

**FILED**

JAN 25 2007

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

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10 In re: ) Chapter 13  
11 KEVIN JOHN DAVIDSON, )  
12 \_\_\_\_\_ Debtor. ) No. 4-04-bk-0485-JMM  
13 KEVIN JOHN DAVIDSON, ) Adversary No. 4:06-ap-00072-JMM  
14 vs. Plaintiff, ) **MEMORANDUM DECISION**  
15 FARMERS INSURANCE EXCHANGE, et al., ) **(MOTION TO DISMISS)**  
16 \_\_\_\_\_ Defendants. )  
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18 This court has reviewed the Defendants' motion to dismiss complaint, the response, and the  
19 Defendants' reply, as well as the entire administrative file in the Debtor's chapter 13 bankruptcy case. It does  
20 not appear to the court that oral argument would be helpful, and the court can therefore rule on the basis of  
21 the record before it.

22 The Defendants have asked the court to dismiss, for failure to state a claim and lack of proof  
23 of damages. The court agrees and will dismiss the case for failure to state a cognizable claim. FED. R.  
24 BANKR. P. 7012. In doing so, the court has construed the well-plead allegations of the complaint as being  
25 true.  
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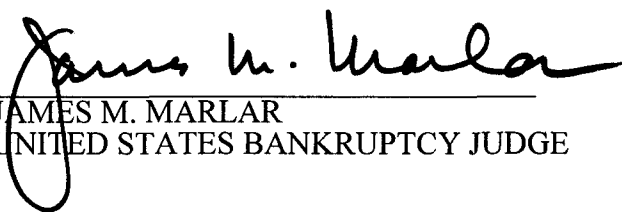
1 Plaintiff here has not shown that he suffered any monetary damages nor why his failure to timely act upon  
2 those alleged and innocuous violations entitles him to relief under § 362(h).

3 All of the disputed matters involving Plaintiff's termination, which creates the claimed cause  
4 of action here, occurred after the court lifted the stay on August 9, 2005. The Debtor complains that he was  
5 not given adequate notice of the Farmers' November, 2005 termination hearing, or that there were other  
6 procedural defects surrounding the termination hearing which concluded with the November 14, 2005  
7 agency termination action.

8 Even considering Plaintiff's contentions in the most favorable light, it is clear that those facts  
9 do not involve a stay violation, because the court lifted the stay on August 9, 2005. All of the events  
10 complained of occurred after that date. If the Plaintiff feels that his contractual rights were breached, or that  
11 there were improprieties in how Farmers conducted the termination hearing, he is free to proceed to the  
12 Superior Court and sue for contractual remedies. However, he has not stated a claim for a § 362(h) violation  
13 which may be maintained in the Bankruptcy Court.

14 A separate order will be entered which grants Defendants' motion and dismisses Plaintiff's  
15 complaint against all Defendants, with prejudice. FED. R. BANKR. P. 9021. Any appeal must be taken within  
16 ten days after the order is entered. FED. R. BANKR. P. 8002.

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18 DATED: January 25, 2007.

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21 JAMES M. MARLAR  
22 UNITED STATES BANKRUPTCY JUDGE  
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1 COPIES served as indicated below  
this 25th day of January, 2007, upon:

2 James L. Robinson, Jr.  
3 Daniel J. Rylander  
Robinson & Rylander  
4 4340 N. Campbell Ave., Suite 266  
Tucson, AZ 85718  
5 Attorney for Debtor/Plaintiff  
Email: [ecf@robrylaw.com](mailto:ecf@robrylaw.com)

6 Michael L. Price  
7 1051 N. Columbus Blvd., Suite 100  
Tucson, AZ 85711  
8 Attorney for Debtor/Plaintiff  
U.S. Mail

9 Charles S. Riecke  
10 Seyfarth Shaw LLP  
55 E. Monroe St., #4200  
11 Chicago, IL 60603  
Attorneys for Defendants  
12 Email: [criecke@seyfarth.com](mailto:criecke@seyfarth.com)

13 Dianne C. Kerns  
7320 N. La Cholla #154  
14 PMB 413  
Tucson, AZ 85741-2305  
15 Chapter 13 Trustee  
Email [mail@dcktrustee.com](mailto:mail@dcktrustee.com)

16 Office of the United States Trustee  
17 230 North First Avenue, Suite 204  
Phoenix, AZ 85003-1706  
18 U.S. Mail

19 By /s/ M. B. Thompson  
20 Judicial Assistant

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22  
23  
24  
25  
26  
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