

CLERK OF THE COURT

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Aug 04 2015 02:51 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOAS
MARGARET A. MCLEITCHIE, Nevada Bar No. 10931
MATTHEW J. RASHBROOK, Nevada Bar No. 12477
MCLEITCHIE SHELL LLC
701 East Bridger Ave., Suite 520
Las Vegas, NV 89101
(702) 728-5300
maggie@nvlitigation.com
Attorneys for Plaintiff
O.P.H. of Las Vegas, Inc.

DISTRICT COURT

CLARK COUNTY NEVADA

O.P.H. of Las Vegas, Inc.,

Case No.: A-12-672158-C

Plaintiff,

vs.

Dept. No.: XXVI

Oregon Mutual Insurance Company, Dave
Sandin, and Sandin & Co.,

NOTICE OF APPEAL

Defendants.

PLEASE TAKE NOTICE that Plaintiff O.P.H. of Las Vegas ("OPH") hereby
appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;
2. "Order Denying Plaintiff's Motion for Partial Summary Judgment," filed electronically February 19, 2014 (Exhibit 1);
3. "Order Granting Defendant Oregon Mutual Insurance Company Motion For Summary Judgment On All Claims Against OMI," filed electronically June 30, 2015, notice of entry of which was served electronically June 30, 2015 (Exhibit 2);
4. "Order Granting Defendants Dave Sandin And Sandin & Co.'s Motion For Summary Judgment," filed electronically June 30, 2015, notice of entry of which was served electronically July 1, 2015 (Exhibit 3);

5. All rulings and interlocutory orders made appealable by any of the foregoing.

Respectfully submitted this 30th day of July, 2015.

By: /s/ Margaret A. McLetchie

Margaret A. McLeitch, Nevada Bar No. 10931

Matthew J. Rashbrook, Nevada Bar No. 12477

MCLETCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

Attorneys for Plaintiff

O.P.H. of Las Vegas, Inc.

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 1601 0208-8742023-13 0015-8257204
 10168 AN N0034 007
 0023436 000 8000088 1874 100
 AN 11455800014

1 CERTIFICATE OF SERVICE

2 Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on
3 this 30th day of July, 2015, I did cause a true copy of the foregoing NOTICE OF APPEAL in
4 *O.P.H. of Las Vegas, Inc. v. Oregon Mutual Ins. Co., et al.*, Clark County District Court Case
5 No. A-12-672158-C, to be filed and served electronically using the Wiznet Electronic
6 Service system, to the following counsel of record:

7 Patricia M. Lee, Esq.
8 Michael S. Kelley, Esq.
9 HUTCHISON & STEFFEN
10 Peccole Professional Park
11 10080 West Alta Drive, Suite 200
12 Las Vegas, NV 89145
13 *Attorneys for Sandin Defendants*

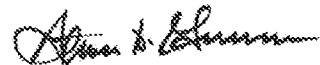
plee@hutchlegal.com
mkelley@hutchlegal.com
kchappuis@hutchlegal.com

12 Robert W. Freeman, Esq.
13 Priscilla L. O'Briant, Esq.
14 LEWIS BRISBOIS BISGAARD & SMITH LLP
15 6385 South Rainbow Blvd., Suite 600
16 Las Vegas, NV 89118
17 *Attorneys for Defendant Oregon Mutual*

kristen.freeman@lewisbrisbois.com
priscilla.obriant@lewisbrisbois.com
kellene.mckay@lewisbrisbois.com

17 /s/ Pharan Burchfield
18 EMPLOYEE of McLetchie Shell LLC
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



CLERK OF THE COURT

1 ROBERT W. FREEMAN
Nevada Bar No. 003062
2 PRISCILLA L. O'BRIAN
Nevada Bar No. 010171
3 LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
4 Las Vegas, Nevada 89118
702.893.3383
5 FAX: 702.893.3789
Attorneys for Oregon Mutual Insurance Company
6

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

10 O.P.J.L OF LAS VEGAS INC.,

11 Plaintiff,

12 vs.

13 OREGON MUTUAL INSURANCE
COMPANY; DAVE SANDIN; and SANDIN
14 & CO.,

15 Defendants.
16

CASE NO. A-12-672158-C

Dept. No. ~~XXVI-H~~ 26

ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

17 The matter of Plaintiff's Motion for Partial Summary Judgment came before the Court for
18 oral argument on January 22, 2014. Counsel present were Margaret A. McLetchie and Daniel B.
19 Heidecke of LANGFORD MCLETCHE on behalf of Plaintiff Robert W. Freeman and Priscilla L.
20 O'Brian of LEWIS BRISBOIS BISGAARD & SMITH LLP on behalf of Defendant *Oregon*
21 *Mutual Insurance Company*; and Z. Kathryn Branson of HUTCHISON & STEFFEN on behalf of
22 the Sandin Defendants.

23 The Court, having reviewed the pleadings and papers on file and heard oral argument and
24 GOOD CAUSE APPEARING:

25 The Court finds that whether the requirement of NRS 687B.360 was triggered by the July
26 31, 2013 notice, is a question of fact.

27 ///

28 ///

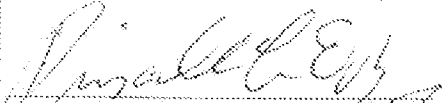
1 THEREFORE, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that
2 Plaintiff's Motion for Partial Summary Judgment is DENIED.

3 DATED this 7th day of February, 2014.

4 
5 DISTRICT COURT JUDGE 

6 Respectfully Submitted By:

7 LEWIS BRISBOIS BISGAARD & SMITH, LLP

8 
9 Robert W. Freeman

10 Nevada Bar No. 3062

11 Priscilla L. O'Brian

12 Nevada Bar No. 10171

13 6385 S. Rainbow Boulevard, Suite 600

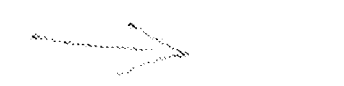
14 Las Vegas, Nevada 89118

15 Attorneys for Oregon Mutual Insurance Company

16 Approved as to Form and Content:

17 HUTCHISON & STEFFEN

18 LANGFORD MCLECHIE

19 
20 Patricia Lee

21 Nevada Bar No. 8287

22 Z. Kathryn Branson

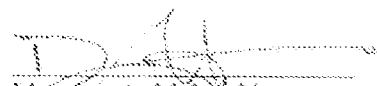
23 Nevada Bar No. 11540

24 Peccole Professional Park

25 10080 West Alta Drive, Suite 200

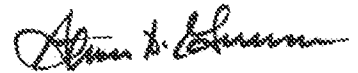
26 Las Vegas, Nevada 89145

27 Attorneys for Sundin Defendants

28 
Margaret A. McLechie
Nevada Bar No. 10931
Daniel B. Heidtke
Nevada Bar No. 12973
616 South Eighth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

DATED this _____ day of _____, 2014.

EXHIBIT 2



CLERK OF THE COURT

1 NOEJ
2 ROBERT W. FREEMAN, ESQ.
3 Nevada Bar No. 003062
4 Email: Robert.Freeman@lewisbrisbois.com
5 PRISCILLA L. O'BRIANT, ESQ.
6 Nevada Bar No. 010171
7 Email: Priscilla.Obriant@lewisbrisbois.com
8 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
9 6385 S. Rainbow Boulevard, Suite 600
10 Las Vegas, Nevada 89118
11 702.893.3383
12 FAX: 702.893.3789
13 *Attorneys for Defendant*
14 *Oregon Mutual Insurance Company*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 O.P.H. OF LAS VEGAS INC.,

12 Plaintiff,

13 vs.

14 OREGON MUTUAL INSURANCE
15 COMPANY; DAVE SANDIN; and SANDIN
16 & CO.,

16 Defendants.

CASE NO. A-12-672158-C
Dept. No.: XXVI


**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANT OREGON
MUTUAL INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT
ON ALL CLAIMS AGAINST OMI**

18 PLEASE TAKE NOTICE that a *Order Granting Defendant Oregon Mutual Insurance*
19 *Company's Motion for Summary Judgment on All Claims Against OMI* was entered in this matter on
20 the 30th day of June, 2015, a copy of which is attached hereto as Exhibit "A".

21 DATED this 30th day of June, 2015.

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23 By

24 
25 ROBERT W. FREEMAN, ESQ.

26 Nevada Bar No. 003062

27 PRISCILLA L. O'BRIANT, ESQ.

28 Nevada Bar No. 010171

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Attorneys for Defendant

Oregon Mutual Insurance Company

1 CERTIFICATE OF SERVICE

2 Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this
3 30th day of June, 2015, I did cause a true copy of the foregoing **NOTICE OF ENTRY OF ORDER**
4 **GRANTING DEFENDANT OREGON MUTUAL INSURANCE COMPANY'S MOTION**
5 **FOR SUMMARY JUDGMENT ON ALL CLAIMS AGAINST OMI** in O.P.H. of Las Vegas,
6 Inc. v. Oregon Mutual Ins. Co., et. al., Clark County District Court Case No. A-12-672158-C, to be
7 served electronically using the Wiznet Electronic Service system, to all parties with an email-
8 address on record.

9
10 Patricia Lee, Esq.
11 Z. Kathryn Branson, Esq.
12 HUTCHISON & STEFFEN, LLC
13 10080 West Alta Drive, Suite 200
14 Las Vegas, Nevada 89145
15 *Attorneys for Defendants Dave Sandin*
16 *and Sandin & Co.*

pllee@hutchlegal.com
KBranson@hutchlegal.com
ycampbell@hutchlegal.com
ideangelis@hutchlegal.com

15 Margaret A. McLetchie, Esq.
16 LANGFORD MCLETCHE LLC
17 616 South Eighth Street
18 Las Vegas, Nevada 89101
19 *Attorneys for Plaintiff*

maggie@nvlitigation.com
jeff@nvlitigation.com
admin@nvlitigation.com

18 **Courtesy Copy**
19 **Via Hand Delivery To:**
20 Eighth Judicial District Court
21 Dept. 26, Judge Gloria Sturman
22 200 Lewis Avenue
23 Las Vegas, Nevada 89155

24
25 By: 

26 Kellene McKay, an Employee of
27 LEWIS BRISBOIS BISGAARD & SMITH LLP
28 Email: Kellene.McKay@lewisbrisbois.com

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

1 **FFCL**
2 ROBERT W. FREEMAN, ESQ.
3 Nevada Bar No. 003062
4 PRISCILLA L. O'BRIANT, ESQ.
5 Nevada Bar No. 010171
6 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
7 6385 S. Rainbow Boulevard, Suite 600
8 Las Vegas, Nevada 89118
9 702.893.3383
10 FAX: 702.893.3789
11 *Attorneys for Defendant*
12 *Oregon Mutual Insurance Company*
13 *("OMI")*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 O.P.H. OF LAS VEGAS INC.,
11
12 Plaintiff,

13 vs.

14 OREGON MUTUAL INSURANCE
15 COMPANY; DAVE SANDIN; and SANDIN
16 & CO.,
17 Defendants.

CASE NO. A-12-672158-C
Dept. No.: XXVI

**ORDER GRANTING DEFENDANT
OREGON MUTUAL INSURANCE
COMPANY MOTION FOR SUMMARY
JUDGMENT ON ALL CLAIMS AGAINST
OMI**

18 This matter came on for hearing on May 14, 2015 in Department XXVI of the Eighth
19 Judicial District Court of the State of Nevada, before the Honorable Gloria Sturman, on Oregon
20 Mutual Insurance Company's Motion for Summary Judgment ("OMI's Motion"). The Court,
21 having read the parties' moving papers and the authority relied upon therein, and having engaged
22 with counsel in oral argument, hereby enters the following undisputed material facts and legal
23 determinations on which the order is based, pursuant to NRCP 56(c).

24 **UNDISPUTED MATERIAL FACTS**

25 1. OMI issued a "Businessowner Protector Policy" to OPH of Las Vegas, Inc. ("OPH"
26 or "insured") at 4170 South Fort Apache Road, Las Vegas, Nevada, Policy No. BSP71668 (the
27 "policy") which provided coverage for the OPH Restaurant at 4833 West Charleston Boulevard,
28 Las Vegas, effective December 26, 2011.

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Remittitur Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> OPH's Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Acquittal

1 2. The "your agent" box on the policy lists "Sandin Insurance Group" ("Sandin").

3 3. The Nevada Division of Insurance issued a license to Sandin & Co., License No.
4 700311, non-resident producer firm, effective May 25, 2010 through June 1, 2013.

4 4. The Nevada Division of Insurance issued a license to Anthony John Sandin, the
5 producer for Sandin, License No. 700310, non-resident producer, effective May 25, 2010 through
6 June 1, 2013.

7 5. The policy and its endorsements contain the following provisions governing
8 cancellation:

SECTION III – COMMON POLICY CONDITIONS

10 (APPLICABLE TO SECTION I -
PROPERTY AND SECTION II - LIABILITY)

A. Cancellation

2 *****

13 2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:

* * * * *

b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.

~~~~~ \* \* \* ~~~~~

16 6. If Notice is mailed, \$ of mailing will be sufficient proof of notice.

13 \*\*\*\*\*

## NEVADA CHANGES

B. Section III -- Common Policy Conditions is amended as follows:

19

20 3. The following are added to Paragraph A.

## Cancellation:

## 7. Midterm Cancellation

If this is policy has been in effect for 70 days or more, or if this policy is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

24 (a) Nonpayment of premium;

|||||

## Notices

1. Notice of cancellation or nonrenewal will be mailed, first class or certified, or delivered to the first Named Insured at the last mailing address known to us and will state:

78 (a) The specific reason for cancellation or nonrenewal; and

(b) The effective date of nonrenewal.

\* \* \*

2. We will also provide a copy of the notice of cancellation, for both policies in effect less than 70 days and policies in effect 70 days or more, to the agent who wrote the policy.

6. On July 9, 2012, OMI generated a billing statement to OPH which was received by OPH in July which stated that the minimum amount due was \$2,814.75 and the due date was July 26, 2012.

7. OMI did not receive payment by July 26, 2012.

8. On the night of July 31, 2012, OMI produced a "Notice of Cancellation" (the "notice") dated July 31, 2012 which stated:

Minimum Due 2,822.00

We did not receive the required premium payment on your account by the date it was due.

We appreciate your business and hope we can continue to serve your insurance needs. If we receive at least the minimum due on this account by 08/15/12, we will continue your coverage without interruption. If we do not receive the minimum due by 08/15/12, each policy listed below will be cancelled effective the time and date shown opposite that policy number.

| <u>Policy type</u>   | <u>Policy number</u> | <u>Effective time and date of cancellation</u>                          |
|----------------------|----------------------|-------------------------------------------------------------------------|
| Businessowner Policy | BSP716685            | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |
| Package Policy       | OM0914045            | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |

If you have any questions, please contact your agent SANDIN INSURANCE GROUP immediately at (503) 381-5570.

9. OMI mailed the notice via first class mail to OPH at 4170 South Fort Apache Road, Las Vegas, Nevada, the corporate office of OPH.

10. The notice was mailed on August 1, 2013 more than 10 days before the effective date of August 16, 2012.

11. On July 31, 2012, OMI uploaded a copy of the provisional notice of cancellation to Sandin's BizLink portal

12. The Agency Agreement between OMI and Sandin provides that "[a] copy of all ... cancellations or renewal notices ... will be mailed or electronically transmitted to the agent."

13. OMI did not receive payment of the outstanding premium by August 15, 2012.

1           14.     At approximately 4:00 a.m. on August 17, 2012, a fire broke out at the OPH  
2 Restaurant at 4833 West Charleston Boulevard (the "fire loss").

3           15.     OPH, through its agent, submitted a claim for the fire loss to OML.

4           16.     On August 20, 2012, OMI mailed a claim denial letter to OPH, stating that the policy  
5 had been cancelled prior to the date of loss, and that OMI therefore had no obligation to indemnify  
6 OPH for the fire loss.

7     **LEGAL DETERMINATIONS**

8           1.     In finding that no coverage exists under the undisputed facts of the case and the terms  
9 of the Policy, the Court is guided by the following standards governing interpretation of insurance  
10 policies in Nevada. The interpretation of an insurance contract is a question of law. *Farmers Ins.*  
11 *Exch. v. Neal*, 119 Nev. 62, 64 P.3d 472, 473 (Nev. 2003). The terms of an insurance policy must  
12 be construed "in their plain and ordinary sense and from the viewpoint of one not trained in the  
13 law." *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 482, 133 P.3d 251, 253 (2006); *Farmers Ins.*  
14 *Exch. v. Neal*, 119 Nev. 62, 64-65, 64 P.3d 472, 473 (2003); *United National Ins. Co. v. Frontier*  
15 *Ins. Co.*, 120 Nev. 678, 684, 99 P.3d 1153, 1156-57 (2004); *Vitale v. Jefferson Ins. Co.*, 116 Nev.  
16 590, 594, 5 P.3d 1054, 1057 (2000). Policies are construed from the perspective of a layman rather  
17 than from "one trained in the law" and absent ambiguity, terms are to be given their plain and  
18 ordinary meaning. *McDaniel v. Sierra Health & Life Ins. Co.*, 118 Nev. 596, 53 P.3d 904, 906 (Nev.  
19 2002). An ambiguity exists when a policy provision is subject to two or more reasonable  
20 interpretations. *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 P.2d 599, 604  
21 (Nev. 1992). A policy should be interpreted to effectuate the reasonable expectations of the insured.  
22 *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 14, 252 P.3d 668, 672 (2011). However, a court in  
23 Nevada will "neither rewrite unambiguous insurance provisions nor attempt to increase the legal  
24 obligations of the parties where the parties intentionally limited such obligation." *Vitale*, 116 Nev.  
25 at 596, 5 P.3d at 1057-58; *United National*, supra, 120 Nev. at 184, 99 P.3d at 1157; *Neal*, 119 Nev.  
26 at 65, 64 P.3d at 473; *Senteney v. Fire Ins. Exch.*, 101 Nev. 654, 707 P.2d 1149 (1985).

27           2.     In addition to the language of the Policy, the Court's decision is also governed by  
28 Nevada statutes regarding mid-term cancellation of policies, which are interpreted based on the

1 principles set forth above. Under NRS 687B.320, an insurer may enact a midterm cancellation of a  
2 policy or cancellation of a renewable policy for failure to pay a premium when due. NRS  
3 687B.320(1)(a). The purpose of NRS 687B.320 is to "protect individuals from the arbitrary actions  
4 of insurers who cancel insurance policies without notice to their insureds." *Daniels v. National*  
5 *Home Life Assurance Co.*, 103 Nev. 674, 677, 747 P.2d 897 (1987). Any notice of cancellation  
6 "must be personally delivered to the insured or mailed first class or certified to the insured at his last  
7 address known to the insurer." NRS 687B.310(6). "The notice must state the effective date of the  
8 cancellation or nonrenewal" and include a written explanation of the reasons for cancellation or  
9 nonrenewal. NRS 687B.310(6). Cancellation of a policy for failure to pay a premium when due is  
10 effective no earlier than 10 days after proper notice is delivered or mailed to the policyholder. NRS  
11 687B.320(2). If a notice of cancellation does not state with reasonable precision the facts on which  
12 the insurer's decision is based, the notice must contain information about the policyholder's right to  
13 request the insurer provide this information. NRS 687B.360.

14 3. In applying the above statutes to the undisputed facts of this case and terms of the  
15 policy, the Court is guided by the following standards governing interpretation of statutes. The  
16 interpretation of a statute is not a question of fact for the jury, but a question of law for resolution by  
17 the court. *W. v. Cal.*, 181 Cal. App. 3d 753, 762 (Cal. App. 1st Dist. 1986); see also *State v.*  
18 *Schumacher*, 136 Idaho 509 (Idaho Ct. App. 2001) (allowing juries to independently interpret  
19 [statute] would be an abdication of this Court's duty to construe legislative language to determine  
20 the law). It is a court's duty to interpret statutes consistent with the intent of the legislature. *Rose v.*  
21 *First Fed. Sav. & Loan Ass'n*, 105 Nev. 454, 457 (Nev. 1989). To do so, the court must give a  
22 statute's terms their plain, ordinary and usual meaning. *O'Neal v. Slaughter (In re Estate of*  
23 *Murray)*, 344 P.3d 419, 421 (Nev. 2015). When construing various statutory provisions, which are  
24 part of a "scheme," a court must interpret them harmoniously and in accordance with their general  
25 purpose. *Zahavi v. State*, 343 P.3d 595, 600 (Nev. 2015).

26 4. The Court finds as a matter of law that the notice provided to the insured by OMI  
27 satisfies the requirements of the policy and NRS 687B310, NRS 687B320, and NRS 687B360. The  
28 notice satisfies the statutory and policy requirements because the notice 1) the notice was based on



1 non-payment of premium a permissible basis for midterm cancellation of a policy, 2) was mailed  
2 first class to the insured at his last known address, 3) state the effective date of the cancellation, 4)  
3 included the reason for cancellation, 5) was effective no earlier than 10 days after it was mailed to  
4 the policyholder, and 6) stated with reasonable precision the facts on which the insurer's decision to  
5 cancel was based.

6 5. The Court finds that both the policy and applicable statutes require only that notice to  
7 the insured be mailed to the insured. As such, the Court specifically finds that proof of mailing of  
8 any notice to the insured is sufficient proof of notice.

9 6. The Court finds that OMI met its policy obligation to provide notice to Sandin by  
10 providing electronic notice in conformance with the Agency Agreement between OMI and the  
11 Sandin.

12 7. The Court having found as a matter of law that OMI's complied with all policy and  
13 statutory requirements to effectuate cancellation and that proof of mailing is sufficient proof of  
14 notice, the Court finds as a matter of law that OMI cancelled the policy effective August 16, 2012 at  
15 12:01 a.m.

16 8. Having found that OMI cancelled the policy effective August 16, 2012 at 12:01 a.m.,  
17 the Court finds as a matter of law there is no coverage under the policy for the August 17 fire loss.

18 9. Having found that there is no coverage under the policy for the August 17 fire loss,  
19 Plaintiff's cause of action for breach of contract fails as a matter of law and OMI is entitled to  
20 summary judgment on this claim.

21 10. Having found that there is no coverage for the August 17 fire loss, the Court finds  
22 that OMI's denial of coverage was reasonable as a matter of law. *Powers v. United Services Auto*  
23 *Ass'n*, 114 Nev. 690, 962 P.2d 596, 604 (Nev.1998) (the plaintiff must establish that the insurer had  
24 no reasonable basis for disputing coverage, and that the insurer knew or recklessly disregarded the  
25 fact that there was no reasonable basis for disputing coverage). Therefore, Plaintiff's cause of action  
26 for breach of the implied covenant of good faith and fair dealing fails as a matter of law and OMI is  
27 entitled to summary judgment on this claim.

28 ///

1 11. Having found that OMI provided notice of the pending cancellation to both OPH and  
2 Sandin as stated in the policy, Plaintiff's cause of action for fraud in the inducement fails as a matter  
3 of law and OMI is entitled to summary judgment on this claim.

4 12. Having found that the notice provided by OMI to the insured satisfied the  
5 requirements of the policy and applicable Nevada statutes and that OMI's denial of coverage was  
6 reasonable as a matter of law, Plaintiff's cause of action for violations of NRS §686A.310 fails as a  
7 matter of law and OMI is entitled to summary judgment on this claim.


8 13. Plaintiff's failure to oppose OMI's motion for summary judgment on the negligence  
9 claim constitutes consent to granting the Motion. EDCR 2.20(c). As such OMI is entitled to  
10 summary judgment on this claim.

11 14. Plaintiff's negligence claim against OMI is barred by the economic loss doctrine.  
12 *Terracon Consultants Western, Inc. v. Mandalay Resorts*, 125 Nev. 66, 206 P.3d 81 (2009).

13 15. For these reasons, the Court hereby orders that judgment is entered in favor of OMI  
14 on all claims against OMI by Plaintiff.


15 IT IS SO ORDERED.

16 DATED this 26<sup>th</sup> day of June, 2015

17  
18   
19 THE HONORABLE GLORIA STURMAN

20 Submitted by:

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22   
23 ROBERT W. FREEMAN

24 Nevada Bar No. 003062

25 PRISCILLA L. O'BRIANT

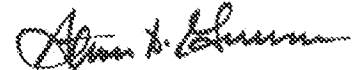
26 Nevada Bar No. 010171

27 6385 S. Rainbow Boulevard, Suite 600

28 Las Vegas, Nevada 89118

Attorneys for OMI

# EXHIBIT 3



CLERK OF THE COURT

1 NEOJ  
2 Patricia Lee (8287)  
3 Michael S. Kelley (10101)  
4 HUTCHISON & STEFFEN, LLC  
5 10080 West Alta Drive, Suite 200  
6 Las Vegas, NV 89145  
7 Tel: (702) 385-2500  
8 Fax: (702) 385-2086  
9 plce@hutchlegal.com  
10 mkelley@hutchlegal.com

11 *Attorneys for defendants*  
12 *David Sandin and Sandin & Co.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 O.P.H. OF LAS VEGAS, INC.,

16 Plaintiff,

17 v.

18 OREGON MUTUAL INSURANCE  
19 COMPANY, DAVE SANDIN, and SANDIN  
20 & CO.,

21 Defendants.

Case No.: A-12-672158-C

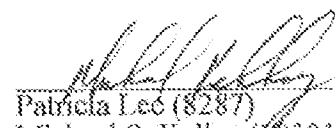
Dept. No.: XXVI

**NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that an Order Granting Defendants Dave Sandin and Sandin  
23 & Co.'s Motion for Summary Judgment was entered in the above-captioned matter on June 30,  
24 2015, a copy of which is attached hereto.

25 DATED this 1<sup>st</sup> day of July, 2015.

HUTCHISON & STEFFEN, LLC

26   
27 Patricia Lee (8287)  
28 Michael S. Kelley (10101)  
Peccola Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

*Attorneys for defendants David Sandin and  
Sandin & Co.*

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

PECCOLA PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

CERTIFICATE OF SERVICE

Pursuant to NRCF 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC, and that on this 18<sup>th</sup> day of July, 2015, I caused the above and foregoing document entitled NOTICE OF ENTRY OF ORDER to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via electronic mail; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys listed below at the address and emails indicated below:

Margaret A. McLeitchie, Esq.  
LANGFORD MCLETCHIE LLC  
616 S. Eighth St.  
Las Vegas, NV 89101

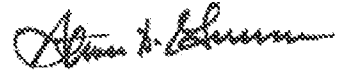
*Attorneys for plaintiff  
O.P.H. of Las Vegas Inc.*

Robert Freeman, Esq.  
Priscilla O'Briant, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Blvd., Ste. 600  
Las Vegas, NV 89118

*Attorneys for Oregon Mutual Insurance  
Company*

  
An employee of Hutchison & Steffen, LLC

ORIGINAL



CLERK OF THE COURT

FFCL  
Patricia Lee (8287)  
Michael S. Kelley (10101)  
HUTCHISON & STEFFEN, LLC  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Tel: (702) 385-2500  
Fax: (702) 385-2086  
plee@hutchlegal.com  
mkelley@hutchlegal.com

*Attorneys for defendants  
David Sandin and Sandin & Co.*

DISTRICT COURT  
CLARK COUNTY, NEVADA

O.P.H. OF LAS VEGAS, INC.,

Plaintiff,

v.

OREGON MUTUAL INSURANCE  
COMPANY, DAVE SANDIN, and SANDIN  
& CO.,

Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

ORDER GRANTING DEFENDANTS  
DAVE SANDIN AND SANDIN &  
CO.'S MOTION FOR SUMMARY  
JUDGMENT

Defendants Dave Sandin and Sandin & Co.'s (the "Sandin defendants") motion for summary judgment came on for hearing before this Court on May 14, 2015. Patricia Lee and Michael S. Kelley of Hutchison & Steffen, LLC appeared on behalf of the Sandin defendants. Robert L. Langford of Langford McLetchie, LLC appeared on behalf of plaintiff, O.P.H. of Las Vegas, Inc. ("OPH" or "Plaintiff"). The Court, having considered the respective papers and submissions of each party, having heard the arguments of counsel at the hearing, hereby enters the following undisputed material facts and legal determinations on which the order is based pursuant to NRCP 56(c).

///

///

///

|                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Voluntary Stipulation        | <input checked="" type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Stipulation      | <input type="checkbox"/> Stipulated Judgment         |
| <input type="checkbox"/> Stipulation by Counsel       | <input type="checkbox"/> Default Judgment            |
| <input type="checkbox"/> Motion to Dismiss by Parties | <input type="checkbox"/> Judgment of Arbitration     |

## Undisputed Material Facts

1. OPH operated an Original Pancake House Restaurant at 4833 West Charleston Boulevard in Las Vegas, Nevada (the "Restaurant"). Stephan Freudenberger is the president of OPH and Lynda Snyder is the corporate office manager of OPH and reports to Mr. Freudenberger.

2. Defendant Dave Sandin is an insurance agent or broker based in Oregon.

3. In the early 2000s, Dave Sandin and his colleague began working with OPH and other Original Pancake House franchisees. Dave Sandin's colleague was initially the lead agent for OPH and Dave Sandin was his assistant. In the early to mid 2000s, David Sandin became the insurance agent for OPH and he has been the insurance agent for OPH through August 2012, except for over two years when OPH was with a different agency.

4. Between February 2006 and October 2008, Dave Sandin was employed by Heffernan Insurance Brokers and was subject to a non-compete agreement. During this time, Dave Sandin was not the broker for OPH. Dave Sandin did not broker any policies for OPH during this time period.

5. Though they are based in Oregon, the Sandin defendants have been licensed to sell insurance in Nevada. Dave Sandin first became licensed to sell insurance in Nevada in 2005. Dave Sandin, Anthony Sandin (a non-party), and Sandin & Co. were all licensed in Nevada when Sandin & Co. took over OPH's account from Dave Sandin's former employer in 2010. Dave Sandin, Anthony Sandin and Sandin & Co. have worked on Plaintiff's account since 2010. Sandin & Co.'s and Anthony Sandin's respective Nevada licenses expired on June 1, 2013. Dave Sandin's Nevada license expired on April 1, 2011.

6. In December 2011, the Sandin defendants recommended Oregon Mutual Insurance Company's ("Oregon Mutual") insurance to Plaintiff based on Plaintiff's coverage needs.

7. Oregon Mutual issued a Businessowner Protector Policy to Plaintiff that covered the Restaurant (the "Policy").

///

1           8.     The Policy's term was from December 26, 2011 through December 26, 2012.  
2 Sandin & Co. is identified as the agent on the Policy.

3           9.     Plaintiff received monthly statements for the premiums directly from Oregon  
4 Mutual.

5           10.    Oregon Mutual mailed a billing statement directly to Plaintiff for the payment  
6 due on or before July 26, 2012, and Plaintiff received the billing statement in July, 2014.

7           11.    Plaintiff failed to pay its monthly premium due on July 26, 2012.

8           12.    Oregon Mutual sent a pre-cancellation notice to Plaintiff on August 1, 2012,  
9 with an effective cancellation date of August 16, 2012.

10          13.    On August 13, 2012, prior to the cancellation of the Policy, Plaintiff realized  
11 that it did not make the monthly premium for July. In fact, Plaintiff cut a check on August 13,  
12 2012 to Oregon Mutual for the July premium but never mailed the check. Plaintiff, however,  
13 did not contact anyone at Oregon Mutual or the Sandin defendants regarding its failure to pay  
14 the July premium.

15          14.    The Sandin defendants did not receive a notice of cancellation.

16          15.    On August 13, 2012, Plaintiff representative, Linda Snyder, contacted defendant  
17 Dave Sandin to report a break-in that occurred at the restaurant overnight between August 10,  
18 2012 and August 11, 2012.

19          16.    On August 16, 2012, Ms. Snyder spoke with Dave Sandin to obtain a claim  
20 number for the break-in.

21          17.    Oregon Mutual posted the pre-cancellation notice on BizLink, its electronic  
22 bulletin board system. The Sandin defendants did not check the BizLink system to look for  
23 notices and Oregon Mutual did not mail the pre-cancellation notice to the Sandin defendants.  
24 Because the Sandin defendants did not know about Oregon Mutual's cancellation or pending  
25 cancellation, the Sandin defendants did not inform Ms. Snyder that the Policy had been or was  
26 in danger of being cancelled.

27          18.    There is no agreement between OPH and the Sandin defendants that requires the  
28 Sandin defendants to provide notice to OPH of a pending policy cancellation.



1           19.     On August 17, 2012, a fire destroyed the Restaurant.

2           20.     On August 17, 2012, after a fire destroyed the Restaurant and after the Policy  
3 had already been cancelled, the Sandin defendants became aware that the Policy had been  
4 cancelled.

5           21.     On August 17, 2012 after the Sandin defendants became aware that the Policy  
6 had been cancelled, Dave Sandin contacted Plaintiff and notified Plaintiff that the Policy had  
7 been cancelled.

8           22.     As a result of the cancellation of Plaintiff's Policy for non-payment on August  
9 16, 2012, Oregon Mutual has denied coverage for the loss caused by the fire.

10          23.     The sole reason for cancellation of the Policy was due to Plaintiff's failure to  
11 pay its July 26, 2012 premium on or before August 15, 2012.

12          24.     Had Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy  
13 would have been in full force and effect on August 16, 2012 and August 17, 2012.

14          25.     Had the Policy not been cancelled, Oregon Mutual would have continued to  
15 adjust the claim for the fire and Oregon Mutual would have paid losses covered under the  
16 Policy subject to the terms, conditions, exclusions and limitations of the Policy.

17 **Conclusions of Law**

18 **The Sandin defendants did not have a legal duty to notify O.P.I.L. of the late premium and**  
19 **pending cancellation.**

20           1.     In Nevada, insurance agents do not have a fiduciary relationship with their  
21 clients. An "insurance agent is obliged to use reasonable diligence to place the insurance and  
22 seasonably to notify the client if he is unable to do so," *Keddie v. Beneficial Insurance, Inc.*, 94  
23 Nev. 418, 420, 580 P.2d 955, 956 (1978).<sup>1</sup>

24           2.     Because the Sandin defendants recommended an insurer and secured a policy  
25 for Plaintiff that met all of its coverage needs, the Sandin defendants satisfied their legal duty

---

26           <sup>1</sup> See also *Havas v. Carter*, 89 Nev 497, 499-500, 515 P.2d 397, 399 (1973) ("[T]he general  
27 rule [is] that an insurance agent or broker who undertakes to procure insurance for another owes an  
28 obligation to his client to use reasonable diligence in attempting to place the insurance and to  
seasonably notify the client if he, the agent or broker, is unable to obtain the insurance.").

1 to Plaintiff as Plaintiff's broker.

2 3. Plaintiff's claim was denied solely because of non-payment.

3 4. Had Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy  
4 would have been in full force and effect on August 16, 2012 and August 17, 2012.

5 5. Had the Policy not been cancelled, Oregon Mutual would have continued to  
6 adjust the claim for the fire and Oregon Mutual would have paid losses covered under the  
7 Policy subject to the terms, conditions, exclusions and limitations of the Policy.

8 6. The Court finds persuasive case law from other jurisdictions that an insurance  
9 agent does not have the legal duty to notify an insured of a late premium and/or pending  
10 cancellation.<sup>2</sup> "[W]hether a defendant owes a plaintiff a duty of care is a question of law."  
11 *Scialabba v. Brandise Const. Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996).

12 7. The Court finds that there is no express or implied agreement between the  
13 Sandin defendants and OPH that required the Sandin defendants to notify OPH of a late  
14 premium and/or a pending cancellation.

15 8. The Sandin defendants did not have a legal duty to notify OPH of the pending  
16 cancellation based on prior course of dealing.

17  
18 <sup>2</sup> See *GlobalNet Financial, Com, Inc. v. Frank Crystal & Co.*, 449 F.3d 377, 388 (2d  
19 Cir. 2006) ("GlobalNet is unable to prevail on its claims because Crystal was not the cause of  
20 the cancellation of coverage. . . It was GlobalNet's negligence that caused the cancellation of  
21 the insurance coverage."); *Guardian Life Ins. Co. of Am. v. Goduti-Moore*, 36 F. Supp. 2d 657,  
22 665-66 (D.N.J. 1999) *reversed on other grounds*, 229 F.3d 212 (3d Cir. 2000) ("It would be  
23 unduly onerous for brokers to warn every client who misses a monthly premium due date that  
24 the client must pay the amount by the end of the grace period or face forfeiture."); *Quintana v.*  
25 *Tennessee Farmers Mut. Ins. Co.*, 774 S.W.2d 630, 634 (Tenn. Ct. App. 1989) ("The  
26 Quintanas' long business relationship with Mr. Willis did not require him to notify them of the  
27 policy's cancellation. In the absence of an agreement creating continuing responsibilities, an  
28 insurance agent's obligation to a client ends when the agent obtains the insurance for the client.  
Thus, an agent has no duty to inform a client of a policy's cancellation if the client knew or  
should have known of the cancellation by other means."); *Rocque v. Coop. Fire Ins. Ass'n of*  
*Vermont*, 438 A.2d 383, 386 (Vt. 1981) ("[W]here an insurance company is required to give  
direct notice of cancellation to the insured, as is the case here, an insurance agent is not liable  
for a failure to notify, since he is justified in assuming that the insured would be made aware of  
the cancellation from other sources.").

1           9.       The Court finds that Dave Sandin previously notified OPH of a pending  
2       cancellation at most one time on or about May 2009. Because "the nonmoving party is entitled  
3       to have the evidence and all reasonable inferences accepted as true," this fact is not in dispute.  
4       *Wiltse v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989). However, Dave  
5       Sandin's *one-time* notification to OPH of a pending cancellation does not create a legal duty on  
6       the Sandin defendants to continually notify OPH of missed payments and pending cancellations  
7       in the future.

8           10.       The Court finds that the Sandin defendants did not receive notice of the pending  
9       cancellation and could not inform OPH to pay its premium. Therefore, whether the Sandin  
10       defendants had a legal duty to notify OPH of the pending cancellation, the Sandin defendants  
11       could not inform OPH of the pending cancellation. Absent receipt of the notice, any purported  
12       duty to inform Plaintiff of its failure to pay never arose. *See Shindler v. Mid-Continent Life*  
13       *Ins. Co.*, 768 S.W.2d 331, 334 (Tex. App. 1989) ("Because there is no proof that [the agent]  
14       had notice of premiums due or policy termination, we hold that [the agent] had no duty, as a  
15       matter of law, to give notice to appellants.").

16       **The status of Dave Sandin's Nevada license is irrelevant and cannot be the basis for**  
17       **Plaintiff's negligence or fraud claims.**

18           11.       The Policy identifies Sandin & Co. as the agent for the OPH, not Dave Sandin.  
19       Therefore, Sandin & Co., not Dave Sandin, was the agent for the Policy.

20           12.       Plaintiff's alleged damages were not caused by Dave Sandin's licensing status.  
21       For every cause of action Plaintiff pleaded, there must be a nexus between the alleged bad act  
22       (Dave Sandin's lack of an appropriate non-resident license) and the damages alleged. *See*  
23       *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) ("Proximate cause limits  
24       liability to foreseeable consequences that are reasonably connected to both the defendant's  
25       misrepresentation or omission and the harm that the misrepresentation or omission created.");  
26       *see also Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1052 (2010) ("[B]oth  
27       intentional and negligent misrepresentation require a showing that the claimed damages were  
28       caused by the alleged misrepresentations."); *Yamaha Motor Co., USA v. Arnoult*, 114 Nev.

1 233, 238, 955 P.2d 661, 664 (1998) ("This court has long recognized that to establish  
2 proximate causation 'it must appear that the injury was the natural and probable consequence  
3 of the negligence or wrongful act, and that it ought to have been foreseen in the light of the  
4 attending circumstances.'") (internal citations omitted).

5 13. The Court finds that Dave Sandin's licensee status did not cause or contribute to  
6 Plaintiff's alleged damages, nor did any alleged misrepresentations concerning his licensing  
7 status result in Plaintiff's failure to pay its policy premium, Oregon Mutual's subsequent  
8 cancellation of Plaintiff's policy, and Oregon Mutual's denial of Plaintiff's claim of loss based  
9 on the cancellation.

10 14. The licensing status of a non-resident agent is purely an administrative matter.  
11 See NRS 683A.201(1) & (3). NRS 683A.201 does not provide for a private right of action.  
12 Rather, NRS 683A.201 provides for an administrative fine.

13 15. In order to prevail on a cause of action for negligence per se, the injury must be  
14 of the type against which the statute was intended to protect. See *Anderson v. Baltrusaitis*, 113  
15 Nev. 963, 944 P.2d 797 (1997); *Sagebrush Ltd. v. Carson City*, 99 Nev. 204, 660 P.2d 1013  
16 (1983) ("[V]iolation of a statute may constitute negligence *per se* only if the injured party  
17 belongs to the class of persons that the statute was intended to protect, and the injury is of the  
18 type that the statute was intended to prevent."). "Whether a legislative enactment provides a  
19 standard of conduct in the particular situation presented by the plaintiff is a question of  
20 statutory interpretation and construction for the court." *Sagebrush*, 99 Nev. at 208, 660 P.2d at  
21 1015.

22 16. Oregon Mutual's cancellation of Plaintiff's insurance policy due to Plaintiff's  
23 failure to pay the premium is not the type of injury that NRS 683A.201 is intended to prevent.

24 17. NRS 686A.015(1) provides that "[n]otwithstanding any other provision of law,  
25 the Commissioner has exclusive jurisdiction in regulating the subject of trade practices in the  
26 business of insurance in this state."

27 18. The Nevada Supreme Court has held that matters within Title 57, including the  
28 licensing of agents, are administrative matters. See *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565,

1 572, 170 P.3d 989, 994 (2007).

2 **Plaintiff's claims of breach of fiduciary duty, negligence and negligence per se, fraud, and**  
3 **fraud in the inducement.**

4 19. Based on the foregoing, Plaintiff's cause of action for breach of fiduciary duty  
5 fails as a matter of law and the Sandin defendants are entitled to summary judgment on this  
6 claim.

7 20. Plaintiff's negligence claim based on the alleged duty by the Sandin defendants  
8 to notify OPH of a pending cancellation is barred by the economic loss doctrine. *Terracan*  
9 *Consultants Western, Inc. v. Mandalay Resorts*, 125 Nev 66, 206 P.3d 81 (2009).

10 21. Based on the foregoing, Plaintiff's cause of action for negligence and negligence  
11 per se fails as a matter of law and the Sandin defendants are entitled to summary judgment on  
12 these claims.

13 22. Plaintiff cannot prove the elements required to prove fraud and fraud in the  
14 inducement. Namely, Plaintiff has not shown a misrepresentation by the Sandin defendants  
15 and causation.

16 23. Based on the foregoing, Plaintiff's cause of action for fraud in the inducement  
17 fails as a matter of law and the Sandin defendants are entitled to summary judgment on this  
18 claim.

19 24. Based on the foregoing, Plaintiff's cause of action for fraud fails as a matter of  
20 law and the Sandin defendants are entitled to summary judgment on this claim.

21 **Plaintiff's claim of Violation of NRS 686A.310**

22 25. NRS 686A.310(2) provides that "an insurer is liable to its insured for any  
23 damages sustained by the insured as a result of the commission of any act set forth in  
24 subsection 1 as an unfair practice."

25 26. The Nevada Supreme Court has held that only an insurer can be liable for unfair  
26 claims practices proscribed in NRS 686A.310. *See Albert H. Wohlers & Co. v. Bartgis*, 114  
27 Nev. 1249, 1263-64, 969 P.2d 949, 959-60 (1998).

28 ///

28. In its opposition, OPH did not oppose the Sandin defendants' motion for summary judgment on the claim for violation of NRS 686A.310. See Plaintiff's opposition at 12, n.1. Plaintiff's failure to oppose the motion on the this claim constitutes consent to granting summary judgment. See EDCR 2.20(c).

WHEREFORE, the Sandin Defendants are entitled to summary judgment on all Plaintiff's claims as a matter of law.

DATED this 14 day of June, 2015.

  
THE HONORABLE GLORIA STURMAN

Reviewed by:  
LANGFORD MCLETCHIE LLC

Robert L. Langford (9788)  
Margaret A. McLernie (10931)  
616 S. Eighth Street  
Las Vegas, NV 89101

Attorneys for defendants  
David Sandin and Sandin & Co.

  
CLERK OF THE COURT

ASTA  
MARGARET A. MCLETCHIE, Nevada Bar No. 10931  
MATTHEW J. RASHBROOK, Nevada Bar No. 12477  
MCLETCHIE SHELL LLC  
701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702) 728-5300  
maggie@nvlitigation.com  
*Attorneys for Plaintiff*  
*O.P.H. of Las Vegas, Inc.*

DISTRICT COURT

CLARK COUNTY NEVADA

O.P.H. of Las Vegas, Inc.,

Case No.: A-12-672158-C

Plaintiff,

vs.

Dept. No.: XXVI

Oregon Mutual Insurance Company, Dave  
Sandin, and Sandin & Co.,

CASE APPEAL STATEMENT

Defendants.

1. Name of appellant filing this case appeal statement:  
Plaintiff O.P.H. of Las Vegas, Inc.
2. Identify the judge issuing the decision, judgment, or order appealed from:  
The Honorable Gloria Sturman.
3. Identify each appellant and the name and address of counsel for each appellant:

Plaintiff O.P.H. of Las Vegas, Inc. is represented by:

MARGARET A. MCLETCHIE, Nevada Bar No. 10931  
MATTHEW J. RASHBROOK, Nevada Bar No. 12477  
MCLETCHIE SHELL LLC  
701 East Bridger Ave., Suite 520  
Las Vegas, NV 89101  
(702) 728-5300

1 4. Identify each respondent and the name and address of appellate counsel, if known,  
2 for each respondent:

3 Respondent Oregon Mutual Insurance Company ("OMI") was represented  
4 throughout the District Court proceedings by:

5 Robert W. Freeman, Nevada Bar No. 3062  
6 Priscilla L. O'Briant, Nevada Bar No. 10171  
7 Lewis Brisbois Bisgaard & Smith LLP  
8 6385 S. Rainbow Boulevard, Suite 600  
9 Las Vegas, Nevada 89118

10 It is unknown whether OMI will be represented by different counsel in this  
11 appeal.

12 Respondents Dave Sandin and Sandin & Co. ("Sandin Defendants") were  
13 represented throughout the District Court proceedings by:

14 Patricia Lee, Nevada Bar No. 8287  
15 Michael S. Kelley, Nevada Bar No. 10101  
16 Hutchison & Steffen, LLC  
17 10080 West Alta Drive, Suite 200  
18 Las Vegas, Nevada 89145

19 It is unknown whether the Sandin Defendants will be represented by  
20 different counsel in this appeal.

21 5. Indicate whether any attorney identified above in 3 or 4 is not licensed to practice  
22 law in Nevada and, if so, whether the District Court granted that attorney permission to  
23 appear under SCR 42 (and attach a copy of any District Court order granting such  
24 permission):

25 N/A

26 6. Indicate whether appellant was represented by appointed or retained counsel in the  
27 District Court:

28 Retained counsel.



1 7. Indicate whether appellant is represented by appointed or retained counsel on  
2 appeal:

3 Retained Counsel.

4 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the  
5 date of entry of the District Court order granting such leave:

6 N/A

7  
8 9. Indicate the date the proceedings commenced in the District Court, e.g., the date  
9 the complaint, indictment, information, or petition was filed:

10 The complaint in this action was filed November 19, 2012.

11 10. Provide a brief description of the nature of the action and result in the District Court,  
12 including the type of judgment or order being appealed and the relief granted by the District  
13 Court:

14  
15 This is an action to recover damages suffered following a fire on or about  
16 August 17, 2012, at the Original Pancake House restaurant located at 4833  
17 West Charleston Boulevard, in Las Vegas, Nevada 89146. Respondent OMI  
18 denied coverage on the policy it sold OPH which policy covered the loss.  
19 Respondent Dave Sandin was the agent that sold OPH the subject insurance  
20 policy. Respondent Sandin & Co. was Dave Sandin's employer at all  
21 relevant times.

22 In the District Court, OPH filed a Motion for Partial Summary Judgment,  
23 alleging that the cancellation notice OMI sent purporting to notify them of  
24 impending cancellation was defective under Nev. Rev. Stat. § 686B.360.  
25 The District Court held that was a question of fact which could not be  
26 resolved on summary judgment. Later, all Defendants filed Motions for  
27 Summary Judgment, and those motions were granted, on all claims,  
28

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including holding that the notice was not defective under Nev. Rev. Stat. §  
686B.360.

11. Indicate whether the case has previously been the subject of an appeal or an original  
writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket  
number of the prior proceeding:

No appeal has previously been taken in this case.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of  
settlement:

There are no circumstances that render settlement impossible.

Respectfully submitted this 30<sup>th</sup> day of July, 2015.

By: /s/ Margaret A. McLetchie

Margaret A. McLetchie, Nevada Bar No. 10931

Matthew J. Rashbrook, Nevada Bar No. 12477

MCLEATCHIE SHELL LLC

701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

*Attorneys for Plaintiff*

*O.P.H. of Las Vegas, Inc.*

1 CERTIFICATE OF SERVICE

2 Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on  
3 this 30<sup>th</sup> day of July, 2015, I did cause a true copy of the foregoing CASE APPEAL STATEMENT  
4 in *O.P.H. of Las Vegas, Inc. v. Oregon Mutual Ins. Co., et al.*, Clark County District Court  
5 Case No. A-12-672158-C, to be filed and served electronically using the Wiznet Electronic  
6 Service system, to the following counsel of record:

7 Patricia M. Lee, Esq. plee@hutchlegal.com  
8 Michael S. Kelley, Esq. mkelley@hutchlegal.com  
9 HUTCHISON & STEFFEN kchappuis@hutchlegal.com  
10 Peccole Professional Park  
11 10080 West Alta Drive, Suite 200  
12 Las Vegas, NV 89145  
13 *Attorneys for Sandin Defendants*

12 Robert W. Freeman, Esq. kristen.freeman@lewisbrisbois.com  
13 Priscilla L. O'Briant, Esq. priscilla.obriant@lewisbrisbois.com  
14 LEWIS BRISBOIS BISGAARD & SMITH LLP kellene.mckay@lewisbrisbois.com  
15 6385 South Rainbow Blvd., Suite 600  
16 Las Vegas, NV 89118  
17 *Attorneys for Defendant Oregon Mutual*

17 /s/ Pharan Burchfield  
18 EMPLOYEE of McLetchie Shell LLC  
19  
20  
21  
22  
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DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

**O.P.H. of Las Vegas, Inc., Plaintiff(s)**  
**vs.**  
**Oregon Mutual Insurance Company, Defendant(s)**

§  
§  
§  
§  
§

Location: **Department 26**  
Judicial Officer: **Sturman, Gloria**  
Filed on: **11/19/2012**  
Case Number History:  
Cross-Reference Case Number: **A672158**

---

**CASE INFORMATION**

---

**Statistical Closures**

06/30/2015      Summary Judgment

Case Type: **Breach of Contract**  
Subtype: **Insurance Carrier**

Case Flags: **Appealed to Supreme Court**  
**Jury Demand Filed**  
**Arbitration Exemption Granted**

---

**DATE**

**CASE ASSIGNMENT**

---

**Current Case Assignment**

|                  |                 |
|------------------|-----------------|
| Case Number      | A-12-672158-C   |
| Court            | Department 26   |
| Date Assigned    | 01/31/2013      |
| Judicial Officer | Sturman, Gloria |

---

**PARTY INFORMATION**

---

**Plaintiff**

**O.P.H. of Las Vegas, Inc.**

*Lead Attorneys*  
**McLetchie, Margaret A., ESQ**  
*Retained*  
702-728-5300(W)

**Defendant**

**Oregon Mutual Insurance Company**

**Freeman, Robert W.**  
*Retained*  
702-893-3383(W)

**Sandin & Co**

**Lee, Patricia**  
*Retained*  
7023852500(W)

**Sandin, Dave**

**Lee, Patricia**  
*Retained*  
7023852500(W)

---


**DATE**

**EVENTS & ORDERS OF THE COURT**


**INDEX**

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11/19/2012

 Complaint With Jury Demand  
Filed By: Plaintiff O.P.H. of Las Vegas, Inc.  
*Complaint with Jury Demand*


11/19/2012

 Initial Appearance Fee Disclosure  
Filed By: Plaintiff O.P.H. of Las Vegas, Inc.  
*Initial Appearance Fee Disclosure*













11/19/2012

 Affirmation  
Filed By: Plaintiff O.P.H. of Las Vegas, Inc.  
*Affirmation: Pursuant to NRS 239B.030/603A.040 (Initial Appearance)*
















11/19/2012

 Disclosure Statement  
Party: Plaintiff O.P.H. of Las Vegas, Inc.  
*Disclosure Statement*











DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

|            |                                                                                                                                                                                                                                                                                                                    |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/19/2012 | Case Opened                                                                                                                                                                                                                                                                                                        |
| 12/17/2012 |  Notice of Service<br>Party: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Plaintiff's Notice and Submission of Service of Affidavit on Defendant Oregon Mutual</i>                                                                   |
| 12/21/2012 |  Initial Appearance Fee Disclosure<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Initial Appearance Fee Disclosure</i>                                                                                             |
| 12/21/2012 |  Answer to Complaint<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Answer To Plaintiff's Complaint</i>                                                                           |
| 12/26/2012 |  Motion to Dismiss<br>Filed By: Defendant Sandin, Dave<br><i>Motion to Dismiss</i>                                                                                                                                                |
| 12/26/2012 |  Initial Appearance Fee Disclosure<br>Filed By: Defendant Sandin, Dave<br><i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>                                                                                               |
| 12/31/2012 |  Affidavit of Service<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Plaintiff's Notice and Submission of Service Affidavit on Defendant Sandin &amp; Co</i>                                                              |
| 12/31/2012 |  Affidavit of Service<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Plaintiff's Notice and Submission of Service Affidavit on Defendant Dave Sandin</i>                                                                |
| 01/10/2013 |  Opposition to Motion to Dismiss<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Opposition to Sandin Defendant's Motion to Dismiss</i>                                                                                  |
| 01/10/2013 |  Certificate of Service<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Certificate of Service</i>                                                                                                                       |
| 01/22/2013 | Case Reassigned to Department 28<br><i>Case reassigned from Judge Nancy Alf Dept 27</i>                                                                                                                                                                                                                            |
| 01/24/2013 |  Reply in Support<br>Filed By: Defendant Sandin, Dave<br><i>Reply in Support of the Sandin Defendants' Motion to Dismiss</i>                                                                                                    |
| 01/30/2013 |  Peremptory Challenge<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Peremptory Challenge</i>                                                                                   |
| 01/31/2013 |  <b>Motion to Dismiss</b> (9:00 AM) (Judicial Officer: Sturman, Gloria)<br><b>01/31/2013, 02/13/2013</b><br>Events: 12/26/2012 Motion to Dismiss<br><i>Defendants David Sandin and Sandin &amp; Company's Motion to Dismiss</i> |













DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

|            |                                                                                                                                                                                                                                                                                                        |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 01/31/2013 |  Notice of Department Reassignment                                                                                                                                                                                    |
| 02/14/2013 |  Consent to Service By Electronic Means<br>Filed By: Defendant Sandin, Dave<br><i>Consent to Service by Electronic Means</i>                                                                                          |
| 02/15/2013 |  Consent to Service By Electronic Means<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Consent to Service by Electronic Means</i>                                                                             |
| 02/26/2013 |  Consent to Service By Electronic Means<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Consent To Service By Electronic Means</i>                                                                       |
| 03/12/2013 |  Order Denying Motion<br><i>Order Denying the Sandin Defendants' Motion to Dismiss</i>                                                                                                                                |
| 03/22/2013 |  Notice of Entry of Order<br>Filed By: Defendant Sandin, Dave<br><i>Notice of Entry of Order Denying the Sandin Defendants' Motion to Dismiss</i>                                                                     |
| 04/03/2013 |  Answer to Complaint<br>Filed by: Defendant Sandin, Dave<br><i>Dave Sandin and Sandin &amp; Co.'s Answer to Complaint</i>                                                                                             |
| 06/13/2013 |  Stipulation and Order<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Stipulated Confidentiality and Protective Order</i>                                                                             |
| 06/13/2013 |  Notice of Entry of Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice of Entry of Order</i>                                                                                                 |
| 09/09/2013 |  Opposition<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Opposition To Plaintiff's Request For Exemption From Arbitration; Declaration Of Kristin E. Meredith</i> |
| 09/17/2013 |  Commissioners Decision on Request for Exemption - Granted<br><i>Commissioner's Decision on Request for Exemption - Granted</i>                                                                                     |
| 10/18/2013 |  Arbitration File<br><i>Arbitration File</i>                                                                                                                                                                        |
| 10/21/2013 |  Arbitration File<br><i>Arbitration File</i>                                                                                                                                                                        |
| 11/08/2013 |  Joint Case Conference Report<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Joint Case Conference Report</i>                                                                                         |
| 11/12/2013 |  Certificate of Mailing                                                                                                                                                                                             |

DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

|            |                                                                                                                                                                                                                                                                                                |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | Filed By: Defendant Oregon Mutual Insurance Company<br><i>Certificate of Mailing</i>                                                                                                                                                                                                           |
| 11/26/2013 |  Scheduling Order<br><i>Scheduling Order</i>                                                                                                                                                                  |
| 11/27/2013 |  Initial Appearance Fee Disclosure<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Initial Appearance Fee Disclosure</i>                                                                               |
| 11/27/2013 |  Exhibits<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Exhibits to Motion for Partial Summary Judgment</i>                                                                                          |
| 11/27/2013 |  Motion for Summary Judgment<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Motion for Partial Summary Judgment</i>                                                                                   |
| 12/10/2013 |  Errata<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Errata to Exhibits to O.P.H.'s Motion for Partial Summary Judgment</i>                                                                         |
| 12/10/2013 |  Errata<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>(Filed in Error) Errata to Exhibits to O.P.H.'s Motion for Partial Summary Judgment</i>                                                        |
| 12/20/2013 |  Opposition to Motion For Summary Judgment<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion for Partial Summary Judgment</i> |
| 01/02/2014 |  Stipulation and Order<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Stipulation And Order To Continue Hearing</i>                                                                           |
| 01/06/2014 |  Notice of Entry of Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice Of Entry Of Order To Continue Hearing</i>                                                                     |
| 01/14/2014 |  Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call<br><i>Order Setting Civil Jury Trial</i>                                                                                                      |
| 01/15/2014 |  Reply in Support<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Reply in Support of Motion for Partial Summary Judgment</i>                                                                        |
| 01/22/2014 |  <b>Motion for Partial Summary Judgment (9:30 AM)</b> (Judicial Officer: Sturman, Gloria)<br><i>Plaintiff's Motion for Partial Summary Judgment</i>                                                         |
| 02/19/2014 |  Order Denying Motion<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Order Denying Plaintiff's Motion For Partial Summary Judgment</i>                                                        |
| 03/14/2014 |                                                                                                                                                                                                                                                                                                |

DEPARTMENT 26  
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**CASE NO. A-12-672158-C**

|            |                                                                                                                                                                                                                                                                                           |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            |  Stipulation and Order<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Stipulation And Order For Extension Of Time To Complete Discovery Request</i>                                        |
| 03/17/2014 |  Notice of Entry of Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice of Entry of Order</i>                                                                                      |
| 03/24/2014 |  Application for Issuance of Commission to Take Deposition<br><i>Application for Issuance of Commission to Take Deposition Outside State of Nevada</i>                                                   |
| 03/28/2014 |  Notice of Entry of Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice of Entry of Order</i>                                                                                      |
| 05/01/2014 |  Application for Issuance of Commission to Take Deposition<br><i>Application For The Issuance Of A Commission To Take The Deposition Of The Custodian Of Records for Moss &amp; Company</i>              |
| 05/06/2014 |  Commission to Take Deposition Outside the State of Nevada<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Commission To Take The Deposition Outside The State Of Nevada</i>                |
| 05/07/2014 |  Application for Issuance of Commission to Take Deposition<br>Party: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Application for Issuance of Commission to Take Deposition Outside the State of Nevada</i> |
| 06/20/2014 |  Stipulation and Order<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Stipulation and Order for Extension of Time to Complete Discovery (Second Request)</i>                                   |
| 06/23/2014 |  Notice of Entry of Order<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Entry of Order</i>                                                                                          |
| 07/18/2014 |  Order Setting Civil Jury Trial<br><i>Order Setting Civil Jury Trial</i>                                                                                                                               |
| 07/18/2014 | Offer of Judgment<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Offer of Judgment</i>                                                                                                                                                                                            |
| 07/18/2014 | Offer of Judgment<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Offer of Judgment</i>                                                                                                                                                                                            |
| 08/05/2014 |  Stipulation and Order<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Stipulation and Order to Strike Offers of Judgment from Record</i>                                                       |
| 08/06/2014 |  Notice of Entry of Order<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Entry of Order</i>                                                                                          |



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**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

|            |                                                                                                                                                                                                                                                                                                                                                                             |
|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 08/15/2014 |  Motion to Strike<br>Filed By: Defendant Sandin, Dave<br><i>Motion to Strike Rebuttal Report of Neal Bordenave on Order Shortening Time</i>                                                                                                                                                |
| 08/19/2014 |  Joinder To Motion<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Joinder to Strike Rebuttal Expert Report of Neal Bordenave on Order Shortening Time</i>                                                                                  |
| 08/26/2014 |  Stipulation and Order<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Stipulation and Order for Extension of Time to Complete Discovery (Third Request)</i>                                                                                                                        |
| 08/28/2014 |  Opposition to Motion<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Opposition to Defendants' Motion to Strike Rebuttal Report of Neal Bordenave on Order Shortening Time</i>                                                                                                     |
| 08/29/2014 | <b>Motion to Strike</b> (9:00 AM) (Judicial Officer: Bulla, Bonnie)<br><i>David Sandin and Sandin &amp; Co.'s Motion to Strike Rebuttal Report of Neal Bordenave on OST</i>                                                                                                                                                                                                 |
| 08/29/2014 | <b>Joinder</b> (9:00 AM) (Judicial Officer: Bulla, Bonnie)<br><i>Oregon Mutual Insurance Company's Joinder to Strike Rebuttal Expert Report of Neal Bordenave on OST</i>                                                                                                                                                                                                    |
| 08/29/2014 |  <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Bulla, Bonnie)<br><i>David Sandin and Sandin &amp; Co.'s Motion to Strike Rebuttal Report of Neal Bordenave on OST ..... Oregon Mutual Insurance Company's Joinder to Strike Rebuttal Expert Report of Neal Bordenave on OST</i> |
| 09/11/2014 |  Order Setting Civil Jury Trial<br><i>(Third) Order Setting Civil Jury Trial</i>                                                                                                                                                                                                         |
| 09/25/2014 | <b>CANCELED Calendar Call</b> (11:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Vacated - per Commissioner</i>                                                                                                                                                                                                                                                           |
| 09/30/2014 |  Supplemental Disclosure of Expert Witness<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Supplemented Designation of Expert Witness Neal Bordenave</i>                                                                                                                          |
| 10/03/2014 | <b>CANCELED Status Check: Compliance</b> (11:00 AM) (Judicial Officer: Bulla, Bonnie)<br><i>Vacated - per Commissioner</i>                                                                                                                                                                                                                                                  |
| 10/07/2014 |  Discovery Commissioners Report and Recommendations<br>Filed By: Defendant Sandin, Dave<br><i>Discovery Commissioners Report and Recommendations</i>                                                                                                                                     |
| 10/20/2014 | <b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Vacated - per Commissioner</i>                                                                                                                                                                                                                                                               |
| 12/05/2014 |  Designation of Expert Witness<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Designation of Rebuttal Expert Witness Pursuant to NRCP 16.1(a)(2)</i>                                                                                                                             |
| 12/08/2014 |  Notice of Appearance<br>Party: Plaintiff O.P.H. of Las Vegas, Inc.                                                                                                                                                                                                                      |

DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

*Notice of Appearance*











|            |                                                                                                                                                                                                                                                                                                                  |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 01/15/2015 |  Stipulation and Order<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Stipulation and Order for Extension of Time to Complete Discovery (Fourth Request)</i>                                                      |
| 01/16/2015 |  Notice of Entry of Stipulation and Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice of Entry of Stipulation and Order for Extension of Time to Complete Discovery (Fourth Request)</i>                |
| 03/17/2015 |  Appendix<br>Filed By: Defendant Sandin, Dave<br><i>Appendix of Exhibits to Dave Sandin and Sandin &amp; Co.'s Motion for Summary Judgment</i>                                                                                  |
| 03/17/2015 |  Motion for Summary Judgment<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Motion For Summary Judgment On All Claims Against OMI</i>                                           |
| 03/17/2015 |  Request for Judicial Notice<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Request For Judicial Notice In Support Of Oregon Mutual Insurance Company's Motion For Summary Judgment On All Claims Against OMI</i> |
| 03/17/2015 |  Motion for Summary Judgment<br>Filed By: Defendant Sandin, Dave<br><i>Dave Sandin and Sandin &amp; Co.'s Motion for Summary Judgment</i>                                                                                      |
| 03/18/2015 |  Notice of Motion<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice of Motion on Oregon Mutual Insurance Company's Motion for Summary Judgment on All Claims Against OMI</i>                                |
| 03/20/2015 |  Motion to Bifurcate<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>OPH's Motion to Bifurcate Trial</i>                                                                                                               |
| 03/23/2015 |  Motion in Limine<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Motion in Limine to Exclude Reference to or Evidence of Rents Owed by Plaintiff</i>                                                                  |
| 03/23/2015 |  Motion in Limine<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Motion in Limine to Exclude Reference to or Evidence of Arson</i>                                                                                    |
| 03/23/2015 |  Motion in Limine<br>Filed By: Defendant Sandin, Dave<br><i>Dave Sandin and Sandin &amp; Co.'s Motion in Limine to Exclude Evidence Re: Dave Sandin's Nevada License Status</i>                                               |
| 03/23/2015 |  Motion in Limine<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Defendant's Motion in Limine to Exclude Plaintiff's Speculative Damages (MIL No. 1)</i>                                                        |

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|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 03/23/2015 |  Motion in Limine<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Defendant's Motion in Limine to Exclude Plaintiff's Experts' Testimony to the Extent it Constitutes Legal Opinion(s) (Motion in Limine #2)</i>        |
| 03/24/2015 |  Certificate of Service<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Certificate of Service</i>                                                                                                                      |
| 03/30/2015 |  Joinder to Motion in Limine<br>Filed By: Defendant Sandin, Dave<br><i>Dave Sandin and Sandin &amp; Co.'s Joinder to Oregon Mutual's Motion in Limine to Exclude Plaintiff's Speculative Damages</i>                                 |
| 03/31/2015 |  Opposition to Motion in Limine<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Opposition to Defendant's Motion in Limine to Exclude Plaintiff's Speculative Damages</i>                                                     |
| 03/31/2015 |  Opposition to Motion in Limine<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Opposition to Defendant's Motion in Limine to Exclude Plaintiff's Expert Testimony to the Extent That It Constitutes Legal Opinion(s)</i>     |
| 03/31/2015 |  Opposition to Motion in Limine<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Plaintiff's Opposition to Dave Sandin and Sandin &amp; Co.'s Motion in Limine To Exclude Evidence Re: Dave Sandin's Nevada License Status</i> |
| 04/02/2015 |  <b>Calendar Call</b> (11:00 AM) (Judicial Officer: Sturman, Gloria)                                                                                                                                                               |
| 04/08/2015 |  Order Setting Civil Jury Trial<br><i>(Fourth) Order Re-Setting Civil Jury Trial</i>                                                                                                                                               |
| 04/09/2015 |  Appendix<br>Filed By: Defendant Sandin, Dave<br><i>Appendix of Exhibits to Dave Sandin and Sandin &amp; Co.'s Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Rents Owed by Plaintiff</i>       |
| 04/09/2015 |  Opposition to Motion For Summary Judgment<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Opposition to Dave Sandin and Sandin &amp; Co.'s Motion for Summary Judgment</i>                                                 |
| 04/09/2015 |  Opposition to Motion For Summary Judgment<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Opposition to Oregon Mutual Insurance Company's Motion for Summary Judgment on All Claims Against OMI</i>                        |
| 04/09/2015 |  Opposition to Motion<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Limited Opposition to Plaintiff's Motion to Bifurcate Trial</i>                                               |
| 04/09/2015 |  Opposition to Motion in Limine<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion in Limine to Exclude</i>                                           |

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*Reference to or Evidence of Rents Owed by Plaintiff*

|            |                                                                                                                                                                                                                                                                                                                   |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/09/2015 |  Opposition to Motion in Limine<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Arson</i>       |
| 04/09/2015 |  Opposition to Motion in Limine<br>Filed By: Defendant Sandin, Dave<br><i>Dave Sandin and Sandin &amp; Co.'s Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Rents Owed by Plaintiff</i>       |
| 04/10/2015 |  Stipulation and Order<br>Filed by: Defendant Oregon Mutual Insurance Company<br><i>Stipulation and Order to Move Hearing on all Pending Motions</i>                                                                             |
| 04/13/2015 |  Notice of Entry of Stipulation and Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice of Entry of Stipulation and Order to Move Hearing on All Pending Motions</i>                                       |
| 04/15/2015 |  Joinder to Opposition to Motion<br>Filed by: Defendant Sandin, Dave<br><i>Dave Sandin and Sandin &amp; Co.'s Joinder to Oregon Mutual Insurance Company's Limited Opposition to Plaintiff's Motion to Bifurcate Trial</i>       |
| 04/17/2015 |  Order Setting Civil Jury Trial<br><i>Fifth Order Setting Civil Jury Trial</i>                                                                                                                                                  |
| 04/27/2015 | <b>CANCELED Jury Trial (9:00 AM) (Judicial Officer: Sturman, Gloria)</b><br><i>Vacated</i>                                                                                                                                                                                                                        |
| 05/07/2015 |  Reply in Support<br>Filed By: Defendant Sandin, Dave<br><i>Reply in Support of Dave Sandin and Sandin &amp; Co.'s Motion in Limine to Exclude Evidence Re: Dave Sandin's Nevada License Status</i>                            |
| 05/07/2015 |  Reply in Support<br>Filed By: Defendant Sandin, Dave<br><i>Reply in Support of Dave Sandin and Sandin &amp; Co.'s Motion for Summary Judgment</i>                                                                             |
| 05/07/2015 |  Reply in Support<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Oregon Mutual Insurance Company's Reply in Support of its Motion for Summary Judgment on All Claims Against OMI</i>                             |
| 05/07/2015 |  Reply to Opposition<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Reply to Dave Sandin and Sandin &amp; Co.'s Joinder to Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion for Bifurcated Trial</i> |
| 05/07/2015 |  Reply to Opposition<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Reply to Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion for Bifurcated Trial</i>                                               |







DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

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|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/07/2015 |  Reply to Opposition<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Reply to Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Arson</i>                    |
| 05/07/2015 |  Reply to Opposition<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Reply to Dave Sandin and Sandin &amp; Co.'s Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Rents Owed by Plaintiff</i> |
| 05/07/2015 |  Reply to Opposition<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Reply to Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Rents Owed by Plaintiff</i>  |
| 05/07/2015 |  Reply in Support<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Experts' Testimony to the Extent it Constitutes Legal Opinion(s)</i>           |
| 05/07/2015 |  Reply in Support<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Speculative Damages</i>                                                        |
| 05/14/2015 | <b>Motion for Summary Judgment</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Dave Sandin and Sandin &amp; Co.'s Motion for Summary Judgment</i>                                                                                                                                                             |
| 05/14/2015 | <b>Motion for Summary Judgment</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Oregon Mutual Ins. Co.'s, Motion for Summary Judgment</i>                                                                                                                                                                      |
| 05/14/2015 | <b>Motion to Bifurcate</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Plaintiff's Motion to Bifurcate Trial</i>                                                                                                                                                                                              |
| 05/14/2015 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Rents Owed by Plaintiff</i>                                                                                                                                           |
| 05/14/2015 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Arson</i>                                                                                                                                                             |
| 05/14/2015 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Dave Sandin and Sandin &amp; Co.'s Motion in Limine to Exclude Evidence Re: Dave Sandin's Nevada License Status</i>                                                                                                                       |
| 05/14/2015 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Defendant's Motion in Limine to Exclude Plaintiff's Speculative Damages (MIL No. 1)</i>                                                                                                                                                   |
| 05/14/2015 | <b>Motion in Limine</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Defendant's Motion in Limine to Exclude Plaintiff's Experts' Testimony to the Extent it Constitutes Legal Opinion(s) (Motion in Limine #2)</i>                                                                                            |
| 05/14/2015 | <b>Joinder to Motion in Limine</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Dave Sandin and Sandin &amp; Co.'s Joinder to Oregon Mutual's Motion in Limine to Exclude Plaintiff's Speculative Damages</i>                                                                                                  |
| 05/14/2015 |  <b>All Pending Motions</b> (10:00 AM) (Judicial Officer: Sturman, Gloria)                                                                                                                                                          |
| 05/26/2015 |  <b>Recorders Transcript of Hearing</b><br><i>Transcript of Proceedings All Pending Motions Thursday, May 14, 2015</i>                                                                                                              |

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|            |                                                                                                                                                                                                                                                                                                                                      |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 05/28/2015 |  Stipulation and Order<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Stipulation and Order to Extend the EDCR 7.21 Deadline for Submission of the Order on Oregon Mutual Insurance Company's Motion for Summary Judgment on All Claims</i> |
| 05/28/2015 |  Stipulation and Order<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Stipulation and Order to Extend the Submission Deadline for the Order Granting Summary Judgement</i>                                                                  |
| 05/28/2015 |  Notice of Entry of Stipulation and Order<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Entry of Order</i>                                                                                                                       |
| 05/28/2015 |  Notice of Entry of Stipulation and Order<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Entry of Order</i>                                                                                                                       |
| 06/30/2015 |  Notice of Entry of Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Notice of Entry of Order Granting Defendant Oregon Mutual Insurance Company's Motion for Summary Judgment on All Claims Against OMI</i>                      |
| 06/30/2015 |  Order<br>Filed By: Defendant Sandin, Dave<br><i>Order Granting Defendants Dave Sandin and Sandin &amp; Co.'s Motion for Summary Judgment</i>                                                                                                       |
| 06/30/2015 |  Order<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Order Granting Defendant Oregon Mutual Insurance Company Motion for Summary Judgment on All Claims Against OMI</i>                                                            |
| 06/30/2015 | <b>Summary Judgment</b> (Judicial Officer: Sturman, Gloria)<br>Debtors: O.P.H. of Las Vegas, Inc. (Plaintiff)<br>Creditors: Oregon Mutual Insurance Company (Defendant)<br>Judgment: 06/30/2015, Docketed: 07/07/2015                                                                                                                |
| 06/30/2015 | <b>Summary Judgment</b> (Judicial Officer: Sturman, Gloria)<br>Debtors: O.P.H. of Las Vegas, Inc. (Plaintiff)<br>Creditors: Dave Sandin (Defendant), Sandin & Co (Defendant)<br>Judgment: 06/30/2015, Docketed: 07/07/2015                                                                                                           |
| 07/01/2015 |  Notice of Entry of Order<br>Filed By: Defendant Sandin, Dave<br><i>Notice of Entry of Order</i>                                                                                                                                                  |
| 07/08/2015 |  Memorandum of Costs and Disbursements<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Memorandum of Costs and Disbursements</i>                                                                                                     |
| 07/13/2015 |  Motion for Attorney Fees and Costs<br>Filed By: Defendant Oregon Mutual Insurance Company<br><i>Defendant Oregon Mutual Insurance Company's Motion for Award of Attorney's Fees and Costs</i>                                                    |

DEPARTMENT 26  
**CASE SUMMARY**  
**CASE NO. A-12-672158-C**

|            |                                                                                                                                                                                                                                                       |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 07/22/2015 |  Notice of Change of Firm Name<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Change of Law Firm Affiliation</i>                                   |
| 07/28/2015 |  Withdrawal of Attorney<br>Filed by: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Withdrawal of Attorney for Plaintiff</i>                                    |
| 07/30/2015 |  Notice of Change of Address<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Change of Address</i>                                                  |
| 07/30/2015 |  Notice of Appeal<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Notice of Appeal</i>                                                                        |
| 07/30/2015 |  Case Appeal Statement<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Case Appeal Statement</i>                                                              |
| 07/30/2015 |  Opposition<br>Filed By: Plaintiff O.P.H. of Las Vegas, Inc.<br><i>Opposition to Oregon Mutual Insurance Company's Motion for Award of Attorney's Fees and Costs</i> |
| 08/18/2015 | <b>Motion</b> (9:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Defendant Oregon Mutual Insurance Company's Motion for Award of Attorney's Fees and Costs</i>                                                                                       |
| 08/20/2015 | <b>CANCELED Calendar Call</b> (9:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Vacated - per Judge</i>                                                                                                                                             |
| 09/14/2015 | <b>CANCELED Jury Trial</b> (9:00 AM) (Judicial Officer: Sturman, Gloria)<br><i>Vacated - Superseding Order</i>                                                                                                                                        |

| DATE | FINANCIAL INFORMATION                                                                                                                                   |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | <b>Defendant</b> Oregon Mutual Insurance Company<br>Total Charges 423.00<br>Total Payments and Credits 423.00<br><b>Balance Due as of 8/3/2015 0.00</b> |
|      | <b>Defendant</b> Sandin & Co<br>Total Charges 30.00<br>Total Payments and Credits 30.00<br><b>Balance Due as of 8/3/2015 0.00</b>                       |
|      | <b>Defendant</b> Sandin, Dave<br>Total Charges 423.00<br>Total Payments and Credits 423.00<br><b>Balance Due as of 8/3/2015 0.00</b>                    |
|      | <b>Plaintiff</b> O.P.H. of Las Vegas, Inc.<br>Total Charges 494.00<br>Total Payments and Credits 494.00<br><b>Balance Due as of 8/3/2015 0.00</b>       |

Clark County, Nevada

XXVII

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

(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone):

1. O.P.H. of Las Vegas Inc. / 4833 West Charleston Boulevard / Las Vegas, Nevada 89146 / (702) 870-1500

Attorney (name/address/phone):

Margaret A. McLetchie / 616 S. Eighth St. / Las Vegas, NV 89101 / (702) 471-6565

Defendant(s) (name/address/phone):

1. Oregon Mutual Insurance Company / P.O. BOX 808 / McMinnville, Oregon 97128 / (800) 888-2912 Ext. 2818
2. Dave Sandin / 46 Da Vinci Street / Lake Oswego, Oregon 97035 / (503) 381-8583
3. Sandin & Co. / 46 Da Vinci Street / Lake Oswego, Oregon 97035 / (503) 381-5570

Attorney (name/address/phone):

Clarke B. Holland / 5858 Horton Street / Suite 370 / Emeryville, California 94608 / (510) 841-7777

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

| Real Property                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Torts                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> <b>Landlord/Tenant</b><br><input type="checkbox"/> Unlawful Detainer<br><input type="checkbox"/> <b>Title to Property</b><br><input type="checkbox"/> Foreclosure<br><input type="checkbox"/> Liens<br><input type="checkbox"/> Quiet Title<br><input type="checkbox"/> Specific Performance<br><input type="checkbox"/> <b>Condemnation/Eminent Domain</b><br><input type="checkbox"/> <b>Other Real Property</b><br><input type="checkbox"/> Partition<br><input type="checkbox"/> Planning/Zoning | <input type="checkbox"/> <b>Negligence</b><br><input type="checkbox"/> <b>Negligence – Auto</b><br><input type="checkbox"/> <b>Negligence – Medical/Dental</b><br><input type="checkbox"/> <b>Negligence – Premises Liability</b><br>(Slip/Fall)<br><input type="checkbox"/> <b>Negligence – Other</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <input type="checkbox"/> <b>Product Liability</b><br><input type="checkbox"/> Product Liability/Motor Vehicle<br><input type="checkbox"/> Other Torts/Product Liability<br><input type="checkbox"/> <b>Intentional Misconduct</b><br><input type="checkbox"/> Torts/Defamation (Libel/Slander)<br><input type="checkbox"/> Interfere with Contract Rights<br><input type="checkbox"/> <b>Employment Torts</b> (Wrongful termination)<br><input type="checkbox"/> <b>Other Torts</b><br><input type="checkbox"/> Anti-trust<br><input type="checkbox"/> Fraud/Misrepresentation<br><input type="checkbox"/> Insurance<br><input type="checkbox"/> Legal Tort<br><input type="checkbox"/> Unfair Competition                                                                                                                                                                                  |
| Probate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Other Civil Filing Types                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Estimated Estate Value: _____<br><input type="checkbox"/> <b>Summary Administration</b><br><input type="checkbox"/> <b>General Administration</b><br><input type="checkbox"/> <b>Special Administration</b><br><input type="checkbox"/> <b>Set Aside Estates</b><br><input type="checkbox"/> <b>Trust/Conservatorships</b><br><input type="checkbox"/> Individual Trustee<br><input type="checkbox"/> Corporate Trustee<br><input type="checkbox"/> <b>Other Probate</b>                                                      | <input type="checkbox"/> <b>Construction Defect</b><br><input type="checkbox"/> Chapter 40<br><input type="checkbox"/> General<br><input checked="" type="checkbox"/> <b>Breach of Contract</b><br><input type="checkbox"/> Building & Construction<br><input checked="" type="checkbox"/> Insurance Carrier<br><input type="checkbox"/> Commercial Instrument<br><input type="checkbox"/> Other Contracts/Acct/Judgment<br><input type="checkbox"/> Collection of Actions<br><input type="checkbox"/> Employment Contract<br><input type="checkbox"/> Guarantee<br><input type="checkbox"/> Sale Contract<br><input type="checkbox"/> Uniform Commercial Code<br><input type="checkbox"/> <b>Civil Petition for Judicial Review</b><br><input type="checkbox"/> Foreclosure Mediation<br><input type="checkbox"/> Other Administrative Law<br><input type="checkbox"/> Department of Motor Vehicles<br><input type="checkbox"/> Worker's Compensation Appeal | <input type="checkbox"/> <b>Appeal from Lower Court</b> (also check applicable civil case box)<br><input type="checkbox"/> Transfer from Justice Court<br><input type="checkbox"/> Justice Court Civil Appeal<br><input type="checkbox"/> <b>Civil Writ</b><br><input type="checkbox"/> Other Special Proceeding<br><input type="checkbox"/> <b>Other Civil Filing</b><br><input type="checkbox"/> Compromise of Minor's Claim<br><input type="checkbox"/> Conversion of Property<br><input type="checkbox"/> Damage to Property<br><input type="checkbox"/> Employment Security<br><input type="checkbox"/> Enforcement of Judgment<br><input type="checkbox"/> Foreign Judgment – Civil<br><input type="checkbox"/> Other Personal Property<br><input type="checkbox"/> Recovery of Property<br><input type="checkbox"/> Stockholder Suit<br><input type="checkbox"/> Other Civil Matters |

**III. Business Court Requested** (Please check applicable category; for Clark or Washoe Counties only.)



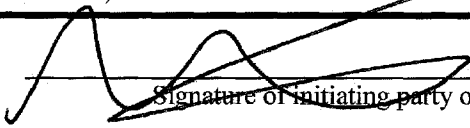
☐ NRS Chapters 78-88  
☐ Commodities (NRS 90)  
☐ Securities (NRS 90)

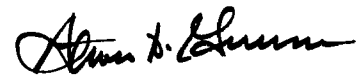
☐ Investments (NRS 104 Art. 8)  
☐ Deceptive Trade Practices (NRS 598)  
☐ Trademarks (NRS 600A)

☐ Enhanced Case Mgmt/Business  
☐ Other Business Court Matters

11/19/2012

Date

  
Signature of initiating party or representative



CLERK OF THE COURT

1 ROBERT W. FREEMAN  
Nevada Bar No. 003062  
2 PRISCILLA L. O'BRIANT  
Nevada Bar No. 010171  
3 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
4 Las Vegas, Nevada 89118  
702.893.3383  
5 FAX: 702.893.3789  
Attorneys for Oregon Mutual Insurance Company  
6

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA  
9

10 O.P.H. OF LAS VEGAS INC.,

11 Plaintiff,

12 vs.

13 OREGON MUTUAL INSURANCE  
COMPANY; DAVE SANDIN; and SANDIN  
14 & CO.,

15 Defendants.  
16

CASE NO. A-12-672158-C

Dept. No.: XXVIII 26

**ORDER DENYING PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

17 The matter of Plaintiff's Motion for Partial Summary Judgment came before the Court for  
18 oral argument on January 22, 2014. Counsel present were Margaret A. McLetchie and Daniel B.  
19 Heidtke of LANGFORD MCLECHIE on behalf of Plaintiff; Robert W. Freeman and Priscilla L.  
20 O'Briant of LEWIS BRISBOIS BISGAARD & SMITH, LLP on behalf of Defendant *Oregon*  
21 *Mutual Insurance Company*; and Z. Kathryn Branson of HUTCHISON & STEFFEN on behalf of  
22 the Sandin Defendants.

23 The Court, having reviewed the pleadings and papers on file and heard oral argument and  
24 GOOD CAUSE APPEARING:



25 The Court finds that whether the requirement of NRS 687B.360 was triggered by the July  
26 31, 2013 notice, is a question of fact.

27 ///

28 ///


1 THEREFORE, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that  
2 Plaintiff's Motion for Partial Summary Judgment is DENIED.

3 DATED this 7<sup>th</sup> day of February, 2014.

4  
5   
DISTRICT COURT JUDGE  
6 


6 Respectfully Submitted By:

7 LEWIS BRISBOIS BISGAARD & SMITH, LLP


8   
9 Robert W. Freeman  
10 Nevada Bar No. 3062  
11 Priscilla L. O'Briant  
12 Nevada Bar No. 10171  
13 6385 S. Rainbow Boulevard, Suite 600  
14 Las Vegas, Nevada 89118  
15 *Attorneys for Oregon Mutual Insurance Company*

14 Approved as to Form and Content:

15 HUTCHISON & STEFFEN


16   
17 \_\_\_\_\_  
18 Patricia Lee  
19 Nevada Bar No. 8287  
20 Z. Kathryn Branson  
21 Nevada Bar No. 11540  
22 Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, Nevada 89145  
*Attorneys for Sandin Defendants*

LANGFORD MCLETCHIE

18   
Margaret A. McLetchie  
Nevada Bar No. 10931  
Daniel B. Heidtke  
Nevada Bar No. 12975  
616 South Eighth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiff*


1            THEREFORE, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that  
2 Plaintiff's Motion for Partial Summary Judgment is DENIED.

3            DATED this \_\_\_\_ day of \_\_\_\_\_, 2014.

4   
5 \_\_\_\_\_  
6 DISTRICT COURT JUDGE ✓

7 Respectfully Submitted By:


8 LEWIS BRISBOIS BISGAARD & SMITH, LLP


9   
10 \_\_\_\_\_  
11 Robert W. Freeman  
12 Nevada Bar No. 3062  
13 Priscilla L. O'Briant  
14 Nevada Bar No. 10171  
15 6385 S. Rainbow Boulevard, Suite 600  
16 Las Vegas, Nevada 89118  
17 *Attorneys for Oregon Mutual Insurance Company*

18 **Approved as to Form and Content:**

19 HUTCHISON & STEFFEN

20 LANGFORD MCLETCHIE

21   
22 \_\_\_\_\_  
23 Patricia Lee  
24 Nevada Bar No. 8287  
25 Z. Kathryn Branson  
26 Nevada Bar No. 11540  
27 Peccole Professional Park  
28 10080 West Alta Drive, Suite 200  
Las Vegas, Nevada 89145  
*Attorneys for Sandin Defendants*

29   
30 \_\_\_\_\_  
31 Margaret A. McLetchie  
32 Nevada Bar No. 10931  
33 Daniel B. Heidtke  
34 Nevada Bar No. 12975  
35 616 South Eighth Street  
36 Las Vegas, Nevada 89101  
37 *Attorneys for Plaintiff*

  
CLERK OF THE COURT

**FFCL**  
ROBERT W. FREEMAN, ESQ.  
Nevada Bar No. 003062  
PRISCILLA L. O'BRIANT, ESQ.  
Nevada Bar No. 010171  
**LEWIS BRISBOIS BISGAARD & SMITH LLP**  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
702.893.3383  
FAX: 702.893.3789  
*Attorneys for Defendant*  
*Oregon Mutual Insurance Company*  
*("OMI")*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS INC.,

Plaintiff,

vs.

OREGON MUTUAL INSURANCE  
COMPANY; DAVE SANDIN; and SANDIN  
& CO.,

Defendants.

CASE NO. A-12-672158-C  
Dept. No.: XXVI

**ORDER GRANTING DEFENDANT  
OREGON MUTUAL INSURANCE  
COMPANY MOTION FOR SUMMARY  
JUDGMENT ON ALL CLAIMS AGAINST  
OMI**

This matter came on for hearing on May 14, 2015 in Department XXVI of the Eighth Judicial District Court of the State of Nevada, before the Honorable Gloria Sturman, on Oregon Mutual Insurance Company's Motion for Summary Judgment ("OMI's Motion"). The Court, having read the parties' moving papers and the authority relied upon therein, and having engaged with counsel in oral argument, hereby enters the following undisputed material facts and legal determinations on which the order is based, pursuant to NRCP 56(c).

**UNDISPUTED MATERIAL FACTS**

1. OMI issued a "Businessowner Protector Policy" to OPH of Las Vegas, Inc. ("OPH" or "insured") at 4170 South Fort Apache Road, Las Vegas, Nevada, Policy No. BSP71668 (the "policy") which provided coverage for the OPH Restaurant at 4833 West Charleston Boulevard, Las Vegas, effective December 26, 2011.

|                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Voluntary Dismissal          | <input checked="" type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Dismissal        | <input type="checkbox"/> Stipulated Judgment         |
| <input type="checkbox"/> Stipulated Dismissal         | <input type="checkbox"/> Default Judgment            |
| <input type="checkbox"/> Motion to Dismiss by Deft(s) | <input type="checkbox"/> Judgment of Arbitration     |

2. The “your agent” box on the policy lists “Sandin Insurance Group” (“Sandin”).

3. The Nevada Division of Insurance issued a license to Sandin & Co., License No. 1, non-resident producer firm, effective May 25, 2010 through June 1, 2013.

4. The Nevada Division of Insurance issued a license to Anthony John Sandin, the producer for Sandin, License No. 700310, non-resident producer, effective May 25, 2010 through June 1, 2013.

5. The policy and its endorsements contain the following provisions governing cancellation:

### SECTION III – COMMON POLICY CONDITIONS

**(APPLICABLE TO SECTION I –  
PROPERTY AND SECTION II – LIABILITY)**

### A. Cancellation

\* \* \* \* \*

2. We may cancel this policy by mailing or delivering to the first Named Insured **written notice of cancellation at least:**

\* \* \* \* \*

b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.

\* \* \* \* \*

6. If Notice is mailed, § of mailing will be sufficient proof of notice.

\* \* \* \* \*

## NEVADA CHANGES

B. Section III – Common Policy Conditions is amended as follows:

\* \* \* \* \*

3. The following are added to Paragraph A.

**Cancellation:**

## 7. Midterm Cancellation

If this is policy has been in effect for 70 days or more, or if this policy is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

(a) Nonpayment of premium;

\* \* \* \* \*

## N. Notices

1. Notice of cancellation or nonrenewal will be mailed, first class or certified, or delivered to the first Named Insured at the last mailing address known to us and will state:

(a) The specific reason for cancellation or nonrenewal; and

1 (b) The effective date of nonrenewal.

2 \* \* \*

3 2. We will also provide a copy of the notice of cancellation, for both policies in effect less  
4 than 70 days and policies in effect 70 days or more, to the agent who wrote the policy.

5 6. On July 9, 2012, OMI generated a billing statement to OPH which was received by  
6 OPH in July which stated that the minimum amount due was \$2,814.75 and the due date was July  
7 26, 2012.

8 7. OMI did not receive payment by July 26, 2012.

9 8. On the night of July 31, 2012, OMI produced a "Notice of Cancellation" (the  
10 "notice") dated July 31, 2012 which stated:

11 Minimum Due 2,822.00

12 We did not receive the required premium payment on your account by the date it was due.

13 We appreciate your business and hope we can continue to serve your insurance needs. If we receive  
14 at least the minimum due on this account by 08/15/12, we will continue your coverage without  
15 interruption. If we do not receive the minimum due by 08/15/12, each policy listed below will be  
16 cancelled effective the time and date shown opposite that policy number.

| <u>Policy type</u>      | <u>Policy number</u> | <u>Effective time and date of cancellation</u>                          |
|-------------------------|----------------------|-------------------------------------------------------------------------|
| Businessowner<br>Policy | BSP716685            | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |
| Package<br>Policy       | OM0914045            | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |

18 If you have any questions, please contact your agent SANDIN INSURANCE GROUP immediately  
19 at (503) 381-5570.

20 9. OMI mailed the notice via first class mail to OPH at 4170 South Fort Apache Road,  
21 Las Vegas, Nevada, the corporate office of OPH.

22 10. The notice was mailed on August 1, 2013 more than 10 days before the effective  
23 date of August 16, 2012.

24 11. On July 31, 2012, OMI uploaded a copy of the provisional notice of cancellation to  
25 Sandin's BizLink portal

26 12. The Agency Agreement between OMI and Sandin provides that "[a] copy of all ...  
27 cancellations or renewal notices ... will be mailed or electronically transmitted to the agent."

28 13. OMI did not receive payment of the outstanding premium by August 15, 2012.

1           14.     At approximately 4:00 a.m. on August 17, 2012, a fire broke out at the OPH  
2 Restaurant at 4833 West Charleston Boulevard (the "fire loss").

3           15.     OPH, through its agent, submitted a claim for the fire loss to OMI.

4           16.     On August 20, 2012, OMI mailed a claim denial letter to OPH, stating that the policy  
5 had been cancelled prior to the date of loss, and that OMI therefore had no obligation to indemnify  
6 OPH for the fire loss.

7 **LEGAL DETERMINATIONS**

8           1.     In finding that no coverage exists under the undisputed facts of the case and the terms  
9 of the Policy, the Court is guided by the following standards governing interpretation of insurance  
10 policies in Nevada. The interpretation of an insurance contract is a question of law. *Farmers Ins.*  
11 *Exch. v. Neal*, 119 Nev. 62, 64 P.3d 472, 473 (Nev. 2003). The terms of an insurance policy must  
12 be construed "in their plain and ordinary sense and from the viewpoint of one not trained in the  
13 law." *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 482, 133 P.3d 251, 253 (2006); *Farmers Ins.*  
14 *Exch. v. Neal*, 119 Nev. 62, 64-65, 64 P.3d 472, 473 (2003); *United National Ins. Co. v. Frontier*  
15 *Ins. Co.*, 120 Nev. 678, 684, 99 P.3d 1153, 1156-57 (2004); *Vitale v. Jefferson Ins. Co.*, 116 Nev.  
16 590, 594, 5 P.3d 1054, 1057 (2000). Policies are construed from the perspective of a layman rather  
17 than from "one trained in the law" and absent ambiguity, terms are to be given their plain and  
18 ordinary meaning. *McDaniel v. Sierra Health & Life Ins. Co.*, 118 Nev. 596, 53 P.3d 904, 906 (Nev.  
19 2002). An ambiguity exists when a policy provision is subject to two or more reasonable  
20 interpretations. *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 P.2d 599, 604  
21 (Nev. 1992). A policy should be interpreted to effectuate the reasonable expectations of the insured.  
22 *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 14, 252 P.3d 668, 672 (2011). However, a court in  
23 Nevada will "neither rewrite unambiguous insurance provisions nor attempt to increase the legal  
24 obligations of the parties where the parties intentionally limited such obligation." *Vitale*, 116 Nev.  
25 at 596, 5 P.3d at 1057-58; *United National*, supra, 120 Nev. at 184, 99 P.3d at 1157; *Neal*, 119 Nev.  
26 at 65, 64 P.3d at 473; *Senteney v. Fire Ins. Exch.*, 101 Nev. 654, 707 P.2d 1149 (1985).

27           2.     In addition to the language of the Policy, the Court's decision is also governed by  
28 Nevada statutes regarding mid-term cancellation of policies, which are interpreted based on the



1 principles set forth above. Under NRS 687B.320, an insurer may enact a midterm cancellation of a  
2 policy or cancellation of a renewable policy for failure to pay a premium when due. NRS  
3 687B.320(1)(a). The purpose of NRS 687B.320 is to "protect individuals from the arbitrary actions  
4 of insurers who cancel insurance policies without notice to their insureds." *Daniels v. National*  
5 *Home Life Assurance Co.*, 103 Nev. 674, 677, 747 P.2d 897 (1987). Any notice of cancellation  
6 "must be personally delivered to the insured or mailed first class or certified to the insured at his last  
7 address known to the insurer." NRS 687B.310(6). "The notice must state the effective date of the  
8 cancellation or nonrenewal" and include a written explanation of the reasons for cancellation or  
9 nonrenewal. NRS 687B.310(6). Cancellation of a policy for failure to pay a premium when due is  
10 effective no earlier than 10 days after proper notice is delivered or mailed to the policyholder. NRS  
11 687B.320(2). If a notice of cancellation does not state with reasonable precision the facts on which  
12 the insurer's decision is based, the notice must contain information about the policyholder's right to  
13 request the insurer provide this information. NRS 687B.360.

14 3. In applying the above statutes to the undisputed facts of this case and terms of the  
15 policy, the Court is guided by the following standards governing interpretation of statutes. The  
16 interpretation of a statute is not a question of fact for the jury, but a question of law for resolution by  
17 the court. *W. v. Cal.*, 181 Cal. App. 3d 753, 762 (Cal. App. 1st Dist. 1986); see also *State v.*  
18 *Schumacher*, 136 Idaho 509 (Idaho Ct. App. 2001) (allowing juries to independently interpret  
19 [statute] would be an abdication of this Court's duty to construe legislative language to determine  
20 the law). It is a court's duty to interpret statutes consistent with the intent of the legislature. *Rose v.*  
21 *First Fed. Sav. & Loan Ass'n*, 105 Nev. 454, 457 (Nev. 1989). To do so, the court must give a  
22 statute's terms their plain, ordinary and usual meaning. *O'Neal v. Slaughter (In re Estate of*  
23 *Murray)*, 344 P.3d 419, 421 (Nev. 2015). When construing various statutory provisions, which are  
24 part of a "scheme," a court must interpret them harmoniously and in accordance with their general  
25 purpose. *Zahavi v. State*, 343 P.3d 595, 600 (Nev. 2015).

26 4. The Court finds as a matter of law that the notice provided to the insured by OMI  
27 satisfies the requirements of the policy and NRS 687B310, NRS 687B320, and NRS 687B360. The  
28 notice satisfies the statutory and policy requirements because the notice 1) the notice was based on

1 non-payment of premium a permissible basis for midterm cancellation of a policy, 2) was mailed  
2 first class to the insured at his last known address, 3) state the effective date of the cancellation, 4)  
3 included the reason for cancellation, 5) was effective no earlier than 10 days after it was mailed to  
4 the policyholder, and 6) stated with reasonable precision the facts on which the insurer's decision to  
5 cancel was based.

6         5.       The Court finds that both the policy and applicable statutes require only that notice to  
7 the insured be mailed to the insured. As such, the Court specifically finds that proof of mailing of  
8 any notice to the insured is sufficient proof of notice.

9         6.       The Court finds that OMI met its policy obligation to provide notice to Sandin by  
10 providing electronic notice in conformance with the Agency Agreement between OMI and the  
11 Sandin.

12         7.       The Court having found as a matter of law that OMI's complied with all policy and  
13 statutory requirements to effectuate cancellation and that proof of mailing is sufficient proof of  
14 notice, the Court finds as a matter of law that OMI cancelled the policy effective August 16, 2012 at  
15 12:01 a.m.

16         8.       Having found that OMI cancelled the policy effective August 16, 2012 at 12:01 a.m.,  
17 the Court finds as a matter of law there is no coverage under the policy for the August 17 fire loss.

18         9.       Having found that there is no coverage under the policy for the August 17 fire loss,  
19 Plaintiff's cause of action for breach of contract fails as a matter of law and OMI is entitled to  
20 summary judgment on this claim.

21         10.      Having found that there is no coverage for the August 17 fire loss, the Court finds  
22 that OMI's denial of coverage was reasonable as a matter of law. *Powers v. United Services Auto*  
23 *Ass'n*, 114 Nev. 690, 962 P.2d 596, 604 (Nev.1998) (the plaintiff must establish that the insurer had  
24 no reasonable basis for disputing coverage, and that the insurer knew or recklessly disregarded the  
25 fact that there was no reasonable basis for disputing coverage). Therefore, Plaintiff's cause of action  
26 for breach of the implied covenant of good faith and fair dealing fails as a matter of law and OMI is  
27 entitled to summary judgment on this claim.

28         ///

11. Having found that OMI provided notice of the pending cancellation to both OPH and Sandin as stated in the policy, Plaintiff's cause of action for fraud in the inducement fails as a matter of law and OMI is entitled to summary judgment on this claim.

12. Having found that the notice provided by OMI to the insured satisfied the requirements of the policy and applicable Nevada statutes and that OMI's denial of coverage was reasonable as a matter of law, Plaintiff's cause of action for violations of NRS §686A.310 fails as a matter of law and OMI is entitled to summary judgment on this claim.

13. Plaintiff's failure to oppose OMI's motion for summary judgment on the negligence claim constitutes consent to granting the Motion. EDCR 2.20(c). As such OMI is entitled to summary judgment on this claim.

14. Plaintiff's negligence claim against OMI is barred by the economic loss doctrine. *Terracon Consultants Western, Inc. v. Mandalay Resorts*, 125 Nev. 66, 206 P.3d 81 (2009).

15. For these reasons, the Court hereby orders that judgment is entered in favor of OMI on all claims against OMI by Plaintiff.

IT IS SO ORDERED.

DATED this 26<sup>th</sup> day of June, 2015

  
THE HONORABLE GLORIA STURMAN

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

  
ROBERT W. FREEMAN

Nevada Bar No. 003062

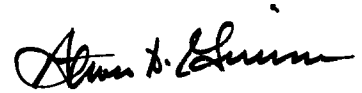
PRISCILLA L. O'BRIANT

Nevada Bar No. 010171

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Attorneys for OMI



CLERK OF THE COURT

1 **NOEJ**  
ROBERT W. FREEMAN, ESQ.  
2 Nevada Bar No. 003062  
Email: [Robert.Freeman@lewisbrisbois.com](mailto:Robert.Freeman@lewisbrisbois.com)  
3 PRISCILLA L. O'BRIANT, ESQ.  
Nevada Bar No. 010171  
4 Email: [Priscilla.Obriant@lewisbrisbois.com](mailto:Priscilla.Obriant@lewisbrisbois.com)  
**LEWIS BRISBOIS BISGAARD & SMITH LLP**  
5 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
6 702.893.3383  
FAX: 702.893.3789  
7 *Attorneys for Defendant*  
*Oregon Mutual Insurance Company*

8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 O.P.H. OF LAS VEGAS INC.,

12 Plaintiff,

13 vs.

14 OREGON MUTUAL INSURANCE  
COMPANY; DAVE SANDIN; and SANDIN  
15 & CO.,

16 Defendants.

CASE NO. A-12-672158-C  
Dept. No.: XXVI

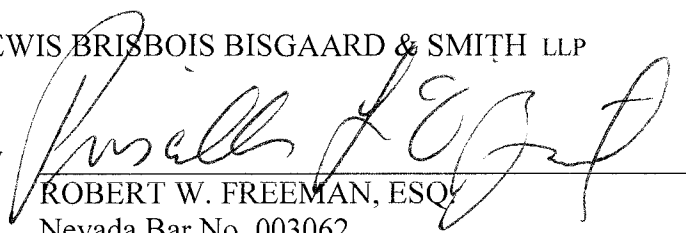
**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANT OREGON  
MUTUAL INSURANCE COMPANY'S  
MOTION FOR SUMMARY JUDGMENT  
ON ALL CLAIMS AGAINST OMI**

17  
18 PLEASE TAKE NOTICE that a *Order Granting Defendant Oregon Mutual Insurance*  
19 *Company's Motion for Summary Judgment on All Claims Against OMI* was entered in this matter on  
20 the 30<sup>th</sup> day of June, 2015, a copy of which is attached hereto as Exhibit "A".

21 DATED this 30<sup>th</sup> day of June, 2015.

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23  
24 By



25 ROBERT W. FREEMAN, ESQ.  
Nevada Bar No. 003062  
26 PRISCILLA L. O'BRIANT, ESQ.  
Nevada Bar No. 010171  
27 6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
28 *Attorneys for Defendant*  
*Oregon Mutual Insurance Company*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this  
3 30<sup>th</sup> day of June, 2015, I did cause a true copy of the foregoing **NOTICE OF ENTRY OF ORDER**  
4 **GRANTING DEFENDANT OREGON MUTUAL INSURANCE COMPANY'S MOTION**  
5 **FOR SUMMARY JUDGMENT ON ALL CLAIMS AGAINST OMI** in O.P.H. of Las Vegas,  
6 Inc. v. Oregon Mutual Ins. Co., et. al., Clark County District Court Case No. A-12-672158-C, to be  
7 served electronically using the Wiznet Electronic Service system, to all parties with an email-  
8 address on record.

9  
10 Patricia Lee, Esq.  
11 Z. Kathryn Branson, Esq.  
12 HUTCHISON & STEFFEN, LLC  
13 10080 West Alta Drive, Suite 200  
14 Las Vegas, Nevada 89145  
15 *Attorneys for Defendants Dave Sandin*  
16 *and Sandin & Co.*

[plee@hutchlegal.com](mailto:plee@hutchlegal.com)  
[KBranson@hutchlegal.com](mailto:KBranson@hutchlegal.com)  
[vcampbell@hutchlegal.com](mailto:vcampbell@hutchlegal.com)  
[jdeangelis@hutchlegal.com](mailto:jdeangelis@hutchlegal.com)

15 Margaret A. McLetchie, Esq.  
16 LANGFORD MCLETCHIE LLC  
17 616 South Eighth Street  
18 Las Vegas, Nevada 89101  
19 *Attorneys for Plaintiff*

[maggie@nvlitigation.com](mailto:maggie@nvlitigation.com)  
[jeff@nvlitigation.com](mailto:jeff@nvlitigation.com)  
[admin@nvlitigation.com](mailto:admin@nvlitigation.com)

18 **Courtesy Copy**

19 **Via Hand Delivery To:**

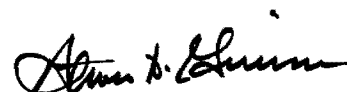
20 Eighth Judicial District Court  
21 Dept. 26, Judge Gloria Sturman  
22 200 Lewis Avenue  
23 Las Vegas, Nevada 89155

24  
25 By: 

26 Kellene McKay, an Employee of  
27 LEWIS BRISBOIS BISGAARD & SMITH LLP  
28 Email: [Kellene.McKay@lewisbrisbois.com](mailto:Kellene.McKay@lewisbrisbois.com)

# EXHIBIT A

# EXHIBIT A



CLERK OF THE COURT

**FFCL**  
ROBERT W. FREEMAN, ESQ.  
Nevada Bar No. 003062  
PRISCILLA L. O'BRIANT, ESQ.  
Nevada Bar No. 010171  
**LEWIS BRISBOIS BISGAARD & SMITH LLP**  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
702.893.3383  
FAX: 702.893.3789  
*Attorneys for Defendant*  
*Oregon Mutual Insurance Company*  
*("OMI")*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

O.P.H. OF LAS VEGAS INC.,

Plaintiff,

vs.

OREGON MUTUAL INSURANCE  
COMPANY; DAVE SANDIN; and SANDIN  
& CO.,

Defendants.

CASE NO. A-12-672158-C  
Dept. No.: XXVI

**ORDER GRANTING DEFENDANT  
OREGON MUTUAL INSURANCE  
COMPANY MOTION FOR SUMMARY  
JUDGMENT ON ALL CLAIMS AGAINST  
OMI**

This matter came on for hearing on May 14, 2015 in Department XXVI of the Eighth Judicial District Court of the State of Nevada, before the Honorable Gloria Sturman, on Oregon Mutual Insurance Company's Motion for Summary Judgment ("OMI's Motion"). The Court, having read the parties' moving papers and the authority relied upon therein, and having engaged with counsel in oral argument, hereby enters the following undisputed material facts and legal determinations on which the order is based, pursuant to NRCp 56(c).

**UNDISPUTED MATERIAL FACTS**

1. OMI issued a "Businessowner Protector Policy" to OPH of Las Vegas, Inc. ("OPH" or "insured") at 4170 South Fort Apache Road, Las Vegas, Nevada, Policy No. BSP71668 (the "policy") which provided coverage for the OPH Restaurant at 4833 West Charleston Boulevard, Las Vegas, effective December 26, 2011.

|                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Voluntary Dismissal          | <input checked="" type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Dismissal        | <input type="checkbox"/> Stipulated Judgment         |
| <input type="checkbox"/> Stipulated Dismissal         | <input type="checkbox"/> Default Judgment            |
| <input type="checkbox"/> Motion to Dismiss by Deft(s) | <input type="checkbox"/> Judgment of Arbitration     |

- The “your agent” box on the policy lists “Sandin Insurance Group” (“Sandin”).

3. The Nevada Division of Insurance issued a license to Sandin & Co., License No. 1, non-resident producer firm, effective May 25, 2010 through June 1, 2013.

4. The Nevada Division of Insurance issued a license to Anthony John Sandin, the producer for Sandin, License No. 700310, non-resident producer, effective May 25, 2010 through June 1, 2013.

5. The policy and its endorsements contain the following provisions governing cancellation:

### SECTION III – COMMON POLICY CONDITIONS

**(APPLICABLE TO SECTION I –  
PROPERTY AND SECTION II – LIABILITY)**

### A. Cancellation

\* \* \* \* \*

2. We may cancel this policy by mailing or delivering to the first Named Insured **written notice of cancellation at least:**

\* \* \* \* \*

b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.

\* \* \* \* \*

6. If Notice is mailed, § of mailing will be sufficient proof of notice.

\* \* \* \* \*

## NEVADA CHANGES

B. Section III – Common Policy Conditions is amended as follows:

\* \* \* \* \*

3. The following are added to Paragraph A.

**Cancellation:**

## 7. Midterm Cancellation

If this is policy has been in effect for 70 days or more, or if this policy is a renewal of a policy we issued, we may cancel only for one or more of the following reasons:

(a) Nonpayment of premium;

\* \* \* \* \*

## N. Notices

1. Notice of cancellation or nonrenewal will be mailed, first class or certified, or delivered to the first Named Insured at the last mailing address known to us and will state:

(a) The specific reason for cancellation or nonrenewal: and



1 (b) The effective date of nonrenewal.

2 \* \* \*

3 2. We will also provide a copy of the notice of cancellation, for both policies in effect less  
4 than 70 days and policies in effect 70 days or more, to the agent who wrote the policy.

5 6. On July 9, 2012, OMI generated a billing statement to OPH which was received by  
6 OPH in July which stated that the minimum amount due was \$2,814.75 and the due date was July  
7 26, 2012.

8 7. OMI did not receive payment by July 26, 2012.

9 8. On the night of July 31, 2012, OMI produced a "Notice of Cancellation" (the  
10 "notice") dated July 31, 2012 which stated:

11 Minimum Due 2,822.00

12 We did not receive the required premium payment on your account by the date it was due.

13 We appreciate your business and hope we can continue to serve your insurance needs. If we receive  
14 at least the minimum due on this account by 08/15/12, we will continue your coverage without  
15 interruption. If we do not receive the minimum due by 08/15/12, each policy listed below will be  
16 cancelled effective the time and date shown opposite that policy number.

| <u>Policy type</u>      | <u>Policy number</u> | <u>Effective time and date of cancellation</u>                          |
|-------------------------|----------------------|-------------------------------------------------------------------------|
| Businessowner<br>Policy | BSP716685            | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |
| Package<br>Policy       | OM0914045            | This policy is cancelled as of:<br>12:01 a.m. standard time on 08/16/12 |

18 If you have any questions, please contact your agent SANDIN INSURANCE GROUP immediately  
19 at (503) 381-5570.

20 9. OMI mailed the notice via first class mail to OPH at 4170 South Fort Apache Road,  
21 Las Vegas, Nevada, the corporate office of OPH.

22 10. The notice was mailed on August 1, 2013 more than 10 days before the effective  
23 date of August 16, 2012.

24 11. On July 31, 2012, OMI uploaded a copy of the provisional notice of cancellation to  
25 Sandin's BizLink portal

26 12. The Agency Agreement between OMI and Sandin provides that "[a] copy of all ...  
27 cancellations or renewal notices ... will be mailed or electronically transmitted to the agent."

28 13. OMI did not receive payment of the outstanding premium by August 15, 2012.

1           14.     At approximately 4:00 a.m. on August 17, 2012, a fire broke out at the OPH  
2 Restaurant at 4833 West Charleston Boulevard (the "fire loss").

3           15.     OPH, through its agent, submitted a claim for the fire loss to OMI.

4           16.     On August 20, 2012, OMI mailed a claim denial letter to OPH, stating that the policy  
5 had been cancelled prior to the date of loss, and that OMI therefore had no obligation to indemnify  
6 OPH for the fire loss.

7 **LEGAL DETERMINATIONS**

8           1.     In finding that no coverage exists under the undisputed facts of the case and the terms  
9 of the Policy, the Court is guided by the following standards governing interpretation of insurance  
10 policies in Nevada. The interpretation of an insurance contract is a question of law. *Farmers Ins.*  
11 *Exch. v. Neal*, 119 Nev. 62, 64 P.3d 472, 473 (Nev. 2003). The terms of an insurance policy must  
12 be construed "in their plain and ordinary sense and from the viewpoint of one not trained in the  
13 law." *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 482, 133 P.3d 251, 253 (2006); *Farmers Ins.*  
14 *Exch. v. Neal*, 119 Nev. 62, 64-65, 64 P.3d 472, 473 (2003); *United National Ins. Co. v. Frontier*  
15 *Ins. Co.*, 120 Nev. 678, 684, 99 P.3d 1153, 1156-57 (2004); *Vitale v. Jefferson Ins. Co.*, 116 Nev.  
16 590, 594, 5 P.3d 1054, 1057 (2000). Policies are construed from the perspective of a layman rather  
17 than from "one trained in the law" and absent ambiguity, terms are to be given their plain and  
18 ordinary meaning. *McDaniel v. Sierra Health & Life Ins. Co.*, 118 Nev. 596, 53 P.3d 904, 906 (Nev.  
19 2002). An ambiguity exists when a policy provision is subject to two or more reasonable  
20 interpretations. *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839 P.2d 599, 604  
21 (Nev. 1992). A policy should be interpreted to effectuate the reasonable expectations of the insured.  
22 *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 14, 252 P.3d 668, 672 (2011). However, a court in  
23 Nevada will "neither rewrite unambiguous insurance provisions nor attempt to increase the legal  
24 obligations of the parties where the parties intentionally limited such obligation." *Vitale*, 116 Nev.  
25 at 596, 5 P.3d at 1057-58; *United National*, supra, 120 Nev. at 184, 99 P.3d at 1157; *Neal*, 119 Nev.  
26 at 65, 64 P.3d at 473; *Senteney v. Fire Ins. Exch.*, 101 Nev. 654, 707 P.2d 1149 (1985).

27           2.     In addition to the language of the Policy, the Court's decision is also governed by  
28 Nevada statutes regarding mid-term cancellation of policies, which are interpreted based on the

1 principles set forth above. Under NRS 687B.320, an insurer may enact a midterm cancellation of a  
2 policy or cancellation of a renewable policy for failure to pay a premium when due. NRS  
3 687B.320(1)(a). The purpose of NRS 687B.320 is to "protect individuals from the arbitrary actions  
4 of insurers who cancel insurance policies without notice to their insureds." *Daniels v. National*  
5 *Home Life Assurance Co.*, 103 Nev. 674, 677, 747 P.2d 897 (1987). Any notice of cancellation  
6 "must be personally delivered to the insured or mailed first class or certified to the insured at his last  
7 address known to the insurer." NRS 687B.310(6). "The notice must state the effective date of the  
8 cancellation or nonrenewal" and include a written explanation of the reasons for cancellation or  
9 nonrenewal. NRS 687B.310(6). Cancellation of a policy for failure to pay a premium when due is  
10 effective no earlier than 10 days after proper notice is delivered or mailed to the policyholder. NRS  
11 687B.320(2). If a notice of cancellation does not state with reasonable precision the facts on which  
12 the insurer's decision is based, the notice must contain information about the policyholder's right to  
13 request the insurer provide this information. NRS 687B.360.

14 3. In applying the above statutes to the undisputed facts of this case and terms of the  
15 policy, the Court is guided by the following standards governing interpretation of statutes. The  
16 interpretation of a statute is not a question of fact for the jury, but a question of law for resolution by  
17 the court. *W. v. Cal.*, 181 Cal. App. 3d 753, 762 (Cal. App. 1st Dist. 1986); see also *State v.*  
18 *Schumacher*, 136 Idaho 509 (Idaho Ct. App. 2001) (allowing juries to independently interpret  
19 [statute] would be an abdication of this Court's duty to construe legislative language to determine  
20 the law). It is a court's duty to interpret statutes consistent with the intent of the legislature. *Rose v.*  
21 *First Fed. Sav. & Loan Ass'n*, 105 Nev. 454, 457 (Nev. 1989). To do so, the court must give a  
22 statute's terms their plain, ordinary and usual meaning. *O'Neal v. Slaughter (In re Estate of*  
23 *Murray)*, 344 P.3d 419, 421 (Nev. 2015). When construing various statutory provisions, which are  
24 part of a "scheme," a court must interpret them harmoniously and in accordance with their general  
25 purpose. *Zahavi v. State*, 343 P.3d 595, 600 (Nev. 2015).

26 4. The Court finds as a matter of law that the notice provided to the insured by OMI  
27 satisfies the requirements of the policy and NRS 687B310, NRS 687B320, and NRS 687B360. The  
28 notice satisfies the statutory and policy requirements because the notice 1) the notice was based on

1 non-payment of premium a permissible basis for midterm cancellation of a policy, 2) was mailed  
2 first class to the insured at his last known address, 3) state the effective date of the cancellation, 4)  
3 included the reason for cancellation, 5) was effective no earlier than 10 days after it was mailed to  
4 the policyholder, and 6) stated with reasonable precision the facts on which the insurer's decision to  
5 cancel was based.

6         5.       The Court finds that both the policy and applicable statutes require only that notice to  
7 the insured be mailed to the insured. As such, the Court specifically finds that proof of mailing of  
8 any notice to the insured is sufficient proof of notice.

9         6.       The Court finds that OMI met its policy obligation to provide notice to Sandin by  
10 providing electronic notice in conformance with the Agency Agreement between OMI and the  
11 Sandin.

12         7.       The Court having found as a matter of law that OMI's complied with all policy and  
13 statutory requirements to effectuate cancellation and that proof of mailing is sufficient proof of  
14 notice, the Court finds as a matter of law that OMI cancelled the policy effective August 16, 2012 at  
15 12:01 a.m.

16         8.       Having found that OMI cancelled the policy effective August 16, 2012 at 12:01 a.m.,  
17 the Court finds as a matter of law there is no coverage under the policy for the August 17 fire loss.

18         9.       Having found that there is no coverage under the policy for the August 17 fire loss,  
19 Plaintiff's cause of action for breach of contract fails as a matter of law and OMI is entitled to  
20 summary judgment on this claim.

21         10.       Having found that there is no coverage for the August 17 fire loss, the Court finds  
22 that OMI's denial of coverage was reasonable as a matter of law. *Powers v. United Services Auto*  
23 *Ass'n*, 114 Nev. 690, 962 P.2d 596, 604 (Nev.1998) (the plaintiff must establish that the insurer had  
24 no reasonable basis for disputing coverage, and that the insurer knew or recklessly disregarded the  
25 fact that there was no reasonable basis for disputing coverage). Therefore, Plaintiff's cause of action  
26 for breach of the implied covenant of good faith and fair dealing fails as a matter of law and OMI is  
27 entitled to summary judgment on this claim.

28       ///

11. Having found that OMI provided notice of the pending cancellation to both OPH and Sandin as stated in the policy, Plaintiff's cause of action for fraud in the inducement fails as a matter of law and OMI is entitled to summary judgment on this claim.

12. Having found that the notice provided by OMI to the insured satisfied the requirements of the policy and applicable Nevada statutes and that OMI's denial of coverage was reasonable as a matter of law, Plaintiff's cause of action for violations of NRS §686A.310 fails as a matter of law and OMI is entitled to summary judgment on this claim.

13. Plaintiff's failure to oppose OMI's motion for summary judgment on the negligence claim constitutes consent to granting the Motion. EDCR 2.20(c). As such OMI is entitled to summary judgment on this claim.

14. Plaintiff's negligence claim against OMI is barred by the economic loss doctrine. *Terracon Consultants Western, Inc. v. Mandalay Resorts*, 125 Nev. 66, 206 P.3d 81 (2009).

15. For these reasons, the Court hereby orders that judgment is entered in favor of OMI on all claims against OMI by Plaintiff.

IT IS SO ORDERED.

DATED this 26<sup>th</sup> day of June, 2015

  
THE HONORABLE GLORIA STURMAN

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP

  
ROBERT W. FREEMAN

Nevada Bar No. 003062

PRISCILLA L. O'BRIANT

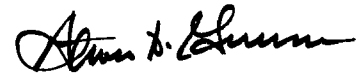
Nevada Bar No. 010171

6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

Attorneys for OMI

ORIGINAL



CLERK OF THE COURT

1 **FFCL**  
2 Patricia Lee (8287)  
3 Michael S. Kelley (10101)  
4 HUTCHISON & STEFFEN, LLC  
5 10080 West Alta Drive, Suite 200  
6 Las Vegas, NV 89145  
7 Tel: (702) 385-2500  
8 Fax: (702) 385-2086  
9 plee@hutchlegal.com  
10 mkelley@hutchlegal.com

11 *Attorneys for defendants*  
12 *David Sandin and Sandin & Co.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 O.P.H. OF LAS VEGAS, INC.,  
16 Plaintiff,

17 v.

18 OREGON MUTUAL INSURANCE  
19 COMPANY, DAVE SANDIN, and SANDIN  
20 & CO.,  
21 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

22 **ORDER GRANTING DEFENDANTS**  
23 **DAVE SANDIN AND SANDIN &**  
24 **CO.'S MOTION FOR SUMMARY**  
25 **JUDGMENT**

26 Defendants Dave Sandin and Sandin & Co.'s (the "Sandin defendants") motion for  
27 summary judgment came on for hearing before this Court on May 14, 2015. Patricia Lee and  
28 Michael S. Kelley of Hutchison & Steffen, LLC appeared on behalf of the Sandin defendants.  
Robert L. Langford of Langford McLetchie, LLC appeared on behalf of plaintiff, O.P.H. of Las  
Vegas, Inc. ("OPH" or "Plaintiff"). The Court, having considered the respective papers and  
submissions of each party, having heard the arguments of counsel at the hearing, hereby enters  
the following undisputed material facts and legal determinations on which the order is based  
pursuant to NRCP 56(c).

///

///

///

|                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Voluntary Dismissal          | <input checked="" type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Dismissal        | <input type="checkbox"/> Stipulated Judgment         |
| <input type="checkbox"/> Stipulated Dismissal         | <input type="checkbox"/> Default Judgment            |
| <input type="checkbox"/> Motion to Dismiss by Deft(s) | <input type="checkbox"/> Judgment of Arbitration     |

1     **Undisputed Material Facts**

2             1.       OPH operated an Original Pancake House Restaurant at 4833 West Charleston  
3 Boulevard in Las Vegas, Nevada (the "Restaurant"). Stephan Freudenberger is the president of  
4 OPH and Lynda Snyder is the corporate office manager of OPH and reports to Mr.  
5 Freudenberger.

6             2.       Defendant Dave Sandin is an insurance agent or broker based in Oregon.

7             3.       In the early 2000s, Dave Sandin and his colleague began working with OPH and  
8 other Original Pancake House franchisees. Dave Sandin's colleague was initially the lead  
9 agent for OPH and Dave Sandin was his assistant. In the early to mid 2000s, David Sandin  
10 became the insurance agent for OPH and he has been the insurance agent for OPH through  
11 August 2012, except for over two years when OPH was with a different agency.

12            4.       Between February 2006 and October 2008, Dave Sandin was employed by  
13 Heffernan Insurance Brokers and was subject to a non-compete agreement. During this time,  
14 Dave Sandin was not the broker for OPH. Dave Sandin did not broker any policies for OPH  
15 during this time period.

16            5.       Though they are based in Oregon, the Sandin defendants have been licensed to  
17 sell insurance in Nevada. Dave Sandin first became licensed to sell insurance in Nevada in  
18 2005. Dave Sandin, Anthony Sandin (a non-party), and Sandin & Co. were all licensed in  
19 Nevada when Sandin & Co. took over OPH's account from Dave Sandin's former employer in  
20 2010. Dave Sandin, Anthony Sandin and Sandin & Co. have worked on Plaintiff's account  
21 since 2010. Sandin & Co.'s and Anthony Sandin's respective Nevada licences expired on  
22 June 1, 2013. Dave Sandin's Nevada license expired on April 1, 2011.

23            6.       In December 2011, the Sandin defendants recommended Oregon Mutual  
24 Insurance Company's ("Oregon Mutual") insurance to Plaintiff based on Plaintiff's coverage  
25 needs.

26            7.       Oregon Mutual issued a Businessowner Protector Policy to Plaintiff that covered  
27 the Restaurant (the "Policy").

28     ///

1           8.     The Policy's term was from December 26, 2011 through December 26, 2012.  
2 Sandin & Co. is identified as the agent on the Policy.

3           9.     Plaintiff received monthly statements for the premiums directly from Oregon  
4 Mutual.

5           10.    Oregon Mutual mailed a billing statement directly to Plaintiff for the payment  
6 due on or before July 26, 2012, and Plaintiff received the billing statement in July, 2014.

7           11.    Plaintiff failed to pay its monthly premium due on July 26, 2012.

8           12.    Oregon Mutual sent a pre-cancellation notice to Plaintiff on August 1, 2012,  
9 with an effective cancellation date of August 16, 2012.

10          13.    On August 13, 2012, prior to the cancellation of the Policy, Plaintiff realized  
11 that it did not make the monthly premium for July. In fact, Plaintiff cut a check on August 13,  
12 2012 to Oregon Mutual for the July premium but never mailed the check. Plaintiff, however,  
13 did not contact anyone at Oregon Mutual or the Sandin defendants regarding its failure to pay  
14 the July premium.

15          14.    The Sandin defendants did not receive a notice of cancellation.

16          15.    On August 13, 2012, Plaintiff representative, Linda Snyder, contacted defendant  
17 Dave Sandin to report a break-in that occurred at the restaurant overnight between August 10,  
18 2012 and August 11, 2012.

19          16.    On August 16, 2012, Ms. Snyder spoke with Dave Sandin to obtain a claim  
20 number for the break-in.

21          17.    Oregon Mutual posted the pre-cancellation notice on BizLink, its electronic  
22 bulletin board system. The Sandin defendants did not check the BizLink system to look for  
23 notices and Oregon Mutual did not mail the pre-cancellation notice to the Sandin defendants.  
24 Because the Sandin defendants did not know about Oregon Mutual's cancellation or pending  
25 cancellation, the Sandin defendants did not inform Ms. Snyder that the Policy had been or was  
26 in danger of being cancelled.

27          18.    There is no agreement between OPH and the Sandin defendants that requires the  
28 Sandin defendants to provide notice to OPH of a pending policy cancellation.



1           19.     On August 17, 2012, a fire destroyed the Restaurant.

2           20.     On August 17, 2012, after a fire destroyed the Restaurant and after the Policy  
3 had already been cancelled, the Sandin defendants became aware that the Policy had been  
4 cancelled.

5           21.     On August 17, 2012 after the Sandin defendants became aware that the Policy  
6 had been cancelled, Dave Sandin contacted Plaintiff and notified Plaintiff that the Policy had  
7 been cancelled.

8           22.     As a result of the cancellation of Plaintiff's Policy for non-payment on August  
9 16, 2012, Oregon Mutual has denied coverage for the loss caused by the fire.

10          23.     The sole reason for cancellation of the Policy was due to Plaintiff's failure to  
11 pay its July 26, 2012 premium on or before August 15, 2012.

12          24.     Had Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy  
13 would have been in full force and effect on August 16, 2012 and August 17, 2012.

14          25.     Had the Policy not been cancelled, Oregon Mutual would have continued to  
15 adjust the claim for the fire and Oregon Mutual would have paid losses covered under the  
16 Policy subject to the terms, conditions, exclusions and limitations of the Policy.

## 17 **Conclusions of Law**

18 **The Sandin defendants did not have a legal duty to notify O.P.H. of the late premium and**  
19 **pending cancellation.**

20           1.     In Nevada, insurance agents do not have a fiduciary relationship with their  
21 clients. An "insurance agent is obliged to use reasonable diligence to place the insurance and  
22 seasonably to notify the client if he is unable to do so." *Keddie v. Beneficial Insurance, Inc.*, 94  
23 Nev. 418, 420, 580 P.2d 955, 956 (1978).<sup>1</sup>

24           2.     Because the Sandin defendants recommended an insurer and secured a policy  
25 for Plaintiff that met all of its coverage needs, the Sandin defendants satisfied their legal duty

---

26                   <sup>1</sup> See also *Havas v. Carter*, 89 Nev 497, 499-500, 515 P.2d 397, 399 (1973) ("[T]he general  
27 rule [is] that an insurance agent or broker who undertakes to procure insurance for another owes an  
28 obligation to his client to use reasonable diligence in attempting to place the insurance and to  
seasonably notify the client if he, the agent or broker, is unable to obtain the insurance.").

1 to Plaintiff as Plaintiff's broker.

2 3. Plaintiff's claim was denied solely because of non-payment.

3 4. Had Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy  
4 would have been in full force and effect on August 16, 2012 and August 17, 2012.

5 5. Had the Policy not been cancelled, Oregon Mutual would have continued to  
6 adjust the claim for the fire and Oregon Mutual would have paid losses covered under the  
7 Policy subject to the terms, conditions, exclusions and limitations of the Policy.

8 6. The Court finds persuasive case law from other jurisdictions that an insurance  
9 agent does not have the legal duty to notify an insured of a late premium and/or pending  
10 cancellation.<sup>2</sup> "[W]hether a defendant owes a plaintiff a duty of care is a question of law."  
11 *Scialabba v. Brandise Const. Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996).

12 7. The Court finds that there is no express or implied agreement between the  
13 Sandin defendants and OPH that required the Sandin defendants to notify OPH of a late  
14 premium and/or a pending cancellation.

15 8. The Sandin defendants did not have a legal duty to notify OPH of the pending  
16 cancellation based on prior course of dealing.

---

17  
18 <sup>2</sup> See *GlobalNet Financial.Com, Inc. v. Frank Crystal & Co.*, 449 F.3d 377, 388 (2d  
19 Cir. 2006) ("GlobalNet is unable to prevail on its claims because Crystal was not the cause of  
20 the cancellation of coverage. . . It was GlobalNet's negligence that caused the cancellation of  
21 the insurance coverage."); *Guardian Life Ins. Co. of Am. v. Goduti-Moore*, 36 F. Supp. 2d 657,  
22 665-66 (D.N.J. 1999) *reversed on other grounds*, 229 F.3d 212 (3d Cir. 2000) ("It would be  
23 unduly onerous for brokers to warn every client who misses a monthly premium due date that  
24 the client must pay the amount by the end of the grace period or face forfeiture."); *Quintana v.*  
25 *Tennessee Farmers Mut. Ins. Co.*, 774 S.W.2d 630, 634 (Tenn. Ct. App. 1989) ("The  
26 Quintanas' long business relationship with Mr. Willis did not require him to notify them of the  
27 policy's cancellation. In the absence of an agreement creating continuing responsibilities, an  
28 insurance agent's obligation to a client ends when the agent obtains the insurance for the client.  
Thus, an agent has no duty to inform a client of a policy's cancellation if the client knew or  
should have known of the cancellation by other means."); *Rocque v. Coop. Fire Ins. Ass'n of*  
*Vermont*, 438 A.2d 383, 386 (Vt. 1981) ("[W]here an insurance company is required to give  
direct notice of cancellation to the insured, as is the case here, an insurance agent is not liable  
for a failure to notify, since he is justified in assuming that the insured would be made aware of  
the cancellation from other sources.").

1           9.       The Court finds that Dave Sandin previously notified OPH of a pending  
2       cancellation at most one time on or about May 2009. Because “the nonmoving party is entitled  
3       to have the evidence and all reasonable inferences accepted as true,” this fact is not in dispute.  
4       *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989). However, Dave  
5       Sandin’s *one-time* notification to OPH of a pending cancellation does not create a legal duty on  
6       the Sandin defendants to continually notify OPH of missed payments and pending cancellations  
7       in the future.

8           10.      The Court finds that the Sandin defendants did not receive notice of the pending  
9       cancellation and could not inform OPH to pay its premium. Therefore, whether the Sandin  
10      defendants had a legal duty to notify OPH of the pending cancellation, the Sandin defendants  
11      could not inform OPH of the pending cancellation. Absent receipt of the notice, any purported  
12      duty to inform Plaintiff of its failure to pay never arose. *See Shindler v. Mid-Continent Life*  
13      *Ins. Co.*, 768 S.W.2d 331, 334 (Tex. App. 1989) (“Because there is no proof that [the agent]  
14      had notice of premiums due or policy termination, we hold that [the agent] had no duty, as a  
15      matter of law, to give notice to appellants.”).

16      **The status of Dave Sandin’s Nevada license is irrelevant and cannot be the basis for**  
17      **Plaintiff’s negligence or fraud claims.**

18           11.      The Policy identifies Sandin & Co. as the agent for the OPH, not Dave Sandin.  
19      Therefore, Sandin & Co., not Dave Sandin, was the agent for the Policy.

20           12.      Plaintiff’s alleged damages were not caused by Dave Sandin’s licensing status.  
21      For every cause of action Plaintiff pleaded, there must be a nexus between the alleged bad act  
22      (Dave Sandin’s lack of an appropriate non-resident license) and the damages alleged. *See*  
23      *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (“Proximate cause limits  
24      liability to foreseeable consequences that are reasonably connected to both the defendant’s  
25      misrepresentation or omission and the harm that the misrepresentation or omission created.”);  
26      *see also Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1052 (2010) (“[B]oth  
27      intentional and negligent misrepresentation require a showing that the claimed damages were  
28      caused by the alleged misrepresentations.”); *Yamaha Motor Co., USA v. Arnoult*, 114 Nev.

1 233, 238, 955 P.2d 661, 664 (1998) (“This court has long recognized that to establish  
2 proximate causation ‘it must appear that the injury was the natural and probable consequence  
3 of the negligence or wrongful act, and that it ought to have been foreseen in the light of the  
4 attending circumstances.’”) (internal citations omitted).

5 13. The Court finds that Dave Sandin’s licensee status did not cause or contribute to  
6 Plaintiff’s alleged damages, nor did any alleged misrepresentations concerning his licensing  
7 status result in Plaintiff’s failure to pay its policy premium, Oregon Mutual’s subsequent  
8 cancellation of Plaintiff’s policy, and Oregon Mutual’s denial of Plaintiff’s claim of loss based  
9 on the cancellation.

10 14. The licensing status of a non-resident agent is purely an administrative matter.  
11 See NRS 683A.201(1) & (3). NRS 683A.201 does not provide for a private right of action.  
12 Rather, NRS 683A.201 provides for an administrative fine.

13 15. In order to prevail on a cause of action for negligence per se, the injury must be  
14 of the type against which the statute was intended to protect. See *Anderson v. Baltrusaitis*, 113  
15 Nev. 963, 944 P.2d 797 (1997); *Sagebrush Ltd. v. Carson City*, 99 Nev. 204, 660 P.2d 1013  
16 (1983) (“[V]iolation of a statute may constitute negligence *per se* only if the injured party  
17 belongs to the class of persons that the statute was intended to protect, and the injury is of the  
18 type that the statute was intended to prevent.”). “Whether a legislative enactment provides a  
19 standard of conduct in the particular situation presented by the plaintiff is a question of  
20 statutory interpretation and construction for the court.” *Sagebrush*, 99 Nev. at 208, 660 P.2d at  
21 1015.

22 16. Oregon Mutual’s cancellation of Plaintiff’s insurance policy due to Plaintiff’s  
23 failure to pay the premium is not the type of injury that NRS 683A.201 is intended to prevent.

24 17. NRS 686A.015(1) provides that “[n]otwithstanding any other provision of law,  
25 the Commissioner has exclusive jurisdiction in regulating the subject of trade practices in the  
26 business of insurance in this state.”

27 18. The Nevada Supreme Court has held that matters within Title 57, including the  
28 licensing of agents, are administrative matters. See *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565,

1 572, 170 P.3d 989, 994 (2007).

2 **Plaintiff's claims of breach of fiduciary duty, negligence and negligence per se, fraud, and**  
3 **fraud in the inducement.**

4 19. Based on the foregoing, Plaintiff's cause of action for breach of fiduciary duty  
5 fails as a matter of law and the Sandin defendants are entitled to summary judgment on this  
6 claim.

7 20. Plaintiff's negligence claim based on the alleged duty by the Sandin defendants  
8 to notify OPH of a pending cancellation is barred by the economic loss doctrine. *Terracan*  
9 *Consultants Western, Inc. v. Mandalay Resorts*, 125 Nev 66, 206 P.3d 81 (2009).

10 21. Based on the foregoing, Plaintiff's cause of action for negligence and negligence  
11 per se fails as a matter of law and the Sandin defendants are entitled to summary judgment on  
12 these claims.

13 22. Plaintiff cannot prove the elements required to prove fraud and fraud in the  
14 inducement. Namely, Plaintiff has not shown a misrepresentation by the Sandin defendants  
15 and causation.

16 23. Based on the foregoing, Plaintiff's cause of action for fraud in the inducement  
17 fails as a matter of law and the Sandin defendants are entitled to summary judgment on this  
18 claim.

19 24. Based on the foregoing, Plaintiff's cause of action for fraud fails as a matter of  
20 law and the Sandin defendants are entitled to summary judgment on this claim.

21 **Plaintiff's claim of Violation of NRS 686A.310**

22 25. NRS 686A.310(2) provides that "an insurer is liable to its insured for any  
23 damages sustained by the insured as a result of the commission of any act set forth in  
24 subsection 1 as an unfair practice."

25 26. The Nevada Supreme Court has held that only an insurer can be liable for unfair  
26 claims practices proscribed in NRS 686A.310. *See Albert H. Wohlers & Co. v. Bartgis*, 114  
27 Nev. 1249, 1263-64, 969 P.2d 949, 959-60 (1998).

28 ///

1           27.     As insurance agents, the Sandin defendants cannot be liable for violation of  
2 NRS 686A.310 pursuant to the statute's plain terms and the Supreme Court's holding in  
3 *Bartgis*.

4           28.     In its opposition, OPH did not oppose the Sandin defendants' motion for  
5 summary judgment on the claim for violation of NRS 686A.310. *See* Plaintiff's opposition at  
6 12, n.1. Plaintiff's failure to oppose the motion on the this claim constitutes consent to  
7 granting summary judgment. *See* EDCR 2.20(c).

8           29.     The Sandin defendants are entitled to judgment as a matter of law on Plaintiff's  
9 claim for violation fo NRS 686A.310.

10           WHEREFORE, the Sandin Defendants are entitled to summary judgment on all  
11 Plaintiff's claims as a matter of law.

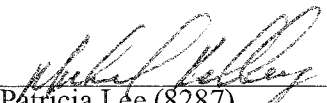
12           IT IS SO ORDERED.

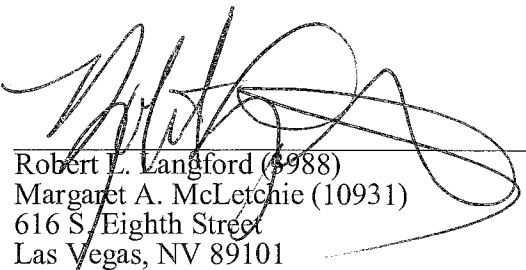
13           DATED this 26 day of June, 2015.

14  
15   
16 THE HONORABLE GLORIA STURMAN

17  
18 Submitted by:  
19 HUTCHISON & STEFFEN, LLC

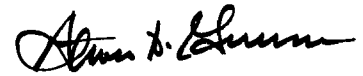
Reviewed by:  
LANGFORD MCLETCHIE LLC

20  
21   
22 Patricia Lee (8287)  
23 Michael S. Kelley (10101)  
24 Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

25   
26 Robert L. Langford (8988)  
27 Margaret A. McLetchie (10931)  
28 616 S. Eighth Street  
Las Vegas, NV 89101

*Attorneys for plaintiff O.P.H. of Las Vegas Inc.*

*Attorneys for defendants  
David Sandin and Sandin & Co.*



CLERK OF THE COURT

1 NEOJ  
2 Patricia Lee (8287)  
3 Michael S. Kelley (10101)  
4 HUTCHISON & STEFFEN, LLC  
5 10080 West Alta Drive, Suite 200  
6 Las Vegas, NV 89145  
7 Tel: (702) 385-2500  
8 Fax: (702) 385-2086  
9 plee@hutchlegal.com  
10 mkelley@hutchlegal.com

11 *Attorneys for defendants*  
12 *David Sandin and Sandin & Co.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 O.P.H. OF LAS VEGAS, INC.,  
16  
17 Plaintiff,

18 v.

19 OREGON MUTUAL INSURANCE  
20 COMPANY, DAVE SANDIN, and SANDIN  
21 & CO.,  
22  
23 Defendants.

Case No.: A-12-672158-C

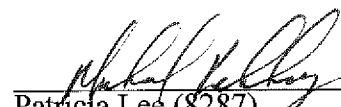
Dept. No.: XXVI

**NOTICE OF ENTRY OF ORDER**

24 PLEASE TAKE NOTICE that an Order Granting Defendants Dave Sandin and Sandin  
25 & Co.'s Motion for Summary Judgment was entered in the above-captioned matter on June 30,  
26 2015, a copy of which is attached hereto.

27 DATED this 1<sup>st</sup> day of July, 2015.

HUTCHISON & STEFFEN, LLC

28   
Patricia Lee (8287)  
Michael S. Kelley (10101)  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

*Attorneys for defendants David Sandin and Sandin & Co.*

**HUTCHISON & STEFFEN**

A PROFESSIONAL LLC

PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 8<sup>th</sup> day of July, 2015, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be served via electronic mail; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered;

to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie, Esq.  
LANGFORD MCLETCHE LLC  
616 S. Eighth St.  
Las Vegas, NV 89101

*Attorneys for plaintiff  
O.P.H. of Las Vegas Inc.*


Robert Freeman, Esq.  
Priscilla O'Briant, Esq.  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Blvd., Ste. 600  
Las Vegas, NV 89118

*Attorneys for Oregon Mutual Insurance  
Company*

  
An employee of Hutchison & Steffen, LLC



ORIGINAL



CLERK OF THE COURT

1 **FFCL**  
2 Patricia Lee (8287)  
3 Michael S. Kelley (10101)  
4 HUTCHISON & STEFFEN, LLC  
5 10080 West Alta Drive, Suite 200  
6 Las Vegas, NV 89145  
7 Tel: (702) 385-2500  
8 Fax: (702) 385-2086  
9 plee@hutchlegal.com  
10 mkelley@hutchlegal.com

11 *Attorneys for defendants*  
12 *David Sandin and Sandin & Co.*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 **O.P.H. OF LAS VEGAS, INC.,**

16 **Plaintiff,**

17 **v.**

18 **OREGON MUTUAL INSURANCE**  
19 **COMPANY, DAVE SANDIN, and SANDIN**  
20 **& CO.,**

21 **Defendants.**

Case No.: A-12-672158-C

Dept. No.: XXVI

**ORDER GRANTING DEFENDANTS  
DAVE SANDIN AND SANDIN &  
CO.'S MOTION FOR SUMMARY  
JUDGMENT**

22 Defendants Dave Sandin and Sandin & Co.'s (the "Sandin defendants") motion for  
23 summary judgment came on for hearing before this Court on May 14, 2015. Patricia Lee and  
24 Michael S. Kelley of Hutchison & Steffen, LLC appeared on behalf of the Sandin defendants.  
25 Robert L. Langford of Langford McLetchie, LLC appeared on behalf of plaintiff, O.P.H. of Las  
26 Vegas, Inc. ("OPH" or "Plaintiff"). The Court, having considered the respective papers and  
27 submissions of each party, having heard the arguments of counsel at the hearing, hereby enters  
28 the following undisputed material facts and legal determinations on which the order is based  
pursuant to NRCP 56(c).

///

///

///

|                                                       |                                                      |
|-------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Voluntary Dismissal          | <input checked="" type="checkbox"/> Summary Judgment |
| <input type="checkbox"/> Involuntary Dismissal        | <input type="checkbox"/> Stipulated Judgment         |
| <input type="checkbox"/> Stipulated Dismissal         | <input type="checkbox"/> Default Judgment            |
| <input type="checkbox"/> Motion to Dismiss by Deft(s) | <input type="checkbox"/> Judgment of Arbitration     |

1     **Undisputed Material Facts**

2             1.     OPH operated an Original Pancake House Restaurant at 4833 West Charleston  
3 Boulevard in Las Vegas, Nevada (the "Restaurant"). Stephan Freudenberger is the president of  
4 OPH and Lynda Snyder is the corporate office manager of OPH and reports to Mr.  
5 Freudenberger.

6             2.     Defendant Dave Sandin is an insurance agent or broker based in Oregon.

7             3.     In the early 2000s, Dave Sandin and his colleague began working with OPH and  
8 other Original Pancake House franchisees. Dave Sandin's colleague was initially the lead  
9 agent for OPH and Dave Sandin was his assistant. In the early to mid 2000s, David Sandin  
10 became the insurance agent for OPH and he has been the insurance agent for OPH through  
11 August 2012, except for over two years when OPH was with a different agency.

12            4.     Between February 2006 and October 2008, Dave Sandin was employed by  
13 Heffernan Insurance Brokers and was subject to a non-compete agreement. During this time,  
14 Dave Sandin was not the broker for OPH. Dave Sandin did not broker any policies for OPH  
15 during this time period.

16            5.     Though they are based in Oregon, the Sandin defendants have been licensed to  
17 sell insurance in Nevada. Dave Sandin first became licensed to sell insurance in Nevada in  
18 2005. Dave Sandin, Anthony Sandin (a non-party), and Sandin & Co. were all licensed in  
19 Nevada when Sandin & Co. took over OPH's account from Dave Sandin's former employer in  
20 2010. Dave Sandin, Anthony Sandin and Sandin & Co. have worked on Plaintiff's account  
21 since 2010. Sandin & Co.'s and Anthony Sandin's respective Nevada licences expired on  
22 June 1, 2013. Dave Sandin's Nevada license expired on April 1, 2011.

23            6.     In December 2011, the Sandin defendants recommended Oregon Mutual  
24 Insurance Company's ("Oregon Mutual") insurance to Plaintiff based on Plaintiff's coverage  
25 needs.

26            7.     Oregon Mutual issued a Businessowner Protector Policy to Plaintiff that covered  
27 the Restaurant (the "Policy").

28     ///

1           8.     The Policy's term was from December 26, 2011 through December 26, 2012.  
2 Sandin & Co. is identified as the agent on the Policy.

3           9.     Plaintiff received monthly statements for the premiums directly from Oregon  
4 Mutual.

5           10.    Oregon Mutual mailed a billing statement directly to Plaintiff for the payment  
6 due on or before July 26, 2012, and Plaintiff received the billing statement in July, 2014.

7           11.    Plaintiff failed to pay its monthly premium due on July 26, 2012.

8           12.    Oregon Mutual sent a pre-cancellation notice to Plaintiff on August 1, 2012,  
9 with an effective cancellation date of August 16, 2012.

10          13.    On August 13, 2012, prior to the cancellation of the Policy, Plaintiff realized  
11 that it did not make the monthly premium for July. In fact, Plaintiff cut a check on August 13,  
12 2012 to Oregon Mutual for the July premium but never mailed the check. Plaintiff, however,  
13 did not contact anyone at Oregon Mutual or the Sandin defendants regarding its failure to pay  
14 the July premium.

15          14.    The Sandin defendants did not receive a notice of cancellation.

16          15.    On August 13, 2012, Plaintiff representative, Linda Snyder, contacted defendant  
17 Dave Sandin to report a break-in that occurred at the restaurant overnight between August 10,  
18 2012 and August 11, 2012.

19          16.    On August 16, 2012, Ms. Snyder spoke with Dave Sandin to obtain a claim  
20 number for the break-in.

21          17.    Oregon Mutual posted the pre-cancellation notice on BizLink, its electronic  
22 bulletin board system. The Sandin defendants did not check the BizLink system to look for  
23 notices and Oregon Mutual did not mail the pre-cancellation notice to the Sandin defendants.  
24 Because the Sandin defendants did not know about Oregon Mutual's cancellation or pending  
25 cancellation, the Sandin defendants did not inform Ms. Snyder that the Policy had been or was  
26 in danger of being cancelled.

27          18.    There is no agreement between OPH and the Sandin defendants that requires the  
28 Sandin defendants to provide notice to OPH of a pending policy cancellation.

1           19.    On August 17, 2012, a fire destroyed the Restaurant.

2           20.    On August 17, 2012, after a fire destroyed the Restaurant and after the Policy  
3 had already been cancelled, the Sandin defendants became aware that the Policy had been  
4 cancelled.

5           21.    On August 17, 2012 after the Sandin defendants became aware that the Policy  
6 had been cancelled, Dave Sandin contacted Plaintiff and notified Plaintiff that the Policy had  
7 been cancelled.

8           22.    As a result of the cancellation of Plaintiff's Policy for non-payment on August  
9 16, 2012, Oregon Mutual has denied coverage for the loss caused by the fire.

10          23.    The sole reason for cancellation of the Policy was due to Plaintiff's failure to  
11 pay its July 26, 2012 premium on or before August 15, 2012.

12          24.    Had Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy  
13 would have been in full force and effect on August 16, 2012 and August 17, 2012.

14          25.    Had the Policy not been cancelled, Oregon Mutual would have continued to  
15 adjust the claim for the fire and Oregon Mutual would have paid losses covered under the  
16 Policy subject to the terms, conditions, exclusions and limitations of the Policy.

## 17   **Conclusions of Law**

18   **The Sandin defendants did not have a legal duty to notify O.P.H. of the late premium and**  
19 **pending cancellation.**

20           1.    In Nevada, insurance agents do not have a fiduciary relationship with their  
21 clients. An "insurance agent is obliged to use reasonable diligence to place the insurance and  
22 seasonably to notify the client if he is unable to do so." *Keddie v. Beneficial Insurance, Inc.*, 94  
23 Nev. 418, 420, 580 P.2d 955, 956 (1978).<sup>1</sup>

24           2.    Because the Sandin defendants recommended an insurer and secured a policy  
25 for Plaintiff that met all of its coverage needs, the Sandin defendants satisfied their legal duty

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26                   <sup>1</sup> See also *Havas v. Carter*, 89 Nev 497, 499-500, 515 P.2d 397, 399 (1973) ("[T]he general  
27 rule [is] that an insurance agent or broker who undertakes to procure insurance for another owes an  
28 obligation to his client to use reasonable diligence in attempting to place the insurance and to  
seasonably notify the client if he, the agent or broker, is unable to obtain the insurance.").

1 to Plaintiff as Plaintiff's broker.

2 3. Plaintiff's claim was denied solely because of non-payment.

3 4. Had Plaintiff paid its July 26, 2012 premium by August 15, 2012, the Policy  
4 would have been in full force and effect on August 16, 2012 and August 17, 2012.

5 5. Had the Policy not been cancelled, Oregon Mutual would have continued to  
6 adjust the claim for the fire and Oregon Mutual would have paid losses covered under the  
7 Policy subject to the terms, conditions, exclusions and limitations of the Policy.

8 6. The Court finds persuasive case law from other jurisdictions that an insurance  
9 agent does not have the legal duty to notify an insured of a late premium and/or pending  
10 cancellation.<sup>2</sup> "[W]hether a defendant owes a plaintiff a duty of care is a question of law."  
11 *Scialabba v. Brandise Const. Co.*, 112 Nev. 965, 968, 921 P.2d 928, 930 (1996).

12 7. The Court finds that there is no express or implied agreement between the  
13 Sandin defendants and OPH that required the Sandin defendants to notify OPH of a late  
14 premium and/or a pending cancellation.

15 8. The Sandin defendants did not have a legal duty to notify OPH of the pending  
16 cancellation based on prior course of dealing.

---

17  
18 <sup>2</sup> See *GlobalNet Financial.Com, Inc. v. Frank Crystal & Co.*, 449 F.3d 377, 388 (2d  
19 Cir. 2006) ("GlobalNet is unable to prevail on its claims because Crystal was not the cause of  
20 the cancellation of coverage. . . It was GlobalNet's negligence that caused the cancellation of  
21 the insurance coverage."); *Guardian Life Ins. Co. of Am. v. Goduti-Moore*, 36 F. Supp. 2d 657,  
22 665-66 (D.N.J. 1999) *reversed on other grounds*, 229 F.3d 212 (3d Cir. 2000) ("It would be  
23 unduly onerous for brokers to warn every client who misses a monthly premium due date that  
24 the client must pay the amount by the end of the grace period or face forfeiture."); *Quintana v.*  
25 *Tennessee Farmers Mut. Ins. Co.*, 774 S.W.2d 630, 634 (Tenn. Ct. App. 1989) ("The  
26 Quintanas' long business relationship with Mr. Willis did not require him to notify them of the  
27 policy's cancellation. In the absence of an agreement creating continuing responsibilities, an  
28 insurance agent's obligation to a client ends when the agent obtains the insurance for the client.  
Thus, an agent has no duty to inform a client of a policy's cancellation if the client knew or  
should have known of the cancellation by other means."); *Rocque v. Coop. Fire Ins. Ass'n of*  
*Vermont*, 438 A.2d 383, 386 (Vt. 1981) ("[W]here an insurance company is required to give  
direct notice of cancellation to the insured, as is the case here, an insurance agent is not liable  
for a failure to notify, since he is justified in assuming that the insured would be made aware of  
the cancellation from other sources.").

1           9.       The Court finds that Dave Sandin previously notified OPH of a pending  
2       cancellation at most one time on or about May 2009. Because “the nonmoving party is entitled  
3       to have the evidence and all reasonable inferences accepted as true,” this fact is not in dispute.  
4       *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989). However, Dave  
5       Sandin’s *one-time* notification to OPH of a pending cancellation does not create a legal duty on  
6       the Sandin defendants to continually notify OPH of missed payments and pending cancellations  
7       in the future.

8           10.       The Court finds that the Sandin defendants did not receive notice of the pending  
9       cancellation and could not inform OPH to pay its premium. Therefore, whether the Sandin  
10      defendants had a legal duty to notify OPH of the pending cancellation, the Sandin defendants  
11      could not inform OPH of the pending cancellation. Absent receipt of the notice, any purported  
12      duty to inform Plaintiff of its failure to pay never arose. *See Shindler v. Mid-Continent Life*  
13      *Ins. Co.*, 768 S.W.2d 331, 334 (Tex. App. 1989) (“Because there is no proof that [the agent]  
14      had notice of premiums due or policy termination, we hold that [the agent] had no duty, as a  
15      matter of law, to give notice to appellants.”).

16      **The status of Dave Sandin’s Nevada license is irrelevant and cannot be the basis for**  
17      **Plaintiff’s negligence or fraud claims.**

18           11.       The Policy identifies Sandin & Co. as the agent for the OPH, not Dave Sandin.  
19      Therefore, Sandin & Co., not Dave Sandin, was the agent for the Policy.

20           12.       Plaintiff’s alleged damages were not caused by Dave Sandin’s licensing status.  
21      For every cause of action Plaintiff pleaded, there must be a nexus between the alleged bad act  
22      (Dave Sandin’s lack of an appropriate non-resident license) and the damages alleged. *See*  
23      *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) (“Proximate cause limits  
24      liability to foreseeable consequences that are reasonably connected to both the defendant’s  
25      misrepresentation or omission and the harm that the misrepresentation or omission created.”);  
26      *see also Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1052 (2010) (“[B]oth  
27      intentional and negligent misrepresentation require a showing that the claimed damages were  
28      caused by the alleged misrepresentations.”); *Yamaha Motor Co., USA v. Arnoult*, 114 Nev.

1 233, 238, 955 P.2d 661, 664 (1998) (“This court has long recognized that to establish  
2 proximate causation ‘it must appear that the injury was the natural and probable consequence  
3 of the negligence or wrongful act, and that it ought to have been foreseen in the light of the  
4 attending circumstances.’”) (internal citations omitted).

5 13. The Court finds that Dave Sandin’s licensee status did not cause or contribute to  
6 Plaintiff’s alleged damages, nor did any alleged misrepresentations concerning his licensing  
7 status result in Plaintiff’s failure to pay its policy premium, Oregon Mutual’s subsequent  
8 cancellation of Plaintiff’s policy, and Oregon Mutual’s denial of Plaintiff’s claim of loss based  
9 on the cancellation.

10 14. The licensing status of a non-resident agent is purely an administrative matter.  
11 See NRS 683A.201(1) & (3). NRS 683A.201 does not provide for a private right of action.  
12 Rather, NRS 683A.201 provides for an administrative fine.

13 15. In order to prevail on a cause of action for negligence per se, the injury must be  
14 of the type against which the statute was intended to protect. See *Anderson v. Baltrusaitis*, 113  
15 Nev. 963, 944 P.2d 797 (1997); *Sagebrush Ltd. v. Carson City*, 99 Nev. 204, 660 P.2d 1013  
16 (1983) (“[V]iolation of a statute may constitute negligence *per se* only if the injured party  
17 belongs to the class of persons that the statute was intended to protect, and the injury is of the  
18 type that the statute was intended to prevent.”). “Whether a legislative enactment provides a  
19 standard of conduct in the particular situation presented by the plaintiff is a question of  
20 statutory interpretation and construction for the court.” *Sagebrush*, 99 Nev. at 208, 660 P.2d at  
21 1015.

22 16. Oregon Mutual’s cancellation of Plaintiff’s insurance policy due to Plaintiff’s  
23 failure to pay the premium is not the type of injury that NRS 683A.201 is intended to prevent.

24 17. NRS 686A.015(1) provides that “[n]otwithstanding any other provision of law,  
25 the Commissioner has exclusive jurisdiction in regulating the subject of trade practices in the  
26 business of insurance in this state.”

27 18. The Nevada Supreme Court has held that matters within Title 57, including the  
28 licensing of agents, are administrative matters. See *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565,

1 572, 170 P.3d 989, 994 (2007).

2 **Plaintiff's claims of breach of fiduciary duty, negligence and negligence per se, fraud, and**  
3 **fraud in the inducement.**

4 19. Based on the foregoing, Plaintiff's cause of action for breach of fiduciary duty  
5 fails as a matter of law and the Sandin defendants are entitled to summary judgment on this  
6 claim.

7 20. Plaintiff's negligence claim based on the alleged duty by the Sandin defendants  
8 to notify OPH of a pending cancellation is barred by the economic loss doctrine. *Terracan*  
9 *Consultants Western, Inc. v. Mandalay Resorts*, 125 Nev 66, 206 P.3d 81 (2009).

10 21. Based on the foregoing, Plaintiff's cause of action for negligence and negligence  
11 per se fails as a matter of law and the Sandin defendants are entitled to summary judgment on  
12 these claims.

13 22. Plaintiff cannot prove the elements required to prove fraud and fraud in the  
14 inducement. Namely, Plaintiff has not shown a misrepresentation by the Sandin defendants  
15 and causation.

16 23. Based on the foregoing, Plaintiff's cause of action for fraud in the inducement  
17 fails as a matter of law and the Sandin defendants are entitled to summary judgment on this  
18 claim.

19 24. Based on the foregoing, Plaintiff's cause of action for fraud fails as a matter of  
20 law and the Sandin defendants are entitled to summary judgment on this claim.

21 **Plaintiff's claim of Violation of NRS 686A.310**

22 25. NRS 686A.310(2) provides that "an insurer is liable to its insured for any  
23 damages sustained by the insured as a result of the commission of any act set forth in  
24 subsection 1 as an unfair practice."

25 26. The Nevada Supreme Court has held that only an insurer can be liable for unfair  
26 claims practices proscribed in NRS 686A.310. *See Albert H. Wohlers & Co. v. Bartgis*, 114  
27 Nev. 1249, 1263-64, 969 P.2d 949, 959-60 (1998).

28 ///



1           27.     As insurance agents, the Sandin defendants cannot be liable for violation of  
2 NRS 686A.310 pursuant to the statute's plain terms and the Supreme Court's holding in  
3 *Bartgis*.

4           28.     In its opposition, OPH did not oppose the Sandin defendants' motion for  
5 summary judgment on the claim for violation of NRS 686A.310. See Plaintiff's opposition at  
6 12, n.1. Plaintiff's failure to oppose the motion on the this claim constitutes consent to  
7 granting summary judgment. See EDCR 2.20(c).

8           29.     The Sandin defendants are entitled to judgment as a matter of law on Plaintiff's  
9 claim for violation fo NRS 686A.310.

10           WHEREFORE, the Sandin Defendants are entitled to summary judgment on all  
11 Plaintiff's claims as a matter of law.


12           IT IS SO ORDERED.

13           DATED this 26 day of June, 2015.

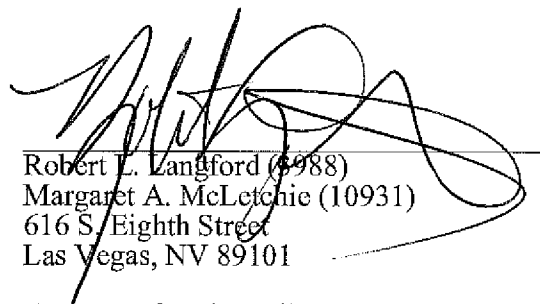
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16 THE HONORABLE GLORIA STURMAN

17  
18 Submitted by:  
19 HUTCHISON & STEFFEN, LLC

Reviewed by:  
LANGFORD MCLETCHE LLC

20  
21   
22 Patricia Lee (8287)  
23 Michael S. Kelley (10101)  
24 Peccole Professional Park  
25 10080 West Alta Drive, Suite 200  
26 Las Vegas, NV 89145

27 *Attorneys for defendants*  
28 *David Sandin and Sandin & Co.*

  
Robert L. Langford (8988)  
Margaret A. McLetchie (10931)  
616 S. Eighth Street  
Las Vegas, NV 89101  
*Attorneys for plaintiff O.P.H. of Las Vegas Inc.*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**January 31, 2013**

---

A-12-672158-C      O.P.H. of Las Vegas, Inc., Plaintiff(s)  
vs.  
Oregon Mutual Insurance Company, Defendant(s)

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**January 31, 2013      9:00 AM      Motion to Dismiss      Defendants David Sandin and Sandin & Company's Motion to Dismiss**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Klein

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- No parties present. Court noted it received a phone call yesterday from Counsel and Court received an unfiled copy of the Oregon Mutual Insurance Company's Peremptory Challenge. COURT ORDERED, Matter OFF CALENDAR, and case to be reassigned.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**February 13, 2013**

---

A-12-672158-C      O.P.H. of Las Vegas, Inc., Plaintiff(s)  
vs.  
Oregon Mutual Insurance Company, Defendant(s)

---

**February 13, 2013      9:00 AM      Motion to Dismiss**

**HEARD BY:** Sturman, Gloria      **COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Ying Pan

**RECORDER:** Rosalyn Navara

**REPORTER:**

**PARTIES**

**PRESENT:**      Branson, Z. Kathryn, ESQ      Attorney  
                 Lee, Patricia      Attorney  
                 McLetchie, Margaret A., ESQ      Attorney

**JOURNAL ENTRIES**

- Attorney Kristin Meredith (Bar No. 11655) appearing for Attorney Vincent Cass, on behalf of Defendant, Oregon Mutual Insurance Company.

Arguments by counsel regarding duty of insurance broker, cancellation of policy, and licensing issue of insurance broker. Court FINDS, Nevada has a low pleading standard, Plaintiff should have an opportunity to conduct Discovery. COURT ORDERED, motion DENIED WITHOUT PREJUDICE.

Ms. McLetchie to prepare proposed Order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**January 22, 2014**

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|               |                                                                                                 |
|---------------|-------------------------------------------------------------------------------------------------|
| A-12-672158-C | O.P.H. of Las Vegas, Inc., Plaintiff(s)<br>vs.<br>Oregon Mutual Insurance Company, Defendant(s) |
|---------------|-------------------------------------------------------------------------------------------------|

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|                         |                |                                                |
|-------------------------|----------------|------------------------------------------------|
| <b>January 22, 2014</b> | <b>9:30 AM</b> | <b>Motion for Partial<br/>Summary Judgment</b> |
|-------------------------|----------------|------------------------------------------------|

**HEARD BY:** Sturman, Gloria

**COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Linda Denman

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

|                 |                             |          |
|-----------------|-----------------------------|----------|
| <b>PRESENT:</b> | Branson, Z. Kathryn, ESQ    | Attorney |
|                 | Freeman, Robert W.          | Attorney |
|                 | Heidtke, Daniel B.          | Attorney |
|                 | McLetchie, Margaret A., ESQ | Attorney |
|                 | O'Briant, Priscilla L.      | Attorney |

**JOURNAL ENTRIES**

- Argument by counsel on PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT to establish defendant Oregon Mutual Insurance Company's liability. Mr. Heidtke argued the notice cancelling plaintiff's insurance due to non-payment lacked the required language under NRS 687(b) 360 which alerts an insured that they have an opportunity to be given specific reasons why a policy is being cancelled, which cancellation then becomes effective after ten (10) days. He explained the timeline in the current case was original notice sent 7/31; policy lapsed 8/16; building burned 8/17; notice with 360 language sent 8/21 so proper cancellation would be ten days following.

Mr. Freeman argued the notice specifically stated cancellation was for non-payment of premium as required in NRS 687(b) 320, which would make 360 unnecessary as there was nothing arbitrary or confusing about the notice.

COURT STATED ITS FINDINGS that what was required to trigger 360 was a question of fact and not

law. COURT ORDERED Motion for Partial Summary Judgment DENIED.

Mr. Freeman to prepare proposed Order; opposing counsel to review as to form and content.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**August 29, 2014**

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|               |                                               |
|---------------|-----------------------------------------------|
| A-12-672158-C | O.P.H. of Las Vegas, Inc., Plaintiff(s)       |
|               | vs.                                           |
|               | Oregon Mutual Insurance Company, Defendant(s) |

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**August 29, 2014      9:00 AM      All Pending Motions**

**HEARD BY:** Bulla, Bonnie      **COURTROOM:** RJC Level 5 Hearing Room

**COURT CLERK:** Jennifer Lott

**RECORDER:** Francesca Haak

**REPORTER:**

**PARTIES**

|                 |                        |          |
|-----------------|------------------------|----------|
| <b>PRESENT:</b> | Kelley, Michael S.     | Attorney |
|                 | Langford, Robert L.    | Attorney |
|                 | O'Briant, Priscilla L. | Attorney |

**JOURNAL ENTRIES**

- David Sandin and Sandin & Co.'s Motion to Strike Rebuttal Report of Neal Bordenave on OST  
..... Oregon Mutual Insurance Company's Joinder to Strike Rebuttal Expert Report of Neal  
Bordenave on OST

Commissioner did not receive Pltf's courtesy copy of Opposition. Oral opposition present by Mr. Langford. Commissioner will treat the rebuttal expert as an initial expert, but Defts will get a new initial expert date. COMMISSIONER RECOMMENDED, David Sandin and Sandin & Co.'s Motion to Strike Rebuttal Report of Neal Bordenave and Joinder are DENIED; alternative relief is provided; Neal Bordenave is not a rebuttal expert, and he will be treated as an initial expert in this case.

COMMISSIONER RECOMMENDED, discovery cutoff EXTENDED to 1/30/2015; adding parties, amended pleadings, and initial expert disclosures DUE 10/30/14 for Deft only; rebuttal expert disclosures DUE 12/1/14; FILE dispositive motions to 3/2/2015; Trial ready 4/13/2015. If Commissioner sees this conduct again, counsel will not get a pass. Commissioner advised counsel read the Rules.

Mr. Kelley to prepare the Report and Recommendations, and counsel to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Kelley to appear at status check hearing to report on the Report and Recommendations.

10/3/14 11:00 a.m. Status Check: Compliance

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**April 02, 2015**

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A-12-672158-C      O.P.H. of Las Vegas, Inc., Plaintiff(s)  
vs.  
Oregon Mutual Insurance Company, Defendant(s)

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**April 02, 2015      11:00 AM      Calendar Call**

**HEARD BY:** Sturman, Gloria      **COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Linda Denman

**RECORDER:** Kerry Esparza

**REPORTER:**

**PARTIES**

**PRESENT:**      Langford, Robert L.      Attorney  
Lee, Patricia      Attorney  
O'Briant, Priscilla L.      Attorney

**JOURNAL ENTRIES**

**- CALENDAR CALL**

Counsel advised they are ready to go but had date conflicts. Counsel agreed to consolidate all upcoming hearings to one date. COURT ORDERED trial dates VACATED and RESET; hearing dates RESET. New Trial Order to issue.

4/28/2015 at 10:00AM      DAVE SANDI'S MOTION FOR SUMMARY JUDGMENT. . . . OMI'S MOTION FOR SUMMARY JUDGMENT

8/20/2015 AT 11:00AM CALENDAR CALL  
9/14 THRU 10/9/2015      TRIAL STACK



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Breach of Contract

# COURT MINUTES

**May 14, 2015**

A-12-672158-C      O.P.H. of Las Vegas, Inc., Plaintiff(s)  
vs.  
Oregon Mutual Insurance Company, Defendant(s)

**May 14, 2015                      10:00 AM                      All Pending Motions**

**HEARD BY:** Sturman, Gloria **COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Linda Denman

**RECORDER:** Kerry Esparza

**REPORTER:**

## PARTIES

**PRESENT:** Freeman, Robert W. Attorney  
Langford, Robert L. Attorney  
Lee, Patricia Attorney  
O'Briant, Priscilla L. Attorney

## JOURNAL ENTRIES

- OREGON MUTUAL INSURANCE CO.'S MOTION FOR SUMMARY JUDGMENT . . . DAVE SANDIN AND SANDIN & CO.'S MOTION FOR SUMMARY JUDGMENT. . . Counsel argued whether there was reasonable notice given to plaintiff's that their insurance coverage would lapse by a certain date if the premiums were not paid. Counsel also argued whether plaintiff's agency, Sandin, received notice and if he was obligated to also call and notice plaintiff under course and conduct. Following argument, COURT ORDERED Oregon Mutual's Motion for Summary Judgment and Dave Sandin and Sandin & Co. s Motion for Summary Judgment GRANTED. COURT FURTHER ORDERED all future hearing and trial dates vacated.

PLAINTIFF'S MOTION TO BIFURCATE TRIAL . . . VACATED.

PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE REFERENCE TO OR EVIDENCE OF RENTS OWED BY PLAINTIFF .... VACATED.

PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE REFERENCE TO OR EVIDENCE OF ARSON ....

. VACATED.

DEFENDANT OREGON MUTUAL'S MOTION IN LIMINE #1 TO EXCLUDE PLAINTIFF'S  
SPECULATIVE DAMAGES... DAVE SANDI AND SANDI & CO'S JOINER THERETO.....  
VACATED.

DEFENDANT OREGON MUTUAL'S MOTION IN LIMINE #2 TO EXCLUDE PLAINTIFF'S  
EXPERTS' TESTIMONY TO THE EXTENT IT CONSTITUTES LEGAL OPINION(S)..... VACATED.

DAVE SANDIN AND SANDIN & CO.'S MOTION IN LIMINE TO EXCLUDE EVIDENCE RE: DAVE  
SANDIN'S NEVADA LICENSE STATUS..... VACATED.



**EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE**  
**NOTICE OF DEFICIENCY**  
**ON APPEAL TO NEVADA SUPREME COURT**

**MARGARET A. MCLEATCHIE**  
**701 E. BRIDGER AVE., SUITE 520**  
**LAS VEGAS, NV 89101**

**DATE: August 3, 2015**  
**CASE: A672158**

**RE CASE:** O.P.H. OF LAS VEGAS, INC. vs. OREGON MUTUAL INSURANCE COMPANY;  
DAVE SANDIN; SANDIN & CO.

NOTICE OF APPEAL FILED: July 30, 2015

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

**PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order *re: Order filed February 19, 2014*

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**NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:**

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

*Please refer to Rule 3 for an explanation of any possible deficiencies.*

---

**\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT; ORDER GRANTING DEFENDANT OREGON MUTUAL INSURANCE COMPANY MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS AGAINST OMI; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT OREGON MUTUAL INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS AGAINST OMI; ORDER GRANTING DEFENDANTS DAVE SANDIN AND SANDIN & CO.'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

O.P.H. OF LAS VEGAS, INC.,

Plaintiff(s),

vs.

OREGON MUTUAL INSURANCE  
COMPANY; DAVE SANDIN; SANDIN & CO.,

Defendant(s),

Case No: A672158

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 3 day of August 2015.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk