

Emp	Hours	Dollars	Gp	
/14 MSK	0.40	56.00	B P	L110 A105 Analyze and evaluate issues re hearing on motion to strike and upcoming deposition of experts and plaintiff's principal.
/14 PL	0.40	64.00	B P	L120 A101 Plan and Prepare for impending expert depositions and hearing on our motion to strike OPH's expert report.
/14 MSK	0.40	56.00	B P	L120 A104 Legal Analysis of opposition to motion to strike expert report.
/14 MSK	0.20	28.00	B P	L110 A107 Communicate (outside counsel) regarding hearing on motion to strike and deposition of plaintiff's expert.
/14 MSK	4.10	574.00	B P	L450 A101 Receipt, review and analysis of motion to strike, joinder and opposition and exhibits to briefs to prepare for hearing on motion to strike.
/14 MSK	2.60	364.00	B P	L450 A109 Appear for/Attend hearing on motion to strike rebuttal report of plaintiff.
/14 MSK	2.80	392.00	B P	L450 A101 Plan and Prepare for hearing on motion to strike rebuttal report.
/14 MSK	0.30	42.00	B P	L120 A105 Analyze and evaluate issues regarding hearing on motion to strike and strategy going forward.
/14 MSK	2.00	280.00	B P	L210 A103 Preparation of Report and Recommendations of Discovery Commissioner from hearing on Motion to Strike.
/14 MSK	0.20	28.00	B P	L420 A108 Communicate (other external) with Paul Burkett regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L120 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.20	28.00	B P	L120 A107 Communicate (outside counsel) with OMI's counsel regarding deposition of experts and strategy.
/14 MSK	0.10	14.00	B P	L120 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L330 A107 Communicate (outside counsel) with OMI's counsel regarding deposition of Plaintiff's representative.
/14 MSK	0.10	14.00	B P	L120 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding OMI's discovery responses.
/14 MSK	0.10	14.00	B P	L140 A107 Communicate (outside counsel) with opposing counsel regarding draft of Discovery Commissioner's report and recommendations.
/14 MSK	0.20	28.00	B P	L120 A104 Legal Analysis of letter from OPH's counsel regarding ruling by discovery commissioner on motion to strike expert report.

SANDIN 000034

Emp	Hours	Dollars	Gp	
/14 PL	0.50	80.00	B P	L130 A104 Analyze and evaluate issues re: finalizing proposed report and recommendations regarding Sandin's motion to strike; receipt, review and analysis of correspondence from opposing counsel objecting to proposed report and recommendations; analyze and evaluate strategy for addressing the objections during Court order call with the Discovery Commissioner.
/14 MSK	0.10	14.00	B P	L140 A110 Manage data/files by evaluating and analyzing order setting new trial date.
/14 MSK	0.20	28.00	B P	L120 A107 Communicate (outside counsel) with OMI's counsel regarding discovery commissioner's ruling on motion to strike and conference with discovery commissioner.
/14 MSK	0.60	84.00	B P	L310 A104 Legal Analysis of OMI's responses to OPH's third set of discovery.
/14 MSK	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with OMI's counsel and OPH's counsel regarding discovery commissioner's ruling on motion to strike and conference with discovery commissioner.
/14 MSK	0.10	14.00	B P	L120 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L120 A101 Plan and Prepare for - telephone conference with discovery commissioner regarding motion to strike.
/14 MSK	0.30	42.00	B P	L230 A109 Appear for/attend telephone conference with discovery commissioner regarding ruling on motion to strike.
/14 MSK	0.40	56.00	B P	L250 A103 Preparation of discovery commissioner's report and recommendation in accordance with telephone conference.
/14 MSK	0.10	14.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding review of discovery commissioner's report and recommendations.
/14 MSK	0.10	14.00	B P	L210 A103 Preparation of discovery commissioner's report and recommendation by finalizing and submitting to court.
/14 MSK	0.10	14.00	B P	L110 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L340 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.20	28.00	B P	L420 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	0.40	56.00	B P	L340 A104 Legal Analysis of Plaintiff's supplemental expert reports on duty of care.
/14 MSK	0.10	14.00	B P	L110 A108 Communicate (other external) with court regarding discovery

SANDIN 000035

APP00560

Emp	Hours	Dollars	Gp	
				commissioner's report and recommendations.
/14 MSK	0.10	14.00	B P	L110 A104 Legal Analysis of discovery commissioner's report and recommendations executed by Judge.
/14 MSK	0.30	42.00	B P	L110 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L110 A106 Communicate (with client) with Dave Sandin regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding expert reports.
/14 MSK	0.20	28.00	B P	L340 A104 Legal Analysis of Plaintiff's expert reports on duty of care.
/14 MSK	0.20	28.00	B P	L340 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L340 A105 Communicate (in firm) with Kaci Thompson regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L340 A103 Preparation of expert disclosure of Paul Burkett.
/14 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding expert reports.
/14 MSK	0.10	14.00	B P	L420 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L420 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.50	70.00	B P	L340 A104 Legal Analysis of Plaintiff's expert report on duty of care of insurance agent to discuss possible rebuttal report.
/14 PL	0.10	16.00	B P	L130 A102 Research and evaluate issues re: responding to expert's inquiry for additional factual information.
/14 MSK	0.30	42.00	B P	L420 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	0.20	28.00	B P	L420 A106 Communicate (with client) with Dave Sandin regarding [REDACTED].
/14 MSK	2.10	294.00	B P	L120 A104 Legal Analysis of deposition transcript of David Sandin for facts pertaining to expert rebuttal report.
/14 PL	0.40	64.00	B P	L130 A111 Review and analysis of Dave Sandin deposition in order to ascertain factual information requested by expert witness.

SANDIN 000036

APP00561

Emp	Hours	Dollars	Gp	
/14 MSK	3.80	532.00	B P	L420 A104 Legal Analysis of Deposition transcripts of Dave Sandin and Anthony Sandin for facts regarding rebuttal report.
/14 MSK	0.20	28.00	B P	L420 A105 Communicate (in firm) with Patricia Lee regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L420 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L110 A102 Research Nevada Statutes on the duty of care of an insurance agent.
/14 MSK	0.60	84.00	B P	L420 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	1.60	224.00	B P	L340 A104 Legal Analysis of draft rebuttal report of Paul Burkett.
/14 MSK	0.30	42.00	B P	L340 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	2.40	336.00	B P	L340 A104 Legal Analysis of draft rebuttal report of Paul Burkett on standard of care of insurance agent.
/14 MSK	0.70	98.00	B P	L420 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/14 MSK	1.50	210.00	B P	L340 A103 Preparation of rebuttal disclosure with enclosed report.
/14 MSK	0.70	98.00	B P	L340 A104 Legal Analysis of rebuttal report of Kevin Kirkendall regarding damages.
/14 MSK	0.20	28.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding rebuttal report of Kevin Kirkendall.
/14 MSK	1.40	196.00	B P	L240 A104 Legal Analysis of evidence (documents and deposition) to use in motion for summary judgment.
/14 MSK	0.80	112.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding extension of deadline to disclose rebuttal experts.
/14 MSK	0.40	56.00	B P	L340 A104 Legal Analysis of rebuttal expert report of Edward McKinnon (OMI's expert).
/14 MSK	0.40	56.00	B P	L340 A104 Legal Analysis of rebuttal expert report of Donald Way (OMI's expert).
/14 MSK	1.10	154.00	B P	L240 A102 Research standard of insurance agent in Nevada to prepare summary judgment motion.
/14 MSK	1.60	224.00	B P	L340 A104 Legal Analysis of OPH's rebuttal expert report.
/14 MSK	0.10	14.00	B P	L210 A104 Legal Analysis of notice of appearance by counsel for plaintiff.

SANDIN 000037

APP00562

Emp	Hours	Dollars	Gp	
/14 MSK	0.10	14.00	B P	L110 A108 Communicate (other external) with Greg Stewart regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L340 A101 Plan and Prepare for - expert deposition by analyzing issues and experts that opined on issues.
/14 PL	0.10	16.00	B P	L130 A104 Analyze and evaluate issues re: status of expert report. +L130
/14 MSK	1.20	168.00	B P	L240 A104 Legal Analysis of motion for summary judgment and strategy for summary judgment.
/14 MSK	1.10	154.00	B P	L240 A104 Legal Analysis of Anthony Sandin's deposition for evidence and to support motion for summary judgment.
/14 MSK	4.30	602.00	B P	L240 A104 Legal Analysis of Dave Brown's deposition for evidence and to support motion for summary judgment.
/14 MSK	2.90	406.00	B P	L240 A104 Legal Analysis of Dave Sandin's deposition (Vol. I) for evidence and to support motion for summary judgment.
/14 PL	0.10	16.00	B P	L120 A101 Analyze and evaluate issues re: timing and strategy for filing dispositive motion.
/14 MSK	6.10	854.00	B P	L240 A104 Legal Analysis of documents produced in litigation to cite to for legal and factual arguments in motion for summary judgment.
/14 MSK	3.60	504.00	B P	L240 A104 Legal Analysis of deposition of David Sandin (Vol. I) to prepare evidence and documents to support motion for summary judgment.
/14 MSK	2.50	350.00	B P	L240 A104 Legal Analysis of deposition of David Sandin (Vol. II) to prepare evidence and document to support motion for summary judgment.
/14 MSK	1.50	210.00	B P	L240 A104 Legal Analysis of deposition of Deborah Mosher to prepare evidence and document to support motion for summary judgment.
/14 MSK	0.20	28.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding expert depositions.
/14 MSK	5.70	798.00	B P	L240 A104 Legal Analysis of deposition of Lynda Snyder and exhibits to incorporate into motion for summary judgment.
/14 PL	0.10	16.00	B P	L120 A104 Legal Analysis of notice of JDE of OPH in unrelated litigation.
/14 MSK	4.10	574.00	B P	L240 A104 Legal Analysis of Stephan Freudenberger and exhibits to incorporate and use as evidence to support motion for summary judgment.
/14 MSK	0.40	56.00	B P	L210 A104 Legal Analysis of application to take judgment debtor examination of OPH in other litigation. [NO CHARGE]
/14 PL	0.50	80.00	B P	L110 A106 Communicate (with client) telephone conference with Gregory Stewart re: [REDACTED]

SANDIN 000038

APP00563

Emp	Hours	Dollars	Gp	
/14 MSK	0.40	56.00	B P	1240 A102 Research NRS 686A.310 and basis for claim against agent based on statute to prepare for motion for summary judgment.
/14 MSK	0.20	28.00	B P	1340 A107 Communicate (outside counsel) with OMI's counsel regarding expert deposition and dates for depositions.
/14 MSK	3.10	434.00	B P	1240 A104 Legal Analysis of deposition of Jerry Mesonheimer and exhibits to prepare and support facts section of motion for summary judgment.
/14 MSK	4.30	602.00	B P	1240 A104 Legal Analysis of deposition of William Pettit and exhibits to prepare and support facts section of motion for summary judgment.
/14 MSK	0.40	56.00	B P	1340 A108 Communicate (other external) with OMI's and OPH's counsel regarding expert depositions and need to extend discovery.
/14 MSK	0.90	126.00	B P	1240 A102 Research case law regarding violation of insurance statute to prepare for motion for summary judgment.
/14 PL	0.30	48.00	B P	1120 A104 Legal Analysis of request to extend expert disclosure deadline by opposing counsel including impact the same will have on dispositive motion deadline and trial.
/14 MSK	0.60	84.00	B P	1340 A107 Communicate (outside counsel) with OMI's and OPH's counsel regarding expert depositions and continuation of discovery deadline.
/15 MSK	0.70	98.00	B P	1310 A104 Legal Analysis of Oregon Mutual's supplemental responses to discovery.
/15 MSK	1.10	154.00	B P	1120 A103 Preparation of status report regarding status of litigation and analysis for conclusion to Utica.
/15 PL	0.10	16.00	B P	1120 A106 Analyze and research case management order to assist in completion of status report to client.
/15 MSK	0.30	42.00	B P	1210 A104 Legal Analysis of stipulation to extend discovery.
/15 MSK	7.90	1,106.00	B P	1120 A103 Preparation of Attorneys Final Summary and Opinion Report by drafting fact section and section on claims and defenses.
/15 MSK	5.50	770.00	B P	1120 A103 Preparation of Attorneys Final Summary and Opinion Report by drafting sections re damages, defenses, and evaluating witnesses and judge.
/15 PL	0.50	80.00	B P	1120 A106 Provide input on presiding judge as part of Utica's required status report.
/15 MSK	0.10	14.00	B P	1210 A107 Communicate (outside counsel) with Oregon Mutual's counsel regarding stipulation and order to extend discovery.

Emp	Hours	Dollars	Gp	
/15 MSK	5.70	798.00	B P	L120 A103 Preparation of Attorneys Final Summary and Opinion Report. [NO CHARGE]
able	5.70	0.00		
/15 PL	0.50	80.00	B P	L120 A106 Communicate (with client) re: [REDACTED].
/15 MSK	2.20	308.00	B P	L120 A102 Research case law on breach of fiduciary claims to include in status report to Utica [NO CHARGE]
able	2.20	0.00		
/15 PL	0.50	80.00	B P	L110 A104 Legal Analysis of expert report from Mr. Burkett.
/15 MSK	0.10	14.00	B P	L120 A103 Preparation of Status Report for Utica Insurance.
/15 MSK	7.80	1,092.00	B P	L240 A103 Preparation of facts section for motion for summary judgment by incorporating deposition outlines and documents to supports facts.
/15 MSK	0.10	14.00	B P	L210 A104 Legal Analysis of order from court extending discovery deadline and dispositive motion deadline.
/15 MSK	1.30	182.00	B P	L240 A103 Preparation of legal standard and beginning paragraphs for motion for summary judgment.
/15 MSK	1.20	168.00	B P	L240 A103 Preparation of summary judgment motion section on breach of fiduciary duty claim.
/15 MSK	1.00	140.00	B P	L240 A103 Preparation of summary judgment motion section on claim for violation of NRS 686A.310, unfair practices.
/15 MSK	4.00	560.00	B P	L240 A103 Preparation of facts section for motion for summary judgment by incorporating deposition outlines and documents to supports facts. [NO CHARGE]
able	4.00	0.00		
/15 MSK	2.20	308.00	B P	L240 A103 Preparation of motion for summary judgment by continuing to draft section on violation of NRS 686A.310 claim.
/15 MSK	5.70	798.00	B P	L240 A102 Research case law regarding duties owed by insurance agent to insured when insured fails to make premium. [NO CHARGE]
able	5.70	0.00		
/15 PL	0.60	96.00	B P	L110 A106 Review, analyze and amend status report to carrier, as requested by carrier.
/15 PL	0.60	96.00	B P	L110 A102 Research and Review changes to Nevada Administrative Code for purposes of determining [REDACTED].
/15 MSK	0.20	28.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding dates for expert depositions.
/15 MSK	2.80	392.00	B P	L120 A103 Preparation of status report for Utica of status of litigation and recommendations. [NO CHARGE]
able	2.80	0.00		

SANDIN 000040

APP00565

Emp	Hours	Dollars	Gp	
/15 PL	0.10	16.00	B P	L120 A106 Finalize status report to Utica
/15 PL	0.30	48.00	B P	L340 A101 Coordinate expert depositions.
/15 MSK	0.50	70.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding dates and schedule for expert depositions.
/15 MSK	0.60	84.00	B P	L120 A103 Preparation of status report to Utica for status of case.
/15 MSK	0.40	56.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding deposition of experts.
/15 MSK	0.20	28.00	B P	L340 A103 Preparation of notice of deposition of OPH's expert Neal Bordenave.
/15 MSK	0.40	56.00	B P	L340 A103 Preparation of subpoena duces tecum to expert Neal Bordenave requesting his file and correspondence.
/15 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) with Oregon Mutual's counsel regarding expert deposition dates.
/15 MSK	0.60	84.00	B P	L340 A103 Preparation of expert deposition schedule.
/15 MSK	4.90	686.00	B P	L240 A103 Preparation of motion for summary judgment by drafting section on negligence and proximate cause.
/15 MSK	2.60	364.00	B P	L240 A102 Research case law on fraud and defenses to fraud to support motion for summary judgment.
/15 MSK	2.20	308.00	B P	L240 A103 Preparation of fraud section of motion for summary judgment.
/15 MSK	1.30	182.00	B P	L240 A103 Preparation of notice of cancellation section of motion for summary judgment.
/15 MSK	0.80	112.00	B P	L340 A107 Communicate (outside counsel) with Oregon Mutual's counsel regarding schedule and location of expert depositions.
/15 MSK	3.40	476.00	B P	L240 A102 Research case law regarding duties of insurance agent to support motion for summary judgment. [NO CHARGE]
/15 PL	0.20	32.00	B P	L130 A104 Legal Analysis of location of expert depositions and whether we should consider moving them to Las Vegas.
/15 MSK	0.20	28.00	B P	L120 A106 Communicate (with client) Dave Sandin regarding [REDACTED].
/15 MSK	1.10	154.00	B P	L240 A102 Research case law regarding duties of insurance agent to support motion for summary judgment. [NO CHARGE]
/15 PL	0.20	32.00	B P	L130 A103 Preparation for expert witness depositions.

SANDIN 000041

APP00566

Emp	Hours	Dollars	Gp	
/15 MSK	0.10	14.00	B P	L340 A104 Legal Analysis of rule requiring payment of cost for expert depositions.
/15 PL	0.10	16.00	B P	L130 A103 Continue to coordinate dates and location of expert depositions.
/15 PL	0.20	32.00	B P	L130 A103 Coordinate payment of Paul Burkett's deposition testimony by opposing counsel; analyze and evaluate issues re: anticipated motion for summary judgment.
/15 MSK	0.10	14.00	B P	L340 A104 Legal Analysis of Notice of Deposition of expert Don Way.
/15 MSK	0.10	14.00	B P	L340 A104 Legal Analysis of of Notice of Deposition of expert Kevin Kirkendall.
/15 MSK	0.80	112.00	B P	L340 A103 Preparation of letter to opposing counsel regarding depositions of expert Paul Burkett and Neal Bordenave.
/15 MSK	0.20	28.00	B P	L340 A107 Communicate (outside counsel) with OMI's and OPH's counsel regarding deposition of Donald Way.
/15 MSK	0.20	28.00	B P	L340 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/15 MSK	0.30	42.00	B P	L140 A108 Communicate [REDACTED] with Greg Stewart and email [REDACTED] to Greg.
/15 MSK	5.20	728.00	B P	L240 A102 Research case law regarding insurance agent duty to notify insured of missed payment to support motion. [NO CHARGE]
/15 MSK	1.10	154.00	B P	L240 A103 Preparation of draft of summary judgment motion.
/15 MSK	0.40	56.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding expert depositions.
/15 PL	0.50	80.00	B P	L130 A101 Plan and Prepare for meeting with jointly retained expert, Kirkendall, in preparation for his deposition and deposition of rebuttal expert, Mary Heinz; coordinate deposition fees of Neal Bordenave.
/15 MSK	0.30	42.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding meeting with expert Kevin Kirkendall to prepare for depositions.
/15 PL	0.10	16.00	B P	L130 A104 Receipt, review and analysis of notice of taking deposition of Mr. Freudenberger.
/15 MSK	2.10	294.00	B P	L340 A101 Plan and Prepare for - meeting with expert Kevin Kirkendall by reviewing expert reports and pleadings.
/15 MSK	3.60	504.00	B P	L340 A109 Appear for/Attend meeting with expert Kevin Kirkendall to prepare for his deposition and deposition of expert Mary Heinz.
/15 MSK	0.10	14.00	B P	L330 A104 Legal Analysis of Notice of deposition of Stephan Freudenberger.
/15 MSK	0.80	112.00	B P	L340 A102 Research rule on payment of fees of expert depositions and right to

SANDIN 000042

APP00567

Emp	Hours	Dollars	Gp	
/15 MSK	0.30	42.00	B P	cancel depositions for non-payment of fees. L340 A107 Communicate (outside counsel) with OMI's counsel regarding expert depositions.
/15 PL	0.50	80.00	B P	L130 A103 Review and analysis of notes from meeting with Mr. Kirkendall in preparation for Mary Heinz deposition; receipt, review and analysis of correspondence from OMI's counsel re: intent to appear via video conference for Paul Burkett's deposition; analyze and evaluate issues re: whether payment for Ms. Heinz needs to be coordinated in advance of her deposition.
/15 MSK	0.20	28.00	B P	L340 A103 Preparation of outlines for expert depositions.
/15 PL	5.20	832.00	B P	L340 A101 Travel to Reno; in person meeting with Paul Burkett in preparation for his deposition the following day.
/15 MSK	1.10	154.00	B P	L340 A107 Communicate extensively (outside counsel) with OMI's counsel and opposing counsel regarding scheduled for expert depositions and moving depositions.
/15 MSK	5.10	714.00	B P	L350 A104 Legal Analysis of facts and evidence regarding Sandin's prior notices to OPH of missed insurance premiums.
/15 PL	1.30	208.00	B P	L130 A101 Convert deposition of Bordenave to video deposition; exchange correspondences with opposing counsel re: reorganizing depositions so that Northern California depositions can occur back to back; receipt, review and analysis of amended deposition notice of Mr. Wey and Mr. McKinnon; exchange several correspondences with opposing counsel regarding the same.
/15 PL	2.20	352.00	B P	L330 A109 Appear for/attend and defend deposition of Paul Burkett; subsequent consultation with opposing counsel re: moving subsequent depositions such that Northern California experts can be deposed back to back.
/15 MSK	0.20	28.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding dates for expert depositions.
/15 MSK	1.40	196.00	B P	L440 A104 Legal Analysis of trial and tasks and assignments to prepare for trial on April 27, 2015.
/15 PL	5.20	832.00	B P	L130 A101 Prepare for and attend deposition of Mary Heinz, OMI's expert on damages.
/15 PL	0.60	96.00	B P	L130 A101 Plan and Prepare for Kevin Kirkendall's deposition; analyze and evaluate issues re: Plaintiff's strategy of establishing duty through custom and practice and ways to combat the same through expert deposition; analyze and evaluate issues re: anticipated dispositive motion; exchange correspondences with opposing counsel re: cementing deposition date for Mr. Freudenberger.
/15 PL	4.20	672.00	B P	L330 A109 Prepare for and attend deposition of Mary Heinz (OMI's damages expert).
/15 MSK	3.00	420.00	B P	L340 A109 Appear for/attend deposition of expert Kevin Kirkendall.

SANDIN 000043

APP00568

Emp	Hours	Dollars	Gp	
/15 MSK	0.20	28.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding expert depositions.
/15 MSK	0.30	42.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding summary of Kevin Kirkendall deposition.
/15 MSK	1.70	238.00	B P	L330 A101 Plan and Prepare for - deposition of Stephen Freudenberger by preparing outline.
/15 PL	0.20	32.00	B P	L130 A104 Receipt, review and analysis of amended deposition notice of Mr. Freudenberger; analyze and evaluate issues re: sum and substance of Mr. Kirkendall's deposition today.
/15 MSK	0.20	28.00	B P	L340 A101 Plan and Prepare for - deposition of expert Neal Bordenave (OPH's expert).
/15 PL	2.70	432.00	B P	L330 A101 Travel to Chico California in anticipation of taking deposition of OPH's agent / broker standard of care expert deposition, Neal Bordenave.
/15 PL	4.70	752.00	B P	L330 A101 Review and analysis of all expert reports produced to date and various parts of the record in preparation for deposition of Neal Bordenave, OPH's expert on agent standard of care.
/15 PL	4.60	736.00	B P	L330 A101 Draft deposition outline for Neal Bordenave, OPH's agent standard of care expert.
/15 PL	0.50	80.00	B P	L330 A104 Review and analyze staffing for remaining depositions.
/15 MSK	3.00	420.00	B P	L340 A103 Preparation of deposition summary of Paul Burkett.
/15 MSK	3.30	462.00	B P	L240 A103 Preparation of motion for summary judgment by citing to deposition testimony and documents as evidence to support motion.
/15 MSK	1.60	0.00	B P	L340 A101 Plan and Prepare for - deposition of expert Neal Bordenave by pulling documents and creating outline. [NO CHARGE]
/15 PL	6.20	992.00	B P	L130 A109 Attend and take deposition of OPH's expert on agent standard of care.
/15 PL	4.40	704.00	B P	L330 A109 Travel to San Jose in anticipation of deposition of OMI's expert on agent standard of care, Don Way.
/15 PL	1.70	272.00	B P	L420 A104 Review expert witness reports of Don Way and documents referenced therein; prepare deposition outline for Mr. Way's deposition.
/15 PL	0.30	48.00	B P	L240 A104 Review relevant portions of clients' deposition testimony ostensibly substantiating Plaintiff's claim that Sandin Defendants offered notification of termination as a "value added service," and Sandin's counter-testimony stating that it was never their policy to notify their clients of cancellations.
/15 PL	0.20	32.00	B P	L340 A104 Post deposition analysis and note to file on issues raised during

SANDIN 000044

Emp	Hours	Dollars	Gp	
				Bordenave deposition.
/15 MSK	6.30	882.00	B P	L240 A102 Research case law regarding insurance duty of care and fiduciary duty to support summary judgment motion.
/15 MSK	2.20	308.00	B P	L330 A101 Plan and Prepare for - deposition of Stephen Freudenberger by reviewing and analyzing documents to question.
/15 MSK	0.30	42.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding expert depositions.
/15 PL	2.80	448.00	B P	L330 A109 Travel to, attend and participate in deposition of OMI's expert on agent standard of care, Don Way.
/15 PL	0.20	32.00	B P	L130 A104 Receipt, review and analysis of OMI's expert disclosure; receipt, review and analysis of invoice from expert Don Way.
/15 MSK	0.80	112.00	B P	L330 A101 Plan and Prepare for - deposition of Stephen Freudenberger by reviewing documents and creating outline.
/15 MSK	0.20	28.00	B P	L240 A106 Communicate (with client) Dave Sandin, regarding [REDACTED].
/15 PL	0.20	32.00	B P	L240 A106 Communicate (with client) Dave Sandin, re: [REDACTED].
/15 MSK	3.20	448.00	B P	L330 A101 Plan and Prepare for - deposition of Stephan Freudenberger.
/15 MSK	2.20	308.00	B P	L330 A109 Appear for/attend deposition of Stephan Freudenberger.
/15 MSK	3.10	434.00	B P	L240 A103 Preparation of section on prior notices of missed payment for summary judgment motion.
/15 PL	0.50	80.00	B P	L240 L104 Analyze and evaluate issues re: timing of Sandin's alleged prior notice in the past of pending cancellations to OPH based on Ms. Snyder's testimony; review of the record to confirm the same in anticipation of incorporation into Motion for Summary Judgment.
/15 PL	0.80	128.00	B P	L340 A101 Coordinate rescheduling of McKinnon's deposition due to scheduling conflicts.
/15 PL	0.10	16.00	B P	L120 A104 Legal Analysis of deposition transcript of Mary Heinz.
/15 MSK	2.80	392.00	B P	L340 A101 Plan and Prepare for - deposition of OMI's expert Edward McKinnon by evaluating and analyzing expert reports and CV's and expert documents.
/15 MSK	0.20	28.00	B P	L340 A107 Communicate (outside counsel) with OMI's counsel regarding deposition of expert Edward McKinnon.
/15 MSK	2.00	280.00	B P	L240 A103 Preparation of section on prior notices of missed or late payments for

SANDIN 000045

APP00570

Emp	Hours	Dollars	Gp	
				motion for summary judgment.
/15 MSK	2.60	364.00	B P	L330 A101 Plan and Prepare for - deposition of expert Edward McKinnon.
/15 MSK	2.10	294.00	B P	L330 A109 Appear for/Attend deposition of expert Edward McKinnon.
/15 MSK	6.70	938.00	B P	L240 A103 Preparation of summary judgment motion by evaluating and analyzing transcript of expert Neal Bordenave and incorporating relevant portions into motion for summary judgment.
/15 MSK	2.10	294.00	B P	L240 A102 Research case law on agent's duty of care to support summary judgment motion.
/15 PL	0.10	16.00	B P	L340 A104 Legal Analysis of deposition transcript of Don Way.
/15 PL	0.10	16.00	B P	L340 A104 Legal Analysis of deposition transcript of Stephan Freudenberger.
/15 PL	0.10	16.00	B P	L130 A104 Legal Analysis of anticipated motion for summary judgment and arguments to incorporate therein.
/15 MSK	5.70	798.00	B P	L240 A103 Preparation of motion for summary judgment by reviewing and checking case law and exhibits.
/15 PL	2.20	352.00	B P	L240 A104 Legal Analysis of proposed motion for summary judgment.
/15 PL	0.40	64.00	B P	L250 A102 Conduct research in support of motion in limine to exclude any evidence [REDACTED].
/15 MSK	6.40	896.00	B P	L240 A102 Research statutes and legislative history regarding whether agent has duty to insure for motion for summary judgment.
/15 MSK	0.40	56.00	B P	L430 A107 Communicate (outside counsel) with OMI's counsel regarding possible motions in limine.
/15 MSK	1.30	182.00	B P	L430 A104 Legal Analysis of possible motions in limine against Plaintiff.
/15 PL	0.10	16.00	B P	L340 A104 Legal Analysis of what evidence should be excluded by way of motions in limine.
/15 PL	0.10	16.00	B P	L420 A104 Receipt, review and analysis of correspondence from retained expert Paul Burkett re: [REDACTED].
/15 MSK	1.80	252.00	B P	L240 A104 Legal Analysis of OMI's motion for summary judgment and case law and statutes cited in motion.
/15 MSK	4.20	588.00	B P	L430 A103 Preparation of motion in limine to exclude evidence of Dave Sandin's expired Nevada license.
/15 MSK	5.80	812.00	B P	L430 A103 Preparation of Pre-trial disclosures of witnesses and exhibits pursuant to NRCP 16.1.

SANDIN 000046

APP00571

Emp	Hours	Dollars	Gp	
/15 MSK	0.10	14.00	B P	I210 A104 Legal Analysis of writ of attachment filed against OPH.
/15 MSK	3.20	0.00	B P	I430 A103 Preparation of motion in limine excluding evidence of Dave Sandin's expired Nevada license. [NO CHARGE]
/15 MSK	0.30	42.00	B P	I430 A107 Communicate (outside counsel) with OPH's counsel regarding motion in limine to exclude evidence of Dave Sandin's license status and whether OPH will stipulate to exclude.
/15 MSK	0.40	56.00	B P	I430 A107 Communicate (outside counsel) with OMI's counsel regarding motions in limine and trial deadlines.
/15 MSK	7.30	1,022.00	B P	I430 A103 Preparation of Pre-trial Disclosures by reviewing and analyzing exhibits to include.
/15 PL	0.10	16.00	B P	I340 A104 Legal Analysis of impending motions in limine deadline and evidence for which to seek exclusion.
/15 MSK	7.10	994.00	B P	I430 A103 Preparation of Pre-trial disclosures by reviewing documents and selecting document to be used as exhibits.
/15 MSK	0.70	98.00	B P	I430 A107 Communicate (outside counsel) with opposing counsel regarding meet and confer requirement on proposed motions in limine and excluding evidence at trial.
/15 MSK	0.50	70.00	B P	I430 A104 Legal Analysis of OPH's motion to bifurcate trial splitting liability and damages.
/15 MSK	1.10	0.00	B P	I430 A103 Preparation of motion in limine to exclude evidence of Dave Sandin's Nevada license. [NO CHARGE]
/15 PL	0.20	32.00	B P	I250 A104 Receipt, review and analysis of meet and confer correspondence from opposing counsel seeking consent to exclude evidence of arson and unpaid rents.
/15 PL	0.30	48.00	B P	I250 A104 Legal Analysis of motion to bifurcate trial.
/15 PL	0.10	16.00	B P	I250 A103 Finalize motion in limine to exclude any evidence relating to Mr. Sandin's revoked Nevada license.
/15 PL	0.50	80.00	B P	I440 A104 Receipt, review and analysis of correspondence from opposing counsel re: request to stipulate to omitting any evidence of arson and unpaid rents; review of record for evidence of either in order to meaningfully respond.
/15 PL	0.30	48.00	B P	I250 A104 Legal Analysis of OMI's motion to exclude any evidence of speculative damages and to exclude Plaintiff's expert testimony to the extent it includes any legal opinions.
/15 PL	0.20	32.00	B P	I120 A104 Legal Analysis of pre-trial disclosures.
/15 PL	0.10	16.00	B P	I440 A101 Analyze and evaluate issues re: staffing deposition summaries.

SANDIN 000047

APP00572

Emp	Hours	Dollars	Gp	
/15 MSK	0.20	28.00	B P	L240 A107 Communicate (outside counsel) with opposing counsel regarding due date for opposition to motion for summary judgment.
/15 MSK	0.40	56.00	B P	L430 A104 Legal Analysis of OPH's motion in limine to exclude evidence of past due rents on the property.
/15 MSK	0.50	70.00	B P	L430 A104 Legal Analysis of OPH's motion in limine to exclude evidence of possible arson.
/15 MSK	0.50	70.00	B P	L430 A104 Legal Analysis of OMI's Motion in limine to exclude evidence of speculative damages.
/15 MSK	0.40	56.00	B P	L430 A104 Legal Analysis of OMI's motion in limine to exclude experts to testify of legal opinions.
/15 MSK	0.60	84.00	B P	L440 A104 Legal Analysis of tasks required for trial.
/15 MSK	4.70	658.00	B P	L330 A103 Preparation of deposition summary of Kevin Kirkendall (expert on damages).
/15 MSK	1.60	0.00	B P	L430 A103 Preparation of pre-trial disclosures of witnesses and exhibits by reviewing and analyzing documents to include as exhibits. [NO CHARGE]
/15 MSK	2.70	378.00	B P	L330 A103 Preparation of deposition summary of damages expert Kevin Kirkendall, CPA.
/15 MSK	3.70	518.00	B P	L430 A103 Preparation of Joinder to Motion in limine to exclude evidence of speculative damages.
/15 MSK	0.40	0.00	B P	L430 A103 Preparation of pretrial disclosures of exhibits and witnesses. [NO CHARGE]
/15 MSK	3.50	490.00	B P	L330 A103 Preparation of deposition summary of Mary Heinz, Plaintiff's damages expert.
/15 MSK	0.90	0.00	B P	L430 A103 Preparation of pre-trial disclosures of witnesses and exhibits. [NO CHARGE]
/15 PL	0.10	16.00	B P	L440 A101 Plan and Prepare for meet and confer to discuss stipulated exhibits, order of witnesses and other pre-trial matters.
/15 MSK	0.60	84.00	B P	L430 A107 Communicate (outside counsel) with OMI's and OPH's counsel regarding pre-trial disclosures and due date.
/15 MSK	1.80	252.00	B P	L430 A103 Preparation of Joinder to OMI's Motion in limine to exclude evidence of plaintiff's speculative damages.
/15 MSK	4.60	644.00	B P	L330 A103 Preparation of deposition summary of Mary Heinz, Plaintiff's damages expert.

SANDIN 000048

APP00573

Emp	Hours	Dollars	Gp	
/15 PL	0.20	32.00	B P	L250 A104 Legal Analysis of joinder to OMI's motion in limine.
/15 PL	0.50	80.00	B P	L440 A107 Analyze and evaluate issues re: status of pre-trial memo from Plaintiff; exchange correspondences with Plaintiff's counsel regarding the same.
/15 MSK	4.40	616.00	B P	L330 A103 Preparation of deposition summary of Mary Heinz, Plaintiff's damages expert.
/15 MSK	7.90	1,106.00	B P	L430 A103 Preparation of Opposition to Motion in limine to exclude evidence of rent arrears.
/15 MSK	0.30	42.00	B P	L430 A104 Legal Analysis of OPH's opposition to motion in limine to exclude reference to Dave Sandin's license status.
/15 PL	0.20	32.00	B P	L250 A104 Legal Analysis of motion in limine to exclude any evidence of arson.
/15 PL	0.20	32.00	B P	L250 A104 Legal Analysis of OPH's opposition to exclude any evidence of speculative damages.
/15 PL	0.20	32.00	B P	L250 A104 Legal Analysis of OPH's opposition to Plaintiff's motion to exclude expert testimony to the extent it includes expert legal opinions.
/15 PL	0.20	32.00	B P	L250 A104 Legal Analysis of OPH's opposition to Sandin defendants' motion in limine to exclude any mention of Dave Sandin's lack of licensure.
/15 PL	0.20	32.00	B P	L440 A104 Legal Analysis of OPH's pre-trial disclosures.
/15 PL	0.30	48.00	B P	L230 A101 Plan and Prepare for calendar call.
/15 PL	0.20	32.00	B P	L440 A104 Legal Analysis of OMI's pre-trial disclosures.
/15 MSK	5.10	714.00	B P	L430 A103 Preparation of opposition to OPH's motion in limine to exclude evidence of past due rents.
/15 MSK	0.30	42.00	B P	L430 A104 Legal Analysis of OPH's opposition to OMI's motion in limine to exclude evidence of speculative damages.
/15 MSK	0.30	42.00	B P	L430 A104 Legal Analysis of OPH's opposition to OMI's motion in limine to exclude expert opinion testimony on issue of contract construction.
/15 MSK	1.40	196.00	B P	L430 A102 Research case law re character evidence and routine of organization to support opposition to motion in limine to exclude evidence of past due rents.
/15 PL	2.20	352.00	B P	L450 A109 Appear for/Attend Attend calendar call.
/15 PL	0.70	112.00	B P	L250 A104 Receipt, review and analysis of correspondence from opposing counsel re: request for extension of time to respond to motion for summary judgment; exchange correspondences with opposing counsel regarding the same; Receipt, review and analysis of correspondence from OMI's counsel re: request to continue dispositive motion calendar due to scheduling conflict; exchange correspondences with all

SANDIN 000049

APP00574

Emp	Hours	Dollars	Gp	
/15 MSK	0.20	28.00	B P	counsel to coordinate a mutually agreeable date on which to hold oral arguments for dispositive motions; Receipt, review and analysis of proposed stipulation and order memorializing the agreement to continue dispositive motion hearing date. L110 A107 Communicate [REDACTED] with Dave and Anthony Sandin regarding [REDACTED].
/15 MSK	6.60	924.00	B P	L330 A103 Preparation of deposition summary of expert Neal Bordenave.
/15 MSK	0.10	14.00	B P	L120 A104 Legal Analysis of stipulation and order to continue hearings.
/15 MSK	0.30	42.00	B P	L210 A107 Communicate (outside counsel) with opposing counsel regarding due date to motion to bifurcate trial.
/15 MSK	0.60	84.00	B P	L120 A107 Communicate (outside counsel) with OMI's counsel regarding hearings and strategy for motion for summary judgment.
/15 MSK	0.20	28.00	B P	L120 A108 Communicate [REDACTED] with Greg Stewart regarding [REDACTED].
/15 MSK	0.80	112.00	B P	L120 A107 Communicate (outside counsel) with OMI's and OPH's counsel regarding hearing dates and due dates for oppositions to motion for summary judgment.
/15 PL	0.40	64.00	B P	L250 A104 Legal Analysis issues re: whether or not all outstanding motions should be consolidated and moved to one date; exchange correspondences with opposing counsel regarding the same; receipt, review and analysis of proposed stipulation and order to consolidated and continue all outstanding hearings.
/15 PL	0.20	32.00	B P	L120 A104 Legal Analysis issues re: whether or not to oppose OPH's motion to bifurcate trial.
/15 MSK	1.70	238.00	B P	L430 A103 Preparation of Opposition to motion in limine regarding excluding evidence of past due rents.
/15 MSK	6.60	924.00	B P	L430 A103 Preparation of deposition summary of Neal Bordenave.
/15 PL	0.10	16.00	B P	L120 A104 Legal Analysis of substantive issues to raise in opposition to motion in limine concerning OPH's failure to pay any rents.
/15 MSK	4.00	560.00	B P	L330 A103 Preparation of deposition summary of Neal Bordenave.
/15 MSK	4.50	630.00	B P	L430 A103 Preparation of reply brief in support of motion in limine to exclude evidence of Dave Sandin's licensing status.
/15 MSK	1.90	266.00	B P	L430 A103 Preparation of opposition to OPH's motion in limine to exclude evidence of past due rents.
/15 PL	0.30	48.00	B P	L250 A104 Legal Analysis of Plaintiff's motion in limine to exclude reference to or evidence of rents owed by plaintiff.
/15 PL	0.30	48.00	B P	L250 A104 Legal Analysis of proposed opposition to Plaintiff's Motion in limine to

SANDIN 000050

APP00575

Emp	Hours	Dollars	Gp	
/15 PL	0.30	48.00	B P	Exclude Reference to or Evidence of Rents Owed by Plaintiff. L250 A104 Legal Analysis of OMI's limited opposition to OPH's motion to bifurcate trial.
/15 PL	0.30	48.00	B P	L250 A104 Legal Analysis of OMI's opposition to OPH's motion in limine to exclude rents.
/15 PL	0.30	48.00	B P	L250 A104 Legal Analysis of OMI's opposition to OPH's motion in limine to exclude any reference to arson.
/15 MSK	0.20	28.00	B P	L430 A104 Legal Analysis of OMI's opposition to motion to bifurcate trial.
/15 MSK	0.20	28.00	B P	L430 A104 Legal Analysis of OMI's opposition to OPH's motion in limine to exclude evidence of arson.
/15 MSK	0.40	56.00	B P	L430 A104 Legal Analysis of OMI's opposition to OPH's motion in limine to exclude evidence of past due rents.
/15 MSK	0.90	126.00	B P	L240 A106 Communicate (with client) with Dave Sandin regarding [REDACTED].
/15 MSK	6.70	938.00	B P	L240 A104 Legal Analysis of OPH's opposition to motion for summary judgment, exhibits, legal argument and how to effectively respond to OPH's bogus arguments.
/15 PL	0.50	80.00	B P	L240 A104 Legal Analysis of issues re: substantively responding to Plaintiff's opposition to Sandin defendants' motion for summary judgment.
/15 PL	0.30	48.00	B P	L240 A104 Legal Analysis of OPH's Opposition to Sandin defendants' motion for summary judgment.
/15 PL	0.10	16.00	B P	L250 A104 Legal Analysis of Court's acceptance of stipulation and order to consolidate and continue all outstanding pre-trial motions.
/15 BJT	1.40	196.00	B P	L240 A102 Research re summary judgment, conflicting evidence, and prepare legal memorandum memorializing findings.
/15 MSK	0.40	56.00	B P	L120 A108 Communicate [REDACTED] with Greg Stewart regarding [REDACTED].
/15 MSK	0.40	56.00	B P	L110 A108 Communicate [REDACTED] with Greg Stewart regarding [REDACTED].
/15 MSK	0.40	56.00	B P	L240 A102 Research case law to support reply in support of motion for summary judgment.
/15 MSK	7.30	1,022.00	B P	L240 A103 Preparation of reply brief in support of motion for summary judgment.
/15 PL	0.10	16.00	B P	L250 A104 Legal Analysis of draft reply in support of Sandin defendants' motion for summary judgment.

SANDIN 000051

APP00576

Emp	Hours	Dollars	Gp	
/15 BJT	1.60	224.00	B P	L240 A102 Research re course of conduct of broker creating duty to notify.
/15 MSK	0.70	98.00	B P	L240 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED]
/15 MSK	7.60	1,064.00	B P	L240 A103 Preparation of reply brief in support of motion for summary judgment.
/15 BJT	2.10	294.00	B P	L240 A102 Conduct research re: duty of insurance broker and creation of duty based on continuing conduct.
/15 MSK	2.80	392.00	B P	L240 A103 Preparation of standard of insurance agent, including Nevada statutes and administrative code and legislative history.
/15 MSK	0.90	126.00	B P	L160 A103 Preparation of settlement letter to opposing counsel to settle case for \$50,000.
/15 MSK	0.20	28.00	B P	L430 A107 Communicate (outside counsel) with OMI's counsel regarding opposition to motion to bifurcate.
/15 MSK	4.40	616.00	B P	L430 A103 Preparation of joinder to OMI's limited opposition to motion to bifurcate.
/15 MSK	0.10	14.00	B P	L120 A108 Communicate [REDACTED] with Greg Stewart regarding [REDACTED].
/15 PL	0.10	16.00	B P	L440 A104 Legal Analysis of limiting opposition to motion to bifurcate trial.
/15 MSK	5.80	812.00	B P	L240 A102 Research case law on duty of insurance agent to notify insured of pending cancellation to use in reply brief.
/15 MSK	4.70	658.00	B P	L240 A103 Preparation of reply brief in support of motion for summary judgment.
/15 MSK	6.70	938.00	B P	L240 A103 Preparation of reply brief in support of motion for summary judgment.
/15 MSK	0.90	126.00	B P	L110 A103 Preparation of declaration of Paul Burkett to support reply for summary judgment.
/15 MSK	0.20	28.00	B P	L240 A107 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/15 MSK	6.60	924.00	B P	L240 A103 Preparation of reply brief in support of motion for summary judgment.
/15 PL	0.10	16.00	B P	L130 A104 Draft declaration of Paul Burkett in support of reply brief.
/15 PL	0.30	48.00	B P	L120 A102 Research various legal issues to be addressed in reply brief.
/15 MSK	1.90	266.00	B P	L330 A103 Preparation of deposition summary of expert Neal Bordenave.
/15 MSK	0.20	28.00	B P	L120 A108 Communicate (other external) with OMI's counsel regarding summary judgment motion and settlement offer.

SANDIN 000052

APP00577

Emp	Hours	Dollars	Gp	
/15 MSK	0.30	42.00	B P	L160 A107 Communicate (outside counsel) with Robert Langford (OPH's counsel) regarding settlement and mediation.
/15 PL	0.20	32.00	B P	L120 A106 Communicate (with client) re: [REDACTED].
/15 MSK	3.00	420.00	B P	L330 A103 Preparation of deposition summary of expert Neal Bordenave.
/15 MSK	0.30	42.00	B P	L120 A107 Communicate (outside counsel) with OMI's counsel regarding offer of judgment.
/15 PL	0.70	112.00	B P	L120 A106 Communicate (with client) re: [REDACTED].
/15 PL	0.10	16.00	B P	L160 A104 Legal Analysis of offer of judgment from DHI to OPH.
/15 MSK	3.70	518.00	B P	L330 A103 Preparation of deposition summary of expert Neal Bordenave.
/15 MSK	0.20	28.00	B P	L160 A107 Communicate (outside counsel) with opposing counsel regarding settlement and mediation.
/15 PL	0.50	80.00	B P	L160 A106 Communicate (with client) re: [REDACTED].
/15 PL	0.70	112.00	B P	L240 A104 Legal Analysis of all opposition and reply dates for pre-trial motions and strategy for complying with the same.
/15 MSK	8.20	1,148.00	B P	L240 A103 Preparation of reply brief in support of motion for summary judgment.
/15 MSK	0.10	14.00	B P	L240 A106 Communicate (with client) with Dave Sandin regarding [REDACTED].
/15 MSK	1.60	224.00	B P	L240 A102 Research case law regarding exclusive jurisdiction of insurance commission to handle matter regarding insurance.
/15 MSK	0.70	98.00	B P	L240 A103 Preparation of declarations of Dave Sandin and Michael Kelley to support reply brief for summary judgment.
/15 MSK	0.20	28.00	B P	L240 A106 Communicate (with client) with Dave Sandin regarding [REDACTED].
/15 MSK	2.80	0.00	B P	L240 A103 Preparation of reply brief in support of motion for summary judgment. [NO CHARGE]
/15 PL	1.00	160.00	B P	L410 A111 Begin deposition summary for Stephan Freudenburg's first day of deposition testimony in preparation for trial.
/15 TGM	0.40	38.00	B P	L110 A111 evaluate and analyze with Patricia Lee re: [REDACTED]
able MSK	0.40	56.00		
/15 TGM	2.50	237.50	B P	L410 A111 Begin to review and evaluate and summarize Stephan Freudenberg's deposition for trial.
able MSK	2.50	350.00		

SANDIN 000053

APP00578

Emp	Hours	Dollars	Gp	
/15 MSK	0.40	56.00	B P	I240 A107 Communicate (outside counsel) with OMI's counsel regarding reply briefs in support of motion for summary judgment.
/15 MSK	3.80	0.00	B P	I240 A103 Preparation of reply brief in support of motion for summary judgment. [NO CHARGE]
/15 MSK	0.40	56.00	B P	I460 A103 Preparation of reply brief in support of motion in limine to exclude evidence of Dave Sandin's Nevada license.
/15 MSK	4.90	686.00	B P	I240 A102 Research cases on standard of insurance agent for reply brief in support of motion for summary judgment.
/15 PL	0.40	64.00	B P	I250 A104 Legal Analysis of draft reply in support of motion in limine to exclude any evidence of Dave Sandin's licensure lapse.
/15 PL	1.30	208.00	B P	I240 A104 Legal Analysis of reply in support of motion for summary judgment.
/15 MSK	0.10	14.00	B P	I430 A104 Legal Analysis of Reply to Dave Sandin and Sandin & Co.'s Joinder to Oregon Mutual Insurance Company's opposition to Plaintiff's Motion to Bifurcate Trial.
/15 MSK	0.10	14.00	B P	I430 A104 Legal Analysis of Reply to Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion to Bifurcate Trial.
/15 MSK	0.10	14.00	B P	I430 A104 Legal Analysis of Reply to Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Arson.
/15 MSK	0.10	14.00	B P	I430 A104 Legal Analysis of Reply to Oregon Mutual Insurance Company's Opposition to Plaintiff's Motion in Limine to Exclude Reference to or Evidence of Rents Owed by Plaintiff.
/15 MSK	0.10	14.00	B P	I430 A104 Legal Analysis of Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Experts' Testimony to the Extent it Constitutes Legal Opinion(s).
/15 MSK	0.20	28.00	B P	I430 A104 Legal Analysis of Reply in Support of Defendant's Motion in Limine to Exclude Plaintiff's Speculative Damages.
/15 MSK	0.40	56.00	B P	I210 A104 Legal Analysis of Oregon Mutual Insurance Company's Reply in Support of its Motion for Summary Judgment on all Claims against OMI.
/15 MSK	0.40	56.00	B P	I450 A103 Preparation of outline for hearings on motion in limine.
/15 TGM able MSK	0.80 0.80	76.00 112.00	B P	I410 A111 Continue to summarize Stephan Freudenberger's deposition transcript.
/15 PL	0.10	16.00	B P	I160 A106 Receipt, review and analysis of correspondence from Greg Stewart following up on possible mediation.
/15 MSK	1.90	266.00	B P	I350 A101 Plan and Prepare for - hearing on motion for summary judgment.

SANDIN 000054

APP00579

Emp	Hours	Dollars	Gp	
/15 PL	0.50	80.00	B P	L240 A101 Plan and Prepare for various pre-trial and dispositive motions to be heard by the Court this week and staffing the same.
/15 MSK	4.30	602.00	B P	L450 A101 Plan and Prepare for - hearings on motions in limine and to bifurcate trial.
/15 MSK	3.60	504.00	B P	L450 A109 Appear for/Attend hearing on motion for summary judgment and motions in limine.
/15 MSK	0.30	42.00	B P	L120 A106 Communicate (with client) with Dave Sandin regarding [REDACTED].
/15 PL	4.30	688.00	B P	L240 A101 Plan and Prepare for Sandin defendants' motion for summary judgment.
/15 PL	0.10	16.00	B P	L160 A106 Communicate (with client) re: [REDACTED].
/15 MSK	0.60	84.00	B P	L120 A108 Communicate [REDACTED] with Greg Stewart regarding [REDACTED].
/15 MSK	1.90	0.00	B P	L240 A103 Preparation of Findings of Fact and Conclusion of Law on motion for summary judgment. [NO CHARGE]
/15 PL	0.10	16.00	B P	L240 A104 Legal Analysis of proposed order granting summary judgment in favor of OMI forwarded by OMI's counsel.
/15 MSK	8.20	1,148.00	B P	L240 A103 Preparation of findings of fact and conclusion of law on motion for summary judgment.
/15 MSK	0.30	42.00	B P	L240 A104 Legal Analysis of OMI's proposed order granting summary judgment.
/15 MSK	0.10	14.00	B P	L240 A107 Communicate (outside counsel) with opposing counsel regarding proposed orders granting motions for summary judgment.
/15 MSK	0.20	28.00	B P	L120 A107 Communicate (outside counsel) with OMI's counsel regarding submitting proposed orders on motion for summary judgment.
/15 MSK	0.30	42.00	B P	L120 A107 Communicate (outside counsel) with opposing counsel regarding stipulation and order regarding deadline to submit proposed order on motion for summary judgment.
/15 MSK	0.60	84.00	B P	L240 A107 Communicate (outside counsel) with opposing counsel regarding stipulation and order to submit proposed order.
/15 MSK	0.10	14.00	B P	L210 A104 Legal Analysis of order extending deadline to submit order granting motion for summary judgment.
/15 PL	0.10	16.00		L340 A104 Legal Analysis of Receipt, review and analysis of executed errata to Paul Burkett's deposition transcript.
/15 MSK	0.90	126.00		L240 A104 Legal Analysis of transcript on hearing on motion for summary judgment.

SANDIN 000055

APP00580

Emp	Hours	Dollars	Gp	
/15 MSK	0.10	14.00		L250 A107 Communicate (outside counsel) with opposing counsel regarding proposed order granting motion for summary judgment.
/15 MSK	0.30	42.00		L240 A107 Communicate (outside counsel) with opposing counsel regarding comments to proposed order granting summary judgment.
/15 MSK	2.90	406.00		L120 A104 Legal Analysis of opposing counsel comments to proposed order granting summary judgment and possible response to comments.
/15 PL	0.40	64.00		L120 A104 Legal Analysis of Receipt, brief review and analysis of proposed changes to order granting summary judgment as submitted by OPH's counsel.
/15 MSK	2.00	280.00		L210 A103 Preparation of order granting motion for summary judgment after counsel for plaintiff submitted its comments.
/15 PL	0.80	128.00		L120 A107 Communicate (outside counsel) Review and analysis of correspondence from opposing counsel re: proposed changes to findings of fact, conclusions of law and judgment and prudence of accepting/rejecting the same.
/15 MSK	0.30	42.00		L240 A107 Communicate (outside counsel) with OMI's counsel regarding their proposed order granting summary judgment.
/15 MSK	0.30	42.00		L240 A107 Communicate (outside counsel) with OPH's counsel regarding proposed order granting summary judgment.
/15 PL	0.10	16.00		L120 A107 Communicate (outside counsel) Receipt, review and analysis of correspondence from OMI's counsel re: letter sent to the court regarding disagreement over proposed judgment and anticipated competing orders in light of the same. +L120
/15 MSK	0.40	56.00		L240 A107 Communicate (outside counsel) with opposing counsel regarding proposed order granting summary judgment.
/15 MSK	1.20	168.00		L240 A103 Preparation of letter to Judge Sturman regarding proposed order granting summary judgment and arguments against OPH's proposed changes to the order.
/15 PL	0.10	16.00		L120 A107 Communicate (outside counsel) Receipt, review and analysis of correspondence from OPH's counsel re: responsive letter to Court regarding competing orders memorializing judgment in favor of OMI.
/15 MSK	0.50	70.00		L120 A108 Communicate [REDACTED] with Greg Stewart regarding [REDACTED].
/15 MSK	5.10	714.00		L460 A102 Research case law and statutes to support motion for attorney's fees and costs.
/15 MSK	3.50	490.00		L460 A102 Research case law, statutes, and rules on motion for attorney's fees and costs.
/15 MSK	3.70	518.00		L430 A103 Preparation of motion for attorney's fees and costs.

Emp	Hours	Dollars	Gp	
/15 MSK	0.20	28.00		L210 A104 Legal Analysis of order granting OMI's motion for summary judgment.
/15 MSK	0.20	28.00		L240 A108 Communicate (other external) with Court's law clerk regarding order granting motion for summary judgment.
/15 MSK	0.50	70.00		L460 A102 Research statutes on awarding costs to prevailing party.
/15 MSK	0.60	84.00		L460 A102 Research judgments and process for filing judgment.
/15 MSK	0.10	14.00		L120 A108 Communicate [REDACTED] with expert Paul Burkett regarding [REDACTED].
/15 MSK	0.10	14.00		L460 A103 Preparation of notice of entry of order granting summary judgment.
/15 MSK	0.10	14.00		L210 A104 Legal Analysis of OMI's notice of entry of order granting summary judgment.
/15 MSK	0.90	126.00		L120 A104 Legal Analysis of filing judgment, notice of entry of judgment, memorandum of costs, and motion for attorney's fees.
/15 MSK	0.30	42.00		L460 A104 Legal Analysis of memorandum of costs filed by Oregon Mutual.
/15 JSK	0.30	135.00		L120 A105 Communicate (in firm) Conference with M. Kelley re [REDACTED].
/15 MSK	1.50	210.00		L460 A104 Legal Analysis of filing judgment, notice of entry of judgment, and memorandum of costs and timing to do so.
/15 MSK	1.30	182.00		L430 A103 Preparation of Judgment in favor of Sandins and against OPH.
/15 RKB	0.20	15.00		L460 A101 Plan and Prepare for - evaluate and analyze memoranda re: entry of judgment and impact on timing of memorandum of costs.
/15 MSK	0.10	14.00		L120 A108 Communicate [REDACTED] with Greg Stewart.
/15 MSK	0.80	112.00		L210 A104 Legal Analysis of OMI's motion for attorney's fees.
/15 MSK	1.10	154.00		L460 A103 Preparation of memorandum of costs.
/15 RKB	0.20	15.00		L430 A101 Plan and Prepare for - memoranda to and from Michael Kelley and Patricia Lee re: [REDACTED].
/15 RKB	0.10	7.50		L430 A108 Communicate (other external) Draft electronic correspondence to Court re: memorandum of costs.
/15 RKB	0.90	67.50		L210 A101 Plan and Prepare for - Begin evaluate and analyze list of costs and identify those that require additional supplementation, begin incorporating same into matrix for use in support of memorandum of costs.
/15 RKB	0.70	52.50		L210 A101 Plan and Prepare for - continue preparing matrix for use as backup for

SANDIN 000057

APP00582

Emp	Hours	Dollars	Gp	
/15 RKB	1.80	135.00		memorandum of costs.
/15 RKB	0.20	28.00		L210 A101 Plan and Prepare for - continue preparing supporting documentation for memorandum of costs.
/15 PL	0.20	32.00		L120 A104 Legal Analysis of filing memorandum of costs.
/15 RKB	1.10	82.50		L120 A102 Research Analyze and evaluate issues re: level of detail now required for evidence in support of memorandum of costs.
/15 RKB	0.10	7.50		L210 A101 Plan and Prepare for - Continuing preparing matrix for use in support of memorandum of costs.
/15 RKB	0.10	7.50		L210 A105 Communicate (in firm) Consultation with Michael Kelley re: [REDACTED]
/15 RKB	0.90	67.50		L210 A101 Plan and Prepare for - Draft memorandum of costs.
/15 PL	0.10	16.00		L250 A102 Research Review and analysis of scan/copy prints to include in memorandum of costs.
/15 MSK	0.10	14.00		L460 A103 Preparation of memorandum of costs with Risa Beck.
/15 MSK	0.10	14.00		L210 A104 Legal Analysis of notice of withdrawal by Robert Langford as counsel for plaintiff.
/15 MSK	4.70	658.00		L460 A103 Preparation of motion for attorney's fees and costs.
/15 MSK	4.80	672.00		L460 A103 Preparation of motion for attorneys' fees and costs.
/15 MSK	0.10	14.00		L210 A104 Legal Analysis of notice of change of address filed by Plaintiff's counsel.
FEES	1002.80	137,252.50		
	1063.50	145,130.50		
Actual Hours/\$				
	1002.80	132,979.00		
	1063.50	140,857.00		
Billable Hours/\$				
		166.50	4,440.00	(CP 02/15/13 - 07/31/15)
		166.50	4,440.00	(CTD Through 07/31/15)
Write-up \$				
Write-dn \$				

Analysis	(CP 02/15/13 - 07/31/15)						
de Name	Hours	Dollars	Actual Hrs	Hours	Billable Dollars	Billable\$/Actual Hrs	Actual Hrs
S Amber Samuels	23.70	3,085.50	130.19	23.70	3,085.50	130.19	130.19
T Brandon J. Trout	5.90	790.00	133.90	5.90	774.00	131.19	131.19
IP Cami M. Perkins	0.30	0.00	0.00	0.30	0.00	0.00	0.00
T Erin Lee Truman	0.30	42.00	140.00	0.30	42.00	140.00	140.00

SANDIN 000058

APP00583

Code	Name	----- Actual -----		Actual \$/		----- Billable -----		Billable\$/
		Hours	Dollars	Actual Hrs	Hours	Dollars	Actual Hrs	
K	Joseph S. Kistler	0.30	135.00	450.00	0.30	135.00	450.00	
T	Jessica S. Taylor	0.50	70.00	140.00	0.50	0.00	0.00	
D	Katherine Currie-Diamond	9.70	727.50	75.00	9.70	727.50	75.00	
K	Michael S. Kelley	545.90	73,948.00	135.46	545.90	69,594.00	127.48	
,	Patricia Lee	103.80	16,608.00	160.00	103.80	16,608.00	160.00	
B	Risa K. Beck	23.70	1,665.00	70.25	23.70	1,665.00	70.25	
M	Tyler G. Mackay	3.70	351.50	95.00	3.70	518.00	140.00	
B	Katy Branson	285.00	39,830.00	139.75	285.00	39,830.00	139.75	

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY



EXHIBIT F

[Skip to Main Content](#) [Logout My Account](#) [Search Menu](#) [New District Civil/Criminal Search Refine](#)
[Search Close](#)

Location : District Court Civil/Criminal [Help](#)

REGISTER OF ACTIONS

CASE NO. A-12-672158-C

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

§
§
§
§
§
§
§

Case Type: **Breach of Contract**
Subtype: **Insurance Carrier**
Date Filed: **11/19/2012**
Location: **Department 26**
Cross-Reference Case Number: **A672158**
Supreme Court No.: **68543**

PARTY INFORMATION

Defendant **Oregon Mutual Insurance Company**

Lead Attorneys
Robert W. Freeman
Retained
702-893-3383(W)

Defendant **Sandin & Co**

Patricia Lee
Retained
7023852500(W)

Defendant **Sandin, Dave Sandin, David**

Patricia Lee
Retained
7023852500(W)

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

Margaret A. McLetchie
Retained
702-728-5300(W)

EVENTS & ORDERS OF THE COURT

08/29/2014 **All Pending Motions** (9:00 AM) (Judicial Officer Bulla, Bonnie)
David Sandin and Sandin & Co.'s Motion to Strike Rebuttal Report of Neal Bordenave on OST Oregon Mutual Insurance Company's Joinder to Strike Rebuttal Expert Report of Neal Bordenave on OST

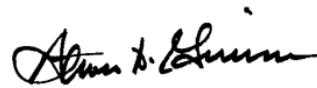
Minutes

08/29/2014 9:00 AM

- David Sandin and Sandin & Co.'s Motion to Strike Rebuttal Report of Neal Bordenave on OST Oregon Mutual Insurance Company's Joinder to Strike Rebuttal Expert Report of Neal Bordenave on OST Commissioner did not receive Plt's courtesy copy of Opposition. Oral opposition present by Mr. Langford. Commissioner will treat the rebuttal expert as an initial expert, but Defts will get a new initial expert date. COMMISSIONER RECOMMENDED, David Sandin and Sandin & Co.'s Motion to Strike Rebuttal Report of Neal Bordenave and Joinder are DENIED; alternative relief is provided; Neal Bordenave is not a rebuttal expert, and he will be treated as an initial expert in this case. COMMISSIONER RECOMMENDED, discovery cutoff EXTENDED to 1/30/2015; adding parties, amended pleadings, and initial expert disclosures DUE 10/30/14 for Deft only; rebuttal expert disclosures DUE 12/1/14; FILE dispositive motions to 3/2/2015; Trial ready 4/13/2015. If Commissioner sees this conduct again, counsel will not get a pass. Commissioner advised counsel read the Rules. Mr. Kelley to prepare the Report and Recommendations, and counsel to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Kelley to appear at status check hearing to report on the Report and Recommendations. 10/3/14 11:00 a.m. Status Check: Compliance

[Parties Present](#)

[Return to Register of Actions](#)



CLERK OF THE COURT

1 **OPPS**
2 MARGARET A. MCLEITCHIE
3 Nevada Bar No. 10931
4 MCLEITCHIE SHELL LLC
5 701 East Bridger Ave., Suite 520
6 Las Vegas, NV 89101
7 (702) 728-5300
8 maggie@nvlitigation.com
9 Attorney for Plaintiff
10 O.P.H. of Las Vegas, Inc.

8 **DISTRICT COURT**

9 **CLARK COUNTY NEVADA**

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

11 Plaintiff,

12 vs.

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

15 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

16
17 **OPPOSITION TO DAVE SANDIN AND SANDIN & CO.'S MOTION FOR**
18 **ATTORNEY'S FEES AND COSTS**

19 COMES NOW Plaintiff, O.P.H. of Las Vegas, Inc. ("O.P.H."), by and through its
20 attorney of record, Margaret A. McLetchie, of McLetchie Shell LLC, and hereby submits
21 this Opposition to Dave Sandin and Sandin & Co.'s Motion for Attorney's Fees and Costs.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 This Opposition is based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities submitted in support hereof, the attached exhibits,
3 and any oral argument this Court may entertain.

4
5 Respectfully submitted this 28th day of September, 2015.

6
7 By: /s/ Margaret A. McLetchie
8 Margaret A. McLetchie
9 Nevada Bar No. 10931
10 MCLEATCHIE SHELL LLC
11 701 East Bridger Ave., Suite 520
12 Las Vegas, NV 89101
13 Attorney for Plaintiff
14 O.P.H. of Las Vegas, Inc.

15
16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. PROCEDURAL HISTORY**

18 The Plaintiff filed its initial Complaint in this matter on November 19, 2012 naming
19 Oregon Mutual Insurance Company (“OMI”), as well as Sandin & Co., a corporation, and
20 Dave Sandin, an individual (the “Sandin Defendants”). After service of the Complaint, the
21 Sandin Defendants filed a Motion to Dismiss on December 26, 2012. This Motion was heard
22 on February 13, 2013, and decided in the Plaintiff’s favor. Before discovery had begun in
23 this case, and even before the Sandin Defendants filed an Answer to the Plaintiff’s
24 Complaint, the Sandin Defendants served an Offer of Judgement on the Plaintiff in the
25 amount of \$2,000.00. Given that the parties had yet to begin discovery, that the Plaintiff had
26 successfully pled its Complaint to survive a motion to dismiss, and that Plaintiff had not
27 received an Answer from the Sandin Defendants, the Plaintiff prudently rejected the \$2,000
28 Offer of Judgement.

///

1 At this time, the case was put into arbitration and the parties began discovery. It
2 was not until August 18, 2013, that the case was removed from Nevada's Arbitration
3 program. Following discovery, OMI and the Sandin Defendants moved for Summary
4 Judgment on March 17, 2015. On June 30, 2015, the Court entered separate orders as to OMI
5 and the Sandin Defendants granting their respective motions for summary judgment. The
6 Notice of Entry of Judgement was filed on August 13, 2015.

7 **II. ARGUMENT**

8 Pursuant to Nev. R. Civ. P. 68, a party is not entitled to attorney's fees simply
9 because it served an Offer of Judgment on the opposing party and that party failed to achieve
10 a more favorable verdict. The "purpose of NRCP 68 is to encourage settlement, it is not to
11 force plaintiffs unfairly to forego legitimate claims." Beattie v. Thomas, 668 P.2d 268, 274
12 (Nev. 1983). Thus the Court has the discretion to determine if, and in what amount, a grant
13 of attorney's fees is reasonable. The Nevada Supreme Court has provided guidance to trial
14 courts in making this determination, stating:

15 In exercising its discretion regarding the allowance of fees and costs under
16 NRCP 68 ... the trial court must carefully evaluate the following factors: (1)
17 whether the plaintiff's claim was brought in good faith; (2) whether the
18 defendants' offer of judgment was reasonable and in good faith in both its
19 timing and amount; (3) whether the plaintiff's decision to reject the offer
20 and proceed to trial was grossly unreasonable or in bad faith; and (4)
21 whether the fees sought by the offeror are reasonable and justified in
22 amount."

23 Trustees of Carpenters for S. Nevada Health and Welfare Trust v. Better Bldg. Co., 710 P.2d
24 1379, 1382 (Nev. 1985) (citing Beattie, 668 P.2d at 274).

25 The Nevada Supreme Court has also found that while the party served an offer of
26 judgment may have lost the case entirely, the timing of the offer is relevant to whether the
27 decision to reject was reasonable and in good faith. See Id. at 1382 (stating that the court did
28 not abuse its discretion in denying attorney's fees to a party who failed to provide essential
documents to the offeree at the time the offeree decided to reject an offer of judgment); See
also Wynn v. Smith, 16 P.3d 424, 429 (Nev. 2001)(holding that the trial court did not abuse

1 its discretion in refusing attorney's fees to a prevailing party when the offeree required
2 discovery to determine the liability of the parties and the offer of judgment was premature).

3 In this case, O.P.H.'s claims were brought in good faith. However, the offer of
4 judgment provided by the Sandin Defendants was woefully premature and in an amount that
5 would not have begun to compensate O.P.H. for the damages caused by its lapsed insurance
6 policy. As such, an award of attorney's fees pursuant to Nev. R. Civ. P. 68 is not appropriate.

7 **1. The Plaintiff's Claims Against the Sandin Defendants were Brought in Good**
8 **Faith.**

9 Despite the claims of the Sandin Defendants, the Plaintiff brought a cognizable
10 claim against them. This is not only verified by the fact that the Plaintiffs' legal claims
11 survived a motion to dismiss, but by the fact that no discovery had taken place at the time of
12 the filing. As such, it is unclear how Plaintiff brought the claims in bad faith when the legal
13 theory it was predicated upon had been upheld and the facts of the case had not yet been
14 discovered. There is no evidence that Plaintiff acted maliciously or without a good faith
15 belief that its claims were meritorious.

16 **2. The Sandin Defendants' Early Offer of Judgment in the Amount of \$2,000.00**
17 **was Unreasonable and not in Good Faith.**

18 The Sandin Defendants contend that their \$2,000 offer was not only reasonably
19 timed but tendered in a reasonable amount. What the defendants seem to ignore is that, in
20 this case, a popular Las Vegas restaurant burned to the ground. Without money to rebuild the
21 restaurant, O.P.H. suffered, and continues to suffer, hundreds of thousands of dollars in lost
22 profits. Two thousand dollars would not even begin to compensate the Plaintiff for the
23 damages suffered by having its insurance lapse.

24 Further, the timing of the Offer of Judgment was entirely premature. The Sandin
25 Defendants had not answered the Complaint at the time that the offer was presented. As such,
26 O.P.H. was not given notice of the Sandin Defendants' contentions, affirmative defenses, or
27 access to any allegedly exculpatory discovery. To hold that the Plaintiff should have accepted
28 an inadequate offer before any opportunity to litigate the case is unreasonable.

1 **3. O.P.H. Decision to Reject the Offer and Proceed to Trial was Reasonable and**
2 **Made in Good Faith.**

3 The offer of judgment in this case was served the day after the Plaintiff prevailed
4 on a motion to dismiss brought by the Sandin Defendants. In denying a motion to dismiss,
5 the Court would be required to find that the Plaintiff sufficiently pled a legal claim on which
6 relief could be granted. It is incongruous to suggest that Plaintiff could prevail on such a
7 motion, and then accept the merest scintilla of their damages the next day. O.P.H.'s decision
8 to proceed at this time was not only reasonable and in good faith, but the right decision at the
9 time.

10 **4. The Fees Being Sought by the Sandin Defendants are Excessive and**
11 **Unreasonable.**

12 Pursuant to Brunzell v. Golden Gate Nat. Bank, 455 P.2d 31, 33 (Nev. 1969), the
13 Court must decide if the attorney fees being sought are reasonable in light of the following
14 factors.

15 (1) the qualities of the advocate: his ability, his training, education,
16 experience, professional standing and skill; (2) the character of the work to
17 be done: its difficulty, its intricacy, its importance, time and skill required,
18 the responsibility imposed and the prominence and character of the parties
19 where they affect the importance of the litigation; (3) the work actually
20 performed by the lawyer: the skill, time and attention given to the work; (4)
21 the result: whether the attorney was successful and what benefits were
22 derived.

23 As to the first and fourth factor, the Plaintiff does not contend that Ms. Lee, Mr. Kelly, and
24 Ms. Branson are less than competent or unqualified to perform the job assigned to them. Nor
25 does the Plaintiff deny that the attorneys prevailed in a summary judgement motion.
26 However, the billing in this case far exceeds the "character of the work" that was required
27 by this case.

28 The Sandin Defendants assert it was "unreasonable" for the Plaintiff to reject the
offer of judgment while the case was still in arbitration, because the cap for damages at that
stage was \$50,000. However, despite the Sandin Defendants' obvious knowledge of the
limitations of an arbitration action, the attorneys for the Sandin Defendants managed to bill
over \$35,000.00 from the time that they served the offer of judgment to the time that the case

1 was exempted from arbitration. See “Exhibit E” to the Defendants’ Motion for Fees. Racking
2 up \$35,000 during an incomplete arbitration proceeding, when the cap for an award of
3 attorney’s fees is \$3,000, is objectively unreasonable in itself. See Nev. Arb. R. 16(E).

4 An award of \$140,857.00 in attorney’s fees to the Sandin Defendants for a case that
5 did not go to trial is unreasonable on its face. As such, if this Court is inclined to grant
6 attorney’s fees despite the premature and unreasonable nature of the offer of judgment, the
7 Plaintiff requests that the fees be reduced by 50% to reflect the rampant over-billing as well
8 as the excessive time spent by the attorneys while the case was in arbitration.

9
10 **5. The Court Should Reduce the Costs Claimed by the Sandin Defendants by
\$13,850 in Limiting the Expert Fees to the Statutory \$1,500.00.**

11 Nev. R. Civ. P. 68 allows a party to recover their attorney’s fees and costs where
12 (1) they make an offer of judgment to an opposing party, (2) the offer is declined, and (3) the
13 opposing party fails to secure a better result at trial. Nev. Rev. Stat. § 17.115 is a statutory
14 codification of a similar concept, with the difference that under Nev. Rev. Stat. § 17.115, a
15 party may recover taxable costs, including those paid to expert witnesses. In defining the
16 meaning of “costs” Nev. Rev. Stat. § 18.005(5) limits the amount recoverable for expert
17 witness costs to \$1,500.00 for each of five expert witnesses, unless the court allows a larger
18 fee out of necessity.

19 In this case, the Sandin Defendants hired Paul Burkett, ostensibly to provide expert
20 testimony in his capacity as President of an insurance company. However, it does not appear
21 that his services were necessary in the instant matter. He was not subject to deposition or
22 required to give testimony. See Memorandum of Costs, pp. 4-10. In his invoice, Mr. Burkett
23 billed for several reports, however his potential testimony and findings are not present
24 anywhere in the Sandin Defendants’ Motion for Summary Judgment. Id.; See also Motion
25 for Summary Judgment dated March 17, 2015. Consequently, there is little reason, let alone
26 necessity, that would warrant an award of expert costs outside the statutory maximum.

27 ///

28 ///

1 **III. CONCLUSION**

2 Based upon the foregoing, Plaintiff respectfully requests this Court deny the Sandin
3 Defendants' Motion for Attorney's Fees in its entirety. In the alternative, the Plaintiff
4 requests the Court reduce the attorney's fees by 50% to reflect the over-billing of a
5 straightforward case. Finally, the Plaintiff requests this Court reduce the award of expert
6 costs to the statutory maximum of \$1,500.00.

7
8 Respectfully submitted this 28th day of September, 2015.

9
10 By: /s/ Margaret A. McLetchie
11 Margaret A. McLetchie
12 Nevada Bar No. 10931
13 MCLETCHIE SHELL LLC
14 701 East Bridger Ave., Suite 520
15 Las Vegas, NV 89101
16 Attorney for Plaintiff,
17 O.P.H. of Las Vegas, Inc.

CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 28th day of September, 2015, I did cause a true copy of the foregoing OPPOSITION TO DAVE SANDIN AND SANDIN & CO.'S MOTION FOR ATTORNEY'S FEES AND COSTS, to be filed and served electronically using the Wiznet Electronic Service system, to the following counsel of record:

Patricia M. Lee, Esq.
Michael S. Kelley, Esq.
HUTCHISON & STEFFEN
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Attorneys for Sandin Defendants

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

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

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

/s/ Pharan Burchfield
EMPLOYEE of McLetchie Shell LLC

to: Utica National Insurance Group

Greg Stewart
C/O ALLEGENT ONLINE BILLING
P.O. Box 5310
Binghamton NY 13902

Attorney Mark A. Hutchison

Legal Services Re: Sandin & Company, et al. adv. OPH of Las Vegas
Client ID 739549-001

Atty 1 Patricia Lee
Atty 2 Michael S. Kelley
Type 1 Commercial Litigation
Type 2 Defense work

is Codes None Alternate Billing Format FWD
ice Charges N Fee BCC 3 Cost BCC 3
Tax None
ner Acct Min 0 No auto transfers chosen
led only N

===== FEES =====

Emp	Hours	Dollars	Gp	
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding drafting stipulated protective order and provisions to include therein.
/13 PL	0.10	16.00	B P	L120 A106 Communicate (with client) Greg Stewart re: [REDACTED].
/13 PL	0.10	16.00	B P	L120 A101 Analyze and evaluate issues re: information needed from client to [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.90	126.00	B P	L110 A102 Research rules and limitations surrounding arbitration and short trials in Nevada.
/13 PL	0.40	64.00	B P	L320 A104 Legal Analysis of correspondence from opposing counsel re: initial disclosures.
/13 ZKB	1.10	154.00	B P	L110 A104 Legal Analysis of draft protective order received from counsel for Oregon Mutual, including analysis and revision of certain provisions governing attorneys' fees.
/13 ZKB	0.60	84.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding revisions to protective order in detailed memoranda outlining and explaining revisions and requested changes to the same.

SANDIN 000001

Emp	Hours	Dollars	Gp	
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of proposed order granting motion to dismiss.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding revisions to order denying motion to dismiss.
/13 PL	0.40	64.00	B P	L120 A104 Legal Analysis of proposed stipulated protective order over confidential documents.
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with counsel for Oregon Mutual regarding attorneys' fees provision requested in stipulated protective order and revising the same to cover intentional misconduct only.
/13 ZKB	0.50	70.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 PL	0.10	16.00	B P	L210 A104 Legal Analysis of proposed order denying motion to dismiss; analyze and evaluate changes thereto.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of deadline to file answer pending entry of order denying motion to dismiss.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding second set of revisions and concerns as to "findings" set forth in order.
/13 PL	0.10	16.00	B P	L120 A104 Legal Analysis of correspondence from Arbitration Commission re: appointment of arbitrator.
/13 PL	0.10	16.00	B P	L120 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of appointment of arbitrator and [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A103 Preparation of correspondence to court regarding inability to agree on Order language and submission of a competing version of the same.
/13 ZKB	0.90	126.00	B P	L110 A103 Preparation of order denying motion to dismiss based on inability to agree on proposed language by plaintiff.
/13 ZKB	1.00	140.00	B P	L110 A103 Preparation of initial E&O report.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding her correspondence and competing order submitted to the Court.
/13 PL	0.10	16.00	B P	L120 A106 Communicate (with client) re: [REDACTED].
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of Utica's [REDACTED].

SANDIN 000002

APP00527

Emp	Hours	Dollars	Gp	
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of version of order denying motion to dismiss to confirm which parties' version the Court approved.
/13 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 PL	0.80	128.00	B P	L120 A106 Communicate (with client) amending [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A103 Preparation of revised legal expense projection for E&O.
/13 PL	0.40	64.00	B P	L120 A108 Communicate (other external) with arbitrator setting forth preliminary litigation parameters; coordinate EAC accordingly.
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of notice of EAC received from arbitrator's office.
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of deadline to file answer to complaint.
/13 ZKB	0.40	56.00	B P	L110 A103 Preparation of correspondence to arbitrator with enclosed motion to dismiss and information regarding answer.
/13 RKB	0.70	0.00	B P	L110 A103 Preparation of documents to include in early disclosure statement and incorporate into same.
/13 RKB	0.40	0.00	B P	L110 A103 Preparation of witness list to disclose in early disclosure statement and incorporate into same.
/13 RKB	0.30	0.00	B P	L110 A103 Preparation of drafting initial disclosure statement.
/13 RKB	0.10	0.00	B P	L320 A101 - Document production - Plan and prepare for Memorandum to Katy Branson re [REDACTED].
/13 RKB	0.20	15.00	B P	L110 A105 Communicate (in firm) with Katy Branson re [REDACTED].
/13 ZKB	0.20	28.00	B P	L110 A103 Preparation of production of policy and/or declaration page of policy.
/13 ZKB	3.60	504.00	B P	L110 A104 Legal Analysis of hundreds of pages of documentation provided by D. Sandin in preparation for disclosures.
/13 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of initial disclosures and revise the same.
/13 PL	0.50	80.00	B P	L120 A107 Communicate (outside counsel) re: proposed protective orders over confidential documents in litigation; receipt, review and analysis of co-defendant's objections to the same; receipt, review and analysis of various correspondences by and between co-defendant's counsel and opposing counsel debating the same.

Emp	Hours	Dollars	Gp	
/13 PL	0.50	80.00	B P	L210 A101 Plan and Prepare for affirmative defenses to complaint.
/13 RKB	3.90	292.50	B P	L110 A101 Plan and Prepare for - Identify additional witnesses to incorporate into initial disclosure statement; review documents for privileged information; correctly identify to incorporate into initial disclosures.
/13 RKB	0.10	7.50	B P	L110 A108 Communicate (other external) Telephone conference with office of D. Winterton re production of initial disclosures.
/13 RKB	0.10	7.50	B P	L110 A103 Preparation of Draft receipt of copy for initial disclosure statement to arbitrator.
/13 RKB	0.20	15.00	B P	L110 A105 Communicate (in firm) with Katy Branson re [REDACTED].
/13 ZKB	1.30	182.00	B P	L110 A103 Preparation of final set of initial disclosures and coordinate service of the same.
/13 ZKB	1.80	252.00	B P	L110 A103 Preparation of answer.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding certain responses to complaint.
/13 ZKB	3.10	434.00	B P	L110 A104 Legal Analysis of several hundreds of pages of documents for disclosure to verify no privileged documents or information contained therein.
/13 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of potential for disqualification of opposing counsel based on statements obtained from D. Sandin without advising of adverse interests as required by Rules of professional conduct.
/13 PL	0.70	112.00	B P	L110 A107 Communicate (outside counsel) re: status of her initial disclosure statement; receipt, review and analysis of correspondence from co-defendant's counsel re: initial disclosure statement; receipt, review and analysis of correspondence from co-defendant's counsel to arbitrator re: previously filed answer and affirmative defenses; receipt, review and analysis of correspondence from opposing counsel re: attorney work product inadvertently produced with instructions to disregard; receipt, review and analysis of co-defendant's response to the same; receipt, review and analysis of opposing counsel's response to the same.
/13 ZKB	0.80	112.00	B P	L110 A103 Preparation of final answer and evaluate, analyze, and incorporate additional affirmative defenses.
/13 ZKB	1.10	154.00	B P	L110 A101 Plan and Prepare for - early arbitration conference.
/13 ZKB	1.20	168.00	B P	L110 A109 Appear for/Attend early arbitration conference.
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with counsel for Oregon Mutual regarding additional revisions to protective order.
/13 PL	0.10	16.00	B P	L110 A107 Communicate (outside counsel) re: enclosed arbitration fee.

SANDIN 000004

APP00529

Emp	Hours	Dollars	Gp	
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 PL	0.10	16.00	B P	L310 A107 Communicate (outside counsel) re: first set of interrogatories and request for production of documents to Plaintiff.
/13 PL	0.10	16.00	B P	L310 A104 Legal Analysis of initial disclosure statement from opposing counsel. +L310
/13 PL	0.10	16.00	B P	L110 A108 Communicate (other external) re: status of arbitrator's scheduling order.
/13 PL	0.20	32.00	B P	L310 A104 Legal Analysis of Oregon Mutual's written discovery requests to Plaintiff.
/13 ZKB	0.80	112.00	B P	L110 A106 Communicate (with client) with [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 PL	0.20	32.00	B P	Analyze and evaluate issues re: discovery to be propounded by Sandin defendants.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED] and telephone call to arbitrator regarding the same.
/13 ELT	0.30	42.00	B P	L110 A105 Communicate (in firm); conference with Z. Katy Branson regarding [REDACTED].
/13 PL	0.20	32.00	B P	L120 A106 Communicate (with client) Greg Stewart of Utica re: [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	1.30	182.00	B P	L110 A102 Research potential exceptions to NAR 16 governing amounts of award.
/13 PL	0.30	48.00	B P	L120 A106 Communicate (with client) re: [REDACTED]; prepare response to the same.
/13 PL	0.10	16.00	B P	L110 A101 Analyze and evaluate issues re: content of anticipated discovery.
/13 PL	0.10	16.00	B P	L110 A104 Legal Analysis of status of Plaintiff's responses to co-defendant's written discovery.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding status of discovery responses, protective order, and timing of receiving the same.

SANDIN 000005

APP00530

Emp	Hours	Dollars	Gp	
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) regarding status of discovery responses and receiving the same.
/13 PL	0.20	32.00	B P	L120 A107 Communicate (outside counsel) re: opposing counsel's request for interim protective order until formal protective order is in place so that she can produce certain documents.
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) regarding status of protective order.
/13 ZKB	0.80	112.00	B P	L110 A104 Legal Analysis of revised protective order.
/13 ZKB	0.50	70.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel via e-mail correspondence regarding questions, concerns, and revisions to recent protective order draft.
/13 ZKB	1.20	168.00	B P	L110 A104 Legal Analysis of OPH's discovery responses.
/13 ZKB	0.80	112.00	B P	L110 A107 Communicate (outside counsel) regarding protective order, my proposed revisions, difficulty of implementation of certain aspects of the order, and revising the same.
/13 ZKB	1.40	196.00	B P	L110 A104 Legal Analysis of final proposed protective order and prepare language addressing concerns as to whom would be required to sign exhibit to stipulation.
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel for OPH regarding proposed protective order language and finalize and submit signed protective order.
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of notices of deposition received for plaintiff and plaintiff representatives.
/13 PL	0.10	16.00	B P	L110 A104 Analyze and evaluate issues re: status of discovery.
/13 PL	0.20	32.00	B P	L120 A104 Receipt, review and analysis of executed stipulated protective order over confidential documents.
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) with counsel for Oregon Mutual regarding final protective order executed by all parties.
/13 PL	0.10	16.00	B P	L120 A104 Analyze and evaluate issues re: crafting written discovery requests to plaintiff.
/13 ZKB	3.70	518.00	B P	L110 A104 Legal Analysis of additional supplemental discovery responses received from OPH and begin crafting interrogatory requests to OPH related to the same.
/13 ZKB	0.60	84.00	B P	L110 A107 Communicate (outside counsel) regarding supplementation of documents and protective order.
/13 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].

Emp	Hours	Dollars	Gp	
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding PMK topics and scheduling of depositions.
/13 ZKB	1.40	196.00	B P	L110 A104 Legal Analysis of several discrete research projects needed in anticipation of discovery requests and preparation of summary judgment motions, including the mailbox doctrine, requirements for notice to the agent, and new legislative action pending that renders failure to notice agent irrelevant to proper cancellation of a policy.
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of requests for production to Oregon Mutual.
/13 KCD	0.70	52.50	B P	L110 A101 Conduct legal research re: agent-principle relationship, legal duty to inform insured, and legal notice by insurer to agent and mailbox rule for K. Branson.
able RKB	0.70	52.50		
/13 KCD	0.50	37.50	B P	L110 A102 Conduct research re: mailbox rule and agent-principle relationship.
able RKB	0.50	37.50		
/13 ZKB	2.40	336.00	B P	L110 A103 Preparation of additional interrogatories and begin drafting requests for admission.
/13 ZKB	2.60	364.00	B P	L110 A104 Legal Analysis of previous discovery responses received from OPH and documents disclosed by Oregon Mutual while preparing detailed discovery requests.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) regarding additional confidential disclosures not yet received.
/13 PL	0.20	32.00	B P	L120 A104 Legal Analysis of strength of case after analyzing discovery done to date.
/13 ZKB	3.60	504.00	B P	L110 A103 Preparation of remainder of requests for admission to OPH; begin drafting requests for production of documents to OPH.
/13 PL	0.40	64.00	B P	L120 A104 Legal Analysis of possible motion to disqualify opposing counsel for improperly communicating with Mr. Sandin prior to litigation and possible rescheduling of arbitration due to OMI's unavailability for depositions until early to mid-August.
/13 ZKB	0.70	98.00	B P	L110 A104 Legal Analysis of final set of supplemental confidential disclosures received from counsel for OPH.
/13 ZKB	0.30	42.00	B P	L110 A103 Preparation of receipts of copy for hand delivery of discovery requests.
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with counsel for Oregon Mutual Insurance regarding deposition dates in August and effect on discovery deadlines.
/13 ZKB	1.90	266.00	B P	L110 A103 Preparation of remainder of requests for production to OPH.
/13 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of discovery requests received from OPH on OMI in comparison to requests the Sandin defendants will be propounding on OPH.

SANDIN 000007

APP00532

Emp	Hours	Dollars	Gp	
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding scheduling and depositions and conflict between the same.
/13 KCD able RKB	3.20 3.20	240.00 240.00	B P	L110 A102 Research re: liability for agent when agent is not licensed, what conduct is encompassed with failure to procure, and the mailbox rule.
/13 KCD able RKB	2.00 2.00	150.00 150.00	B P	L110 A102 Prepare research memo on liability of agent when not licensed, failure to procure, what conduct creates a legal duty, and mailbox rule.
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of research obtained in light of [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of requests for production to the Sandin defendants received from OPH.
/13 KCD able RKB	1.20 1.20	90.00 90.00	B P	L110 A102 Research conduct that creates legal duty on the part of the agent, and conduct research on fiduciary relationship between broker and insured.
/13 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of outcome of research tasks and additional questions and need for clarification of certain items, including definition of "notice" to the agent and legislative history background.
/13 ZKB	1.90	266.00	B P	L110 A103 Preparation of requests for production to OMI.
/13 ZKB	2.20	308.00	B P	L110 A103 Preparation of interrogatories to OMI for hand delivery.
/13 ZKB	1.90	266.00	B P	L110 A102 Research requests for admission to OMI for hand delivery tomorrow.
/13 KCD able RKB	2.10 2.10	157.50 157.50	B P	L110 A102 Research conduct that creates a legal duty, research on the proposed senate bill 495, legal research on cancellation of policy, and fiduciary duty that does not exist between agent and insured.
/13 PL	0.50	80.00	B P	L310 A104 Legal Analysis of additional discovery reequests to be propounded on Plaintiff and Co-Defendant.
/13 ZKB	1.10	154.00	B P	L110 A104 Legal Analysis of existence of legal duty to notify insured of potential cancellation and case law regarding the same.
/13 ZKB	1.90	266.00	B P	L110 A103 Preparation of additional discovery requests to incorporate into three sets propounded on OMI and three sets propounded on OPH, and finalize and coordinate hand delivery of the same.
/13 ZKB	0.70	98.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.70	98.00	B P	L110 A104 Legal Analysis of an agent/broker's alleged fiduciary duty to insured in Nevada.

SANDIN 000008

APP00533

Emp	Hours	Dollars	Gp	
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A103 Preparation of representation letter with OPH and determine that the same is not supportive of a contractual relationship.
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of communications received from opposing counsel regarding potential PMK topics and deposition scheduling in light of the same.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 PL	0.80	128.00	B P	L110 A101 Analyze and evaluate issues re: information needed to respond to written discovery requests, coordinating depositions and solidifying arbitration hearing date in light of conflicting schedules. +L310
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) regarding rescheduling depositions of OPH person(s) most knowledgeable.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) via telephone and e-mail with opposing counsel concerning potential experts, continuing arbitration conference, and rescheduling of OPH's depositions.
/13 PL	0.10	16.00	B P	L110 A101 Analyze and evaluate issues re: status of coordinating depositions.
/13 PL	0.40	64.00	B P	L330 A101 Analyze and evaluate issues re: focal point of impending depositions and continuing debate with opposing counsel on whether or not discovery has been or should be continued.
/13 ZKB	0.90	126.00	B P	L110 A107 Communicate (outside counsel) regarding discovery, deposition scheduling, and numerous attorneys and parties involved with coordination of dates.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of discovery requests propounded by plaintiff outside of the discovery period.
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) regarding unwillingness to respond to discovery propounded late.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of potential for expert in case, as disclosed by OMI, and request for extension of discovery deadline.
/13 PL	0.30	48.00	B P	L330 A104 Analyze and evaluate issues re: ongoing deposition coordination issues; review and analysis of staffing and location for the same.
/13 PL	0.60	96.00	B P	L330 A101 Review and analysis of canceled party deposition, rescheduling of the same and continuing discovery deadline.
/13 ZKB	0.70	98.00	B P	L110 A107 Communicate (outside counsel) with M. McRetchie regarding discovery period and her response to concerns about timing.

SANDIN 000009

APP00534

Emp	Hours	Dollars	Gp	
/13 ZKB	0.70	98.00	B P	L110 A104 Legal Analysis of tasks and strategy associated with possible discovery extension, scheduling depositions, NRCP 30(b) (6) topics, and OMI's response to request for information regarding topics on which expert might testify.
/13 ZKB	0.60	84.00	B P	L110 A106 Communicate (with client) by telephone and e-mail regarding [REDACTED].
/13 ZKB	0.50	70.00	B P	L110 A107 Communicate (outside counsel) P. O'Brian, regarding depositions, scheduling issues, and OMI's request for an expert.
/13 ZKB	0.80	112.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding deposition dates, arbitration dates, amended notices that will need to be re-noticed due to recent conflicts, etc.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of newly-amended deposition notices and effect of opposing counsel's conflicts on the same.
/13 PL	0.10	16.00	B P	L350 A104 Legal Analysis of possible motion to continue discovery anticipated to be filed by opposing counsel.
/13 ZKB	1.10	154.00	B P	L110 A107 Communicate (outside counsel) regarding new deposition dates, third set of amended notices, conflicting topics set forth in "person most knowledgeable" notices, persons identified as "most knowledgeable," and continued scheduling issues.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 PL	0.10	16.00	B P	L330 A101 Analyze and evaluate issues re: clarifying current confusion regarding scheduling multiple depositions.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	1.10	154.00	B P	L110 A107 Communicate (outside counsel) regarding dates in September and November for depositions and arbitration, respectively, in light of difficulties coordinating numerous calendars for the same, travel to California and Oregon, topics noticed for depositions, and legal analysis for requirement that depositions take place where deponent resides.
/13 ZKB	1.90	266.00	B P	L110 A102 Research and analyze case law and rules governing, among other things, person most knowledgeable topics for depositions, ability to ask off-topic questions should the need arise, and ability to question person most knowledgeable without needing to prepare another notice.
/13 ZKB	0.80	112.00	B P	L110 A104 Legal Analysis of supplemental disclosures received from Oregon Mutual Insurance.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of third amended deposition notices of person(s) most

Emp	Hours	Dollars	Gp	
/13 PL	0.10	16.00	B P	knowledgeable of OPH and individual managers/owners of the same. L320 A104 Legal Analysis of first supplemental disclosure statement from Oregon Mutual.
/13 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of person(s) most knowledgeable topics and four additional amended deposition notices received for Oregon Mutual and the Sandin defendants.
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of amended disclosure statement served by Oregon Mutual.
/13 ZKB	0.60	84.00	B P	L110 A107 Communicate (outside counsel) via telephone conference with all counsel concerning scheduling issues, deposition dates, arbitration conference, OMI's request to use an expert, and timing of the same.
/13 ZKB	0.60	84.00	B P	L110 A107 Communicate (outside counsel) via e-mail correspondence regarding final agreed-upon dates for all depositions in Las Vegas, Oregon, and Fresno.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing attorneys regarding extension of discovery response deadlines for one week.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel confirming final dates in light of final amended notices received.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of correspondence from counsel for OMI and counsel for OPH to arbitrator regarding moving discovery deadlines and arbitration hearing deadlines.
/13 ZKB	0.50	70.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel for OMI regarding legal position as to effect of notice on cancellation and timing of depositions in relation to filing motion for summary judgment.
/13 ZKB	0.70	98.00	B P	L110 A104 Legal Analysis of OMI's responses to plaintiff's requests for production of documents.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of person most knowledgeable topics for OPH representatives to determine whether any additional topics should be incorporated.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of notice of deposition of Sandin person(s) most knowledgeable with additional topics received from OMI.
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) regarding extension for client signatures to their responses to the Sandin defendants' discovery requests.

SANDIN 000011

APP00536

Emp	Hours	Dollars	Gp	
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of asserting new position on discovery, possible letter to arbitrator regarding the same, and coordinating travel in light of deposition scheduling.
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of new amended deposition notice from Oregon Mutual as to one of OPH's person(s) most knowledgeable.
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of withdrawing objection to continued discovery in light of arbitrator's order.
/13 ZKB	0.80	112.00	B P	L110 A107 Communicate (outside counsel) with counsel for OMI and counsel for OPH regarding timing and travel arrangements for J. Masconheimer's deposition in Fresno, and allegations by OPH of obscuring the state of OPH's policy at the time the fire claim was asserted.
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with counsel for Oregon Mutual regarding OPH's discovery responses admitting oversight and internal failure to pay July premium and effect on motion for summary judgment.
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) regarding videoconferencing for Fresno deposition due to plaintiff's refusal to accommodate flights in order to minimize costs of travel.
/13 ZKB	2.90	406.00	B P	L110 A103 Preparation of responses and objections to OPH's requests for production, set one.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	2.10	294.00	B P	L110 A103 Preparation of responses and objections to OPH's requests for admission to Sandin & Co.
/13 ZKB	0.50	70.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with Kristin and opposing counsel and client regarding telephonic appearance at Fresno deposition.
/13 ZKB	4.10	574.00	B P	L110 A103 Preparation of responses and objections to interrogatories to D. Sandin.
/13 ZKB	2.10	294.00	B P	L110 A103 Preparation of responses and objections to requests for admission to D. Sandin.

Emp	Hours	Dollars	Gp	
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of internal documents regarding policies and procedures used for Sandin & Co.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of agency agreements with OMI.
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.60	84.00	B P	L110 A103 Preparation of correspondence to opposing counsel designating person(s) most knowledgeable for deposition of Sandin & Co.
/13 PL	0.10	16.00	B P	L110 A104 Legal Analysis of Mr. Sandin's recent disclosure that he is an independent contractor for Sandin & Co. and implications in relation to the litigation in light of the same.
/13 ZKB	1.10	154.00	B P	L110 A103 Preparation of exhibits and disclosures to attach to responses to requests for production.
/13 ZKB	1.20	168.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	1.40	196.00	B P	L110 A103 Preparation of final five sets of discovery responses incorporating D. Sandin's responses and coordinate for delivery of the same to opposing attorneys.
/13 ZKB	3.20	448.00	B P	L110 A103 Preparation of initial deposition outline and exhibits for attachment thereto for deposition of person most knowledgeable, Linda Snyder.
/13 ZKB	1.90	266.00	B P	L110 A103 Preparation of supplemental disclosure of documents, redacted and/or confidentially designated documents, and privilege log.
/13 PL	0.30	48.00	B P	L330 A101 Analyze and evaluate issues re: opposing counsel's obstreperous objections during 30(b)(6) deposition today.
/13 ZKB	1.30	182.00	B P	L110 A104 Legal Analysis of OPH's discovery responses and note requests for clarification as to certain answers.
/13 ZKB	6.20	868.00	B P	L110 A109 Appear for/attend deposition of person(s) most knowledgeable and propound questions during the same.
/13 ZKB	0.90	126.00	B P	L110 A107 Communicate (outside counsel) with counsel for OMI regarding OPH's responses in deposition.
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	3.40	476.00	B P	L110 A103 Preparation of deposition outline of S. Freudenberg and exhibits and discovery responses to cover during the same.

APP00538

SANDIN 000013

Emp	Hours	Dollars	Gp	
/13 ZKB	0.60	84.00	B P	L110 A106 Communicate (with client) regarding [REDACTED] [REDACTED] [REDACTED]
/13 ZKB	3.10	434.00	B P	L110 A109 Appear for/Attend deposition of S. Freudenberger and ask questions during the same.
/13 ZKB	0.80	112.00	B P	L110 A106 Communicate (with client) with [REDACTED] [REDACTED] [REDACTED]
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED] [REDACTED] [REDACTED]
/13 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of form of request to exclude certain improperly-obtained "statements against interest" by counsel for OPH.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED] [REDACTED] [REDACTED]
/13 RKB	0.20	15.00	B P	L110 A103 Preparation of Conference with Katy Branson re [REDACTED] [REDACTED]
/13 ZKB	0.40	56.00	B P	L110 A103 Preparation of initial list of documents and discovery responses based on improperly-obtained information from D. Sandin.
/13 RKB	1.70	127.50	B P	L110 A103 Review disclosures and discovery responses to identify documents to be used as evidence in support of motion in limine.
/13 RKB	0.30	22.50	B P	L110 A105 Analyze and evaluate issues re discovery responses and their relationship to motion in limine.
/13 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of correspondence between D. Sandin and counsel for OPH prior to filing of complaint.
/13 ZKB	0.50	70.00	B P	L110 A107 Communicate (outside counsel) regarding scheduling telephone conference to discuss improperly obtained evidence.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with counsel for plaintiff regarding scheduling 2.47 conference to exclude certain improperly obtained communications.
/13 CMP	0.30	0.00	B P	L110 A104 Legal Analysis of letter drafted and sent to opposing counsel pre-litigation and whether it should be produced or motion should be filed to preclude reference to same in discovery or other portions of case.
/13 PL	0.80	128.00	B P	L120 A104 Legal Analysis of correspondence from OMI's counsel to OPH's counsel re:

SANDIN 000014

APP00539

Emp	Hours	Dollars	Gp	
/13 ZKB	0.90	126.00	B P	excessive nature of offer of judgment in light of arbitration cap; analyze and evaluate strategy for disabusing opposing counsel of her notion that statutory cap was (or even could be) waived.
/13 ZKB	0.80	112.00	B P	L110 A104 Legal Analysis of effect of motion in limine on certain pre-litigation admissions made by D. Sandin.
/13 ZKB	0.80	112.00	B P	L110 A104 Legal Analysis of offers of judgment received from plaintiff and inability to beat potential arbitration award due to statutory limits on the same.
/13 ZKB	0.80	112.00	B P	L110 A107 Communicate (outside counsel) regarding offers of judgment received from counsel and effect of arbitration damages cap on the same, including co-defendant's counsel's opinion that plaintiff's counsel may be proceeding with arbitration in bad faith.
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED]
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED]
/13 ZKB	0.80	112.00	B P	L110 A104 Legal Analysis of procedure to subpoena documents from national brokerage firm.
/13 ZKB	0.70	98.00	B P	L110 A106 Communicate (with client) regarding [REDACTED]
/13 RKB	0.30	22.50	B P	L110 A105 Analyze and evaluate issues re: service of subpoena to obtain records from Willis Insurance.
/13 RKB	0.30	22.50	B P	L110 A102 Research options for serving Willis Insurance through Division of Insurance and/or registered agent; identify correct addresses and legal name for entity for subpoenas.
/13 RKB	0.10	7.50	B P	L110 A108 Communicate (other external) Telephone conference with Division of Insurance to investigate entity relationship of Willis Risk Purchasing Group for service of subpoena.
/13 RKB	0.10	7.50	B P	L110 A108 Communicate (other external) with Willis Risk Purchasing Group to investigate correct legal entity for service of subpoena.
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED]
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of location on which to serve subpoena for documents in light of multiple office locations.

Emp	Hours	Dollars	Gp	
/13 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of testimony from L. Snyder and effects of the same on claims and defenses.
/13 PL	0.30	48.00	B P	L320 A103 Analyze and evaluate issues re: issuing subpoena duces tecum to out of state insurance carrier; review of uniform act permitting reciprocity of foreign subpoenas without having to seek judicial approval of the same in receiving jurisdiction.
/13 ALS	3.90	487.50	B P	L330 A104 Prepare summary of deposition of Loraine Snyder including analysis of impact of testimony on defense and conduct necessary follow up.
/13 RKB	0.20	15.00	B P	L110 A108 Communicate (other external) Exchange communications with Nationwide re service of out-of-state subpoena and required documentation.
/13 RKB	0.90	67.50	B P	L110 A103 Begin drafting application for out-of-state commission.
/13 RKB	0.40	30.00	B P	L110 A103 Draft commission for custodian of records of Willis of Portland.
/13 RKB	0.60	45.00	B P	L110 A103 Draft notice of taking deposition of custodian of records for Willis of Portland.
/13 RKB	0.70	52.50	B P	L110 A103 Draft subpoena duces tecum for Willis' custodian of records.
/13 RKB	0.70	52.50	B P	L110 A103 Begin drafting affidavit of Katy Branson in support of application for commission to take out-of-state records deposition.
/13 RKB	0.20	15.00	B P	L110 A104 Analyze and evaluate issues re additional language to incorporate into subpoena for specific documents and discuss timing of application.
/13 RKB	0.20	15.00	B P	L110 A103 Draft correspondence to A. Burnaford re subpoena for records.
/13 RKB	0.20	15.00	B P	L110 A108 Communicate (other external) Exchange multiple communications with Nationwide Legal Support re subpoena documentation to effect service in Oregon.
/13 RKB	0.30	22.50	B P	L110 A107 Communicate (outside counsel) regarding co-defendant's counsel's request for more information as to damages from plaintiff representatives, potential motion to compel, possibility that counsel for OPH will seek more depositions if request for exemption is granted, and factual bases therefor.
/13 ZKB	0.90	126.00	B P	L110 A107 Communicate (outside counsel) regarding co-defendant's counsel's request for more information as to damages from plaintiff representatives, potential motion to compel, possibility that counsel for OPH will seek more depositions if request for exemption is granted, and factual bases therefor.
/13 ZKB	0.50	70.00	B P	L110 A103 Preparation of topics and list of documents needed in foreign subpoenas and reason for requiring the same.
/13 ZKB	0.60	84.00	B P	L110 A107 Communicate (outside counsel) with co-defendant's counsel regarding topics and limitations on testimony at next week's depositions.
/13 ALS	2.20	275.00	B P	L330 A104 Continue to prepare summary of deposition of Loraine Snyder including analysis of impact of testimony on defense and conduct necessary follow up.
/13 RKB	0.10	7.50	B P	L110 A108 Communicate (other external) Telephone conference with Nationwide Legal Support re service of subpoena and Oregon procedures.

SANDIN 000016

APP00541

Emp	Hours	Dollars	Gp	
/13 RKB	0.10	7.50	B P	L110 A108 Communicate (other external) Leave in-depth voicemail for A. Burnaford with Willis re request for documents.
/13 RKB	0.20	15.00	B P	L110 A104 Analyze and evaluate issues re witness fee and subpoena requirements for obtaining documents.
/13 RKB	0.20	15.00	B P	L110 A108 Communicate (other external) Telephone conference with National Legal Support re witness fee and language for affidavit per Oregon rules.
/13 ALS	4.30	537.50	B P	L330 A104 Prepare summary of deposition of Stephen Freudenberger including analysis of impact of testimony on defense and conduct necessary follow up.
/13 RKB	0.30	22.50	B P	L110 A108 Communicate (other external) Exchange multiple communications with process server for proceeding with service on entity in Oregon.
/13 ZKB	1.10	154.00	B P	L110 A104 Legal Analysis of third supplemental disclosure from plaintiff and related documents, including disclosure of two previous insurance policies and communications with Heffernan insurance regarding the same.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) regarding supplementation of discovery responses due to incomplete disclosure of policies held by plaintiff since 2004.
/13 ZKB	3.10	434.00	B P	L110 A101 Plan and Prepare for depositions of OMI 30 (b) (6) designees and the Sandin defendants by first reviewing relevant documents on which testimony will be elicited.
/13 ZKB	1.30	182.00	B P	L110 A104 Legal Analysis of OMI's responses to Sandin discovery requests in preparation for drafting deposition outlines of OMI 30 (b) (6) deponents.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with plaintiff's counsel regarding confirmation of topics to which corporate designees will testify.
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ALS	1.70	212.50	B P	L330 A104 Continued to prepare summary of deposition of Stephen Freudenberger including analysis of impact of testimony on defense and conduct necessary follow up.
/13 ALS	2.00	250.00	B P	L330 A104 Continued to prepare summary of deposition of Loraine Snyder including analysis of impact of testimony on defense and conduct necessary follow up.
/13 JST	0.50	70.00	B P	L140 A105 Communicate (in firm) [No Charge] Conference with Katy Branson re: [REDACTED].
/13 RKB	0.80	60.00	B P	L110 A103 Preparation of Revise and incorporate additional language for requested documents into subpoena deuces tecum and notice of deposition.
/13 RKB	0.20	15.00	B P	L110 A105 Communicate (in firm) Conference with Katy Branson re [REDACTED].

SANDIN 000017

APP00542

Emp	Hours	Dollars	Gp	
/13 ZKB	0.60	84.00	B P	L110 A103 Preparation of revisions to subpoena and correspondence to Willis f/k/a HRH brokerage for information regarding OPH policies.
/13 ZKB	2.60	364.00	B P	L110 A101 Plan and Prepare for - deposition preparation meeting with D. Sandin, including coordinating certain key documents plaintiff and OMI will seek D. Sandin's testimony about and confirm key issues and timelines of case.
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with OMI's counsel regarding conflict deposition notices.
/13 ZKB	1.20	168.00	B P	L110 A104 Legal Analysis of OPH discovery responses to D. Sandin requests for admissions and interrogatories to review with D. Sandin during deposition preparation.
/13 ZKB	4.20	588.00	B P	L110 A101 Plan and Prepare for - deposition of D. Sandin and 30(b) (6) designee with A. Sandin and D. Sandin in Oregon.
/13 ZKB	2.30	322.00	B P	L110 A103 Preparation of deposition outline for 30(b) (6) designee for OMI Dave Brown.
/13 PL	0.80	128.00	B P	L120 A101 Analyze and evaluate issues re: deposition preparation of David Sandin.
/13 PL	0.10	16.00	B P	L160 A107 Communicate (outside counsel) re: settlement offer.
/13 RKB	0.10	7.50	B P	L110 A104 Analyze and evaluate issues re: opposition to motion for exemption.
/13 RKB	0.20	15.00	B P	L110 A101 Identify and coordinate exhibits required for opposition.
/13 ZKB	3.50	490.00	B P	L110 A103 Preparation of opposition to request for exemption and coordinate filing and service of the same.
/13 ZKB	0.40	56.00	B P	L110 A103 Preparation of declaration in support of opposition and coordinate exhibits to opposition.
/13 ZKB	6.40	896.00	B P	L110 A109 Appear for/Attend deposition of OMI 30(b) (6) designee Dave Brown regarding, among other things, marketing of OMI to agents, relationship of OMI with Sandin defendants, OMI's research of licensing of agents, etc. and ask questions of the same.
/13 ZKB	1.40	196.00	B P	L110 A104 Legal Analysis of notes taken from deposition in preparation for remaining depositions of OMI designees and the Sandin defendants.
/13 ZKB	0.90	126.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].

SANDIN 000018

APP00543

Emp	Hours	Dollars	Gp	
/13 ZKB	1.40	196.00	B P	L110 A103 Preparation of deposition outline for 30(b) (6) designee Bill Pettit regarding Bizlink.
/13 ZKB	3.60	504.00	B P	L110 A109 Appear for/Attend deposition of 30(b) (6) designee Bill Pettit and ask questions of the same.
/13 ZKB	0.80	112.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 PL	1.40	224.00	B P	L330 A101 Plan and Prepare for defense of Dave Sandin's deposition and preparation of the witness with respect to the same.
/13 ZKB	1.30	182.00	B P	L110 A103 Preparation of supplemental disclosure statement attaching new documents received from D. Sandin and disclosing additional witnesses regarding employment at HRH and inability to act as OPH's broker for two-year period.
/13 ZKB	1.30	182.00	B P	L110 A101 Plan and Prepare for - deposition of Deborah Mosher, 30(b) (6) designee regarding billing procedures and cancellation notices and prepare deposition outline.
/13 ZKB	0.50	70.00	B P	L110 A106 Communicate (with client) regarding testimony of D. Mosher and billing practices and procedures of OMI.
/13 ZKB	4.10	574.00	B P	L110 A109 Appear for/Attend deposition of D. Mosher regarding OMI billing practices and question witness regarding the same.
/13 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	1.50	210.00	B P	L110 A106 Communicate (with client) in [REDACTED].
/13 ZKB	1.00	140.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	8.20	1,148.00	B P	L110 A109 Appear for/Attend and defend deposition of D. Sandin as an individual and prepare clarification questions for the same.
/13 ZKB	2.10	294.00	B P	L110 A106 Communicate (with client) pre- and post- final D. Sandin and Sandin 30(b) (6) depositions regarding [REDACTED].
/13 ZKB	5.70	798.00	B P	L110 A109 Appear for/Attend and defend remainder of D. Sandin's individual deposition and the deposition of A. Sandin as 30(b) (6) designee for Sandin & Co.
/13 ZKB	0.40	56.00	B P	L110 A102 Research document disclosures and confirm disclosure of OMI proposal to all parties in light of OPH's accusations that OPH requested auto-pay and Sandin failed to set up the same.

Emp	Hours	Dollars	Gp	
/13 RKB	0.10	7.50	B P	L110 A104 Analyze and evaluate issues re utilizing local counsel for subpoena.
/13 RKB	0.20	15.00	B P	L110 A104 Analyze and evaluate issues re documents required by local counsel to serve subpoena without commission.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of OMI's opposition to request for exemption.
/13 PL	0.70	112.00	B P	L120 A104 Legal Analysis of deposition summaries to be prepared for Mr. Stewart.
/13 RKB	0.20	15.00	B P	L110 A103 Preparation of additional language for notice of deposition for custodian of records.
/13 RKB	0.20	15.00	B P	L110 A103 Preparation of additional language of correspondence to A. Burnaford and Certificate of Authenticity.
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) regarding service of subpoena in Oregon and coordinating the same.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of order granting plaintiff's request for exemption and effect of the same on timing of discovery deadlines.
/13 PL	0.20	32.00	B P	L310 A104 Analyze and evaluate issues re: OPH's written discovery requests.
/13 RKB	0.20	15.00	B P	L320 A104 Analyze and evaluate issues re subpoena to be issued in Oregon.
/13 RKB	0.30	22.50	B P	L320 A103 Preparation of revised subpoena and notice of deposition to incorporate additional language for requested documents.
/13 ZKB	0.90	126.00	B P	L110 A103 Preparation of third supplemental disclosure statement with new custodians of records and additional documentation.
/13 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of requests for production to OMI in follow-up of deposition testimony concerning Bizlink report.
/13 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of pleading [REDACTED].
/13 ZKB	0.50	70.00	B P	L110 A103 Preparation of final draft of subpoena and corresponding documents and forward to D. Campbell with [REDACTED].
/13 RKB	0.10	7.50	B P	L320 A104 Analyze and evaluate issues re subpoena duces tecum and location of deposition in OR.
/13 RKB	0.30	22.50	B P	L320 A103 Preparation of revised subpoena duces tecum and notice of deposition to reflect new location for deposition.
/13 ZKB	0.90	126.00	B P	L110 A102 Research whether commissions statements are discoverable.
/13 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of written discovery requests propounded on the Sandin

SANDIN 000020

APP00545

Emp	Hours	Dollars	Gp	
/13 ZKB	0.40	56.00	B P	defendants. L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) regarding subpoena service, information requested, and whether information is protected and/or privileged.
/13 RKB	0.10	7.50	B P	L320 A104 Analyze and evaluate issues re certificate of authenticity for documents responsive to subpoena duces tecum.
/13 RKB	0.10	7.50	B P	L320 A103 Review documents from D. Campbell to confirm compliance.
/13 ZKB	1.60	224.00	B P	L110 A101 Plan and Prepare for - deposition of OMI claims rep J. Masonheimer, including review of documents to which J. Masonheimer has the capacity to testify.
/13 ZKB	3.00	420.00	B P	L110 A109 Appear for/Attend telephonic deposition of claims representative J. Masonheimer held in Fresno, California.
/13 ALS	0.80	100.00	B P	L330 A104 Continued to prepare summary of deposition of Stephen Freudenberger including analysis of impact of testimony on defense and conduct necessary follow up.
/13 ALS	0.60	75.00	B P	L330 A104 Continued to prepare summary of deposition of Loraine Snyder including analysis of impact of testimony on defense and conduct necessary follow up.
/13 PL	0.30	48.00	B P	L120 A104 Legal Analysis of inventory of discovery completed to date, analysis of discovery remaining to be done and analysis of time line to complete the same in light of recent exemption from arbitration.
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) with plaintiff's counsel regarding obtaining scheduling order and setting case for trial in district court.
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) with counsel for plaintiff regarding conference pursuant to NRCP 16.1.
/13 ZKB	0.90	126.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel and conduct and participate in supplemental early case conference now that case was returned to district court.
/13 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) regarding responding to subpoena and status of the same.
/13 ZKB	0.50	70.00	B P	L110 A107 Communicate (outside counsel) regarding discovery cutoff deadlines, disclosures of experts if any, bifurcation of discovery to allow for dispositive motion practice, and proposed trial dates.
/13 ZKB	0.60	84.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel to evaluate and analyze need for longer discovery period as related to damages discovery, as well as later trial date, and scheduling additional early case conference to vet the

Emp	Hours	Dollars	Gp	
/13 ZKB	0.60	84.00	B P	same. L110 A107 Communicate (outside counsel) with opposing counsel through supplemental early case conference, and vet additional filing issues, trial issues, dispositive motion timing, bifurcation of discovery, length of trial, and maintaining confidential order in place.
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of S. Freudenberger's deposition transcript revisions.
/13 ZKB	0.20	0.00	B P	L110 A107 Communicate (outside counsel) regarding status of obtaining subpoenaed documents from Willis of Oregon. [NO CHARGE]
/13 ZKB	0.40	56.00	B P	L110 A108 Communicate (other external) with Willis legal department via telephone again regarding status of subpoena and extension of deadline to respond thereto.
/13 ZKB	0.40	56.00	B P	L110 A108 Communicate (other external) with Holly Murphy in writing confirming extension to produce subpoenaed documents.
/13 ZKB	0.30	42.00	B P	L110 A103 Preparation of amended notice of deposition reflecting subpoenaed documents requesting and extension provided to Willis.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding review of deposition transcripts and providing comments as soon as possible.
/13 ZKB	0.30	0.00	B P	L110 A107 Communicate (outside counsel) with local counsel in Oregon for purposes of subpoena and update him with status of fulfilling subpoena. [NO CHARGE]
/13 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) G. Stewart regarding [REDACTED].
/13 BJT able RKB	0.80 0.80	76.00 60.00	B P	L110 A102 Research re: discoverability of commission statements and payments and [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with counsel for plaintiff regarding proposed changes and revisions to JCCR.
/13 ZKB	1.60	224.00	B P	L110 A104 Legal Analysis of draft JCCR and negotiate detailed comments and revisions with opposing attorneys.
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of ability to object to discovery of commissions statements.
/13 ZKB	0.60	84.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	3.80	532.00	B P	L110 A103 Preparation of responses to OPH's discovery requests for admissions and requests for production of documents, including detailed objections thereto as related to production of commissions statements.
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding potential

SANDIN 000022

APP00547

Emp	Hours	Dollars	Gp	
/13 ZKB	0.20	28.00	B P	objections to binding portions of transcript on corporation and timing to provide the same. L110 A106 Communicate (with client) Anthony Sandin as representative for Sandin Insurance regarding [REDACTED].
/13 RKB	0.20	15.00	B P	L330 A104 Analyze and evaluate issues re custodian of records affidavit and notice to vacate in preparation of drafting same.
/13 ZKB	0.30	42.00	B P	L110 A108 Communicate (other external) with paralegal for Willis regarding vacating deposition in exchange for Willis completing an affidavit of Custodian of Records.
/13 RKB	0.20	15.00	B P	L320 A104 Legal Analysis of affidavit of document of custodian for records from Willis of Oregon, Inc.; identify missing and/or incorrect information.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of COR affidavit and missing topics from the same.
/13 ZKB	0.10	14.00	B P	L110 A108 Communicate (other external) with Willis of Oregon regarding missing subjects from COR affidavit.
/13 ZKB	0.40	56.00	B P	L110 A103 Preparation of notice of vacating deposition of Willis custodian of records.
/13 RKB	0.10	7.50	B P	L320 A104 Legal Analysis of final affidavit of records to identify any missing information.
/13 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of OMI's responses to OPH's second set of interrogatories, RFAs, and RFPDs and effect of the same on the Sandin defendants' defenses.
/13 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) about [REDACTED].
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) with D. Campbell regarding response to subpoena on Willis.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/13 ZKB	0.20	28.00	B P	L110 A107 Communicate (outside counsel) regarding providing original deposition transcript for D. Sandin and signed errata sheet accompanying the same.
/13 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) with D. Sandin to discuss [REDACTED].
/13 ZKB	4.60	644.00	B P	L110 A104 Legal Analysis of contents of D. Sandin's two-day deposition transcript to determine if [REDACTED].
/13 ZKB	1.60	224.00	B P	L110 A103 Preparation of lengthy correspondence to opposing counsel outlining portions of D. Sandin's two-day deposition transcript that should not bind the

SANDIN 000023

APP00548

Emp	Hours	Dollars	Gp	
/13 PL	0.10	16.00	B P	corporation and legal reasons therefor. L120 A104 Legal Analysis of motion for partial summary judgment filed by OPH against OMI.
/13 PL	0.10	16.00	B P	L110 A104 Legal Analysis of sum and substance of motion for summary judgment filed by OPH against OMI and analyze opportunity for joinder to opposition.
/13 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) with G. Stewart with [REDACTED].
/13 PL	0.20	32.00	B P	L210 A104 Legal Analysis of motion for partial summary judgment filed by OPH against Oregon Mutual.
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of scheduling order, timing of upcoming deadlines, and planning motion for summary judgment.
/13 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of motion for partial summary judgment against OMI and case law and statutes cited by plaintiff in the same.
/13 ZKB	2.30	322.00	B P	L110 A104 Legal Analysis of first quarter of documents produced by Willis of Oregon relating to brokering insurance for plaintiff, including e-mails, policies, and endorsements since 2001.
/13 ZKB	6.30	882.00	B P	L110 A104 Legal Analysis of remaining Willis production, including e-mails, policies, and endorsements from 2001 through 2008.
/13 PL	0.10	16.00	B P	L320 A104 Legal Analysis of documents produced in response to subpoena duces tecum.
/13 PL	0.20	32.00	B P	L210 A104 Legal Analysis of proposed stipulation and order to continue briefing schedule on OPH's motion for partial summary judgment and correspondences from opposing counsel regarding the same.
/13 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of reasoning behind lack of 2004 documentation from Willis for information regarding Dave Sandin and/or OPH and conference.
/13 ZKB	0.50	70.00	B P	L110 A106 Communicate (with client) regarding [REDACTED]. [REDACTED].
/13 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of stipulation concerning upcoming partial summary judgment hearing and motion practice.
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of updated offers of judgment received from plaintiff, in light of previous offers of judgment and case law governing subsequent offers throughout litigation.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].

SANDIN 000024

APP00549

Emp	Hours	Dollars	Gp	
/13 PL	0.10	16.00	B P	L110 A106 Communicate (with client) re: [REDACTED].
/13 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of opposition filed by OMI to plaintiff's motion for partial summary judgment.
/13 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/14 PL	0.20	32.00	B P	L120 A104 Legal Analysis of any experts that may need to be retained in the event the matter progresses to trial.
/14 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of need for expert to [REDACTED].
/14 ZKB	4.30	602.00	B P	L110 A103 Preparation of supplemental disclosure statement together with redaction and organization of thousands of pages of documents to be produced.
/14 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of OPH's reply in support of its motion for partial summary judgment based on narrow interpretation of statute.
/14 ZKB	3.90	546.00	B P	L110 A103 Preparation of additional portions of supplemental disclosure including the remainder of thousands of pages of subpoenaed documents from Willis regarding D. Sandin's employment, hiatus during non-compete period, and representation by other brokers of OPH.
/14 ZKB	0.90	126.00	B P	L110 A101 Plan and Prepare for - OPH's motion for partial summary judgment against OMI on narrow legal issue and analyze implications of the same on Sandin defendants if granted or denied.
/14 ZKB	1.50	210.00	B P	L110 A109 Appear for/Attend hearing on OPH's motion for partial summary judgment on narrow statutory issue.
/14 ZKB	0.80	112.00	B P	L110 A107 Communicate (outside counsel) with counsel for OMI regarding Court's ruling, upcoming disclosures, and OMI's strategy and tasks associated with filing a motion for summary judgment.
/14 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of order setting civil jury trial received from the Court.
/14 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) via e-mail to G. Stewart regarding [REDACTED].
/14 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of disclosing additional witnesses in light of OPH working with other brokers during two-year time period in contradiction of L. Snyder's deposition testimony.
/14 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of proposed language to be included in Order as requested by counsel for OPH.

SANDIN 000025

APP00550

Emp	Hours	Dollars	Gp	
/14 ZKB	0.60	84.00	B P	L110 A106 Communicate (with client) with D. Sandin regarding [REDACTED].
/14 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of revised proposed order denying summary judgment and additional findings incorporated therein.
/14 PL	0.10	16.00	B P	L120 A104 Legal Analysis of Order setting Civil Jury Trial.
/14 ZKB	0.40	56.00	B P	L110 A107 Communicate (outside counsel) with counsel for Oregon Mutual Insurance regarding damages discovery and extension of time to answer the same, including need to continue expert disclosure deadlines.
/14 PL	0.30	48.00	B P	L120 A104 Legal Analysis of retaining possible expert to discuss [REDACTED].
/14 ZKB	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with counsel for OMI regarding lack of damages computations or evidence and need for additional time for experts, together with opposing counsel's request to shorten discovery extension period.
/14 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of stipulation and order to extend case deadlines due to outstanding discovery issues on damages and various new dates requested together with explanation for why discovery cannot be completed under current case deadlines.
/14 ZKB	0.20	28.00	B P	L110 A104 Legal Analysis of subpoena to COR depo of David Neuhauser.
/14 PL	0.10	16.00	B P	L130 A102 Research Analyze and evaluate issues re: retaining expert witness to opine on [REDACTED].
/14 ZKB	0.80	112.00	B P	L110 A104 Legal Analysis of supplemental discovery interrogatories responded to by OMI together with supplemental responses to requests for production addressing accessing the Bizlink portal.
/14 PL	0.20	32.00	B P	L110 A104 Legal analysis of issues re: pool of potential expert witnesses on [REDACTED].
/14 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of OPH's responses to OMI's requests for production of documentation supporting damages claims (pleading only, not documents) and evaluate need for damages expert.
/14 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of OPH's responses to OMI's second set of interrogatories regarding [REDACTED].
/14 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of new set of requests for production to OMI regarding [REDACTED].
/14 ZKB	0.70	98.00	B P	L110 A104 Legal Analysis of documents produced by OMI regarding [REDACTED].

Emp	Hours	Dollars	Gp	
/14 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of deposition of custodian of records of Moss & Company, involvement of the same in the litigation, and effect of documentation on damages claimed.
/14 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of OPH's fourth and fifth supplemental production of documents related to damages calculations as a result of the fire.
/14 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) with adjuster regarding [REDACTED].
/14 ZKB	0.80	112.00	B P	L110 A102 Research potential experts on [REDACTED].
/14 ZKB	1.80	252.00	B P	L110 A102 Research (continued) of [REDACTED] expert and conference call with possible expert regarding [REDACTED].
/14 ZKB	0.80	112.00	B P	L110 A103 Preparation of status letter for case, outlining expert issues, summary judgment timing, reminders to plaintiff, etc.
/14 PL	0.40	64.00	B P	L130 A104 Legal Analysis of issues re: selection of expert witness to opine [REDACTED].
/14 ZKB	1.30	182.00	B P	L110 A102 Research (continued) of various experts on [REDACTED], and reach out to several potential candidates for discussion.
/14 ZKB	1.20	168.00	B P	L110 A108 Communicate [REDACTED] with P. Burkett regarding retaining to opine on [REDACTED].
/14 ZKB	0.60	84.00	B P	L110 A106 Communicate (with client) with D. Sandin regarding [REDACTED].
/14 PL	0.30	48.00	B P	L13 A102 Research Review and analysis of CV for potential expert Paul Burkett; conduct brief background search on Mr. Burkett in anticipation of advising client about retaining him in this matter.
/14 ZKB	0.50	70.00	B P	L110 A108 Communicate [REDACTED] again with P. Burkett regarding [REDACTED].
/14 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of P. Burkett's CV and charges in anticipation of using him as an expert on the insurance broker's duty of care.
/14 ZKB	0.40	56.00	B P	L110 A108 Communicate [REDACTED] with P. Burkett regarding [REDACTED].
/14 ZKB	1.80	252.00	B P	L110 A103 Preparation of interrogatories and requests for admission to Oregon Mutual regarding validity of policy and/or ability to investigate the same.
/14 ZKB	1.80	252.00	B P	L110 A103 Preparation of file of relevant discovery documents and deposition testimony for P. Burkett to review and assist with his expert report opinion.

SANDIN 000027

APP00552

Emp	Hours	Dollars	Gp	
/14 ZKB	0.40	56.00	B P	L110 A104 Legal Analysis of Oregon Mutual's responses to OPH's third set of requests for production regarding additional cancellation issues.
/14 ZKB	0.60	84.00	B P	L110 A107 Communicate (outside counsel) with co-defendant's counsel regarding joint-hiring of expert to opine on OPH's damages.
/14 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) with adjuster regarding [REDACTED].
/14 ZKB	0.50	70.00	B P	L110 A104 Legal Analysis of benefits and costs associated with jointly hiring an expert with Oregon Mutual and issues on which he would be opining in the insurance realm.
/14 ZKB	0.30	42.00	B P	L110 A106 Communicate (with client) with G. Stewart regarding [REDACTED].
/14 ZKB	0.40	56.00	B P	L110 A106 Communicate (with client) with G. Stewart regarding [REDACTED].
/14 ZKB	0.30	42.00	B P	L110 A108 Communicate [REDACTED] via correspondence to P. Burkett regarding [REDACTED].
/14 ZKB	1.00	140.00	B P	L110 A106 Communicate (with client) with G. Stewart regarding [REDACTED].
/14 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of broker expert's opinion.
/14 ZKB	0.40	56.00	B P	L110 A108 Communicate [REDACTED] with broker expert regarding [REDACTED].
/14 ZKB	0.30	42.00	B P	L110 A104 Legal Analysis of stipulating to a one-week extension of expert disclosures and effect of the same on other case deadlines.
/14 ALS	8.20	1,148.00	B P	L130 A104 Prepare deposition summary of David Eric Sandin (taken on 9/12/13 and 9/13/13)
/14 ZKB	0.20	28.00	B P	L110 A106 Communicate (with client) regarding [REDACTED].
/14 ZKB	0.60	84.00	B P	L110 A104 Legal Analysis of stipulation agreeing to extend only the expert disclosure deadlines and ensure compliance with local rules governing the same.
/14 ZKB	0.40	56.00	B P	L110 A108 Communicate [REDACTED] with P. Burkett regarding [REDACTED].
/14 PL	0.10	16.00	B P	L120 A104 Receipt, review and analysis of OPH's 6th supplemental document production.
/14 MSK	0.40	0.00	B P	L120 A105 Communicate (in firm) with Katy Branson regarding [REDACTED].

SANDIN 000028

APP00553

Emp	Hours	Dollars	Gp	
/14 MSK	2.90	406.00	B P	L120 A104 evaluate and analyze pleadings, motion to dismiss, discovery, research in preparation of trial.
/14 MSK	0.20	28.00	B P	L120 A104 Legal Analysis of OMI's 3rd supplement production of documents.
/14 MSK	0.10	14.00	B P	L120 A104 Legal Analysis of email from Plaintiff's counsel with amended tax returns
/14 MSK	0.10	14.00	B P	L120 A104 Legal Analysis of OMI's Supplement to Plaintiff's document requests.
/14 MSK	0.30	42.00	B P	L120 A104 Legal Analysis of OMI's designation of expert witnesses.
/14 MSK	0.10	14.00	B P	L120 A104 Legal Analysis of Plaintiff's expert disclosures and report.
/14 MSK	0.10	14.00	B P	L120 A104 Legal Analysis of Plaintiff's 7th Supplemental disclosures of documents.
/14 MSK	0.60	84.00	B P	L130 A110 Manage data/files of Sandin's disclosure of expert witnesses and deal with issues regarding disclosure (no charge).
/14 MSK	0.60	0.00		
/14 MSK	0.10	14.00	B P	L120 A104 Legal Analysis of notice of entry of order to extend discovery deadlines.
/14 MSK	0.50	70.00	B P	L140 A108 Respond to email from Greg Stewart regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L120 A107 Telephone call with OMI's counsel regarding case and strategy.
/14 MSK	0.10	14.00	B P	L140 A108 Email with opposing counsel regarding rebuttal expert deadline.
/14 MSK	0.10	14.00	B P	L120 A104 Analyze and evaluate issues re responses to discovery.
/14 MSK	0.10	14.00	B P	L110 A107 Emails with opposing counsel regarding deadline to disclosure rebuttal experts.
/14 PL	0.30	48.00	B P	L130 A107 Analyze and evaluate issues re: continuing rebuttal expert deadlines at the behest of opposing counsel; exchange correspondences with opposing counsel regarding the same.
/14 MSK	0.10	14.00	B P	L110 A107 Email from opposing counsel regarding Sandin's 3rd disclosure.
/14 MSK	0.10	14.00	B P	L110 A107 Email with opposing counsel regarding extension for response to Sandin's discovery requests.
/14 MSK	0.10	14.00	B P	L110 A107 Email from and to opposing counsel regarding rebuttal expert deadline.
/14 MSK	0.20	28.00	B P	L110 A107 Telephone call with OMI's counsel regarding deposition regarding damages.
/14 MSK	0.20	28.00	B P	L310 A104 Legal Analysis of OMI's responses to discovery requests.

SANDIN 000029

APP00554

Emp	Hours	Dollars	Gp	
/14 MSK	0.10	14.00	B P	L120 A105 Analyze and evaluate issues regarding deposition of Plaintiff's representative.
/14 MSK	0.10	14.00	B P	L110 A105 Research scheduling order in order to determine trial date.
/14 MSK	0.10	14.00	B P	L110 A107 Communicate (outside counsel) regarding deposition of plaintiff's representative.
/14 MSK	0.10	14.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding trial date.
/14 PL	0.20	32.00	B P	L450 A107 Communicate (outside counsel) Exchange correspondences with opposing counsel re: coordinating trial date.
/14 PL	0.20	32.00	B P	L440 A101 Review and analysis of Court's scheduling order in order to ascertain trial stack and availability thereon.
/14 MSK	0.10	14.00	B P	L110 A107 Communicate (outside counsel), Telephone call with OMI's counsel regarding joint rebuttal report.
/14 MSK	0.40	56.00	B P	L130 A104 Legal Analysis of rebuttal expert report on damages.
/14 MSK	0.10	14.00	B P	L140 A104 Legal Analysis of order from court setting trial.
/14 PL	0.40	64.00	B P	L120 A104 Receipt, review and analysis of offer of judgment from Plaintiff; research prior offer for comparison and in preparation for advising client.
/14 MSK	0.80	112.00	B P	L120 A108 Prepare letter to Greg Stewart regarding [REDACTED].
/14 MSK	0.10	14.00	B P	L340 A107 Communicate opposing counsel regarding rebuttal expert reports.
/14 MSK	0.20	28.00	B P	L120 A104 Legal Analysis of offer of judgment from plaintiff.
/14 PL	0.30	48.00	B P	L120 A108 telephone conference with local attorney seeking to take judgment / Debtor examination of OPH on an unrelated collection matter and invitation to attend the same.
/14 MSK	0.30	42.00	B P	L340 A104 Legal Analysis of Plaintiff's rebuttal reports.
/14 MSK	1.50	210.00	B P	L110 A102 Research rule and case law on disclosure of rebuttal expert when disclosing party did not previously disclose initial expert re duty of care.
/14 MSK	2.70	378.00	B P	L250 A103 Preparation of motion to strike to rebuttal expert on duty of care.
/14 MSK	0.10	14.00	B P	L110 A107 Communicate (outside counsel) regarding offer of judgment.
/14 PL	0.50	80.00	B P	L130 A104 Receipt, review and analysis of rebuttal expert reports filed by OPH.
/14 PL	0.50	80.00	B P	L120 A102 Analyze and evaluate issues re: possible motion to strike in light of

SANDIN 000030

APP00555

Emp	Hours	Dollars	Gp	
/14 PL	0.30	48.00	B P	new Rules requiring anticipatory disclosures; conduct research on applicability of new rule to present disclosure.
/14 PL	0.10	16.00	B P	L250 A107 Communicate (outside counsel) Exchange correspondences with opposing counsel re: request to execute stipulation and order to "withdraw" offer of judgment from Court's filed docket.
/14 MSK	3.00	420.00	B P	L110 A106 Communicate (with client) Exchange correspondences with Greg Stewart re: [REDACTED].
/14 MSK	0.30	42.00	B P	L250 A103 Preparation of motion to strike rebuttal report on duty of care.
/14 PL	0.20	32.00	B P	L120 A107 Prepare letter to opposing counsel regarding improper rebuttal report on duty of care.
/14 MSK	0.70	98.00	B P	L250 A102 Continue to explore strength of anticipated motion to strike expert report in light of new anticipatory disclosure requirements.
/14 MSK	0.10	14.00	B P	L250 A103 Preparation of motion to strike rebuttal report.
/14 MSK	0.10	14.00	B P	L250 A103 /Execute stipulation and order to remove offers of judgment from docket.
/14 MSK	0.10	14.00	B P	L120 A107 Communicate (outside counsel) with OMI's counsel regarding rebuttal expert reports.
/14 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding meet and confer regarding rebuttal expert report.
/14 PL	0.20	32.00	B P	L120 A107 Communicate (outside counsel) with opposing counsel regarding trial date (letter from opposing counsel).
/14 MSK	0.20	28.00	B P	L110 A104 Receipt, review and analysis of OPH's Eight Supplemental Disclosure Statement.
/14 MSK	0.20	28.00	B P	L120 A104 Legal Analysis of plaintiff's 8th supplemental production.
/14 MSK	0.20	28.00	B P	L120 A104 Legal Analysis of plaintiff's third set of discovery to OMI.
/14 MSK	0.90	126.00	B P	L240 A103 Preparation of motion for summary judgment on plaintiff's claims against Sandin defendants.
/14 MSK	0.10	14.00	B P	L120 A107 Receipt, review and analysis of letter from OMI's counsel regarding trial and depositions.
/14 MSK	0.10	14.00	B P	L330 A104 Legal Analysis of notice of deposition of Plaintiff's principal, Stephen Freudenberger.
/14 MSK	0.10	14.00	B P	L140 A107 Exchange emails with counsel regarding stipulation and order to remove offers of judgment from docket.

Emp	Hours	Dollars	Gp	
/14 MSK	0.50	70.00	B P	L110 A101 Plan and Prepare for meet and confer with opposing counsel regarding improper rebuttal expert on standard of care.
/14 MSK	0.20	28.00	B P	L110 A107 Communicate (outside counsel) - telephone conference with opposing counsel regarding improper rebuttal expert on standard of care.
/14 MSK	0.10	14.00	B P	L120 A106 Communicate (with client) -- telephone call with Dave Sandin regarding [REDACTED].
/14 MSK	0.50	70.00	B P	L250 A103 Preparation of motion to strike rebuttal report on standard of care.
/14 MSK	0.10	14.00	B P	L110 A107 Communicate with opposing counsel regarding discovery deadlines.
/14 MSK	1.20	168.00	B P	L430 A102 Research case law regarding rebuttal expert report which should have been disclosed on initial expert for motion to strike.
/14 MSK	0.10	14.00	B P	L110 A107 Receipt, review, and analysis of emails from opposing counsel regarding discovery and deposition dates.
/14 MSK	0.10	14.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding status of discovery deadline.
/14 MSK	0.40	56.00	B P	L110 A107 Communicate (outside counsel) regarding discovery, depositions, and expert reports.
/14 MSK	0.10	14.00	B P	L110 A104 Legal Analysis of Notice of deposition of Plaintiff's principal.
/14 PL	0.50	80.00	B P	L120 A101 Plan and Prepare for expert depositions and procurement of payment from Plaintiff for our expert's deposition
/14 MSK	0.50	70.00	B P	L120 A108 Communicate (other external) with Greg Stewart and David Sandin regarding [REDACTED].
/14 MSK	0.20	28.00	B P	L340 A102 Research rule on fee for expert deposition and who is responsible for payment of fee.
/14 MSK	0.40	56.00	B P	L120 A104 Legal Analysis of stipulation and order to continue discovery and expert depositions.
/14 MSK	0.50	70.00	B P	L110 A107 Communicate with opposing counsel regarding discovery schedule and expert depositions.
/14 MSK	0.10	14.00	B P	L420 A108 Communicate (other external) with Paul Burkett (our expert on standard of care) regarding [REDACTED].
/14 PL	0.30	48.00	B P	L130 A101 Analyze and evaluate issues re: clearing up scheduling conflicts in an effort to coordinate expert depositions.
/14 MSK	0.30	42.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding discovery and extension of dates.

SANDIN 000032

APP00557

Emp	Hours	Dollars	Gp	
/14 MSK	0.30	42.00	B P	L120 A104 Legal Analysis of revised stipulation and order to extend discovery deadlines.
/14 MSK	0.20	28.00	B P	L420 A108 Communicate (other external) with Paul Burkett (our expert on standard of care) regarding [REDACTED].
/14 MSK	0.30	42.00	B P	L120 A104 Legal Analysis of third version of stipulation and order to continue discovery and execute.
/14 MSK	6.70	938.00	B P	L240 A103 Preparation of motion for summary judgment, statement of undisputed facts, evaluate and analyze discovery responses to include in statement of facts.
/14 MSK	0.90	126.00	B P	L350 A103 Preparation of motion to strike rebuttal report on duty of care (finalize and file motion).
/14 MSK	3.90	546.00	B P	L350 A103 Preparation of motion for summary judgment and evaluate and analyze produced documents to incorporate into motion.
/14 PL	0.40	64.00	B P	L120 A104 Legal Analysis of whether or not to submit Motion to Strike on OST in light of anticipated continuance.
/14 MSK	4.90	686.00	B P	L240 A103 Preparation of motion for summary judgment and analyze depositions of Plaintiff's representatives incorporated into motion.
/14 MSK	0.10	14.00	B P	L110 A104 Legal Analysis of order from court setting hearing on motion to strike.
/14 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) regarding expert depositions.
/14 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding deposition of expert witnesses.
/14 MSK	0.30	42.00	B P	L120 A104 Legal Analysis of Oregon Mutual's joinder to motion to strike plaintiff's expert witness.
/14 MSK	0.20	28.00	B P	L120 A104 Legal Analysis of letter from plaintiff's counsel regarding discovery dispute.
/14 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding deposition dates for experts.
/14 MSK	0.10	14.00	B P	L340 A107 Communicate (outside counsel) with opposing counsel regarding deposition of experts.
/14 MSK	0.20	28.00	B P	L340 A104 Legal Analysis of deposition notices for expert depositions.
/14 MSK	0.10	14.00	B P	L340 A108 Communicate (other external) with expert Paul Burkett regarding [REDACTED].
/14 MSK	0.20	28.00	B P	L110 A107 Communicate (outside counsel) with opposing counsel regarding discovery.

SANDIN 000033

APP00558

HUTCHISON & STEFFEN

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

1 argument that may be heard by this Court.

2 DATED this 2nd day of September, 2015.

3 HUTCHISON & STEFFEN, LLC

4 
5 Patricia Lee (8287)
6 Michael S. Kelley (10101)
7 Peccole Professional Park
8 10080 West Alta Drive, Suite 200
9 Las Vegas, NV 89145
10 plee@hutchlegal.com
11 mkelley@hutchlegal.com

12 *Attorneys for defendants*
13 *Dave Sandin and Sandin & Co.*

NOTICE OF MOTION

TO: MARGARET A. McLEITCHIE, attorney for O.P.H. OF LAS VEGAS INC.; and

TO: ROBERT W. FREEMAN & PRISCILLA L. O'BRIANT, attorneys for OREGON
MUTUAL INSURANCE CO.:

PLEASE TAKE NOTICE that the undersigned will bring **DAVE SANDIN AND
SANDIN & CO.'S MOTION FOR ATTORNEY'S FEES AND COSTS** before Department
XXVI of the above entitled Court in courtroom 3H on the 6th day of October,
2015, at the hour of 9 o'clock, a.m., or as soon thereafter as counsel may be heard.

DATED this 2nd day of September, 2015.

HUTCHISON & STEFFEN, LLC


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

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

MEMORANDUM OF POINTS AND AUTHORITIES

1. Introduction.

This suit arose as a result of an August 17, 2012 fire that destroyed Plaintiff's restaurant at 4833 West Charleston Boulevard in Las Vegas, Nevada. The Sandin defendants, insurance agents and/or insurance brokers, procured insurance for Plaintiff from Oregon Mutual Insurance Company ("Oregon Mutual" or "OMI") for coverage of its restaurant. Plaintiff was to pay all of its premiums directly to Oregon Mutual. Approximately seven months into the policy period, Plaintiff failed to pay the monthly premium due on July 26, 2012. On August 1, 2012, Oregon Mutual sent a notice of cancellation for non-payment to Plaintiff, warning Plaintiff that failure to cure the missed premium would result in cancellation of its policy, effective August 16, 2012. Plaintiff did not make its July premium, and the policy was cancelled accordingly. The fire occurred one day later.

Early in the litigation, the Sandin defendants served an offer of judgment to OPH in the amount of \$2,000. OPH did not accept the offer of judgment, and by rule, the offer was deemed rejected. Recently, the Court granted the Sandin defendants' motion for summary judgment on all of OPH's claims against the Sandin defendants. Therefore, the Sandin defendants obtained a more favorable result in the litigation than their offer of judgment. Accordingly, the Sandin defendants are entitled to their costs and reasonable attorneys' fees.

2. Procedural Background.

Plaintiff commenced this action on November 11, 2012, by filing claims against Oregon Mutual and the Sandin defendants. *See* Complaint, on file. On December 26, 2012, the Sandin defendants filed a motion to dismiss seeking to dismiss all the claims against them for failure to state a claim pursuant to NRCP 12(b)(5). *See* Motion to Dismiss, on file. The Sandin defendants' motion to dismiss was denied without prejudice. *See* Order Denying the Sandin Defendants' Motion to Dismiss dated March 12, 2013, on file. On February 14, 2013, the Sandin defendants served an Offer of Judgment to OPH pursuant to NRCP 68 and/or NRS 17.115. *See* Exhibit B. The Offer of Judgment provided that "defendants Dave Sandin and Sandin & Co. . . . offer judgment to be taken by plaintiff, OPH of Las Vegas, Inc., against the

1 Sandin defendants in this action, in the amount of TWO THOUSAND DOLLARS AND
2 NO/100 (\$2,000.00).” *Id.* OPH did not accept the offer and it expired ten days after the date of
3 service pursuant to NRCP 68 and NRS 17.115.

4 On March 17, 2015, the Sandin defendants filed their motion for summary judgment,
5 seeking judgment on all of OPH’s claims against them. On May 14, 2015, a hearing was held
6 before this Court on the Sandin defendants’ motion for summary judgment.¹ At the hearing,
7 the Court granted both the Sandin defendants’ and Oregon Mutual’s motions for summary
8 judgment. An order was entered on July 1, 2015 granting the Sandin defendants’ motion for
9 summary judgment. On August 13, 2015, judgment was entered in favor of the Sandin
10 defendants and against OPH an all of OPH’s claims against the Sandin defendants. *See* Notice
11 of Entry of Judgment, on file.

12 **3. Legal Argument.**

13 **A. Legal standard to enforce an offer of judgment.**

14 The Sandin defendants move the Court for an order granting attorneys’ fees and costs
15 due to OPH’s rejection of the Sandin defendants’ offer of judgment. The Sandin defendants
16 obtained a more favorable judgment on summary judgment than the offer of judgment.
17 Accordingly, the Sandin defendants are entitled to attorneys’ fees and costs. The strong public
18 policy supporting this rule is to encourage parties in litigation to settle on reasonable terms
19 when available, rather than requiring the parties and the court to incur the substantial costs and
20 expenditure of time and resources proceeding to trial.

21 Under NRCP 68(a), “[a]t any time more than 10 days before trial, any party may serve
22 an offer in writing to allow judgment to be taken in accordance with its terms and conditions.”
23 NRCP 68(a). If the offeree rejects an offer and fails to obtain a more favorable judgment, “the
24 offeree shall pay the offeror’s post-offer costs, applicable interest on the judgment from the
25 time of the offer to the time of entry of the judgment and reasonable attorney’s fees, if any be
26 allowed, actually incurred by the offeror from the time of the offer.” NRCP 68(f)(2). Further,
27

28 ¹ Also on hearing that day was Oregon Mutual’s motion for summary judgment.

1 NRS 17.115 provides:

2 1. At any time more than 10 days before trial, any party may serve upon one or
3 more other parties a written offer to allow judgment to be taken in
4 accordance with the terms and conditions of the offer of judgment.

5 ...

6 4. Except as otherwise provided in this section, of a party who rejects an offer
7 of judgment fails to obtain a more favorable judgment, the court:

8 ...

9 © Shall order the party to pay the taxable costs incurred by the party who
10 made the offer; and

11 (d) May order the party to pay to the party who made the offer any or all of
12 the following:

13 (2) Any applicable interest on the judgment for the period from the
14 date of service of the offer to the date of entry of the judgment.

15 (3) Reasonable attorney's fees incurred by the party who made the
16 offer for the period from the date of service of the offer to the date of
17 entry of the judgment.

18 NRS 17.115(1) & (4).

19 The Court must consider various factors when determining whether to award attorney's
20 fees and costs under NRCP 68. The factors are as follows: (1) whether the offeree's claims
21 were brought in good faith; (2) whether the offeror's offer of judgment was reasonable and in
22 good faith in both its timing and amount; (3) whether the offeree's decision to reject the offer
23 and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought
24 by the offeror are reasonable and justified in amount. *See RTTC Commc'ns., LLC v. Saratoga*
25 *Flier, Inc.*, 121 Nev. 34, 41, 110 P.3d 24, 28 (2005) (citing *Beattie v. Thomas*, 99 Nev. 579,
26 588-89, 668 P.2d 268, 274 (1983)). In addition, when deciding whether to award attorneys'
27 fees, the Court must consider the factors in *Brunzell v. Golden Gate National Bank*, 85 Nev.
28 345, 349, 455 P.2d 31, 33 (1969).

///

///

///

///

1 **B. Legal analysis.**

2 **1. OPH's claims were not brought in good faith.²**

3 As a threshold matter, OPH's claims were not brought in good faith. In this lawsuit,
4 OPH attempted to shift the blame for the missed premium to the Sandin defendants and Oregon
5 Mutual. Plaintiff's claims against the Sandin defendants were centered on two main themes:
6 (1) the Sandin defendants had a legal duty to notify OPH that it was late making its monthly
7 insurance premium and (2) Dave Sandin breached some fictitious duty to OPH by allowing his
8 Nevada license to lapse.

9 With regard to the first point, the Sandin defendants had no idea of the pending
10 cancellation and could not inform OPH to pay its premium. OPH did not dispute that the
11 Sandin defendants did not have knowledge of the pending cancellation. Whether or not the
12 Sandin defendants had a legal obligation to notify OPH of the pending cancellation, the Sandin
13 defendants could not inform OPH of the pending cancellation. *See* Order Granting Defendants
14 Dave Sandin and Sandin & Co.'s Motion for Summary Judgment, ¶ 10 (Conclusions of Law),
15 on file.

16 Further, in Nevada, insurance agents do not have a fiduciary relationship with their
17 clients. An "insurance agent is obliged to use reasonable diligence to place the insurance and
18 seasonably to notify the client if he is unable to do so." *Keddie v. Beneficial Insurance, Inc.*, 94
19 Nev. 418, 420, 580 P.2d 955, 956 (1978).³ The Nevada Supreme Court has further stated that
20 "[a]n insurance agent or broker does not owe the insured any additional duties other than
21 procuring the requested insurance." *Flaherty v. Kelly*, 2013 WL 7155078 (Nev. Dec. 18, 2013)

22
23 ² In its opposition to the motion for summary judgment, OPH consented to judgment in
24 the Sandin defendants' favor on the claim for violation of 686A.310. Clearly this claim was not
25 brought in good faith. *See Albert H. Wohlers & Co. v. Bartgis*, 114 Nev. 1249, 969 P.2d 949
(1998).

26 ³ *See also Havas v. Carter*, 89 Nev 497, 499-500, 515 P.2d 397, 399 (1973) ("the
27 general rule [is] that an insurance agent or broker who undertakes to procure insurance for
28 another owes an 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 (unpublished). It has been further stated that “no Nevada court has imposed on insurance
2 brokers a fiduciary duty toward insureds.” *CBC Financial, Inc. v. Apex Insurance Managers,*
3 *LLC*, 291 Fed.Appx. 30, *4 (9th Cir. Aug. 14, 2008) (unpublished).

4 With regard to the second point, the fact that Dave Sandin’s Nevada license had expired
5 at the time the subject Policy was issued had nothing to do with the issues in this case.⁴ The
6 licensing status of a non-resident agent is purely an administrative matter. *See* NRS
7 683A.201(1) & (3). NRS 683A.201 does not provide for a private right of action. Rather, it
8 provides for an administrative fine. NRS 686A.015(1) provides that “[n]otwithstanding any
9 other provision of law, the Commissioner has exclusive jurisdiction in regulating the subject of
10 trade practices in the business of insurance in this state.” The Nevada Supreme Court has held
11 that matters within Title 57, including the licensing of agents, is an administrative matter. *See*
12 *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 572, 170 P.3d 989, 994 (2007).

13 In granting summary judgment, this Court stated:

14 I think that this is one of those cases where maybe the federal approach is better
15 than the Nevada approach where you traverse the legal standard of the pleading
16 early on and dismiss the cases earlier rather than give parties a chance. Nevada
17 is a place that believes in giving people a chance and that’s – that was my
18 intention when I sent you off on this odyssey and maybe that was a disservice to
19 your client because I just don’t see how after everything we can say that this is
20 anything other than just a contract that fails because your client didn’t pay his
21 premium

22 . . .

23 I think I have to grant both of these summary judgments. As I said, you know,
24 maybe the federal system is better and you would have saved all this time you
25 guys spent on the discovery. I don’t know. You know, like I said, we want to
26 give people a chance here

27 Transcript of Proceeding dated May 14, 2015, at 46:11-21; 48:16-20.

28 OPH’s claims were not based on the law or any legal principle. In opposition to the
summary judgment motion, Plaintiff never submitted any case law to support its two theories
of the case. OPH knew that it had no legal basis for its claims, but pursued the claims hoping
that a jury would return a verdict in its favor out of sympathy for the tragic situation.

⁴ Plaintiff’s own expert agreed that the expired license was a non-issue.

1 Therefore, on the first factor, OPH's claim were brought in bad faith.

2 **2. *The Sandin defendants' offer of judgment was reasonable and in good faith***
3 ***in both its timing and amount.***

4 The Sandin defendants served their offer of judgment on February 14, 2013. This was
5 one day after the hearing on the Sandin defendants' motion to dismiss, where the Court denied
6 the motion. Thus, the offer of judgment was served early on in an effort to resolve the case
7 before any of the parties expended a large sum of time and money on the case.

8 The offer of judgment for \$2,000 was also reasonable in its amount. The Sandin
9 defendants felt very confident that they would defend against OPH's claims, whether on
10 summary judgment or at trial. The Court granted summary judgment in the Sandin defendants'
11 favor on all OPH's claims. Additionally, at the time of the offer of judgment, the case was part
12 of the mandatory arbitration program.⁵ In the mandatory arbitration program, damages are
13 limited to \$50,000. Nevada Arbitration Rules 16(B) ("The maximum award that can be
14 rendered by the arbitrator is \$50,000 per plaintiff, exclusive of attorney's fees, interest and
15 costs."). Given the \$50,000 cap on damages, the \$2,000 offer of judgment was reasonable.

16 The amount is also reasonable in amount in terms of damages. Oregon Mutual's and
17 the Sandin defendants' damages expert, Kevin Kirkendall, calculated damages under the Policy
18 at either \$10,748 or \$54,036.⁶ See Expert Report dated November 29, 2014, Exhibit D. Mr.
19 Kirdendall never apportioned liability among OMI and the Sandin defendants. The Sandin
20 defendants, however, assert that their liability would have been less than OMI's. Therefore, the
21 \$2,000 offer of judgment was reasonable in both its timing and amount.

22 ///

23
24 ⁵ Six months after the offer of judgment, OPH filed a Request for Exemption from
25 Arbitration. See Exhibit C. The Commissioner granted the request on September 17, 2013.
26 See Commissioner's Decision on Request for Exemption - Granted, on file.

27 ⁶ Mr. Kirdendall calculated damages under two scenarios. The first scenario provides
28 that OPH's lease would be terminate ending September 15, 2012 because the landlord had the
right to cancel the lease upon 30 days notice. The second scenario provides that damages are
calculated through the most recent lease option date of June 30, 2014. See Exhibit D.

1 **3. *OPH's decision to reject the offer and proceed to discovery and towards trial***
2 ***was grossly unreasonable.***

3 OPH's decision to reject the offer was unreasonable. As stated in subsection 1 above,
4 OPH's claims were brought in bad faith and were not grounded in the law. There was no legal
5 basis whatsoever for OPH's claims against the Sandin defendants. Therefore, OPH's decision
6 to reject the offer and proceed through months and months of discovery was unreasonable.

7 **4. *The fees sought by the Sandin defendants are reasonable and justified in***
8 ***amount.***

9 The penalty for rejecting the offer and failing to secure a more favorable outcome at
10 trial is the rejecting party pays costs and fees from the date of the offer forward. The Sandin
11 defendants served the offer of judgment on February 14, 2013. Currently, the Sandin
12 defendants' attorneys' fees incurred from February 14, 2013 to the present total \$140,857.00.
13 See the itemized fee analysis from February 14, 2013 to the present, attached as Exhibit E. The
14 Sandin defendants' counsel utilized a total of 1,063.50 hours defending the case post-offer of
15 judgment. See *id.* The hourly rates of the Sandin defendants' counsel are more than
16 reasonable. The primary attorneys on th case billed their time at deeply discounted rates.
17 Patricia Lee billed her time at a discounted rate of \$160 per hour and the associates (Michael
18 Kelley and Katy Branson) billed their time at a discounted rate of \$140. Their standard billing
19 rates are \$360 and \$295, respectively. The hourly rate for the Sandin defendants' counsel is
20 more than reasonable based on the experience of counsel, the quality of representation, and
21 results achieved in this case.

22 Further, the Sandin defendants' total costs of defending the case equals \$20,948.63.
23 See the Verified Memorandum of Costs, on file.⁷ Overall, the fees and costs that the Sandin
24 defendants incurred were reasonable considering the work performed, the quality of advocacy,
25 and the result achieved. Accordingly, the Sandin defendants should be awarded these fees and
26 costs based on the law and strong public policy on which the law is based.

27 ⁷ Although the offer of judgment permits the Sandin defendants to recover post-offer
28 costs, NRS 18 permits the Sandin defendants to recover all costs as the prevailing party.

1 Additionally, the fees and costs are reasonable given the circumstances of the case. As
2 stated above, OPH's commenced this litigation on November 11, 2012. Discovery did not
3 close until March 6, 2015, almost two-and-a-half years after the case commenced. The motions
4 for summary judgment were not filed until March 17, 2015. The delay in the case was almost
5 entirely attributable to OPH. First, the case was assigned to the mandatory arbitration program
6 because OPH did not file a request for exemption. On August 28, 2013, OPH finally filed a
7 Request for Exemption from Arbitration. *See* Exhibit C. The Commissioner granted the
8 request on September 17, 2013. *See* Commissioner's Decision on Request for Exemption -
9 Granted, on file.

10 Additionally, OPH initially failed to designate an expert to support its claims for bad
11 faith and statutory violations. OMI later improperly designated Neal Bordenave as a rebuttal
12 witness even though he supported OPH's case in chief. The Sandin defendants and OMI
13 moved to strike Mr. Bordenave's report. Although agreeing that the report was not a proper
14 rebuttal report, Commissioner Bulla denied the motion. Commissioner Bulla allowed OPH to
15 treat Mr. Bordenave as an initial expert and defendant would be provided with a new initial
16 expert deadline. *See* Minutes of August 29, 2014 hearing, Exhibit F.

17 In a subsequent phone conference between the parties and Commissioner Bulla, OPH
18 complained that Bordenave's "rebuttal" report had been limited so as to only act as a rebuttal and
19 OPH would therefore be prejudiced if that report was used as OPH's initial report. Based on
20 this, Commissioner Bulla reset the expert disclosure deadlines, providing staggered disclosures,
21 resulting in the necessity for OMI to provide updated expert and rebuttal reports to respond to
22 Bordenave's new "initial" expert report. *See* Discovery Commissioner's Report and
23 Recommendations, on file. Plaintiff's failure to appropriately and timely disclose its expert
24 witness resulted in increased fees and costs to the Sandin defendants.

25 In addition to those procedural hurdles, there have been sixteen (16) depositions taken
26 by the parties, which includes expert depositions. Of the sixteen depositions, eleven (11) were
27 taken outside of the Las Vegas Valley, with many occurring in Oregon and Northern
28

1 California. Thus, counsel was required to travel to the various sites for the depositions.

2 The fees sought by the Sandin defendants are reasonable and justified in amount by the
3 length of the litigation and also the complexity and travel required.

4 **5. *The Sandin defendants are entitled to their attorneys' fees pursuant to the***
5 ***Brunzell factors.***

6 The fourth *Beattie* factor (whether the fees sought by the offeror are reasonable and
7 justified in amount) implicates *Brunzell*, the 1969 Nevada Supreme Court case that sets forth
8 factors for courts to consider in rendering attorneys' fees awards. See *Gunderson v. D.R.*
9 *Horton, Inc.*, — Nev. —, 319 P.3d 606, 616 (2014), *reh'g denied* (Apr. 23, 2014) (concluding
10 that the district court's failure to consider the *Brunzell* factors within its *Beattie* analysis
11 constitutes an abuse of discretion); see also *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345,
12 349, 455 P.2d 31, 33 (1969).⁸ *Brunzell* establishes that the trial court must consider:

- 13 (1) the character and difficulty of the work performed;
- 14 (2) the work actually performed by the attorney;
- 15 (3) the qualities of the advocate; and
- 16 (4) the result obtained.

17 See *Brunzell*, 85 Nev. at 350, 455 P.2d at 33.

18 The first *Brunzell* factor, i.e., the character and difficulty of the work performed, favors
19 an award of attorneys' to the Sandin defendants. As stated above, OPH was attempting to shift
20 blame for the missed premium onto the Sandin defendants and OMI. While the facts were not
21 terribly complex, this case presented an unique issue to the Sandin defendants: whether the
22 Sandin defendants could be held liable as insurance agents for a missed premium by the
23 insured under a theory of breach of fiduciary duty and/or negligence. This issue required the

24 ⁸ However, recently the Nevada Supreme Court ruled that other accepted methods may
25 be used to calculate attorneys' fees, provided that the *Brunzell* factors are still considered. See
26 *Haley v. Eighth Judicial Dist. Ct.*, — Nev. —, 273 P.3d 855, 860 (2012) (“[I]n determining the
27 amount of fees to award, the court is not limited to one specific approach; its analysis may
28 begin with any method rationally designed to calculate a reasonable amount,’ so long as the
requested amount is reviewed in light of the factors set forth in *Brunzell* . . .”) (quoting *Shuette*
v. Beazer Homes Holdings Corp., 121 Nev. 837, 864-65, 124 P.3d 530, 549 (2005)).

1 Sandin defendants to retain an expert witness specifically to address this issue. Additionally,
2 counsel was required to spend numerous hours researching this issue to defend themselves
3 against OPH's claims.

4 Concerning the second *Brunzell* factor, the work actually performed by the attorney, the
5 Sandin defendants were primarily represented by Patricia Lee, Michael Kelley, and Kathryn
6 Branson. As stated above, OPH commenced this litigation on November 11, 2012. Discovery
7 did not close until March 6, 2015, almost two-and-a-half years after the case commenced.
8 There were sixteen depositions that required preparation and travel throughout Nevada,
9 California, and Oregon. To prepare the motion for summary judgment, counsel was required to
10 review and summarize each deposition and cite to relevant portions of deposition transcripts.
11 Additionally, OPH produced over 11,000 pages of documents in discovery (not counting the
12 documents produced by the Sandin defendants and OMI). Counsel was required to review the
13 documents and cull the necessary documents for each deposition and finally, the summary
14 judgment motion. The Sandin defendants also retained two experts. Counsel also filed a
15 motion to strike an expert witness. Even though the motion was not granted, Commissioner
16 Bulla recognized that the motion had merit but was lenient on OPH. Counsel also prepared and
17 opposed several motions in limine and had begun trial preparation because the trial date was
18 scheduled for April 27, 2015 (the trial date was continued at the calendar call on April 2,
19 2015).

20 Exhibit E reflects the work actually performed and necessary to the Sandin defendants'
21 successful defense of this action. The hourly rates of the Sandin defendants' counsel are more
22 than reasonable. Patricia Lee billed her time at a discounted rate of \$160 per hour and the
23 associates (Michael Kelley and Katy Branson) billed their time at a discounted rate of \$140.
24 Their normal billing rates are \$360 and \$295, respectively. The hourly rate for the Sandin
25 defendants' counsel is more than reasonable based on the experience of counsel, the quality of
26 representation, and results achieved in this case.

27 Nevada courts have found much higher attorney hourly rates to constitute "prevailing
28

1 market rates.” See, e.g., *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 606, 172
2 P.3d 131, 137 (2007) (finding that the trial court “properly determined . . . that the \$250 per
3 hour fee claimed by respondents’ counsel was reasonable.”); see also, e.g., *Tallman v. CPS Sec.*
4 *(USA), Inc.*, 23 F. Supp. 3d 1249, 1259 (D. Nev. 2014) (awarding a labor and employment
5 attorney with over 20 years of experience \$400 an hour, and a labor and employment attorney
6 with four years of experience \$240 an hour); see also, e.g., *CLM Partners LLC v. Fiesta Palms,*
7 *LLC*, No. 2:11-CV-01387-PMP, 2013 WL 6388760, at *5 (D. Nev. Dec. 5, 2013) (surveying
8 rate determinations among cases in the District of Nevada and finding “hourly rates as much as
9 \$450 for a partner and \$250 for an experienced associate to be the prevailing market rate”); see
10 also *Easley v. U.S. Home Corp.*, No. 2:11-CV-00357-ECR, 2012 WL 3245526, at *3 (D. Nev.
11 Aug. 7, 2012) objections overruled, No. 2:11-CV-00357-MMD, 2013 WL 1145138 (D. Nev.
12 Mar. 18, 2013) (finding \$340 an hour to be reasonable in the Las Vegas legal market for
13 someone with ten years of experience in the areas of labor and employment law).

14 Considering the third *Brunzell* factor, the qualities of the advocate, the law firm of
15 Hutchison & Steffen and its attorneys are well known in the Las Vegas community. Ms. Lee
16 has worked on this case since its inception as the lead attorney. Ms. Lee has over twelve years
17 of experience in handling commercial litigation matters in Nevada, five of which have been as
18 a partner with H&S. Ms. Lee has been consistently recognized as one of the Legal Elite,
19 published in *Nevada Business Magazine*. Ms. Lee was assisted by other H&S attorneys,
20 including Michael Kelley and Kathryn Branson. Mr. Kelley graduated law school in 2005 and
21 was admitted to the State Bar of Nevada in October 2006. Mr. Kelley has practiced civil and
22 commercial litigation for over nine years.

23 Concerning the fourth *Brunzell* factor, the result obtained, the Sandin defendants
24 prevailed on their motion for summary judgment on all claims asserted against them.

25 In sum, each of the *Brunzell* factors support a finding that the Sandin defendants’
26 attorneys’ fees are reasonable. The Sandin defendants respectfully request that the Court find
27 that the attorneys’ fees of \$140,857.00 are reasonable and orders an award of this full amount.
28

1 **C. The Sandin defendants are entitled to costs pursuant to NRS Chapter 18.⁹**

2 Pursuant to NRS Chapter 18, the Sandin defendants are entitled to costs. Under NRS
3 18.020(3), “[c]osts must be allowed of course to the prevailing party against any adverse party
4 against whom judgment is rendered . . . [i]n an action for the recovery of money or damages,
5 where the plaintiff seeks to recover more than \$2,500.” NRS 18.020(3). Further, NRS 18.050
6 provides judicial discretion in allowing costs. NRS 18.110(1) provides:

7 The party in whose favor judgment is rendered, and who claims costs, must file
8 with the clerk, and serve a copy upon the adverse party, within 5 days after the
9 entry of judgment, or such further time as the court or judge may grant, a
10 memorandum of the items of the costs in the action or proceeding, which
11 memorandum must be verified by the oath of the party, or the party’s attorney or
12 agent, or by the clerk of the party’s attorney, stating that to the best of his or her
13 knowledge and belief the items are correct, and that the costs have been necessarily
14 incurred in the action or proceeding.

15 NRS 18.110(1).

16 In March of this year, the Nevada Supreme Court addressed awards of costs under NRS
17 18 in *Cadle Co. v. Woods & Erickson, LLP*, — Nev. —, 345 P.3d 1049 (2015). The *Cadle*
18 court first reiterated that NRS 18.020 “give[s] district courts wide, but not unlimited, discretion
19 to award costs to prevailing parties.” *Id.* at 1054. A court cannot award costs based on a
20 party’s mere estimate of costs; rather, “costs must be reasonable, necessary, and actually
21 incurred.” *Id.* A verified memorandum of costs filed with the clerk and served on the adverse
22 parties pursuant to NRS 18.110 must be supported with “justifying documentation” to
23 demonstrate precisely how the fees “were necessary to and incurred in the present action.”
24 *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383,386 (1998) (finding that
25 it was an abuse of discretion to award the prevailing party costs because the party did not

26 ⁹ NRS 17.115(4)(c) provides that the Court “shall order the [offeree who fails to obtain
27 a more favorable judgment] to pay the taxable costs incurred by the party who made the offer.”
28 NRCP 68(f)(2) provides that “[i]f the offeree rejects an offer and fails to obtain a more
favorable judgment, (2) the offeree shall pay the offeror’s post-offer costs, applicable interest
on the judgment from the time of the offer to the time of entry of the judgment and reasonable
attorney’s fees, if any be allowed, actually incurred by the offeror from the time of the offer.”

1 provide sufficient evidence in form of itemization and/or justifying documentation to support
2 its request for requested costs).

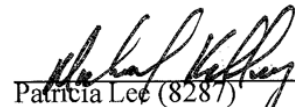
3 Here, the Sandin defendants are the prevailing parties in an action in which OPH sought
4 to recover more than \$2,500, thereby granting the Sandin defendants a statutory right to obtain
5 costs from OPH. Pursuant to NRS 18.110, on August 19, 2015, the Sandin defendants filed a
6 verified memorandum of costs for amounts totaling \$20,948.63. See Memorandum of Costs,
7 on file. The Sandin defendants are entitled to these costs.

8 **4. Conclusion.**

9 For the foregoing reasons, the Court should award the Sandin defendants their
10 attorneys' fees from the date of the offer of judgment and theirs costs.

11 DATED this 2nd day of September, 2015.

12 HUTCHISON & STEFFEN, LLC

13 
14 Patricia Lee (8287)

15 Michael S. Kelley (10101)
16 Peccole Professional Park
17 10080 West Alta Drive, Suite 200
18 Las Vegas, NV 89145
19 pleee@hutchlegal.com
20 mkelley@hutchlegal.com

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 2nd day of September, 2015, I caused the above and foregoing document entitled **DAVE SANDIN AND SANDIN & CO.'S MOTION FOR SUMMARY JUDGMENT** 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 NEFCR 9, 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;

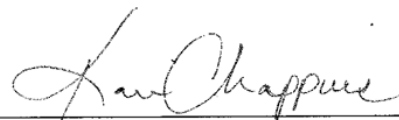
to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie, Esq.
 Matthew J. Rashbrook, Esq.
 MCLETCHE SHELL LLC
 701 East Bridger Ave., Ste. 520
 Las Vegas, NV 89101

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

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

*Attorneys for Oregon Mutual Insurance
 Company*



An employee of Hutchison & Steffen, LLC

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY



EXHIBIT A

DECLARATION OF PATRICIA LEE
PURSUANT TO NRS § 53.045

I, Patricia Lee, hereby declare under the penalty of perjury:

1. I am a resident of Nevada and over 18 years old.
2. I am a partner with Hutchison & Steffen, LLC ("H&S" or "the Firm") counsel for defendants Dave Sandin and Sandin & Co. (the "Sandin defendants") in Case No. A-12-672158-C, in the Eighth Judicial District Court, Nevada.
3. I make this declaration in support of the Sandin defendants' motion for attorneys' fees and costs (the "Motion").
4. The information in the Motion is true and correct to the best of my knowledge.
5. I have been the lead attorney on this case since its inception.
6. I have more than twelve years of experience as an attorney practicing primarily in the areas of business and commercial litigation, five of which have been as a partner at H&S. I have tried over a dozen cases in my career.
7. I have been recognized for my professional work. I have been named one of *Nevada Business Magazine's* Legal Elite.
8. On February 14, 2013, the Sandin defendants served an offer of judgment to plaintiff O.P.H. of Las Vegas, Inc. in the amount of \$2,000. A true and correct copy of the offer of judgment is attached to the Motion as Exhibit B.
9. The time and labor spent on this case was significant, which resulted in a successful motion for summary judgment for the Sandin defendants on all of plaintiff's claims. The primary attorneys on the case were myself, Michael Kelley, and Katy Branson. Additionally, I worked with attorneys Joseph S. Kistler, Erin Lee Truman, Cami M. Perkins, Jessica S. Taylor, Brandon J. Trout, and Amber Sanuels and law clerks Tyler G. Mackay and Katherine Currie-Diamond, and paralegal Risa K. Beck.
10. Mr. Kelley and Ms. Branson were the primary associates on this case. Mr. Kelley graduated law school in 2005 and was admitted to the State Bar of Nevada in October 2006. Mr. Kelley has practiced civil and commercial litigation for over nine years. Mr. Kelley and Ms. Branson were involved in all aspects of the case, including but not limited to,

1 written discovery, depositions, expert discovery, motion practice, and preparing the motion for
2 summary judgment.

3 11. Paralegal Risa Beck assembled the verified memorandum of costs and
4 supporting documentation filed on August 19, 2015 and assembled the itemized fee analysis
5 for this Motion.

6 12. The rates for partners on the case, myself included, is \$160 per hour.
7 Associates billed their time at \$140 per hour. Law clerks and paralegals were billed at \$75 per
8 hour. My standard billing rate is \$360 and Mr. Kelley's standard rate is \$295.

9 13. Not only are these rates far below the Firm's usual and customary rates, but
10 they are well below the standard rates charged by firms of our size and stature for legal
11 services in Southern Nevada. The Firm has had our own *standard* rates approved by other
12 courts in Nevada.

13 14. From February 15, 2013 to July 30, 2015, the firm spent a total of 1,063.50
14 hours of billable time working on this case.

15 15. The total attorneys' fees from H&S for this case from February 15, 2013
16 through July 30, 2015 is \$140,857.00, as set forth in the billing statements attached as Exhibit
17 E. In light of the reduced hourly rate, I believe the entirety of H&S's fees and costs are a
18 conservative figure that should be awarded.

19 16. The entries and associated attorneys' fees contained in the billing reports
20 attached as Exhibit E, and based on my experience as a practicing attorney in this jurisdiction,
21 are reasonable in light of my skill, background, and experience. These attorneys' fees and
22 costs have been necessarily and actually incurred in the successful defense of the Sandin
23 defendants in this case.

24 17. I have reviewed and edited the bills in this case and believe that the fees and
25 costs charged are reasonable.

26 18. The result obtained for the Sandin defendants was significant; the Court
27 granted summary judgment in the Sandin defendants' on all of plaintiff's claims.

28 19. This case presented an unique issue to the Sandin defendants: whether the

1 Sandin defendants could be held liable as insurance agents for a missed premium by the
2 insured under a theory of breach of fiduciary duty and/or negligence. This issue required the
3 Sandin defendants to retain an expert witness specifically to address this issue. Additionally,
4 counsel was required to spend numerous hours researching this issue to defend themselves
5 against OPH's claims.

6 20. I declare under penalty of perjury that the foregoing is true and correct.

7 Executed on date: 9-2-15
8
9

10 Patricia Lee
11 Patricia Lee
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY



EXHIBIT B

OOJ

Patricia Lee (8287)
Z.Kathryn Branson (11540)
HUTCHISON & STEFFEN, LLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Tel: (702) 385-2500
Fax: (702) 385-2086
plee@hutchlegal.com
kbranson@hutchlegal.com

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

v.

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

Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVII

OFFER OF JUDGMENT

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

TO: MAGGIE MCLECHIE, ESQ., its attorney of record:

Pursuant to NRCP 68 and/or NRS 17.115, defendants Dave Sandin and Sandin & Co.
(the "Sandin defendants") offer judgment to be taken by plaintiff, OPH of Las Vegas, Inc.
("OPH"), against the Sandin defendants in this action, in the amount of TWO THOUSAND
DOLLARS AND NO/100 (\$2,000.00).

This offer precludes a separate allowance of costs, fees and interest.

This offer is made for the purposes specified in NRCP 68 and/or NRS 17.115 and to
resolve all claims set forth in OPH's complaint against the Sandin defendants, as alleged in
OPH's complaint on file herein. This Offer of Judgment should not be construed as either an
admission that any individual or entity is liable in this action, or that OPH has suffered any

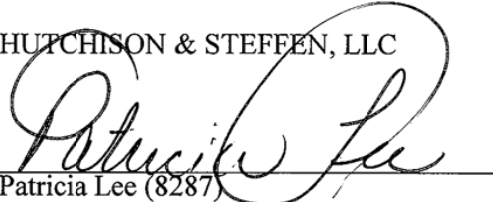
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

specific damages. Accordingly, and pursuant to the foregoing rules and statutes, judgment against the offering defendants may not be entered unless specifically ordered by the District Court.

Pursuant to NRCP 68 and NRS 17.115, this offer will expire ten (10) days after the date of its service on OPH.

DATED this 14th day of February, 2013.

HUTCHISON & STEFFEN, LLC



Patricia Lee (8287)
Z. Kathryn Branson (11540)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
pleeutchlegal.com
kbranson@hutchlegal.com

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 14th day of February, 2013, I caused the above and foregoing document entitled **OFFER OF JUDGMENT** 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
LANGFORD MCLETCHE LLC
616 S. Eighth Street
Las Vegas, NV 89101

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


An employee of Hutchison & Steffen, LLC

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY



EXHIBIT C

LANGFORD MCLETCHIE LLC
ATTORNEYS AT LAW
616 SOUTH EIGHTH STREET
LAS VEGAS, NEVADA 89101
(702) 749-7890 FAX (702) 749-7891

MARGARET A. MCLETCHIE, ESQ.
Nevada State Bar No. 10931

LANGFORD MCLETCHIE LLC

616 S. Eighth Street
Las Vegas, NV 89101

Tel: (702) 471-6565

Fax: (702) 471-6540

maggie@nvlitigation.com

Attorneys for Plaintiff

O.P.H. of Las Vegas Inc.

FILED

2013 AUG 28 P 2:31

ADR

DISTRICT COURT

CLARK COUNTY NEVADA

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

Plaintiff

vs.

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

Defendants.

Case No.: A-12-672158

Dept. No.: XXVII

REQUEST FOR EXEMPTION

FROM ARBITRATION

PLAINTIFF, O.P.H. of Las Vegas, Inc., hereby requests the above entitled matter
be exempted and removed from arbitration pursuant to Nevada Arbitration Rules 3 and 5,
as this case:

1. _____ presents a significant issue of public policy;
2. X involves an amount in excess of \$50,000 per Plaintiff,
exclusive of interest and costs;

1 3. _____ presents unusual circumstances which constitute
2 good cause for removal from the program.

4 According to Nev. Arb. R. 5, a “request for exemption must [generally] be filed
5 within 20 days after filing of an answer by the first answering defendant, and the party
6 requesting the exemption must certify that his or her case is included in the categories of
7 exempt cases listed in Rule 3.” NAR 5(A). However, “[f]or good cause shown, an
8 appropriate case may be removed from the program upon the filing of an untimely request
9 for exemption...” NAR 5(A). Pursuant to Nev. Arb. R. 5, Plaintiff now requests the
0 exemption and removal of this matter from arbitration for the reasons set forth below.

In accordance with Nev. Arb. R. 5, a specific summary of the facts which supports my contention for exemption is as follows:

1. On the early morning hours of August 17, 2012, the Plaintiff's restaurant, located at 4833 W. Charleston, Las Vegas, Nevada, 89102 was completely destroyed by a fire.

2. This matter involves a dispute between Plaintiff and Defendants Oregon Mutual Insurance Company, Dave Sandin, and Sandin & Co., in which a significant amount of damages is claimed by Plaintiff based upon the fire damage to the building located at 4833 W. Charleston, Las Vegas, Nevada 89102.

3 Specifically, this matter seeks to determine the rights and liabilities of the parties
4 in this matter with respect to an insurance policy entered into between Plaintiff and
5 Defendant Oregon Mutual Insurance, and the rights and liabilities as between Plaintiff and
6 Defendants Dave Sandin and Sandin & Co. concerning both this insurance policy and the
7 parties' professional relationship.
8

1 4. The policy limits of the insurance policy at issue total more than \$50,000.00.

2
3 5. The damages suffered by Plaintiff in this matter include lost revenue which totals
4 more than \$50,000.00.

5
6 6. Initially, an exemption from the Arbitration Program in this matter was not
7 sought, because the Arbitration Program presented an opportunity to "obtain[] a prompt
8 and equitable resolution" of the dispute between the parties involved in this litigation. *See*
9 NAR 2(A).

10
11
12 7. According to Nev. Arb. R. 3(B), "[a]ny civil case, *regardless of the monetary*
13 *value, the amount in controversy, or the relief sought*, may be submitted to the program
14 upon the agreement of all parties and the approval of the district judge to whom the case is
15 assigned." NAR 3(B). Operating according to Nev. Arb. R. 3(B), and the general
16 principles set forth in Nev. Arb. R. 2, the Plaintiff determined that proceeding with this
17 matter through the Alternative Dispute Resolution process would resolve the issues in this
18 case more promptly, effectively, and in a cost-efficient manner.

19
20
21
22 8. In fact, it was believed by Plaintiff that all issues, including the substantial
23 amount of damages claimed in this matter, could be resolved by the Arbitrator assigned to
24 this matter. *See* NAR 2(C) ("... [t]he intent of these rules is to give considerable discretion
25 ot the arbitrator, the commissioner and the district judge.")

26
27
28 ///

1 9. Although Nev. Arb. R. 16(B) places a restriction on Arbitrators operating
2 according to the Nevada Arbitration Rules, the Nevada Supreme Court has previously
3 discussed whether parties are allowed to agree to exceed the maximum award set forth in
4 the Nevada Arbitration Rules, and the Court has noted that the Nevada Arbitration Rules do
5 not expressly prevent the parties from agreeing to waive or otherwise modify the
6 maximum. *See Roth v. Scott*, 112 Nev. 1078, 1083, FN. 4, 921 P.2d 1262 (1996) (“...the
7 NAR does not prohibit the parties from agreeing to allow the arbitrator to exceed a
8 \$25,000.00 award, [although] it does not expressly allow for such an agreement either.”)
9

10
11 10. However, it has recently been brought to the undersigned’s attention that the
12 parties in this matter have not, and would not, be stipulating or agreeing to allow the
13 arbitrator to deviate from the maximum award amount set forth in Nev. Arb. R. 16(B).
14 NAR 16(b) (“[t]he arbitrator shall determine all issues raised by the pleadings in cases that
15 are subject to arbitration under the program, including issues of comparative negligence, if
16 any, damages, if any, and costs. The maximum award that can be rendered by the arbitrator
17 is \$50,000 per plaintiff, exclusive of attorney’s fees, interest, and costs.”)
18
19

20
21 11. Operating according to the Nevada Arbitration Rules, and proceeding through
22 arbitration could “provide a simplified procedure for obtaining a prompt” resolution of this
23 matter. *See* NAR 2(A). However, the inability of the arbitrator to render a judgment
24 consistent with the Plaintiff’s actual damages in this case prevents an “equitable resolution”
25 of this matter, which is inconsistent with the intent of the program and the application of
26 the Nevada Arbitration Rules. *See* NAR 2(A) (*emphasis added*).
27
28

LANGFORD MCLETCHIE LLC
ATTORNEYS AT LAW
616 SOUTH EIGHTH STREET
LAS VEGAS, NEVADA 89101
(702) 749-7890 FAX (702) 749-7891

1 Accordingly, for the reasons set forth above the undersigned, on behalf of the
2 Plaintiff and pursuant to Nevada Arbitration Rules 3 and 5, hereby requests this matter be
3 exempted and removed from the Arbitration Program.

4 I hereby certify pursuant to Nev. R. Civ. P. 11 this case to be within the
5 exemption(s) marked above and am aware of the sanctions which may be imposed against
6 any attorney or party who without good cause or justification attempts to remove a case
7 from the arbitration program.

9 I further certify pursuant to Nev. Rev. Stat. Chapter 239B and Nev. Rev. Stat.
10 603A.040 that this document and any attachments thereto do not contain personal
11 information including, without limitation, home address/phone number, social security
12 number, driver's license number or identification card number, account number, PIN
13 numbers, credit card number or debit card number, in combination with any required
14 security code, access code or password that would permit access to the person's financial
15 account.

16
17 DATED this 28th day of August, 2013.

18
19
20 
21 MARGARET A. MCLETCHIE, ESQ.
22 Nevada State Bar No. 10931
23 **LANGFORD MCLETCHIE LLC**
24 616 S. Eighth Street
25 Las Vegas, NV 89101
26 Tel: (702) 471-6565
27 Fax: (702) 471-6540
28 maggie@nvlitigation.com
Attorneys for Plaintiff
O.P.H. of Las Vegas Inc.

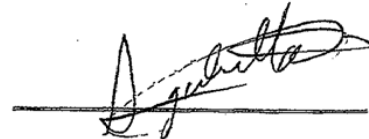
LANGFORD MCLETCHIE LLC
ATTORNEYS AT LAW
616 SOUTH EIGHTH STREET
LAS VEGAS, NEVADA 89101
(702) 749-7890 • FAX (702) 749-7891

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2013, a copy of the foregoing REQUEST FOR EXEMPTION AND REMOVAL FROM ARBITRATION was sent by electronic mail and by U.S. MAIL, postage was fully prepaid, to the following counsel of record:

Patricia Lee
Z. Kathryn Branson
Hutchison & Steffen LLC
10080 W. Alta Dr., Ste. 200
Las Vegas, Nevada 89145
Attorneys for Defendants Dave Sandin and Sandin & Co.

V. Andrew Cass
Kristen E. Meredith
Lewis Brisbois Bisgaard & Smith LLP
6385 S. Rainbow Blvd., Ste. 600
Las Vegas, Nevada 89118
Attorneys for Defendant Oregon Mutual Insurance Company



EMPLOYEE of Langford McLetchie LLC

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY



EXHIBIT D

Kirkendall Consulting Group, LLC

1522 West Warm Springs Road, Henderson, NV 89014 • Telephone: 702-313-1560 • Fax: 702-313-1617

November 29, 2014

Priscilla L. O'Briant, Esq.
Lewis Brisbois Bisgaard & Smith
6385 South Rainbow Boulevard, Suite 200
Las Vegas, Nevada 89118

Michael S. Kelley, Esq.
Hutchison & Steffen
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

RE: O.P.H. of Las Vegas, Inc. v. Oregon Mutual Insurance Company, et al.
Clark County District Court Case No: A-12-672158-C

Dear Ms. O'Briant and Ms. Branson

I am providing you with this second supplement report of my opinions concerning economic damages alleged by O.P.H. of Las Vegas, Inc. ("OPH") in its suit against Oregon Mutual Insurance Company ("OMIC"). Specifically, I have set forth calculations of economic damages to OPH in the attached exhibits. Additionally, I have addressed a number of Ms. Heinz's comments made in her most recent report dated July 21, 2014. The following sections of this report set forth my understanding of the background of this matter, additional documents received since the dates of my initial and first supplemental reports, my calculation of economic damages to OPH and my comments concerning Ms. Heinz's most recent report.

Background

On August 16, 2012, a fire allegedly destroyed the building and its contents located at 4833 W. Charleston Blvd. At the time of the subject fire, The Original Pancake House of Las Vegas, Inc., ("OPH") was operating a restaurant business pursuant to a lease dated June 30, 1999, at that location.¹ OPH is alleging through its expert, Mary Heinz, economic damages totaling \$1,424,012.

Documents Reviewed

Documents utilized and/or reviewed by me in the preparation of this report include the documents listed in my previous reports dated June 4, 2004, and July 16, 2014 and the following documents:

¹ See Bates OPH0124 – OPH0163.

- Report of Mary Heinz, CPA, July 21, 2014

Economic Damages

Economic damages are calculated without regard to liability under three categories. These categories include lost profits, the value of destroyed inventory and the value of tenant improvements and betterments. Damages are summarized in Table I and calculated on Exhibits A through C which accompany this report. Lost profits and the value of tenant improvements and betterments are calculated under two scenarios. Lost profits and tenant improvements and betterments under the first scenario utilize a 30-day lease period ending September 15, 2012. Lost profits and tenant improvements under the second scenario are based upon a 683 day damage period or through the duration of the most recent lease option date of June 30, 2014.

<i>Loss Category</i>	<i>Scenario I</i>	<i>Scenario II</i>
<i>Lost Profits</i>	\$ 740	\$ 13,716
<i>Inventory</i>	\$ 8,460	\$ 8,460
<i>Tenant Improvements & Betterments</i>	\$ 1,548	\$ 31,861
<i>Total Losses</i>	\$ 10,748	\$ 54,036

Inventory is valued at the amounts listed by OPH in its inventory listing. Restaurant equipment is valued here at its book value absent evidence from the plaintiff concerning actual cash value. Restaurant equipment and signage are excluded from the damage categories as actual cash value is to be paid only upon replacement.

Report of Ms. Heinz, July 21, 2014

In her report dated July 21, 2014, Ms. Hienz states, "Mr. Kirkendall calculated the loss payment on a proportionate basis of the original costs for tenant improvements and betterments based on when repairs are not made promptly as set forth in the insurance policy. However, the building was completely destroyed by a fire and the building was not owned by OPH. Therefore, the tenant improvement repairs could not be made and Oregon Mutual Insurance Company did not honor this policy."² To the extent it is determined that the insurance contract reference to repairs refers only to a non-destroyed property Ms. Heinz would be correct that repairs could not be made. However, to the extent repairs could entail re-construction of the subject property Ms. Heinz would be mistaken. I am not aware of anything precluding OPH from negotiating with the landlord to have the property rebuilt such that OPH operations could have continued

² See Ms. Heinz's report dated July 21, 2014, p. 1.

Priscilla L. O'Briant, Esq.
Michael S. Kelley, Esq.
November 29, 2014
Page 3 of 5

within a reasonable time period. Reference to OPH's non-ownership of the subject property is irrelevant as the category of damages is "tenant" improvements and betterments. A tenant is not a landlord and certainly, at least in this case, OPH was not its own landlord.

Ms. Heinz stated "Mr. Kirkendall discusses an email dated May 18, 2011 regarding the landlord's intent to terminate the lease if he found a replacement tenant. As of August, 2012, OPH was still leasing the space which indicates that fair value rent was being paid and no replacement tenant would be found."³ The email referenced by Ms. Heinz indicates that the lease was terminated by the landlord on or about the date of that email. OPH was occupying the subject property on a month-to-month basis and not pursuant to a long-term lease. The fact that rent was being paid by OPH as of August 2012 indicates only that rent was being paid as of August 2012. A conclusion that no tenant would be found, absent evidence, is speculative. Ms. Heinz has no reasonable basis upon which to conclude that OPH would have continued leasing the subject property through April 30, 2016. The very furthest one might reasonably calculate damages, and then only if the trier-of-fact determined that the lease had not been terminated as of May 18, 2011, would have been June 30, 2014, the date through which the most recent option to renew would have extended.

Speaking of lost profits Ms. Heinz made the following statement, "...Oregon Mutual Insurance Company paid on a claim for the loss of gross income for Saturday, August 11, 2012, totaling \$4,847.20. The claim was based on a letter dated September 10, 2012, provided from Ms. Linda Snyder, office manager, of OPH. The letter includes documentation verifying the daily revenue from July through August 10, 2012 to calculate a "5 week Saturday average" in which the claim was accepted and paid by Oregon Mutual Insurance Company. Ms. Linda Snyder provided to the insurance company the same documentation and methodology verifying the daily revenue from January, 2012, through August, 2012." Documentation relating to losses for a previous claim do not constitute calculations for the subject claim. The purpose of Ms. Heinz's reference to "documentation and methodology" is not clear as she reference no particular documents by Bates or other reference. To the extent Ms. Snyder performed any calculations, such documentation has not been provided to me as of this writing. Additionally, it is not clear whether Ms. Heinz is advocating for the calculation of damages based upon a gross revenues measure. Given her calculations of lost profits based upon net income plus officer compensation and management fees, such advocacy would be contrary to her own methodology.

Fees

My rates are as follows:

Analysis and Document Review	\$350 per hour
Secretarial	\$ 75 per hour

³ Ibid.

Priscilla L. O'Briant, Esq.
Z. Kathryn Branson, Esq.
November 29, 2014
Page 4 of 5

Testimony

\$450 per hour

The above opinions are based upon analyses performed to date. I reserve the right to update this report based on information and/or events which may occur or become known to me in connection with the above referenced litigation proceedings. Such documentation and/or events may impact my analysis and that impact may be material. Thank you for the opportunity to serve you in this matter. If you have any questions concerning this report of my opinions please call me.

Sincerely,

Kevin B. Kirkendall,
MBA, CPA-CGMA, CFE

Kevin B. Kirkendall, MBA, CPA, CFE
Kirkendall Consulting Group, L.L.C.

Appendix

Exhibit A	-	Tenant Improvements & Betterments
Exhibit B	-	Damage Summary
Exhibit C	-	Heinz Financial Projections

OPH v. Oregon Mutual Insurance Company, et al.

Lost Profits Analyses

Tenant Improvements & Betterments

Exhibit A

Note: This exhibit sets forth calculation of loss payments for tenants' improvements and betterments (tenant improvements) including leasehold improvements and furniture and fixtures based upon paragraph E 6. d. (5) of the Oregon Mutual Insurance Policy at Bates OPH0058POI. That paragraph indicates that the loss payment is to be calculated as the original cost multiplied by the number of days from the loss to the expiration of the lease which number is then divided by the number of days from the installation of improvements to the expiration of the lease. The following calculations are performed under two scenarios. On or before the loss date it appears that OPH had received notice of the Landlord's intent to terminate the lease for cause upon securing a replacement tenant for the subject building. OPH was informed that upon securing a new tenant they would receive 30 days notice to vacate the premises. Accordingly, the first scenario calculates the loss payment relating to leasehold improvements and furniture and fixtures based upon the assumption that the remaining term of the subject lease was 30 days. Paragraph E 6. d. (5) (b) states that "If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure." The initial lease between OPH and the initial landlord was dated September 3, 1999, with a term commencement date of September 1, 1999, and an expiration date of August 31, 2004. On or about the expiration date and pursuant to a renewal option, OPH renewed the lease for an additional 5 years. On June 30, 2009, the subject lease was amended such that a new five year lease period was to begin on July 1, 2009, to extend through June 30, 2014. Under scenario 2 the lease expiration date utilized in calculating the loss payment, given the policy language noted above, is June 30, 2014.

Date of Loss (1)	8/16/2012	
Leasehold Improvements Installation (2)	11/1/1995	
	Scenario 1	Scenario II
Lease expiration date (3)	15-Sep-12	30-Jun-14
Days from loss to lease expiration	30.00	683.00
Original Costs - Leasehold Improvements (4)	284,541	284,541
Original Costs - Furniture & Fixtures (4)	33,411	33,411
Total leasehold improvements, furniture and fixtures	317,952	317,952
Original Cost X Days From Loss to Lease Expiration	9,538,560	217,161,216
Days from installation to lease expiration	6,163	6,816
Loss Payment	\$ 1,548	\$ 31,861

Footnotes:

- (1) See Bates OPH1272
- (2) See Defendant's Opposition to Plaintiff's Motion for Summary Judgment in Southwestern Holdings, LLC v. Stephan Freudenberger and Kim Freudenberger, p. 3.
- (3) An email from Bobby Younessi to Stephan Freudenberger dated May 18, 2011, memorialized a conversation in which Mr. Freudenberger apparently agreed to vacate the premises upon 30 days written notice. The 30 lease expiration date is based upon an assumption that the landlord would have obtained a replacement tenant and given notice to OPH 90 days after the date of the subject fire.
- (4) See Bates OPH1272.

OPH v. Oregon Mutual Insurance Company, et al.
Lost Profits Analyses
Damage Summary
Exhibit B

	Scenario I	Scenario II
Lost Profits (1)	\$ 740	13,716
Inventory (2)	8,460	8,460
Leasehold Improvements (3)	1,548	31,861
Restaurant Equipment (4)	-	-
Signage (4)	-	-
Totals	\$ 10,748	\$ 54,036

Notes:

- (1) Scenario I lost profits are based upon a 30 day damage period extending from August 16, 2012 through September 15, 2012. From Ms. Heinz's projected OPH ordinary business income for the remainder of 2012 of \$3,380, daily income of \$24.67 is calculated. This figure multiplied by 30 days indicates lost profits of \$740. Scenario II lost profits are comprised of 2012 ordinary business income plus 8.5 months of 2013 ordinary business income.
- (2) Based upon OPH's inventory listing.
- (3) See Exhibit A.
- (4) Damages for restaurant equipment and signage are excluded from the calculations as cash value for these items is to be paid only upon replacement.

OPH v. Oregon Mutual Insurance Company, et al.
Lost Profits Analyses
Heinz Financial Projections
Exhibit C

Note: The following represents Ms. Heinz's projected revenues and expenses for OPH.

	2012	2013	% to	2014	% to	2015	% to	2016	% to
	Projected	Projected	Revenue	Projected	Revenue	Projected	Revenue	Projected	Revenue
Gross Receipts or Sales	391,140	1,352,077	100.00%	1,434,962	100.00%	1,531,568	100.00%	1,633,241	100.00%
Cost of Goods Sold	109,519	378,582	28.00%	403,189	28.00%	429,397	28.00%	457,307	28.00%
Gross Profits	281,621	973,495	72.00%	1,036,773	72.00%	1,104,163	72.00%	1,175,933	72.00%
Compensation of Officers	15,646	54,083	4.00%	57,598	4.00%	61,342	4.00%	65,330	4.00%
Salaries & Wages	93,874	324,498	24.00%	359,991	25.00%	383,390	25.00%	408,310	25.00%
Repair and Maintenance	7,823	27,042	2.00%	28,799	2.00%	30,671	2.00%	32,665	2.00%
Rent	24,000	80,853	6.14%	82,455	5.75%	84,928	5.54%	87,476	5.36%
Tax on License	19,557	67,604	5.00%	71,998	5.00%	76,678	5.00%	81,662	5.00%
Advertising	3,911	13,521	1.00%	14,400	1.00%	15,336	1.00%	16,332	1.00%
Other Deductions	46,937	243,374	18.00%	259,193	18.00%	276,041	18.00%	293,293	18.00%
Management Fees	66,494	148,728	11.00%	158,386	11.00%	168,692	11.00%	179,656	11.00%
Ordinary Business Income	3,380	14,592	1.00%	3,943	0.27%	7,055	0.46%	10,518	0.64%

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY



EXHIBIT E

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 09:01 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
**APPELLANT'S
APPENDIX VOL. 3 OF 4**

ALPHABETICAL INDEX TO APPELLANT'S APPENDIX – VOL. III

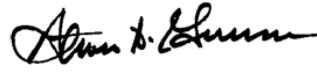
<u>DOCUMENT</u>	<u>DATE</u>	<u>VOLUME</u>	<u>BATES RANGE</u>
Civil Cover Sheet; Complaint	11/19/2012	I	APP00104- APP00122
Correspondence from OMI Re: Policies were no longer in force	8/20/2012	I	APP00001- APP00103
Court Minutes Motion for Attorney Fees and Costs	11/17/2015	III	APP00607
Court Minutes 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

LVEGAS 78140-1 282049v1



CLERK OF THE COURT

1 NOAS

MARGARET A. MCLEITCHIE, Nevada Bar No. 10931

2 MATTHEW J. RASHBROOK, Nevada Bar No. 12477

MCLEITCHIE SHELL LLC

3 701 East Bridger Ave., Suite 520

Las Vegas, NV 89101

4 (702) 728-5300

maggie@nvlitigation.com

5 *Attorneys for Plaintiff*

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

7
8 DISTRICT COURT

9 CLARK COUNTY NEVADA

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

Case No.: A-12-672158-C

11 Plaintiff,

12 vs.

Dept. No.: XXVI

13
14 Oregon Mutual Insurance Company, Dave
Sandin, and Sandin & Co.,

NOTICE OF APPEAL

15
16 Defendants.

17
18 PLEASE TAKE NOTICE that Plaintiff O.P.H. of Las Vegas ("OPH") hereby
19 appeals to the Supreme Court of Nevada from:

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

1 CERTIFICATE OF SERVICE

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

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

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

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

MCLECHIESHELL

ATTORNEYS AT LAW
701 EAST HENDERSON AVE., SUITE 320
LAS VEGAS, NV 89101
(702) 728-3300 (T) / (702) 425-8220 (F)
WWW.STUTTGARTION.COM

EXHIBIT 1


CLERK OF THE COURT

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

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA
9

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

11 Plaintiff,

12 vs.

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

15 Defendants.
16

CASE NO. A-12-672158-C

Dept. No. XXVH-26

ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

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

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

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

27 ///

28 ///


LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
CLARK COUNTY, NV

4812-7436-0016-1

APP00454

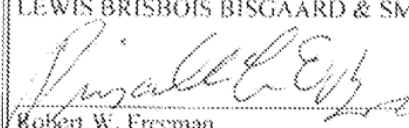
1 THEREFORE, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that
2 Plaintiff's Motion for Partial Summary Judgment is DENIED.

3 DATED this 7th day of February, 2014.

4
5 
DISTRICT COURT JUDGE


6 Respectfully Submitted By:

7 LEWIS BRISBOIS BISGAARD & SMITH, LLP

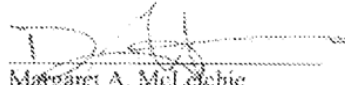
8 
9 Robert W. Freeman
10 Nevada Bar No. 3062
11 Priscilla L. O'Brian
12 Nevada Bar No. 10171
13 6385 S. Rainbow Boulevard, Suite 600
14 Las Vegas, Nevada 89118
15 *Attorneys for Oregon Mutual Insurance Company*

16 Approved as to Form and Content:

17 HUTCHISON & STEFFEN

18 
19 Patricia Lee
20 Nevada Bar No. 8287
21 Z. Kathryn Branson
22 Nevada Bar No. 11540
23 Peccole Professional Park
24 10080 West Alta Drive, Suite 200
25 Las Vegas, Nevada 89145
26 *Attorneys for Sardin Defendants*

LANGFORD MCLECHIE

27 
28 Margaret A. McLachie
Nevada Bar No. 10931
Daniel B. Heidtke
Nevada Bar No. 12975
616 South Eighth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

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

DATED this _____ day of _____, 2014.

DISTRICT COURT JUDGE

Respectfully Submitted By:

LEWIS BRISBOIS BISGAARD & SMITH, LLP

Robert W. Freeman
Nevada Bar No. 3062
Priscilla L. O'Briant
Nevada Bar No. 10171
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Oregon Mutual Insurance Company

Approved as to Form and Content:

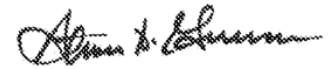
HUTCHISON & STEFFEN

LANGFORD MCLETCHE

Patricia Lee
Nevada Bar No. 8287
Z. Kathryn Branson
Nevada Bar No. 11540
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Attorneys for Sandlin Defendants

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

EXHIBIT 2



CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

12 Plaintiff,

13 vs.

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

16 Defendants.

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

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

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

21 DATED this 30th day of June, 2015.

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23 By 

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

1 CERTIFICATE OF SERVICE

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

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

plee@hutchlegal.com
KBranson@hutchlegal.com
ycampbell@hutchlegal.com
jdeangelis@hutchlegal.com

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

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

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

24
25 By: 

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

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

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

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

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

12 vs.

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

16 Defendants.

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

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

17
18 This matter came on for hearing on May 14, 2015 in Department XXVI of the Eighth
19 Judicial District Court of the State of Nevada, before the Honorable Gloria Sturman, on Oregon
20 Mutual Insurance Company's Motion for Summary Judgment ("OMI's Motion"). The Court,
21 having read the parties' moving papers and the authority relied upon therein, and having engaged
22 with counsel in oral argument, hereby enters the following undisputed material facts and legal
23 determinations on which the order is based, pursuant to NRCP 56(c).

24 UNDISPUTED MATERIAL FACTS

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

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Plaintiff's Motion
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Defendant's Motion
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of the Court

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

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

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

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

9 SECTION III - COMMON POLICY CONDITIONS

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

A. Cancellation

12 *****

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

* * * * *

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

* * * * *

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

53 *****

NEVADA CHANGES

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

19 *****

20 3. The following are added to Paragraph A.

Cancellation:

7. Midterm Cancellation

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

74 (a) Nonpayment of premium;

N. Notices

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

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

1 (b) The effective date of nonrenewal.
 2 * * *
 3 2. We will also provide a copy of the notice of cancellation, for both policies in effect less
 4 than 70 days and policies in effect 70 days or more, to the agent who wrote the policy.
 5 6. On July 9, 2012, OMI generated a billing statement to OPH which was received by
 6 OPH in July which stated that the minimum amount due was \$2,814.75 and the due date was July
 7 26, 2012.
 8 7. OMI did not receive payment by July 26, 2012.
 9 8. On the night of July 31, 2012, OMI produced a "Notice of Cancellation" (the
 10 "notice") dated July 31, 2012 which stated:
 11 Minimum Due 2,822.00
 12 We did not receive the required premium payment on your account by the date it was due.
 13 We appreciate your business and hope we can continue to serve your insurance needs. If we receive
 14 at least the minimum due on this account by 08/15/12, we will continue your coverage without
 15 interruption. If we do not receive the minimum due by 08/15/12, each policy listed below will be
 16 cancelled effective the time and date shown opposite that policy number.
 17
 18

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

 19 If you have any questions, please contact your agent SANDIN INSURANCE GROUP immediately
 20 at (503) 381-5570.
 21 9. OMI mailed the notice via first class mail to OPH at 4170 South Fort Apache Road,
 22 Las Vegas, Nevada, the corporate office of OPH.
 23 10. The notice was mailed on August 1, 2013 more than 10 days before the effective
 24 date of August 16, 2012.
 25 11. On July 31, 2012, OMI uploaded a copy of the provisional notice of cancellation to
 26 Sandin's BizLink portal
 27 12. The Agency Agreement between OMI and Sandin provides that "[a] copy of all ...
 28 cancellations or renewal notices ... will be mailed or electronically transmitted to the agent."
 13. OMI did not receive payment of the outstanding premium by August 15, 2012.

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

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

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

7 **LEGAL DETERMINATIONS**

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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


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

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

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


15 IT IS SO ORDERED.

16 DATED this 26th day of June, 2015

17
18 
19 THE HONORABLE GLORIA STURMAN

20 Submitted by:

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22 
23 ROBERT W. FREEMAN

Nevada Bar No. 003062

24 PRISCILLA L. O'BRIANT


Nevada Bar No. 010171

6385 S. Rainbow Boulevard, Suite 600

26 Las Vegas, Nevada 89118

27 Attorneys for OMI

EXHIBIT 3



CLERK OF THE COURT

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

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

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

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

16 **Plaintiff,**

17 **v.**

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

21 **Defendants.**

Case No.: A-12-672158-C

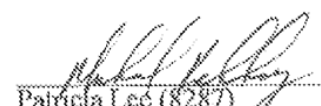
Dept. No.: XXVI

NOTICE OF ENTRY OF ORDER

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

25 DATED this 1st day of July, 2015.

HUTCHISON & STEFFEN, LLC

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

Attorneys for defendants David Sandin and
Sandin & Co.

CERTIFICATE OF SERVICE

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

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

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

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

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

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

*Attorneys for Oregon Mutual Insurance
 Company*


 An employee of Hutchison & Steffen, LLC

ORIGINAL

Alma T. Johnson

CLERK OF THE COURT

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

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

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

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

17 v.

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

Case No.: A-12-672158-C

Dept. No.: XXVI

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

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

///

///

///

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Settlement Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Defendant	<input type="checkbox"/> Judgment of Arbitration

1 **Undisputed Material Facts**

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

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

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

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

16 5. Though they are based in Oregon, the Sandin defendants have been licensed to
17 sell insurance in Nevada. Dave Sandin first became licensed to sell insurance in Nevada in
18 2005. Dave Sandin, Anthony Sandin (a non-party), and Sandin & Co. were all licensed in
19 Nevada when Sandin & Co. took over OPH's account from Dave Sandin's former employer in
20 2010. Dave Sandin, Anthony Sandin and Sandin & Co. have worked on Plaintiff's account
21 since 2010. Sandin & Co.'s and Anthony Sandin's respective Nevada licenses 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 *Wilstie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989). However, Dave
5 Sandin's *one-time* notification to OPH of a pending cancellation does not create a legal duty on
6 the Sandin defendants to continually notify OPH of missed payments and pending cancellations
7 in the future.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

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

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

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

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

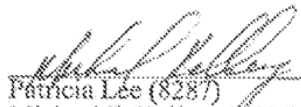
12 IT IS SO ORDERED.

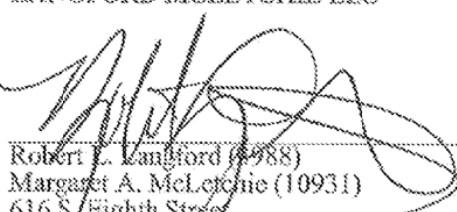
13 DATED this 26 day of June, 2015.

14
15 
16 THE HONORABLE GLORIA STURMAN

17
18 Submitted by:
19 HUTCHISON & STEFFEN, LLC

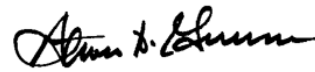
Reviewed by:
20 LANGFORD MCLETCHIE LLC

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

28
29 
30 Robert L. Langford (4988)
31 Margaret A. McLetchie (10931)
32 616 S. Eighth Street
33 Las Vegas, NV 89101

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

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



CLERK OF THE COURT

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

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

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

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

Case No.: A-12-672158-C

Dept. No.: XXVI

18 v.

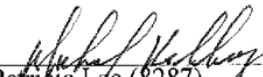
**NOTICE OF ENTRY OF
JUDGMENT**

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

24 PLEASE TAKE NOTICE that Judgment was entered in the above-captioned matter on
25 August 13, 2015, a copy of which is attached hereto.

26 DATED this 13th day of August, 2015.

HUTCHISON & STEFFEN, LLC

27 
28 Patricia Lee (8287)
Michael S. Kelley (10101)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
plee@hutchlegal.com
mkelley@hutchlegal.com

Attorneys for defendants
Dave Sandin and Sandin & Co.

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, LLC. and that on this 13 day of August, 2015, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF JUDGMENT** 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 pursuant to the parties' consents to electronic service; and/or
- ☒ pursuant to NEFCR 9, 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;

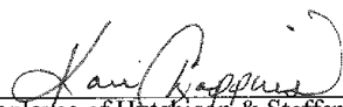
to the attorneys listed below at the address and emails indicated below:

Margaret A. McLetchie, Esq.
Matthew J. Rashbrook, Esq.
MCCLETCHE SHELL, LLC
701 East Bridger Ave., Ste. 520
Las Vegas, NV 89101

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

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

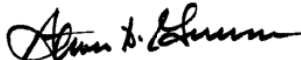
*Attorneys for Oregon Mutual Insurance
Company*


An employee of Hutchison & Steffen, LLC

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

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

Electronically Filed
08/13/2015 09:09:11 AM


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

JUDGMENT

Defendants Dave Sandin and Sandin & Co.'s motion for summary judgment came on for hearing before this Court on May 14, 2015. The *Order Granting Defendants Dave Sandin and Sandin & Co.'s Motion for Summary Judgment* was entered on July 1, 2015.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of Dave Sandin and Sandin & Co. and against O.P.H. of Las Vegas, Inc. on all claims asserted against Dave Sandin and Sandin & Co.

DATED this 10 day of August, 2015.


THE HONORABLE GLORIA STURMAN

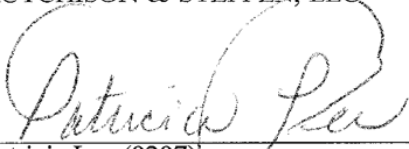
<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/>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

HUTCHISON & STEFFEN

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

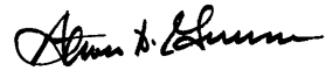
Submitted by:

HUTCHISON & STEFFEN, LLC



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

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



CLERK OF THE COURT

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

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

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

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

16 Plaintiff,

17 v.

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

21 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

DAVE SANDIN AND SANDIN &
CO.'S MOTION FOR ATTORNEY'S
FEE'S AND COSTS

22 Defendants Dave Sandin and Sandin & Co. (the "Sandin defendants") move the Court
23 for fees and costs against plaintiff O.P.H. of Las Vegas, Inc., ("OPH" or "Plaintiff"). The
24 Court recently granted the Sandin defendants' motion for summary judgment and judgment
25 was entered in their favor.

26 This motion is based on Rule 68 of the Nevada Rules of Civil Procedure, NRS 17.115,
27 18.005 et seq., the pleadings on file in this matter, the following points and authorities, the
28 Declaration of Patricia Lee (attached as Exhibit A), the exhibits attached hereto, and any oral

///

///

///