

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

**INDICATE FULL CAPTION:**

O.P.H. Of LAS VEGAS, INC.,  
Appellant,

vs.

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

No. 68543

Electronically Filed  
Aug 28 2015 09:05 a.m.

Tracie K. Lindeman  
Clerk of Supreme Court  
DOCKETING STATEMENT  
CIVIL APPEALS

**GENERAL INFORMATION**

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXVI  
County Clark Judge Gloria Sturman  
District Ct. Case No. A-12-672158-C

**2. Attorney filing this docketing statement:**

Attorney Margaret McLetchie Telephone 702-728-5300  
Firm McLetchie Shell, LLC.  
Address 701 E. Bridger Ave., Suite 520  
Las Vegas, Nevada 89101

Client(s) O.P.H. of Las Vegas, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Robert Freeman, Jr. & Priscilla O'Briant Telephone 702-893-3383  
Firm Lewis Brisbois Brisgaard & Smith, LLP  
Address 6385 S. Rainbow Blvd., Suite 600  
Las Vegas, NV 89118

Client(s) Oregon Mutual Insurance Company

Attorney Patricia Lee & Michael Kelley Telephone 702-385-2500  
Firm Hutchinson & Steffen, LLC  
Address 10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145

Client(s) Dave Sandin and Sandin & Co.

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |                                                             |                                                                         |
|-------------------------------------------------------------|-------------------------------------------------------------------------|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Counsel is not aware of any related proceedings.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Counsel is not aware of any related proceedings.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

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

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

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

Issue 1: Whether the district court erred in granting OMI summary judgment where genuine issues of material fact existed as to whether OMI's July 31 Notice was legally sufficient to provide O.P.H. adequate notice of cancellation.

Issue 2: Whether the district court erred in granting summary judgment in favor of OMI on O.P.H.'s claim that the July 31 Notice was ineffective where—in denying O.P.H.'s motion for partial summary judgment—the district court had previously held that whether the notice was effective was “a question of fact.”

Issue 3: Whether the district court erred in granting summary judgment to the Sandin Defendants on O.P.H.'s negligence claim where the undisputed facts in the case demonstrated that, in the course acting as insurance agents for O.P.H., the Sandin defendants had a custom and practice of notifying O.P.H. when its insurance premiums were due.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Counsel is not aware of any related proceedings.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Pursuant to Nev. Rev. Stat. § 686B.360, cancellation notices must include "adequate information about the policyholder's right" to request information regarding facts which support the insurer's decision to cancel a policy. The lower court, however, interpreted § 686B.360 in a manner which reads that requirement out of the statute.

**13. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? \_\_\_\_\_

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** 6/30/15 & 7/1/15

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**16. Date written notice of entry of judgment or order was served** 6/30/15 & 7/1/15

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**18. Date notice of appeal filed** 7/30/15 (District Court) & 8/4/15 (Supreme Court)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

---

**SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |                                                   |                                       |
|---------------------------------------------------|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)            | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)            | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) _____    |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRAP 3A(b)(1) provides that, in a civil action, an appeal may be taken from "[a] final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." In this case, Appellant OPH filed a Motion for Partial Summary Judgment, alleging that the cancellation notice OMI sent purporting to notify them of impending cancellation was defective under Nev. Rev. Stat. § 686B.360. The District Court held that was a question of fact which could not be resolved on summary judgment. Later, all Defendants filed independent Motions for Summary Judgment, and those motions were granted, on all claims.

**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

O.P.H. of Las Vegas, Inc.  
Oregon Mutual Insurance Company  
Dave Sandin and Sandin & Co.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

n/a

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Counsel is not aware of any counterclaims, cross-claims, or third part claims.

Appellant O.P.H. raises the following claims on appeal:

1. Appeal from denial of motion for summary judgment;
2. Appeal from granting of motion for summary judgment as to Respondent Oregon Mutual Insurance; and
3. Appeal from granting of motion for summary judgment as to Respondents Dave Sandin & Sandin Co.

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

n/a



(b) Specify the parties remaining below:

n/a

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

In this case, the Respondents filed separate motions for summary judgment, neither of which, standing alone, would have disposed all claims against all parties. The district court granted both motions for summary judgment at the same hearing, thereby disposing of all claims in this matter.

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

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

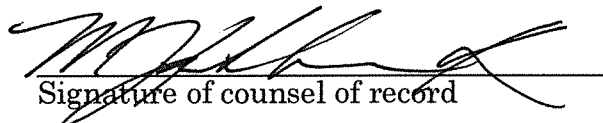
Name of appellant

Matthew J. Rashbrook

Name of counsel of record

Aug 27, 2015

Date

  
Signature of counsel of record

Clark County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 27th day of August, 2015, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

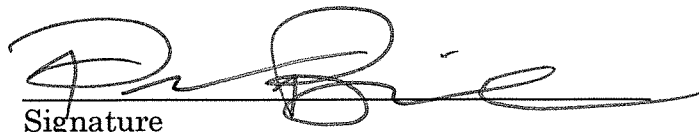
☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Robert W. Freeman, Jr. & Priscilla O'Briant  
Lewis Brisbois Brisgaard & Smith, LLP  
6385 S. Rainbow Blvd., Suite 600  
Las Vegas, Nevada 89118

Patricia Lee & Michael Kelley  
Hutchison & Steffen, LLC  
Peccole Professional Park  
10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145

and Settlement Judge:  
Salvatore Gugino  
9950 W. Cheyenne Ave.  
Las Vegas, NV 89129

Dated this 27th day of August, 2015

  
Signature