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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

SHAWN C. JEANES, WAYNE K. MAINS, individuals, Plaintiffs v. ALLIED MUTUAL INSURANCE COMPANY; ALLIED LIFE FINANCIAL CORPORATION; ALLIED LIFE INSURANCE COMPANY; and DOES 1 through 100, Defendants.	*	4-98-CV-90386 ORDER

Before the Court are Defendants' Motion for Summary Judgment ("Motion") filed March 27, 2000 (Clerk's #59) and Defendants' Supplement to Their Motion for Summary Judgment ("Supplemental Motion") filed April 18, 2000 (Clerk's #63). The Plaintiffs resisted both motions and the Defendants have filed timely replies. The parties have filed briefs and statements of fact in support of their respective positions. The Court held oral argument on both motions on June 8, 2000 at the United States Courthouse in Des Moines, Iowa. The matter is fully submitted.

I. Facts

As this matter comes on Defendants' motion, the Court will view the facts in a light most favorable to Plaintiffs as the nonmoving party. *See Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994).

These motions grow out of a diversity action for breach of contract and an array of related torts brought by Plaintiffs Shawn C. Jeanes ("Jeanes") and Wayne K. Mains ("Mains") against

Pleading # 91

Copies to counsel: JUL 11 2000
By:

Defendant Allied Life Insurance Company ("Allied Life").[1] Jeanes and Mains sue in their former capacities as regional directors of Allied Life; Mains sues independently as an Allied Life policy holder.

According to the Second Amended Complaint and Demand for Jury Trial ("Complaint"), Plaintiffs resigned their positions as regional directors of Allied Life after learning that Allied Life misrepresented the nature and extent of two costs of insurance ("COI") increases that it instituted in 1991 and 1994. Not knowing the "true reason" for the two rate hikes, Plaintiffs renewed their Agency Agreements ("Agreements") with Allied Life in 1994 (Mains) and 1996 (Jeanes). In 1997, a company executive named Tom Van Fossen informed Plaintiffs the 1991 and 1994 COI increases were implemented, not in conformance with changes in mortality rates as they were initially told, but rather to pay for new federal insurance taxes and executive bonuses respectively. Thereupon Plaintiffs were forced to quit and suffered damages.[2] The basis of Defendants' two motions is that Plaintiffs were aware of the nature of the COI increases prior to renewing their Agreements in 1994 and 1996 and therefore have no remedy in contract or tort law, or, by virtue of their silence, have waived any rights they might have had. Additionally, Defendants contend that the statute of limitations bars any claims based on the 1991 COI increase. The Court will highlight additional facts as they become relevant to analysis of these

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[1] Plaintiffs have also sued the parent corporations, Allied Mutual Insurance Company ("Allied Mutual") and Allied Life Financial Corporation ("Allied Financial"), under alter ego theories. The alter ego claims are addressed briefly, *infra*, at page 15 of the Court's Order.

[2] Although not expressly stated in their Complaint, Plaintiffs have plead "constructive discharge." *See* Complaint at para. 50 ("As a direct and proximate result of the conduct of Defendants, and each of them, Plaintiffs were forced to resign and did resign, and have suffered damages ...."). The issue of constructive discharge was not a theme of the parties motion papers. While Defendants have not directly moved for summary judgment on that issue, they do claim that Plaintiffs "voluntarily terminated" their employment relationship with Allied Life. *See* Defs.' Memo. in Supp. of Mot. for Summ. J. at 6. To the extent the issue of constructive discharge is incorporated into Defendants Motion, the Court denies the Motion as there are factual issues which preclude summary disposition of this claim.

claims.

For purposes of clarity, the Court enumerates all eleven causes of action (hereinafter "Counts") stated in the Complaint:

1 – By Plaintiffs against all Defendants: Breach of contract;

2 – By Plaintiffs against all Defendants: Breach of the duty of good faith and fair dealing;

3 – By Plaintiffs against all Defendants: Fraud - concealment;

4 – By Plaintiffs against all Defendants: Fraud - intentional misrepresentation;

5 – By Plaintiffs against all Defendants: Negligent misrepresentation;

6 – By Plaintiffs against Allied Life: Breach of contract for failure to pay commissions due;

7 – By Plaintiffs against Allied Life: Breach of implied covenant of good faith and fair dealing for failure to pay commissions due;

8 – By Mains against all Defendants: Breach of insurance policy contracts;

9 – By Mains against all Defendants: Breach of duty of good faith and fair dealing;

10 – By Mains against all Defendants: Fraud and conversion;

11 – By Mains against all Defendants: Negligent misrepresentation;

Based on the motion papers, Defendants seek dismissal of all but Counts 8 and 10. They also seek dismissal of any claim based on the 1991 COI increase. Proper disposition of the motions before the Court require the resolution of five separate legal issues: (1) Recovery for breach of contract; (2) Recovery for fraud (3) Recovery for negligent misrepresentation; (4) Recovery for breach of an implied duty of good faith and fair dealing; and (5) Validity of Plaintiffs' alter ego claim. The Court will address these five legal issues in turn.

II. Summary judgment standard

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine," if the evidence is sufficient to persuade a reasonable jury to return a verdict for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "As to materiality, the substantive law will identify which facts are material." *Id.* In this case, the parties agree that Iowa law governs the contract and tort claims.

To preclude the entry of summary judgment, the nonmovant – here Jeanes and Mains – must make a sufficient showing on every essential element of its case for which it has the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Continental Grain Co. v. Frank Seitzinger Storage, Inc.*, 837 F.2d 836, 838 (8th Cir. 1988). Importantly, in order to defeat a motion for summary judgment, the nonmoving party must go beyond the pleading and by affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *see Celotex*, 477 U.S. at 324. The quantum of proof that the nonmoving party must produce is not precisely measurable, but it must be "enough evidence so that a reasonable jury could return a verdict for the nonmovant." *Anderson*, 477 U.S. at 257. On a motion for summary judgment, the court views all the facts in the light most favorable to the nonmoving party, and gives that party the benefit of all reasonable inferences that can be drawn from the facts. *See United States v. City of Columbia,* 914 F.2d 151, 153 (8th Cir. 1990).

III. Analysis

A. Recovery for breach of contract (Counts 1 & 6)

In Iowa, to establish a breach of contract action, "the complaining party must prove: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) that it has performed all the terms and conditions required under the contract; (4) the defendant's breach of the contract in some particular way; and (5) that plaintiff has suffered damages as a result of the breach. A party breaches a contract when, without legal excuse, it fails to perform any promise which forms a whole or a part of the contract." *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998) (citations omitted). The parties only dispute whether a factual issue exists on the question of whether a breach occurred, typically a question for the jury. *See id.* at 225.

The two contracts that form the basis of Plaintiffs' breach of contract claims are the Agreements entered into by Mains and Jeanes in 1994 and 1996 respectively. *See* Pls.' Exs. 7 & 5. Mains sues on the Agreement he signed on August 22, 1994; Jeanes sues on the Agreement he signed on May 23, 1996. Plaintiffs claim Allied Life breached the "good faith" clause contained in paragraph 3(b) of both Agreements:

> Good Faith. Both parties will, at all times, act in good faith when dealing with our policyholders and each other. You will not make any actions that suggest or encourage any policyholder to surrender or lapse any policy or to cease premium payments. Any such activity gives us the right to terminate this Agreement for cause.

The Plaintiffs' contend they were effectively lied to regarding a 1991 and 1994 COI increase, and that therefore, Allied Life's promise to act in good faith, as expressed in paragraph 3(b) of the 1994 and 1996 Agreements, was breached. The Court will examine the circumstances surrounding each of the two contracts at issue.

1. Mains' 1994 Agreement

As stated above, the 1994 Agreement forms the basis for Mains' contract claim against Allied Life. Mains claims Allied Life breached the good faith clause of his 1994 Agreement by engaging in two acts: impermissibly raising insurance rates in 1991 and 1994. As to the first act, in 1991, Allied Life raised insurance rates on some policies 7-8% in order to pay for a new federal insurance tax, known as a "DAC tax." Mains claims that increasing rates to pay for the DAC tax was impermissible under the terms of the life insurance policy which stated that increases would be tied to changes in mortality rates. *See* Pls.' Ex. 8, Mains' Life Insurance Policy #IN0174566 at 9 ("Monthly cost of insurance rates will be determined by us based on our expectations as to future mortality experience."). As to the second act, Allied executives met informally sometime after November of 1993 in an elevator and discussed raising rates again, this time by 2% to pay for executive bonuses. *See* Duffy Depo. at 28-32. Information about the second increase was withheld from both policy holders and regional directors. *See id.* at 61-63. Sometime in 1994, Allied Life officially instituted this 2% COI increase. Mains claims he did not learn of these two acts, i.e., the impermissible rate hikes of 1991 and 1994, until after he signed the 1994 Agreement.

Allied Life argues Mains knew of the 1991 and 1994 increases before signing the 1994 Agreement. On close examination of the record, the Court finds that Mains was aware of the 1991 COI increase. In his deposition testimony, Mains admits attending a meeting in Des Moines, Iowa sometime in 1991 where the subject of the DAC tax was first discussed. Mains, as well as other regional directors in attendance, learned that Allied Life was contemplating ways to pay for this new federal tax. There was a suggestion to pay for the tax through agent commissions. Mains stated "there was a lot of protest" regarding lowering agent commissions to

pay for the tax. *See* Mains Depo. at 44-45. It was finally announced at the meeting that Allied Life would raise the cost of insurance "slightly" about "one and a half to two percent." *Id.* at 45. Mains' description of Allied Life's decision to pass on the DAC tax to policy holders is more or less consistent with the company's official position on the subject memorialized in a 1991 announcement to agents and regional directors. This document, entitled ANNOUNCEMENT REGARDING IN-FORCE UNIVERSAL LIFE POLICIES, states in part:

> ALLIED Life is increasing the cost of insurance (COI) on most in-force universal life. The COI increase will be 0 to 8% of the current schedule .... As you know, the life insurance industry was burdened with an additional federal tax beginning in October, 1990. This new tax is projected to increase industry taxes by $8 billion over five years. ... This tax applies to all in-force policies, not just new issues. In effect, it is a Federal insurance sales tax. Maintaining the quality and integrity of all our policies, both new an existing, requires that this pricing change be made. Increasing the COI is the fairest method of treating in-force policies.

Pls.' Ex. 1 (emphasis in original). The fact the 1991 tax turned out to be 7-8% and not the 1 ½-2% as initially stated by Allied Life executives is of no moment. As early as 1991, Mains knew the "true nature" of the 1991 increase implemented by Allied Life: to pass on to policy holders a tax that neither Allied Life nor the regional directors were willing to pay for themselves. At no time prior to renewing his contract did Mains write Allied Life and state his objections to this COI which arguably ran afoul of the express terms of Allied Life's life insurance policy to index insurance rates with changes in mortality. *See* Mains' Depo. at 114-15. Under the statute of limitations, *see* Iowa Code § 614.1(2) (contract claims may be brought with 2 years "after causes accrue"), or waiver principles, *see Hanson Silo Co. v. Bennett,* 254 Iowa 928, 932-33, 119 N.W.2d 764, 765-66 (Iowa 1963), the Court concludes that Mains' decision to review his agency Agreement in 1994 extinguishes any contract claim based on the 1991 COI increase.

As to the second event – the allegedly impermissible COI increase in 1994 – Allied Life

claims, with little evidentiary support, that Mains knew of this second rate hike prior to signing the Agreement on August 22, 1994. However, on the Court's examination of the record, there is a factual dispute going to when Mains learned of this second increase. Mains claims he didn't learn of the increase until the summer of 1997 when Allied Life executive Tom Van Fossen disclosed the details surrounding that decision.

Accordingly, genuine issues of material fact exist as to whether Allied Life, consistent with the 1994 Agreement, acted in good faith toward Plaintiff Mains regarding the company's decision to institute a 2% COI increase in 1994.[3] Defendants' Motion as to Mains' contract claims in Counts 1 and 6 based on the 2% COI increase of 1994 is denied. Mains may not premise his contract claims on Allied Life's decision to raise insurance rates in 1991.

2. Jeanes' 1996 Agreement

The 1996 Agreement forms the basis for Jeanes' contract claims against Allied Life. The contentions that form the basis for Jeanes' claims are the same as those raised by Mains, namely, that Allied Life breached the good faith clause of his 1996 Agreement by impermissibly raising insurance rates in 1991 and 1994. Like Mains, Jeanes claims he did not learn of these two rate hikes until after he signed the 1996 Agreement.

As before, Allied Life argues Jeanes knew of the 1991 and 1994 increases before signing his 1996 Agreement. And as before, after reviewing the record, the Court finds that Jeanes was aware of the "true nature" of the 1991 COI increase, i.e., that it was based, not on changes in

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[3] The allegations of fraud and misrepresentation which provide the basis for Plaintiffs' separate fraud claims may also form the basis for Plaintiffs' breach of contract claims. In comments to the *Restatement (Second) of Contracts* § 205 (1979), the drafters note that in the context of good faith performance, "[s]ubterfuges and evasions violate the obligation of good faith in performance even though the actor believes his conduct to be justified." *Id.* cmt. d. Comment d continues: "bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. A complete catalogue of types of bad faith is impossible." *Id.*

mortality rates, but to offset the federal DAC tax. *See, e.g.,* Jeanes Depo. at 28 (discussed the DAC tax at 1991 regional director's meeting in Des Moines); *id.* at 44-45 (same discussions at 1992 or 1993 regional director's meeting in San Francisco); *id.* at 46 (same discussions at 1995 regional director's meeting in Des Moines; Jeanes realized "that this was a significant problem"). As with Mains, the Court concludes that the statute of limitations or waiver principles bar Jeanes' contract claims based on the 1991 COI increase.

As to the second event – the 2% COI increase in 1994 – the Court concedes that the question of what Jeanes knew and when he knew it is a harder call. Jeanes admits learning of the second COI as early as 1995 at the regional director's meeting in Des Moines. It was at this meeting that "the whole thing hit the fan and when I became very very concerned." *See id.* at 47 (rhetorical emphasis in original). Although Jeanes may have known a second increase had been implemented, the record suggests he did not know the amount of the increase nor its purpose. In fact, Allied Life executives refused to answer Jeanes' questions about the nature of the second increase. *See* Jeanes Depo. at 61-62. It's plausible, therefore, that a reasonable jury could find that Jeanes didn't discover the "true nature" of the second increase until after he signed his 1996 Agreement, i.e., when Van Fossen made his disclosures in 1997. Thus, there are genuine factual issues going to what Jeanes knew about the second COI and when he knew it to preclude a grant of Defendants' Motion on Jeanes' breach of contract claims.

For these reasons, Defendants' Motion is denied as to Counts 1 and 6 of the Complaint to the extent these Counts are based on the 1994 COI increase. The Court turns now to Defendants' Supplemental Motion which takes aim at Plaintiffs' claims for fraud.

B. Recovery for fraud (Counts 3 and 4)

In Iowa, "[t]he elements of fraud are: (1) a material misrepresentation (2) made

knowingly (scienter) (3) with intent to induce the plaintiff to act or refrain from acting (4) upon which the plaintiff justifiably relies (5) with damages." *Beeck v. Kapalis*, 302 N.W.2d 90, 94 (Iowa 1981) (citations omitted).

Allied Life argues that both Mains and Jeanes knew about the 1991 and 1994 COI increases before renewing their respective Agreements. This fact, asserts Allied Life, defeats the reliance element which, as a matter of law, is fatal to any fraud claim. In support of this argument, Allied Life cites to *IBP, Inc. v. FDL Foods, Inc.*, 19 F. Supp. 2d 944 (N.D. Iowa 1998). In *FDL Foods*, Judge Melloy held that where the plaintiff-buyer of a slaughter plant learned of environmental problems at the plant through a newspaper article and nonetheless "renewed its efforts to purchase" the plant, no action for fraud would lie because the element of reliance was missing. *Id.* at 949-50. As Judge Melloy explained: "[I]t is plain that IBP cannot prove that it relied on Wahlert's statements to its detriment. IBP was fully apprised about the environmental conditions of the FDL plant, yet it maintained its suit for specific performance of the sale ...." *Id.* at 950.

As explained above, both Mains and Jeanes knew the "true nature" of the 1991 COI increase, yet still renewed their regional director Agreements. As in *FDL Foods*, reliance in this case is missing. The Court finds that any fraud claim based on Allied Life's decision to implement the 1991 COI increase must fail. *See id.* at 950; *see also* Iowa Code § 614.1(2).

That said, there are still contested factual issues going to what Mains and Jeanes knew about Allied Life's second COI increase and when they discovered that information. The Court's observations in Part IIIA regarding Plaintiffs' contract claims apply here as well. In other words, as to Mains, there are indications in the record that he did not learn of the 1994 COI increase until the summer of 1997. And as to Jeanes, there is a factual dispute about what he knew prior to

signing his Agreement in 1996. At the summary judgment stage, questions about what Mains and Jeanes knew regarding the second COI are properly left to the jury. Because genuine issues of material fact remain on the fraud claims (Counts 3 and 4), the Court denies Defendants' Supplemental Motion.

C. Recovery for negligent misrepresentation (Counts 5 and 11)

The Restatement (Second) of Torts § 552 (1977) sets forth the elements of the tort of negligent misrepresentation. That section provides in relevant part:

> (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Beeck, 302 N.W.2d at 96-97 (quoting § 552). Although § 552 contemplates liability for any person who supplies false information "in the course of his business," Iowa courts reserve liability "only to persons engaged in the business or profession of supplying information to others." *Greatbatch v. Metropolitan Fed. Bank*, 534 N.W.2d 115, 117 (Iowa Ct. App. 1995) (quoting *Meier v. Alfa-Laval, Inc.*, 454 N.W.2d 576, 581-82 (Iowa 1990)). The Defendants' Motion therefore takes aim not at the merits of Plaintiffs' claim for negligent misrepresentation. Rather, they argue that because Allied Life is "not in the business of supplying information," then Allied Life cannot be found liable to Plaintiffs for the tort of negligent misrepresentation in the first instance. This question is for the Court to decide. *See id.* 116 (citing *Teunissen v. Orkin Exterminating Co.*, 484 N.W.2d 589, 591 (Iowa 1992)).

"No clear guideline exists to define whether a party is in the business of supplying information." *Id.* at 117. In some cases, though, the analysis is straight forward. Where, for

example, the defendant provides a non-informational, tangible, product, Iowa courts have held that an action for negligent misrepresentation will not lie. *See Freeman v. Ernst & Young*, 516 N.W.2d 835, 838 (Iowa 1994) (no liability for sellers of video rental business); *Meier v. Alfa-Laval, Inc.*, 454 N.W.2d 576, 581 (Iowa 1990) (no liability for makers of milking machine system). On the other end of the spectrum, defendants whose professions directly involve the supply of information will be subject to the tort. *See Ryan v. Kanne*, 170 N.W.2d 395, 402 (Iowa 1969) (in addition to abstracters and attorneys, tort liability under § 552 also extends to accountants); *McCracken v. Edward D. Jones & Co.*, 445 N.W.2d 375, 382 (Iowa Ct. App. 1989) (liability for stock brokerage firm).

There is no Iowa case dealing specifically with the applicability of the tort against an insurance company. Though, as with Iowa banking cases discussed below, an insurance company probably falls "somewhere in the middle of the spectrum." *Greatbatch*, 534 N.W.2d at 117 (citing *Rankow v. First Chicago Corp.*, 870 F.2d 356, 363 (7th Cir. 1989)). Like banks, insurance companies "provide both informational and noninformational services, and the line between a financial transaction and the information about a financial transaction can be very thin." *Id.* In these types of cases, inquiry into the "nature of the transaction" is critical. *Greatbatch*, 534 N.W.2d at 117. In *Larsen v. United Fed. Sav. and Loan Ass'n*, 300 N.W.2d 281 (Iowa 1981), the court held that tort liability attached to a bank who provided home buyers with the mortgage and an appraisal service. The defendant-bank represented that its appraisal (for which it charged the home buyers a $75.00 fee) on a house checked out "okay." *Id.* at 284. In reliance on the appraisal, the buyers closed on the loan and moved into the house, only to discover the house had "major structural defects." *Id.* Taking into account the "end and aim of the transaction," the *Larsen* Court found the bank liable because the appraisal it offered (and

sold) to the home buyers was part and parcel of the overall loan transaction. "If the home had been found to be worth less than the $45,000 offer, we can safely assume the ... the Larsens [would not] have wished to pay that amount for the home." *Id.* at 287.

In *Greatbatch*, plaintiffs applied for a residential loan from the defendant-bank. *Greatbatch*, 534 N.W.2d at 116. Closing on the loan was contingent on "an acceptable water test or septic certification from the seller." *Id.* A bank employee told the plaintiffs that all inspections and certifications had been complete. *Id.* No inspections were ever performed; this fact was never communicated to plaintiffs. *Id.* After closing on the loan, plaintiffs experienced problems with the septic system of the house and sued the bank. *Id.* In rejecting plaintiffs claim for negligent misrepresentation, the Court of Appeals relied on the fact that that "[t]he information concerning the inspection certificate was not an additional product supplied by the bank, unlike the appraisal in *Larsen*, but was incidental to the underlying financial transaction." *Id.* at 118.

This is a close case, and the banking decisions cited above offer limited guidance. However, the Court believes that the Iowa Supreme Court would be to reluctant find Allied Life in the business of supplying information. Allied Life is an insurance company. While Allied Life, by necessity, deals in the world of information, it exists to provide life insurance to people. In the Court's view, COI increases represent incidental aspects of what Allied Life provides. Information concerning these increases does not seem to be "part of the product" provided by Allied Life, or "central" to its business mission. *Greatbatch*, 534 N.W.2d at 118. In this respect, it follows that Plaintiff Mains, as a policy holder, cannot maintain an action for negligent misrepresentation against Allied Life.

The above observations would also apply to Mains and Jeanes who sue in their capacities as regional directors. To its regional directors, Allied Life provides an agency relationship —

not information. Information they receive from the company is incidental to, and not a central feature of, this relationship. Plus, neither Mains nor Jeanes have ever denied that their transactions with Allied Life were anything other than arm's length, a factor cited by the courts in concluding that no tort liability exists. *See Haupt v. Miller,* 514 N.W.2d 905, 910 (Iowa 1994); *Freeman,* 516 N.W.2d at 838; *Meier,* 454 N.W.2d at 581; *Greatbatch,* 534 N.W.2d at 118. For these reasons, the Court grants Defendants' Motion on the negligent misrepresentation claims (Counts 5 and 11).

D. Recovery for breach of an implied covenant of good faith and fair dealing (Counts 2, 7, and 9)

Plaintiffs claim that the failure of Allied Life to be truthful regarding the COI increases breached an implied covenant of good faith and fair dealing which is present in all contracts. *See Fogel v. Trustees of Iowa College,* 446 N.W.2d 451, 456 (Iowa 1989 (citing Restatement (Second) of Contracts § 205 (1981)). Plaintiffs have contract remedies, pursuant to paragraph 3(b) of their respective Agreements, for breaches of good faith. Iowa has not recognized breach of an implied covenant of good faith and fair dealing outside a contractual relationship as exists between the parties here. *See IBP,* 19 F. Supp. 2d at 952. In fact, a majority of jurisdictions that have addressed the covenant have unequivocally rejected it. *See Fogel,* 446 N.W.2d at 457 (citing cases). The Iowa Supreme Court has interpreted *Fogel* as expressly rejecting a cause of action for breach of an implied covenant of good faith and fair dealing in employment situations. *See Porter v. Pioneer Hi-Bred Int'l, Inc.,* 497 N.W.2d 870, 871 (Iowa 1993). Accordingly, Defendants' Motion as to claims for breach of an implied covenant of good faith and fair dealing (Counts 2, 7, and 9) is granted.

E. Validity of alter ego claim

The Plaintiffs sue Allied Life's parent companies, Allied Financial and Allied Mutual, under an alter ego theory. *See Lakota Girl Scout Council, Inc. v. Harvey Fund Raising Management, Inc.*, 519 F.2d 634, 637-39 (8th Cir. 1975) (summarizing alter ego rules); *Benson v. Richardson*, 537 N.W.2d 748, 761 (Iowa 1995) (same); *Schnoor v. Deitchler*, 482 N.W.2d 913, 915-16 (Iowa 1992) (same). The Court has reviewed the entire record and finds the Plaintiffs' alter ego claims without merit. No reasonable jury could find Allied Financial and Allied Mutual to be alter egos of Allied Life. Therefore, any claims asserted against Defendants Allied Financial and Allied Mutual are dismissed. Only Defendant Allied Life will be held to answer for the allegations asserted in this lawsuit.

IV. Conclusion

For the foregoing reasons, the Court orders that:

(1) Defendants' Motion as to Count I (breach of contract) be **denied**;

(2) Defendants' Motion as to Count II (breach of implied duty of good faith and fair dealing) be **granted**;

(3) Defendants' Supplemental Motion as to Count III (fraud-concealment) be **denied**;

(4) Defendants' Supplemental Motion as to Count IV (fraud-intentional misrepresentation) be **denied**;

(5) Defendants' Motion as to Count V (negligent misrepresentation) be **granted**;

(6) Defendants' Motion as to Count VI (breach of contract-failure to pay commissions) be **denied**;

(7) Defendants' Motion as to Count VII (breach of implied duty of good faith and fair dealing-failure to pay commissions) be **granted**;

(8) Plaintiffs' Count VIII (breach of insurance policy contracts) be preserved to the extent

it is based on the 1994 COI increase;

(9) Defendants' Motion as to Count IX (breach of implied duty of good faith and fair dealing) be **granted;**

(10) Plaintiff Mains' Count X (fraud and conversion) be preserved to the extent it is based on the 1994 COI increase;

(11) Defendants' Motion as to Count XI (negligent misrepresentation) be **granted;**

(12) Allied Financial and Allied Mutual be removed as defendants in this lawsuit;

(13) "Does" 1-100 be removed as defendants in this lawsuit.

IT IS SO ORDERED.

Dated this 10th day July, 2000.

Robert W. Pratt

ROBERT W. PRATT
U.S. DISTRICT JUDGE