

2004

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

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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

**Plaintiffs and  
Appellants,**

**vs.**

**MILES WALTER LANGLEY,**

**Defendant,**

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

**Defendants and  
Appellees.**

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**Case No. 20040308-CA**

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**BRIEF OF APPELLANTS**

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**Appeal from Eighth District Court, Uintah County  
Judge A. Lynn Payne**

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**Oral Argument and Published Decision  
Requested**

**FILED  
UTAH APPELLATE COURTS  
NOV 15 2004**

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

**Plaintiffs and** :  
**Appellants,** :

**vs.** :

**MILES WALTER LANGLEY,** :

**Defendant,** :

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

**Defendants and** :  
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## STATEMENT OF JURISDICTION

The jurisdiction of the Utah Court of Appeals is based on Section 78-2a-3(2)(j) as a case transferred from the Utah Supreme Court.

## STATEMENT OF THE ISSUES

The following issues are presented for consideration by this Appeal:

1. a. **Issue.** Did the district court err in holding that there was a independent power of arrest in Miles Langley as a Colorado bail enforcement agent under the bail bond contract so that the Utah bond agent licensing statute Section 53-11-107(2), U.C.A., requiring a bond agent to be licensed could be ignored with the result that the court incorrectly instructed the jury on the law of arrest?

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

2. a. **Issue.** If Defendant Langley was without a right to arrest because he did not have a Utah bail enforcement agent license, did the district court err in dismissing the cause of action for false imprisonment where the jury instructions pertaining to the power to make a lawful arrest were also contrary to law?

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

3. a. **Issue.** Whether the district court erred as a matter of law in declining to enter a default against Robert Thorpe when he failed to show for trial and had placed no excuse therefor on the record nor had he requested any accommodation of the court.

b. **Standard of Review.** As explained in *Valley Leasing, a Div. of Intermountain Loan Corp. v. Houghton*, 661 P.2d 959 (Utah 1983), the decision on whether a default should have been entered is a matter of discretion of the trial court with this court reviewing to determine whether the trial court abused its discretion.

4. a. **Issue.** Did the trial court err as a matter of law when it ruled that plaintiff George Lee could not testify that he heard Defendant Langley testify in a justice court trial that Langley did not have a Utah bail enforcement agent license?

b. **Standard of Review.** The standard of review in determining whether a court has ruled correctly on evidence is an abuse of discretion standard. *Eggert v. Wasatch Energy Corp.*, 2004 Ut. 28, 94 P.3d 193.

5. a. **Issue.** Did the district court err as a matter of law in refusing to admit into evidence the original of the receipt signed by Robert Thorpe by holding that Plaintiffs failed to show that Robert Thorpe was unavailable so as to not be within an exception to the hearsay rule?

b. **Standard of Review.** The standard of review in determining whether a court has ruled correctly on evidence is an abuse of discretion standard. *Eggert v. Wasatch Energy Corp.*, 2004 Ut. 28, 94 P.3d 193.

#### **DETERMINATIVE LAW**

Plaintiffs claim the following controls resolution of the issues presented:

- A. Section 31A-35-601, U.C.A. (1999).
- B. Title 53, Chapter 11, U.C.A. (1999).

#### **STATEMENT OF THE CASE**

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

**B. COURSE OF PROCEEDINGS.** The incident which is the subject of this suit occurred on April 2, 1999. The Plaintiffs filed a *pro se* complaint with the Eighth District Court in Uintah County on February 28, 2000. R., p.3. Addendum A All Defendants eventually answered the complaint with Defendant Langley answering *pro se*. (R., p. 22).

Defendant, Ranger Insurance Company subsequently made a Cross-claim on March 7, 2002 against Defendants Thorpe and Langley. (R., p. 114).

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

Discovery proceeded but Thorpe failed to show for his deposition and sanctions were sought by the Plaintiffs in August, 2002. (R., p. 171). The sanctions were never imposed after representations to the court by the wife of Thorpe that he had health problems. (R., p. 240). However, Thorpe also failed to respond to Request for Admissions. (R., p. 356).

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

Robert Thorpe failed to show for the trial. The court denied the request of Plaintiffs to enter his default. (TT at R. p. 1187, p. 34). The court did grant the motion at trial of Defendant Ranger Insurance Company to enter the default of Robert Thorpe on the cross-claim brought by Ranger and later entered a formal order. (R., p. 1261).

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

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

## **RELEVANT FACTS**

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

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

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

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

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

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

## **B. THE EVENTS.**

Gerald Lee was arrested for driving under the influence and driving without proof of insurance in late 1998 in the Grand Junction, Colorado area. He jailed in Grand Junction Colorado and released on bail issued by A-1 Bail Bonds operated by Robert Thorpe. (Gerald Lee testimony at TT, R., p. 1187 at pp. 105-106). Despite posting bail, Gerald missed his court appearances in Colorado. (Lee testimony at TT, R., p. 1187 at pp. 109-110).

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

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

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

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

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

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

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

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

Plaintiffs brought this action against the Defendants for negligence or reckless conduct, false imprisonment, and assault. (Complaint, R., p. 3 and R., p. 322).

Other significant events occurred just before and during the trial which bear on this appeal. First, Miles Langley died so his testimony was presented by deposition. Second, Robert Thorpe failed to appear for trial. The court denied a motion by the Plaintiffs to have



his default entered but granted the motion in favor of Ranger Insurance Company on their cross-claim for a default in judgment for failure to appear and defend. (Tt. R., p. 1187 at pp. 34 and 227).

### **SUMMARY OF ARGUMENT**

Plaintiffs show in this Brief that their trial went awry when the court made a fundamental error in determining that there is common law authority for Colorado bail recovery agent Langley to act in Utah. Once the court decided that, Plaintiffs' false imprisonment claim was dismissed and their assault and reckless endangerment claim became impossible to win because the court instructed the jury that if it found Langley acted for Ranger Insurance Company that Langley had a right to make the arrest and use the appropriate force with that.

This Brief explains that there was no legal right for Langley to act as a bail recovery agent in Utah which has licensing requirements. The court compounded the error by excluding from evidence testimony that Langley admitted to having no Utah license and by excluding from evidence a hand-written receipt Defendant Thorpe created proving that he had hired Langley as an agent to act in his behalf.

Finally, this Brief explains that the court abused its discretion by refusing to default Robert Thorpe for failure to appear at trial where he had a pattern of not participating in the litigation yet the court was willing to enter the default of Thorpe on the cross-claim of the Defendant Ranger Insurance Company.

## **ARGUMENT**

### **A. INTRODUCTION**

This appeal presents extraordinarily interesting legal questions that can safely be said do not arise very often at all. Plaintiffs believe that a primary cause of the adverse jury decision was the way the court interpreted and applied legal principles governing the power to make an arrest. This brief will show that the court committed reversible error in its interpretation of the law and in ruling on two key points of evidence.

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

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

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

imprisonment. Langley's acts without justification in law eliminated any defenses to his physical force constituting an assault.

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

### **C. THERE WAS NO POWER OF ARREST.**

#### **1. Legal Framework.**

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

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

While Title 77 governs criminal arrest procedure, Title 53 governs the licensing and powers of bail enforcement agents. When one turns to Title 53, Chapter 10 as directed by Section 77-20-8.5, it is immediately observed that this statute is wrong in its reference. The appropriate chapter of Title 53 is Chapter 11. That chapter, known as the Bail Bond

Recovery Act, gives a comprehensive legal framework for the business operations of bail bond agents. What jumps out immediately is the fundamental requirement in Section 53-11-107 that there are three classes of licenses and no person may act as a bail enforcement agent or bail recovery agent without holding a Utah license. Section 53-11-108, 109 and 111 go on to set the training and education requirements of bail enforcement agents and bail recovery agents. (See Addendum B).

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

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

The best that could be said for Langley's legal status would that he acted in making a citizen's arrest. Section 77-7-3 provides that a private person may arrest another when there has been a public offense committed or attempted in his presence or when a felony has been committed and he has reasonable cause to believe the person arrested has committed it. Section 77-7-7 declares that a peace officer can use force in making an

arrest only after the person being arrested flees or forcibly resists after being informed of the intention to make the arrest.

With no state authority for a Colorado bail enforcement agent to make an arrest in Utah, the only remaining arguable authority for making the arrest is found in federal law and was a major issue at the trial as explained below.

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

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

Finally, of strong importance in this case is Title 31A, Chapter 35, the Bail Bond Surety Licensing Act. In particular, Section 31A-35-601(2) provides that the acts or conduct of any bail bond agent or bail enforcement agent, or bail recovery agent are

considered to be the acts or conduct of the bail bond surety. Put in the context of this case, if Langley worked for Thorpe and Thorpe was an agent for Ranger Insurance Company, the acts of Langley and Thorpe are absolutely imputed to the Ranger Insurance Company.

## **2. Langley Acted Outside the Law.**

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

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

This view by the court of the authority to arrest also caused the court to dismiss the claim for false imprisonment brought by both Plaintiffs. (TT, R., p. 1187 at 213-216).

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

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

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

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

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

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

Finally, in *Johnson v. County of Kittitas*, 11 P.3d 862 (Wash. App. 2001), the court considered a bail bondsman who seized a defendant simply because the bondsman felt threatened that the defendant may skip on the bond. The bondsman relied on *Taylor v. Taintor* to argue that a surety had a right to pick up the subject as they believed necessary



to protect the bond contract. The court rejected the argument stating, as did the other states, that the adoption of a Washington state statute concerning the authority of a bail bondsman supplanted the common law rule of *Taylor v. Taintor*.

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

With all of the predicate legal principles in mind, the reversible error of the district court can be brought into sharp focus. Plaintiffs' theory of the case under Utah law was that Langley had no legal authority to be in Utah making an arrest therefore he could be liable for false imprisonment through false arrest, he could be liable for assault because he was using force in a situation in which he had no right to assert force, and he could be liable for negligence or reckless endangerment because he was purporting to carry out a duty without legal authority. By holding that there was a common law right of interstate apprehension pursuant to the contract documents, the trial court was wrong on the law and instructed the jury wrong when it said all they had to do to find lawful arrest authority was to find the contract authorized Langley to act. There is no known authority for the

proposition that parties can get together in one state and contract away the public policy and statutes of another state, yet that is what the court allowed in this trial.

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

**D. FALSE IMPRISONMENT SHOULD NOT HAVE BEEN DISMISSED.**

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

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

As explained in the preceding section, Miles Langley had no authority to arrest Gerald Lee in Utah. Certainly, even if there was some authority found in the law to arrest Gerald Lee, Langley is not given any authority to falsely imprison George Lee in his own

home. It is a question of fact that the jury could have found that George Lee, by exercise of force of Miles Langley, was deprived of his liberty or compelled to remain by the force.

The error of the trial court was to not even let the jury consider that false imprisonment claim through finding Miles Langley had a right to act under the common law surrounding the bail bond contract. The district court was wrong on the law completely. Instead of instructing the jury that if Miles Langley was found to be acting within the contract there was legal authority, the jury should have been instructed that Langley had no authority to act in Utah and the Defendants needed to show a justification for force or detention.

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

**E. DEFAULT SHOULD HAVE BEEN ENTERED AGAINST ROBERT THORPE.**

Plaintiff began the trial by moving to enter the default of Robert Thorpe who had simply failed to appear at trial without explanation. (TT. R., p. 1187 at p. 7). The trial court refused to do that stating that Plaintiffs' counsel clearly intended to ask that the jury be instructed on default that Thorpe hired Langley to apprehend Gerald Lee, which was a fact the court understood would be disputed by testimony of Mrs. Thorpe. Plaintiffs' counsel pointed out that Thorpe had essentially ignored the case throughout discovery effort and the practical effect to deny a default at trial would be to reward him for ignoring the court. (TT, R., p. 1187 at pp. 16-19). Counsel further argued that the default of Thorpe could also

be imputed to Ranger Insurance Company as its agent. The trial court was unpersuaded and refused to default Thorpe, though it could have ruled Thorpe was in default but Ranger was not bound.

Later, Ranger Insurance Company, which had asserted a cross-claim against Thorpe moved to have a default of the cross-claim entered for Thorpe failing to appear at trial. The court granted that motion. (R., p. 1261).

The legal standard as to whether a default should be entered is that it is within the discretion of the trial court. *Valley Leasing, a Div. of Intermountain Loan Corp. v. Houghton*, 661 P.2d 959 (Utah 1983). The question presented is, therefore, did the trial court abuse its discretion in failing to enter a default against Robert Thorpe.

An examination of the record will show that Thorpe failed to show up for his scheduled deposition. (R., p. 114). The record shows that he came to none of the court's various hearings in the course of the litigation though he was clearly on the mailing list. Thorpe never presented any information to the court suggesting he would not be at trial or giving an explanation as to why he was not at trial. A fair inference of such conduct is that he simply chose to ignore the court. The unfortunate consequence of ignoring the court was that he got complete benefit of such conduct by having the claims of the Plaintiffs dismissed against him though he ultimately did get caught on the cross-claim by Ranger Insurance Company.

The court's concern the default of Thorpe could be imputed to the principal for which he was an agent was entirely misplaced. Ranger selected Thorpe as its agent and expressly made him an agent as shown in Trial Exhibit No. 2. ( R., p. 999). That principals are bound for the conduct of their agents is not a new concept in the law at all. *Forsythe v. Pendleton*, 617 P.2d 358 (Utah 1980).

What Plaintiffs suggest to the court is not unusual in the law. In *Murphy v. Crosland*, 886 P.2d 74 (Utah App. 1994), this Court considered a statute that created responsibility for certain corporate acts in individual corporate officers aside from the corporation. The corporation had a default judgment entered against it and this Court recognized that the individual officers could be bound by that judgment under the statute that created responsibility in them for the acts of the corporation. The primary issue at trial was whether those persons had, in fact, engaged in those acts. That Ranger Insurance Company would be held responsible for the default of Thorpe is completely consistent with this case where the agency relationship between them is clear in the record and there is a statute that creates responsibility for the acts of Ranger's agents.

That the trial court abused its discretion in not entering the default of Robert Thorpe is shown by the effect being to reward Mr. Thorpe for displaying contempt for the proceedings throughout and by the court choosing to disregard the law of agency. The court also ruled by anticipating the testimony of Mrs. Thorpe, which he had not even heard

at the time of the ruling other than to be told generally by Ranger Insurance Company that she would dispute that Langley had been hired by Thorpe.

The correct ruling would have been to find that Robert Thorpe was in default and thereby had admitted the allegations made against him in the complaint. Those admissions which would have become the law of the case through the default were that Ranger Insurance Company is a bond surety company and Langley was an agent of not only Thorpe but Ranger Insurance, and that Langley assaulted the Lees unlawfully. (Complaint at R., p. 3). The only remaining fact issues for trial would have been whether Thorpe was an agent for Ranger Insurance Company and the amount of damages.

Thorpe and Ranger were not just Co-Defendants in this litigation. The evidence presented by Ranger itself shows that they had a principal and agent relationship. Ranger clearly had a remedy against Thorpe for any damage caused by a default of its agent as established by the fact the court entered a default judgment in favor of Ranger Insurance Company on their cross-claim against Thorpe.

The court's error is further demonstrated by considering the entry of the default judgment in favor of Ranger against Thorpe. What the court did in entering the default is recognize the agency relationship between Ranger and Thorpe existed so as to justify entering a judgment on the contract documents against Thorpe for Ranger. However, when the court refused to enter a default for the Plaintiffs against Thorpe, the agency relationship suddenly became a barrier to enforcing the agency relationship for third-party

Lees. Keep in mind that the ruling of the court denying the default judgment against Thorpe, as expressed on the record, was to protect Ranger Insurance Company even though there was a statute in place, Section 31A-35-601(2), that would have reached the same result Plaintiffs sought by the default even absent a default. That is, Ranger Insurance Company is responsible as a matter of law for the wrongful acts of its bail agent and bail recovery agent. The court was construing away from the public policy expressed in Title 53 that bond sureties be absolutely responsible for acts of bond enforcement agents.

The correct legal result for the court in this circumstance would have been to enter a default of Thorpe in favor of the Plaintiffs, hold that the default binds Ranger Insurance Company under its agency relationship with Thorpe and the applicable law discussed above.

This Court is requested to reverse the trial court to order that the default of Robert Thorpe be entered and that Ranger Insurance Company, principal, be bound thereby.

**F. REVERSIBLE ERROR OCCURRED BY EXCLUDING LANGLEY'S JUSTICE COURT ADMISSION.**

Obviously, one of the key elements in establishing that Miles Langley did not have authority to arrest was the fact that he had no Utah bail recovery agent license. As has been pointed out above, the court completely ignored Utah's licensing scheme. The court added to the error through a serious evidentiary error justifying reversal.

As the record shows at p. 45, both the Lees and Langley were tried for assault in a justice court. A trial was held and Langley was convicted of assault and the Lees were acquitted. During the course of the justice court trial, Langley was asked if he had a Utah bail enforcement license. He stated in the justice court that he did not.

Plaintiffs attempted to show by the testimony of George Lee that he was present in the courtroom in the justice court and heard Miles Langley say he did not have a Utah bail bond license. In fact, it was George Lee himself in the justice court doing the questioning of Langley. As shown in TT, R., p. 1187, pp. 200-202, Plaintiffs attempted to offer the justice court statement of Langley and the court found it to be hearsay, and refused to allow it, thereby eliminating plaintiff's key proof that Langley was outside the law in making an arrest.

Counsel for Lees argued that Langley's status was an admission by a party opponent under Rule 801(d)(2) and a statement against interest under 804(b)(3), Utah Rules of Evidence. Plaintiffs counsel also asserted that Rule 804(b)(1) excluded the statement from the hearsay rule as former testimony. (TT. R., p. 1187 at 201-202).

The court said that former testimony under 804(b)(1) could only be established by a "document". (TT. R., p. 1187 at 202). A review of the case law does not show any such requirement. Utah has no case law on this point. However, *Method of Proof of Testimony Given at Former Examination, Hearing, or Trial*, 11 A.L.R. 2d 30 at § 29 states that the general rule is that the testimony of a witness in a former civil trial may be proved by the



testimony of any person who was present and heard him testify. The element that Langley be unavailable – he was dead – is met beyond question. There is virtually no Utah case law which suggests that the former testimony needs to be in writing and George Lee was completely free to say what he heard Langley say in court.

The court does not give an explanation in the record as to why it did not find Langley's statement to be a statement against interest or an admission of a party opponent. It simply sustains the objection and the trial moves on. An examination of the rules of evidence shows that this key testimony should have been allowed.

First, Rule 804(b)(3), U.R.E., states that where the declarant is unavailable, a statement which tended to subject the declarant to criminal liability is admissible. (See Addendum E). Section 53-11-124 makes it a Class A Misdemeanor under Utah law to act as a bail enforcement agent without a Utah license. One would be hard pressed to find a more clear example of a statement being one within the definition of statement against interest.

Rule 801(d)(2) makes admissible admissions by a party opponent. The rule allows out of court statements where it is the party's own statement. Statements of admissions are not hearsay by definition under Rule 801 and are not exceptions to the hearsay rule. Langley's statement in the justice court to the effect that he did not have a Utah bond enforcement license is an admission of his lack of authority to act in Utah.

The court's exclusion of Langley's statement was later used in trial as justification for supporting other adverse decisions against Plaintiffs. (TT. R., p. 1187 at pp. 222-223). The trial court cited the lack of evidence of no licensing of Langley as additional reason to support the defense theory of common law apprehension under a bail bond contract thereby compounding the error.

This ruling excluding the evidence of no enforcement license requires reversal of the case because it was a key element to show that Langley was outside of Utah law and thereby without authority to act. This Court is respectfully requested to reverse the trial court on this ground and to order a new trial as may be consistent with rulings on the other issues raised herein.

**G. FAILURE TO ADMIT THORPE'S RECEIPT WAS REVERSIBLE ERROR.**

Another serious evidentiary error occurred when the court refused to allow Gerald Lee to authenticate a receipt given by Thorpe to Lee. This receipt was proposed Plaintiff Exhibit No. 5 found in the record at p. 986, Addendum F.

The context of this exhibit is that Langley said he was hired by Robert Thorpe to go get Gerald Lee, that he got Gerald Lee in Utah, and that he brought Lee back to Grand Junction and was paid cash by Thorpe for doing so. Mrs. Thorpe testified that her husband never hired Langley, that Langley did whatever he did on his own, and that her husband, who had not shown up for the trial, would not have paid Langley anything. (R., Video at 999).

This point was essential to the trial because Mrs. Thorpe was attempting to cutoff the chain of agency to avoid responsibility of Robert Thorpe for the wrongful acts of Miles Langley and also thereby relieve her surety, Ranger Insurance Company, from imputed liability.

In rebuttal to the testimony of Mrs. Thorpe, Plaintiffs offered a receipt signed by Robert Thorpe showing that he paid \$350.00 for the apprehension by Langley of Lee. This receipt was created in the presence of Gerald Lee who saw Robert Thorpe actually write it. Lee's proffered testimony at TT. R., at pp.277-278 was that he paid cash on his bond to Robert Thorpe with Miles Langley standing there with them and Thorpe, in turn, gave some of the cash to Miles Langley and wrote the receipt. The receipt said that Langley had been paid by Thorpe for the recovery of Lee exactly contrary to the video deposition testimony of Mrs. Thorpe. (See proffered Exhibit on 5 R., p. 986).

Defense counsel objected that the receipt was hearsay. Counsel for Plaintiffs pointed out that this writing is an admission of a party opponent of a key element at issue. The admission being that Robert Thorpe paid Miles Langley for the apprehension of Gerald Lee contrary to the testimony of Mrs. Thorpe.

The court responded in TT R., p. 1187 at pp. 276-285 after discussion that he could accept that it was an admission of a party opponent but then stated that the witness had to be unavailable and Mr. Thorpe was not unavailable. The court stated, at TT. R., p. 1187

at p.281 that there is “an interstate act” and Thorpe can be subpoenaed. The key evidence was excluded.

The ruling of the trial court was clearly wrong and an abuse of discretion because of the prejudice it works on the plaintiff. Remember, the issue at hand is whether to believe the dead Langley that he was paid by Thorpe and Thorpe’s wife testifies by video deposition that her husband would never had paid Thorpe. Plaintiffs can’t use Robert Thorpe as a witness to rebut because he didn’t show up for either his deposition or trial. The receipt effectively tells the jury that Mrs. Thorpe is dead wrong.

Rule 801(d)(2), which governs admission by a party opponent, need merely be the party’s own statement of admission and is outside the very definition of hearsay. There is absolutely no requirement about availability of the party and the court was wrong to rule on that point.

The second problem with the court’s ruling is the court apparently focused on Rule 804(b)(3) concerning statements against interest. (TT. R., p. 1187 at pp. 281-283). The court looked to unavailability under that rule and said the plaintiff could not show unavailability because of the interstate compact concerning witnesses. An examination of the Utah Code shows that the only “uniform act” to which the court could have been referring to is Title 77, Chapter 21, titled “Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings”. An examination of Title 77, Chapter 21, shows that this statute governs obtaining witnesses from out of state in

criminal proceedings only. There is nothing in Utah law which gives civil litigants the power to subpoena somebody to come to trial to testify from another state.

In short, the logic of the trial court was wrong on several levels. First, the document had been properly authenticated by Gerald Lee stating that he had seen Robert Thorpe write it. Second, the writing of a receipt of the arrest of Gerald Lee was a key admission of agency on the part of Robert Thorpe that he actually paid Langley contrary to the testimony of his wife and business partner. Third, there was no requirement of witness availability under the applicable rules governing this piece of evidence.

A final concern ought to be that the practical effect of this ruling is to once again reward Robert Thorpe for not showing up at trial. The trial court abused its discretion by refusing to default Robert Thorpe and then telling the Plaintiffs that a key piece of evidence cannot be admitted because they did not subpoena this defaulting absent Defendant to trial under a law governing criminal proceedings.

That this error rises to the level of being reversible happens because of the context of the offered receipt in the total case. Put plainly, Plaintiffs got whipsawed. The jury was instructed in Instruction No. 25 that if they found Thorpe worked for Ranger Insurance Company and Langley worked for Thorpe, there was lawful authority to make an arrest and they could no-cause the Plaintiffs. At the same time, Thorpe was allowed to claim through Mrs. Thorpe, Robert Thorpe being absent from the trial, that Langley did not work for them and absolute rebuttal evidence to that point in the handwriting of Robert Thorpe done in

the presence of live witness Gerald Lee was not allowed. The practical effect of this ruling and the instructions given were to set up Defendant Thorpe so he could not possibly lose the case. If he was the agent of Ranger, which Plaintiffs always agreed he was, then there was arrest authority under the contracts and at the same time Ranger and Thorpe could deny Langley was their agent with evidence showing Mrs. Thorpe was dead wrong being excluded. This result is a clear abuse of discretion in the context of this case and constitutes reversible error.

### **CONCLUSION**

This Court is respectfully requested to find as follows:

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

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

3. This Court is respectfully requested to find that the Eighth District Court abused its discretion in failing to enter a default against Robert Thorpe and asks that the

case be remanded with an order that Mr. Thorpe's default be entered and the binding effect upon the principal, Ranger Insurance Company, of that default also be entered whereby Ranger Insurance Company is found to be bound by the acts of its agent.

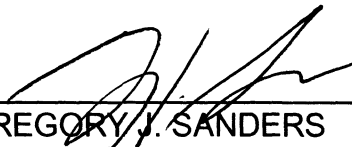
4. This Court is requested to hold under an abuse of discretion standard that the District Court created reversible error when it refused to allow George Lee to testify that he heard Langley say in a justice court trial that Langley did not have a Utah bail enforcement agent license.

5. This Court is requested to find under an abuse of discretion standard that it was error for the District Court to exclude an exhibit of the receipt signed by Robert Thorpe for the work of Langley in apprehending Gerald Lee where Langley had deceased prior to trial and video testimony by Mrs. Thorpe was allowed denying that the event ever happened.

Taking all of the errors into account, this Court is respectfully requested to remand the case to the Eighth District Court for a new trial with the default of Robert Thorpe in place whereby the issue of a new trial would be limited to whether Langley was an agent of Thorpe, whether Langley assaulted or falsely arrested the Plaintiffs, and the amount of damages.

**DATED** this 12<sup>th</sup> day of November, 2004.

KIPP AND CHRISTIAN, P.C.

A handwritten signature in black ink, appearing to read 'G. Sanders', is written over a horizontal line.

GREGORY J. SANDERS  
Attorneys for Plaintiffs and Appellees



## **ADDENDUM**

<b>A. COMPLAINT .....</b>	<b>A-1</b>
<b>B. STATUTES CITED .....</b>	<b>A-5</b>
<b>C. EXCERPTS FROM TRIAL EXHIBIT 2 .....</b>	<b>A-27</b>
<b>D. CERTAIN JURY INSTRUCTIONS GIVEN AND REJECTED .....</b>	<b>A-43</b>
<b>E. UTAH RULES OF EVIDENCE .....</b>	<b>A-57</b>
<b>F. REJECTED EXHIBIT: RECEIPT OF THORPE .....</b>	<b>A-63</b>

## **Addendum “A”**

### **Complaint**

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

FILED  
DISTRICT COURT  
UINTAH COUNTY, UTAH

FEB 28 2000

JOANNE MCKEE, CLERK

BY [Signature] DEF

GEORGE M LEE

\*

GERALD L LEE

\*

PLAINTIFFS

\*

vs.

\*

MILES WALTER LANGLEY

\*

ROBERT P THORPE

\*

RANGER INSURANCE CO.

\*

DEFENDANTS

\*

*Judge A. Lynn Payne*

CIVIL ACTION NO. 000800176 CR

Complaint

JURISDICTION

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

PARTIES

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

#### LEGAL CLAIMS

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

76-5-103 Assault and Battery

76-5-302 Kidnap

76-5-112 Reckless Endangerment

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

claims not limited to above statutes.

Relief Requested

1. Plaintiffs costs for this action.

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

3. Damages in the amount of

Compensatory \$ 500,000 Per Defendant

Punitive \$ 500,000 Per Defendant

Respectfully Submitted,

*George M. Lee*

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

DATE FEB. 28 2000

## **Addendum “B”**

### **Statutes Cited**

## **Title 31A, Utah Code Annotated**

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# **UTAH CODE UNANNOTATED 1999**

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## **VOLUME 2**

Complete through the  
1999 GENERAL SESSION

LEXIS Law Publishing  
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**31A-35-601. Acts of agent.**

(1) As used in this section;

(a) "Bail recovery agent" means an individual employed by a bail enforcement agent to assist the bail enforcement agent regarding civil or criminal defendants released on bail by:

(i) presenting a defendant for required court appearances;

(ii) apprehending or surrendering a defendant to a court; or

(iii) keeping the defendant under necessary surveillance.

(b) "Bail recovery apprentice" means an individual who:

(i) is employed by a bail enforcement agent; and

(ii) works under the direct supervision of that bail enforcement agent or under the direct supervision of a bail recovery agent employed also by the bail enforcement agent, unless the bail recovery apprentice is conducting activities at the direction of the employing bail enforcement agent that do not require direct supervision.

(2) The acts or conduct of any bail bond agent or bail enforcement agent, bail recovery agent, or bail recovery ap-

prentice who acts within the scope of the authority delegated to him by the bail bond surety, are considered to be the acts or conduct of the bail bond surety for which the bail bond agent or bail bond enforcement agent, bail recovery agent, or bail recovery apprentice is acting as agent.

(3) The acts or conduct of any bail bond agent or bail enforcement agent, bail recovery agent, or bail recovery apprentice who acts within the scope of the authority delegated to him by the bail bond agent are considered to be the acts or conduct of the bail bond agent for which the bail enforcement agent is acting as agent.

1998



## **Title 53, Utah Code Annotated**

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# **UTAH CODE UNANNOTATED 1999**

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## **VOLUME 2**

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Charlottesville, Virginia**

A-15

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

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

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

(2) A person may not:

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

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

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

1998

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

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

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

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

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

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

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

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

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

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

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

1998

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

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

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

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

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

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

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

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

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

(a) advertise his services;

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

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

1998

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

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

1998

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

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

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

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

1998

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

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

1998

## **Title 77, Utah Code Annotated**

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# **UTAH CODE UNANNOTATED 1999**

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## **VOLUME 4**

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Charlottesville, Virginia

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

A private person may arrest another:

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

1980

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

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

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

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

- (3) A surety acting under this section is subject to the provisions of Title 53, Chapter 10, Bail Bond Recovery. 1998

## **Addendum “C”**

### **Excerpts from Trial Exhibit 2 (R. 999)**

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

Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____
Offense _____	Case # _____	Power # _____	Amount _____	Premium _____

Total Bond Amount \_\_\_\_\_ Total Prem. \_\_\_\_\_

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

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

Alias/Nickname/Street Name JED.

Date of Birth 24 MAR 50 Place of Birth VERNAL UT. Social Security No. 522-72-6891 Height 6' Weight 146

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

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

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

Present Occupation(s) Hvy Equip opsr. Previous Occupation(s) \_\_\_\_\_

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

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

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

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

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

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

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

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

Age	Child's Name/Address	School/ Employer	Phone
-----	----------------------	------------------	-------

<u>22</u>	<u>MICHAEL DAVID LEE</u>		
-----------	--------------------------	--	--

Auto Year \_\_\_\_\_ Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_ Tag# \_\_\_\_\_ State \_\_\_\_\_

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

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

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

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

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

Credit Card Company \_\_\_\_\_ Account# \_\_\_\_\_

Credit Card Company \_\_\_\_\_

Attorney \_\_\_\_\_

**RELATIVES/FRIENDS**

Mother	<u>MONA RAE</u>
Father	<u>Geo</u>
Brother	
Brother	
Sister	
Sister	
Sister	
M-Law	
F-Law	
Gr. Pare	
Bes'	

3. If I do the one in which I hereby waive, I, GER, and/or its Agent, to o. al Security Records, criminal re. party or agency, private or governm. GER, and/or its Agent.

Signature of Defendant [Signature]

Date 11-30-11

Signature of Defendant [Signature]



Houston, Texas 77252-2807  
(713) 954-8100  
(713) 954-8389 (FAX)

AGENT Maria Thorpe DATE OF APPLICATION 11-30-98

Offense \_\_\_\_\_ Case # \_\_\_\_\_ Power # \_\_\_\_\_ Amount \_\_\_\_\_ Premium \_\_\_\_\_  
Offense \_\_\_\_\_ Case # \_\_\_\_\_ Power # \_\_\_\_\_ Amount \_\_\_\_\_ Premium \_\_\_\_\_  
Offense \_\_\_\_\_ Case # \_\_\_\_\_ Power # \_\_\_\_\_ Amount \_\_\_\_\_ Premium \_\_\_\_\_  
Offense \_\_\_\_\_ Case # \_\_\_\_\_ Power # \_\_\_\_\_ Amount \_\_\_\_\_ Premium \_\_\_\_\_  
Total Bond Amount \_\_\_\_\_ Total Prem. \_\_\_\_\_

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

Defendant's Full Name (First, Middle, Last) Gerald L. Lee Phone 789 7023

Alias/Nickname/Street Name 2281 E. 4500 S.

Date of Birth 3-26-50 Place of Birth Vernal UT Social Security No. 522-72-6891 Height 6 Weight 150

Eye Color Blue Hair Color Brown Race White Scars/Tattoos/Marks, etc. \_\_\_\_\_

Address 2281 E 4500 S Apt. # 2 ( ) Own ( ) Rent Landlord

City Vernal State/Zip Code UT 84078 Previous Address 2281 E 4500 S

Present Occupation(s) Eap Operator Previous Occupation(s) Eap Operator

Employer Martgomery Recycling Shift Days How Long 4 years

Address \_\_\_\_\_ Job Title Eap Operator Phone 789 2136

Previous Employer Bundy Const. How Long 6 years

Union No Local # Rangely

Spouse Full Name None Date of Birth \_\_\_\_\_ Social Security No. \_\_\_\_\_

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

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

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

Age \_\_\_\_\_ Child's Name/Address \_\_\_\_\_ School/ Employer \_\_\_\_\_ Phone \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Auto Year 79 Make Ford Model Pickup Color Blue Tag # \_\_\_\_\_ State Colo

Amount Owed None Lien Holder \_\_\_\_\_

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

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

Previous Arrests for No Infractions Where Rangely Colo

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

Credit Card Company \_\_\_\_\_ Account # \_\_\_\_\_

Credit Card Company \_\_\_\_\_ Account # \_\_\_\_\_

Attorney \_\_\_\_\_ Address \_\_\_\_\_ Phone \_\_\_\_\_

RELATIVES/FRIENDS		ADDRESS, CITY, STATE, ZIP	PHONE
Mother	<u>Mona Rael Lee</u>	<u>Same</u>	<u>789-7023</u>
Father	<u>George Lee</u>	<u>Same</u>	<u>789-7023</u>
Brother	<u>Belton Lee</u>	<u>4500 S Vernal Utah</u>	
Brother	<u>George Lee</u>	<u>4500 S Vernal Utah</u>	
Sister			
Sister	<u>Shawna McCabe</u>	<u>6000 S</u>	<u>257-7922</u>
Sister			
M-Law			
F-Law			
Gr. Parents			
Best Friend			
Ex Spouse			

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

- RANGER shall have control and jurisdiction over me during the term for which my bail bond(s) is executed and shall have the right to apprehend and surrender me to the proper officials at any time for violation of my bail bond(s) obligations to the Court and RANGER as provided by law.
- It is understood and agreed that any one of the following actions by me shall constitute a breach of my obligations to RANGER and that RANGER and/or its Agent shall have the right to forthwith apprehend and surrender me in exoneration of my bail bond(s):
  - If I depart the jurisdiction of the Court without the written consent of the Court and RANGER, or its Agent.
  - If I shall move from one address to another or change my phone number without notifying RANGER, and/or its Agent.

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

**WITNESSETH:**

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

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

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

IN TESTIMONY WHEREOF we have hereunto set our hand and affixed our seals this

30 day of Nov, 1998

THE PREMIUM PAID ON THIS BOND IS NOT RETURNABLE

Defendant Signature

Indemnitor

Signature

Name

Phone

Spouse

Reference (Personal or Credit)

1.

George Lee

Wade Montgomery

Wade Montgomery

Donna

Tom

Employment

Address

Driver's Lic.

S.S. No.

Employer

Montgomery Recycling Inc

845 E. 2850 S.

7715046 UT

363-72-1071

6-1-61

City

D.O.B.

Relation

CE-V

## BAIL BOND UNDERWRITING AGREEMENT

THIS AGREEMENT entered into this 11th of March, 1988, by and between RANGER INSURANCE COMPANY, a Delaware Corporation duly licensed and authorized to issue surety bail bond powers of attorney in all bail states (hereinafter "RIC or "Company"), North American Bail Bond Services (hereinafter "General Agent") and Robert Paul Thorpe and Maria Elizabeth Thorpe dba A-1 Bail Bonds (hereinafter "Agent" or "Bail Agent").

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

18. INDEMNITY FUND.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

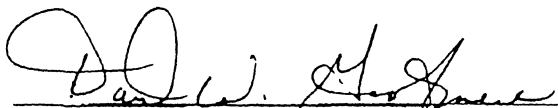
31. **WRITTEN NOTICES.** Any written notice given hereunder shall be deemed received by the addressee upon deposit of the same in the United State Mail with proper first class postage affixed thereto, addressed as follows:

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

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

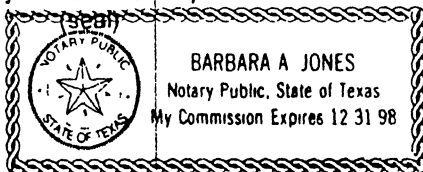
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

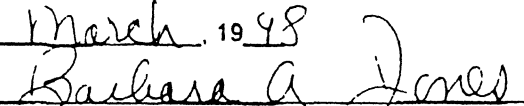
RANGER INSURANCE COMPANY

By.   
David W. Grobmeier – Assistant Vice President

State of Texas County of Harris

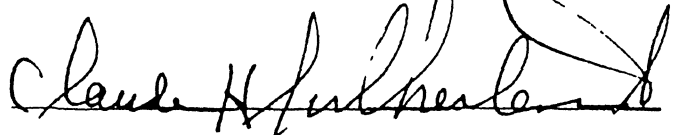
Subscribed and sworn to before me this 23rd day of March, 1998  
My Commission expires



  
(Notary Public)

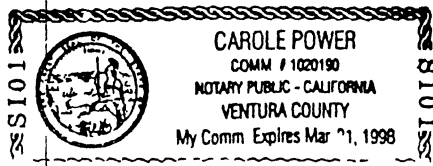
GENERAL AGENT

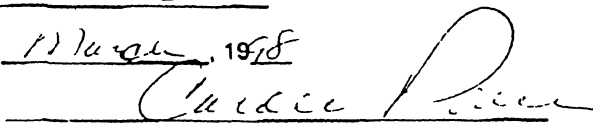
NORTH AMERICAN BAIL BOND SERVICES

By. 

State of California County of Alameda

Subscribed and sworn to before me this 1st day of March, 1998  
My Commission expires:  
(seal)



  
(Notary Public)

BAIL AGENT

Maria Thorpe  
MARIA THORPE  
(print name)

BAIL AGENT

Robert Thorpe  
Robert Thorpe  
(print name)

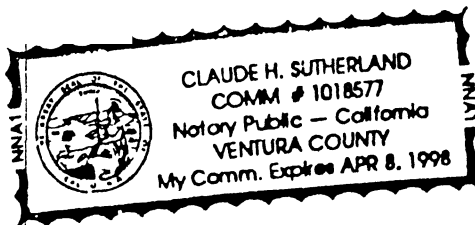
State of California  
County of Alameda ) ss.

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

WITNESS my hand and official seal.

Claude H. Sutherland  
(signature of Notary Public)

(seal)



## **Addendum “D”**

### **Certain Jury Instructions Given and Rejected**



## **Instructions Given**

**INSTRUCTION NO. 25**

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

INSTRUCTION NO. 26

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

## **Plaintiffs' Instructions Rejected**

**INSTRUCTION NO. 5**

**FALSE IMPRISONMENT INTRODUCTION**

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

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

Miles Langley has denied that he acted wrongfully.

***Reference:***

MUJI 10.14

**INSTRUCTION NO. 6**

**FALSE IMPRISONMENT**

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

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

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

***References:***

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

**INSTRUCTION NO. 7**

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

***Reference:***

Title 53, Chapter 11, UCA.

**INSTRUCTION NO. 8**

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

**Reference:**

Section 77-7-3, UCA



**INSTRUCTION NO. 9**

**NEGLIGENCE - INTRODUCTORY INSTRUCTION**

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

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

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

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

***References:***

MUJI 3.1  
JIFU No. 2.4 (1957)

A-55

**INSTRUCTION NO. 10**

**RIGHT TO RECOVER FOR NEGLIGENT CONDUCT**

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

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

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

***References:***

MUJI 3.2

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

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

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

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

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

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

**Addendum “E”**  
**Utah Rules of Evidence**

**UTAH CODE  
ANNOTATED**

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**1953**

**UTAH COURT RULES  
1999**

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**State and Federal Rules  
and Code of Judicial  
Administration**

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## **Rule 801. Definitions.**

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) *Statements which are not hearsay*. A statement is not hearsay if:

(1) *Prior statement by witness*. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony or the witness denies having made the statement or has forgotten, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) *Admission by party-opponent*. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

(Amended effective October 1, 1992.)

## **Rule 804. Hearsay exceptions; declarant unavailable.**

(a) *Definition of unavailability.* "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay exceptions.* The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement under belief of impending death.* In a civil or criminal action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, if the judge finds it was made in good faith.

(3) *Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history.* (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry, or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

(Amended effective October 1, 1992.)

**Addendum "F"**

**Rejected Exhibit: Receipt of Thorpe  
(on reverse of printed form)**

PO. BOX 2807  
HOUSTON, TEXAS 77252-2807

## DEPOSITED

AGENCY \_\_\_\_\_

DATE \_\_\_\_\_

RECEIPT NO. /

POWER NO. \*\*\*R5-J1048785\*\*

Received of \_\_\_\_\_ (NAME OF DEPOSITOR) \_\_\_\_\_ (ADDRESS)

Social Sec. No. \_\_\_\_\_ or Date of Birth \_\_\_\_\_  
sum of \$ \_\_\_\_\_ on behalf of the defendant \_\_\_\_\_ As security for the execution of this Bail Bond written in the  
the following \_\_\_\_\_ collateral \_\_\_\_\_

BY (Print Name) \_\_\_\_\_

(Signature) \_\_\_\_\_

Said Collateral is deposited as security for the payment of any sums which may become due to the Agency or the "Surety" by the terms of the Bail Bond executed by the said Defendant and Indemnitors, all of the terms of which are made a part of this receipt by this reference.

The Ranger Insurance Company will not be responsible for cash or other valuables in connection with this bond unless listed in the appropriate collateral or premium portions of this form.

The above conditions are agreed to \_\_\_\_\_ (DEPOSITOR) \_\_\_\_\_ (DEPOSITOR)

### RECEIPT FOR RETURN OF COLLATERAL

The undersigned hereby surrenders the original of this collateral receipt and acknowledges the return and receipt of all collateral listed above. The collateral has been returned in good and sufficient condition and the depositor(s) hereby relieves the surety agent and the surety company from any further liability or responsibility in relation to the collateral.

RETURNED BY \_\_\_\_\_ DATE \_\_\_\_\_

ACCEPTED BY: \_\_\_\_\_ DEPOSITOR SIGNATURE ACCEPTED BY: \_\_\_\_\_ DEPOSITOR SIGNATURE

023C (10/94)

**RANGER**  
INSURANCE  
P.O. BOX 2807  
HOUSTON, TEXAS 77252-2807

## RECEIPT and STATEMENT OF CHARGES

Received of: \_\_\_\_\_  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
Expenses (Itemize in detail, such as Guard Fees, Recording Fees, Notary Fees, Long Distance Calls, Telegrams, Travel and other actual, unusual expenses.) \_\_\_\_\_

Was Collateral taken: (YES) (NO) If yes, only use collateral receipt furnished above.

Name and Address of Bail Bond Agency \_\_\_\_\_

By \_\_\_\_\_

POWER NUMBER  
\*\*\*R5-11048785\*\*  
DATE 3 Apr 79  
\$ 112.50  
BAIL BOND PREMIUM  
\$ 8.00  
MISC. CHARGES  
\$ 12.00  
TOTAL CHARGES  
\$ 120.50  
RECEIVED ON ACCOUNT  
\$  
BALANCE DUE

### MEMORANDUM OF BAIL BOND FURNISHED

Defendant \_\_\_\_\_ Amount of Bond \$ \_\_\_\_\_ Date Filed \_\_\_\_\_

Defendant Date of Birth: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Charges \_\_\_\_\_

Date Released \_\_\_\_\_ Date to Appear \_\_\_\_\_

Case No. \_\_\_\_\_

Received Copy of above Receipt and Memorandum

23B (10/94)

**RANGER**  
INSURANCE  
P.O. BOX 2807  
HOUSTON, TEXAS 77252

NOW ALL MEN BY \_\_\_\_\_  
by the authority of \_\_\_\_\_  
or rescinded, do \_\_\_\_\_  
its name, place \_\_\_\_\_  
limited to a \_\_\_\_\_  
penalties \_\_\_\_\_  
T \_\_\_\_\_  
argues \_\_\_\_\_  
urt \_\_\_\_\_  
se No. \_\_\_\_\_  
y \_\_\_\_\_  
rewrite, original No. \_\_\_\_\_  
cuting Agent \_\_\_\_\_

COPY FOR DEPOSITOR

COPY FOR DEFENDANT



3 April 99

RECEIVED OF DEF. \$35000 RECOVERY  
FEE - PD TO M. LANGLEY

Rt.

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 12<sup>th</sup> day of November, 2004, two true and correct copies of the foregoing **BRIEF OF APPELLANTS** was mailed, first class, postage pre-paid to:

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

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

