

1                                    **UNITED STATES DISTRICT COURT**  
2                                    **DISTRICT OF NEVADA**

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4            A. ARMEDA THOMAS,

5                                    Plaintiff,

6                                    v.

7            FARM BUREAU LIFE INSURANCE  
8            COMPANY D/B/A FARM BUREAU  
9            FINANCIAL SERVICES, a Foreign  
                 Corporation,

10                                   Defendant.

Case No. 2:16-cv-01091-APG-NJK

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

(ECF No. 21)

11            Plaintiff A. Armeda Thomas sues defendant Farm Bureau Life Insurance (FBL) for  
12            breaching an annuity policy of which Mrs. Thomas is the beneficiary. Mrs. Thomas's late  
13            husband purchased the policy in 2012. When he died in 2014, FBL began paying Mrs. Thomas  
14            monthly payments. But Mrs. Thomas wants to receive the payments in one lump sum. She  
15            argues that both the policy and a 2014 agreement with FBL give her the right to withdraw the  
16            total amount (subject to a penalty). FBL contends that Mrs. Thomas is limited to the monthly  
17            payments.

18            Despite ambiguities in each contract, a holistic reading of each shows an unmistakable  
19            intent to provide Mrs. Thomas monthly payments without the right to withdraw beyond that.  
20            Mrs. Thomas's preferred reading of the ambiguous terms is not plausible, especially where it  
21            would render clear terms and intent meaningless. I therefore grant FBL's motion to dismiss.

22            **BACKGROUND**

23            Blaine Thomas, a Kansas resident, entered into an annuity policy with FBL on January  
24            27, 2012. ECF No. 15-5 at 2. Blaine Thomas is listed as both the Owner and the Annuitant of  
25            the policy. *Id.* at 8. Under the policy, the Owner is "entitled to exercise all rights and privileges  
26            provided in the policy." *Id.* at 10. The Annuitant is "the person whose life determines the  
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1 annuity benefit [and] Death Benefit . . . Only one Annuitant may be named.” *Id.* Policy section  
2 6.6 (“Cash Surrender”) says, “Before the Retirement Date and while the Annuitant lives, the  
3 Owner may surrender this policy for its surrender value.” *Id.* at 14.

4 Policy section 2.7 (“Termination”) says, “This policy ends when any one of the following  
5 events occurs: a. the Owner requests that the policy be canceled; b. the Annuitant dies . . . .” *Id.*  
6 at 12. Section 7.1 states that “[t]he Owner may choose to have the proceeds of this policy paid  
7 under a payment option. After the death of an Annuitant who is an Owner, the Beneficiary may  
8 choose an option if the Owner had not done so before the Annuitant’s death.” *Id.* at 14. The  
9 Beneficiary is defined as “the person (or persons) named by [the Owner] to whom the Death  
10 Benefit payable on the death of the Annuitant . . . will be paid.” *Id.* at 10. Mr. Thomas’s January  
11 27 application lists his children as the Beneficiaries, but a note next to that section says “(See  
12 Settlement Attached).” *Id.* at 20.

14 On January 31, 2012, Mr. Thomas and an FBL representative executed “Directions for  
15 Settlement” regarding the annuity. ECF No. 15-6. In that document, Mr. Thomas “revoke[d] all  
16 previous Beneficiary designations on said Policy and direct[ed] that the net proceeds of said  
17 Policy payable as a result of the death of the Insured shall be” paid to Mrs. Thomas as the  
18 Beneficiary. *Id.* at 2. Mr. Thomas chose to have the proceeds paid as a “Fixed Amount Income”  
19 of \$7,000 per month. *Id.* Mr. Thomas did not check the box on the next line that offered the  
20 “[p]rivilege to commute and accept in one sum.” *Id.*

22 Mr. Thomas passed away on January 3, 2014. On August 24, 2014, Mrs. Thomas and an  
23 FBL representative executed a document entitled Payment Option Agreement (the “2014  
24 Agreement”). ECF No. 15-8. The introductory “Data Page” says, “[t]he policy named below has  
25 been surrendered or matured by reason of the death or survival of the annuitant. [FBL] agrees to  
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1 retain the proceeds which are now payable and apply such proceeds in the manner described in  
2 this agreement.” *Id.* at 3. The agreement appears to be styled as a new annuity and it states that it  
3 replaces Mr. Thomas’s policy. *Id.* Mrs. Thomas is listed as the “Annuitant” and the “Primary  
4 Payee,” the “Purchase Amount” is \$631,729.33, and it calls for a Guaranteed Payment Amount  
5 of \$7,000 to be paid monthly. *Id.* Section III of the Data Page (“Method of Payment”) confirms  
6 the “proceeds will be paid out in equal installments of \$7000.00. This amount will continue until  
7 all proceeds plus interest have been paid out.” The agreement also specifies that Mrs. Thomas is  
8 “[w]ithout the right to withdraw at any time” and “[w]ithout the right to change options at any  
9 time.” *Id.*

## 11 ANALYSIS

### 12 I. Mrs. Thomas’s Withdrawal Rights Under the 2012 Annuity Contract Executed 13 by Blaine Thomas and FBL

14 Mrs. Thomas points to an ambiguous clause in the 2012 policy to suggest that she has the  
15 right to “continue” the policy, and therefore the right to exercise the withdrawal rights that her  
16 husband had under the contract. FBL contends that this interpretation is inconsistent with the  
17 clear intent of the parties as shown by a holistic reading of the contract.

18 Nevada courts follow the Restatement (Second) of Conflict of Laws (1971), Section 192  
19 of which reads, the “validity of a life insurance contract issued to the insured . . . and the rights  
20 created thereby are determined . . . by the local law of the state where the insured was domiciled  
21 at the time the policy was applied for.” Mr. Thomas was a resident of Kansas when he applied  
22 for the annuity so Kansas law applies.

24 “The primary rule for interpreting written contracts is to ascertain the parties’ intent.”  
25 *Iron Mound, LLC v. Nueterra Healthcare Mgmt., LLC*, 313 P.3d 808, 812 (Kan. 2013). “All  
26 pertinent provisions of an insurance policy must be considered together, rather than in isolation,  
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1 and given effect.” *Atchison, Topeka & Santa Fe Ry. Co. v. Stonewall Ins. Co.*, 71 P.3d 1097,  
2 1120 (Kan. 2003). “An ambiguity in the language of the contract will be strictly construed  
3 against the party who drafted the provision.” *Shelter Mut. Ins. Co. v. Williams*, 804 P.2d 1374,  
4 1379 (Kan. 1991). “Whether an instrument is ambiguous is a matter of law to be decided by the  
5 court.” *Simon v. Nat’l Farmers Org., Inc.*, 829 P.2d 884, 888 (Kan. 1992).

6         The 2012 contract, read in its entirety, makes clear Blaine Thomas’s intent to direct  
7 payments of \$7,000 per month to Mrs. Thomas without giving her the option to accept a lump  
8 sum. As the only “Owner,” Mr. Thomas had the prerogative to elect what payment option would  
9 be used to distribute the policy proceeds “[a]fter the death of an Annuitant who is an Owner” (as  
10 was the case here). In the Directions for Settlement, Mr. Thomas listed Mrs. Thomas as the  
11 Beneficiary and he chose “Payment Option D,” electing fixed income to Mrs. Thomas of \$7,000  
12 monthly. He did not check the box that would have granted Mrs. Thomas the “[p]rivilege to  
13 commute and accept in one sum.”

14         To overcome this, Mrs. Thomas must offer other provisions that can be reasonably  
15 construed to show either that her husband actually intended to allow her the right to withdraw  
16 additional sums or that Mrs. Thomas has the power to change her husband’s elections. She  
17 points to section 5.2, which is admittedly ambiguous. It says that if the Owner dies, and “if . . .  
18 the Owner’s spouse is a surviving Beneficiary . . . the policy may be continued to the extent of  
19 such spouse’s interest in the policy.” ECF No. 15-5 at 13, § 5.2. Mrs. Thomas argues this means  
20 the spouse can step into the shoes of the Owner and therefore has any withdrawal rights the  
21 Owner had. FBL does not offer an explanation of the provision, but says the plaintiff’s  
22 interpretation of a vague clause cannot trump other clear, contradictory provisions.  
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1 Despite the rule that ambiguities must be construed against the drafting party, Mrs.  
2 Thomas's interpretation is not a plausible construction of the ambiguity. Section 5.2 says the  
3 policy may be continued "to the extent of such spouse's interest in the policy." Mrs. Thomas's  
4 interest is that of a Beneficiary. She does not satisfactorily explain how Section 5.2 converts a  
5 Beneficiary interest into an Owner interest. Mrs. Thomas's reading is in direct conflict with the  
6 qualifying language "to the extent of," which limits the surviving spouse's rights. Her preferred  
7 interpretation would also render inoperative Mr. Thomas's expressed intent in the Directions for  
8 Settlement, which violates the primary rule for interpreting written contracts. Indeed, it would  
9 muddle entirely the distinction between Owner and Beneficiary, converting all the Owner's  
10 expressed directions into non-binding suggestions. I cannot approve this interpretation.

12 **II. Mrs. Thomas's Withdrawal Rights Under the 2014 Payment Option Agreement**  
13 **Executed by Mrs. Thomas and FBL**

14 Mrs. Thomas next contends an ambiguous clause in the 2014 Agreement gives her the  
15 withdrawal rights offered to an Owner in the 2012 policy. FBL again argues that this  
16 interpretation is inconsistent with a holistic reading of the contract, and that it is implausible even  
17 read in isolation.

18 The 2014 Agreement, read as a whole, does not give Mrs. Thomas a right to withdraw  
19 amounts above the prescribed monthly payment. The Data Page states that proceeds will be paid  
20 in equal installments of \$7,000 until all proceeds are paid out. It also says the primary payee  
21 (Mrs. Thomas) is "without the right to withdraw at any time" and "without the right to change  
22 options at any time." The 2014 Agreement does not mirror the provision in the 2012 policy that  
23 affirmatively states that "the Owner may surrender this policy for its surrender value." Instead,  
24 the 2014 Agreement's provisions on "Full Withdrawal" and "Partial Withdrawal" provide only  
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1 that “You may surrender this agreement if: withdrawals are permitted under the option shown on  
2 the [Policy] Data Pages. . . .”<sup>1</sup> ECF No. 16-1 at 19.

3 The “Full Withdrawal” clause introduces a possible ambiguity by saying, “You may  
4 surrender this agreement if withdrawals are permitted under the option shown on the Policy Data  
5 Page.” The 2014 Agreement contains only a “Data Page.” The 2012 policy has a page entitled  
6 “Policy Data,” which is referred to elsewhere in the 2012 policy as the “Policy Data page.” Mrs.  
7 Thomas therefore argues that the ambiguity, construed against the drafter, means the “Full  
8 Withdrawal” clause refers back to the 2012 policy’s “Surrender Charge” table (ECF No. 15-5 at  
9 9, 11), and that the existence of such a table implies withdrawals are permitted. FBL says that  
10 addition of the word “Policy” before “Data Page” in the 2014 Agreement is a typographical  
11 error, and that both the “Full Withdrawal” and “Partial Withdrawal” clauses refer to the 2014  
12 Agreement’s Data Page.

13 Mrs. Thomas’s preferred interpretation is not plausible with a holistic reading of the  
14 Agreement. The 2014 Agreement opens by announcing that it “replaces” the 2012 policy. All  
15 terms and references (besides the contested one) are internal to the document. None points to the  
16 2012 policy. It stretches credulity to argue a fleeting reference to a “Policy Data Page” (as  
17 opposed to “Data Page”) intends to refer back to the 2012 policy, given no further discussion or  
18 clarity. That construction also would nullify the clear provision disallowing withdrawals. Even  
19 if the “Full Withdrawal” clause of the 2014 Agreement clearly referred to the “Policy Data” page  
20 of the 2012 policy, that page does not address whether “withdrawals are permitted,” who has the  
21 right to withdraw, and what conditions are placed on withdrawal. Instead, it simply lays out a  
22 schedule of surrender charges for withdrawal. By contrast, the Data Page of the 2014 Agreement  
23 clearly addresses withdrawal rights, stating they are not allowed. These two issues each, by  
24 themselves, put Mrs. Thomas’s interpretation in serious doubt. Combined, they require too  
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27 <sup>1</sup> The “Full Withdrawal” provision uses the term “Policy Data Pages,” whereas the “Partial  
28 Withdrawal” provision uses “Data Pages,” an inconsistency discussed below.

1 much of an inferential leap to be plausible. The clear intent expressed in the 2012 policy and the  
2 2014 Agreement must outweigh this implausible construction.

3 **III. CONCLUSION**

4 IT IS THEREFORE ORDERED that the defendant's motion to dismiss (**ECF No. 21**) is  
5 **GRANTED**. Mrs. Thomas is granted leave to amend the complaint to cure the defects in her  
6 claim if sufficient facts exist. Mrs. Thomas must file the amended complaint within 21 days of  
7 entry of this order.

8 DATED this 5<sup>th</sup> day of December, 2016.

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ANDREW P. GORDON  
12 UNITED STATES DISTRICT JUDGE  
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