The substance of the conversation is memorialized in the October 15, 1993 letter from Mr. Ivie.

e. if a document, the author of the document;

**ANSWER:** Darren Ivie.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** See document produced pursuant to Request for Production of Documents No. 4, attached as Exhibit B.

9. Please state with specificity all facts which you believe support your contention that "Defendants misrepresented the reason why Plaintiffs were no longer in the insurance business to clients of the Plaintiffs?" If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** Numerous former clients have said that Farm Bureau told them I retired from insurance to pursue a construction job.

10. Please set forth the precise language of the Career Agent Contract or other contract between Defendants and Plaintiffs you contend Defendants violated when they "confiscated Plaintiffs' Books of Business" as alleged in paragraph 23 of the Complaint.

**ANSWER:** Paragraph 4. I am a self employed independent contractor therefore I own my Book of Business. The implied covenant of good faith and fair dealing was also breached.

11. Please state all acts which you contend Defendants performed which “intentionally interfered with Plaintiffs’ existing and prospective business relationship” as alleged in paragraph thirty five of the Complaint.

**ANSWER:** Wrongfully terminating my contract, confiscating my Book of Business to give to new agents, and informing my clients that I quit as an insurance salesman to pursue construction.

12. Please identify the name, address, and telephone number of each person with whom you claim a business relationship which you contend Defendants interfered with, and for each said person, please state the specific acts which you contend Defendants engaged in to interfere with that relationship.

**ANSWER:** Every individual listed in my Book of Business, which is in possession of Farm Bureau. See Answer to Interrogatory No. 11.

13. Are you contending that no enforceable contract governed the relationship between the Defendants and the Plaintiffs?

**ANSWER:** No.

14. Please state with specificity the damages which you allegedly suffered as a result of the actions alleged in your Complaint. With respect to said damages, please state:

a. the total amount of damages claimed;

**ANSWER:** Plaintiffs are in the process of determining the total amount of damages suffered with specificity.

b. the method used to calculate said damages;

**ANSWER:** The Plaintiffs are in the process of determining the method used to calculate their damages.

c. the person who will testify at trial concerning said damages.

**ANSWER:** The Plaintiffs are in the process of retaining an expert to testify as to damages.

15. Please state the effective date of the last Career Agent Contract which you entered into with Defendants?

**ANSWER:** February 1, 1993.

16. In paragraph 14 of the Complaint, the Plaintiffs allege that "Mr. Ivie told Plaintiffs that as long as certain production goals were met, Defendants would not cancel their contracts." Please state the certain production goals Plaintiffs were told to meet.

**ANSWER:** See letter dated October 15, 1993, produced pursuant to Request for Production of Documents No. 4, attached as Exhibit B.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please produce a copy of the last Career Agent Contract entered into between you and the Defendants.

**ANSWER:** See Exhibit A.

2. Please produce a copy of the June 30, 1994, letter referenced in paragraph 16 of the Plaintiff's Complaint.

**ANSWER:** See documents produced by Leo Syphus pursuant to Request for Production of Documents No. 2.



3. Please produce copies of the letters referred to in paragraph twelve of the Plaintiff's Complaint.

ANSWER: There are no letters referred to in paragraph 12 of Plaintiffs' Complaint.

4. Please produce any and all documents which you contend support your conclusion that the contract between you and Defendants was modified or amended, either expressly or impliedly.

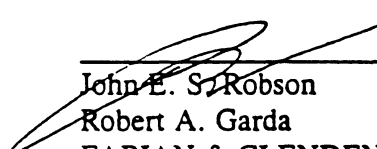
ANSWER: See Exhibit B.

5. Please produce any documents referred to or reviewed during preparation of the answers to the preceding interrogatories.

ANSWER: See Exhibit C.

DATED this 24<sup>th</sup> day of January, 1998.

As to Objections:



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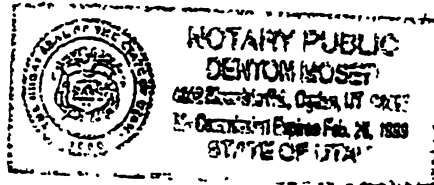
John E. S. Robson  
Robert A. Garda  
FABIAN & CLENDENIN,  
A Professional Corporation  
Attorneys For Plaintiffs

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

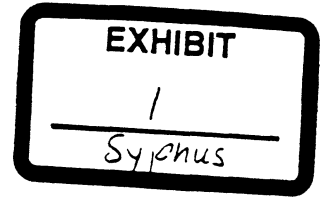
On this 29<sup>th</sup> day of January, 1998, personally appeared before me Scott A. Stokes,  
personally known to me or proved to me on the basis of satisfactory evidence to be the person  
whose name is signed on the preceding document, and acknowledged to me that he signed it  
voluntarily for its stated purpose.

~~Not A. L.~~

  
NOTARY PUBLIC



Tab P



John E. S. Robson, A4130  
Robert A. Garda, A7055  
FABIAN & CLENDENIN,  
A Professional Corporation  
Twelfth Floor  
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Telephone: (801) 531-8900

Attorneys for Plaintiffs

IN THE SECOND DISTRICT COURT, WEBER COUNTY

STATE OF UTAH

JAY L. WOOD, DARRELL K. TANNER, )  
SCOTT A. STOKES and LEO SYPHUS, )  
individuals, )  
 )  
Plaintiffs, )

vs. )

UTAH FARM BUREAU INSURANCE )  
COMPANY, a Utah corporation, FARM )  
BUREAU LIFE INSURANCE )  
COMPANY, an Iowa corporation and FBL )  
INSURANCE COMPANY, an Iowa )  
corporation, )  
 )  
Defendants. )

**PLAINTIFF LEO SYPHUS' ANSWERS  
TO DEFENDANTS' FIRST SET OF  
INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS**

Case No. 970906166CV

Judge Michael D. Lyon

Plaintiff, Leo Syphus, by and through his counsel, answer Defendants' First

Interrogatories and Requests for Production of Documents as follows:

**General Objection:** Discovery is still ongoing in this lawsuit and Plaintiffs are not in possession of all information needed to answer these interrogatories. Plaintiffs have answered

all interrogatories to the best of their ability with the limited information and documents they possess.

### INTERROGATORIES

1. Please state the following with respect to each Plaintiff:

a. date of birth:

ANSWER: March 3, 1924.

b. the name, address and telephone number of your current employer:

ANSWER: Blue Cross & Blue Shield of Utah, 2455 Parleys Way, P.O. Box 30270,  
Salt Lake City, UT 84130-0270.

c. the name of your current supervisor:

ANSWER: None.

d. your current duties with said employer:

ANSWER: Sell health insurance.

e. whether each Plaintiff is married:

ANSWER: Single.

f. the names and ages of Plaintiff's children:

ANSWER: Lamond Syphus, 45; Karen Cowling, 43; Susan Hegewald, 37; Michael Syphus, 39; Dianne Foster, 33.

2. Please state whether each Plaintiff currently maintains a license issued by the State of Utah to sell (1) life insurance and (2) property and casualty insurance? If not, please state the last date said Plaintiff was licensed to sell each type of insurance.

**ANSWER:** Yes.

3. With respect to the allegation in the Complaint that you developed a "Book of Business," please state the following:

a. describe with particularity the items which you contend were confiscated which constituted the "Book of Business:"

**ANSWER:** Client lists, client folders, policy records, clients, policy holders and commissions off of their premiums.

b. how you determined the value of the "Book of Business" as set forth in paragraphs 6-9 of the Complaint:

**ANSWER:** As reported by Farm Bureau and Walter Warnek**A**

4. Please state with specificity all facts which you believe support your contention that the items described in your answer to Interrogatory Number 3 constituting the "Book of Business" belonged to you. If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** I created the Book of Business by enrolling, contacting and servicing the clients within the Book of Business. Many of the people in my Book of Business were my family and friends. Furthermore, my contract with Farm Bureau states I am an independent contractor therefore I own my Book of Business.

Farm Bureau also treated the Book of Business as owned by me. Farm Bureau and I almost reached an agreement where I would give up a portion of my book of business to Farm Bureau in exchange for no longer paying office expenses and not being subject to minimum

requirements. The deal fell through because Farm Bureau could not hire enough new agents to service the portion of my book of business I was willing to part with.

Farm Bureau could not arbitrarily remove or transfer clients from my Book of Business. Farm Bureau policy was to not remove a client from my Book of Business unless the client requested removal, I failed to fill out a fact-finding sheet, or the client's policy was canceled. An old policy of Farm Bureau was to threaten to take a portion of the book of business if I did not sell a certain amount of life insurance. Finally, other agents treated the Book of Business as their own and Farm Bureau never contested these actions. For example, Floyd Carter sold his book of business to his grandson, Reese Carter.

- a. if a conversation, the date of the conversation or document;

**ANSWER:** None.

- b. if a conversation, the person with whom you had the conversation;

**ANSWER:** None.

- c. if a conversation, the location of the conversation;

**ANSWER:** None.

- d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** None.

- e. if a document the author of the document;

**ANSWER:** See documents produced pursuant to Request for Production of

Documents Nos. 1 and 5, attached as Exhibits A and C.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents produced pursuant to Request for Production of Documents Nos. 1 and 5, attached as Exhibits A and C.

5. Please state with specificity all facts which you believe support your contention that "Defendants agree to pay to Plaintiffs incentive bonuses and other compensation which was, from time to time, defined by Defendants and which included, but was not limited to, the reasonable value of the Plaintiffs' "Book of Business" upon death, termination, or change of status?" If your answer includes reference to conversations with other or documents, please state:

**ANSWER:** The Career Incentive Plan was based on total commissions from my book of business. The production/loss ratio incentive plan also based on my commissions on my entire book of business. Finally, I received renewal commissions from my book of business.

a. if a conversation, the date of the conversation or document;

**ANSWER:**

b. if a conversation, the person with whom you had the conversation;

**ANSWER:**

c. if a conversation, the location of the conversation

**ANSWER:**

d. if a conversation, the substance of the conversation as best you can recall;



**ANSWER:**

- e. if a document, the author of the document;

**ANSWER:** Farm Bureau.

- f. if a document, the substance of the document as best you can recall.

**ANSWER:** A copy of the Career Incentive Plan is attached as Exhibit C.

Documents regarding production/loss ratios and renewal business are attached as Exhibits A and C.

6. There is no Interrogatory No. 6.

7. Please state with specificity all facts which you believe support your contention that "Defendants informed Plaintiffs that if Plaintiffs went to work as insurance agents for any other company within a two year period, Plaintiffs would forfeit certain pension contributions previously made by Defendants?" If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** Previous agents have been denied retirement benefits for going into competition with Farm Bureau. It is also Farm Bureau policy and part of a written Career Incentive Plan.

- a. if a conversation, the date of the conversation or document;

**ANSWER:** None

- b. if a conversation, the person with whom you had the conversation;

**ANSWER:** None

- c. if a conversation, the location of the conversation;

**ANSWER:** None

- d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** None

- e. if a document, the author of the document;

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 5, attached as Exhibit C.

- f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 5, attached as Exhibit C.

8. Please state with specificity all facts which you believe support your contention that the terms of the Career Agent Contract entered into by each Plaintiff effective January 1, 1994, was modified? If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** A letter written by Bryan DeLair indicating production requirements.

- a. if a conversation, the date of the conversation or document;

**ANSWER:** Early June, 1994.

- b. if a conversation, the person with whom you had the conversation;

**ANSWER:** Bryan DeLair.

- c. if a conversation, the location of the conversation;

**ANSWER:** Bryan DeLair's office.

d. if a conversation, the substance of the conversation as best you can recall;

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 2, attached as Exhibit B.

e. if a document, the author of the document;

**ANSWER:** Bryon DeLair.

f. if a document, the substance of the document as best you can recall.

**ANSWER:** See documents produced pursuant to Request for Production of Documents No. 2, attached as Exhibit B.

9. Please state with specificity all facts which you believe support your contention that “Defendants misrepresented the reason why Plaintiffs were no longer in the insurance business to clients of the Plaintiffs?” If your answer includes reference to conversations with others or documents, please state:

**ANSWER:** Of all former clients that I have had conversations with, none were told by Farm Bureau that I had been terminated by Farm Bureau. Farm Bureau led my clients to believe that I retired.

10. Please set forth the precise language of the Career Agent Contract or other contract between Defendants and Plaintiffs you contend Defendants violated when they “confiscated Plaintiffs’ Books of Business” as alleged in paragraph 23 of the Complaint.

**ANSWER:** Paragraph 4. I am a self employed independent contractor therefore I own my Book of Business. The implied covenant of good faith and fair dealing was also breached.

11. Please state all acts which you contend Defendants performed which “intentionally interfered with Plaintiffs’ existing and prospective business relationship” as alleged in paragraph thirty five of the Complaint.

**ANSWER:** Wrongfully terminating my contract, confiscating my Book of Business to give to new agents, and informing my clients that I retired as an insurance salesman.

12. Please identify the name, address, and telephone number of each person with whom you claim a business relationship which you contend Defendants interfered with, and for each said person, please state the specific acts which you contend Defendants engaged in to interfere with that relationship.

**ANSWER:** Every individual listed in my Book of Business, which is in the possession of Farm Bureau. See Answer to Interrogatory No. 11.

13. Are you contending that no enforceable contract governed the relationship between the Defendants and the Plaintiffs?

**ANSWER:** No.

14. Please state with specificity the damages which you allegedly suffered as a result of the actions alleged in your Complaint. With respect to said damages, please state:

a. the total amount of damages claimed;

**ANSWER:** Plaintiffs are in the process of determining the total amount of damages suffered with specificity.

b. the method used to calculate said damages;

**ANSWER:** The Plaintiffs are in the process of determining the method used to calculate their damages.

c. the person who will testify at trial concerning said damages.

**ANSWER:** The Plaintiffs are in the process of retaining an expert to testify as to damages.

15. Please state the effective date of the last Career Agent Contract which you entered into with Defendants?

**ANSWER:** January 1, 1994.

16. In paragraph 14 of the Complaint, the Plaintiffs allege that "Mr. Ivie told Plaintiffs that as long as certain production goals were met, Defendants would not cancel their contracts." Please state the certain production goals Plaintiffs were told to meet.

**ANSWER:** See letter dated June 30, 1994 produced pursuant to Request for Production of Documents No. 2, attached as Exhibit B.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. Please produce a copy of the last Career Agent Contract entered into between you and the Defendants.

**ANSWER:** See Exhibit A.

2. Please produce a copy of the June 30, 1994, letter referenced in paragraph 16 of the Plaintiff's Complaint.

ANSWER: See Exhibit B.

3. Please produce copies of the letters referred to in paragraph twelve of the Plaintiff's Complaint.

ANSWER: No letters are referenced in paragraph 12 of Plaintiffs' Complaint.

4. Please produce any and all documents which you contend support your conclusion that the contract between you and Defendants was modified or amended, either expressly or impliedly.

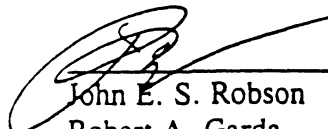
ANSWER: See Exhibit B.

5. Please produce any documents referred to or reviewed during preparation of the answers to the preceding interrogatories.

ANSWER: See Exhibit C.

DATED this 24<sup>th</sup> day of January, 1998.

As to Objections:



John E. S. Robson  
Robert A. Garda  
FABIAN & CLENDENIN,  
A Professional Corporation  
Attorneys For Plaintiffs

Leo Syphus

COUNTY OF SALT LAKE

On this 28<sup>th</sup> day of January, 1998, personally appeared before me Leo Syphus,



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