

2004

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

Utah Court of Appeals

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<b>GEORGE M. LEE and GERALD LEE,</b>	:	
	:	
<b>Plaintiffs and</b>	:	<b>Trial Case No. 000800126</b>
<b>Appellants,</b>	:	<b>Case No. 20040308-CA</b>
<b>vs.</b>	:	
<b>MILES WALTER LANGLEY,</b>	:	
	:	
<b>Defendant,</b>	:	
<b>ROBERT P. THORPE, and THE</b>	:	
<b>RANGER INSURANCE COMPANY,</b>	:	
	:	
<b>Defendants and</b>	:	
<b>Appellees.</b>	:	
	:	

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

**Robert Thorpe**  
***Pro Se***  
**3047½ A½ Road**

**IN THE UTAH COURT OF APPEALS**

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

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**Plaintiffs and  
Appellants,**

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**Trial Case No. 000800126  
Case No. 20040308-CA**

**vs.**

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**Defendant,**

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**ROBERT P. THORPE, and THE  
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**BRIEF OF APPELLEE RANGER INSURANCE COMPANY**

---

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

---

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## **COMPLETE LIST OF ALL PARTIES IN DISTRICT COURT**

Defendants Miles Walter Langley and Robert P. Thorpe are listed as defendants in this lawsuit, but neither is a party to this appeal.

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## **I. STATEMENT OF JURISDICTION**

Defendant/Appellee Ranger Insurance Company (“Ranger”) agrees with the Jurisdictional Statement in Appellants George Lee and Gerald Lee’s (“the Lees”) Appellate Brief.

## **II. ISSUES PRESERVED, STANDARDS OF REVIEW AND PRESERVATIONS OF ISSUES BELOW**

The Lees present five issues on appeal, none of which question the jury’s verdict. They have correctly identified the standard of review this Court should apply to each issue. (Appellants’ Brief, v-viii). However, the Lees have not shown where each issue has been preserved in the record pursuant to Utah Rule of Appellate Procedure 24(a)(5)(A). This is a significant omission, since Ranger contends that the Lees have not properly preserved their first and second issues, pertaining to jury instructions.

Regardless of how the Lees have chosen to frame their issues on appeal, Ranger believes the overarching issue for this Court’s consideration is as follows:

Whether the jury’s verdict that bail bondsman Miles Langley did not assault or recklessly endanger the Lees should be overturned based on alleged errors that had no impact on the jury’s decision?

## **III. DETERMINATIVE PROVISIONS, STATUTES AND RULES**

There are no statutes or rules that are determinative of any issues on appeal. While the Lees claim that Utah Code Ann. §31A-35-601 (1999), “Acts of [Bail Bond] Agent,” and §53-11-101, et seq, “Bail Bond Recovery Act,” govern this appeal, the trial court noted that these statutes apply to sureties and bail recovery agents who are licensed in

Utah. (R. 1187, p. 6). Since the Lees contend on appeal that Miles Langley was not licensed in Utah, these statutes are inapplicable.

Should this Court conclude that these statutes are determinative of this appeal, Ranger points out that Utah Code Ann. §77-20-8.5 (1998) authorizes a surety to arrest a fugitive “at any time . . . and at any place within the state” for the purpose of surrendering him to the court. (Appellants’ Addendum 25). Moreover, the statutes do not prohibit a bondsman duly licensed in another state from entering Utah to apprehend a fugitive pursuant to a valid arrest warrant.

#### **IV. STATEMENT OF THE CASE**

##### **A. Nature of the Case, Parties, Course of the Proceedings and Disposition Below.**

The Appellants are brothers George and Gerald Lee, two Utah residents who claim they were assaulted by a Colorado bail recovery agent, Miles Langley, on April 2, 1999, in Vernal, Utah. (R. 2). At the time of the alleged assault, there were two outstanding warrants in Colorado for Gerald Lee, one for driving under the influence and one for operating a vehicle without a driver’s license. (R. 1187, p. 105; R. 999 Exhibit 1, pp. 001-002).

Defendant Robert P. Thorpe owned A-1 Bail Bonds (“A-1”), a bail bond agency in Grand Junction, Colorado. (R. 1187, p. 254; M. Thorpe depo. p. 6).<sup>1</sup> Maria Thorpe, his

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<sup>1</sup>Page 254 of the trial court transcript notes that witness Maria Thorpe’s deposition transcript was made part of the record. (R. 1187, p. 254). However, it appears that the clerk of the trial court did not assign a separate page number for her deposition transcript in the record. When citing portions of Ms. Thorpe’s deposition transcript in this brief,

wife, was also an owner. (R. 1187, p. 254; M. Thorpe depo. pp. 5-6). Shortly after Gerald Lee was arrested in Colorado in 1998 for the two separate offenses, he purchased two bail bonds from A-1; the purchase of these bonds allowed him to be released from the jail in Colorado until his initial criminal court hearings. (R. 1187, p. 106; Exhibit 2, pp. 008-010).

Ranger is a bail bond surety insurer in Texas. (R. 1187, pp. 256-58). Ranger contracted with A-1, through a general agent known as North American Bail Bond Services (“NABBS”), to supply surety bail bonds. (R. 1187, pp. 258-59; R. 999, Exhibit 2, p. 018). Ranger acted as principal and A-1 as independent contractor. (R. 999, Exhibit 2; R. 1187, p. 254, M. Thorpe depo., pp. 51-52). The Bail Bond Underwriting Agreement signed by A-1, Ranger and NABBS provides that A-1 is “solely responsible for . . . the apprehension, . . . arrest, extradition and/or surrender of errant bond principals [fugitives].” (R. 999, Exhibit 2, p. 020). A-1 also agreed to conduct apprehensions of fugitives “properly and lawfully in compliance with all laws, statutes, regulations and prudent business practices utilized in the bail bond business.” (R. 999, Exhibit 2, p. 020).

Miles Langley was a Colorado resident who was licensed as a bail recovery agent in Colorado. (R. 1187, pp. 56, 62-63). He was self-employed. (R. 1187, p. 61). Mr. Langley claimed A-1 hired him to apprehend Gerald Lee, a claim contested by A-1. (R.

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Ranger has cited to the page of the trial transcript where her deposition transcript is made part of the record, then cites to the page of the deposition transcript containing the relevant testimony. The cited portions of her deposition testimony are attached as Addendum A.

1187, p. 74; R. 1187, p. 254, M. Thorpe depo. p. 39). It was undisputed that Mr. Langley was never an employee, independent contractor or agent of Ranger. (R. 1187, p. 259). The Lees deposed Mr. Langley in connection with this lawsuit, but he died before trial. (R.1187, p. 55).

The Lees filed a Complaint in the Eighth Judicial District Court in Vernal, Utah, against Mr. Langley, Mr. Thorpe in his capacity as owner of A-1, and Ranger in its capacity as bond surety. (R. 2; R. 1187, p. 33). The Complaint alleges that on April 2, 1999, Mr. Langley, acting as an employee of A-1, apprehended Gerald Lee in Vernal, Utah, in order to take him to Colorado on the arrest warrants. (R. 2). The apprehension occurred at the home of George Lee, and during the apprehension, a scuffle ensued between the Lee brothers and Mr. Langley. (R. 3). The Lees allege they sustained physical injuries during the fight. (R. 3). The Complaint lists assault and battery, kidnap, and reckless endangerment, as the causes of action. (R. 3). The Complaint seeks both compensatory and punitive damages. (R. 3).

This case was tried to a jury in Vernal on February 2-4, 2004, with Judge Lynn Payne presiding. (R. 1187). Neither Mr. Thorpe nor Mr. Langley appeared at trial, leaving Ranger as the only defendant present. (R. 1187). Although the Lees did not plead false imprisonment in their Complaint, Judge Payne permitted them to present this claim to the jury, in addition to claims for assault, reckless endangerment and punitive damages. (R. 1187). After the Lees presented their case in chief, Judge Payne granted Ranger's motion for partial directed verdict, resulting in dismissal of the false

imprisonment claim. (R. 1187, pp. 213, 222-23).

The jury answered the Special Verdict form by finding that Mr. Langley did not assault or recklessly endanger the Lees, resulting in a no cause verdict for Mr. Langley, A-1, and Ranger. (R. 1009-1012). Because the jury found that Mr. Langley did not assault or recklessly endanger the Lees, the other issues appearing later on the Special Verdict form became moot and were not answered by the jury. (R. 1009-1012). Those issues were: (1) the apportionment of fault among George Lee, Gerald Lee, and Mr. Langley; (2) whether Mr. Langley was acting as an employee of A-1; (3) whether Mr. Langley was acting within the scope of any authority delegated by Ranger; and (4) whether the Lees sustained any compensatory or punitive damages. (R. 1009-1012).

**B. Statement of Facts.**

**1. Gerald Lee was Arrested Twice in Colorado in 1998 for Criminal Offenses.**

Gerald Lee was arrested in November 1998, in Grand Junction, Colorado, for driving under the influence of alcohol. (R. 1187, p. 105, R. 1187 p. 254, M. Thorpe depo. p. 14). He was also arrested in Rio Blanco, Colorado, in late 1998, for driving without proof of insurance. (R. 1187, p. 105). The warrants for his arrest on both charges are still outstanding. (R. 999, Exhibit 7).

**2. Mr. Lee Purchased Two Bail Bonds from A-1 in Order to be Released from Jail.**

While in jail for these offenses, Mr. Lee purchased two bail bonds from A-1. (R. 999, Exhibit 2, pp. 016-017). Mr. Lee entered into a Bail Bond Application and Contract

with A-1. (R. 999, Exhibit 2, pp. 008-010). Ranger was the surety for these bonds, meaning that if Mr. Lee failed to appear for court hearings in Colorado and the bonds were forfeited, Ranger guaranteed to pay the Colorado court for the forfeiture. (R. 1187, p. 258). Ranger did not undertake, in its capacity as surety, to guarantee to the court that Mr. Lee would appear for the court hearings.(R. 1187, p. 258).

Because Mr. Lee purchased these bail bonds, he was released from jail immediately. (R. 1187, p. 254, M. Thorpe depo. p. 10; R. 1187, p. 141). More specifically, the Colorado court released him into A-1's custody. (R. 1187, p. 254, M. Thorpe depo. p. 12). Mr. Lee was aware that if he failed to show up for court hearings in Colorado, it would cause a forfeiture of the bonds. (R. 1187, p. 146). Additionally, his failure to appear would cause a warrant for his arrest to issue. (R. 999, Exhibit 1, pp. 001-002).

### **3. Mr. Lee Contractually Agreed that A-1 Could Arrest Him if He Failed to Appear for Colorado Court Hearings.**

In exchange for Ranger acting as surety and A-1 acting as bonding agent so that Gerald Lee could be released from jail, he promised Ranger and A-1 several things in the Bail Bond Application and Contract. (R. 999, Exhibit 2, pp. 008-010). First, he agreed that upon his release from jail until his appearance at court hearings, “Ranger shall have control and jurisdiction over me . . . and shall have the right to apprehend and surrender me to the proper officials at any time . . . .” (R. 999, Exhibit 2, p. 008). He further agreed that if he left Colorado or failed to appear for court hearings, “Ranger and/or its Agent shall have the right to forthwith apprehend and surrender me in exoneration of my bail

bonds . . . .” (R. 999, Exhibit 2, p. 008). Thus, if Mr. Lee failed to show up for court hearings in Colorado, A-1 had the right to apprehend him and return him to jail in Colorado. (R. 1187, p. 262; R. 1187, p. 254, M. Thorpe depo. p. 14).

Third, he agreed that if he left Colorado and was apprehended by A-1, he “agree[d] to voluntarily return to [Colorado], and . . . waive extradition proceedings and hereby consent to the application of such reasonable force as may be necessary to effect such return.” (R. 999, Exhibit 2, p. 008). It was undisputed that this clause gave A-1 the right to apprehend Gerald Lee if he left Colorado. (R. 1187, p. 263).

**4. Mr. Lee Failed to Appear for Court Hearings in Colorado Related to the Two Offenses.**

The court in Rio Blanco, Colorado, scheduled a hearing on Mr. Lee’s license violation for December 16, 1998. (R. 1187, p. 265). The court in Mesa County, Colorado, scheduled a hearing on Mr. Lee’s DUI violation for January 25, 1999. (R. 1187, p. 265). Mr. Lee failed to show up for either court **hearing**. (R. 1187, p. 109-110).

<sup>2</sup> Mr. Lee testified that he knew that by failing to appear, he had caused a forfeiture of the bail bonds. (R. 1187, p. 146). A-1 had the right at this point to apprehend Mr. Lee because he had violated “not only his bail bond conditions with the court, but he also violated his bail bond application and contract . . . .” (R. 1187, p. 254, M. Thorpe depo. pp. 20-1).

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<sup>2</sup>He testified at trial that he failed to appear for the hearings because they were scheduled on the same day, which obviously was not true. (R. 1187, pp. 109-110, 145).



On December 16, 1998, the Rio Blanco court issued a Notice of Forfeiture, addressed to Mr. Lee, A-1 and Ranger, stating that since Mr. Lee failed to show up for his court hearing the week before, the bail bond was in danger of being forfeited. (R. 1187, p. 254, M. Thorpe depo. pp. 29-30; R. 999, Exhibit 1, pp. 006-007). The court allowed A-1 until April 20, 1999, to bring Mr. Lee into court, or else the bond would be forfeited and Ranger or A-1 would have to pay the court \$500 for Mr. Lee's failure to appear. (R. 1187, p. 254, M. Thorpe depo., pp. 30-32).<sup>3</sup>

**5. A-1 Attempted to Bring Gerald Lee into Court to Avoid Forfeiture of the Bonds.**

Beginning in February 1999, A-1 made several unsuccessful attempts to locate Mr. Lee and bring him into court in Colorado. (R. 1187, p. 254, M. Thorpe depo., p. 34). These attempts included calling Mr. Lee's former employer, who had co-signed on the bonds, and calling Mr. Lee's mother in Vernal. (R. 1187, p. 254, pp. 34-38). On April 1, 1999, Maria Thorpe called his employer again and told him she would be coming to Vernal soon to pick up Mr. Lee and remand him back to the Colorado court's custody. (R. 1187, p. 254, M. Thorpe depo. pp. 38).

**6. Miles Langley Apprehended Gerald Lee on April 2, 1999.**

Maria Thorpe testified that she did not have a chance to apprehend Mr. Lee herself, because Miles Langley traveled to Vernal and apprehended him without her

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<sup>3</sup>The Mesa County Court issued a Notice of Forfeiture on January 25, 1999, ordering Mr. Lee to appear on March 9, 1999, but it is not known what became of this ®. 999, Exhibit 1, p. 004).

direction or knowledge. (R. 1187, p. 254, M. Thorpe depo. p. 38). Ms. Thorpe testified that A-1 did not ask or hire Mr. Langley to apprehend Mr. Lee but speculated that he learned of the impending forfeiture of the bond, and therefore the right to apprehend Mr. Lee, by looking through courthouse records for Notices of Forfeiture. (R. 1187, p. 254, M. Thorpe depo pp. 39-40).

The Lees deposed Mr. Langley in 2002. (R. 1187, p. 55). He testified that he was a licensed bail recovery agent in Colorado in 1999. (R. 1187, p. 64). The Lees did not inquire whether he was licensed as a bail recovery agent in Utah in 1999. (R. 1187, p. 55). However, Mr. Langley had apprehended fugitives in Utah “numerous times” prior to 1999. (R. 1187, p. 70).

Mr. Langley claimed that A-1 hired him to apprehend Mr. Lee in Vernal, but that he never had any contact with Ranger and that “they had no idea” A-1 had hired him. (R. 1187, pp. 74, 80). Mr. Langley testified that he went to the Mesa County courthouse to confirm that there was an outstanding warrant for Mr. Lee’s arrest on a DUI charge. (R. 1187, p. 75). He drove to the Vernal Sheriff’s Department on April 2, 1999, where he told the assistant sheriff he was going to apprehend Mr. Lee. (R. 1187, p. 82). The assistant sheriff told Mr. Langley that Mr. Lee was staying at the home of his brother George Lee and gave him general directions to George Lee’s home. (R. 1187, p. 82). As Mr. Langley neared George Lee’s home, he stopped at the Naples Police Department and told a police officer that he was in town to apprehend Gerald Lee. (R. 1187, p. 83). After Mr. Langley showed the officer the arrest warrant, the officer gave Mr. Langley specific

directions to George Lee's home. (R. 1187, p. 83).

Mr. Langley arrived at George Lee's home and entered the home after telling George Lee, who answered the door, that he was with a construction company and wanted to give Gerald Lee a job. (R. 1187, pp. 85-86). Mr. Langley entered the home, shook Gerald Lee's hand, then told him he had a warrant for Mr. Lee's arrest. (R. 1187, p. 86). A scuffle ensued, and George Lee testified that as he went to help his brother, Mr. Langley elbowed him. (R. 1187, pp. 192-193). Gerald Lee testified that he was also physically injured in the fight. (R. 1187, p. 119).

Officers from the Naples Police Department arrived at George Lee's home shortly afterward.<sup>4</sup> (R. 1187, p. 90). Mr. Langley took Gerald Lee into custody and drove him to Grand Junction, Colorado, where he was put in jail. (R. 1187, p. 97). Gerald Lee testified that he went with Mr. Langley because Naples police officer Steve Hatzidakis told him he would be arrested if he did not accompany Mr. Langley. (R. 1187, p. 125).

**7. The Lees Sued Ranger for Assault, Reckless Endangerment, False Imprisonment and Punitive Damages.**

Although Ranger never had any contact with Mr. Langley, did not hire him to apprehend Mr. Lee and was not aware of any fight between the Lees and Mr. Langley until it was served with the Lees' Complaint, the Lees relied upon Utah Code Ann. §31A-35-601(2) as their basis for suing Ranger for Mr. Langley's actions. (R. 1187, p. 260).

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<sup>4</sup>They cited Langley and the Lees for assault. (Appellants' Brief, xii). Mr. Langley later plead down his citation to disorderly conduct. (R. 1025).

This statute states that:

The acts or conduct of any . . . bail recovery **agent** . . . 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 recovery agent . . . is acting as agent.

Ranger presented evidence at trial that it did not delegate any authority to Mr. Langley to apprehend Mr. Lee. (R. 1187, pp. 259-60; R. 1187, p. 254, M. Thorpe depo. pp. 39-40, 45).

**8. The Lees Requested a Default Against Robert Thorpe that Would Have the Legal Effect of a Directed Verdict Against Ranger on the Issue of Liability, a Request Judge Payne Recognized as Overreaching.**

At the beginning of the trial in February 2004, the Lees asked Judge Payne to enter a default judgment against Robert Thorpe because he did not appear for trial. (R. 1187, p. 7). The Lees argued that if the judge granted default judgment against Mr. Thorpe, the legal effect would be **that Ranger would become automatically liable, and the only issue for the jury to decide would be damages.** (R. 1187, p. 18).

Although Robert Thorpe did not appear at trial, he filed an Answer in which he denied that A-1 hired Mr. Langley. (R. 88-91). Furthermore, Maria Thorpe, co-owner of A-1, testified at trial (**through** her deposition testimony) that A-1 did not hire Mr. Langley, that A-1 had a legal right to apprehend Mr. Lee, and that Ranger did not delegate any authority to Mr. Langley. (R. 1187, p. 254, M. Thorpe depo. pp. 48, 52-53). Frances Trevino, bail operations department supervisor with Ranger, confirmed that Ranger did not **delegate** any authority to Mr. Langley. (R. 1187, pp. 256, 258-64).

Notwithstanding this, the Lees contended that a default should enter against Mr. Thorpe, and that the effect would be to instruct the jury that Ranger was liable to the Lees for assault, reckless endangerment, false imprisonment and punitive damages. (R. 1187, pp. 16-18).

Judge Payne denied the Lees' request to default Robert Thorpe, noting that he was not required to default Mr. Thorpe under the circumstances, that it would be inappropriate to punish Ranger for Mr. Thorpe's failure to appear when Ranger had no control over him, and that it would be improper to take the issue of liability away from the jury when the evidence and the law did not justify it. (R. 1187, pp. 17-18).

**9. Judge Payne Dismissed the Lees' False Imprisonment Claim Because They Could Not Meet the Legal Elements of This Claim.**

At the close of the Lees' case in chief, Ranger moved for a partial directed verdict to dismiss the Lees' false imprisonment claim. (R. 1187, p. 213). The judge concluded that George Lee had presented no evidence that Mr. Langley confined or imprisoned him; Mr. Langley merely entered his home and allegedly struck him, but that action did not equate to confinement or imprisonment. (R. 1187, pp. 213-215, 222). Judge Payne further concluded that Gerald Lee had presented no evidence that Mr. Langley acted without reasonable grounds to believe Gerald Lee had committed an offense. (R. 1187, pp. 215-16). To the contrary, there were two separate legal bases for Mr. Langley to apprehend Gerald Lee: one stemming from Mr. Lee's contractual assent to be apprehended in the Bail Bond Application and Contract, and one stemming from the common law set forth in *Taylor v. Taintor*, 89 U.S. 366 (1872), which confers a right

upon bail bondsmen to apprehend fugitives. (R. 1187, pp. 215-16).

**10. Although Judge Payne Ruled in Favor of the Lees on Many Legal Issues, the Jury Felt After Hearing the Evidence that Mr. Langley Did Not Assault or Recklessly Endanger the Lees and Entered a Verdict of No Cause of Action.**

Judge Payne observed at the outset of the trial that the Lees were taking incongruous positions with respect to Utah's Bail Bond Recovery Act, Utah Code Ann. §§53-11-101, *et seq.* (R. 1187, pp. 6, 219). The Bail Bond Sureties & Agents Act, Utah Code Ann. §§31-A-35-101, *et seq.*, and The Bail Act §§77-20-1, *et seq.* On the one hand, the Lees claimed without any supporting evidence that Mr. Langley was not a licensed bail recovery agent in Utah and therefore acted without legal authority to apprehend Mr. Lee. (R. 1187, p. 6). On the other hand, they argued that the statutes which appear to only bail recovery agents, sureties and bonding companies licensed in Utah, applied against Mr. Langley, A-1 and Ranger. (R. 1187, p. 6). Ranger urged the trial court not to apply the statutes due to this inconsistency. (R. 1187, p. 9). However, the judge permitted the jury to be given a special instruction setting forth Utah Code Ann. §31A-35-601. (R. 1030).<sup>5</sup> Judge Payne also allowed the jury, over Ranger's objection, to be instructed that a bail recovery agent is acting within the scope of authority delegated by a bail bond surety when the work performed by the agent benefits the surety. (R. 1029).

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<sup>5</sup>The Lees contend that Judge Payne "ruled early on in the trial that the Utah licensing statute would not be used," but he never made such a ruling or otherwise determined its applicability. (Appellants' Brief, p. 5; R. 1187, pp. 4-7, 9-12).

Finally, Ranger attempted to dismiss the punitive damages claim against it, both in a motion for summary judgment before trial and in a motion for directed verdict after the close of the Lees' case in chief. (R. 477-633; R. 1187, p. 223). Ranger contended that if Utah Code Ann. §31A-35-601 was a vicarious liability statute, as the Lees argued it was, it could only make Ranger vicariously liable in compensatory damages for Mr. Langley's acts that Ranger may have delegated to him, but not vicariously liable in punitive damages. (R. 477-633). Ranger further argued that the Lees presented no evidence that it acted with the requisite degree of culpability to impose punitive damages under Utah Code Ann. §78-18-1(2004). (R. 1187, p. 225). However, Judge Payne allowed the issue of punitive damages to go to the jury, subjecting Ranger to huge financial exposure. (R. 1187, p. 226).

The Lees presented four witnesses on their behalf at trial and were armed with the above favorable legal rulings. (R. 1187, p. 2). At the close of evidence, the jury received a Special Verdict form that first asked if Mr. Langley had assaulted the Lees; and second, if he had recklessly endangered them. (R. 1009-1012). The jury answered both of these questions in the negative, thereby resulting in a verdict of no cause of action against any defendant. (R. 1009-1012).

Because the jury found that Mr. Langley did not assault or recklessly endanger the Lees, it did not need to and did not reach the other questions on the Special Verdict form; namely, what the fault apportionment should be among Mr. Langley, George Lee and Gerald Lee; whether Mr. Langley was acting within the scope of any authority delegated

by A-1 (in other words, whether A-1 hired him to apprehend Mr. Lee); whether he was acting within the scope of any authority delegated by Ranger; what amount of compensatory damages was warranted; and whether punitive damages were warranted. (R. 1009-1012).

## **V. SUMMARY OF ARGUMENTS**

**POINT I:** The Lees' first issue on appeal suffers from several shortcomings. First, there was ample evidence that Mr. Langley, or any bail recovery agent for that matter, had a legal right to apprehend Gerald Lee as a fugitive from the Colorado court. *Taylor v. Taintor, supra*, confers a common law right upon bail recovery agents to apprehend fugitives who have outstanding arrest warrants. Nothing in the various Utah statutes the Lees cite abrogates that common law right. Additionally, and as an alternative legal basis for apprehending Mr. Lee, he contractually consented to his apprehension when he purchased the bail bonds from A-1.

Second, the Lees completely ignore the facts indicating that Mr. Lee consented to apprehension in their appellate brief. They have failed to marshal the evidence supporting the trial court's decision to recognize the plain language of the contract.

Third, the Lees' argument that Judge Payne incorrectly instructed the jury on the law of arrest has not been preserved on appeal. The Lees failed to take exception at trial to the instructions they are now objecting to on appeal



and therefore cannot challenge their validity on appeal.

Fourth, any error on the trial court's part, and there was none, is harmless.

The law on arrest was not pertinent to the jury's consideration of whether Mr. Langley assaulted or recklessly endangered the Lees.

**POINT II:** The trial court did not err in dismissing the Lees' claim for false imprisonment because they did not present any evidence in their case in chief that George Lee was confined or imprisoned or that Mr. Langley apprehended Gerald Lee without a reasonable basis for doing so. They did not take exception to the jury instructions they are challenging on appeal and thus have waived their right to challenge them.

**POINT III:** The trial court did not abuse its discretion in declining to enter default judgment against Robert Thorpe, particularly when the Lees contended that the legal effect of default judgment would be to instruct the jury that Ranger was liable to the Lees for all claims. Again, the Lees ignored their duty to marshal the evidence supporting the judge's ruling in this regard, and this Court should therefore affirm the ruling.

**POINT IV:** The trial court's ruling that George Lee could not testify as to what he allegedly heard Miles Langley say in another court proceeding was correct because the testimony was unreliable hearsay and was otherwise inadmissible. Even if the trial court had allowed the testimony, it would not have changed the outcome of the case. Whether Mr. Langley had a Utah

bail recovery license had no bearing on whether he assaulted or recklessly endangered the Lees.

**POINT V:** The trial court properly excluded from evidence a document containing cryptic handwriting, purportedly showing that Mr. Thorpe paid Mr. Langley for apprehending Gerald Lee. The document constituted hearsay. In any event, the Lees achieved their objective of introducing evidence that Mr. Thorpe hired Mr. Langley through other means, including Gerald Lee's testimony that he witnessed Mr. Thorpe hand Mr. Langley cash, and Mr. Langley's testimony that Mr. Thorpe paid him for apprehending Mr. Lee. If the trial court abused its discretion in refusing to admit this document, there is no harmful error because the jury did not reach the issue of whether Mr. Langley acted within the scope of any authority delegated by A-1.

## **VI. ARGUMENT**

### **POINT I**

#### **THE LEES' CONTENTION THAT GERALD LEE COULD NOT BE APPREHENDED DEFIES COMMON SENSE, COMMON LAW, AND CONTRACTUAL AGREEMENTS.**

Gerald Lee had two outstanding warrants for his arrest in Colorado in 1999. He would have been required to remain in jail in Colorado until his court hearings had A-1 not issued him bail bonds releasing him from the court's custody into A-1's custody. In exchange for his freedom, he agreed that if he failed to show up for court hearings, A-1 could apprehend him. He agreed that if he left Colorado, he could be apprehended. He

further promised that if he were apprehended by A-1, he would voluntarily agree to return to Colorado. Finally, he consented to the use of reasonable force against him to assure his return to Colorado. (R. 999, Exhibit 2).

The Lees' assertion that he was immune from apprehension and was absolved from answering for his criminal offenses because he crossed state lines defies common sense. Their contention that Judge Payne misinterpreted the law of arrest overlooks longstanding common law permitting bail recovery agents to cross state lines to apprehend fugitives, and it ignores that Mr. Lee contractually consented to apprehension.

**A. There Were Ample Legal Bases for Apprehending Mr. Lee.**

The focus of the Lees' first issue on appeal is whether Mr. Langley was licensed as a bail recovery agent in Utah. They complain that they should have been able to introduce hearsay evidence that he did not have a Utah license because they missed their opportunity to ask him when they deposed him whether he was licensed in Utah. They believe that if he was not licensed in Utah, he had no authority to apprehend Mr. Lee, but this is incorrect in many respects.

Significantly, there is nothing in the tangled statutory web they cite (Utah Code Ann. §§53-11-101, *et seq.*, §§31A-35-601, *et seq.* and §§77-20-1, *et seq.*) suggesting that a bail recovery agent who is duly licensed in another state cannot enter Utah to apprehend a fugitive. The Lees repeatedly assert on appeal that the statutes prohibit the apprehension of an individual in Utah by someone who is not licensed in Utah, but they are unable to point to any statutory provision that says this. Instead, the statutes appear to

govern bail bond sureties, bail bond agencies, and bail bond recovery agents who reside in and operate businesses in Utah. The statutes do not address, and were not meant to address, out-of-state sureties or recovery agents who must pursue a fugitive in Utah pursuant to a valid arrest warrant from another state.

While the statutes the Lees rely upon do not deal with the situation that arose in this case, Mr. Langley testified that he had apprehended fugitives in Utah on several prior occasions without incident. On this occasion, he informed local law enforcement authorities that he was apprehending Mr. Lee pursuant to valid Colorado arrest warrants. The Utah authorities did not stop Mr. Langley or inquire if he was licensed in Utah; instead, they acknowledged his authority to apprehend Mr. Lee and directed Mr. Langley to his whereabouts.

There were two separate legal bases for Mr. Lee to be apprehended in Utah. First, the U.S. Supreme Court stated in *Taylor v. Taintor*, 83 U.S. 366 (1872) that

[w]hen bail is given, the principal [fugitive] is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge . . . . They may pursue him into another State; may arrest him on the Sabbath; and if necessary, may break and enter his house for that purpose.

*Taylor v. Taintor*, 83 U.S. at 371. Ms. Thorpe testified that *Taylor v. Taintor* gives bail bond agents the authority to apprehend fugitives, and to enter another state to do so. (R. 1187, p. 254, M. Thorpe depo. p. 13). Judge Payne reviewed *Taylor v. Taintor* during the trial and observed that it confers a common law right for a bail recovery agent to enter Utah to act upon an arrest warrant. (R. 1187, p. 215).

The Lees downplay *Taylor v. Taintor* by referring to a few cases from other jurisdictions in which the courts determined under different circumstances that state statutes could override the common law. For example, the court in *Walker v. Commonwealth*, 127 S.W.3d 596 (Ky. 2004), concerned a bondsman who detained an individual in Kentucky without an arrest warrant, in violation of Kentucky law prohibiting a bondsman from detaining without a warrant. In this case, there were two valid arrest warrants for Gerald Lee, and Utah's bail recovery statutes are different from Kentucky's. The case of *Green v. State*, 829 S.W.2d 222 (Texas App. 1992), is inapposite because the Texas court concluded that the state legislature intended to abrogate *Taylor v. Taintor* by passing laws that squarely contradicted it. The Lees cannot point to any Utah statute that contradicts the common law principle of apprehension in another state set forth in *Taylor v. Taintor*. The court in *Johnson v. County of Kittitas*, 11 P.3d 862 (Wash.Ct.App. 2001), merely expressed its view that *Taylor v. Taintor* contains dicta but also acknowledges that "it is generally understood to be the seminal authority on the bond surety's common law authority to seize and surrender the principal...." *Johnson*, 11 P.3d. at 864. Finally, the court in *McFarland v. State*, 666 N.W. 2d 621 (Iowa Ct. App. 2003), simply noted that *Taylor v. Taintor* did not allow a bondsman to break into the home he mistakenly thought housed a fugitive.

Even if Utah statute supplanted *Taylor v. Taintor*, which it does not, there was a separate legal basis permitting Mr. Lee's apprehension. Mr. Lee freely signed a contract

in which he agreed and consented to apprehension. He acknowledged that by purchasing the bail bonds he was submitting himself to the custody of A-1. The Bail Bond Application & Contract plainly states that if he commits any act that could cause forfeiture of the bond, he can be apprehended; he was aware that his failure to appear for the Colorado court hearings constituted forfeiture of the bond, he acknowledged receiving a Notice of Forfeiture from the Rio Blanco court stating that the bond could be forfeited for his failure to appear at the December 1998 court hearing. The contract he signed additionally provides that if he leaves Colorado, he agrees that he can be apprehended and brought back to Colorado. He has never alleged that these terms are somehow invalid or unenforceable.

There was ample reason for the trial court to determine that it did not matter whether Mr. Langley was licensed as a bail recovery agent in Utah. The judge's conclusion that Mr. Lee could be apprehended was supported by common law and contract law, as well as the common sense notion that those who try to evade the law by leaving one state for another can be brought to justice.

**B. The Lees Did Not Marshal the Evidence Showing the Contractual Basis for Apprehending Mr. Lee.**

When, as here, appellants dispute a ruling that is based on factual findings, they must marshal the evidence supporting the ruling and show that such evidence cannot support the ruling. *Water & Energy Systems Technology, Inc. v. Keil*, 48 P.3d 888 (Utah 2002). Failure to marshal the evidence means the reviewing court will not disturb the trial court's ruling on appeal. *Neely v. Bennett*, 519 P.3d 724 (Utah Ct. App. 2002).

The Bail Bond Application & Contract was admitted in evidence in its entirety at trial, and Mr. Lee conceded that he signed it. The Lees did not present any testimony at trial to undermine the validity of this document. Perhaps because of this, the Lees barely acknowledge its existence on appeal, instead claiming that *Taylor v. Taintor* is a relic. The Lees have failed to present, “in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists; after constructing this magnificent array of supporting evidence, the challenger must ferret out a fatal flaw in the evidence, and the gravity of that flaw must be sufficient to convince the appellate court that the court’s finding resting upon the evidence is clearly erroneous.” *Neely v. Bennett*, 51 P.3d at 727. Therefore, the Lees cannot prevail on their first issue on appeal.

**C. The Lees Did Not Preserve This Issue for Appeal.**

The Lees claim that the trial court’s alleged error in misapplying the law on arrest culminated in its refusal to give their requested jury instructions on this subject. The two jury instructions they claim should have been read are “Utah law requires a bail bond recovery agent to operate only when licensed by the state of Utah,” and citizens “without law enforcement authority” can make arrests in certain circumstances. (Appellants’ Addendum 53-54). The first jury instruction does not accurately reflect the law, and it was irrelevant because there was no evidence Mr. Langley was not licensed in Utah. The second jury instruction was not read because there was no evidence Mr. Langley made an arrest without law enforcement authority.

The Lees did not take exception to the trial court's refusal to read these instructions to the jury. Trial counsel must formally make exceptions to jury instructions on the record, before the jury retires to deliberate on the evidence. *Jones v. Cyprus Plateau Mining Corp.*, 944 P.2d 357, 360 (Utah 1997). It does not appear from the trial court transcript that exceptions were conducted. The parties discussed proposed jury instructions with Judge Payne in his chambers on February 3, 2004 (R. 1187, pp. 291-307), but this discussion did not include formal exceptions or any objections to specific instructions, and the Lees' counsel states on the record that exceptions would occur later. (R. 1187, p. 307). The next reference to jury instructions in the trial transcript comes the next morning, before Judge Payne read the instructions to the jury. The Lees' counsel states at that point that there are no objections to the jury instructions. (R. 1187, p. 310).

Failure to take exception to a jury instruction with specificity precludes the party from objecting on appeal that the instructions were defective. *Jones v. Cyprus Plateau Mining Corp.*, 944 P.2d at 359. "[T]o assert that the trial court erred in either giving or failing to give an instruction, a party must first submit correct instructions and then, should the court fail to give them, timely except." *Paulos v. Covenant Transport, Inc.*, 86 P.3d 752, 754 (Utah Ct. App. 2004), *citation omitted*.

**D. Whether Mr. Langley had Legal Authority to Apprehend Mr. Lee was not Relevant to the Jury's Verdict, So Any Error was Harmless.**

Even if the trial court had permitted the Lees to present evidence that Mr. Langley was not licensed in Utah, and even if the jury heard instructions to the effect that an individual cannot be apprehended unless the person apprehending him is licensed in Utah



as a bail recovery agent, that would not have changed the outcome at trial. The jury quickly disposed of the Lees' lawsuit by finding that the Lees were not assaulted or recklessly endangered. Authority to arrest had nothing to do with their claims for assault or reckless endangerment; rather, it pertained to their false imprisonment claim. The Lees' counsel conceded that "[t]he licensing law has very little to do with the liability of this case except that it establishes an element of false imprison[ment in] that there was unlawful activity of the arrest, if you will, the detaining was not based in law." (R. 1187, p. 20).

An appellant bears the burden of demonstrating that a trial court error was harmful, that is, "that there is a reasonable likelihood that the error affected the outcome of the proceedings." *Steffensen v. Smith's Management Corp.*, 820 P.2d 482, 489-90 (Utah Ct. App. 1992). In *Steffensen*, the plaintiff challenged the trial court's reading of the defendant's jury instruction on foreseeability, which pertained to her negligence claim. Although the appellate court determined that the trial court should not have read the instruction, it noted that the jury found the defendant was negligent, so the reading of the erroneous instruction was harmless. *Steffensen*, 820 P.2d at 490; *see also Albrecht v. Bennett*, 44 P.3d 838 (Utah Ct. App. 2002) (error that does not affect outcome of case is harmless and will not warrant reversal).

The law of arrest did not pertain to the claims presented to the jury. If the trial court had read the Lees' requested instructions to the jury, it would not have changed the result.

## **POINT II**

### **THE TRIAL COURT APPROPRIATELY DISMISSED THE FALSE IMPRISONMENT CLAIM FOR LACK OF EVIDENCE**

Since the Lees were unable to assemble evidence in their case in chief that Mr. Langley falsely imprisoned them, the trial court granted Ranger's motion for partial directed verdict against their false imprisonment claim. The Lees had the burden of showing that (1) Mr. Langley acted, intending to confine or restrain the Lees; (2) his actions resulted in the Lees' confinement or restraint; (3) the Lees were conscious of or were harmed by the confinement or restraint; and (4) Mr. Langley acted without having reasonable grounds to believe Mr. Lee committed an offense. (R. 903).

With respect to George Lee's claim for false imprisonment, he never testified at trial that Mr. Langley confined him, restrained him, or made him feel he could not leave. (R. 903). There was no evidence that Mr. Langley confined or imprisoned George Lee. As the trial court aptly noted, Mr. Langley may have entered his home under false pretenses and engaged in a scuffle with him and his brother, and that may have given rise to claims for trespass or assault, but not for false imprisonment. (R. 1187, p. 214).

With respect to Gerald Lee's claim, the trial court concluded that there was no evidence that Mr. Langley acted without reasonable grounds to believe Mr. Lee committed an offense. Mr. Langley stated in his deposition that he was apprehending

Gerald Lee pursuant to his belief that there were valid arrest warrants in Colorado for Mr. Lee. The Lees offered no evidence that Mr. Langley was lying about his belief, or that the arrest warrants were invalid. Additionally, the trial court observed that since Mr. Lee contractually consented to apprehension, he “is not in a position now to complain that the arrest was unlawful.” ( R. 1187, p. 216). The court properly dismissed the false imprisonment claim for lack of evidence.

No reasonable jury could have found based on the evidence offered by the Lees that George Lee had been imprisoned or confined, or that Mr. Langley was not acting with reasonable grounds to believe Gerald Lee was not evading arrest warrants. The trial court’s grant of directed verdict must therefore be affirmed. See *Goebel v. Salt Lake City Southern R. Co.*, 509 Utah Adv. Rep. 39 (2004) (directed verdict on proximate cause affirmed where no reasonable jury could find that small defect in road caused bicycle accident). Additionally, the jury instructions the Lees claim should have been read pertaining to false imprisonment were not formally objected to, so the Lees cannot complain of error on appeal.

### **POINT III**

#### **THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO DEFAULT MR. THORPE FOR FAILURE TO APPEAR**

##### **A. The Lees Misconstrued the Proper Legal Effect of a Default.**

If the trial judge had exercised his discretion and granted default judgment against Mr. Thorpe in favor of the Lees, the appropriate result would be that the Lees would have

a judgment against A-1 alone for their claims, and they could attempt to collect monies from A-1 based on that judgment. However, the Lees clearly view a default against Mr. Thorpe as a far more expansive weapon. They contend that a default judgment against Mr. Thorpe would have also given them a judgment against Ranger on liability, and that the only issue left for the jury to decide would be how much to award against Ranger for compensatory and punitive damages. (Appellants' Brief, p. 13).

The Lees' position does not make sense. They complain that Mr. Thorpe deserved to have a default judgment entered against him because he failed to appear at trial, yet they have no qualms about arguing that Ranger should be held automatically liable in damages to them, even though Ranger appeared at trial. They urged the trial court to determine as a matter of law, before any party presented evidence, that Mr. Langley assaulted, recklessly endangered and falsely imprisoned the Lees; and that Ranger authorized these actions. The Lees wanted the trial court to prohibit Ranger from putting on a case and defending itself, merely because an individual over whom Ranger had no control failed to show up for trial. If third parties could be so severely punished for someone's failure to appear in court, Ranger would have been well positioned to ask that George Lee be flogged because his brother did not appear in court in Colorado.

The trial court accurately sensed that the Lees would attempt to abuse a default judgment against Mr. Thorpe and exercised its discretion to refuse the Lees' request. The third issue on appeal does not raise any grounds for disturbing the jury's verdict.

**B. The Trial Court Granted Ranger's Request for Default Judgment against A-1 Because there was No Dispute that A-1 was Obligated to Indemnify Ranger for Costs Associated with the Trial.**

The Lees' argument that the trial court was required to grant the Lees a default judgment against Robert Thorpe on their claims once it granted Ranger default judgment against A-1 for contractual indemnity ignores that the bases for granting the default judgment would be entirely different. The Lees asked the trial court to default Mr. Thorpe because failed to appear for trial. On the other hand, Ranger asked the trial court for judgment on its indemnity claim against A-1 because there was no claim and no evidence that the contractual indemnity clause between A-1 and Ranger was invalid or unenforceable. Moreover, it asked for judgment either in the form of a directed verdict or a default judgment.

Ranger filed a cross-claim against A-1 in 2002 for contractual indemnity. (R. 111-114). Specifically, the Bail Bond Underwriting Agreement between A-1 and Ranger states that A-1 shall "indemnify, hold and save [Ranger] harmless from 100% of any and all costs, expenses and liabilities, including but not limited to . . . attorneys' fees . . . trial preparation expenses, court costs . . . and the like . . . in connection with the subject matter of this Agreement . . . ." (R. 999, Exhibit 2). A-1 never challenged the validity of this indemnification duty or otherwise presented evidence against it. (R. 1187, 226-27). Consequently, Ranger moved during trial for a directed verdict against A-1 on its indemnity cross-claim, or in the alternative, a default judgment against A-1. (R. 1187, pp.

226, 252).

Judge Payne granted both motions in the alternative. (R. 1187, p. 252). Thus, if Judge Payne somehow became obligated to grant the Lees' request for default against Mr. Thorpe just by granting Ranger's request for default against A-1, such mechanical reasoning could be avoided by recognizing that the judgment against A-1 was alternatively a directed verdict.

**C. Because the Lees did not Marshal the Factual Circumstances Justifying Judge Payne's Denial of Their Request for Default Judgment, This Issue Cannot be Considered on Appeal.**

The Lees do not explain in their appellate brief why Judge Payne ruled as he did. Since they ignore the factual underpinnings of his denial of their request for default judgment, this Court need not reach the merits of their third issue on appeal.

**POINT IV**

**THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN  
PRECLUDING GEORGE LEE FROM TESTIFYING THAT MR. LANGLEY  
TESTIFIED IN ANOTHER COURT HEARING THAT  
HE DID NOT HAVE A UTAH LICENSE**

**A. The Proposed Testimony was Inadmissible Hearsay.**

During the direct examination of George Lee, the Lees' counsel asked him about a justice court hearing he attended in Colorado regarding the assault citations issued to him, his brother and Mr. Langley arising from the April 2, 1999 scuffle. (R. 1187, p. 200). When Mr. Lee began to testify that Mr. Langley made a certain statement in the justice court hearing, Ranger objected on the ground of hearsay. (R. 1187, p. 200). The trial court sustained the objection. (R. 1187, p. 202).

The Lees now ask for a new trial because the judge's ruling was allegedly incorrect. Nonetheless, the question posed by the Lees' counsel, and the partial answer Mr. Lee gave, show that the proposed testimony was hearsay. Mr. Lee was intending to testify that Mr. Langley made a certain remark on a prior occasion. Hearsay "is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted." Utah Rule of Evidence 801(c).

The proposed testimony does not fall outside the definition of hearsay, nor is it an exception to the hearsay rule. It is not an admission by a party opponent, as the Lees allege, because the statement was not being offered against Mr. Langley, it was being offered against Ranger. Utah Rule of Evidence 801(d)(2). Additionally, for a statement to be considered an admissible admission by a party opponent, the proponent must demonstrate that the declarant "manifested an adoption or belief in its truth." Utah Rule of Evidence 801(d)(2). The Lees did not make this showing to the trial judge before he sustained Ranger's objection, nor do they make this showing on appeal.

The Lees' alternative assertion that the proposed testimony constituted a statement against interest under Utah Rule of Evidence 804(b)(3) is equally faulty. 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"

qualifies as a hearsay exception under this rule. Utah Rule of Evidence 804(b)(3). Mr. Langley had no reason to believe that he was jeopardizing his self-interest if he testified he was not a licensed Utah agent. Indeed, the Lees did not shown Mr. Langley had any cause to think he would be exposing himself to liability for damages stemming from the April 2, 1999 scuffle if he were not licensed in Utah. Trial judges' rulings regarding Rule 804(b)(3) are fact sensitive and are therefore based on their considerable discretion. *State v. Webster*, 32 P.3d 976 (Utah Ct. App. 2001). Judge Payne did not abuse his discretion in precluding Mr. Langley's out-of-court statement.

**B. Any Error in Precluding this Testimony was Harmless.**

There are two separate reasons why any error in precluding George Lee from providing the proposed testimony would not warrant reversal of the jury's verdict. First, the Lees' attorney stated what the proposed testimony would be in the presence of the jury. In debating the objection from Ranger that Mr. Lee's impending comment, if uttered, would be hearsay, the Lees' counsel told the judge, in the jury's presence and earshot, that "we have an admission he's not licensed." (R. 1187, p. 201). Thus, the Lees achieved their intended objective, through their attorney instead of their witness.

Second, the issue of whether Mr. Langley was a Utah-licensed bail recovery agent did not pertain to the questions of whether he assaulted or recklessly endangered the Lees. Had the jury heard from George Lee's mouth rather than their attorney's mouth that Mr. Langley testified he was not licensed in Utah, it would not have affected their decision that the Lees were not wronged by any defendant on April 2, 1999.



## **POINT V**

### **THE TRIAL COURT'S REFUSAL TO ADMIT A DOCUMENT ON REBUTTAL WAS NOT REVERSIBLE ERROR**

After Ranger presented its case to the jury, the Lees called Gerald Lee as a rebuttal witness. (R. 1187, p. 276). The Lees' counsel attempted to introduce a document in evidence purportedly containing Mr. Thorpe's handwriting and purportedly dated April 3, 1999. (R. 1187, p. 277). The Lees hoped to introduce the document as evidence that Mr. Thorpe paid Mr. Langley for apprehending Gerald Lee, and therefore as evidence that Mr. Langley was hired by A-1 to apprehend Gerald Lee. (R. 1187, p. 280). Ranger objected that the document was not authenticated and that it constituted hearsay, and the court sustained the objection. (R. 1187, pp. 278-79).

The trial court correctly rejected the Lees' argument that the document qualified as an admission by a party opponent under Utah Rule of Evidence 801(d)(2). The Lees were attempting to introduce this document not against Mr. Thorpe, who allegedly made an admission in the document, but against Ranger. Furthermore, at the time Mr. Thorpe allegedly marked the document, on April 3, 1999, the purported statement that he paid Mr. Langley was not an "admission." It was of no import on that date whether A-1 hired Mr. Langley, because the Lees had not yet filed their Complaint claiming that A-1 was liable for Mr. Langley's acts as its alleged employee.

In any event, even if the trial court committed error by excluding the document, the

error was not prejudicial. The Lees introduced evidence in their case in chief that Mr. Thorpe hired Mr. Langley to apprehend Gerald Lee, through the testimony of Mr. Langley, and through Gerald Lee's earlier testimony that he saw Mr. Thorpe hand Mr. Langley \$350 in cash. (R. 1187, p. 131). Thus, the Lees had already achieved the purpose of providing testimony that Mr. Langley was acting under A-1's direction and authority and that Mr. Thorpe had paid \$350 to Mr. Langley. The introduction of the document would not have constituted true rebuttal testimony, but merely cumulative testimony.

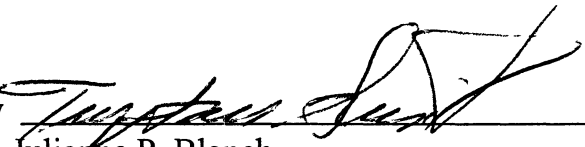
Additionally, the Lees argue that the document supported their claim that Mr. Langley was acting in the scope of authority delegated by A-1. This is a question the jury did not need to reach on the Special Verdict form. Because it had already determined that Mr. Langley did not commit any wrongful acts against the Lees, the issue of whether he acted independently or as A-1's agent was moot. The Lees' final issue on appeal does not create harmful error.

### **CONCLUSION**

The Lees do not challenge the jury's verdict, and it must stand. They have not offered any convincing reason for this Court to reverse the verdict and remand to the trial court for a second trial. Judge Payne did not commit any legal errors, much less any errors that would have changed the outcome. Ranger respectfully requests that this Court affirm the judgment below.

DATED this 14<sup>th</sup> day of January, 2005.

SNOW, CHRISTENSEN & MARTINEAU

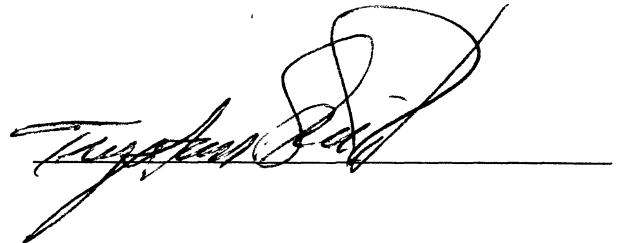
By   
Julianne P. Blanch  
Trystan B. Smith  
Attorney for Defendant/Appellee Ranger  
Insurance Company

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14<sup>th</sup> day of January, 2005, I caused a true and correct copy of the foregoing **BRIEF OF APPELLEE RANGER INSURANCE COMPANY** to be mailed to the following:

Gregory J. Sanders  
Kipp & Christian, PC  
10 Exchange Place, Suite 400  
Salt Lake City, UT 84111  
Attorneys for Plaintiffs/Appellants

Robert P. Thorpe  
3047 1-1/2A 1-1/2 Road  
Grand Junction, CO 81503

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

## **APPENDIX A**

**CONDENSED**

IN THE EIGHTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

---

GEORGE M. LEE and  
GERALD LEE,

Plaintiffs,

vs.

Civil No. 000800126

MILES WALTER LANGLEY,  
ROBERT P. THORPE, and  
THE RANGER INSURANCE COMPANY,

Judge A. Lynn Payne

Defendants.

---

VIDEOTAPE DEPOSITION OF MARIA E. THORPE

December 22, 2003



REGISTERED  
PROFESSIONAL  
REPORTERS

**RUSK & RUSK COURT REPORTERS**

**Joseph J. Rusk, CSR, RPR, RMR**

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1	APPEARANCES	
2		
3		
4		
5	GREGORY SANDERS	
6	KIPP & CHRISTIAN	
7	10 Exchange Place	
8	Suite 400	
9	Salt Lake City, Utah 84111,	
10		
11	On Behalf of Plaintiff;	
12		
13		
14		
15	JULIANNE P. BLANCH	
16	SNOW, CHRISTENSEN & MARTINEAU	
17	10 Exchange Place	
18	Eleventh Floor	
19	Salt Lake City, Utah 84145,	
20		
21	On Behalf of Defendant.	
22		
23		
24		
25		

\*\*\* Notes \*\*\*

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1 The videotape deposition of MARIA E.  
2 THORPE, taken at the offices of Rusk & Rusk Court  
3 Reporters, 751 Horizon Court, Suite 110, Grand  
4 Junction, Colorado 81506, on the 22nd day of  
5 December, 2003, at 9:53 o'clock a.m., before  
6 Joppa H. Smith, Registered Professional Reporter  
7 and Notary Public at Large.  
8 \* \* \*  
9 THE VIDEOGRAPHER: Your Honor, ladies  
10 and gentlemen, today is December the 22nd  
11 of 2003. The following deposition is being  
12 videotaped by Esther Rusk of Rusk & Rusk  
13 Court Reporters, at the conference room of  
14 their office at Skyline Building, 751  
15 Horizon Court, Suite 110, Grand Junction,  
16 Colorado 81506, in the matter of George M.  
17 Lee and Gerald Lee, Plaintiffs, versus  
18 Miles Walter Langley, Robert P. Thorpe and  
19 The Ranger Insurance Company, Defendants,  
20 and filed in the Eighth Judicial District  
21 of Uintah County, State of Utah, Civil No.  
22 000800126. This deposition has been  
23 noticed by the Defendants, The Ranger  
24 Insurance Company. The deponent is Maria  
25 Thorpe. The time is approximately 9:55

Page 5

1 a.m.  
2 Counsel will now identify themselves  
3 for the record.  
4 MS. BLANCH: Julianne Blanch for  
5 Ranger Insurance Company.  
6 MR. SANDERS: Craig Sanders for the  
7 Plaintiffs.  
8 THE VIDEOGRAPHER: Joppa Smith, the  
9 court reporter, will now swear in the  
10 deponent.  
11 \* \* \*  
12 MARIA E. THORPE,  
13 being produced and sworn, was examined and  
14 testified as follows:  
15 EXAMINATION  
16 BY MS. BLANCH:  
17 Q. This is Julianne Blanch. Mrs.  
18 Thorpe, can you state your full name for the  
19 record.  
20 A. It's Maria Elizabeth Thorpe.  
21 Q. Do you own a business named A-1 Bail  
22 Bonds?  
23 A. Not currently, no.  
24 Q. Did you in 1999?  
25 A. Yes.

\*\*\* Notes \*\*\*

Page 6

1 Q. Where were the offices for A-1 Bail  
2 Bonds in 1999?  
3 A. We had an office at 225 West Grand,  
4 and then at one point in 1999 we moved the  
5 office to 600 White Avenue.  
6 Q. In April of 1999, where was it in  
7 Grand Junction, Colorado?  
8 A. I believe it was still at 225 West  
9 Grand.  
10 Q. In 1999, were there other owners of  
11 A-1 Bail Bonds?  
12 A. It was a joint ownership between  
13 myself and my husband.  
14 Q. What is your husband's name?  
15 A. Robert Paul Thorpe.  
16 Q. Your husband has been named by the  
17 Lees as a defendant in this lawsuit, and I  
18 understand he has some health problem.  
19 There is a jury trial scheduled for  
20 this case in February, and if there is a reason  
21 that he doesn't show up due to his health, the  
22 jury may wonder why he's not there.  
23 Can you briefly explain his health  
24 problems, without getting into any things that  
25 are too private?

\*\*\* Notes \*\*\*

Page 8

1 provide insurance to the court that a defendant  
2 will appear.  
3 If he doesn't appear, then we write  
4 for the insurance company, and that if we don't  
5 pay the bond liability that the courts demand  
6 upon order of judgment, then we're liable for  
7 that, the insurance company is liable for it, if  
8 the defendant is not remanded by the judgment due  
9 date.  
10 Q. You mentioned that you provide an  
11 insurance to the court that a defendant will  
12 appear.  
13 Are you talking about a criminal  
14 defendant or a civil defendant?  
15 A. Criminal.  
16 Q. Do you have any certifications or  
17 licenses for your business?  
18 A. Yes, I'm insured by the State of  
19 Colorado. I have an insurance producer  
20 license.  
21 Q. In your business, do you contract  
22 with sureties?  
23 A. Could you be more definitive?  
24 Q. Sure. Ranger, the company I  
25 represent, is a bail bonding surety. Do you

\*\*\* Notes \*\*\*

Page 7

1 A. Well, it began with -- on May 24 of  
2 19 -- of 2000, my son passed away. And then in  
3 July of 2001 my husband had a heart attack. And  
4 then in 2002 he had a mild -- you know, a  
5 partial stroke that impaired his sight. Then he  
6 had acute pancreatitis and an infection around  
7 the pancreas, which the doctors had to put in a  
8 drainage tube that was in place for several  
9 months. A perforated ulcer. So he's got an  
10 ongoing history of medical problems.  
11 Q. Can you tell us some of your  
12 background in the bonding business.  
13 When did you start?  
14 A. I'm not sure of the exact year. It  
15 would be in the neighborhood of maybe 1996, but  
16 I'm not positive.  
17 Q. So you have been in the business  
18 since then?  
19 A. Yes, ma'am.  
20 Q. Is -- A-1 Bail Bonds, was it a  
21 bonding agency?  
22 A. Yes.  
23 Q. Can you describe for us what a  
24 bonding agency does?  
25 A. We're insurance producers. We

Page 9

1 contract with --  
2 A. Right. In order to write bonds in  
3 the State of Colorado, you either have to be a  
4 cash bondsman, where you put up 50,000 with the  
5 state, otherwise, you have to receive an  
6 insurance appointment in conjunction with your  
7 license to produce bail.  
8 Q. In 1999, was Ranger a surety for A-1  
9 Bail Bonds?  
10 A. Yes, ma'am.  
11 Q. Were there any other sureties at the  
12 time?  
13 A. Later in 1999 we had an appointment  
14 with Granite State Insurance.  
15 Q. Can you let us know what a surety  
16 does in this bail bonding process?  
17 A. A surety is a -- guarantees to the  
18 court that if the bondsman who posted the bond,  
19 and it's a contract that we enter with the  
20 court, that if the defendant is not remanded back  
21 into custody within the time allowed by the  
22 court prior to the entry of judgment, then  
23 ultimately the surety is liable to the court for  
24 that amount.  
25 Q. Let's talk a little bit more about



Page 10

1 the bonding process.

2 If a person is booked into jail for

3 something like driving under the influence, they

4 go to jail in Grand Junction, Colorado, they're

5 booked.

6 If they want to get out of jail, do

7 they have to file a bond?

8 A. Right. There's three types of bond

9 in the State of Colorado.

10 There's a cash bond. So if they

11 have \$500 cash, they can -- if they have the cash

12 at the time that they're booked in, they can

13 request that the booking tech takes that cash

14 from their books, and then that's forwarded to

15 the court, and that's a secured bond.

16 They can post a surety bond, and

17 that's when they use a bail bondsman to post

18 certified funds, you know, with the court.

19 Or they can post a property bond.

20 Actually, there's four types.

21 There's also a PR bond, a personal recognizance

22 bond, but they usually have to see the judge

23 first before a judge will order a PR bond, or

24 they're interviewed by pre-trial services.

25 Q. If someone who has been arrested

Page 11

1 wants to go the route of a surety bond to get

2 out of jail, how would he find -- how would he

3 hook up with A-1 Bail Bonds; would there be a

4 list at the jail where he could choose among the

5 various bail bondsmen in Grand Junction?

6 A. At the jail, the jail is segmented

7 into different pods, and each pod has a bulletin

8 board by the phones, and on those bulletin

9 boards are the advertisings of every bonding

10 agency that wishes to advertise at that

11 facility.

12 Q. Okay. And if the person who has

13 been arrested contacts your company for a surety

14 bond, do you go out to the jail to meet him and

15 get the paperwork signed?

16 A. Procedurally, we contact a

17 co-signer first, they call us by phone, we get

18 the information, we get family information or

19 friends who will indemnify the bond for us,

20 contact them, the paperwork is done prior to the

21 defendant's release.

22 Q. What is the role of a co-signer in

23 the bonding process?

24 A. They indemnify and hold the

25 sureties harmless from the potential liability

\*\*\* Notes \*\*\*

Page 12

1 that could arise from a defendant's failure to

2 appear.

3 Q. So if a criminal defendant used you

4 for a surety bond, and filled out an application

5 with you, and then they failed to show up at

6 court, the co-signer could be financially liable

7 for their failure to appear?

8 A. That's correct.

9 Q. When a criminal defendant files a

10 bond with your company, is he essentially

11 released by the court into your custody?

12 A. Right. It's a continuation of their

13 original incarceration.

14 Q. So even though he's able to leave

15 the jail, is he still considered to be in the

16 custody of the court system and in the custody

17 of A-1 Bail Bonds until he goes to court?

18 A. Right. He's in legal contemplation

19 of the surety, it's just a continuation of his

20 original incarceration.

21 Q. Okay. When a criminal defendant is

22 released from jail and then he has a court

23 hearing, if he fails to show up for court, does

24 A-1 Bail Bonds have any right as a bonding

25 agent to bring the criminal defendant into

Page 13

1 court?

2 A. We have a legal right to apprehend

3 and return a defendant back into custody.

4 That's a right that was provided to us way back

5 in the common law, back to Taylor vs. Taintor

6 back in the 1800s. That has been the basis of

7 every statutory provision thereafter, so --

8 and it pretty much says that we can seize and

9 surrender a defendant any time, any day, at any

10 location.

11 Q. You mentioned Taylor vs. Taintor. Is

12 that a U.S. Supreme Court case?

13 A. That's correct.

14 Q. And a pretty old one?

15 A. Yes.

16 Q. When a criminal defendant files a

17 bond with A-1 Bail Bonds, do you have him sign a

18 bail bond application?

19 A. Yes, he signs a bail bond

20 application; he signs a checklist so he

21 understands what his obligations to our company

22 is and what his duties are to the court; he

23 signs an appearance bond with the court that

24 has special conditions on the appearance bond

25 as well.

\*\*\* Notes \*\*\*

Page 14

1 Q. Okay. When he signs the application,  
2 is there a statement in there where the criminal  
3 defendant acknowledges that you can apprehend him  
4 and bring him to court if he fails to show up for  
5 a court hearing?  
6 A. Absolutely.  
7 Q. Okay. Let's talk about the facts  
8 of this particular case involving Gerald Lee.  
9 As I understand it, Gerald Lee, one  
10 of the plaintiffs here, was arrested for a DUI  
11 by the Grand Junction, Colorado police on  
12 November 29, 1998; does that sound right to  
13 you?  
14 A. I would have to check my paperwork,  
15 because I don't have a recall of the exact  
16 dates.  
17 Q. Okay.  
18 A. If that's all right.  
19 Q. Yes, that's okay, please go ahead.  
20 And if it will help you with the  
21 dates, there's a bail bond application contract  
22 that's dated November 30, 1998.  
23 A. Right, that would have been the date  
24 of his release.  
25 Q. Okay. To shortcut the process, is

Page 15

1 it common that a criminal defendant would file  
2 a bail bond application within a day or two  
3 after he's been arrested for a criminal  
4 violation?  
5 A. It's -- they generally file it at  
6 the time of their release.  
7 Q. From jail?  
8 A. Yeah. We go into the jail, we  
9 provide the necessary document to the court  
10 clerk -- I mean to the jail clerk, and then the  
11 defendant is released to us in the lobby -- or  
12 at the office is generally where that paperwork  
13 is filled out, moments after his release.  
14 Q. Okay. Let's look at the bail bond  
15 application that Mr. Gerald Lee signed.  
16 MS. BLANCH: And we'll mark this as  
17 Exhibit 1.  
18 (Exhibit 1 marked).  
19 BY MS. BLANCH:  
20 Q. Mrs. Thorpe, Exhibit 1 is a 3-page  
21 bail bond application and contract, the top of  
22 it is dated November 30, 1998, and it says  
23 agent, Maria Thorpe, and at the top it says  
24 Ranger Insurance as well.  
25 The next page of it has writing, and

\*\*\* Notes \*\*\*

Page 16

1 there's a signature, Gerald Lee, signed November  
2 30, 1998.  
3 And then the third page is entitled  
4 indemnitor/guarantor checklist.  
5 A. Yes.  
6 Q. Let's talk a little bit about  
7 Exhibit No. 1.  
8 We were talking earlier about how a  
9 criminal defendant, when he wants to get out of  
10 jail, may elect to get a surety bond, and if he  
11 elects to choose A-1 Bail Bonds as the bail  
12 bonding agent, then you have him sign a bail  
13 bonding application that sets forth the agreement  
14 among the parties.  
15 Have you seen Exhibit 1 before?  
16 A. Yes.  
17 Q. Okay. And on the second page, if  
18 you could turn to that, there's a signature in  
19 the middle, Gerald Lee, dated November 30,  
20 1998.  
21 A. Uh-huh.  
22 Q. To your knowledge, did he sign that  
23 document?  
24 A. As far as I know.  
25 Q. Okay. Is your husband usually the

Page 17

1 one who is present when a criminal defendant is  
2 signing a bail bond application?  
3 A. No, generally I do the paperwork.  
4 Q. Okay. To the best of your  
5 recollection, did Mr. Lee sign that document in  
6 your presence?  
7 A. Yes, ma'am.  
8 Q. Okay. Let's talk about the first  
9 page of the bail bond application, and paragraph  
10 1 towards the bottom of page 1 says, Ranger shall  
11 have control and jurisdiction over me.  
12 Is me Mr. Lee?  
13 A. Yes, ma'am.  
14 Q. Okay. During the term for which my  
15 bail bond is executed and shall have the right  
16 to apprehend and surrender me to the proper  
17 officials at any time for violation of my bail  
18 bond obligation to the court and Ranger as  
19 provided by law.  
20 Can you explain for us what that  
21 means?  
22 A. What that means is that, as we  
23 discussed previously, Ranger Insurance and the  
24 surety, myself, have the right that if he  
25 violates any condition of bail, to go and

\*\*\* Notes \*\*\*

1 apprehend the defendant and remand him back  
2 into custody, so as to minimize our liability.

3 Q. Now, Ranger Insurance Company is in  
4 Texas. In all of your dealings with Ranger --  
5 first of all, did you deal with them on other  
6 criminal defendants besides Mr. Lee?

7 A. Well, we've written hundreds of  
8 bonds through Ranger.

9 Q. Okay. At any time did you meet  
10 anyone from Ranger Insurance in person?

11 A. The only time that I've ever met  
12 anyone from Ranger Insurance was at a Bail  
13 Association meeting in Las Vegas, and it was  
14 just -- it didn't pertain to business as such,  
15 you know, concerning a specific defendant, no.

16 Q. Okay. So in the normal course of  
17 business, you never met anyone from Ranger  
18 Insurance Company?

19 A. No, ma'am.

20 Q. Does Ranger Insurance Company ever  
21 meet any of the bail bondsmen that you  
22 independently contract with?

23 A. No, ma'am.

24 Q. If we look at paragraph 2A of the  
25 first page of Exhibit 1, the bond application,

1 it says, it is understood and agreed that any  
2 one of the following actions by me.

3 And that is, again, Mr. Lee?

4 A. Yes, ma'am.

5 Q. Shall constitute a breach of my  
6 obligations to Ranger, and that Ranger and/or its  
7 agent.

8 Is A-1 Bail Bonds the agent?

9 A. Yes, ma'am.

10 Q. Shall have the right to forthwith  
11 apprehend and surrender me in exoneration of my  
12 bail bond.

13 And subparagraph A says, if I depart  
14 the jurisdiction of the court without the written  
15 consent of the court and Ranger or its agent.

16 Can you explain to for us what that  
17 means?

18 A. Well, as a condition of the  
19 appearance bond, when Mr. Lee was released from  
20 custody, he signs an appearance bond, and, in  
21 effect, he's signing a contract with the  
22 court.

23 Part of the conditions of those  
24 bonds is that he cannot depart the jurisdiction  
25 of Colorado without written consent of the

\*\*\* Notes \*\*\*

1 surety and of the court, and if he did not  
2 obtain that -- to my knowledge, he did not obtain  
3 that consent.

4 Q. And as you would learn later, he  
5 actually went to Utah when he was released from  
6 Grand County -- or Grand Junction, Colorado jail,  
7 he went back to Utah?

8 A. Yes.

9 Q. Okay. So what he did was a violation  
10 of paragraph 2A of Exhibit 1, the bail bond  
11 application?

12 A. Yes.

13 Q. Okay. And then that gave Ranger  
14 and A-1 Bail Bonds the right to apprehend  
15 him?

16 A. Yes, ma'am, to surrender him.

17 MR. SANDERS: Excuse me, I'm going  
18 to object, it calls for a legal conclusion.

19 Go ahead and answer.

20 BY MS. BLANCH:

21 Q. And -- go ahead. Did you give your  
22 answer?

23 A. Could you repeat yourself?

24 Q. Sure. And did -- the fact that he  
25 left to go to Utah, did that give Ranger and

1 A-1 Bail Bonds the right to apprehend him?

2 A. Yes, ma'am, that -- at that point  
3 he violated his -- not only his bail bond  
4 conditions with the court, but he also  
5 violated his bail bond application and contract  
6 with us.

7 Q. Okay. And we were talking earlier  
8 about how if someone who files a bond, a criminal  
9 defendant, fails to show up for a court hearing,  
10 that that also gives A-1 Bail Bonds, as the  
11 bonding agent, the right to go and apprehend  
12 him, even if he doesn't leave the jurisdiction;  
13 is that correct?

14 A. That's true.

15 Q. Let's look at paragraph 3 of  
16 Exhibit 1. It says, if I depart the jurisdiction  
17 of the court wherein my bail bond is posted by  
18 Ranger for --

19 THE REPORTER: I'm sorry, could  
20 you --

21 MS. BLANCH: Go slower?

22 THE REPORTER: Well, just a little  
23 bit.

24 MS. BLANCH: Sure.

25 BY MS. BLANCH:

\*\*\* Notes \*\*\*

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<p>1 first one liable, but you said you have certain 2 resources. 3 A. Right. 4 Q. You can go against the co-signer, 5 Mr. Wade Montgomery, and it also sounds like from 6 this that you could go against Mr. Gerald Lee to 7 get your money back? 8 A. That's correct. 9 Q. Okay. Paragraph 6 says, I 10 understand I am responsible if it becomes 11 necessary to arrest and surrender the 12 defendant. 13 Is Mr. Lee the defendant in this 14 paragraph? 15 A. That's correct. 16 Q. And that I am responsible for 17 paying all reasonable costs incurred for 18 locating, apprehending, transporting and 19 surrendering the defendant to custody. 20 What does that mean? 21 A. Back to the original jurisdiction. 22 Well, to custody could mean any law enforcement 23 agency can take him into custody if it's a 24 warrant that's entered into NCIC. If it's a 25 statewide warrant only, that means he has to be</p>	<p>1 returned to Colorado and remanded to any law 2 enforcement officer within the State of 3 Colorado. 4 Q. Okay. And it's also talking about 5 how he is responsible for paying reasonable costs 6 for locating or apprehending him. 7 If he does not show up to court and 8 law enforcement or A-1 Bail Bonds has to get 9 him and bring him to court, does this mean that 10 he's responsible for the costs associated with 11 that? 12 A. That's correct. 13 Q. Let's look at paragraph 7. I 14 understand that if the bail is ordered forfeited 15 by the court, that I am responsible to pay 16 court costs and reasonable appearance or attorney 17 fees, and a minimum of \$1100 is written in 18 there, for the bail agent to reinstate or 19 exonerate the bail bond if necessary. 20 Does that mean that he has to pay 21 up to \$1100 if he doesn't show up to court and 22 either law enforcement or A-1 Bail Bonds has to 23 apprehend him? 24 A. That's correct. 25 Q. The amount of the bond at the top</p>
*** Notes ***	

Page 28	Page 29
<p>1 of the indemnitor/guarantor checklist is \$500, 2 and the premium amount is \$75. 3 Does -- how much did Wade Montgomery 4 have to pay A-1 Bail Bonds for the bond, if he 5 is, in fact, the one that paid anything to A-1 6 Bail Bonds? 7 A. Well, the one who paid should have 8 signed the receipt. I don't have the Ranger 9 receipts, they're not in the file, the file 10 that I have, the Ranger receipts. 11 Ranger is a three-part contract, 12 and the top two parts have a receipt and 13 statement of charges, and then the top is for 14 the collateral. So whoever signed the bottom 15 here (indicating) would have been the one from 16 whom we received the monies from. 17 Q. Okay. And Gerald Lee's signature 18 is at the bottom of what you are showing us? 19 A. This is the second bond. 20 Q. Okay. 21 A. So I don't know, without looking at 22 the document, whether he posted -- whether he 23 paid us or his co-signer did. 24 Q. Okay. We will at some point take a 25 break during this deposition and let you have a</p>	<p>1 chance to go through your file and see if you 2 have a receipt for the original. 3 A. I don't have that in here. 4 Q. Okay. 5 A. I don't know what happened to it. 6 Q. Okay. Now, Gerald was supposed to 7 appear in court on December 16, 1998, and he 8 failed to appear, according to court documents. 9 Exhibit No. 2 that we'll mark is a 10 notice of forfeiture and citation to show cause 11 for Mr. Lee. 12 (Exhibit 2 marked). 13 BY MS. BLANCH: 14 Q. Exhibit 2, this notice of forfeiture, 15 is stamped December 3 -- excuse me, December 23, 16 1998, stamped by the court. 17 Can you tell us what this document 18 means? 19 A. This is a notice from Rio Blanco 20 court to myself and to Ranger Insurance and to 21 Gerald Lee that -- as well as the prosecuting 22 attorney in his criminal case, that he failed to 23 make his court appearance on the date that was 24 scheduled by the court. 25 Q. Okay.</p>
*** Notes ***	

1 A. Thereby forfeiting the bond.  
 2 Q. Okay. And the date of the court  
 3 appearance, it looks like, was December 16,  
 4 1998?  
 5 A. Yes, ma'am.  
 6 Q. Okay. And he didn't show up for it  
 7 is what this document is saying?  
 8 A. That's correct.  
 9 Q. Okay. And it then gives you a  
 10 certain amount of time to apprehend him; is that  
 11 right?  
 12 A. Not -- well, this document says  
 13 that they scheduled a hearing for us to appear  
 14 in Rio Blanco court to show cause. If we don't  
 15 appear at the hearing or we don't have any legal  
 16 grounds to show cause why judgment should not be  
 17 entered against the surety, then at that time  
 18 the court enters judgment. On the judgment  
 19 document it will say that he has to be  
 20 surrendered by a certain date, otherwise that  
 21 judgment payment has to be paid to the court.  
 22 Q. According to that court document  
 23 then, if you don't bring him into the court by  
 24 January 20 of 1999, then you have to pay the  
 25 court money?

\*\*\* Notes \*\*\*

1 A. No, ma'am.  
 2 Q. Okay.  
 3 A. This is -- this document says that  
 4 I'm cited to appear on January 20 to show that --  
 5 why a judgment default should not be entered  
 6 against me. If I fail to appear for the judgment  
 7 hearing -- for the default hearing to show  
 8 cause, or I don't have legal cause that would  
 9 persuade the court not to enter judgment, then  
 10 the court enters judgment, and then there's a  
 11 judgment due date.  
 12 So there's going to be a notice of  
 13 judgment similar to this document (indicating),  
 14 and on that particular document it will have the  
 15 judgment satisfaction date, and it's by that  
 16 date that the defendant has to be remanded into  
 17 custody or judgment has to be paid.  
 18 Q. On January 20, 1999, did you or  
 19 someone from A-1 Bail Bonds go to the order to  
 20 show cause?  
 21 A. No, ma'am, not that I'm aware of.  
 22 Q. For some reason the date got  
 23 extended to April 20 of 1999 by which Mr. Lee  
 24 needed to be brought into court by you or law  
 25 enforcement?

1 A. Right.  
 2 Q. Why was that?  
 3 A. The Rio Blanco court reviewed the  
 4 case on January 20. At that date if no one from  
 5 our office had appeared or we didn't have legal,  
 6 you know, cause to -- that judgment should not  
 7 be entered, then that April date is the date that  
 8 the court is saying have him in my courtroom by  
 9 April or in custody, otherwise you're going to  
 10 have to pay the judgment order.  
 11 Q. Okay. And that date that he needed  
 12 to be brought back to the court was April 20 of  
 13 1999?  
 14 A. That sounds correct, but I can't say  
 15 with certainty without looking at the judgment  
 16 order.  
 17 Q. Okay. To your best recollection, was  
 18 it April 20 of 1999?  
 19 A. Yes, ma'am.  
 20 Q. And if Mr. Lee were not brought back  
 21 to court by that date, how much would you have  
 22 to pay the court?  
 23 A. The \$500.  
 24 Q. The notice of forfeiture, Exhibit  
 25 D -- or, excuse me, Exhibit 2, as you pointed

\*\*\* Notes \*\*\*

1 out, is addressed to several people, including  
 2 you at A-1 Bail Bonds.  
 3 Did you receive a copy of this notice  
 4 of forfeiture?  
 5 A. Yes, ma'am.  
 6 Q. When you received that notice, did  
 7 you contact or try to contact Mr. Gerald Lee  
 8 about having him come back for -- to get him back  
 9 into the custody of the court?  
 10 A. Yes, ma'am.  
 11 Q. Okay. What I'm showing you as  
 12 Exhibit 3 is a conversation log.  
 13 (Exhibit 3 marked).  
 14 BY MS. BLANCH:  
 15 Q. This is something that you were kind  
 16 enough to give me last week.  
 17 MS. BLANCH: And we'll let Mr.  
 18 Sanders take a look at it, because he  
 19 hasn't seen it before.  
 20 THE WITNESS: No, he doesn't have a  
 21 copy of that.  
 22 BY MS. BLANCH:  
 23 Q. Can you tell us what Exhibit 3 is?  
 24 A. Exhibit 3 is a conversation log that  
 25 was in my computer database, that when I was

1 trying to purge old letters or -- out of the  
2 computer, I came across it, so I wasn't aware we  
3 had had that.

4 Q. Okay. And when did you find it?

5 A. Only like a couple of weeks ago when  
6 I started going through, because there's no space  
7 on my computer hard drive.

8 Q. Did your -- do you know when you  
9 created this conversation log?

10 A. Well, it would have began on 2/23 of  
11 '99, because that would have been the first  
12 entry, and then I would have gone back on a  
13 regular basis to update it.

14 Q. So there are several dates on the  
15 conversation log, all in -- most of them in  
16 1999?

17 A. Yes, ma'am.

18 Q. One is in 2003. So you would have  
19 entered these various entries on the conversation  
20 log close to the time of the date?

21 A. Yes.

22 Q. Okay. Let's look at the first entry,  
23 which is February 23, 1999. It says, called C/S  
24 at his business, will call back tomorrow.

25 Who is C/S?

1 A. Co-signer.

2 Q. Okay. And that would be Mr. Wade  
3 Montgomery?

4 A. Yes.

5 Q. Okay. Let's look at the second  
6 entry, which is March 19, 1999. What did you do  
7 on that date to try to get Mr. Lee back into  
8 court?

9 A. Well, apparently there was no  
10 communication from the 23rd of February to  
11 March 19, so at that point we advised Mr.  
12 Montgomery of his contractual obligations, and  
13 told him that if Mr. Lee could not come back to  
14 Colorado or would not come back, then he would  
15 have to send us a \$1,000 check to secure the  
16 liability.

17 Q. What did he say to that?

18 A. He said that he would try to get --  
19 from what I can remember, was that he told us  
20 where -- that Mr. Lee was staying at his  
21 brother's house, and as much as I -- I can't  
22 remember details, other than -- my inclination  
23 is that he was going to get ahold of Mr. Lee and  
24 have him get ahold of us.

25 Q. What does the next entry say?

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1 A. That we called back the co-signer's  
2 place of business, and his wife answered, and  
3 that she was going to relay a message to her  
4 husband.

5 Q. Mr. Montgomery?

6 A. Yes, ma'am.

7 Q. What is the date of the third  
8 entry?

9 A. March 23 of '99.

10 Q. What is the next entry?

11 A. March 24 of '99.

12 Q. What does that say?

13 A. It said we called Gerald's mom,  
14 and she said that when she saw him, she would  
15 relay the message to him, that he needed to  
16 take care of the forfeiture and come back to  
17 Colorado, because we always try to discuss with  
18 people that -- you know, come back voluntarily,  
19 do a book and release, it won't take that  
20 long, and then that way it's cleared up for  
21 everybody.

22 Q. Okay.

23 A. This should be April 1 of '99  
24 (indicating).

25 Q. Okay.

1 A. I started erasing it without  
2 realizing what it was, and I went back in, and  
3 I guess my mind was 2003, not '99, so I  
4 apologize.

5 Q. Okay. In case anyone is wondering  
6 where you got Mrs. Lee's phone number for --  
7 Gerald Lee's mother, on the bond application,  
8 which is Exhibit 1, I notice that there is a  
9 phone number for a -- it says mother, Mona Rae  
10 Lee, and then has her phone number?

11 A. Right.

12 Q. Is that how you got her phone number  
13 to call her?

14 A. Yes.

15 Q. Okay.

16 A. To the best of my knowledge. I mean  
17 if her number has changed, we could have called  
18 information or done some, you know, minor  
19 investigation to find the new number.

20 Q. Okay. And then the last entry,  
21 which is dated April 1, and you said 1999, what  
22 does that say?

23 A. It says the co-signer called, and I  
24 had -- I is myself, that I would be leaving to  
25 go to Utah to pick up Gerald and return him to

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1 Colorado, and that he would be liable for those  
2 expenses.  
3 Q. Okay. On April 1 of 1999, did you  
4 have plans yourself to go to Grand Junction and  
5 pick him up?  
6 A. Yes, I had -- I do remember talking  
7 to the co-signer and saying if you can't send me  
8 the \$1,000, then we need to get him picked up and  
9 remanded back into custody.  
10 Q. What happened after that?  
11 A. I didn't go to Utah right away, I  
12 just -- because I didn't give the exact date to  
13 Mr. Montgomery. The next thing I know, the  
14 defendant was brought back by Miles Langley.  
15 Q. Okay. Who is Miles Langley?  
16 A. Miles Langley is a gentleman that  
17 resides in Colorado, was doing bail recovery  
18 for some bonding agencies. He was a bouncer at  
19 a bar. I mean Miles did, you know, odds and  
20 ends jobs.  
21 Q. Did Miles Langley hold himself out  
22 as a bail bondsman?  
23 A. Not to my knowledge.  
24 Q. Okay. Had you ever -- had A-1 Bail  
25 Bonds ever worked before with Mr. Langley?

1 A. No.  
2 Q. Had A-1 Bail Bonds ever hired Mr.  
3 Langley to do anything for A-1 Bail Bonds?  
4 A. No.  
5 Q. Was Mr. Langley ever an employee of  
6 A-1 Bail Bonds?  
7 A. No.  
8 Q. Did you or your husband hire Mr.  
9 Langley to apprehend Gerald Lee in Utah?  
10 A. No.  
11 Q. Did you ask him to apprehend Mr. Lee  
12 in Utah?  
13 A. No.  
14 Q. As you came to find out, Mr. Langley  
15 apprehended Mr. Lee in Vernal, Utah, and brought  
16 him back to Colorado.  
17 Do you have any idea how Mr. Langley  
18 would have found out that there was a notice of  
19 forfeiture and that Gerald Lee needed to come  
20 back to Utah by April 20?  
21 A. Only by speculation.  
22 Q. What is your speculation?  
23 A. Miles regularly hung out at  
24 different bond offices, and he would go out and  
25 party with one of the subagents that we had

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1 working there, she had the forfeitures on her  
2 desk, and I don't know if she could have given  
3 him the forfeiture to go take care of or if he  
4 would have seen it on one of the desks. You  
5 know, we had a pawn shop at that location, so  
6 there were people in and out all the time.  
7 Q. Okay. Would it also have been  
8 possible for him to go to court and look through  
9 the documents and see that he needed to be  
10 brought back to Utah -- or to Grand Junction,  
11 Colorado?  
12 A. Yeah. Miles was in and out of the  
13 courthouse a lot of times, so if he was at any  
14 of the hearings, he could have been there even  
15 at the time that the judge was ordering  
16 forfeiture on a particular case.  
17 Q. Now, when Mr. Langley came back to  
18 Grand Junction with Mr. Gerald Lee, did he come  
19 to A-1 Bail Bonds?  
20 A. I wasn't there, so I don't know if he  
21 came to A-1 Bail Bonds first or if he went to the  
22 jail first. I don't know.  
23 Q. Okay. Now, some of your answer for  
24 this next question may be something that you  
25 learned from your husband, and if it is, please

1 let us know that, so that we know that it's  
2 something that your husband told us.  
3 Did Mr. Langley talk to your husband  
4 around April 3 of 1999 about paying him for  
5 apprehending Mr. Gerald Lee?  
6 A. Not to my knowledge.  
7 Q. Okay. When Mr. Langley came back  
8 with Mr. Gerald Lee to Colorado, did he take him  
9 straight to the courthouse?  
10 A. Well, he wouldn't have taken him to  
11 the courthouse, he would have taken him to the  
12 jail.  
13 Q. Okay. To your knowledge, did that  
14 happen?  
15 A. Yes, he was taken to the jail.  
16 Q. Okay. And then how did A-1 Bail  
17 Bonds find out about that; did the jail contact  
18 A-1 Bail Bonds?  
19 A. No, the jail wouldn't have contacted  
20 us. I don't know if Mr. Lee called Bob after he  
21 had been booked into the jail or if Miles came  
22 back. I don't know how they communicated that  
23 he was back in town.  
24 Q. Okay. But at some point A-1 Bail  
25 Bonds learned that Mr. Lee was back in Colorado;

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1 is that right?

2 A. That's correct.

3 Q. And that he was in jail?

4 A. That's correct.

5 Q. And at that point, because he was

6 in jail, was it necessary for him to get a second

7 bond?

8 A. For his release, yes. Bob revoked

9 the Mesa County bond, and then posted two bonds

10 to secure his release on the new warrant

11 amounts.

12 Q. So when Gerald Lee came back to

13 Colorado on April 3 of 1999, the first bond

14 that we've been talking about, the one dated

15 November 30, 1998, was revoked; is that right?

16 A. The Rio Blanco bond was never

17 revoked at the Mesa County Detention Facility.

18 The Mesa County bond was revoked at the Mesa

19 County Detention Facility. To my knowledge,

20 he was remanded into custody on the Rio Blanco

21 warrant, as well as the Mesa County warrant.

22 Q. The second bond is in the amount of

23 \$750, while the first one back in 1998 is in the

24 amount of \$500.

25 Why was the second bond more?

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1 A. The judges usually elevate the

2 amount that is required to -- for their release.

3 Obviously a \$500 secured bond wasn't enough to

4 warrant Mr. Lee to come back and take care of

5 his court obligations, so by increasing that

6 amount, the courts are trying to provide an

7 additional incentive, financial incentive, that

8 they'll return.

9 Q. Okay. Does A-1 have any bail -- or

10 did A-1 have any bail bondsmen as employees?

11 A. No.

12 Q. Were they independent contractors?

13 A. They're what's called subagents.

14 Q. It sounds like there were times when

15 someone got a bond with A-1 Bail Bonds, they

16 failed to appear, and you needed to go apprehend

17 them.

18 Sometimes it sounds like you would

19 do it; is that right?

20 A. Yes.

21 Q. Would your husband ever do it?

22 A. Sometimes.

23 Q. And then sometimes you would hire

24 these independent contractor bail bondsmen to do

25 it?

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1 A. As far as I can remember, we've only

2 hired one person as an independent bail recovery

3 agent, James Julianno out of New Mexico, to

4 apprehend somebody that was out of state.

5 Actually, there's twice. I had a

6 Kelly -- a defendant by the name of Kelly

7 Bradbury that had fled on a plane, and she went

8 to Arizona, and I contacted some bail agency

9 in Arizona to meet her at the airport to

10 detain her until I showed up and could bring her

11 back.

12 Q. Were there any bail agents or bail

13 bondsmen that you hired inside of Colorado to

14 apprehend someone inside of Colorado?

15 A. No.

16 Q. Okay. In the bail bonding industry,

17 is it typical for a company like A-1 Bail Bonds,

18 if they're going to hire an individual to go out

19 and apprehend someone, just to hire them for a

20 particular job?

21 A. Can you say that again?

22 Q. Sure. If someone like A-1 Bail

23 Bonds needs to hire a bail bondsman to apprehend

24 an individual, is it typical in the industry

25 for them to hire them just for that particular

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1 job?

2 A. Yes.

3 Q. When you used Mr. Julianno as an

4 independent contractor bail bondsman, how did

5 you pay him, how did you reimburse him for

6 apprehending the individual?

7 A. By check.

8 Q. Do you understand that Mr. Langley

9 has testified before in this case, he's given

10 a deposition just like you have in this case?

11 A. Yes.

12 Q. It's my understanding that he

13 passed away. Do you know whether he has either

14 way?

15 A. Yes.

16 Q. Mr. Langley said in his deposition

17 that your husband, Robert Thorpe, paid him money

18 to go get Mr. Lee in Vernal, Utah.

19 Is that true, to your knowledge?

20 A. No.

21 Q. Have you looked through bank

22 statements and cancelled checks from A-1 Bail

23 Bonds in April and May of 1999 just to verify

24 that no check was ever given by A-1 Bail Bonds

25 to Mr. Langley?

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1 A. Yes.  
 2 Q. What have you found?  
 3 A. There was no such payment.  
 4 Q. Okay. Go ahead.  
 5 A. There was also Gerald and Sherry  
 6 Green that we've used for recovery, but like I  
 7 said, those are just on a limited basis. And we  
 8 would hire some out-of-state people to find  
 9 people that are out of state to minimize our  
 10 costs, because we don't know the areas, and it  
 11 just takes a lot of time.  
 12 Q. And have you paid all of those  
 13 individuals with a check?  
 14 A. Yes.  
 15 MS. BLANCH: Let's mark as Exhibit 4  
 16 what I've put in front of our court  
 17 reporter.  
 18 (Exhibit 4 marked).  
 19 BY MS. BLANCH:  
 20 Q. This is something that you sent to me  
 21 last week; is that right?  
 22 A. Yes, ma'am.  
 23 Q. Okay. As Mr. Sanders is looking it  
 24 over, because he hasn't seen this yet, could you  
 25 tell us what Exhibit 4 is?

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1 cancelled checks?  
 2 A. Absolutely.  
 3 Q. But you can tell us now that after  
 4 looking at your bank statements and the cancelled  
 5 checks, there were no checks made out to Miles  
 6 Langley?  
 7 A. No, ma'am.  
 8 Q. We have been talking about two  
 9 bonds, one is November 30, 1998, and then there  
 10 was a second one. I don't know if you've  
 11 brought that with you.  
 12 A. I think both bonds were originally  
 13 written on the same date, and then when he was  
 14 re-incarcerated, both bonds would be posted on  
 15 the same date, to the best of my knowledge.  
 16 Q. Okay. The second bond would have  
 17 been dated around April 3 of 1999, wouldn't it  
 18 have?  
 19 A. Yes, ma'am. April 30 maybe. April 3  
 20 or April 30, I'm sorry.  
 21 Q. Okay. Between the time that you  
 22 learned --  
 23 A. April 3.  
 24 Q. Okay. April 3?  
 25 A. Yes, ma'am.

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1 A. It's bank statements for our business  
 2 account, for A-1 Bail Bonds.  
 3 Q. From what time period?  
 4 A. I believe from the end of March  
 5 until maybe May or June.  
 6 Q. Okay. And why did --  
 7 A. Prior to the date of his recovery,  
 8 and then a month or more after that time.  
 9 Q. Why did you get those bank  
 10 statements?  
 11 A. To look to see if a payment had, in  
 12 fact, been made. You know, just to clarify, so  
 13 that I could make exact responses today. Even  
 14 though I had no knowledge of any payment, I  
 15 just wanted to double-check for my own peace of  
 16 mind.  
 17 Q. And you've also brought cancelled  
 18 checks with you, I noticed?  
 19 A. Yes, ma'am, so that if there's any  
 20 misunderstanding about any amount that appears  
 21 on there, that the actual check can be viewed to  
 22 see to whom it was endorsed and where it was  
 23 cashed and the date it was issued.  
 24 Q. Okay. If Mr. Sanders wishes during a  
 25 break, will he be able to look through those

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1 Q. So one is dated November 30, '98, the  
 2 other is dated April 3 of '99?  
 3 A. That's correct.  
 4 Q. Between the time that you learned  
 5 that Miles Langley had apprehended Gerald Lee  
 6 and brought him back to Colorado and the time  
 7 you issued the second bond on April 3 of 1999,  
 8 did you or anyone at A-1 Bail Bonds tell Ranger  
 9 that Mr. Langley had apprehended Mr. Lee?  
 10 A. I don't believe so, no.  
 11 Q. Did you or anyone else at A-1 Bail  
 12 Bonds tell Ranger about the circumstances of  
 13 how Mr. Langley had apprehended Mr. Lee?  
 14 A. I don't believe so.  
 15 Q. Okay. To your knowledge, would  
 16 Ranger have had any way of knowing that there  
 17 was a scuffle between Mr. Langley and the Lee  
 18 brothers during the apprehension?  
 19 A. Not by our agency, no.  
 20 (Exhibit 5 marked).  
 21 BY MS. BLANCH:  
 22 Q. What we've marked as Exhibit 5 is a  
 23 copy of the bail bond underwriting agreement  
 24 between Ranger and A-1 Bail Bonds.  
 25 MS. BLANCH: And I don't know

1 whether Mr. Sanders has ever seen this.  
 2 Have you?  
 3 MR. SANDERS: Is it this?  
 4 MS. BLANCH: Yes. It appears that  
 5 he does.  
 6 BY MS. BLANCH:  
 7 Q. Is what has been marked as Exhibit 5  
 8 the contract between A-1 Bail Bonds and Ranger  
 9 Insurance that was in place in 1999?  
 10 A. Yes, ma'am.  
 11 Q. I wanted to direct your attention to  
 12 paragraph 3, where it says relation of company,  
 13 general agent and agent.  
 14 Is the company Ranger?  
 15 A. I'm not sure, because this contract  
 16 was provided to us by NABBS, North American Bail  
 17 Bonds. They were our general agents. They're a  
 18 company that was between ourselves and Ranger.  
 19 So NABBS contracted with Ranger, I contracted  
 20 with NABBS.  
 21 Q. Okay. So just like when I --  
 22 okay. When I get automobile policies for my  
 23 automobiles, I go to my agent, I don't go  
 24 directly to the insurance company?  
 25 A. That's correct.

\*\*\* Notes \*\*\*

1 Q. Okay.  
 2 A. I did not sign this contract in  
 3 front of Ranger, you know, with Ranger, I -- it  
 4 was a -- I was being appointed by North  
 5 American Bail Bonds to write for Ranger, and then  
 6 North American Bail Bonds had a contract with  
 7 Ranger.  
 8 Q. If we look at the very first  
 9 paragraph of the underwriting agreement, the  
 10 contract between A-1 and Ranger, it may clarify  
 11 this.  
 12 It says, this agreement is entered  
 13 into the 11th of March, 1998, by and between  
 14 Ranger Insurance Company, and there are some  
 15 more words there, then A-1 Bail Bonds,  
 16 hereinafter general agent, and Robert Paul Thorpe  
 17 and Maria Elizabeth Thorpe, A-1 Bail Bonds,  
 18 hereinafter agent or --  
 19 A. See, here, this clarifies.  
 20 Hereinafter RIC or company is referring to  
 21 Ranger.  
 22 Q. Okay.  
 23 A. So that's correct.  
 24 Q. Okay. So if we look at paragraph 3,  
 25 it says, the relation of company and agent, and

1 agent is A-1 Bail Bonds, is that of principal and  
 2 independent contractor.  
 3 Was that your understanding?  
 4 A. Well --  
 5 Q. So you were sort of an independent  
 6 contractor vis-a-vis Ranger?  
 7 A. That's correct.  
 8 Q. Okay. Then it says, agent shall  
 9 have exclusive control over his retail bail  
 10 business, shall set his or her own working  
 11 hours, and shall retain or discharge employees  
 12 or independent contractors in agent's sole  
 13 discretion.  
 14 And the way that the relationship  
 15 worked between Ranger and A-1 Bail Bonds, was  
 16 that true, you had control over all --  
 17 A. That's true.  
 18 Q. -- details of your business?  
 19 A. Yes, ma'am.  
 20 Q. A little further down in the  
 21 paragraph it says, agent is solely responsible  
 22 for seeking out and obtaining any and all  
 23 specialized knowledge and skills necessary in  
 24 his or her professional function, and is  
 25 similarly solely responsible for the proper

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1 screening, selection and hiring of all employees  
 2 and/or independent contractors retained by  
 3 agent.  
 4 And is that the way the relationship  
 5 worked between you and Ranger?  
 6 A. That's correct.  
 7 Q. Okay. So if you wanted to go out  
 8 and apprehend someone, you were the one with  
 9 the skills and knowledge necessary to do that?  
 10 A. And the authority.  
 11 Q. Okay. So that's not something that  
 12 Ranger could dictate to you how to do it,  
 13 because that wouldn't have been practical?  
 14 A. They never did. There was never any  
 15 communication.  
 16 Q. Okay.  
 17 A. There was never any exception  
 18 either.  
 19 Q. And then if we look at paragraph 8  
 20 of the agreement, which is found on page 3, it  
 21 says, agent duties with regard to bond  
 22 principals. Agent shall be solely responsible  
 23 for the negotiating, underwriting, securing and  
 24 posting of bail bonds issued to secure the  
 25 release from custody of criminal defendants,