

1 premium finance company wanted to cancel, we didn't get
2 in the middle of that. That was the premium finance
3 company's rights to cancel the policy as per the finance
4 agreement that the client signed.

5 So it's always after it's cancelled, that's
6 generally when I want to get into it on that basis.

7 But we never gave notice of any pending
8 cancellation in any of the areas that I worked.

9 Q And why not?

10 A Because contractually we pick up more liability.
11 And the liability is the following: I have to do it to
12 all my clients. If I do it for one, I have got to do it
13 for all.

14 And I believe David Sandin made it clear he had
15 over 200 clients and he doesn't track it and he didn't
16 want to do it.

17 So I don't want to get into it, I have never
18 wanted to. And, in fact, when I teach the agents' errors
19 and omissions classes here in Nevada one of the items I
20 do teach very specifically is don't get in the middle of
21 that contractual relationship. Do your job at the
22 beginning, and then if it does get cancelled then get in
23 and say okay, how do we fix the problem, what do you want
24 to do?

25 Q Okay. If -- I mean, I think you have just

Page 15

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, MICHELLE BLAZER, a Certified Court Reporter
in and for the State of Nevada, do hereby certify:

That I was personally present for the purpose of
acting as Certified Court Reporter in the matter entitled
herein; that the witness was by me duly sworn; that
before the proceedings completion, the reading and
signing of the deposition has not been requested by the
deponent or party;

That the foregoing transcript is a true and
correct transcript of the stenographic notes of testimony
taken by me in the above-captioned matter to the best of
my knowledge, skill and ability.

I further certify that I am not an attorney or
counsel for any of the parties, nor a relative or
employee of any attorney or counsel connected with the
action, nor financially interested in the action.

DATED: 2/26/2015

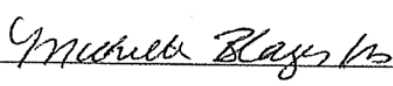

MICHELLE BLAZER, CCR #469 (NV) CSR #3361 (CA)

EXHIBIT 10

ANS
Patricia Lee (8287)
Z.Kathryn Branson (11540)
HUTCHISON & STEFFEN, LLC
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*Attorneys for defendants
Dave 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.: XXVII

**DEFENDANT SANDIN & CO.'S
ANSWERS TO PLAINTIFF O.P.H.
OF LAS VEGAS, INC.'S FIRST SET
REQUESTS FOR ADMISSION**

TO: O.P.H. OF LAS VEGAS, INC. and

TO: MARGARET A. MCLETCHIE, ESQ. of the law firm of LANGFORD MCLETCHIE
LLC, counsel for defendant..

In accordance with Rules 26 and 33 of the Nevada Rules of Civil Procedure, defendant
SANDIN & CO. (hereinafter, "Sandin & Co." or "defendant") responds to plaintiff O.P.H. OF
LAS VEGAS, INC.'s (hereinafter, "OPH" or "plaintiff") requests for admission as follows:

DEFINITIONS

The following definitions apply to the Sandin & Co.'s objections:

A. "Nondiscoverable/Irrelevant" - The request in question concerns a matter that is
not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the
discovery of admissible evidence.

B. "Unduly burdensome" - The request in question seeks discovery which is
unduly burdensome or expensive, taking into account the needs of the case, limitations on the

1 **RESPONSE:**

2 Objection. This request calls for a crucial fact that is central to this litigation and to
3 which Sandin & Co. is not required to provide a response. *See Morgan v. Demille*, 106 Nev.
4 671, 676 (1990). Furthermore, Sandin & Co. is unable to speculate as to what it would have
5 found on the BizLink System on August 16, 2012. Notwithstanding said objection, and
6 without waiving the same, Sandin & Co. responds as follows: after reasonable inquiry, the
7 information currently known or available is insufficient to allow Sandin & Co. to admit or deny
8 this request at this time, and Sandin & Co. therefore denies the same.

9 **REQUEST FOR ADMISSION NO. 10:**

10 Admit that, prior to the Policy being canceled on August 16, 2012, you did not give
11 notice or otherwise alert O.P.H. that the Policy was about to be canceled on August 16, 2012.

12 **RESPONSE:**

13 Objection. This request is also vague as to whether the Policy was arguably going to be
14 canceled for any reason other than non-payment of premium. Notwithstanding said objection,
15 and without waiving the same, Sandin & Co. responds as follows: Admit.

16 **REQUEST FOR ADMISSION NO. 11:**

17 Admit that you never accessed the BizLink System as it relates to O.P.H and/or the
18 Policy.

19 **RESPONSE:**

20 Deny.

21 **REQUEST FOR ADMISSION NO. 12:**

22 Admit that you did not access the BizLink System from July 1, 2012 through August
23 16, 2012.

24 **RESPONSE:**

25 Objection. This request calls for information is it relates to non-party insureds and is
26 therefore irrelevant and unlikely to lead to the discovery of admissible information.
27 Notwithstanding said objection, and without waiving the same, Sandin & Co. responds as
28 follows: Sandin & Co. admits that it did not access the BizLink System as it relates to O.P.H.

1 warned or otherwise notified O.P.H. that an insurance policy was about to be canceled.

2 **RESPONSE:**

3 Deny.

4 **REQUEST FOR ADMISSION NO. 29:**

5 Admit that you warn or otherwise notify clients, customers, and/or insureds that their
6 insurance policies are about to be canceled.

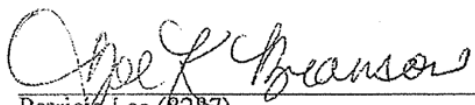
7 **RESPONSE:**

8 Objection. This request is vague and ambiguous regarding whether or not an admission
9 would constitute an "always, sometimes, or rarely" response. Notwithstanding said objection,
10 and without waiving the same, Sandin & Co. responds as follows: Sandin & Co. admits that he
11 rarely notifies clients, customers, and/or insureds that their insurance policies are about to be
12 canceled, and Sandin & Co. further denies that he has any duty to do so, or that so notifying
13 constitutes a regular practice, or that, by so notifying, any duty has arisen that would require
14 him to notify his customers, clients, and/or insureds.

15 **Discovery is on-going and defendant reserves the right to amend these responses**
16 **up to and including at the time of trial as allowed by applicable law and rules of civil**
17 **procedure.**

18 DATED this 9 day of August, 2013.

19 HUTCHISON & STEFFEN, LLC

20 

21 Patricia Lee (8287)
22 Z. Kathryn Branson (11540)
23 Peccole Professional Park
24 10080 West Alta Drive, Suite 200
25 Las Vegas, NV 89145
26 plee@hutchlegal.com
27 kbranson@hutchlegal.com

28 *Attorneys for defendants*
Dave Sandin and Sandin & Co.

EXHIBIT 11

1 **ANS**
2 Patricia Lee (8287)
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11 *Attorneys for defendants*
12 *Dave 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 Defendants.

) Case No.: A-12-672158-C

) Dept. No.: XXVII

) **DEFENDANT DAVE SANDIN'S**
) **ANSWERS TO PLAINTIFF O.P.H.**
) **OF LAS VEGAS, INC.'S FIRST SET**
) **OF INTERROGATORIES**

23 TO: O.P.H. OF LAS VEGAS, INC., plaintiff; and

24 TO: MARGARET A. McLETCHIE, ESQ. of the law firm of LANGFORD McLETCHIE
25 LLC, counsel for plaintiff:

26 In accordance with Rules 26 and 33 of the Nevada Rules of Civil Procedure, defendant
27 DAVE SANDIN (hereinafter, "D. Sandin" or "defendant") responds to plaintiff O.P.H. OF
28 LAS VEGAS, INC.'s (hereinafter, "OPH" or "plaintiff") interrogatories as follows:

DEFINITIONS

The following definitions apply to the D. Sandin's objections:

A. "Nondiscoverable/Irrelevant" - The request in question concerns a matter that is
not relevant to the subject matter of this litigation and is not reasonably calculated to lead to the
discovery of admissible evidence.

B. "Unduly burdensome" - The request in question seeks discovery which is

1 System.” Notwithstanding said objection and without waiving the same, D. Sandin responds as
2 follows: D. Sandin used BizLink from December 22, 2011 through December 27, 2011 to
3 provide information to OMI regarding OPH’s property to be covered, contents of the property,
4 general liability limits sought, location of property, fire-proofing information, etc. in order to
5 obtain the Policy for OPH. After December 27, 2011, D. Sandin may have accessed the
6 BizLink System as it relates to OPH and the Policy in or about June 2012 to add a new location
7 endorsement. This was the last time D. Sandin accessed BizLink as it relates to OPH and the
8 Policy until August 17, 2012.

9 **INTERROGATORY NO. 4:**

10 Please explain when and how you informed OPH that the Policy was nearing
11 cancellation. Your response should include, but should not be limited to, the time, date and
12 manner in which you alerted, warned, or otherwise notified OPH that the Policy would be
13 canceled.

14 **RESPONSE TO INTERROGATORY NO. 4:**

15 Objection. This interrogatory assumes facts not in evidence. This interrogatory also
16 erroneously assumes that D. Sandin has a legal obligation beyond procurement of insurance
17 based on a client’s, customer’s, and/or insured’s stated coverage needs under an insurance
18 policy placed through D. Sandin. Notwithstanding said objection and without waiving the
19 same, D. Sandin responds as follows: D. Sandin did not inform OPH that the Policy was
20 nearing cancellation.

21 **INTERROGATORY NO. 5:**

22 Please explain when and how you were notified that the Policy had been canceled.
23 Your response should include, but should not be limited to, the time, date, and manner in which
24 you came to discover that the Policy had been canceled, and please identify the person(s) you
25 communicated with regarding or relating to the Policy having been canceled.

26 **RESPONSE TO INTERROGATORY NO. 5:**

27 D. Sandin received communication Anthony Sandin on Friday, August 17, 2012
28 between 4:00 p.m. and 4:45 p.m. that the Policy had been cancelled.

INTERROGATORY NO. 6:

Please explain when and how you notified OPH that the Policy had been canceled.
Your response should include, but should not be limited to, the time, date, and manner in which
you informed OPH that the Policy had been canceled, and please identify the person(s) you
communicated with regarding, or relating to, the Policy having been canceled.

1 procedure. This interrogatory also erroneously assumes that D. Sandin has a legal obligation
2 beyond procurement of insurance based on a client's, customer's, and/or insured's stated
3 coverage needs under an insurance policy placed through D. Sandin. Notwithstanding said
4 objection and without waiving the same, D. Sandin responds as follows: D. Sandin has no
5 "typical practices, polices, and/or procedures of monitoring" whether his client's and/or
6 customer's insurance policies are nearing cancellation, especially where, as here, the insured
7 receives its bill(s) for policy premiums directly from the carrier.

7 **INTERROGATORY NO. 9:**

8 Please explain why you continued to operate, and interact with OPH, as though the
9 Policy was still in effect on August 16, 2012 and for days thereafter, when the Policy was
10 allegedly canceled on August 16, 2012 at 12:01 A.M.

10 **RESPONSE TO INTERROGATORY NO. 9:**

11 Objection. This interrogatory assumes facts not in evidence and contradicts evidence of
12 communications regarding the Policy's cancellation commencing August 17, 2012. This
13 interrogatory is also vague as to the phrase "and for days thereafter" and is argumentative.
14 Notwithstanding said objection, and without waiving the same, D. Sandin responds as follows:
15 D. Sandin did not know the Policy was cancelled until August 17, 2012, at which point he
16 immediately contacted Stephen Freudenberger and Linda Snyder to inform them of the
17 cancellation.

17 **INTERROGATORY NO. 10:**

18 Please explain why you did not inform OPH that the Policy was nearing cancellation
19 before the Policy was canceled.

19 **RESPONSE TO INTERROGATORY NO. 10:**

20 Objection. This interrogatory erroneously assumes that D. Sandin has a legal obligation
21 beyond procurement of insurance based on a client's, customer's, and/or insured's stated
22 coverage needs under an insurance policy placed through D. Sandin. This interrogatory is also
23 duplicative of other interrogatories set forth herein. Notwithstanding said objection and
24 without waiving the same, D. Sandin responds as follows: D. Sandin did not know the Policy
25 was nearing cancellation before it was cancelled on August 16, 2012 due to OPH's non-
26 payment of premium.

26 **INTERROGATORY NO. 11:**

27 Please explain why you recommended that OPH change insurance providers and
28 purchase the Policy from OMI. Your response should include, but should not be limited to, the

1 VERIFICATION

2 STATE OF OREGON

3 COUNTY OF MULTNOMAH) ss:

CLACKAMAS

4 SANDIN & CO., under penalties of perjury, being first duly sworn deposes and says:

5 That I have read the foregoing DEFENDANT SANDIN & CO.'S ANSWERS TO
6 PLAINTIFF O.P.H. OF LAS VEGAS, INC.'S FIRST SET OF INTERROGATORIES
7 and know the contents thereof;

8 That the same is true of my own knowledge, except for those matters therein contained
9 stated upon information and belief, and

10 That based on this information, I believe the DEFENDANT SANDIN & CO.'S
11 ANSWERS TO PLAINTIFF O.P.H. OF LAS VEGAS, INC.'S FIRST SET OF
12 INTERROGATORIES to be truthful.

13 

14
15 SANDIN & CO.
By: Anthony Sandin
16 Its: Principal

17
18 SWORN and SUBSCRIBED to before me
19 this 13 day of August, 2013.

20 
21 NOTARY PUBLIC in and for said
22 County and State

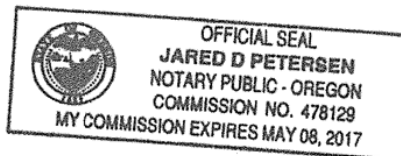


EXHIBIT 12

Las Vegas Sun

After fire, owner undecided on fate of Original Pancake House

By **Cristina Chang**

Published Friday, Aug. 17, 2012 | 9:22 a.m.

Updated Friday, Aug. 17, 2012 | 12:11 p.m.

An early morning fire destroyed a restaurant that's served breakfast to Las Vegas locals and visitors for 17 years.

At 2:53 a.m., a passerby reported seeing heavy smoke coming from the roof of the Original Pancake House, 4833 W. Charleston Blvd., west of South Decatur Boulevard, Las Vegas Fire & Rescue spokesman Tim Szymanski said.

The first firefighting unit arrived to see heavy smoke coming from vents on the restaurant's roof and requested additional units. Minutes later flames shot through the roof, indicating the attic over the entire building was ablaze, Szymanski said.

The fire was brought under control in about 15 minutes, he said.

Stephan Freudenberger, who with his wife is the local franchisee for the national restaurant, said this morning it was too early to determine what his plans would be for the Charleston Boulevard location.

Freudenberger said he and his wife arrived after his general manager called and reported seeing the business on fire on television news. The restaurant was closed when the fire broke out.

A fence is being erected around the burned-out building as investigators from Las Vegas Fire & Rescue and the restaurant's insurer determine a cause for the fire. Szymanski indicated that determination may take several weeks.

The restaurant opened in 1995 and employs about 25 people, many of whom had worked there since its inception. A second Original Pancake House location in Las Vegas, at 4170 South Fort Apache Road, remains open.

Fire officials had not yet determined a damage estimate.

, 89102



Locally owned and independent since 1950; Winner of the Pulitzer Prize for Public

OPH - 0114

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APP00376

~~149612~~ decided on fate of Original Pancake House - Las Vegas Sun News

Service, best news website in the nation & DuPont Award for broadcast journalism

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Las Vegas Sun

2360 Corporate Cir. Henderson, NV 89074

**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

PARTIES	Freeman, Robert W.	Attorney for Oregon Mutual Insurance
PRESENT:	Langford, Robert L.	Attorney for Plaintiff O.P.H. of Las Vegas
	Lee, Patricia	Attorney for Sandin Defendants
	O'Briant, Priscilla L.	Attorney for Oregon Mutual Insurance

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.

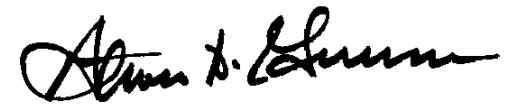
PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE REFERENCE TO OR EVIDENCE OF ARSON VACATED.

A-12-672158-C

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



CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

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

Plaintiff,)

vs.)

OREGON MUTUAL INSURANCE)

COMPANY, DAVE SANDIN, SANDIN)

AND CO.,)

Defendants.)

CASE NO. A-12-672158

DEPT. NO. XXVI

Transcript of Proceedings

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

THURSDAY, MAY 14, 2015

APPEARANCES:

For the Plaintiff: ROBERT L. LANGFORD, ESQ.

For the Defendants: PATRICIA LEE, ESQ.
ROBERT W. FREEMAN, ESQ.
PRISCILLA L. O'BRIANT, ESQ.
MICHAEL S. KELLEY, ESQ.

RECORDED BY: KERRY ESPARZA, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 THURSDAY, MAY 14, 2015 AT 10:39 A.M.

2

3 THE COURT: Okay. Everybody state their
4 appearances for the record and then we'll go over what
5 we've got on calendar.

6 MR. LANGFORD: Robert Langford on behalf of the
7 defendant O -- or plaintiff, O.P.H., Your Honor.

8 MR. FREEMAN: Robert Freeman here for Oregon
9 Mutual.

10 MS. LEE: Patricia Lee, bar number 8287, on behalf
11 of the Sandin defendants.

12 MS. O'BRIANT: Priscilla O'Briant on behalf of
13 Oregon Mutual.

14 MR. KELLEY: Michael Kelley on behalf of the
15 Sandin defendants.

16 THE COURT: All right. We've got a number of
17 motions on. We've got Dave Sandin and Sandin and Company's
18 Joinder to Oregon Mutual's Motion in Limine, we've got a
19 bunch of motions in limine, another Motion in Limine to
20 Exclude Reference or Evidence of Rents Owed, Motion to
21 Bifurcate, Oregon Mutual's Motion for Summary Judgment,
22 Sandin and Company's Motion for Summary Judgment, another
23 motion in limine on expert witnesses, a Motion in Limine to
24 Exclude Speculative Damages, a Motion in Limine to Exclude
25 License Status, and a Motion in Limine to Exclude Evidence

1 of Arson.

2 So, I assume you want to start with the Motions
3 for Summary Judgment?

4 MR. FREEMAN: Sure.

5 MS. LEE: We can, Your Honor.

6 THE COURT: All right. So, I don't which of those
7 is up first, but --

8 MR. FREEMAN: How about Oregon Mutual's?

9 THE COURT: Okay.

10 MS. LEE: Age before beauty, Your Honor.

11 MR. FREEMAN: You know, Your Honor, I find when I
12 was reviewing the pleadings to prepare that most of the
13 arguments are more than adequately described in the Motion,
14 Opposition, and Reply. I think this boils down to a very
15 simple fact pattern. O.P.H. bought insurance from Oregon
16 Mutual that required monthly premium payments. They did
17 not make those monthly premium payments. Oregon Mutual
18 notified them of that fact, gave them a notice that
19 reflected what the problem with the policy was, how much
20 was owed, gave them a date upon which they could cure.
21 They did not cure. The policy was cancelled and then
22 O.P.H. suffered the loss that is referenced in the
23 pleadings, the fire at the Original Pancake House.

24 The issue, it seems to me, you know, that O.P.H.
25 has brought up is anything that would convince you that

1 there is a genuine issue of material fact in this case and
2 I submit to you that there isn't. They have briefed that
3 this phrase of reasonable precision requires you to find a
4 fact issue there and I think you even suggested a year ago
5 in another motion that was filed that that might be a fact
6 issue. I would encourage you to revisit, that issue that
7 when you made that statement in court that issue was not
8 briefed to you. It has been briefed now. We've given you
9 authority for the proposition that the interpretation of
10 Nevada statutes is a question for the Court, is it a duty
11 and obligation of the Court.

12 That duty of the Court expands to interpreting
13 that statute in light of the legislative history. We've
14 given you the legislative history and the legislative
15 intent behind the statute that is at issue today. That
16 statute was written to protect insurers from arbitrary,
17 unnoticed midterm cancellations of their insurance policy
18 and that statute was written in such a way that the notice
19 given to the insured would give them enough information
20 about why it was being cancelled, that they could do
21 something about it.

22 In this case, we've given you the notice. It's at
23 page 5 of our Motion. It includes everything that is
24 necessary to be in there. It gives the reason that the
25 policy is going to be cancelled. We did not receive the

1 required premium payment on your account by the date due.
2 It gives the amount. It identified the date upon which
3 they have to make this payment to save their policy and it
4 tells them what happens if they don't. It tells them with
5 particularity which policies will be cancelled and when
6 they will be canceled by 12:01 a.m. standard time on August
7 16th, 2012.

8 We struggled -- I struggled with this notion of
9 what would I say to convince you that this is not a
10 question of fact that a jury has to decide and I think that
11 I will try to remind you of something else that you said a
12 year ago in the hearing. You said -- and I won't pretend
13 to be able to quote you a year later, but you said
14 something to the effect of: I can't imagine what more
15 could be in this notice that would inform the insured why
16 their policy was to be cancelled.

17 And it seems to me that if that is true, and I
18 can't imagine what more could be put in there, that
19 adopting the plaintiff's position here and saying that this
20 is a case that requires a jury to resolve would sentence
21 insurers to jury trial any time they have a midterm
22 cancellation of their policy. So it wouldn't matter what
23 was in the notice because all the plaintiff would have to
24 do is say: I beg to differ on your argument that this
25 notice is reasonably precise. It's not reasonably precise

1 and that's a jury question, so I get to go to a jury trial.

2 So you put yourself and insurers in a position
3 where they could never avoid jury trial in a mid-term
4 cancellation and that is far afield from the legislative
5 intent of the statute. The statute was not written so that
6 no policy could be cancelled midterm and I want you to
7 remember -- and I know that you do. This case is about the
8 plaintiffs nonpayment of their premium. I -- you know,
9 they bought insurance, they didn't pay for it, and they
10 suffered a loss, and they want to be paid anyway. That is
11 the core issue that we're talking about. It's not one of
12 any more moment than that and I struggle with trying to
13 figure out a way that if the plaintiff's position is
14 adopted you could avoid having every single midterm
15 cancellation go to trial.

16 So, we've given you authority for the proposition
17 that this is a question of law. We've given you guidance
18 as to what that question of -- how that question of law is
19 to be decided with resort to legislative intent. We've
20 even given you a couple of cases that were certainly
21 decided as questions of law on insurance cancellations
22 where the notices included language that is far more
23 ambiguous than: Hey, you didn't pay your premium. You
24 know, one of them was you -- you know, you're -- something
25 about improper housekeeping or you change the way you keep

1 -- you maintain your premises and it increased the risk
2 that was insured against.

3 So, I don't know what -- if you have any
4 questions, I'm happy to ask them or answer them. But I
5 think --

6 THE COURT: Just back to the statement of facts,
7 the plaintiffs dispute essentially two things. The first
8 thing they dispute is the statement in your Motion that on
9 August 13, 2013 -- I think it was 2012.

10 O.P.H. cut a check for the July payment and placed
11 it in an envelope with first class postage. On that
12 date, O.P.H. knew it had not made the payment pursuant
13 to the terms of the July billing statement, but did not
14 contact their agent or OMI to advise the payment would
15 be late. Remarkably, despite knowing that the July
16 payment had not been made, and realizing it needed to
17 go in the mail to be received timely, O.P.H.
18 intentionally did not mail the check in which the
19 reason of fact is disputed is O.P.H. is not aware that
20 the August 13, 2012 check intended its July payment had
21 not -- had to be remitted by August 15, 2012 in order
22 to prevent cancellation of the policy. This is a
23 result of the fact that they did not receive notice of
24 such from either OMI or the Sandin defendants.

25 MR. FREEMAN: Well, we've given you authority -- I

1 don't know whether -- you know, I don't know what went on
2 in their office. You know, I don't know --

3 THE COURT: Right.

4 MR. FREEMAN: -- what they got but we've given you
5 authority --

6 THE COURT: But the issue is that OPI was not
7 aware of the August 13, 2012 check had to be remitted by
8 August 15 because they didn't get that notice isn't the
9 issue. The fact that the notice was sent is the issue.

10 MR. FREEMAN: Exactly. The statute requires
11 notice be sent. We've proved the notice was sent.

12 THE COURT: It doesn't require notice to be
13 received.

14 MR. FREEMAN: Right.

15 THE COURT: It doesn't' require anybody to pick up
16 the phone and call them and say did you get the notice.

17 MR. FREEMAN: No. We complied. I mean, the --
18 It's not coincidence. The obligation is under the
19 insurance policy. The obligations under the statute are
20 the same. We complied with those obligations. We gave
21 them a reason for, you know, what -- why the policy was
22 going to be cancelled. We gave them the effective date of
23 that cancellation. We mailed it more than 10 days prior to
24 the cancellation and it was mailed first class. That is the
25 obligations under the policy and the Nevada statute.

1 Now, I -- you know, I -- what more can we do other
2 than what we've done? That's what we contracted to do.
3 That's what the statute requires us to do. We did it.
4 That's undisputed. So we should be able to rely on this
5 statute and the Court's interpretation of it to protect us
6 from the time and expense and uncertainty associated with
7 having to go to a jury when we canceled the policy
8 properly.

9 THE COURT: Thank you.

10 MR. LANGFORD: This case is really about notice.
11 It's absolutely about notice, but not only notice to
12 O.P.H., Your Honor, but notice to Sandin defendants as
13 well. The requirements of the policy indicated that Sandin
14 defendants would be noticed if there was going to be
15 termination for nonpayment and because they didn't notify -
16 - give notice to Sandin defendants, now they're going to
17 say they did because it was up for a 24-hour period on a
18 website called Bizlink, they're going to say: Oh, well
19 that was our notice. Sandin defendants are going to tell
20 you: Well, that wasn't really noticed because we're
21 hinging our argument on the fact that we didn't get notice
22 so how could we give notice to O.P.H.?

23 The fact is the notice that they gave to Sandin
24 defendants, which they said they were going to give, is
25 inadequate and it didn't provide enough notice to the

1 Sandin defendants so that they could then also comply with
2 their duty to give notice to O.P.H. So OMI stays in
3 because there's problems with their notice all over the
4 place, Your Honor. And that's undisputed.

5 THE COURT: Okay. Well, here's the problem that I
6 have with this case, because this is really what it's
7 about, is the premium was sent in -- I think it said
8 January -- July 9th. July 9th, due within -- I don't know
9 how many days. It wasn't paid. So on July 31st, they sent
10 a notice saying you're late, if you don't pay us by August
11 15th, we're going to cancel your policy.

12 They didn't pay by August 15th and I understand
13 you're concerned with they didn't get notice, but they
14 didn't pay and they had a check -- they -- written that
15 they knew they needed to send and they didn't send the
16 check. So I'm kind of like: What right do they have to
17 say we didn't receive notice, so we're protected from our
18 own failure to put a check that we wrote in the mail
19 because we didn't -- we say we didn't get a notice?

20 MR. LANGFORD: Because the terms of the policy,
21 Your Honor, indicate that OMI will give notice both to
22 O.P.H. but also to the Sandin Group.

23 THE COURT: But it doesn't say that you have to
24 receive it.

25 MR. LANGFORD: No, that's --

1 THE COURT: It says we have to give it -- to send
2 it.

3 MR. LANGFORD: That's correct, but if you create a
4 situation that is likely that you're not going to get it
5 because -- and you say: Well, how does that insurance
6 company benefit by that? They benefit in two ways. First,
7 let's say nothing happens. You do a head smack and say I
8 haven't paid my insurance and you go down and you -- well
9 there's a reinstatement fee. So the insurance company
10 wins. They're not on the hook for any damages of anything
11 because nothing's happened. So they win because they make
12 more money that way with a faulty -- or a -- may comply
13 strictly, but doesn't really ever provide any kind of
14 notice or is likely to not provide the kind of notice for a
15 plaintiff to cure.

16 Secondly, they win in that if it lapses, and there
17 is a catastrophic circumstance where there's a great loss
18 of the property that they would be on the hook for, then
19 they get to stand back and say: Oh, gosh, you didn't pay
20 and so we don't have to pay. And there's something wrong
21 with that.

22 Under the terms of the policy, they said they
23 would give notice also to the Sandin defendants. That
24 notice was woefully inadequate and that was the scheme that
25 was concocted by OMI. Sandin had no -- you know, they

1 didn't say: Hey, we would really like to go to this system
2 where the notice is only up for one day and if we happen to
3 catch it, great; and if we don't, we don't.

4 OMI also knows, their expert testified, that there
5 are agents who perform the function that the Sandin agents
6 and brokers were doing and that is there -- they back up
7 the notice system. There's a pecuniary interest on the
8 part of the Sandin defendants to do that. They get money
9 from premiums that are paid on a regular basis. That's how
10 they make their money. And so, if they had a client that
11 is about to lapse on their coverage, it is in their best
12 interest to call that client and say: Hey, cure the lapse.
13 You need to make your premium payment because that's how
14 they get their money. It's a scheme that OMI created with
15 this up for one day and gone into the archive, a lack of
16 training and monitoring of its agents as to whether they
17 can actually access on a regular basis and do access on a
18 regular basis their webpage.

19 There's a variety of issues that are factual
20 issues that should go before a jury on this case holding --
21 giving liability to OMI.

22 THE COURT: Okay. Well, so you're saying that
23 they can't cancel insurance -- they can't cancel any of
24 their policyholders' insurance because they don't provide
25 adequate notice to the agents who write the policy?

1 MR. LANGFORD: In this case, that's what took
2 place. That's a factual issue that has to be decided. Was
3 that notice that they said they would give to Sandin
4 sufficient notice for Sandin to be able to perform the
5 function that it had historically done and that was to
6 notify O.P.H. of --

7 THE COURT: And where is the duty on the insurance
8 company to do that?

9 MR. LANGFORD: It's in the policy. It says they
10 will --

11 THE COURT: Okay.

12 MR. LANGFORD: -- give that notice to Sandin
13 defendants.

14 THE COURT: Okay. And, again, where the statute
15 doesn't say that you have to give this notice of
16 cancellation to your insured a return receipt request so
17 that you've got proof that they got it. In other words,
18 you have to -- the insured must be notified before they can
19 be cancelled. They have to receive notice before they can
20 be cancelled, to have proof that they received notice
21 before it being cancelled.

22 Where would there be any duty -- any obligation
23 that they have to have proof that the agent received notice
24 before they can, I don't know, take down their notice or
25 proceed with their cancellation or I just --

1 MR. LANGFORD: There isn't, but as the Sandin
2 expert said, Your Honor, you know, this -- he wouldn't go
3 as far as to say that one day wasn't adequate. He said he
4 sure would have liked to have seen more days up there and
5 think about it. If you've got a variety of things, you
6 know, is it reasonable to believe that you're going to go
7 to that website each and every day and search out your --
8 the people that are your clients? It's not reasonable to
9 believe that but that's what OMI did.

10 They created that duty contractually within the
11 policy that they would give Sandin defendants notice. Part
12 and parcel of that -- I mean, all the experts talked about,
13 oh, yeah, that happens out there. There are agents that do
14 then call up their clients and say, hey your insurance is
15 about to lapse, you need to do something about that. So
16 they know that. They know that going in. And they created
17 this system where it is likely that those agents that do
18 that -- it's reasonable to believe that those agents are
19 not going to get that notice. That's the system they've
20 created, Your Honor.

21 THE COURT: Okay.

22 MR. FREEMAN: May I respond to that?

23 THE COURT: Certainly, Mr. Freeman.

24 MR. FREEMAN: Yes. Again, I'm going to rotate
25 back to what I said before. The Nevada Legislature decided

1 -- I -- you know, counsel calls this a scheme, he describes
2 our notice practice as being unlikely to give notice to
3 insureds. The Legislature decided what kind of notice was
4 likely to be given to insureds. They wrote the statute.
5 We complied with the statute. We also complied with our
6 policy. We gave notice to Sandins -- the notice was not
7 there for 24 hours. It was there for 30 days. It was
8 there for longer than the -- well past the cancellation
9 day.

10 Again, I don't think that's a genuine issue of
11 material fact as it relates to the claims against OMI. And
12 so, I don't think that you should be distracted by an
13 argument that relates to the sufficiency of a notice
14 between the insurance company and the agent, but if it
15 satisfies your curiosity, I'll tell you that we provided
16 that notice electronically, as our contract requires. So,
17 Mr. Langford said --

18 THE COURT: And you're saying your contract,
19 contract with whom?

20 MR. FREEMAN: The policy says we'll give notice to
21 the agent either by mail or electronically. We gave it
22 electronically.

23 It's not a scheme that we concocted to avoid our
24 policyholders knowing that they owe money. I mean, why
25 would we do that? Why would we be in business to try to

1 hide from our insureds the probability that their policy is
2 going to be cancelled because they haven't paid us? You
3 know, that makes no sense.

4 THE COURT: Okay.

5 MR. FREEMAN: Those notices were calculated to
6 satisfy our -- the contract and the statute. They did
7 that. Forcing us to go to trial now is not what the law
8 requires.

9 THE COURT: Okay. Thanks. Is -- were there --
10 are there cross claims here?

11 MR. FREEMAN: No cross claims.

12 THE COURT: So this is just -- yeah. Okay.
13 Thanks. All right. Next.

14 MS. LEE: Did you want to hear our Motion for
15 Summary Judgment next --

16 THE COURT: Yeah.

17 MS. LEE: -- Your Honor? The Sandin defendants.
18 Okay.

19 So just dovetailing -- I'm sorry. Just
20 dovetailing into what counsel was just saying, I mean,
21 really it does boil down to that they didn't pay their
22 premium and the policy got cancelled and when they realized
23 that it got cancelled -- and you can't write this if you
24 tried in a movie, the very next day the restaurant burns
25 down. I mean, what are the odds of that happening?

1 But once that happened, O.P.H. then looked around
2 to who they could blame and who they could recover from
3 because they still -- they wanted to get the insurance
4 money but they don't want to take any responsibility on
5 themselves when had they paid their premium, this would
6 have never happened. OMI would have continued to have
7 adjusted the claim and they would have been paid according
8 to the terms of the policy.

9 And now Dave Sandin, not being licensed at Nevada
10 at the time, his license had lapsed. He forgot to renew it
11 basically. It's an administrative fee that you pay.
12 There's nothing substantive that you have to do. It's an
13 administrative violation, the penalty of which is \$1,000 or
14 less.

15 So, at the time that this policy was placed, Dave
16 Sandin wasn't licensed but Sandin and defendants [sic], who
17 was listed as the broker of record, was licensed. And even
18 if Dave Sandin was licensed, it wouldn't have changed the
19 fact that OMI would have denied the claim. So it's
20 completely unrelated.

21 So there's all these kind of red herrings where
22 you weren't licensed and you had a duty to notify me even
23 though you didn't get any notice and they say that right in
24 their Complaint. They concede that we did not get notice,
25 meaning the Sandin defendants did not get notice and when

1 Mr. Freudenberger, their -- the owner of O.P.H. was
2 deposed, he was asked, you know: Well, would you -- did
3 you have an expectation that the Sandins would notify you
4 if they themselves did not receive notice? And he said:
5 That's a foolish question. Are you really asking me that
6 question? And the deposing attorney said: Yes, I'm asking
7 that question. And he's like: Well, that's a foolish
8 question. Of course I would never expect someone to give
9 me notice if they themselves didn't get notice.

10 So, it's just kind of the smoke and mirrors and I
11 just kind of wanted to start with that framework, but
12 looking at the specific causes of action, Your Honor, we
13 have fraud in the inducement and fraud against our clients,
14 the Sandin defendants. We have violations of NRS 686(a),
15 which I believe they conceded was not a good cause of
16 action and agreed to voluntarily dismiss that in a footnote
17 on page 1 -- I'm sorry, page 12 of their Opposition,
18 footnote 1. If I am mistaken, I'm sure Mr. Langford will
19 let me know, but I think that's a nonissue anymore. And
20 then there's a negligence cause of action, a breach of
21 fiduciary duty action -- cause of action, and those are all
22 alleged against the broker.

23 So, if I could take fraud in the inducement and
24 fraud together, they're both the same elements and they
25 fail to meet the elements on this particular cause of

1 action because they can't show two elements that are
2 absolutely necessary to recover under fraud or fraud in the
3 inducement. First, they have to show that defendant made a
4 false representation.

5 So they're saying that Dave Sandin said: Hey, I'm
6 -- I have a nonresident broker's license in Nevada. That
7 would be the false statement, but nobody has testified that
8 Dave Sandin said that. They're saying it was a material
9 omission. You should have told me that your license had
10 lapsed and if you would have told me, then I wouldn't have
11 -- I mean, I don't know what the logical conclusion is. If
12 you would have told me that your license had lapsed, then I
13 wouldn't have done business with Sandin and Company, which
14 did still have their license at the time he used them as a
15 broker of record, then I would have never contracted with
16 OMI and I would have never missed my premium policy
17 payment and then I would have been covered. I mean, I
18 don't know what -- it's just -- this line of logic that
19 just doesn't flow.

20 So they can't prove that there's any material
21 misrepresentations. Instead, what they're saying is there
22 was a material omission.

23 The second thing that they raised this fraud in
24 inducement claim is -- on is that we represented, meaning
25 the Sandin defendants, that OMI would meet plaintiff's

1 needs. I -- no one has testified that Dave Sandin
2 specifically said OMI will meet your needs, but he did
3 satisfy their duty -- that duty. Their own expert says:
4 Yeah, he placed the policy that they needed. Nobody is
5 disputing that and up until the point that they stopped
6 paying for this service, OMI was meeting their needs. If
7 they would have continued to pay, OMI would have continued
8 to do their job. So even if Dave Sandin did say that OMI
9 would meet plaintiff's needs, that's not a false statement.
10 OMI was meeting plaintiff's needs until O.P.H. breached the
11 contract.

12 And then, you know, you go through the rest of the
13 elements, but -- and I don't think they meet those either,
14 but just getting right down to the main elements that they
15 just have not been able to show is that they sustained
16 damages as a result.

17 So are they saying that Dave Sandin's
18 misrepresentation or omission about his license then caused
19 OMI to not pay the policy? That would have to be the nexus
20 to make this fraud in the inducement stick. You induced me
21 to enter into this contract with OMI by telling me that you
22 were a licensed broker in Nevada, but you really weren't,
23 and so now I've been damaged. That -- there's no nexus
24 there, Your Honor. Again, even if Dave Sandin had not
25 allowed his license to lapse, the policy still would have

1 been cancelled.

2 And, again, OMI met its needs. So, I mean, --

3 THE COURT: When was the policy -- when was the
4 license not in effect with respect to when the policy was -
5 -

6 MS. LEE: A few months before the policy was
7 placed, his license lapsed. He just forgot to renew it.
8 It's literally a fee. It's a fee that he paid. He forgot
9 to pay it. But the broker of record is actually Sandin and
10 Company, which was licensed. Anthony Sandin was licensed.
11 Dave Sandin had just inadvertently forgotten to pay the
12 fee. And so, it's an administrative fee. All of the
13 experts agree. That has nothing to do with their damages.
14 Their own expert even says: No, Dave Sandin's licensing
15 status has nothing to do with the damages in this case. I
16 agree with your expert on that.

17 So, fraud in the inducement, it's just absolutely
18 -- it's just outrageous in this case. It just cannot stand
19 and it should be dismissed because they cannot meet two of
20 the critical elements which is that there was a material
21 misrepresentation upon which they relied and that reliance
22 then caused the damage, which is nonpayment of the policy.
23 There is no causal nexus.

24 So we would ask that that -- the third and fourth
25 cause of action be dismissed.

1 Again, for the violations of NRS 686(a) on page
2 12, footnote 1, they concede that this was an improperly
3 pleaded cause of action against the brokers and so we will
4 accept that.

5 Then we get to negligence, Your Honor, which is
6 the seventh cause of action. In their Complaint, at
7 paragraph 88, they state in their Complaint that they're
8 suing for negligence per se, which we -- so based on the
9 statute that -- that because Dave Sandin wasn't licensed,
10 that caused them a harm that the statute was designed to
11 protect. But when they did their Opposition to our Motion,
12 they kind of broke it down into just general, good old
13 fashioned, run of the mill negligence and then went onto
14 address negligence per se. So I just want to make sure
15 that I'm understanding what it is that they're pleading and
16 make sure that I argue against both.

17 If they're arguing negligence, then that is barred
18 by the economic loss doctrine. Okay. So there's no
19 negligence that they can bring here. Under *Terracon*, they
20 would have to show a physical injury or they would have to
21 show a property damage, neither of which is being alleged
22 in terms of what my clients did. They had property damage,
23 but we didn't cause that property damage. The fire is an
24 unrelated thing to anything my clients did.

25 So if they're now saying for the first time, no,

1 we're just talking about duty breached causation, okay, but
2 that's not what you said in your Complaint, but if we have
3 to address it today, let me address it today. That cannot
4 fly under *Terracon*. They could have -- if they wanted
5 notice or they wanted Dave Sandin to be licensed or they
6 wanted, you know, all of these things, they could have
7 contracted for that which is why *Terracon* said you can't
8 sue for negligence in these type of cases unless there's a
9 physical injury or property damage.

10 So, I'll just put that out there because I'm not
11 exactly sure to what extent they're actually arguing
12 negligence because it's not in their Complaint. Their
13 Complaint actually argues negligence per se and they argue
14 that Dave Sandin conducted business in Nevada as an
15 insurance agent without being licensed as such in violation
16 of NRS 683(a)201.

17 Well, first of all, Your Honor, there is no
18 private right of action for violating this statute. It's a
19 penal statute. It's an administrative statute and the
20 penalty for violating this statute is that:

21 A person required to be licensed in this state who
22 transacts insurance without a license is subject to an
23 administrative fine of not more than \$1,000.

24 And the Nevada Supreme Court has expressly held
25 that in the absence of evidence of the legislative intent

1 to impose civil liability, a violation of a penal statute
2 is not negligence per se. It can never be negligence per
3 se because this -- you just -- there's no private right of
4 action for that.

5 And even if there were private cause of action, in
6 order to prevail on a claim for negligence per se, the
7 injury has to be the type against which the statute was
8 intended to protect. OMI's cancellation of O.P.H.'s policy
9 due to O.P.H.'s failure to pay the premium is not the type
10 of injury the statute was designed to -- you know, it's not
11 the class of people that the statute is designed to
12 protect.

13 So, either way, that fails. So I respectfully
14 submit that there is no negligence here. They've been
15 unable to prove, as a matter of law, Your Honor, not even
16 going into the factual dispute of everything -- assuming
17 everything they say is even true, as a matter of law, they
18 can't rely on negligence per se because it's an
19 administrative statute and they can't get negligence
20 because of the economic loss doctrine. So without even
21 delving into the facts, as a matter of law, Your Honor can
22 dismiss the negligence claim.

23 With respect to the breach of fiduciary duty, Your
24 Honor, and we were here at the very beginning of this case,
25 Your Honor, on a Motion to Dismiss and we talked about

1 *Iqbal* and how you're reluctant to, you know, grant any
2 motions at this early stage. Go off and do some discovery
3 and we have done a lot of discovery, Your Honor. We have
4 taken countless depositions, we've flown all over the
5 western region of the United States, we've subpoenaed
6 documents, we've done written discovery, and nothing that
7 we have done has changed the fact that what I said on the
8 first day I was here with you on the Motion to Dismiss is
9 that our client does not owe a duty, fiduciary or
10 otherwise, to O.P.H. other than what is articulated in
11 Nevada law.

12 Our client has a duty to do two things: procure
13 the insurance that's requested and, two, timely notify them
14 if we can't get it. That is it. That's the *Ketty*
15 [phonetic] case. Plaintiff cites to it in his brief. All
16 of the experts that were deposed say: Yeah, that is the
17 standard. That is what the law requires.

18 There is no statute that requires our client to
19 give notice of cancellation. There's no case law that
20 requires our client to give notice. They are hanging their
21 hat on course and conduct. They're saying: Hey, Mr. Dave
22 Sandin, you've been our insurance broker since 2002, 2005 -
23 - early 2000s, let's say, and you've given us notice at
24 least on three separate occasions that our policy was going
25 to terminate. Two of the occasions that they identified by

1 date, Dave Sandin wasn't even their broker. That's a
2 factual impossibility. That's not a genuine issue of
3 material fact. That's not disputed because no one's is
4 disputing that Dave Sandin was not their broker of record
5 during those two instances. So there's no issue of
6 material fact there.

7 Ms. Snyder is just flat-out wrong and nobody is
8 coming back and saying: Oh, wait, wait, wait. You were
9 the broker of record during those two years. So that just
10 leaves one instance, where, for the purposes of this
11 motion, because we have to take facts as true, or view them
12 in a light most favorable to them, one instance in which
13 Dave Sandin ostensibly told them about a pending
14 cancellation over -- since 2 -- since early 2000.

15 I don't know how that creates course and conduct
16 and whether or not this Court can accept that as a standard
17 when Nevada law has already articulated the standard for
18 brokers and what they're saying is that: Well, yeah, we
19 all agree. This is what the standard of broker is. They
20 have two obligations and that's it, however this is a
21 different case. This is not your average broker or client
22 relationship. Dave Sandin has been with these people since
23 the early 2000s. They relied on him for everything. They
24 were completely dependent on him for everything. They
25 needed to call -- you know, call me and remind me to pay my

1 bill, Dave Sandin, and if I don't and we get a cancellation
2 notice, you need to notify me that my policy is about to
3 cancel. So that's your duty because we've been together so
4 long.

5 Well, we've cited, Your Honor, a plethora of cases
6 in other jurisdictions. They've cited zero for the
7 opposite proposition. A plethora of cases in other
8 jurisdiction and there happens to be no case law on point
9 in Nevada, but that has said that you cannot create this
10 duty through course and conduct. I mean, we have here in
11 the -- we have a relationship between -- in the *Catana*
12 [phonetic] case, this is Tennessee case where the insurance
13 agent -- and the Court held that:

14 The insurance agent did not have an obligation to
15 inform the insured of cancellation of the insurance
16 even though the insured and the agent had been doing
17 business for 20 years.

18 The plaintiffs there argued that: Their
19 longstanding association with the agent gave rise to a
20 duty on his part to notify them.

21 It's the exact same argument they're making here.
22 Exact same argument. We've been together for years and
23 years and years. I always rely on you to do this for me
24 and this is the argument that they made in the *Catana*
25 [phonetic] case and the Court rejected that and granted

1 summary judgment on behalf of the brokers and said: Look,
2 your longstanding relationship with the broker doesn't then
3 impose a duty on him to notify you of a policy
4 cancellation. And the Court specifically says:

5 In the absence of an agreement -- okay. And we
6 have no agreement here. There's nothing in writing:

7 Creating continuing responsibilities, an insurance
8 agent's obligation to a client ends when the agent
9 attains the insurance for the client; thus an agent has
10 no duty to inform a client of a policy's cancellation if
11 the client knew or should have known of the
12 cancellation by other means.

13 And in Nevada, we have a built-in system for doing
14 that. The Nevada Administrative Code mandates that OMI
15 provide O.P.H. with notice of cancellation before the
16 policy cancels and OMI did that. OMI also has to give
17 notice to the Sandin defendants. Now whether or not that
18 occurred is really beside the point.

19 The point is: Do the Sandin defendants, once they
20 get that notice, then have a duty to notify O.P.H.? And
21 there is no articulated duty in the law. If the
22 Legislature would have wanted the insurance broker, once
23 they received notice from the insurance agent, to then pick
24 up the phone and/or mail something to the insured to also
25 give them additional notice, they would have said that.

1 It's already memorialized in the legislative -- Nevada
2 Administrative Code. You don't think the legislators would
3 have then thought: Hey, do we then need to have the broker
4 provide notice to the insured, too? I'm sure that was part
5 of the discussion. It's not part of the statute though.
6 So if it's not part of the statute, there's no duty there.
7 So even if we would have gotten notice, which they even say
8 we did not, you know, we had no duty to do it.

9 And then also, Your Honor, talking about the fact
10 that we didn't receive notice, they concede that. In their
11 Complaint, their pleading, they say: We didn't get notice.
12 The Sandin defendants didn't get notice. Their proprietor
13 says: Of course I wouldn't expect you to give me notice if
14 you didn't get notice.

15 Well, if we didn't get notice, it's impossible for
16 -- so then what did we breach? What's the duty that we
17 breached there? If we didn't get the notice -- if we had a
18 duty to notify, that duty would only arise once we were
19 notified. So if they're conceding the fact that we weren't
20 notified, then there -- they must also concede the fact
21 that we have no duty because if we're not notified, what
22 are we talk -- what can we tell you about?

23 So, -- and, Your Honor, other than the *Catana*
24 [phonetic] case, I'd like to show -- you know, there's so
25 many cases around the country that talk about this exact

1 same fact pattern where the insured is -- has been denied
2 coverage because a failure to pay a policy premium and then
3 looks to the broker and says: Hey, why didn't you tell me
4 that I was supposed to pay my premium and didn't pay it?
5 Hey, why didn't you remind me to make my premium payment?
6 When you got the notice of cancellation, why didn't you
7 call me?

8 And every single case that we've cited, and
9 they've cited nothing to the contrary, not one single case
10 to the contrary, in every single case the broker was
11 granted summary judgment because the Courts say if you have
12 other means of getting of that notice of cancellation, then
13 the broker's not responsible. The broker is responsible
14 for placing you policy, getting you the coverage that you
15 asked for, or telling you that you can't do it in a timely
16 manner, and everybody agrees. There's no dispute. Their
17 own expert says: Yes, the Sandin defendants complied with
18 that duty, but what they should have also done is notify
19 them of the pending cancellation but everyone agrees that
20 we didn't get the -- they didn't receive the notice.

21 So, it's a strange, convoluted thing that -- it's
22 a valiant effort, I think, to try to save a case and try to
23 get insurance for a client who really doesn't deserve to
24 have the insurance because they didn't hold up their end of
25 the bargain. They didn't pay the policy premium.

1 And, Your Honor, by the way, as of August 13th,
2 they knew that they hadn't paid the policy premium. They
3 wrote a check. If they would have sent it out that day, it
4 probably would have gotten there by the 15th or they could
5 have just picked up the phone and said: Hey, Dave Sandin,
6 I noticed that I -- you know, I don't get the -- that my
7 policy premium is in jeopardy of being cancelled, you know,
8 can you help me do something? I mean, what did they do?
9 They knew on the 13th. Our clients didn't know on the 13th.
10 Our clients didn't know until after the policy cancelled.
11 Our clients didn't know until they tried to call on another
12 claim and found out, hey, by the way, your clients' policy
13 is terminated.

14 So, they knew on the 13th. They wrote a check on
15 the 13th and for whatever reason, they just didn't do
16 anything with it. They didn't mail it. They didn't call
17 and pay it by phone. They didn't even investigate it. So
18 what is their duty in all of this? Their duty, I think, is
19 to make sure that they're making their monthly premium
20 payments and once you find out that you're delinquent,
21 remedy it. So they knew before we did.

22 So it's -- it just belies logic that we should
23 then have to call them on a notice of cancellation that we
24 never received and that they're trying to create this
25 additional duty by the mere virtue of the longstanding

1 nature of the relationship. So now we're going to say
2 anytime an agent or broker has a longstanding relationship
3 with an insured and if you give them notice on one
4 occasion, because that's the only one that they can prove
5 because nobody is disputing that during the two years that
6 Dave Sandin was not their broker, those are -- within that
7 two years, that's the period of time that they're saying
8 they were notified by Dave Sandin, which is a factual
9 impossibility. He was not their broker at the time. He
10 was subject to a noncompete. We have letters showing where
11 Dave Sandin, once the noncompete was over, is now reaching
12 out to O.P.H. again saying: Hey, my noncompete is over,
13 can I start brokering your business again? And they accept
14 him back. And they agree. Yeah, he was gone for this two-
15 year period. Well, if he was gone for this two-year
16 period, how could he have given you notice of delinquent
17 payment?

18 So we have one possible time and for the purposes
19 of this Motion only -- if this goes to trial, we'll show
20 that that one time didn't exist either, but for the
21 purposes of this Motion, in construing all facts in light
22 of the, you know, of the nonmoving party, on one occasion
23 he gave notice. Does that then create a duty for him to
24 give notice -- for the Sandin defendants to give notice
25 every single time there's a pending cancellation? And even

1 if it did, does that duty arise if they never receive
2 notice themselves?

3 I mean, it's just -- we have no business in this
4 case, Your Honor. They -- an insurance broker's duties are
5 clearly defined by Nevada law. They have cited to
6 absolutely not one single statute, not one single
7 Administrative Code, not one case law, not even in another
8 jurisdiction, that imposes this duty. They are relying
9 solely on the experts who were retained in this case to
10 say: Oh, well, it's industry practice that if you are
11 going to notify -- if you create a custom and practice by
12 telling somebody over time, repeatedly, that your cancel --
13 that your policy is going to be -- then that raises an
14 expectation on behalf of the client.

15 They deposed our expert for 25 minutes and our
16 expert said: Yeah, if we do it for one, you've got to do
17 it for all of you clients. If you do it for one of your
18 clients, you've got to do it for all of your clients, but
19 they never asked him the question: You know, how many
20 times do you have to do it to create this kind of
21 expectation? And when we got the Opposition, Mr. Burkett
22 submitted an affidavit explaining that. It has to be more
23 than one time. OMI's expert says it has to be more than
24 one time. You know, you can't just do it once and then
25 expect that you have this reliance -- this equitable

1 reliance issue, which is not even plead in their Complaint.

2 THE COURT: Well, in the opposite -- in the
3 statement of contested facts in the Opposition in
4 opposition -- in response to the statement from your
5 pleading:

6 There is no argument from O.P.H. and Sandin
7 defendants that requires Sandin defendants to provide
8 notice to O.P.H. of a pending policy cancellation.

9 Their response is: There was an understanding
10 between the parties that the Sandin defendants would
11 provide the same level of service Dave Sandin had
12 previously provided in other brokerages including, but
13 not limited to, providing notice of pending cancelation
14 as Dave Sandin has previously, on several occasions,
15 and consistent with defendant Sandin's business
16 practices.

17 And I think somewhere else in here there was a --
18 the quote was just saying what he usually does for
19 customers, e-mails them and calls them or calls them and e-
20 mails them or something. But -- so is that your -- is
21 economic -- it kinds of ties into the economic loss theory
22 where you haven't contracted for that. You have no right
23 to say failure to do that is --

24 MS. LEE: Absolutely, Your Honor. It is -- that
25 is *Terracon* on the nose. If it's something that you can

1 contract for, then contract for it. The Court is not going
2 to waste its time and resources figuring out negligence
3 when there's been no physical injury of property damage
4 that we can point to and definitively and substantively say
5 it's X amount of dollars because he broke three of your
6 ribs or it's X amount of dollars because he smashed into
7 the side of your house with his car. That's property
8 damage. That's physical injury. We have neither of those
9 things here.

10 And if they wanted Mr. Sandin to notify them, then
11 they should have contracted for it. It's not an
12 understanding because it would create chaos and that's what
13 *Terracon* was trying to reign in is that if it's something
14 that you can contract for, then you should contract for it.

15 THE COURT: Okay. Anything else?

16 MS. LEE: Oh, is there anything else? Well, just,
17 Your Honor, that, you know, they haven't met their -- the
18 claim for fiduciary duty, the elements are that you -- a
19 fiduciary duty exists, that it was breached, and that
20 damages were caused as a result. They haven't been able to
21 prove that a fiduciary duty exists because the duty that
22 Nevada imposes on its brokers has been met. They have two
23 obligations, two duties. They've met those. This
24 heightened duty that they're trying to create doesn't exist
25 and if they wanted that heightened standard, they should

1 have contracted for it.

2 THE COURT: Thank you. Okay. Mr. Langford.

3 MR. LANGFORD: In deposing the experts in this
4 case, they were all pretty consistent in that the statutory
5 duty imposes a duty on the broker to procure adequate
6 insurance for the insured and they all said: Yes, there is
7 no duty under the statute to provide additional notice to
8 the insured that the policy is about to lapse. They all,
9 though, uniformly said: You can create that duty. And
10 that becomes a question of fact as to whether that duty was
11 created in that my expert says one time, if you do it one
12 time you've created that duty. Their expert said -- well,
13 one expert didn't say anything. That's correct. But
14 another expert, [indiscernible] the expert for OMI said:
15 Oh, it's got to be six times out of six is the -- he -- and
16 he wouldn't go any beyond that. He -- in other words, it
17 was, again, a question of fact.

18 Counsel's case that they cite in their Reply about
19 in the absence of other facts, all of the cases cited by
20 the defense lack the fact that the broker had in prior
21 circumstances given notice to the insured. That's what's
22 critically missing. That's what the Court is alluding to
23 when it says in the absence of other facts, this Court is
24 not going to find a duty because of the long relationship
25 between the parties. So that's correct, but that's not

1 what we're arguing, Your Honor. We're arguing that we have
2 those facts here, that Mr. Sandin did say I will give you
3 the same level of service. Isn't that a contract in it and
4 of itself? If I say I'm going to give you this level of
5 service if you'll give me money, that's a contract, and
6 that's what he says he did. He had that personal touch
7 with his clients. That's what he says.

8 They can't escape their liability based on the
9 fact that he didn't actually steal money from them or punch
10 him in the ribs. His breach of the particular contract he
11 had is sufficient to say that the damages of not having
12 insurance money when it's -- when there's a catastrophic
13 loss is his fault and he should not escape liability merely
14 because he can say: Well, there wasn't a written contract.
15 I think that there's plenty of evidence here that he said
16 he was going to continue to provide that and that he did
17 provide notice.

18 They want to say, well, Mr. Freudenberger says
19 well of course if he didn't get the notice, how could he
20 give me the notice? Mr. Freudenberger is German and a very
21 logical thinker, a very literal thinker, and so he said:
22 Well, yeah. Two -- you know, but he had a duty to find out
23 if he was going to lapse. OMI provided a mechanism, albeit
24 a poor mechanism for providing notice, to Mr. Sandin that
25 he had clients that were about to lapse, but Mr. Sandin

1 didn't even avail himself of that opportunity to get
2 notice. That's where he breached. He didn't look anything
3 up.

4 You know what they -- there's testimony that he
5 did find out what his revenue stream was going to be based
6 upon the premiums that had been paid. He was facile enough
7 with the computer to be able to find out what his revenue
8 stream was going to be but the one day it's up on -- live -
9 - it's up live on the website and then it goes into an
10 archive, that's -- that was inadequate and he didn't avail
11 himself of that one-day slot.

12 Again, that's why this is all -- they want to
13 deflect to all sorts of other things, but it comes down to
14 the two parties, Your Honor, were woefully inadequate in
15 the amount of notice that they either gave Mr.
16 Freudenberger or gave Mr. Sandin. Mr. Sandin was
17 inadequate in living up to his promise to Mr. Freudenberger
18 that I will provide you the same level of service. And
19 then at one point, he did. He did for sure tell them that
20 they were about to lapse.

21 So I think -- you know, then they want to come in
22 and say: Well, technically under the statute, their
23 experts, Your Honor, say that you can create this duty.
24 All of the experts say -- it's interesting. They all say:
25 When we teach seminars on insurance, we tell the brokers:

1 Don't do this. Don't do this because if you do it, you're
2 going to create a liability for yourself. So we tell them:
3 Don't give notice to the clients. If it -- if they lapse,
4 let them lapse and then work on it afterwards, but do not
5 give them -- because you'll create liability for yourself.
6 That's what the Sandin defendants did here, created
7 liability.

8 THE COURT: Okay. Is it sufficient that the
9 experts say, in our opinion, in our expert opinion, this
10 creates a duty? I mean, where's the law that tells me
11 that, in fact, you can create a duty like that? And does
12 the -- it gets us around *Terracon* because it really seems
13 to me that that's a -- kind of stands our -- in Nevada,
14 kind of stands in our way here, is unless you say to your
15 broker -- your -- well this is your argument. The broker
16 says I'm going to provide my same level of service to you.
17 Okay. Well what is that? Are you going to notify me
18 before my policy lapses -- that my policy is going to lapse
19 even though I apparently know the policy is going to lapse
20 because I wrote a check by mail?

21 MR. LANGFORD: I don't think that that's
22 indicative, Your Honor, that they knew the policy was going
23 to lapse. I think it was -- at some point, they realized
24 they hadn't made the July payment and they were going to
25 pay it. That's my recollection and I could be wrong.

1 Counsel can correct me if I am, but my recollection is they
2 didn't realize the policy was going to lapse. They still
3 thought they had time to cure --

4 THE COURT: Okay.

5 MR. LANGFORD: -- the lapse or to cure the fact
6 that they --

7 THE COURT: All right. Well then that's just my
8 question is: Because we have this case law in Nevada that
9 says, look, if it's something that -- it's a contract. You
10 have to have a contract for it. You have to agree to it.
11 You can't just sue in tort because you don't have a
12 contract that covers it. We're not going to create these
13 obligations where -- which really should be contractual if
14 you don't -- as a tort, when you don't have a contract.
15 That's kind of what *Terracon* says.

16 MR. LANGFORD: Well and I think -- I'm sorry. I
17 think that what the experts are saying is that your course
18 and conduct, what you do, can create that liability.

19 THE COURT: Okay.

20 MR. LANGFORD: So if you're saying this is -- I'm
21 a broker and this is what I'm going to do and I'm going to
22 give you that, and then I do it, you've created that
23 liability for yourself.

24 THE COURT: Okay. All right. Thanks.

25 MS. LEE: Thank you, Your Honor.

1 And in terms of duty, Your Honor, Your Honor as a
2 matter of law, whether a defendant owes a plaintiff is a
3 question of law under Nevada law. And that's the Shing --
4 well, I can't -- the citation is 112 Nevada 965. So you
5 can decide as a matter of law whether or not there was a
6 duty. Experts can't decide that there is a duty. Experts
7 can decide whether or not the standard of care was met and
8 that goes to a negligence cause of action. Did they meet
9 the standard of care?

10 They can't say: There's a legal duty, because
11 they're not lawyers and they can't then say there is a
12 legal duty. They can say there is expectations created,
13 but they don't then say: And this is how you contend with
14 *Terracon*. They don't say that because we have laws in
15 place, such as *Terracon*, that says you can't sue in tort
16 for a contract action. This is a contract action. If you
17 wanted the Sandin defendants to notify you, that should
18 have been in writing. That is something that you can
19 solidly put into a contract. You can't then come back and
20 say: Oh, you were negligent because you didn't notify me.
21 And that's exactly what *Terracon* is designed to do, Your
22 Honor.

23 And so they just don't have -- they don't have --
24 they don't meet the elements. It's just -- and breach of
25 fiduciary duty -- and it should also say there's been no

1 Nevada Court that has ever imposed on insurance brokers a
2 fiduciary duty towards the insureds, the Ninth Circuit has
3 held.

4 And an insurance agent or broker does not owe the
5 insured any additional duties other than procuring the
6 requested insurance.

7 That's Nevada law. So, there's nothing -- and,
8 again, I paid close attention when you asked Mr. Langford,
9 where is the law? Like where can I look to say that I can
10 create this duty that doesn't exist because of this past
11 course and dealing? And how do we get around *Terracon*?
12 And I didn't hear an answer. I didn't hear: Well, you can
13 rely on this case, Your Honor, that says here is an
14 exception to *Terracon*. When brokers act this way, there's
15 an exception. There's an exception for design
16 professionals in *Terracon*. There's no carved out exception
17 for brokers, Your Honor.

18 So the law in Nevada is just crystal clear. So if
19 they didn't -- if they wanted to have this added value to
20 their relationship -- now whether or not Dave Sandin was
21 nice and responsible enough to pick up the phone, I do it
22 with my clients all the time. If I see -- if I get the
23 registry of actions and I see that my client is being sued,
24 I'll pick up the phone and I'll say: Hey, by the way, did
25 you know that you're a defendant in this case? No. Oh

1 here, I'll get a copy of the Complaint. I'll download it
2 and I'll send it to you. It's a courtesy. It's something
3 that -- you know, it's a courtesy. It doesn't mean that
4 now if they get sued and they don't get notice of the
5 lawsuit for some reason, I as the lawyer, get sued for not
6 checking Odyssey every day or, you know, the printout of
7 registered actions, you know.

8 And one last thing, Your Honor, you know, our
9 clients are no more responsible for the damages. I mean,
10 so we have this -- even if we go through all of this, the
11 failure to notify. Did the failure to notify cause the
12 damage? The failure to notify by my clients. No. Their
13 failure to pay the policy premium caused the damage.
14 They're saying: Well, if you just would have told me I
15 would have paid it. Well, we don't that. You knew about
16 it on the 13th and did nothing about it. How could we
17 guarantee that your client would have avoided this loss if
18 we would have just notified you? That's not what caused
19 your damage. What caused your damage is that you didn't
20 pay your bill.

21 So, my client's no more responsible than my real
22 estate agent would be if I didn't pay my mortgage and my
23 house got foreclosed on. I can't turn to my realtor and
24 tell me: Hey, why didn't you tell me I wasn't paying my
25 mortgage? I mean, it's the same kind of logic. It wasn't

1 the failure to notify that caused the damage.

2 Again, the causal nexus is lacking. What caused
3 the damage is they failed to pay their premium. All of the
4 experts agree and they even said: Yeah, the reason why the
5 policy was cancelled is because they didn't pay their
6 premium. Well is that a legal basis -- I mean, is that
7 something that you're allowed to do in this industry?
8 Absolutely. If you don't pay your bill, you don't get the
9 service. And they knew about it and they didn't do
10 anything about it. So us notifying them is not a guarantee
11 that this would have avoided the damage. We could have
12 notified them and the damage still could have occurred. So
13 we have to also look at the causation, Your Honor.

14 So, I mean, there's just so many deficiencies in
15 these causes of action. They have not proven breach of
16 fiduciary duty. They don't have a right to bring a
17 negligence cause of action. If they're bringing a
18 negligence per se cause of action, they can't base that on
19 a penal code.

20 As far as fraud in the inducement, again, I'm
21 struggling with that one in terms of what was the fraud? I
22 guess a material omission that Dave Sandin had his license
23 lapsed a few months before he placed this policy, but,
24 then, again, where's the -- there's a mandatory requirement
25 that there be a nexus. If Dave Sandin were licensed, would

1 that have changed the outcome? Absolutely not. The policy
2 still would have cancelled because they still wouldn't have
3 paid their bill whether he was licensed or not licensed.

4 So there's a lot of red herrings going on here,
5 Your Honor, to try to point the finger and I understand it.
6 They're trying to get money because their restaurant burned
7 down. It's a lot of money. I get it. But the blame has
8 to lie with the person responsible for maintaining that
9 policy.

10 My client is not a party to their contract. It's
11 OMI and it's O.P.H. Dave Sandin did what he was supposed
12 to do. He put them together and then he stepped out of the
13 picture, which is what the law says that he's supposed to
14 do. Now they're coming back and saying: Oh but you also
15 have to not only -- and I'm sorry, Your Honor. I said one
16 more thing and -- but I do have to mention this.

17 Not only did they say we have a duty to notify,
18 but we have a duty to now find out and he said: you know,
19 you can't just stick your head in the sand. You've got to
20 go on this website every day. You've got to go look to see
21 if my policy is being cancelled. Well that's just
22 ridiculous. It's ridiculous. It -- and there's no
23 standard -- are we just creating standards now? I mean,
24 there's no duty to notify and there's certainly no duty to
25 go find out the status of an insured's policy as a broker.

1 They would spend all day doing that. That's all they would
2 be doing if they had to do that. So, --

3 THE COURT: Thank you.

4 MS. LEE: And so I would just say it just kind of
5 shows kind of how far out this duty that they're trying to
6 create extends and I think it's a slippery slope and I
7 think it's dangerous and I think we have *Terracon* in place
8 for exactly that reason.

9 THE COURT: All right. Thanks.

10 MS. LEE: Thanks.

11 THE COURT: Mr. Langford, I think that this is one
12 of those cases where maybe the federal approach is better
13 than the Nevada approach where you traverse the legal
14 standard of the pleading early on and dismiss the cases
15 earlier rather than give parties a chance. Nevada is a
16 place that believes in giving people a chance and that's --
17 that was my intention when I sent you off on this odyssey
18 and maybe that was a disservice to your client because I
19 just don't see how after everything we can say that this is
20 anything other than just a contract that fails because your
21 client didn't pay his premium and -- I mean, when I saw the
22 arson motion, I was like: Why would you even want to
23 mention arson? Arson is insane. Nobody would commit arson
24 if their policy was lapsed. Who -- why would you even want
25 to bring it up? It's insanity to even bring up arson. It

1 proves that they never would have let their policy cancel.
2 They wouldn't have burned their restaurant down if they
3 thought they had a policy that cancelled.

4 It's -- I mean, this is clearly a terrible, tragic
5 business loss and I feel for your client. This is horrific
6 to have lost a -- I -- there was a mob scene outside that
7 restaurant every time I drove by it. I mean, it was
8 clearly, visually popular and I feel terrible that he got
9 himself into this situation because of 24 hours. It's
10 really sad, but I can't make it better for him just because
11 I feel bad for him.

12 I just, as a matter of law, OMI sent the notice
13 they're required to send. If the Legislature had something
14 in there saying, you know, return receipt requested, you've
15 got to have proof that they actually got it, that they knew
16 they were going to be cancelled, we could talk; but putting
17 it in the mail is all they had to do and this idea -- I
18 mean, I found it intriguing and I understood it and I liked
19 the concept of can your -- does your broker owe you this
20 duty to notify you because they've done it in the past? I
21 just -- I -- in the end, I don't see how we could get
22 around -- even if we could get around, is it sufficient to
23 do it one time, does that then create the expectation on
24 the client that you're going to do it from then on?

25 You know, in Nevada, you would -- I think you need

1 a contract that said: Oh, yeah, I'm happy to come back to
2 you. By the way, I'm just so forgetful, I have no
3 calendaring system, I'm terribly disorganized, will you let
4 me know if you ever see a notice of cancellation on me,
5 will you let me know because I'll pay it, but I'm just
6 really bad at recordkeeping?

7 Maybe then you'd have an expect -- you'd have
8 something you could act on, but there's nothing here that
9 tells me that Mr. Sandin knew that he was expected to keep
10 doing this, that he agreed to keep doing this. I just --
11 you know, I was -- I thought maybe there was something out
12 there and, you know, in Nevada we give people a chance and
13 gave your client a chance to see if he could prove these
14 causes of action. I just, in the end, as a matter of law,
15 I think they both fail.

16 I think I have to grant both of these summary
17 judgments. As I said, you know, maybe the federal system
18 is better and you would have saved all this time you guys
19 spent on the discovery. I don't know. You know, like I
20 said, we want to give people a chance here and I just feel
21 bad. I want you to know I really do. I personally feel
22 really bad about this one, but I don't think I have any
23 choice. As a matter of law, I think both causes of action
24 fail. So I'm going to grant both motions.

25 MS. LEE: Thank you, Your Honor.

1 MR. FREEMAN: Thank you, Your Honor.
2 THE COURT: So if you'll prepare --
3 MS. LEE: We'll prepare --
4 THE COURT: -- findings of fact, conclusions of
5 law?
6 MS. LEE: Yes.
7 THE COURT: Show it to Mr. Langford because I'm
8 sure he's going to want to consider with his client what
9 their options are.
10 MS. LEE: All right. Thank you, Your Honor.
11 THE CLERK: So everything else is vacated?
12 MR. LANGFORD: Thank you, Your Honor.
13 THE COURT: Everything's vacated. Yeah.
14 THE CLERK: The trial and --
15 THE COURT: Thank you.
16 THE CLERK: -- [indiscernible]?
17 THE COURT: It's done. Thanks.

18
19 PROCEEDING CONCLUDED AT 11:43 A.M.

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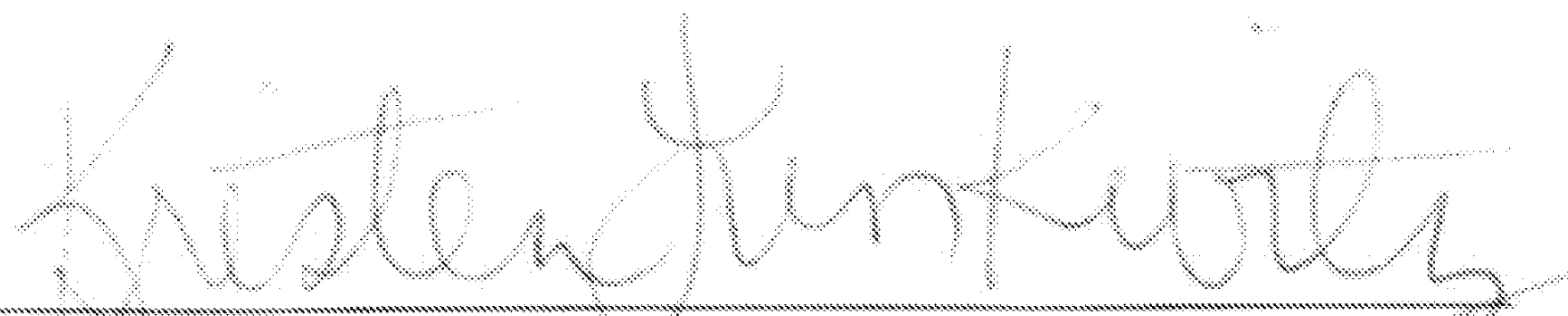
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

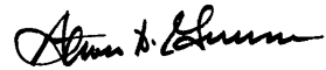
AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

A handwritten signature in cursive script, reading "Kristen Lunkwitz", is written over a horizontal line.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

ORIGINAL



CLERK OF THE COURT

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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).

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☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Delt(s)	☐ Judgment of Arbitration

APP00430

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
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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).¹

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 ¹ 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.² "[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 ² 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.

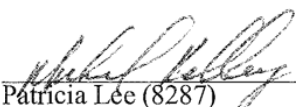
12 IT IS SO ORDERED.

13 DATED this 26 day of June, 2015.

14
15 
16 THE HONORABLE GLORIA STURMAN

17
18 Submitted by:

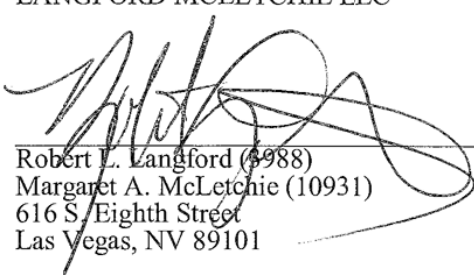
19 HUTCHISON & STEFFEN, LLC

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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

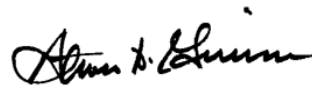
27 *Attorneys for defendants*
28 *David Sandin and Sandin & Co.*

Reviewed by:

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22 Robert L. Langford (9988)
23 Margaret A. McLetchie (10931)
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25 Las Vegas, NV 89101

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



CLERK OF THE COURT

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

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

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

Case No.: A-12-672158-C

Dept. No.: XXVI

13 v.

NOTICE OF ENTRY OF ORDER

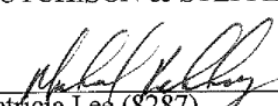
14 OREGON MUTUAL INSURANCE
COMPANY, DAVE SANDIN, and SANDIN
15 & CO.,

16 Defendants.

17
18 PLEASE TAKE NOTICE that an Order Granting Defendants Dave Sandin and Sandin
19 & Co.'s Motion for Summary Judgment was entered in the above-captioned matter on June 30,
20 2015, a copy of which is attached hereto.

21 DATED this 1st day of July, 2015.

22 HUTCHISON & STEFFEN, LLC

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

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27 *Attorneys for defendants David Sandin and*
28 *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 8th 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;

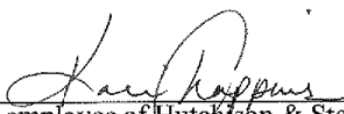
to the attorneys listed below at the address and emails indicated below:

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

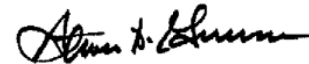
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An employee of Hutchison & Steffen, LLC

ORIGINAL



CLERK OF THE COURT

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12 *David Sandin and Sandin & Co.*

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

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

Case No.: A-12-672158-C

Dept. No.: XXVI

17 v.

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

**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).

///

///

///

☐ Voluntary Dismissal	☒ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☐ Motion to Dismiss by Def(s)	☐ 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.

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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
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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.

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24 Insurance Company's ("Oregon Mutual") insurance to Plaintiff based on Plaintiff's coverage
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26 7. Oregon Mutual issued a Businessowner Protector Policy to Plaintiff that covered
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2 Sandin & Co. is identified as the agent on the Policy.

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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 anything, to print out anything to do with OPH, and
2 we started making our master file of all the
3 documents.

4 Q. Okay. What did he -- earlier you said you
5 asked him to analyze the complaint. What else did he
6 tell you about his analysis of the complaint?

7 A. I don't know if he analyzed anything. I just
8 told him to read it and that's about it.

9 Q. What did he say about the licensing issue?

10 A. He had -- he had made an error and did not see
11 the renewal. I did not see a written renewal notice
12 either.

13 Q. Do you remember the date it expired?

14 A. April of 2011, I think.

15 Q. So you said that he made an error and didn't
16 see the renewal and you didn't see the renewal,
17 either. Do you know where the renewal was sent?

18 A. If they did send one out by mail it would have
19 been to either 19 Churchill Downs or 46 Da Vinci,
20 both Lake Oswego, Oregon.

21 Q. And how would they have -- by "they," who do
22 you mean?

23 A. I'm actually not very familiar with the process
24 but NCCI is a -- I believe you go onto -- he does our
25 licensing through some kind of a software thing.

1 Q. Who is "he" and what's -- who is "he"?

2 A. I'm sorry. Anthony.

3 Q. And what's NCCI?

4 A. NCCI is the -- helps keep track of licensing.
5 And it's just a matter of going onto a website,
6 clicking a button and giving them a credit card for
7 your license.

8 Q. So do you pay a fee to do that on NCCI?

9 A. You pay a fee to renew your license.

10 Q. So is NCCI operated -- who operates NCCI?

11 A. May not be NCCI. I don't remember the name of
12 the software he uses to do our licensing. I'm not
13 involved with that.

14 Q. But it's your understanding there's some
15 software program that you -- you purchase -- you pay
16 for the program?

17 A. I don't think you pay for it.

18 Q. But you use -- it's your understanding that
19 insurance brokerages use these software programs to
20 then apply for licenses, insurance licenses in all
21 states?

22 A. The resident's license is, in our case, Oregon.
23 There's more paperwork involved with that. With a
24 non-resident's license, like Nevada or California,
25 it's just a matter of going onto a website and

1 clicking a button for a non-resident's license.

2 There's not as much background or licensing
3 requirements for education and all that. It's all
4 done on your home state, so non-resident's license
5 there's not much to do.

6 Q. Understood. And how long does a license last,
7 a non-resident license?

8 A. I believe they vary by state, but I think two
9 years to four years.

10 Q. And do you know how long Nevada's lasts?

11 A. I don't know.

12 Q. Do you know when you had obtained your Nevada
13 license?

14 A. No.

15 Q. Do you know when you first started selling
16 insurance in Nevada?

17 A. Oh, let's see. HRH, 2004, 2005, something like
18 that.

19 Q. And when you started selling insurance in
20 Nevada, you got a license in Nevada?

21 A. At HRH I didn't have anything to do with
22 licensing.

23 Q. Is it your understanding that it's the
24 brokerage company's responsibility to take care of
25 licensing? Is that why you didn't have anything to

1 Q. How long has your longest commercial customer
2 been with you?

3 A. At Sandin & Co.?

4 Q. Yes.

5 A. Three years.

6 Q. How about customers that came over from
7 Heffernan that were your clients previously?

8 A. Yeah, I've had some clients that have been with
9 me since HRH.

10 Q. How many?

11 A. Probably about ten percent.

12 Q. And are you pretty loyal to those customers?

13 A. Yes.

14 Q. Are they pretty loyal to you?

15 A. Yes.

16 Q. They keep giving you their business every year?

17 A. Yes.

18 Q. So they've been with you since you worked at
19 HRH, so would it be fair to say that you have a close
20 relationship with that ten percent of your business
21 that has been with you since HRH?

22 MS. BRANSON: Objection, vague and
23 ambiguous.

24 THE WITNESS: Yes.

25 BY MS. MCLEITCHIE:

1 THE WITNESS: No.

2 BY MS. MCLETCHE:

3 Q. They're not usually sent by certified mail?

4 A. I don't think so.

5 Q. Standard First-Class U.S. mail delivery?

6 A. Yes.

7 Q. When you receive copies of the pre-cancellation
8 cancellation notices, generally what do you do?

9 MS. BRANSON: Objection, calls for a
10 narrative, overbroad.

11 THE WITNESS: That depends on how we
12 receive it.

13 BY MS. MCLETCHE:

14 Q. If you get it by e-mail, what do you do?

15 A. If we get an e-mail, we will attempt to call
16 the client and forward the e-mail.

17 Q. Why do you do that?

18 A. To give them a chance to make a payment.

19 Q. Why do you want to give them a chance to make
20 the payment?

21 A. Keep their insurance and keep coverage so they
22 don't have to remarket the account.

23 Q. Is it hard to remarket an account?

24 A. It takes effort, yes.

25 Q. So it's a more profitable account for you if

1 you don't have to remarket it, as a general rule?

2 A. Sure. Time is money.

3 Q. If you learn of a pre-cancellation cancellation
4 notice by phone, what do you do?

5 A. By phone?

6 Q. Uh-huh.

7 A. I will make a note of it and e-mail the client.

8 Q. Will you call the client?

9 A. We'll e-mail first and then call to make sure
10 they got the e-mail.

11 Q. So the only -- if you get the pre-cancellation
12 cancellation notice by phone call, the only
13 difference -- the only difference between the way you
14 would handle that and an e-mail is you would also
15 make a note of it; is that right?

16 A. Yes.

17 Q. Where do you make a note of it?

18 A. In the file and obviously the notes in the
19 e-mail.

20 Q. Since the e-mail exists you don't have to make
21 a note; right?

22 A. Correct.

23 Q. When you get a -- when you learn of a
24 pre-cancellation cancellation notice because you get
25 a copy of it, a notice in the mail, what do you do?

1 A. If we get a written copy?

2 Q. Uh-huh.

3 A. We'll go through the same process.

4 Q. And by "the same process," you mean that you'll
5 call and e-mail the client?

6 A. Yes.

7 Q. So I know you're not an attorney. I'm just
8 asking based on your experience. You do have a lot
9 of experience in the insurance industry.

10 So I am wondering if you know -- you told me
11 that the practice of how they provide these
12 pre-cancellation cancellation notices for all the
13 companies who do that, that they vary from carrier to
14 carrier.

15 Do they vary only based on carrier or do they
16 sometimes vary based on where the insured is doing
17 business?

18 MS. BRANSON: Objection, calls for
19 speculation.

20 THE WITNESS: I don't know. I don't know
21 if it varies by state.

22 BY MS. MCLEITCHIE:

23 Q. So you just -- so you know in your experience
24 it varies by carrier but you don't know why?

25 MS. BRANSON: Objection, calls for

C E R T I F I C A T E

I, MARY T. JACKS, do hereby certify that pursuant to the Rules of Civil Procedure, the witness named herein appeared before me at the time and place set forth in the caption herein; that at the said time and place, I reported all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such testimony adduced and oral proceedings had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 9th day of October, 2013.



MARY JACKS

COURT REPORTER

NOTARY PUBLIC, 452723

My Commission expires October 15, 2014

EXHIBIT 4

Stephen Freudenberger - 8/14/2013
O.P.H. of Las Vegas, Inc. vs. Oregon Mutual Insurance Company, et al.

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3

4 O.P.H. OF LAS VEGAS, INC.,)
5 Plaintiff,) CASE NO. A-12-672158-C
6 vs.) DEPT. NO.: XXVII
7 OREGON MUTUAL INSURANCE)
8 COMPANY; DAVE SANDIN; and)
9 SANDIN & CO.,)
10 Defendants.)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

DEPOSITION OF STEPHAN FREUDENBERGER

Taken Wednesday, August 14, 2013

At 1:00 p.m.

6385 South Rainbow Boulevard, #600

Las Vegas, Nevada

Reported by: RENE' HANNAH, CCR #326

Stephen Freudenberger - 8/14/2013
O.P.H. of Las Vegas, Inc. vs. Oregon Mutual Insurance Company, et al.

1 APPEARANCES:

2 For the Plaintiff: DANNY HEIDTKE, ESQ.
3 Langford McLetchie
4 616 South Eighth Street
5 Las Vegas, Nevada 89101
6 (702) 471-6565
7 danny@nvlitigation.com

8 For the Defendant Oregon Mutual Insurance Company:
9 KRISTIN E. MEREDITH, ESQ.
10 Lewis Brisbois Bisgaard
11 & Smith, LLP
12 6385 South Rainbow Boulevard
13 Suite 600
14 Las Vegas, Nevada 89118
15 (702) 893-3383
16 pamela.january@lewisbrisbois.com

17 For Defendant Dave Sandin and Sandin Insurance:
18 Z. KATHRYN BRANSON, ESQ.
19 Hutchison & Steffen
20 10080 West Alta Drive, #200
21 Las Vegas, Nevada 89145
22 (702) 385-2500
23 kbranson@hutchlegal.com

24 I N D E X

25 Examination by:	Direct	Cross	Re-direct	Recross
Ms. Meredith	3		70, 116, 128	
Ms. Branson		51		76, 125
Mr. Heidtke		121		

26 E X H I B I T S

27 Number	Description	Page
28 Defendant's		
29 Exhibit 24	Gmail	36
30 Exhibit 25	Two letters	55

31

32

1 (NRCP Rule 30(b)(4) was waived by the parties prior
2 to commencement of the deposition.)

3 Thereupon,

4 STEPHAN FREUDENBERGER,
5 having been first duly sworn, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MEREDITH:

9 Q Could you state and spell your name for
10 the record, please?

11 A Stephan Freudenberger, S-T-E-P-H-A-N,
12 F-R-E-U-D-E-N-B-E-R-G-E-R.

13 MS. MEREDITH: And Counsel, instead of
14 asking Mr. Freudenberger for an address, do you
15 represent that you'll make him available, any need
16 for trial, we won't have to subpoena him?

17 MR. HEIDTKE: Yes, that's correct.

18 MS. MEREDITH: And you are also
19 representing him as his counsel today?

20 MR. HEIDTKE: Yes. Danny Heidtke, present
21 for Mr. Freudenberger.

22 BY MS. MEREDITH:

23 Q Mr. Freudenberger, have you ever been
24 deposed before?

25 A Yes.

1 my 74 employees have a safe, clean and
2 harassment-free workplace.

3 Q Anything else?

4 A To make money.

5 Q Anything else?

6 A No.

7 Q And for what period of time had you been
8 the managing member of OPH of Las Vegas?

9 A I was the president of OPH of Las Vegas,
10 Inc. since it was founded on the 20th of April,
11 1995. I've been the managing member of OPH 5 since
12 2005.

13 Q Do you hold the title of president and
14 managing member concurrently?

15 A Yes. It's for two different companies.

16 Q Okay.

17 A One is an Inc. and has a president as its
18 top dog, the other one is an LLC which has the
19 managing member as the highest-level employee.

20 Q Are you employed by any other businesses
21 or entities presently?

22 A Freudenberger Restaurant Group.

23 Q And what's your capacity or job at --

24 A Managing member. Sorry.

25 Q How long have you had that title?

1 Q Can you tell me when you had first contact
2 with Dave Sandin?

3 MR. HEIDTKE: Objection, vague.

4 THE WITNESS: He pitched us, us is the
5 franchise owners of the Original Pancake House, at a
6 meeting, late nineties. And he was one of the
7 speakers invited by the franchisor from Portland,
8 Oregon who used him and who then allowed him to
9 pitch the franchise owners.

10 BY MS. MEREDITH:

11 Q Okay. After that pitch by Mr. Sandin, did
12 you start doing business with him?

13 A Yes.

14 Q And did he continually represent OPH as
15 its insurance broker from the late nineties until at
16 least 2012?

17 A Yes. With an interruption of a couple of
18 months or a year and a half. I don't know. There
19 was a non-compete clause he had when he moved from
20 one company to another, at which point we had
21 somebody else get us insurance.

22 Q At any time from when you first started
23 doing business with Mr. Sandin as the broker for
24 OPH, did he ever tell you he was licensed in Nevada
25 to sell insurance?

1 A So different insurance agent.

2 Q So I guess another way to put it is
3 regardless of whether or not he is legally
4 responsible, which I'm not asking you to draw
5 conclusions on, you felt that he didn't do his job,
6 whether there was a legal reason or not, you felt he
7 didn't do his job?

8 A I know he didn't. We wouldn't be sitting
9 here if he had. That's the sad thing. None of us
10 should be sitting here. This could have been so
11 easily avoided by purely contacting my office or my
12 insurance broker, saying here, Freudenberger policy,
13 whatever name it runs under, this thing hasn't paid
14 its premium. It's two weeks late. Just let us
15 fricking know and we fix it.

16 Q Right.

17 A I cannot fix something I don't know about.
18 He was my buffer. So if I don't get notification, I
19 absolutely a hundred percent relied on my broker to
20 be the buffer, like he had been in the past. And
21 because he wasn't there to back me up, I'm never
22 going to use him again. And that's why he failed
23 me, because he put me with this shitty company.

24 MS. BRANSON: Okay. Thank you, very much,
25 for your time.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)

5 I, Rene' Hannah, Certified Court Reporter,
6 do hereby certify:

7 That I reported the deposition of STEPHAN
8 FREUDENBERGER, commencing on Wednesday, August 14,
9 2013, at 1:00 p.m.

10 That prior to being deposed, the witness
11 was duly sworn by me to testify to the truth. That
12 I thereafter transcribed my said shorthand notes
13 into typewriting and that the typewritten transcript
14 is a complete, true and accurate transcription of my
15 said shorthand notes.

16 I further certify that I am not a relative
17 or employee of counsel of any of the parties, nor a
18 relative or employee of the parties involved in said
19 action, nor a person financially interested in
20 the action.

21 IN WITNESS WHEREOF, I have set my hand in
22 my office in the County of Clark, State of Nevada,
23 this _____ day of _____, 2013.

24 RENE' R. HANNAH, CCR NO. 326
25

EXHIBIT 5

DISTRICT COURT
CLARK COUNTY NEVADA

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

Plaintiff,

v.

Case No.: A-12-672158-C

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

Defendants.

DEPOSITION OF DAVID SANDIN, VOLUME II

Taken in behalf of the Plaintiff

Friday, September 13, 2013

Reported by Mary Jacks, Court Reporter, Notary Public

C&L Court Reporters
Salem: 503-585-5993 Portland: 503-228-1132

APP00326

1 BE IT REMEMBERED THAT, pursuant to the Rules of
2 Civil Procedure, the deposition of DAVID SANDIN,
3 Volume II, was taken before Mary Jacks, Court
4 Reporter and Notary Public for the State of Oregon,
5 on Friday, September 13, 2013, commencing at the hour
6 of 9:50 a.m., at the location of C&L Court Reporters,
7 4103 Sylvia Street SE, Salem, Oregon.

8 --o0o--

9 A P P E A R A N C E S

10
11 Appearing on behalf of the Plaintiffs:

12 Langford McLetchie
13 By: MAGGIE MCLEITCHIE
14 DANNY HEIDTKE
15 616 South 8th Street
16 Las Vegas, Nevada 89101
17 702-471-6565

18
19 Appearing on behalf of the Oregon Mutual Insurance:

20 Lewis Brisbois Bisgaard & Smith
21 By: KRISTIN E. MEREDITH
22 6385 South Rainbow Blvd., Suite 600
23 Las Vegas, Nevada 89118
24 702-893-3383

25
26 Appearing on behalf of the Sandin Defendants:

27 Hutchison & Steffen
28 By: Z. KATHRYN BRANSON
29 10080 West Alta Drive, Suite 200
30 Las Vegas, Nevada 89145
31 702-385-2500

32
33 ALSO PRESENT: Anthony Sandin

C&L Court Reporters

Salem: 503-585-5993

Portland: 503-228-1132

APP00327

EXAMINATION INDEX

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1 SALEM, OREGON; FRIDAY, SEPTEMBER 13, 2013; 9:50 AM

2
3 DAVID SANDIN,

4 having first been duly sworn, was
5 examined and testified as follows:

6
7 EXAMINATION

8 BY MS. MEREDITH:

9 Q. Mr. Sandin, we're back here for the
10 continuation of your deposition. The court reporter
11 has put you under oath again, so you understand that
12 you are again under oath with respect to your
13 testimony; correct?

14 A. Yes.

15 Q. And the things that -- what we call the
16 admonitions, that Ms. McLetchie discussed with you
17 yesterday about waiting for me to ask a question and
18 I'll wait for you to respond, all those little things
19 that you discussed at the beginning, those are still
20 in effect. Do you understand that?

21 A. Yes.

22 Q. I'd like to talk a little bit about your
23 license in Nevada. Do you remember the year you were
24 first licensed in Nevada?

25 A. It was 2004, 2005.

1 A. Yes.

2 Q. Okay. Now, were the services that you provided
3 to OPH after April 11, 2011, different than the
4 services you had provided to them prior to April 11,
5 2011?

6 A. No, they were not different.

7 Q. Did you give them somehow different information
8 or provide different levels of service to them in any
9 way?

10 A. Well, my levels of service has been consistent
11 as I've worked on their accounts.

12 Q. So in your mind, the services and the
13 information and the things that you did for OPH,
14 after April 11 -- after April 2011, were the same
15 that you had been providing for them in the prior
16 six, seven, eight years; correct?

17 A. Yeah. Not a continuous stream, but, yes, over
18 a period of time.

19 Q. At any time that you provided any services or
20 worked for OPH, did Linda Snyder ever ask you to
21 provide any proof or evidence that you were licensed
22 in Nevada?

23 A. No, she did not.

24 Q. Did Stephan Freudenberger ever ask you to
25 provide evidence that you were licensed in Nevada at

C E R T I F I C A T E

I, MARY T. JACKS, do hereby certify that
pursuant to the Rules of Civil Procedure, the witness
named herein appeared before me at the time and place
set forth in the caption herein; that at the said
time and place, I reported all testimony adduced and
other oral proceedings had in the foregoing matter;
and that the foregoing transcript pages constitute a
full, true and correct record of such testimony
adduced and oral proceedings had and of the whole
thereof.

IN WITNESS HEREOF, I have hereunto set my hand
this 24th day of September, 2013.

Mary T Jacks

MARY JACKS

COURT REPORTER

NOTARY PUBLIC, 452723

My Commission expires October 15, 2014

EXHIBIT 6

1 MARGARET A. MCLETCHIE, ESQ.
Nevada State Bar No. 10931
2 DANIEL B. HEIDTKE, ESQ.
Nevada State Bar No. 12975
3 LANGFORD MCLETCHIE LLC
616 S. Eighth Street
4 Las Vegas, NV 89101
5 (702) 471-6565
maggie@nvlitigation.com
6 *Attorney for Plaintiff*

7
8 **DISTRICT COURT**
9 **CLARK COUNTY NEVADA**

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

Case No.: A-12-672158-C

Dept. No.: XXVI

11
12 Plaintiff,

13
14 vs.

**PLAINTIFF O.P.H. OF LAS
VEGAS, INC.'S ANSWERS TO
DEFENDANT DAVE SANDIN'S
FIRST SET OF
INTERROGATORIES**

15
16 OREGON MUTUAL INSURANCE
COMPANY, DAVE SANDIN, AND
17 SANDIN & CO.,

18 Defendants.

19
20 RESPONDING PARTY: Plaintiff O.P.H. OF LAS VEGAS, INC.

21 PROPOUNDING PARTY: Defendant DAVE SANDIN

22 SET NO.: One

23
24 COMES NOW, Plaintiff, O.P.H. of Las Vegas, Inc. (hereinafter "Plaintiff"), by and
25 through his counsel of record, Langford McLetchie LLC, pursuant to Nev. R. Civ. P. 33,
26 Answers to Defendant Sandin's First Set of Interrogatories as follows:
27
28

Dave Sandin and/or Sandin & Co. informed you of the late premium payment, and the date and manner in which you paid the late premium.

ANSWER TO INTERROGATORY NO. 1 [Nos. 1 and 2]:

Plaintiff incorporates by this reference its Preliminary Statement and General Objections as if set forth fully herein. Plaintiff further objects that the information sought in Interrogatory No. 1 [Nos. 1 and 2] is equally available to the propounding party, and thus, is unduly burdensome and propounded for the improper purpose to harass and annoy. In particular, “whether or not Dave Sandin and/or Sandin & Co. received notice of the late premium and/or impending policy cancellation” is information that is equally, if not more, available to the propounding party. Plaintiff further objects that Interrogatory No. 1 [Nos. 1 and 2] is vague and ambiguous.

Subject to and without waiving any objections, Plaintiff responds as follows:

Dave Sandin has been working with Plaintiff since at least 1999. During that time period, which spans over a decade, Plaintiff rarely missed a payment for its insurance premium. However, when Plaintiff had missed a payment for its insurance premium, Dave Sandin informed Plaintiff that Plaintiff’s insurance premiums were late and/or otherwise outstanding. Specifically, Dave Sandin informed Plaintiff on or around March 23, 2006 that Plaintiff’s February 2006 payment was late and/or outstanding, and on or around May 13, 2008 that Plaintiff’s May 2008 payment was late and/or outstanding.

In addition, Dave Sandin set up Plaintiff’s account with Fireman’s Fund Insurance (a previous insurance policy) for auto-pay beginning in May 2009 until December 2011.

///

LANGFORD MCLETCHIE LLC
ATTORNEYS AT LAW
616 SOUTH EIGHTH STREET
LAS VEGAS, NEVADA 89101
(702) 471-6565 • FAX (702) 471-6540

1 insurance policy with Oregon Mutual Insurance Co., and/or the statutes and regulations in
2 place in Nevada.

3
4 EXECUTED as to the objections this 1st day of August, 2013

5
6 By: 

Margaret A. McLetchie, Esq.
Nevada Bar No. 10931
Daniel B. Heidtke, Esq.
Nevada Bar No. 12975
LANGFORD MCLETCHIE LLC
616 S. Eighth Street
Las Vegas, NV 89101
Telephone: (702)471-6565
Facsimile: (702)471-6540
Email: maggie@nvlitigation.com
Attorneys for Plaintiff

10
11
12 EXECUTED as to the answers this 1st day of August, 2013.

13
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17 ON BEHALF OF PLAINTIFF,
O.P.H. OF LAS VEGAS

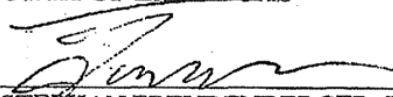
18 
19
20 STEPHAN FREUDENBERGER, President
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EXHIBIT 7

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DISTRICT COURT
CLARK COUNTY, NEVADA

O.P.H. of Las Vegas, Inc.,)
 Plaintiffs,)
 vs.) Case No. A-12-672158C
Oregon Mutual Insurance)
Company, Dave Sandin and)
Sandin & Co.,)
 Defendants.)
-----)

DEPOSITION OF DON WAY
San Jose, California
Wednesday, March 4, 2015
Volume I

Reported by:
JOANNA BROADWELL
CSR No. 10959
Job No. 2007564

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DISTRICT COURT
CLARK COUNTY, NEVADA

O.P.H. of Las Vegas, Inc.,)
 Plaintiffs,)
 vs.) Case No. A-12-672158C
Oregon Mutual Insurance)
Company, Dave Sandin and)
Sandin & Co.,)
 Defendants.)

Deposition of DON WAY, Volume I, taken on
behalf of Plaintiff, at 111 North Market Street, Suite
300, San Jose, California, beginning at 1:22 p.m. and
ending at 3:20 p.m. on Wednesday, March 4, 2015,
before JOANNA BROADWELL, Certified Shorthand
Reporter No. 10959.

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APPEARANCES:

For Plaintiffs:

LANGFORD & MCLEITCHIE

BY: ROBERT LANGFORD

Attorney at Law

616 S. Eighth Street

Las Vegas, NV 89101

(707) 471-6535

For Defendants: OREGON MUTUAL INSURANCE CO.

LEWIS BRISBOIS BISGAARD & SMITH LLP

BY: PRISCILLA O'BRIANT (Via Teleconference)

Attorney at Law

6385 South Rainbow Blvd., Suite 600

Las Vegas, NV 89118

(702) 693-4388

1 For Defendants: DAVE SANDIN and SANDIN & CO.
2 HUTCHISON & STEFFEN LLC
3 BY: PATRICIA LEE
4 Attorney at Law
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None		
Previously Marked Exhibits		
None		
* Retained by Counsel		

1 San Jose, California, Wednesday, March 4, 2015

2 1:22 p.m.

3

4 PROCEEDINGS

5 MR. LANGFORD: Robert Langford on behalf of
6 Plaintiff O.P.H. Las Vegas.

7 MS. LEE: Patricia Lee on behalf of the Sandin
8 defendants.

9 MS. O'BRIANT: Priscilla O'Briant on behalf of
10 Oregon Mutual Insurance Company.

11

12 DON WAY,
13 having been administered an oath, was examined and
14 testified as follows:

15

16 EXAMINATION

17 BY MR. LANGFORD:

18 Q Mr. Way, would you state your full name and spell
19 it for the record?

20 A Donald Alexander Way, spelled W-A-Y.

21 Q And do you have your own business?

22 A I'm basically retired, but I do have an LLC that
23 is part of my retirement in the business, which is
24 litigation consulting.

25 Q Before we go much further, I want to go

Page 6

1 Q I'm speaking now with regards to the duty of
2 care, standard of care owed between an agent and an
3 insured client. If you'd given notice in the past, do
4 you think that you've created a duty to give notice in
5 the future?

6 A There are basically two ways in which an agent
7 can voluntarily undertake that obligation which
8 otherwise does not exist. One is, you could have a
9 service contract in which one of the things he agrees to
10 do is to monitor the payment status and let his customer
11 know if they're delinquent. The other way is if he
12 consistently, over time, provides that duplicate notice.
13 And if there have been 10 prior cancellations for
14 nonpayment, assuming anybody still wants the account,
15 which is unlikely, and every one of those 10 times the
16 agent, when learning of the cancellation, immediately
17 called up his policyholder and said, "Hey, Joe, you're
18 being canceled for nonpayment again. You need to send
19 in "X" number of dollars. Do it right now."

20 If you do that ten times in a row or even six
21 times in a row, you have voluntarily undertaken an
22 obligation to continue doing that indefinitely unless or
23 until such time as you go to your customer and say,
24 "Hey, Joe, I'm really sick and tired of this. I'm not
25 going to bother calling you anymore. Pay your darned

1 premium."

2 So this is a voluntary assumption, either by
3 contract or by practice. Now, sometimes what happens is
4 the agent does it the first time, then he doesn't do it
5 the second and third, then he does it the fourth time.
6 We don't know whether he's going to do it the fifth time
7 or not. It's my professional opinion that he has not
8 created -- he has not voluntarily undertaken a duty --
9 or I would say an obligation. I try not to use the word
10 "duty"; it's a legal term from your profession.

11 Q Well, a minute ago you said six out of ten times
12 would create the duty.

13 A No, six out of six times. I'm sorry. Maybe I
14 was unclear. What I said first was, if the guy's
15 policyholder has been canceled for nonpayment 10 times,
16 and all 10 times the agent called him up and reminded
17 him, in my opinion that creates the continuing
18 obligation unless or until something happens to
19 terminate it, voluntary undertaking. And in my opinion,
20 if it happens six out of six times -- maybe the guy has
21 only been canceled six times, but every one of those six
22 times, the agent followed up, I think that's enough to
23 create a continuing obligation.

24 Q Four out of four times?

25 A Probably.

1 Q Three out of three times?

2 A Maybe. Once or twice, probably not. There
3 isn't. As far as I'm aware, there's no generally
4 accepted standard of care as to how many times you have
5 to do it. You just have to create a custom and practice
6 of doing it every time. Now, what constitutes a minimum
7 number of times for every -- I've had judges tell me
8 three is enough. I've had judges tell me five isn't
9 enough. I can't give you a definitive number or draw a
10 line in the sand and say four works but three doesn't.
11 It's someplace in that vicinity.

12 Q Let me ask you -- I'm sorry. Let me ask you
13 this: Let's say the agent works for an insurance
14 company or works on behalf of one agency, works for one
15 agency. Okay?

16 A All right.

17 Q Agent works for one agency.

18 A Okay.

19 Q Same client.

20 A Okay.

21 Q Okay? Leaves that agency, goes to a new agency,
22 client goes with him. Leaves that agency, goes to a
23 third agency, client goes with him. Would you expect
24 that he has created a duty if he has behaved the same
25 way in each of the agencies that he's worked at?

1 A That's a little trickier question, but in my
2 opinion the answer would be yes.

3 Q Would be "yes"?

4 A Yes.

5 MS. LEE: Just for clarification, are you talking
6 about -- when you say "duty," you're talking about the
7 duty to notify --

8 BY MR. LANGFORD:

9 Q Duty to notify a pending cancellation. And you
10 understood that to be the question; is that right?

11 A Yeah, and that wasn't exactly a hypothetical.

12 Q Perhaps not.

13 A But, yes. Now that the problem is -- and here we
14 get a little outside my expertise -- negligence would be
15 on the individual agent. But he's working for an
16 agency, so you've got to respond --

17 THE REPORTER: I'm sorry. "He's working for an
18 agency"...

19 THE DEPONENT: The individual agent is the person
20 on whom the negligence falls, because it's the
21 individual agent, not his current employer, that created
22 that expectation, that custom and practice, that
23 history. So in your example, that third agency, whether
24 or not they are responsible, that's a question that's
25 outside of my expertise. You're talking respondeat

Page 53

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: 3/9/15

22 
23 _____

24 JOANNA BROADWELL

25 CSR No. 10959

EXHIBIT 8

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DISTRICT COURT
CLARK COUNTY, NEVADA

O.P.H. OF LAS VEGAS, INC.,)
 Plaintiff,)
vs.) No. A-12-672158-C
OREGON MUTUAL INSURANCE)
COMPANY, DAVE SANDIN and)
SANDIN & CO.,)
 Defendants.)
_____)

Videotaped Deposition of
NEAL BORDENAVE, JD, CPCU
Tuesday, March 3, 2015

Reported by: JULIE A. MARTINEZ, CSR #9773
JOB NO.: 238139

1 A P P E A R A N C E S

2 --oOo--

3
4 COUNSEL FOR PLAINTIFF:

5 LANGFORD McLEITCHIE

6 BY: ROBERT LANGFORD, Attorney at Law

7 616 North 8th Street

8 Las Vegas, Nevada 89101

9 702.471.6565

10 robert@nvlitigation.com

11

12 FOR DEFENDANT DAVE SANDIN and SANDIN & COMPANY:

13 HUTCHISON & STEFFEN

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25

1 A P P E A R A N C E S (Continued)
2
3 FOR DEFENDANT OREGON MUTUAL INSURANCE COMPANY:
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5 BY: PRISCILLA L. O'BRIANT, Attorney at Law
6 6385 South Rainbow Blvd., Suite 600
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8 702.693.4388
9 POBRIANT@lbbslaw.com

10

11 THE VIDEOGRAPHER:

12 LITIGATION SERVICES
13 BY: ALEXANDRA KOPPEL, Videographer
14 3770 Howard Hughes Parkway, Suite 300
15 Las Vegas, Nevada 89169

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1 BE IT REMEMBERED that on Tuesday, the 3rd day
2 of March, 2015, at the hour of 9:10 a.m., of said day, at
3 MOA Deposition Reporters, 1074 East Avenue, Suite A,
4 Chico, California, before, Julie A. Martinez, a Certified
5 Shorthand Reporter, personally appeared NEAL BORDENAVE,
6 who was examined as a witness in said cause.

7 --oOo--

8 THE VIDEOGRAPHER: This is the beginning of
9 videotape No. 1 in the deposition of Neal Bordenave
10 taken by the defense in the matter of O.P.H. of Las Vegas
11 versus Oregon Mutual Insurance, case number
12 A-12-672158-C, noticed at 1074 East Avenue in Chico,
13 California on March 3rd, 2015 at 9:10 a.m.

14 The court reporter is Julie Martinez.

15 I am Alexandra Koppel, the videographer, an
16 employee of Litigation Services located at 3770 Howard
17 Hughes Parkway, Suite 300, Las Vegas, Nevada 89169.

18 This deposition is being videotaped at all
19 times unless specified to go off the video record.

20 Would all present please identify themselves
21 beginning with the witness.

22 MR. BORDENAVE: Neal Bordenave.

23 MR. LANGFORD: Robert Langford on behalf of
24 O.P.H.

25 MS. O'BRIANT: Priscilla O'Briant on behalf of

1 Oregon Mutual Insurance Company.

2 MS. LEE: Patricia Lee on behalf of the Sandin
3 defendants.

4 THE VIDEOGRAPHER: Would the court reporter
5 please swear in the witness.

6 --oOo--

7 NEAL BORDENAVE,
8 called as a witness herein, having been administered an
9 oath in accordance with C.C.P. Section 2094, was examined
10 and testified as follows:

11 --oOo--

12 EXAMINATION BY MS. LEE

13 Q. Just a couple of preliminary housekeeping
14 matters. First of all, I am Patricia Lee. Very nice to
15 meet you, Mr. Bordenave.

16 A. Nice to meet you.

17 Q. I appreciate your taking time to be with us
18 today.

19 MS. LEE: I am going to just put on the
20 record -- I am sorry, they are a little crinkly here --
21 the second amended notice of deposition of Neal Bordenave
22 and we can mark that as defense Exhibit A. I'll hand you
23 a copy as well and a copy to your counsel.

24 (Exhibit A was marked)

25 BY MS. LEE: Q. And I just wanted to make

1 premium, just focusing on that particular issue, do you
2 know if there's a statutory duty on the part of an
3 agent/broker to notify its insureds under Nevada law?

4 A. I do not know if there is one.

5 Q. Do you know if there is any case law that
6 requires an agent/broker to notify the insured of a
7 provisional notice of cancellation in Nevada?

8 A. I did not research any case law.

9 Q. Are there any secondary sources or industry
10 publications that you can cite to or that you relied on
11 that would suggest that an agent/broker has a duty to
12 notify the insured of a provisional notice of
13 cancellation?

14 A. Based on my 27 years in the business that if
15 you have a practice of notifying your insured, if you do
16 it for one you have to do them for all, and that was
17 supported -- and I read Mr. Burkett's deposition. That's
18 the industry standard, that if you are ever going to take
19 on that initiative you sure as heck better do it for
20 everybody.

21 Q. But have you reviewed or seen any industry
22 publications or anything in writing that suggests that?

23 A. That I can cite the specific one, no, but
24 certainly trade journals in all of the years I have been
25 doing this, they cite to that all the time for training

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

I, JULIE A. MARTINEZ, a Certified Shorthand Reporter, licensed by the State of California, being empowered to administer oaths and affirmations pursuant to Section 2093 (b) of the Code of Civil Procedure, do hereby certify:

That the witness named in the foregoing deposition was present at the time and place specified, and was by me administered an oath to testify as to the truth, the whole truth, and nothing but the truth; that the said proceeding was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription;

That the foregoing transcript constitutes a full, true and correct report of the proceedings which then and there took place; that I am a disinterested person to said action.

IN WITNESS WHEREOF, I have hereunto subscribed my signature on this 11th day of March, 2015.

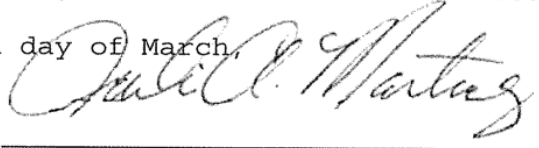

JULIE A. MARTINEZ, CSR
Certified Shorthand Reporter
California License #9773

EXHIBIT 9

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DISTRICT COURT
CLARK COUNTY NEVADA
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O.P.H. OF LAS VEGAS, INC.,

Plaintiff,

vs.

CASE NO. A-12-672158-C
DEPT NO. XXVI

OREGON MUTUAL INSURANCE
COMPANY, DAVE SANDIN, AND
SANDIN & COMPANY,

Defendants.

_____ /

DEPOSITION OF
PAUL BURKETT
Wednesday, February 25, 2015
Reno, Nevada

REPORTED BY: MICHELLE BLAZER
CCR #469 (NV) - CSR #3361 (CA)
PAGES: 1-23

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APPEARANCES

FOR THE PLAINTIFFS:

LANGFORD MCLEITCHIE LLC

Attorneys at Law

616 S. Eighth Street

Las Vegas, Nevada 89101

By: Robert L. Langford, Esq.

FOR THE DEFENDANTS:

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Attorneys at Law

Peccole Professional Park

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By: Patricia Lee, Esq.

FOR THE DEFENDANTS:

(Via Video and Telephonically)

LEWIS, BRISBOIS, BISGAARD & SMITH

Attorneys at Law

6385 S. Rainbow Boulevard, Suite 600 Suite 600

Las Vegas Nevada 89118

By: Priscilla L. O'Briant, Esq.

ALSO PRESENT:

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I N D E X

EXAMINATION

PAGE

BY MR. LANGFORD:

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EXHIBITS

NUMBER

DESCRIPTION

PAGE

(None Marked)

ooo

1 Reno, Nevada, Wednesday, February 25, 2015
2 8:57 o'clock, a.m.
3 oOo
4 PURSUANT TO NOTICE, and on Wednesday, the 25th
5 day of February 2015, at the hour of 8:57 a.m. of said
6 day, at the offices of Bonanza Reporting, Reno, Nevada,
7 before Michelle Blazer, a Certified Court Reporter,
8 personally appeared PAUL BURKETT.
9 PAUL BURKETT,
10 having been duly sworn,
11 was examined and testified as follows:
12 EXAMINATION
13 BY MR. LANGFORD:
14 Q Mr. Burkett, would you state your full name,
15 please?
16 A Paul Wesley Burkett B-u-r-k-e-t-t.
17 Q And who are you employed by?
18 A I'm employed by Snoaspen Insurance Group, Inc.
19 Of Reno, Nevada.
20 Q And what is your position there?
21 A I'm the president of the company.
22 Q How long have you been there?
23 A At Snoaspen, since 1997.
24 Q I will get into more of your background in a
25 minute. What is the address for Snoaspen?

Page 4

1 admitted carrier that will take you on that.

2 So it becomes an important issue at the very
3 beginning to set that standard. The subsequent item at
4 the end, getting notice that it's cancelled, whether it's
5 before or after, all it tells me, I have got to have a
6 preparation to say to the client the following: What do
7 you want to do now? It's been cancelled.

8 That's all I use it for. Because I'm not going
9 to interfere with the process of the cancellation between
10 the insurance company and the insured. That's -- that's
11 contractual. My job is then what do I do to pick up the
12 pieces afterwards.

13 Q Assuming that it gets cancelled?

14 A Right.

15 Q Okay. Would you agree, though, that it might be
16 more prudent, in fact, to notify your client that there
17 is a pending cancellation?

18 A No. I don't want to get into that. Our policy
19 has always been we never get involved in the cancellation
20 process, that's between the insurance company and the
21 insured. And I have had -- I have owned three agencies,
22 I have had -- worked for about three others.

23 And so in all instances that was the policy.
24 If -- We never got involved in the -- in the
25 cancellation. If it was a premium finance company, the

Page 14

1 (Defendant's Exhibit 10 marked.)

2 BY MS. MEREDITH:

3 Q Miss Snyder, have you seen the notice of
4 cancellation that we've marked as Exhibit 10, prior
5 to today?

6 A Yes.

7 Q Do you recall when you first saw this?

8 A After we were canceled.

9 Q The address at the top of the page is 4170
10 South Ft. Apache Road. Do you see that?

11 A Yes, I do.

12 Q Las Vegas?

13 A Yes.

14 Q That is the administrative or home office
15 address of OPH?

16 A Correct.

17 Q Do you have some reason to believe that
18 OPH did not receive this document sometime after
19 7-31-12?

20 MS. MCLETHIE: Objection, vague.

21 BY MS. MEREDITH:

22 Q I'm sorry. Do you have some reason to
23 believe if OPH did not receive this document prior
24 to the due date of 8-15-12?

25 A Yes, absolutely.

1 Q And what reason?

2 A It didn't come.

3 Q And how do you know it didn't come?

4 A Because I didn't get it.

5 Q Do you recall, when did you first get it?

6 A After we were canceled.

7 Q Meaning what date?

8 A After the 23rd.

9 Q And how did you receive it after the 23rd?

10 A In the mail. As a matter of fact, I think
11 it was sent, it may have been sent certified. I
12 know a notice of cancellation was sent certified.

13 Q Let me go back. You're saying this
14 document, Exhibit 10, was sent certified?

15 A I said it may have been the one that was
16 sent certified.

17 Q Oh, I see. Okay.

18 A Okay.

19 Q But you believe that you received a copy
20 of the notice of cancellation after August 23rd; is
21 that correct?

22 A Correct.

23 Q And that's what I'm trying to understand.
24 How did you come to have that document after August
25 23rd?

1 at Ft. Apache was damaged by the fire.

2 MS. MCLEITCHIE: Objection, counsel's
3 testifying, lack of foundation.

4 BY MS. MEREDITH:

5 Q No. Okay. Was the restaurant at Ft.
6 Apache damaged by the fire?

7 A No.

8 Q What was damaged by the fire?

9 A The restaurant at West Charleston.

10 Q Sorry. Okay. So the West Charleston
11 location, is that operational now?

12 A No.

13 Q Okay. Have any repairs been made to the
14 West Charleston location?

15 A It's gone.

16 Q It's on?

17 A It's gone. It's no longer there.

18 Q Oh, okay.

19 A It's a cement slab.

20 Q Was it burned completely to the ground?

21 A It was burned past the point of
22 restoration.

23 Q Okay. Was OPH responsible for rebuilding
24 the structure?

25 MS. MCLEITCHIE: Objection, calls for a

1 legal conclusion.

2 THE WITNESS: To the best of my knowledge,
3 no. It wasn't our building.

4 BY MS. MEREDITH:

5 Q Was OPH responsible for the contents of
6 the West Charleston location?

7 MS. MCLEITCHIE: Objection, vague, calls
8 for a legal conclusion.

9 THE WITNESS: Yes.

10 BY MS. MEREDITH:

11 Q Do you know what the damage to the
12 contents was as far as dollar amount?

13 A The initial setup of OPH of Las Vegas,
14 Inc., the West Charleston location was \$750,000.
15 And then another probably hundred to \$130,000 was
16 spent on inventory, furniture, fixtures, things to
17 prepare the restaurant for opening.

18 Q And when did that West Charleston location
19 originally open?

20 A I believe it was October of 1995.

21 Q Were the furniture and fixtures
22 depreciated over the years?

23 A That's something you would probably be
24 best to ask our accountant, but it's my
25 understanding that yes, it was.

1 narrative, asked and answered.

2 THE WITNESS: Those were not expectations
3 that I had of Dave, those were established
4 procedures that Dave put in place with the Original
5 Pancake House. He was our go to person and our
6 failsafe person when it came to insurance. It
7 wasn't our demands or expectations of him, it was
8 the way the relationship worked for 12 plus years.

9 BY MS. BRANSON:

10 Q Okay. That's not what I asked. I
11 appreciate that, but that's not what I'm asking. So
12 I'm going to repeat the question.

13 A Okay.

14 Q You gave me a list of what, and I'm not
15 arguing with you about that, I'm just asking if Dave
16 had this list of duties that he had to OPH.

17 A Uh-huh.

18 Q What were OPH's duties under these
19 policies? You gave me Dave Sandin's duties under
20 these policies, that OPH believed Dave Sandin had.
21 I want to know what OPH believed its own duties were
22 under these policies.

23 MS. MCLEITCHIE: Objection, vague,
24 compound, calls for a legal conclusion, asked and
25 answered.

1 provide PMK notices, and that's because she should
2 have an opportunity to ask other persons of the
3 company to make sure she's prepared. You were
4 certainly able to notice additional questions as Ms.
5 Meredith has done in the depo she's been taking.

6 MS. BRANSON: Thank you, Maggie.

7 BY MS. BRANSON:

8 Q Okay. Let's see. Under the
9 interrogatories I am looking at interrogatory number
10 one. And Miss Snyder, just to let you know, if you
11 do not know any of these, if you don't know the
12 answer or you don't feel capable of answering my
13 question, please let me know and we will absolutely
14 move on.

15 MS. MCLEITCHIE: And just again, she's
16 going to only answer them based on her own personal
17 recollection, not in any preparation of the PMK.

18 BY MS. BRANSON:

19 Q And again, I will expect that you're
20 answering as PMK. So if you don't have knowledge,
21 let me know and we will move on. Number one is,
22 sorry, are you at number one?

23 A Yes, I am.

24 Q Okay. Thank you. Can you please identify
25 which policy Dave Sandin informed you was late?

1 Which policy premium was late on March 23rd, 2006?

2 A No.

3 Q Is it because you don't know or don't
4 remember?

5 A I don't remember who the carrier was at
6 the time.

7 Q What about the May, 2008 payment that was
8 late and/or outstanding? Do you recall which
9 carrier that was?

10 A I believe that would have been Fireman's
11 Fund.

12 Q Is this the one that resulted in the
13 auto-pay?

14 A No, that was in 2009.

15 Q Were these, in this interrogatory number
16 one, are these the only two late payments then that
17 were notified, that they then notified you about?

18 MS. MCLEITCHIE: Objection, asked and
19 answered.

20 THE WITNESS: There were actually three
21 because there would have been the one prior to the
22 auto-pay in 2009.

23 Q Okay. Interrogatory number four.

24 A Number four, okay.

25 Q Sorry, just a second. If you look at line

1 mischaracterizes testimony, asked and answered.

2 THE WITNESS: They're redundant, but
3 again, it was understood based on ten plus years of
4 doing business with Mr. Sandin that he would notify
5 us if our policy was in jeopardy.

6 BY MS. BRANSON:

7 Q I apologize. It wasn't meant to be
8 redundant. Did Mr. Sandin ever expressly tell you
9 he would notify you that you had missed a premium
10 payment?

11 MS. MCLEITCHIE: Objection, vague, asked
12 and answered.

13 THE WITNESS: You're asking the same
14 question in a different way.

15 BY MS. BRANSON:

16 Q Well, it's because I'm afraid I'm not
17 getting a response to that question. I'm getting an
18 explanation. I don't need an explanation.

19 A I think what you're not getting is the
20 answer that you want to get. My answer to this is
21 that we had a ten-plus year relationship with Dave
22 Sandin specifically, regardless of what company he
23 worked for. Our relationship was with Dave Sandin.
24 It was implied and understood that he would protect
25 us as his client, the same as an attorney would

1 protect their client in regards to insurance
2 matters. So was it specifically word for word said
3 I will do this, no. But it was implied and
4 understood, and it was implied and understood for
5 over ten years. So regardless of how it's asked or
6 how it's worded, it remains the same.

7 Q Right. And my question was very narrow.
8 I just wanted to know about if there was something
9 expressly worded.

10 A If we could interject something.

11 Q Sure.

12 A The Original Pancake House is a mall
13 business. It's a husband and wife business. It's
14 got one person in the office. It relies on the
15 expertise of the subcontractors that it has, be it
16 an insurance advisor, an attorney, an accountant.
17 So if you can't place your professional faith in
18 those parties that are representing you, then where
19 do you place your faith?

20 MS. MEREDITH: In yourself.

21 MS. MCLETCHIE: Objection, move to strike
22 Counsel testifying.

23 MS. MEREDITH: She's asking me a question.
24 I place it in myself. I don't rely on other people.

25 THE WITNESS: I'm not an expert.

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 I, Rene' Hannah, Certified Court Reporter,
6 do hereby certify:

7 That I reported the deposition of LINDA
8 SNYDER, commencing on Tuesday, August 13, 2013, 9:00
9 a.m.

10 That prior to being deposed, the witness
11 was duly sworn by me to testify to the truth. That
12 I thereafter transcribed my said shorthand notes
13 into typewriting and that the typewritten transcript
14 is a complete, true and accurate transcription of my
15 said shorthand notes.

16 I further certify that I am not a relative
17 or employee of counsel of any of the parties, nor a
18 relative or employee of the parties involved in said
19 action, nor a person financially interested in
20 the action.

21 IN WITNESS WHEREOF, I have set my hand in
22 my office in the County of Clark, State of Nevada,
23 this _____ day of _____, 2013.

24 RENE' R. HANNAH, CCR NO. 326

25

EXHIBIT 2

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DISTRICT COURT
CLARK COUNTY NEVADA
O.P.H. OF LAS VEGAS, INC.,
Plaintiff,
v. Case No.: A-12-672158-C
OREGON MUTUAL INSURANCE COMPANY;
DAVE SANDIN; and SANDIN & CO.,
Defendants.

DEPOSITION OF DAVID BROWN
Taken in behalf of the Plaintiff
Monday, September 9, 2013

Reported by Mary Jacks, Court Reporter, Notary Public

1 BE IT REMEMBERED THAT, pursuant to the Rules of
2 Civil Procedure, the deposition of DAVID BROWN was
3 taken before Mary Jacks, Court Reporter and Notary
4 Public for the State of Oregon, on Monday, September
5 9, 2013, commencing at the hour of 9:45 a.m., at the
6 location of C&L Court Reporters, 4103 Sylvia Street
7 SE, Salem, Oregon.

8 --o0o--

9 A P P E A R A N C E S

10
11 Appearing on behalf of the Plaintiffs:

12 Langford McLetchie
13 By: DANNY HEIDTKE
14 MARGARET MCLEITCHIE
15 616 South 8th Street
16 Las Vegas, Nevada 89101
17 702-471-6565
18 Danny@nvlitigation.com
19 Maggie@nvlitigation.com

20 Appearing on behalf of the Oregon Mutual Insurance:

21 Lewis Brisbois Bisgaard & Smith
22 By: KRISTIN E. MEREDITH
23 6385 South Rainbow Blvd., Suite 600
24 Las Vegas, Nevada 89118
25 702-893-3383
Meredith@lbbslaw.com

20 Appearing on behalf of the Sandin Defendants:

21 Hutchison & Steffen
22 By: Z. KATHRYN BRANSON
23 10080 West Alta Drive, Suite 200
24 Las Vegas, Nevada 89145
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APP00272

1 SALEM, OREGON; MONDAY, SEPTEMBER 9, 2013; 9:45 AM

2
3 DAVID BROWN,

4 having first been duly sworn, was
5 examined and testified as follows:

6
7 EXAMINATION

8 BY MR. HEIDTKE:

9 Q. Good morning, Mr. Brown. My name is Danny
10 Heidtke, spelled H-E-I-D-T-K-E. I represent, along
11 with Ms. McLetchie to my right, Original Pancake
12 House, the plaintiff in this case.

13 As you are probably aware, this is Original
14 Pancake House versus Oregon Mutual Insurance and the
15 Sandin Defendants.

16 I just want to confirm as we start that
17 Ms. Meredith is representing you today?

18 A. Ms. Meredith represents our company, Oregon
19 Mutual Insurance. She does not represent me.

20 Q. Okay.

21 MS. MEREDITH: Well, I should clarify.
22 I'm not representing him, personally. I am
23 representing him in his capacity as an employee of
24 Oregon Mutual.

25 MR. HEIDTKE: That's -- that's what I

1 A. Any of the documents posted on BizLink are --
2 those would be batch processed at the time of our --
3 when we run our nightly batch process.

4 Q. So the documents are posted at night then?

5 A. Yes.

6 Q. And how do -- if they do at all -- how do
7 agents receive notice that a document is on BizLink
8 for them to check?

9 A. For the most part they receive no notice. They
10 are just available there as policies renew. And the
11 exception to that is, is we do have a couple
12 billing-related documents. One is our provisional
13 notice of cancellation. The other would be what we
14 call notice of late pay, I believe.

15 And on those particular documents, we have
16 in -- on BizLink a link will appear under the quick
17 links on days that those -- those documents are
18 posted. And what those links take the agent to is a
19 list of individuals -- a name listing with date,
20 final date to pay, et cetera, or date paid, and that
21 only remains visible for the day that that notice was
22 produced or that -- so but the documents are posted
23 and available for viewing irregardless, so --

24 Q. So just so I understand, the documents are put
25 on in the evening. So then the following day, so for

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1 example, if it was -- a document was posted July 31st
2 at night, then it would be available all day
3 August 1st in the typical -- is that what you are
4 saying to me? And in the provisional notice or
5 notice of late pay instance, that link is available
6 for one full day?

7 A. One full day.

8 Q. Are there any other types of documents that
9 have the same sort of link available?

10 A. I don't believe so. I believe it is just those
11 two payment-related documents.

12 Q. Okay. And why are those two documents the only
13 two?

14 A. Those particular documents -- since those are
15 -- those are documents that are -- well, they're of
16 significant importance, one, that it identifies
17 policyholders who have not paid, made their current
18 payment within the specified period of time, and so
19 that link is there notifying agents should they wish
20 to follow it up.

21 And then the second document or second link
22 advises the agent that, in fact, the payment was made
23 after receiving the notice, the provisional notice of
24 non-payment that the payment had not been received.
25 It advises the agent that that payment has, in fact,

1 been there.

2 So outside of that, those are the two documents
3 that are visible on the links. Now those documents
4 also are -- or the document that the agent can see,
5 which is just, again, a list of policyholders and it
6 shows the date and that, and then the agent could go
7 to our document images and actually see the
8 provisional notice that was to be mailed to the
9 customer that day.

10 Another option that the BizLink portal does
11 provide is it gives the agent or users under the
12 agency the option of having those -- that listing --
13 payment listing, payment-related listing, e-mailed to
14 them directly on a given day. So that is a
15 self-administered thing that agents can select to
16 have activated. So they would receive an e-mail on a
17 given date when a new notice such as that was -- was
18 being posted.

19 Q. When did that --

20 MS. MEREDITH: Can we go off the record
21 for a second?

22 MR. HEIDTKE: Sure.

23 (Whereupon, there was a brief discussion
24 held off the record.)

25 THE WITNESS: Now, this is not

C E R T I F I C A T E

I, MARY T. JACKS, do hereby certify that
pursuant to the Rules of Civil Procedure, the witness
named herein appeared before me at the time and place
set forth in the caption herein; that at the said
time and place, I reported all testimony adduced and
other oral proceedings had in the foregoing matter;
and that the foregoing transcript pages constitute a
full, true and correct record of such testimony
adduced and oral proceedings had and of the whole
thereof.

IN WITNESS WHEREOF, I have hereunto set my hand
this 24th day of September, 2013.

Mary T Jacks

MARY JACKS

COURT REPORTER

NOTARY PUBLIC

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APP00277

EXHIBIT 3

DISTRICT COURT
CLARK COUNTY NEVADA

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

Plaintiff,

v.

Case No.: A-12-672158-C

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

Defendants.

DEPOSITION OF DAVID SANDIN, VOLUME I

Taken in behalf of the Plaintiff

Thursday, September 12, 2013

Reported by Mary Jacks, Court Reporter, Notary Public

C&L Court Reporters
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APP00279

1 BE IT REMEMBERED THAT, pursuant to the Rules of
2 Civil Procedure, the deposition of DAVID SANDIN,
3 Volume I, was taken before Mary Jacks, Court Reporter
4 and Notary Public for the State of Oregon, on
5 Thursday, September 12, 2013, commencing at the hour
6 of 9:50 a.m., at the location of C&L Court Reporters,
7 4103 Sylvia Street SE, Salem, Oregon.

8 --oOo--

9 A P P E A R A N C E S

10
11 Appearing on behalf of the Plaintiffs:

12 Langford McLetchie
13 By: MAGGIE MCLEITCHIE
14 DANNY HEIDTKE
15 616 South 8th Street
16 Las Vegas, Nevada 89101
17 702-471-6565

18
19 Appearing on behalf of the Oregon Mutual Insurance:

20 Lewis Brisbois Bisgaard & Smith
21 By: KRISTIN E. MEREDITH
22 6385 South Rainbow Blvd., Suite 600
23 Las Vegas, Nevada 89118
24 702-893-3383

25
26 Appearing on behalf of the Sandin Defendants:

27 Hutchison & Steffen
28 By: Z. KATHRYN BRANSON
29 10080 West Alta Drive, Suite 200
30 Las Vegas, Nevada 89145
31 702-385-2500

32
33 Also Present: Stephan Freudenberger

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1 SALEM, OREGON; THURSDAY, SEPTEMBER 12, 2013; 9:50 AM

2
3 DAVID SANDIN,

4 having first been duly sworn, was
5 examined and testified as follows:

6
7 EXAMINATION

8 BY MS. MCLEATCHIE:

9 Q. Good morning, Mr. Sandin. I'm Maggie
10 McLetchie. As you know, I represent the Original
11 Pancake House of Las Vegas. I'm going to go over
12 first the kind of ground rules for today and how
13 we're going to do things.

14 You understand that your testimony today is
15 under oath; correct?

16 A. Yes.

17 Q. We'll try to talk one at a time to make sure
18 that it helps the court reporter keep a good record,
19 so please let me ask -- finish my questions. If your
20 counsel has an objection, let her finish her
21 objection and you go ahead and answer. I'll try not
22 to talk over you, either. Okay?

23 A. Okay.

24 Q. And we have to be sure for the court reporter
25 that we give verbal answers, so no head nods. She

1 produced in this litigation. Sound okay?

2 A. Okay.

3 Q. If you -- if I ask a question early on in the
4 deposition and then we're talking and going through
5 documents and you need to clarify something you said
6 earlier or supplement or change an answer, can you
7 please let me know?

8 A. Yes.

9 Q. If you remember anything else after this
10 deposition, which you'll have an opportunity to
11 review the transcript, but if you remember something
12 after this deposition where you realize that you said
13 something that was false or incorrect today, just let
14 your attorney know. Okay?

15 A. Okay.

16 Q. Just so we're clear, and just so the record is
17 clear, if I say "OPH," will you understand I mean the
18 plaintiff, the Original Pancake House of Las Vegas?

19 A. Yes.

20 Q. And "OMI," will that make sense if I sometimes
21 say OMI for Oregon Mutual Insurance Company?

22 A. Yes, that's fine.

23 Q. And if I say "Sandin or "Sandin Company," will
24 you understand that I mean the Sandin Insurance
25 Group?

1 A. Yes.

2 Q. And obviously, you go by both Dave and David
3 Sandin; correct?

4 A. Uh-huh.

5 Q. And your son is Anthony Sandin; is that
6 correct?

7 A. Yes.

8 Q. Does he go by any other names? Does he go by
9 Tony or just Anthony?

10 A. Just Anthony.

11 Q. Okay. Any questions about the process?

12 A. No.

13 Q. Have you ever been deposed before?

14 A. No, I have not.

15 Q. Have you ever been involved in a lawsuit before
16 either as a witness or as a party?

17 A. No.

18 Q. Have you ever -- so you never testified at
19 trial or in a courtroom then?

20 A. No, I have not.

21 Q. Never in an arbitration or a mediation either?

22 A. No.

23 Q. Have you ever given testimony under oath under
24 any circumstances?

25 A. No.

1 Q. Lucky you. Okay. I just want to go over a
2 little bit just your general background. Can you
3 just state your full name for the record?

4 A. David Eric Sandin.

5 Q. And how do you spell Eric?

6 A. E-R-I-C.

7 Q. And you go by Dave Sandin, as we discussed?

8 A. Uh-huh.

9 Q. Any other names that you ever go by?

10 A. No.

11 Q. Who's your current employer?

12 A. Sandin Insurance Group.

13 Q. What's your title there?

14 A. Producer.

15 Q. What's the address at the office?

16 A. 19 Churchill Downs, Lake Oswego, Oregon 97035.

17 Q. What's your address?

18 A. Same.

19 Q. Where's your personal address?

20 A. 19 Churchill Downs.

21 Q. Okay. What's the highest level of education
22 that you have attained?

23 A. College graduate.

24 Q. What did you study?

25 A. Economics was my major, and New Testament

1 Greek.

2 Q. That sounds interesting. So the highest formal
3 degree you have is a college degree?

4 A. Uh-huh.

5 Q. Do you have any other professional training?

6 A. No. I've taken some classes but --

7 Q. What -- what classes have you taken?

8 A. I've taken some other economic classes. I took
9 a couple pastoral classes for a while many years ago.

10 Q. Have you taken any classes specific to
11 insurance?

12 A. Just education classes, yeah.

13 Q. What do you mean by "education classes"?

14 A. In Oregon we're required to take 24 hours every
15 two years. I think I've done about 20 hours per year
16 for many years.

17 Q. When's the last time you did that?

18 A. Last class I took?

19 Q. Yes.

20 A. Oh, I've been out to -- about six months ago.

21 Q. And what was that class?

22 A. The flood insurance class, I believe.

23 Q. Have you taken any classes specific to
24 commercial insurance or business lines over the last
25 year?

1 A. Yes.

2 Q. What were those?

3 A. I took an E&O class, I took -- that's errors
4 and omissions. Took a personal lines homeowners and
5 automobile class. I did a couple others, I believe.

6 Q. What about anything specific, though, to
7 business or commercial insurance?

8 A. Did most of those, like, a year and a half ago.

9 Q. What were those?

10 A. General liability and property.

11 Q. Anything else?

12 A. I don't remember, but probably.

13 Q. Not just in the last year but over the last --
14 since you can remember, are there any other classes
15 or trainings that you've taken seminars that are
16 specific to business or commercial insurance?

17 A. Yeah, as I said, I took several every year.

18 Q. Can you remember any of those, specifically?

19 A. No, not right now.

20 Q. Did you have any jobs -- sorry. Go ahead.

21 A. No.

22 Q. Did you have any jobs before or during college?

23 A. Yes.

24 Q. What were those?

25 A. I worked at Nordstrom's in the shoe department.

1 Q. Anything related to insurance companies?

2 A. No.

3 Q. Anything related to businesses other than
4 retail businesses?

5 A. No.

6 Q. After you graduated from college, what was your
7 first job?

8 A. Just a few miles away, Supra Products. Well,
9 no, I worked for another place in Portland briefly,
10 and then I worked for about eight years at Supra
11 Products in Salem.

12 Q. What was the other place in Portland that you
13 worked at?

14 A. Call USA.

15 Q. What kind of company was that?

16 A. That's when Ma Bell broke up and I was selling
17 long distance phone service.

18 Q. What kind of company was Supra?

19 A. Supra was the leading producer of lockboxes for
20 real estate and automotive dealerships.

21 Q. What about after Supra?

22 A. After Supra I went into business for myself for
23 about three years, three or four years.

24 Q. What kind of business was that?

25 A. Selling Christmas trees to nonprofit groups,

1 mainly churches.

2 Q. How about after that?

3 A. Let's see. After that, I went to work for a
4 large software company in Bend, Oregon.

5 Q. Computer software company?

6 A. Uh-huh.

7 Q. How long did you work there?

8 A. Four or five years, I think.

9 Q. What was the name of that company?

10 A. Orcom Systems.

11 Q. Can you spell that?

12 A. O-R-C-O-M Systems, Inc.

13 Q. What did you do there?

14 A. I sold, well, computer software and computer
15 equipment to utility companies and hotels. Mainly
16 software to help them digitize their paperwork and
17 put that on computers, so intensive paper companies
18 like utilities, hotels, the portfolios, the -- not
19 portfolios -- folios. I guess when you check into a
20 hotel, it generates a folio. We were able to put
21 that on a computer disc for them at that time without
22 them -- actually, I was employed by -- IBM paid half
23 my salary through Orcom.

24 Q. So you were helping -- approximately what years
25 was this?

1 A. Oh, jeez, '80s, mid '80s to around '90s, yeah,
2 '90s.

3 Q. So computers weren't quite as popular as they
4 are now?

5 A. No, they were expensive then.

6 Q. This was a process to help them use less paper
7 and do things more electronically?

8 A. Customer-wise they could pull up a person who
9 wanted a copy of their folio if they stayed at the
10 hotel. They could pull it up in seconds instead of
11 days.

12 Q. Did you have to learn how the software worked
13 in order to be able to sell it?

14 A. Yes.

15 Q. Are you pretty comfortable with computers?

16 A. Average.

17 Q. After the -- after the -- after your four or
18 five years with that company, what did you do next?

19 A. I went to work for a competitor of theirs in
20 Wilsonville, Oregon.

21 Q. What did the competitor do?

22 A. Did what they did, but better. They -- that
23 was when Windows first came out, I think, or Windows
24 was new. And turned down a job at Microsoft and went
25 to work for a small firm in Wilsonville.

1 MS. MCLEITCHIE: Can we just take a short
2 break?

3 (Whereupon, a brief recess was taken.)

4 BY MS. MCLEITCHIE:

5 Q. Okay. So the competitor did what the first
6 software company you worked for did, but better. Can
7 you explain that to me?

8 A. They had converted over their software to a
9 Windows environment, and I didn't have faith that my
10 company was going to be able to do that, the one I
11 was working at before, so I was losing accounts to
12 them. They offered me a job. And so I --

13 Q. What kinds of clients did they have?

14 A. Mainly hotels and hospitals.

15 Q. What was the name of that company?

16 A. Laser Arch, I think.

17 Q. Okay. And about how long did you work there?

18 A. Couple years.

19 Q. And why did you leave there?

20 A. I went to work for another software company
21 that was providing software point-of-sale systems to
22 restaurants.

23 Q. Is that the first time you started working in
24 any way in the businesses that served the hospitality
25 industry?

1 A. Uh-huh.

2 Q. Let me finish my question. It's just for her.

3 So that was the first time you started working
4 in the -- in businesses that served the hospitality
5 industry?

6 A. Yes.

7 Q. How long did you work there?

8 A. Let's see. I don't recall exactly. It was
9 about three years.

10 Q. So did they also have hotel clients or were
11 they mostly just restaurants?

12 A. No, just restaurants.

13 Q. Just restaurants?

14 A. Uh-huh.

15 Q. So you had an --

16 A. Mostly pizzerias.

17 Q. When you say a "point-of-sale system," what do
18 you mean?

19 A. The system that restaurants use for taking
20 orders, receiving clients, that kind of thing.

21 Q. Approximately what year did you start working
22 there?

23 A. Mid '90s.

24 Q. And as with the prior software company, did you
25 have to learn and understand how this point-of-sale

1 software worked in order to be able to sell it?

2 A. Somewhat, yes. I was mostly in sales and we
3 had technical people that went out and installed it.

4 Q. In sales did you explain the product to people?

5 A. Yes.

6 Q. Did you attend trainings on how the product
7 worked? Did you get training on how the product
8 worked?

9 A. Yes.

10 Q. So you were there for about three years. Then
11 what?

12 A. Then my best friend from college wanted help
13 with his insurance brokerage that he was working at.
14 He was starting an office in Portland, went to work
15 for him at half the pay.

16 Q. What was the name of your friend?

17 A. Mike Delanty.

18 Q. Can you spell that?

19 A. D-E-L-A-N-T-Y.

20 Q. How long did you work with him?

21 A. I worked there for quite a few years. He moved
22 brokerages so we moved once or twice. Let's see.
23 Oh, no, we moved once.

24 Q. Just so I'm clear, what was the name of that
25 brokerage when you first started working with your

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APP00294

1 friend?

2 A. Arthur J. Gallagher.

3 Q. Was this your first job in the insurance
4 industry?

5 A. Yes, it was.

6 Q. And this was approximately the mid '90s?

7 A. No, that was end of the '90s.

8 Q. I'm sorry. The end of the '90s. Thank you.
9 And how long did you work there before it switched
10 brokerages?

11 A. They closed that office in -- around 2001,
12 maybe 2002, 2001, I believe.

13 Q. Okay. And when they closed that office and
14 changed brokerages, can you explain to me what that
15 means?

16 A. Well, it means they shut the doors and he -- I
17 told -- I went out of town for a couple of weeks,
18 told them to fix it and find us a new job, and when I
19 came back from vacation he had done that.

20 Q. How had he fixed it?

21 A. He had joined HRH, Hilb Rogal & Hamilton, HRH
22 of Oregon, which was an office already established in
23 Oregon. And we became producers and I was more of a
24 marketing person at that point.

25 Q. Can you explain to me what producer means?

1 A. Oh, broker, in Oregon they like to use the word
2 producer instead of broker, but basically you are
3 procuring insurance for clients.

4 Q. What does broker insurance mean?

5 A. What does what mean?

6 Q. What does broker insurance mean?

7 A. You go out and find quotes for your clients
8 that are appropriate for their coverage needs and
9 present those to the client.

10 Q. Going back to Arthur J. Gallagher, were you
11 also a producer and a marketer at Arthur J.
12 Gallagher?

13 A. I was marketing department only.

14 Q. Were there specific kinds of clients that
15 Arthur J. Gallagher focused on?

16 A. It was general business, kind of all different
17 businesses.

18 Q. How about you in particular, were there
19 particular types of businesses that you focused on?

20 A. Hotels was my expertise, so I was calling on
21 quite a few hotels.

22 Q. Hotels was your expertise because of the first
23 software company that you worked at?

24 A. No. That was Mike's expertise and I was just
25 following his lead.

1 Q. Did you have any restaurant industry clients or
2 hospitality industry clients?

3 A. At Gallagher, a couple.

4 Q. When I say "hospitality," does that include
5 hotels and restaurants?

6 A. Generally, it.

7 Q. So you had some restaurant clients at Arthur J.
8 Gallagher?

9 A. A couple.

10 Q. When you say a couple -- two? Five? About how
11 many?

12 A. Two to ten.

13 Q. Okay. Any of your former clients that you sold
14 software to, the pizza businesses, did any of them
15 give you business at Arthur J. Gallagher?

16 A. No, at HRH of Oregon they didn't. Florida,
17 particularly.

18 Q. What -- what were the problems that led to the
19 closing of Arthur J. Gallagher?

20 A. I don't know exactly. Mike was let go over a
21 dispute with his boss in Seattle.

22 Q. My understanding -- and then I was obviously a
23 little confused, but my understanding was that Mike
24 had started the Arthur J. Gallagher office. Was it a
25 subsidiary of another office?

1 A. It was a subsidiary of Seattle.

2 Q. So he reported to somebody in Seattle?

3 A. Yes.

4 Q. Was it like a franchise?

5 A. No.

6 Q. How did it operate?

7 A. He was given pretty much free rein to do what
8 he wanted to do, and I think there was some problems
9 with him not wanting to introduce the head person in
10 Seattle to his large clients.

11 Q. So there was some conflict between him and
12 the --

13 A. Conflict between him and the new lady who took
14 over. Don't remember her name. But anyway, they
15 didn't hit it off very well.

16 Q. So you said you left and went and took a break
17 and said "fix it," and when you got back he had fixed
18 it?

19 A. Yes.

20 Q. And that was by becoming an office of HRH of
21 Oregon; is that right?

22 A. Joining their office.

23 Q. Joining their office?

24 A. Across the street.

25 Q. So it was convenient?

1 A. Yes.

2 Q. So you started working at HRH of Oregon, as
3 well?

4 A. Uh-huh.

5 Q. And you mentioned that you were producer and a
6 marketer there and you started getting some more
7 restaurant clients; is that correct?

8 A. I mainly assisted Mike the first year or so at
9 HRH.

10 Q. When you say you assisted Mike, what did you
11 do? What did that involve?

12 A. We shared commissions on -- he would take the
13 lead. He was more knowledgeable. And I did the
14 marketing and went out and got the clients.

15 Q. What was he -- what was he more knowledgeable
16 about?

17 A. He'd been in the industry since he was 22, so
18 just --

19 Q. How old was he at this point?

20 A. We were about 40 then, I guess.

21 Q. Did you learn more about the industry through
22 working with him and working through HRH?

23 A. Yes.

24 Q. What skills did you learn?

25 A. Oh, just the general knowledge of what's

1 involved in procuring insurance coverages for mainly
2 on the property and liability side. I hadn't done
3 any workers' comp until I got to HRH, so I learned
4 quite a bit about workers' comp insurance.

5 Q. The property and liability policies you are
6 talking about, is that both personal and commercial?

7 A. Just commercial.

8 Q. Just commercial, so HRH only did commercial?

9 A. I was only involved with commercial until last
10 year.

11 Q. So at Arthur J. Gallagher you were also just
12 doing commercial?

13 A. Uh-huh.

14 MS. BRANSON: Objection, mischaracterizes
15 testimony.

16 BY MS. MCLEITCHIE:

17 Q. Okay. So HRH of Oregon, how long were you
18 there?

19 A. I left HRH in 2006, February of 2006, early to
20 mid February.

21 Q. Why did you leave?

22 A. Couple reasons, mainly. HRH wasn't wanting the
23 smaller restaurant groups. I had a number of small
24 pizza groups, franchises, one group that had about
25 100 locations, but the franchises were only

1 onesie-twosie type locations and there was conflict
2 on them wanting that business.

3 Q. Why didn't they want the business?

4 A. They felt it was too small. They wanted us
5 concentrating -- they were a large brokerage. I
6 think they were the fourth or fifth largest brokerage
7 in the country and they wanted things that generated
8 more than \$5,000 of revenue.

9 Q. And your focus at this point was on smaller
10 businesses or smaller franchises?

11 A. Yes.

12 Q. And when you say "onesie-twosie," do you mean
13 somebody who might own one or two franchises?

14 A. Yes.

15 Q. I want to make sure I understand the lingo.
16 So did Mike go with you?

17 A. No.

18 Q. So he stayed at HRH?

19 A. Yes.

20 Q. Did you regret having to part ways with him
21 professionally?

22 A. Not professionally, no. We had a falling out
23 my last year and a half at HRH. We stopped splitting
24 commissions and did our own thing.

25 Q. What did your falling out involve?

1 A. I wanted to go into a couple different areas,
2 construction and restaurants. He wanted me to help
3 him with hotels. I think that was most of the
4 professional disagreement.

5 Q. So I understand that HRH wasn't really
6 interested in the smaller restaurant business, but at
7 HRH you started to develop that clientele; is that
8 correct?

9 A. Yes.

10 Q. And what share of your own business and your
11 own clients -- what share was construction and what
12 share was restaurants?

13 A. Revenue-wise, construction was much more.
14 Probably 60 to 70 percent of my business.

15 Q. What about number of clients?

16 A. Number of clients would have been mostly hotels
17 and restaurants.

18 Q. Do you like working with the restaurant
19 business?

20 A. Yes.

21 Q. How come?

22 A. Passion for people. They like what they do.
23 They're fun to work with personality-wise. They're
24 not as stuffy as working with accounting firms or law
25 firms or that kind of stuff.

1 Q. That sounds fair enough. So you moved on, and
2 remind me where you left HRH of Oregon for in
3 February 2006? What company did you leave HRH of
4 Oregon for in February 2006?

5 A. Heffernan Insurance.

6 Q. Heffernan, and was that a smaller brokerage?

7 A. Smaller but still quite large, 20th largest I
8 think in the country.

9 Q. And they were willing to work with you on the
10 types of businesses you wanted to target?

11 A. Yes.

12 Q. And how long did you stay there?

13 A. I stayed at Heffernan until the end of April
14 2010.

15 Q. And earlier we talked about the breakdown
16 between construction and hospitality industry
17 clients. Did that stay roughly the same throughout
18 your years there or did it change?

19 A. At Heffernan I had several construction clients
20 as well, but, no, I mostly focused on hotels and
21 restaurants.

22 Q. So earlier when we were talking about the share
23 of your business in construction being 60 to 70
24 percent of your clients -- of your revenue, when was
25 that? What time frame would that have been in?

1 A. At HRH.

2 Q. At HRH. And then so now at Heffernan, if you
3 would tell me how you would break down your business
4 both in terms of revenue and in number of clients,
5 that would be great.

6 A. At Heffernan it was mostly restaurants.

7 Q. What percent of your revenue was restaurants?

8 A. And hotels, I'm sorry. Restaurants and hotels.
9 Hotels would be larger revenue. Number of clients
10 would be more restaurants.

11 Q. And just a few construction clients?

12 A. Yes, just a few. They have a -- they had a
13 construction practice that I pretty much referred
14 some of those clients to them.

15 Q. And again, was that because you liked working
16 with the restaurant people and hotels better?

17 A. That, and the recession. Construction had
18 basically stopped at that time.

19 Q. Oh, of course. Okay. So mostly restaurants
20 and hotels. About what percentage of your revenue?

21 A. Seventy percent.

22 Q. Okay. So Heffernan, you started in 2006. When
23 did you leave?

24 MS. BRANSON: Objection, mischaracterizes
25 testimony.

1 THE WITNESS: April of 2010.

2 BY MS. MCLEITCHIE:

3 Q. Do I have the date correct of when you left HRH
4 and joined Heffernan? Is it February of 2006?

5 A. Yes.

6 Q. Why did you leave Heffernan?

7 A. I was ushered out the door.

8 Q. Who ushered you out the door?

9 A. They let me go because -- I don't know exactly
10 why they let me go. They just fired me for -- I
11 believe because my son had started a company and they
12 thought I put him up to it.

13 Q. Had you put him up to it?

14 A. No.

15 Q. When you left Heffernan what was your title
16 there?

17 A. Assistant vice president, something like that.

18 Q. And what were your job duties?

19 A. To procure insurance for restaurants, hotels,
20 pretty much anything I wanted to work on anywhere in
21 the country.

22 Q. Earlier when you -- we talked about Arthur J.
23 Gallagher, you talked about the fact that you were
24 assisting Mike. At this point, obviously, you
25 weren't assisting anybody?

1 A. That's correct.

2 Q. And you were both soliciting insurance and
3 producing insurance; is that correct?

4 A. Yes.

5 Q. Did you -- I'm sorry.

6 A. Yes.

7 Q. Did you have any other job duties?

8 A. No.

9 Q. Okay. So when you left in April of 2010, what
10 did you do?

11 A. I went to work for my son and we started
12 planning out our business, our business plan, so he
13 was already pursuing his own clients and I helped
14 further that.

15 Q. And what's your son's name, just to be clear
16 for the record?

17 A. Anthony Sandin.

18 Q. And what was the name of the company he
19 started?

20 A. Sandin & Co., LLC, DBA Sandin Insurance Group.

21 Q. And did you go straight from Heffernan to
22 Sandin Insurance Group?

23 A. Yes.

24 Q. So if I say "Sandin Insurance Group," that will
25 be -- can we agree that will mean Sandin & Company or

1 the Sandin Insurance Group?

2 A. Yes.

3 Q. So you went straight to Sandin Insurance Group
4 to work with your son?

5 A. Well, a few days. I think I got some legal
6 counsel first because --

7 MS. BRANSON: Objection as to any
8 attorney/client communications.

9 BY MS. MCLETCHE:

10 Q. You weren't sued by Heffernan; were you?

11 A. Oh, yes.

12 Q. Earlier I asked if you were a party in any
13 litigation and you said, "No."

14 A. Well, it was dropped, but there was letters
15 that went back and forth between attorneys.

16 Q. And I don't want to hear about any letters that
17 your attorney just sent to you, but the letters from
18 the other side, from the folks at Heffernan and their
19 attorneys, what do you recall about those letters?

20 A. Pretty much when you leave a brokerage they
21 provide a cease and desist.

22 Q. And what's your understanding of a cease and
23 desist?

24 A. Call your lawyer and pass them on to them.

25 Q. Were they concerned about you poaching

1 Q. What did he tell you?

2 A. I told him to look at the data, allegations,
3 and licensing, and told him to check that out and we
4 would talk I think the next day or two days.

5 Q. And then when you -- did you speak two days
6 later?

7 A. Yes.

8 Q. What did he say?

9 A. Well, among many things, we learned that my
10 Nevada license had expired.

11 Q. You hadn't learned your license expired until
12 you got a copy of the complaint?

13 A. Yes.

14 Q. So among other things, what other things did
15 you learn?

16 A. Well, we just went through the -- we went
17 through -- forwarded it off -- sent a copy to Utica.
18 He forwarded a copy to our E&O carrier.

19 Q. I don't want to -- I don't want you to get into
20 anything you ever talked about with an attorney. But
21 in this conversation between you and Anthony, besides
22 talking about the fact that your license in Nevada
23 had lapsed, what else did you talk about?

24 A. Well, I told him to check his computer for
25 anything. Don't erase anything or get rid of

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

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

Respondents.

Supreme Court No. 76966

Electronically Filed
District Court No. A-12-872138
Feb 22 2019 08:59 a.m.

Elizabeth A. Brown
Clerk of Supreme Court
APPELLANT'S
APPENDIX VOL. 2 OF 4

ALPHABETICAL INDEX TO APPELLANT'S APPENDIX – VOL. II

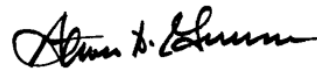
<u>DOCUMENT</u>	<u>DATE</u>	<u>VOLUME</u>	<u>BATES RANGE</u>
Civil Cover Sheet; Complaint	11/19/2012	I	APP00104- APP00122
Correspondence from OMI Re: Policies were no longer in force	8/20/2012	I	APP00001- APP00103
Court Minutes Motion for Attorney Fees and Costs	11/17/2015	III	APP00607
Court Minutes All Pending Motions	5/14/2015	II	APP00378- APP00379
Court Minutes Defendants David Sandin and Sandin & Company's Motion to Dismiss	2/13/2013	I	APP00160
Dave Sandin and Sandin & Co.'s Answer to Complaint	4/3/2013	I	APP00168- APP00178
David Sandin and Sandin & Co.'s Motion for Attorney's Fees and Costs	9/2/2015	III	APP00484- APP00606
Dave Sandin and Sandin & Co.'s Motion for Summary Judgment	3/17/2015	I	APP00199- APP00222
Defendants Dave Sandin and Sandin & Co.'s Reply in Support of Their Motion for Decision on Attorneys' Fees and Motion for Additional Attorneys' Fees and costs Associated with Appeal	12/6/2017	IV	APP00694- APP00781
Motion for Decision on Attorneys' Fees and Motion for Additional Attorneys' Fees and Costs Associated With Appeal	10/23/2017	III	APP00624- APP00683

Motion for Partial Summary Judgment	11/27/2013	I	APP00179-APP00198
Motion to Dismiss	12/26/2012	I	APP00123-APP00133
Notice of Appeal	9/11/2018	IV	APP00883-APP00884
Notice of Appeal	7/30/2015	III	APP00450-APP00479
Notice of Entry of Judgment	8/13/2015	III	APP00480-APP00483
Notice of Entry of Order Denying Plaintiff O.P.H. of Las Vegas Inc.'s Motion to Reconsider and/or Amend Judgment	6/12/2018	IV	APP00878-APP00882
Notice of Entry of Order Denying the Sandin Defendants' Motion to Dismiss	3/22/2013	I	APP00164-APP00167
Notice of Entry Order Findings of Facts, Conclusion of Law and Judgment in Favor of Dave Sandin and Sandin & Co. on their Motion for Attorneys' Fee and Costs	3/16/2018	IV	APP00770-APP00781
Notice of Entry of Order Granting Defendants Dave Sandin and Sandin & Co.'s Motion for Summary Judgment	7/1/2015	II	APP00439-APP00449
Notice of Entry of Stipulation and Order for Dismissal with Prejudice	9/11/2018	IV	APP00885-APP00888
Offer of Judgment	2/14/2013	I	APP00161-APP00163

Opposition to Dave Sandin and Sandin & Co.'s Motion for Attorney's Fees and Costs	9/28/2015	IV	APP00587-APP00594
Opposition to Dave Sandin and Sandin & Co.'s Motion for Summary Judgment	4/9/2015	II	APP00223-APP00377
Opposition to Defendants Dave Sandin and Sandin & Co.'s Motion for Additional Attorneys' and Costs Associated with Appeal	11/30/2017	IV	APP00684-APP00693
Opposition to Sandin Defendant's Motion to Dismiss	1/10/2013	I	APP00134-APP00151
Order Granting Defendants Dave Sandin and Sandin & Co.'s Motion for Summary Judgment	6/30/2015	II	APP00430-APP00438
Plaintiff O.P.H. of Las Vegas Inc.'s Motion to Reconsider and/or Amend Judgment	3/30/2018	IV	APP00782-APP00816
Plaintiff O.P.H. of Las Vegas Inc.'s Reply in Support of its Motion to Reconsider and/or Amend Judgment	4/24/2018	IV	APP00834-APP00863
Reply in Support of Dave Sandin and Sandin & Co.'s Motion for Attorney's Fees and Costs	11/10/2015	III	APP00595-APP00606
Reply in Support of the Sandin Defendants' Motion to Dismiss	1/24/2013	I	APP00152-APP00159
Sandin Defendants' Opposition to Motion for Reconsideration	4/16/2018	IV	APP00817-APP00833
Transcript of Hearing – Motion for Reconsideration	5/1/2018	IV	APP00864 – APP00877

Transcript of Proceedings – All Pending Motions	5/14/2015	II	APP00380- APP00429
Transcript of Proceedings – Motion for Attorney’s Fees and Costs	2/6/2018	IV	APP00608- APP00623

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CLERK OF THE COURT

1 OMSJ

2 MARGARET A. MCLETCHIE, ESQ.

3 Nevada Bar No. 10931

4 ROBERT L. LANGFORD, ESQ.

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15 **DISTRICT COURT**

16 **CLARK COUNTY NEVADA**

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

18 Plaintiff,

19 vs.

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

22 Defendants.

Case No.: A-12-672158

Dept. No.: XXVII

**OPPOSITION TO DAVE SANDIN
AND SANDIN & CO.'S MOTION
FOR SUMMARY JUDGMENT**

23 COMES NOW Plaintiff, O.P.H. of Las Vegas, Inc. ("OPH"), by and through its
24 attorneys of record, Margaret A. McLetchie, Esq., Robert L. Langford, Esq., and Matthew J.
25 Rashbrook, of Langford McLetchie LLC, and hereby submits this Opposition to the Dave
26 Sandin and Sandin & Co. ("Sandin Defendants") Motion for Summary Judgment
27 ("Motion"). This Opposition is based upon the papers and pleadings on file herein, the
28

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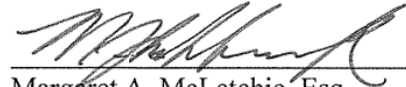
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Memorandum of Points and Authorities submitted in support hereof, the attached exhibits, and any oral argument this Court may entertain.

DATED this 9th day of April, 2015.


Margaret A. McLetchie, Esq.
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O.P.H. of Las Vegas, Inc.

I. INTRODUCTION

On or about August 17, 2012, a fire destroyed the building at 4833 West Charleston Boulevard, in Las Vegas, Nevada. As a result of the fire, the building and the contents thereof were destroyed. OPH's loss as a result of the fire likely exceeds \$1,000,000.00.

Extensive discovery has been completed in this case, including depositions of several experts on behalf of each party, revealing numerous genuine issues of material fact, as will be illustrated and discussed below. Because of these numerous genuine issues of material facts, none of the claims may appropriately be dismissed on summary judgment.

II. RESPONSES AND OBJECTIONS TO SANDIN DEFENDANTS' STATEMENT OF UNDISPUTED FACTS

#	Fact Asserted by the Sandin Defendants	Reason Fact is Disputed
1	This fact is not disputed.	
2	This fact is not disputed.	
3	"In the early 2000s, Dave Sandin and his colleague began working with O.P.H. and	Dave Sandin has been O.P.H.'s broker since 2002.

#	Fact Asserted by the Sandin Defendants	Reason Fact is Disputed
	other Original Pancake House franchisees. Dave Sandin's Colleague was initially the lead agent for O.P.H. and Dave Sandin was his assistant. In or around 2005, David Sandin became the insurance agent for O.P.H. and he has been the insurance agent for O.P.H. through August 2012, except for over two years when O.P.H. was with a different agency.	(Deposition of Linda Snyder, attached hereto as Exhibit ("Ex.") 1, p. 20:20 – 21:5.)
4	"Though they are based in Oregon, the Sandin defendants were licenced (sic) 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 O.P.H.'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.	At least 99.99% of OPH's contact with the Sandin Defendants was with Dave Sandin personally. Deposition of Linda Snyder, Ex. 1, p. 24:6-13.
5	This fact is not disputed.	
6	"Plaintiff had a claim the first week of its policy with Allied Insurance. As a result of this claim, Allied Insurance reviewed Plaintiff's	Object on the basis that the evidence offered in support

#	Fact Asserted by the Sandin Defendants	Reason Fact is Disputed
	credit history and ultimately cancelled Plaintiff's policy due to Plaintiff's poor credit. Allied Insurance's cancellation of this policy left Oregon Mutual as the next best alternative that was willing to accept Plaintiff at a premium Plaintiff was willing and able to pay and that was available to negotiate terms of the policy during the holiday season. As David Sandin testified, his 'top six carriers would not write [O.P.H.'s] insurance because of their loss history and their bad credit.' Therefore, in December 2011, the Sandin defendants recommended Oregon Mutual's insurance to Plaintiff based on Plaintiff's coverage needs."	of this fact is hearsay not within any exception.
7	This fact is not disputed.	
8	This fact is not disputed.	
9	This fact is not disputed.	
10	This fact is not disputed.	
11	This fact is not disputed.	
12	"Oregon Mutual sent a cancellation notice to Plaintiff on August 1, 2012, with an effective cancellation date of August 16, 2012."	OMI may have mailed a document to OPH on August 1, 2012, however, no such document was received by OPH, and the document purported to have been mailed would not, in

#	Fact Asserted by the Sandin Defendants	Reason Fact is Disputed
		any event, have satisfied the requirements of Nev. Rev. Stat. §§ 687B.320 and 687B.360. (Deposition of Linda Snyder, Ex. 1, p. 81:22 - p. 82:8.)
13	This fact is not disputed.	
14	"The Sandin defendants did not receive a notice of cancellation."	This fact is disputed by OMI. OMI asserts that it provided notice to the Sandin Defendants by making a copy of the cancellation notice available on the BizLink portal. (Deposition of David Brown, Ex. 2, p. 58:12 – 60:18.)
15	This fact is not disputed.	
16	This fact is not disputed.	
17	"The Sandin defendants did not know about Oregon Mutual's cancellation of Plaintiff's insurance policy for non-payment, and therefore did not inform Ms. Snyder that the Policy had been cancelled or that it was in danger of being cancelled during these conversations."	To the extent that the Sandin Defendants concede that but-for the lack of notice, they would have advised OPH of an impending cancellation, this fact is not disputed. However, OMI asserts that

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#	Fact Asserted by the Sandin Defendants	Reason Fact is Disputed
		notice was provided to the Sandin Defendants as discussed at #14 above. (Deposition of David Brown, Ex. 2, p. 58:12 – 60:18.)
18	“There is no agreement between O.P.H. and the Sandin defendants that requires the Sandin defendants to provide notice to O.P.H. of a pending policy cancellation.”	There was an understanding between the parties that the Sandin Defendants would provide the same level of service Dave Sandin had previously provided at other brokerages, including, but not limited to, providing notice of impending cancellation as Dave Sandin had previously on several occasions and consistent with the Sandin Defendants’ business practice. (Deposition of Linda Snyder, Ex. 1, p. 176-77, Deposition of Dave Sandin Ex. 3, p. 126-27, Deposition of Stephan Freudenberger, Ex. 4, p. 115:16-23.)

#	Fact Asserted by the Sandin Defendants	Reason Fact is Disputed
19	This fact is not disputed.	
20	This fact is not disputed.	
21	This fact is not disputed.	
22	“As a result of the cancellation of Plaintiff’s Policy for non-payment on August 16, 2012, Oregon Mutual has denied coverage for the loss caused by the fire.”	If OMI had provided notice to the Sandin Defendants, the Sandin Defendants would have in turn provided notice to OPH. In Dave Sandin’s words, when he receives e-mail notice of a pre-cancellation notice, “If we get an e-mail, we will attempt to call the client and forward the e-mail.” If he receives a pre-cancellation notice by phone, “We’ll e-mail first and then call to make sure they got the e-mail.” If he receives the notice by mail, “We’ll go through the same process.” In all cases, Dave Sandin contacts his clients “To give them a chance to make a payment.” (Deposition of Dave Sandin, Vol. 1, Ex. 3, p. 126-28.)

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#	Fact Asserted by the Sandin Defendants	Reason Fact is Disputed
		Were it not for the Sandin Defendants' failure to notify OPH of the impending cancellation, OPH would have paid the premium due and the policy would not have been cancelled. (Deposition of Stephan Freudenberger, Ex. 4, p. 115:2-15.)
23	"The sole reason for cancellation of the Policy was due to Plaintiff's failure to pay its July 26, 2012 premium on or before August 15, 2012."	Were it not for the Sandin Defendants' failure to notify OPH of the impending cancellation, OPH would have paid the premium due and the policy would not have been cancelled. (Deposition of Stephan Freudenberger, Ex. 4, p. 115:2-15.)
24	This fact is not disputed.	
25	This fact is not disputed.	

1 **III. OPH'S STATEMENT OF FACTS**

- 2 1. Starting in 1995, OPH operated an Original Pancake House restaurant at 4833 West
3 Charleston Boulevard, in Las Vegas, Nevada. (Deposition of Linda Snyder, Ex. 1
4 p.130 18-20.)
- 5 2. In 2002, Dave Sandin became OPH's insurance broker and began procuring
6 insurance for OPH. (Deposition of Linda Snyder, Ex. 1, p.18:1-11.)
- 7 3. In 2002, when OPH began purchasing insurance through him, Dave Sandin worked
8 for a series of different insurance brokerages. (Deposition of Dave Sandin, Vol. 1,
9 Ex. 3, p. 18-31.)
- 10 4. OPH expected that Dave Sandin would provide the same level of service regardless
11 of what brokerage he worked for. (Deposition of Linda Snyder, Ex. 1, p. 176.)
- 12 5. In Dave's Sandin's words, "... my levels of service has been consistent as I've
13 worked on their accounts." (Deposition of Dave Sandin, Vol. 2, Ex. 5, p. 295:10-
14 11.)
- 15 6. On at least three occasions Dave Sandin informed OPH they were late on a
16 premium payment: on or about March 23, 2006 (OPH's Answers to Dave Sandin's
17 First Set of Interrogatories, Ex. 6, p. 5:20-21.), on or about May 13, 2008 (*Id.*, p.
18 5:21-22), and on or about May of 2009 (Deposition of Linda Snyder, Ex. 1, p. 164-
19 65).
- 20 7. In Dave Sandin's words, when he receives e-mail notice of a pre-cancellation
21 notice, "If we get an e-mail, we will attempt to call the client and forward the e-
22 mail." (Deposition of Dave Sandin, Vol. 1, Ex. 3, p. 126:15-16.) If he receives a
23 pre-cancellation notice by phone, "We'll e-mail first and then call to make sure they
24 got the e-mail." (*Id.*, at 127:3-10) If he receives the notice by mail, "We'll go
25 through the same process." (*Id.*, at 127:23 – 128:6.) In all cases, Dave Sandin
26 contacts his clients "To give them a chance to make a payment." (*Id.*, at 126:17-
27 18.)
- 28

- 1 8. By "... consistently, over time, provid[ing] that duplicate notice," the Sandin
2 Defendants voluntarily created a duty to continue providing such notices to OPH.
3 (Deposition of Don Way, Ex. 7, p. 50-53.)
- 4 9. The Sandin Defendants were required to notify all customers of any pending
5 cancellations: "... if you have a practice of notifying your insured, if you do it for
6 one you have to do them for all[.]" (Deposition of Neal Bordenave, Ex. 8, p. 55:9-
7 20.) This is because "... contractually we pick up more liability. And the liability
8 is the following: I have to do it to all my clients. If I do it for one, I have got to do
9 it for all." (Deposition of Paul Burkett, Ex. 9, p. 14:15 – 15:13.)
- 10 10. Dave Sandin did not advise OPH of the impending cancellation of their policy at
11 any time before the policy was cancelled. (Defendant Sandin & Co.'s Answers to
12 Plaintiff O.P.H. of Las Vegas, Inc.'s First Set of Requests For Admission #10, Ex.
13 10, and Defendant Dave Sandin's Answers to O.P.H. of Las Vegas, Inc.'s
14 Interrogatories, Ex. 11, # 4 and 10.)
- 15 11. At the time he procured the insurance policy from OMI, on behalf of OPH, in
16 December of 2011, Dave Sandin was not a licensed non-resident agent in Nevada.
17 (Deposition of Dave Sandin, Vol. 1, Ex. 3, p.75-76:14.)
- 18 12. In order to legally sell insurance in Nevada, an individual must possess either a
19 resident or non-resident agent license. (NRS §§ 598.0623, 686A.201, 683A.310.)
- 20 13. At the time he sold the OMI policy to OPH, Dave Sandin was unaware of the lapse
21 in his Nevada licensure. (Deposition of Dave Sandin, Vol. 1, Ex. 3, p.75:8-13.)
- 22 14. Anthony Sandin, on behalf of Sandin and Co., maintained Dave Sandin's licensure,
23 as well as his own and that of Sandin and Co. (Deposition of Dave Sandin, Vol. 1,
24 Ex. 3, p. 76-78.)
- 25 15. Dave Sandin held himself out to OPH as someone qualified to sell them insurance.
26 (Deposition of Linda Snyder, Ex. 1, p. 20-22; Deposition of Stephan
27 Freudenberger, Ex. 4, p. 17:1-9.)
- 28

1 16. Dave Sandin has a particularly close relationship with the customers, composing
2 approximately 10% of his book of business, who have been with him since he was
3 with HRH (of which OPH was one). (Deposition of Sandin, Vol. 1, Ex. 3, p.99, p.
4 18-31.)

5 17. Stephan Freudenberger, the President of OPH (Deposition of Stephan
6 Freudenberger, Ex. 4, p 15:7-12), relied on Dave Sandin to offer whatever support
7 was necessary with regard to OPH's insurance needs. (Deposition of Stephan
8 Freudenberger, Ex. 4, p. 115:16-23.)

9 18. Linda Snyder, the office manager of OPH (Deposition of Linda Snyder, Ex. 1, p.
10 8:19-23), relied on Dave Sandin to offer whatever support was necessary with
11 regard to OPH's insurance needs. (Deposition of Linda Snyder, Ex. 1, p.144.)

12 19. In the early morning hours of August 17, 2012, there was a fire at the Original
13 Pancake House restaurant located at 4833 West Charleston Boulevard, in Las
14 Vegas, Nevada. (See Ex. 12, OPH0114-OPH0115.)

15 20. As a result of the August 17, 2012 fire, the building at 4833 West Charleston
16 Boulevard, in Las Vegas, Nevada and its contents, were a total loss. (Deposition of
17 Linda Snyder, Ex. 1, p. 129:8-22.)

18 **IV. LEGAL STANDARD**

19 Nev. R. Civ. P. 56(c) states that a motion for summary judgment will be granted
20 where there is no issue of material fact, and the moving party is therefore entitled to judgment
21 as a matter of law.

22 The moving party bears the burden of showing clearly that there is no genuine issue
23 of material fact to be determined; that no rational trier of fact could find for the non-moving
24 party. *Clark v. JDI Realty, LLC*, 130 Nev. Adv. Rep. 92, 26, 340 P.3d 563, 573 (2014), citing
25 *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). "... [T]he
26 nonmoving party is entitled to have the evidence and all reasonable inferences accepted as
27
28

1 true.” *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 292 (1989), citing *Johnson v. Steel, Inc.*,
2 100 Nev. 181 (1984).

3 “The trial judge should exercise great care in granting motions for summary
4 judgment.” *Short v. Hotel Riviera*, 79 Nev. 94, 103 (1963); *see also McColl v. Scherer*, 73
5 Nev. 226, 231-32 (1957). Where an issue, or a trial, can turn on the credibility of a witness,
6 summary judgment is improper. *Short v. Hotel Riviera*, 79 Nev. at 100.

7 ///

8 If there is an ambiguity in a contract, and conflicting extrinsic evidence regarding
9 the intentions of the parties, summary judgment is inappropriate. *Mullis v. Nevada Nat’l*
10 *Bank*, 98 Nev. 510, 513 (1982). This is because the ambiguity must be resolved by looking
11 to the intentions of the parties, which requires an examination of the credibility of the parties.
12 *Agricultural Aviation Eng’g Co. v. Board of Clark County Comm’rs*, 106 Nev. 396, 400
13 (1990). That examination of credibility is a function of the trier of fact. *Id.*

14
15 **V. ARGUMENT**

16 For each cause of action, OPH has shown enough evidence to support each element
17 required for each cause of action claimed. Although the Sandin Defendants may dispute the
18 credibility of certain witnesses or advance evidence to the contrary, those very disputes are
19 the very reason that none of these matters are appropriate for resolution by a motion for
20 summary judgment. As has been detailed at length above, as well as in the Sandin
21 Defendants’ Motion for Summary Judgment, summary judgment is only appropriate where
22 the moving party can show that there is no genuine issue of material fact to be determined.
23 OPH is entitled to have all its evidence, and every inference reasonably drawn therefrom,
24 accepted as true. With regard to OPH’s claims for negligence and negligence per se, fraud,
25 fraud in the inducement, and breach of fiduciary duty, the Sandin Defendants’ Motion must
26 be denied.¹

27
28 ¹ With regard to the claim for violation of Nev. Rev. Stat. § 686A.310, OPH does not
oppose the Sandin Defendants’ Motion.

1 A. OPH's Claims for Negligence and Negligence Per Se Must be Heard by a
2 Fact-Finder.

3 To succeed on a claim for negligence, OPH must prove that the Sandin Defendants
4 owed a duty, that they breached the duty, and that OPH suffered damages that resulted from
5 that breach. *Perez v. Las Vegas Medical Ctr.*, 107 Nev. 1, 4 (1991).

6 In Nevada negligence and proximate cause are questions of fact, and therefore are
7 for the jury to determine. *Nehls v. Leonard*, 97 Nev. 325, 328 (1981), quoting *Merluzzi v.*
8 *Larson*, 96 Nev. 409, 610 P.2d 739 (1980); *see also Klasch v. Walgreen Co.*, 127 Nev. Adv.
9 Rep. 74, 19, 264 P.3d 1155, 1161 (2011) (reversing the district court's granting of summary
10 judgment; "Breach of duty and causation are classically questions of fact.").

11 Even assuming, *arguendo*, that the matter could properly be determined upon a
12 motion for summary judgment, there exist numerous genuine issues of material fact that
13 would prevent such a determination. To succeed on a claim for negligence against the Sandin
14 Defendants, OPH must prove that there existed a duty on the part of the Sandin Defendants,
15 that the Sandin Defendants breached that duty, causation, and damages.

16 There are genuine issues of material fact which cannot be settled at this stage, and
17 ample evidence upon which a jury could find for OPH on the issue of proximate cause.

18 The matter of damages is indisputable. It is undisputed that there was a catastrophic
19 fire at 4833 West Charleston Boulevard, in Las Vegas, Nevada. As a result OPH's restaurant
20 was a total loss.

21 Having settled the last two prongs of a negligence claim, causation and damages,
22 the two separate theories for duty and breach must now be examined.

23 **1. Negligence**

24 Dave Sandin testified that it was the business practice of the Sandin Defendants to
25 notify their customers of missed payments or impending cancellation, "To give them a
26 chance to make a payment." (Deposition of Dave Sandin, Vol. 1, Ex. 3, p. 126:17-18).
27
28

1 Because the Sandin Defendants were in the practice of notifying at least some of
2 their customers of missed payments or impending cancellations, they created for themselves
3 an obligation to continue doing so, in spite of the fact that ordinarily this would not be a
4 requirement of the ordinary standard of care for an insurance agent. The Sandin Defendants'
5 expert, Paul Burkett, testified on this very fact, and offered this very conclusion: "... the
6 liability is the following: I have to do it to all my clients. If I do it for one, I have got to do it
7 for all." (Deposition of Paul Burkett, Ex. 9, p. 14:15 – 15:13.) In the words of OMI's expert,
8 Don Way, by "... consistently, over time, provid[ing] that duplicate notice," the Sandin
9 Defendants voluntarily created a duty to continue providing such notices to OPH.
10 (Deposition of Don Way, Ex. 7, p. 50-53.)

11 Dave Sandin did not inform OPH of the impending cancellation of their insurance
12 policy, and thereby breached the duty he owed OPH to do so.

13 2. Negligence Per Se

14 A claim of negligence per se requires proof of the injured party is in the class of
15 persons a statute is intended to protect, the injury is of the type which the statute is intended
16 to protect from, and that the defendant violated the statute without any excuse for doing so.
17 *Barnes v. Delta Lines*, 99 Nev. 688, 710-11 (1983).

18 It is undisputed that Dave Sandin was not properly licensed as a non-resident agent
19 in Nevada at the time he procured the OMI policy for OPH. According to Nev. Rev. Stat. §
20 598.0923(1), a person commits a deceptive trade practice if he "conducts the business or
21 occupation without all required state, county, or city licenses."

22 Dave Sandin had a duty to obtain a license from the Nevada Department of
23 Insurance before brokering insurance policies for Nevada residents or businesses. He failed
24 to do so. He thereby violated Nev. Rev. Stat. § 598.0923(1).

25 Under Nev. Rev. Stat. § 41.600 et seq., any person who is a victim of consumer
26 fraud may bring an action, any violation of Nev. Rev. Stat. § 598.0923(1) is an act of
27 consumer fraud, and anyone injured may recover any damages they have sustained, along
28

1 with their costs and reasonable attorney's fees. It is clear therefore, that OPH is within the
2 class designed to be protected, and that they have suffered the type of injury that the statute
3 was intended to protect them from.

4 B. Proximate Cause

5 Negligence and proximate cause are questions of fact, and therefore are for the jury
6 to determine. *Nehls v. Leonard*, 97 Nev. 325, 328 (1981), quoting *Merluzzi v. Larson*, 96
7 Nev. 409, 610 P.2d 739 (1980); see also *Klasch v. Walgreen Co.*, 127 Nev. Adv. Rep. 74,
8 19, 264 P.3d 1155, 1161 (2011) (reversing the district court's granting of summary judgment;
9 "Breach of duty and causation are classically questions of fact.").

10 The Sandin Defendants argue (Motion, 18:20 – 19:7) that OPH must prove a nexus
11 between the acts or omissions of the Sandin Defendants, and the harm suffered by OPH,
12 citing, among others, *Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007). This
13 is certainly true. However, what the Sandin Defendants fail to acknowledge is that in Nevada,
14 OPH is entitled to present evidence on the issue at trial, and to have a jury determine the
15 question. The Sandin Defendants fail to consider that *Nelson v. Heer* was a Nevada Supreme
16 Court review of a motion for judgment as a matter of law, a motion decided at the close of
17 evidence. If at the close of evidence, the fact-finder determines that there is no nexus between
18 the acts of the Sandin Defendants and the harm suffered by OPH, then the jury will rightly
19 find for the Sandin Defendants on those issues. It is, however, not a matter to be decided by
20 the trier of fact before that time.

21 Furthermore, assuming *arguendo*, that proximate cause was an appropriate matter
22 to be determined on summary judgment, in order for the Sandin Defendants to succeed on
23 their Motion, they must prove that there is no genuine issue of material fact upon which a
24 reasonable jury could find for OPH. However, there is an abundance of evidence that the acts
25 and omissions of the Sandin Defendants were the cause of the damages suffered by OPH.

26 According to experts designated by OPH, OMI, and the Sandin Defendants, by
27 making it their business practice to alert their customers of late payments or impending
28 cancellations, or by virtue of the fact that they had on several occasions advised OPH of a

1 late payment or impending cancellation, the Sandin Defendants created for themselves a duty
2 to continue doing so. On this occasion, they breached that duty by failing to notify OPH that
3 they had missed a payment, and therefore that OMI would cancel the policy if they did not
4 make a payment by August 15th, 2012.

5 In the past, the Sandin Defendants had alerted OPH when their payments were late.
6 In each instance, OPH remedied the situation immediately, preventing any cancellation. This
7 occurred three times. This illustrates a pattern of behavior by OPH: on every occasion the
8 Sandin Defendants advised them of a late payment or impending cancellation, OPH remedied
9 the deficiency.

10 As discussed previously, in Nevada proximate cause is a matter for the fact-finder
11 to determine. *Nehls v. Leonard*, 97 Nev. at 328. Therefore, the Sandin Defendants' arguments
12 in this respect necessarily fail. Even assuming that it was a matter properly before the court
13 for determination on summary judgment, there is ample evidence upon which a reasonable
14 jury could find that a nexus exists between the acts or omissions of the Sandin Defendants,
15 and the damages suffered by OPH. Proximate cause is not a matter to be determined upon
16 summary judgment. *Nehls v. Leonard*, 97 Nev. 325, 328 (1981), quoting *Merluzzi v. Larson*,
17 96 Nev. 409, 610 P.2d 739 (1980). Even if it could be, there exist numerous genuine issues
18 of material fact, upon which OPH has shown ample evidence to allow a reasonable jury to
19 find in their favor, and the instant Motion must therefore be denied.

20
21 C. Fraud and Fraud in the Inducement

22 The Sandin Defendants made at least two misrepresentations to OPH: that Dave
23 Sandin was licensed to sell insurance in Nevada, and that OMI was a suitable insurer for
24 OPH.

25 Given that none of the Sandin Defendants was aware of whether or not Dave Sandin
26 was actually licensed in Nevada, they represented to OPH that he was without a sufficient
27 basis for doing so. OPH relied on Sandin to procure insurance on their behalf, and the
28 representation that he was qualified to do so was material to their decision to rely on him.

1 The fact that the policy lists Sandin & Co. as the agent for OPH is immaterial. Dave
2 Sandin, regardless of which forms his name does or does not appear upon, was the *de facto*
3 agent for OPH, and had been since 2002. Ms. Snyder, on behalf of OPH, estimated that
4 99.99% of her contact with the Sandin Defendants was actually with Dave Sandin. In fact,
5 Linda Snyder is not sure that she has ever spoken to Anthony Sandin:

6 Q: Did you have any communication with Anthony Sandin?

7 A: If I did it was minimal, 99.99 percent would have been with
8 Dave.

8 (Deposition of Linda Snyder, Ex. 1, p. 24:9-13.)

9 The Sandin Defendants argue (Motion, 22:2-8) that they did not represent to OPH
10 that OMI was a suitable insurer, but it was implicit by virtue of the fact that they
11 recommended the policy. Dave Sandin's duty, as OPH's broker, was to procure for them
12 appropriate insurance coverage. If Dave Sandin felt, as argued in the Motion (*Id.*) that in fact
13 OMI was not appropriate coverage, but was the only available coverage, he had a duty to
14 disclose that fact to OPH. By presenting the OMI policy to OPH without any such caveat,
15 Sandin represented to OPH that OMI was an appropriate insurer for their needs. If the reality,
16 in the opinion of the Sandin Defendants, was that OMI was an inadequate insurer, but the
17 only one available, they failed to make that clear at any time before now. That failure was a
18 misrepresentation, and makes the Sandin Defendants liable for fraud, or fraud in the
19 inducement.

20 As illustrated above, there are in fact at least two genuine issues of material fact,
21 and OPH has offered evidence upon which a jury could find in their favor on either, or both.
22 Therefore, the Sandin Defendants' Motion must be denied regarding the causes of action for
23 fraud and fraud in the inducement.

24 D. Breach of Fiduciary Duty

25 It is well-settled that insurance agents typically are required to use reasonable
26 diligence to procure appropriate insurance for their clients, or to notify the client when they
27 are unable to. *See e.g., Keddie v. Beneficial Ins.*, 94 Nev. 418. However, the relationship
28 between the Sandin Defendants and OPH was not a typical one. Dave Sandin testified to as

1 much: he has a particularly close relationship with the customers, composing approximately
2 10% of his book of business, who have been with him since he was with HRH (of which
3 OPH was one). So, by their own admission, the Sandin Defendants have a different
4 relationship with OPH than they do with a typical customer. The relationship must be
5 evaluated accordingly.

6 As was previously discussed, by contacting their customers whenever they missed
7 a payment or were facing an impending cancellation, the Sandin Defendants created for
8 themselves greater liability and more duties than the typical insurance broker has to their
9 client by creating a business practice that OPH reasonably relied upon as a buffer, or
10 backstop.

11 The Sandin Defendants suggest that the case *GlobalNet Financial.Com, Inc. v.*
12 *Frank Crystal & Co.* is instructive. However, even taking into account the fact that it is a
13 case interpreting New York law, the facts of the case make it entirely distinguishable from
14 the facts of the instant case. 449 F.3d 377 (2nd Cir. 2006). In *GlobalNet* there is no suggestion
15 that the broker and the insured had any previously existing and ongoing relationship with
16 any of the additional duties the Sandin Defendants have created for themselves, discussed
17 above. This was discussed by the court, and found to be dispositive on a number of issues:
18 “In any event, there is no evidence of any contractual duty on the part of Crystal to forward
19 cancellation notices[.]” *GlobalNet*, 449 F.3d at 386.

20 In the instant case, there is ample evidence which proves that the Sandin Defendants
21 had such a business practice: the testimony of Dave Sandin that it was his practice and the
22 practice of Sandin & Co. to notify customers of late payments and impending cancellations,
23 and the expert testimony, advanced by experts from each party to this action, that the Sandin
24 Defendants had thereby created a duty for themselves to continue advising customers of late
25 payments or impending cancellations.

26 Furthermore, the assertion by the Sandin Defendants that Ms. Snyder’s testimony
27 is false (Motion, p. 14:3-11) simply proves that this matter cannot be appropriately dealt with
28 on summary judgment. Ms. Snyder testified that Dave Sandin previously notified her of late

1 payments. (Deposition of Linda Snyder, Ex. 1, p. 164-165); *see also* (Ex. 11, p. 5, line 20-
2 21), on or about May 13, 2008 (Id. line 21-22). The Sandin Defendants dispute these facts
3 (Motion, 14:13-18). The matter must be resolved by examining the credibility of the
4 testimony, and therefore cannot be appropriately resolved by summary judgment.
5 *Agricultural Aviation Eng'g Co. v. Board of Clark County Comm'rs*, 106 Nev. 396, 400
6 (1990).

7 Lastly, the Sandin Defendants argue that, even if they generally had a duty to advise
8 OPH of late payments or impending cancellations, it would not have arisen in this instance,
9 because they had no notice of the late payment, or impending cancellation, a fact which OPH
10 does not dispute.² However, the Sandin Defendants' cannot ignore notice and thereby claim
11 to have escaped the duty they owed to OPH. This would be akin to willful blindness, a
12 doctrine the United States Supreme Court has adopted in civil cases. *Global-Tech*
13 *Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2069-70 (2011).

14 There exists several genuine issues of material fact regarding the claim for breach
15 of fiduciary duty. The claim therefore cannot be properly resolved on summary judgment.

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23 ///

24 ² It must, however, be noted, that OMI disputes this fact. (OMI's Motion for Summary
25 Judgment, p. 6:1-6.) OMI suggests that because it made the information available to the
26 Sandin Defendants via the BizLink portal, the Sandin Defendants had notice of the late
27 payment and impending cancellation. OPH disputes that the notice was of the form
28 required by Nevada law, and therefore its effect. Several of the claims in this case may turn
on whether there was notice to either the Sandin Defendants or to OPH, including whether
the notice was in the form required to satisfy Nevada law. The issue is therefore not
appropriate for determination on summary judgment.

There are genuine issues of material fact which must be resolved at trial on each of OPH's claims against the Sandin Defendants. The matters are therefore not appropriate for summary judgment, and the Motion must be denied.

Respectfully submitted this, the 9th day of April, 2015.

By: 
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CERTIFICATE OF SERVICE

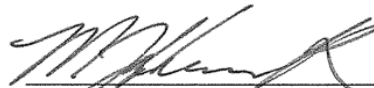
Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 9th day of April, 2015, I did cause a true copy of the foregoing **OPPOSITION TO DAVE SANDIN AND SANDIN & CO.'S MOTION FOR SUMMARY JUDGMENT** in *O.P.H. of Las Vegas, Inc. v. Oregon Mutual Ins. Co., et al.*, Clark County District Court Case No. A-12-672158-C, to be filed and served electronically using the Wiznet Electronic Service system, to all parties with an email address on record.

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EMPLOYEE of Langford McLetchie LLC

1 **DEC**
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15

16 **DISTRICT COURT**
17 **CLARK COUNTY NEVADA**
18

19 O.P.H. of Las Vegas, Inc.,
20
21 Plaintiff,

Case No.: A-12-672158

22 vs.

Dept. No.: XXVII

23 Oregon Mutual Insurance Company, Dave
24 Sandin, and Sandin & Co.,
25
26 Defendants.

**DECLARATION OF MATTHEW J.
RASHBROOK**

27 Under the penalty of perjury, I, MATTHEW J. RASHBROOK, do hereby swear as
28 follow:

- 29 1. I have personal knowledge of the facts set forth herein, except where stated to be
30 upon information and belief, and where so stated, I believe them to be true.
- 31 2. I am over the age of eighteen (18) years old and am mentally competent.
- 32 3. I represent O.P.H. of Las Vegas, Inc. in the matter *O.P.H. of Las Vegas v. Oregon*
33 *Mutual Insurance Company, Dave Sandin, and Sandin & Co.*, case no. A-12-672158.
- 34 4. Attached as Exhibit 1 is a true and correct copy of a pertinent portion of the transcript

- 1 of the deposition of Linda Snyder, taken on August 13, 2013.
- 2 5. Attached as Exhibit 2 is a true and correct copy of a pertinent portion of the transcript
- 3 of the deposition of David Brown, taken on September 9, 2013.
- 4 6. Attached as Exhibit 3 is a true and correct copy of a pertinent portion of the transcript
- 5 of the deposition of David Sandin, taken on September 12, 2013.
- 6 7. Attached as Exhibit 4 is a true and correct copy of a pertinent portion of the transcript
- 7 of the deposition of Stephan Freudenberger, taken on August 14, 2013.
- 8 8. Attached as Exhibit 5 is a true and correct copy of a pertinent portion of the transcript
- 9 of the deposition of David Sandin, taken on September 13, 2015.
- 10 9. Attached as Exhibit 6 is a true and correct copy of Plaintiff O.P.H. of Las Vegas,
- 11 Inc.'s Answers to Defendant Dave Sandin's First Set of Interrogatories dated August
- 12 1, 2013.
- 13 10. Attached as Exhibit 7 is a true and correct copy of a pertinent portion of the transcript
- 14 of the deposition of Don Way, taken on March 4, 2015.
- 15 11. Attached as Exhibit 8 is a true and correct copy of a pertinent portion of the transcript
- 16 of the deposition of Neal Bordenave, taken on March 3, 2015.
- 17 12. Attached as Exhibit 9 is a true and correct copy of a pertinent portion of the transcript
- 18 of the deposition of Paul Burkett, taken on February 25, 2015.
- 19 13. Attached as Exhibit 10 is a true and correct copy of Defendant Sandin & Co.'s
- 20 Answer's to Plaintiff O.P.H. of Las Vegas, Inc.'s First Set of Requests for Admission
- 21 dated August 9, 2013.
- 22 14. Attached as Exhibit 11 is a true and correct copy of Defendant Dave Sandin's
- 23 Answers to O.P.H. of Las Vegas, Inc.'s First Set of Interrogatories dated August 13,
- 24
- 25
- 26
- 27
- 28

1 2013.

2 15. Attached as Exhibit 12 is a true and correct copy of a news article "After fire, owner
3 undecided on fate of Original Pancake House" published by Las Vegas Sun on
4 August 17, 2013. News article can also be found at
5 [http://www.lasvegassun.com/news/2012/aug/17/fire-damages-original-pancake-](http://www.lasvegassun.com/news/2012/aug/17/fire-damages-original-pancake-house-restaurant/)
6 [house-restaurant/](http://www.lasvegassun.com/news/2012/aug/17/fire-damages-original-pancake-house-restaurant/) (last checked on April 9, 2015).
7

8 I declare under penalty of perjury that the foregoing is true and correct.
9

10 Executed on: April 9, 2015
11 Date


12 Signature

EXHIBIT 1

30(b)(6) Linda Snyder - 8/13/2013
O.P.H. of Las Vegas, Inc. vs. Oregon Mutual Insurance Company, et al.

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 O.P.H. OF LAS VEGAS, INC.,)
5 Plaintiff,) CASE NO. A-12-672158-C
6 vs.) DEPT. NO.: XXVII
7 OREGON MUTUAL INSURANCE)
8 COMPANY; DAVE SANDIN; and)
9 SANDIN & CO.,)
10 Defendants.)
11)
12)
13)
14)
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24)
25)

DEPOSITION OF NRCP Rule 30(b)(6) DEPONENT FOR
ORIGINAL PANCAKE HOUSE OF LAS VEGAS, LINDA SNYDER

Taken on Tuesday, August 13, 2013

At 9:00 a.m.

6385 South Rainbow Boulevard, Suite 600

Las Vegas, Nevada

Reported by: RENE' HANNAH, CCR #326

30(b)(6) Linda Snyder - 8/13/2013
O.P.H. of Las Vegas, Inc. vs. Oregon Mutual Insurance Company, et al.

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15 I N D E X

16 Examination by:	Direct	Cross	Re-direct	Recross
17 Ms. Meredith	4	179, 187, 189, 191		
Ms. Branson		134		192
18 Ms. McLetchie		186		1188

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30(b)(6) Linda Snyder - 8/13/2013
O.P.H. of Las Vegas, Inc. vs. Oregon Mutual Insurance Company, et al.

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1 (NRCP Rule 30(b)(4) was waived by the parties prior
2 to commencement of the deposition.)

3 Thereupon,

4 LINDA SNYDER,
5 having been first duly sworn, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MEREDITH:

9 Q Could you state your name and spell it for
10 the record, please?

11 A My name is Linda, L-I-N-D-A, Lorraine,
12 L-O-R-R-A-I-N-E, Snyder, S-N-Y-D-E-R.

13 Q And Miss Snyder, can you give us an
14 address where you can be reached at?

15 MS. MEREDITH: Or Counsel, is she to be
16 reached through you?

17 MS. MCLETHIE: Through counsel is fine.

18 BY MS. MEREDITH:

19 Q Have you been deposed before?

20 A No.

21 Q Given that you haven't been deposed
22 before, this might be a little unfamiliar to you,
23 although you probably had a chance to --

24 MS. MEREDITH: Let me make the record
25 clear. Ms. McLetchie, are you representing Miss

1 Nevada.

2 Q And you received your diploma?

3 A Yes, in 1966.

4 Q Did you go on to any college?

5 A No, I did not.

6 Q Have you ever attended any college of any
7 type?

8 A No, I have not.

9 Q Have you ever attended a trade or
10 technical school?

11 A No, I have not.

12 Q Do you hold any special licenses or
13 certificates?

14 A No, I do not.

15 Q Are you a member of any union?

16 A No, I am not.

17 Q Are you currently employed?

18 A Yes, I am.

19 Q And where are you currently employed?

20 A I'm employed by the Original Pancake
21 House.

22 Q And what is your job title?

23 A I'm the office manager.

24 Q And what are your basic duties as the
25 office manager?

1 Q Do you know when OPH's first contact with
2 Mr. Sandin was?

3 A Was in the late nineties.

4 Q And was Mr. Sandin with Heffernan
5 Insurance at that time?

6 A No, he was not.

7 Q Who was he with?

8 A He was with HRH of Oregon.

9 Q And that was in the late nineties?

10 A And also when I met him in 2002, or began
11 dealing with him in 2002.

12 Q Okay. Did Mr. Sandin at some point leave
13 HRH of Oregon?

14 A Yes, he did.

15 Q And where did he go?

16 A He went to Heffernan. Heffernan.

17 Q At some point did Mr. Sandin leave
18 Heffernan?

19 A Yes, he did.

20 Q And do you recall when?

21 A I don't recall when.

22 Q And do you know where he went?

23 A He went to Sandin & Company.

24 Q Now, do you know when he left HRH and went
25 to Heffernan?

1 of the owners opted to secure his services,
2 Mr. Freudenberger being one of them.

3 Q And when you say a franchise owners
4 meeting, I'm assuming that's an OPH franchise owners
5 meeting?

6 A Yes.

7 Q So it was specific to OPH franchisees?

8 A Yes.

9 Q Okay. When OPH first decided to do
10 business with Mr. Sandin did he advise OPH that he
11 was licensed in Nevada?

12 A Yes.

13 Q And what did he advise?

14 A I don't understand the question.

15 Q Well, I mean, did he just say, "I'm a
16 licensed agent in Nevada," or did he send some
17 written materials showing he was a licensed agent?
18 What did he tell OPH?

19 A I'm not certain. It was before my time.

20 Q Okay. At any time that you dealt with
21 Dave Sandin did he ever tell you that he was
22 licensed in Nevada?

23 MS. MCLEITCHIE: Objection, vague. You can
24 answer.

25 THE WITNESS: Oh, okay. Not directly.

1 BY MS. MEREDITH:

2 Q Okay.

3 A He inferred that he was licensed to sell
4 insurance in the state of Nevada. He'd been our
5 agent since prior to 2002.

6 Q When you say he inferred, what do you
7 mean?

8 A He represented himself as an insurance
9 agent authorized to sell us insurance coverage in
10 the state of Nevada.

11 Q Did he ever provide OPH with any written
12 proof or evidence that he was licensed in Nevada?

13 MS. MCLEITCHIE: Objection, asked and
14 answered.

15 THE WITNESS: Not that I know of.

16 BY MS. MEREDITH:

17 Q Did OPH ever ask Dave Sandin to provide
18 written proof or evidence that he was licensed in
19 Nevada?

20 A Not that I'm aware.

21 Q Was HRH of Oregon licensed to do business
22 in Nevada?

23 A I believe so.

24 Q Did HRH of Oregon ever provide OPH with
25 any documentation that it was licensed to do

1 business in Nevada?

2 A Not that I'm aware of.

3 Q Was Heffernan Insurance licensed to do
4 business in Nevada?

5 A To the best of my knowledge, yes.

6 Q Did Heffernan ever provide OPH with any
7 written documentation or evidence that it was
8 licensed to do business in Nevada?

9 A Not that I'm aware of.

10 Q Did OPH ever ask HRH of Oregon to provide
11 written proof to it that it was licensed in Nevada?

12 A Not that I'm aware of.

13 Q Did OPH ever ask Heffernan Insurance to
14 provide written proof or evidence that it was
15 licensed to conduct business in Nevada?

16 A Not that I'm aware of.

17 Q Again, this is for us to all be on the
18 same page. And maybe, Counsel, I don't know if he
19 should refer to it as Sandin & Company, Sandin
20 Insurance, I have a lot of different things that I
21 call the Sandin agencies. Is there a way that you
22 would like to designate it to people here?

23 MS. BRANSON: I have no objection, as long
24 as we stick with one.

25 MS. MCLETCHIE: Just pick one.

1 A Not that I'm aware.

2 Q Did Anthony Sandin ever provide OPH with
3 written evidence or proof, written evidence or proof
4 that he was licensed in Nevada?

5 A Not to the best of my knowledge.

6 Q Obviously, you've indicated that you on
7 behalf OPH communicated with Dave Sandin, correct?

8 A Correct.

9 Q Did you have any communication with
10 Anthony Sandin?

11 A If I did it was minimal. Most of my
12 communication, 99.99 percent would have been with
13 Dave.

14 Q Did you have communications with anyone
15 else at Sandin Insurance other than Dave Sandin or
16 Anthony Sandin?

17 A No.

18 Q Okay. I would just like to go through
19 some of the methods you might have, did you ever
20 meet Dave Sandin in person?

21 A No.

22 Q Did you speak with him on the phone?

23 A Yes.

24 Q Did you email him?

25 A Yes.