

**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

District Court No. A-12-872138  
Electronically Filed  
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

<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOLUME</u></b>	<b><u>BATES RANGE</u></b>
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Correspondence from OMI Re: Policies were no longer in force	8/20/2012	I	APP00001- APP00103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

**RIS**

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

Electronically Filed  
11/10/2015 02:54:44 PM

  
CLERK OF THE COURT

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

**REPLY IN SUPPORT OF DAVE  
SANDIN AND SANDIN & CO.'S  
MOTION FOR ATTORNEY'S FEES  
AND COSTS**

Defendants Dave Sandin and Sandin & Co. (the "Sandin defendants") submit this reply in support of their motion for fees and costs against plaintiff O.P.H. of Las Vegas, Inc., ("OPH" or "Plaintiff").

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

OPH's claims were not brought in good faith. OPH asserted claims against the Sandin Defendants based on the fact that Dave Sandin's Nevada licenses had expired. The licensing status of a non-resident agent is purely an administrative matter. *See* NRS 683A.201(1) & (3). NRS 683A.201 does not provide for a private right of action. Rather, it provides for an administrative fine. Further, NRS 686A.015(1) provides that "[n]otwithstanding any other provision of law, the Commissioner has exclusive jurisdiction in regulating the subject of trade practices in the business of insurance in this state."

Whether or not Dave Sandin was licensed in Nevada was not the proximate cause of Oregon Mutual's cancellation of Plaintiff's Policy and subsequent refusal to cover Plaintiff's claim of loss; rather, it was solely and exclusively Plaintiff's failure to pay its premium that caused its loss as set forth in the complaint. For every cause of action Plaintiff pleaded, there must be a nexus between the alleged bad act (Dave Sandin's lack of an appropriate non-resident license) and the damages alleged. *See Nelson v. Heer*, 123 Nev. 217, 225-26, 163 P.3d 420, 426 (2007) ("Proximate cause limits liability to foreseeable consequences that are reasonably connected to both the defendant's misrepresentation or omission and the harm that the misrepresentation or omission created."); *see also Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227 P.3d 1042, 1052 (2010) ("[B]oth intentional and negligent misrepresentation require a showing that the claimed damages were caused by the alleged misrepresentations."); *Yamaha Motor Co., USA v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) ("This court has long recognized that to establish proximate causation 'it must appear that the injury was the natural and probable consequence of the negligence or wrongful act, and that it ought to have been foreseen in the light of the attending circumstances.'") (internal citations omitted).

Here, this nexus was lacking as Dave Sandin's license status did not cause or contribute to Plaintiff's alleged damages, nor did any alleged misrepresentations concerning his licensing status result in Plaintiff's failure to pay its premium, Oregon Mutual's subsequent cancellation of Plaintiff's policy, and Oregon Mutual's denial of Plaintiff's claim of loss based on the cancellation. *See Equity Diamond Brokers, Inc. v. Transnational Insurance Co.*, 785 N.E.2d 816, 822 (Ohio Ct. App. 2003) ("[A]ny alleged negligence by appellees in failing to obtain the proper licenses was not the proximate cause of EDB's loss and the trial court did not err in granting summary judgment in favor of appellees.").

Plaintiff's damages would have occurred regardless of whether Dave Sandin had an appropriate insurance broker license. Oregon Mutual's denial of Plaintiff's claim was based solely on Plaintiff's failure to pay its premium. This was evident when Plaintiff filed its complaint. No discovery was needed on this issue.

1           Additionally, the Sandin defendants did not have a legal duty to notify OPH that it was  
2 late making its monthly insurance premium. The Sandin defendants had no idea of the pending  
3 cancellation and could not inform OPH to pay its premium. OPH did not dispute that the  
4 Sandin defendants did not have knowledge of the pending cancellation. Indeed, Plaintiff's  
5 complaint alleges that "Defendant OREGON MUTUAL did not send a cancellation notice to  
6 Defendant DAVE SANDIN" and "Defendant DAVE SANDIN did not receive a cancellation  
7 notice." Plaintiff's Complaint, ¶¶ 27 & 28. Whether or not the Sandin defendants had a legal  
8 obligation to notify OPH of the pending cancellation, the Sandin defendants could not have  
9 informed OPH of the pending cancellation. *See* Order Granting Defendants Dave Sandin and  
10 Sandin & Co.'s Motion for Summary Judgment, ¶ 10 (Conclusions of Law), on file. This was  
11 evident when Plaintiff filed its complaint. On the other hand, O.P.H. was aware as of August  
12 13, 2012 (prior to the cancellation) that it had not yet paid its July premium. O.P.H. even cut a  
13 check on August 13, 2012 for the premium. *Id.*, ¶ 13 (Undisputed Material Facts).

14           Further, OPH never cited any authority (statutory, administrative, or case law) from  
15 Nevada or any other jurisdiction to support their invented theory that the Sandin defendants had  
16 a legal duty to notify OPH that it was late making its monthly insurance premium. *See*  
17 Opposition to Dave Sandin and Sandin & Co.'s Motion for Summary Judgment, filed on April  
18 9, 2015. OPH's claims were not based on the law or any legal principle.

19       **2. The Sandin defendants' offer of judgment was reasonable and in good**  
20 **faith in both its timing and amount and OPH's decision to reject the**  
21 **offer and proceed to discovery and towards trial was grossly**  
22 **unreasonable.**

23           The second and third factors concern the reasonableness of the offer in its timing and  
24 amount and the reasonableness of rejecting the offer. As stated in the motion, at the time of the  
25 offer of judgment, the case was part of the mandatory arbitration program.<sup>1</sup> In the mandatory  
26 arbitration program, damages are limited to \$50,000. Nevada Arbitration Rules 16(B) ("The

---

27           <sup>1</sup> Six months after the offer of judgment, OPH filed a Request for Exemption from  
28 Arbitration. *See* Exhibit C. The Commissioner granted the request on September 17, 2013.  
*See* Commissioner's Decision on Request for Exemption - Granted, on file.



1 maximum award that can be rendered by the arbitrator is \$50,000 per plaintiff, exclusive of  
2 attorney's fees, interest and costs."). Given the \$50,000 cap on damages, the \$2,000 offer of  
3 judgment was reasonable.

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

8 In its opposition, Plaintiff argues that "[t]he Sandin Defendants had not answered the  
9 Complaint at the time that the offer was presented. As such, O.P.H. was not given notice of the  
10 Sandin Defendants' contentions, affirmative defenses, or access to any allegedly exculpatory  
11 discovery." Opposition, at 4:24-27. A similar argument was rejected by the Nevada Supreme  
12 Court. In *LaForge v. State, Univ. & Cmty. Coll. Sys. of Nevada*, 116 Nev. 415, 422-24, 997  
13 P.2d 130, 135-36 (2000), the appellant argued that the district court abused its discretion in  
14 awarding attorney's fees to respondents, because respondents' offer of judgment was not  
15 reasonable in its timing and appellant's rejection of the offer was not unreasonable or in bad  
16 faith. Specifically, the appellant argued "that respondents' failure to raise, or give notice of  
17 their intent to raise, the issue preclusion defense earlier unfairly deprived him of valuable  
18 information which could have impacted his decision of whether to accept respondents' offer."  
19 *Id.* In rejecting the arguments by the appellant, the Nevada Supreme Court stated, "[w]here the  
20 district court properly considers these *Beattie* factors, the award of attorney's fees is  
21 discretionary." *Id.* (emphasis added). The Court further stated,

22 we conclude that the district court did not abuse its discretion in applying the  
23 *Beattie* factors and awarding attorney's fees to respondents. Respondents'  
24 failure to bring the issue preclusion defense earlier did not constitute a  
25 withholding of information that rendered appellant's rejection of the offer of  
26 judgment reasonable, because respondents did not actually withhold any  
27 information about the federal case from appellant. Appellant had just as much  
28 information about the federal dismissal as did respondents. Appellant's failure  
to anticipate respondents' defense does not amount to a withholding of  
information . . . .

27 *Id.*

28 Similarly, the Court should use its discretion and find that the Sandin defendants' offer

1 of judgment was reasonable and in good faith in both its timing and amount and OPH's  
2 decision to reject the offer and proceed to discovery and towards trial was grossly  
3 unreasonable.

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

6 Other than arguing that there was general over billing, Plaintiff does not provide any  
7 examples of over billing. The fees sought by the Sandin defendants are reasonable and  
8 justified in amount for several reasons. First, the hourly rates of the Sandin defendants'  
9 counsel are more than reasonable. The primary attorneys on the case billed their time at deeply  
10 discounted rates. Patricia Lee billed her time at a discounted rate of \$160 per hour and the  
11 associates (Michael Kelley and Katy Branson) billed their time at a discounted rate of \$140.  
12 The discounted rates are far below the market rate for the Las Vegas area. Indeed, their  
13 standard billing rates are \$360 and \$295, respectively. The hourly rate for the Sandin  
14 defendants' counsel is more than reasonable based on the experience of counsel, the quality of  
15 representation, and results achieved in this case.

16 Second, the fees and costs are reasonable given the circumstances of the case.

17 Plaintiff's opposition fails to address the circumstances of this case that led to the high fees.

18 As stated in the motion, OPH's commenced this litigation on November 11, 2012. Discovery  
19 did not close until March 6, 2015, almost two-and-a-half years after the case commenced. The  
20 motions for summary judgment were not filed until March 17, 2015. The delay in the case was  
21 almost entirely attributable to OPH. First, the case was assigned to the mandatory arbitration  
22 program because OPH did not file a request for exemption. On August 28, 2013, OPH finally  
23 filed a Request for Exemption from Arbitration. See Exhibit C. The Commissioner granted  
24 the request on September 17, 2013. See Commissioner's Decision on Request for Exemption -  
25 Granted, on file.

26 Additionally, OPH initially failed to designate an expert to support its claims for bad  
27 faith and statutory violations. OMI later improperly designated Neal Bordenave as a rebuttal  
28 witness even though he supported OPH's case in chief. The Sandin defendants and OMI

1 moved to strike Mr. Bordenave's report. Although agreeing that the report was not a proper  
2 rebuttal report, Commissioner Bulla denied the motion. Commissioner Bulla allowed OPH to  
3 treat Mr. Bordenave as an initial expert and defendant would be provided with a new initial  
4 expert deadline. *See* Minutes of August 29, 2014 hearing, Exhibit F.

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

13 In addition to those procedural hurdles, there have been sixteen (16) depositions taken  
14 by the parties, which includes expert depositions. Of the sixteen depositions, eleven (11) were  
15 taken outside of the Las Vegas Valley, with many occurring in Oregon and Northern  
16 California. Thus, counsel was required to travel to the various sites for the depositions.

17 The fees sought by the Sandin defendants are reasonable and justified in amount by the  
18 length of the litigation and also the complexity and travel required. The total of \$140,857.00 in  
19 fees and \$20,948.63 in costs is reasonable for litigation that spanned over two-and-a-half years.

20 **4. The Sandin defendants are entitled to their costs for their expert**  
21 **witnesses.**

22 Other than expert witness costs, Plaintiff does not dispute the Sandin defendants' costs.  
23 Therefore, the Court should grant the Sandin defendants' costs that are not in dispute.  
24 Additionally, the Sandin Defendants recognize that NRS 18.005(5) allows costs for  
25 "[r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500  
26 for each witness, unless the court allows a larger fee after determining that the circumstances  
27 surrounding the expert's testimony were of such necessity as to require the larger fee."  
28 Plaintiff, however, argues in its opposition that "it does not appear that [Paul Burkett's]

1 services were necessary in this instant matter.” Opposition at 6:20-21. This is incorrect.

2 As stated above, this case presented an unique issue to the Sandin defendants: whether  
3 the Sandin defendants could be held liable as insurance agents for a missed premium by the  
4 insured under a theory of breach of fiduciary duty and/or negligence. This issue required the  
5 Sandin defendants to retain Mr. Burkett as an expert witness specifically to address this issue.  
6 Plaintiff argues that Mr. Burkett “was not subject to deposition or required to give testimony.”  
7 Opposition at 6:21-22. Again, this is incorrect. Mr. Langford, Ms. McLetchie’s former  
8 partner, deposed Mr. Burkett in Reno, Nevada on February 25, 2015. *See* Exhibit G.<sup>2</sup>

9 Plaintiff further argues incorrectly that Mr. Burkett’s “potential testimony and findings  
10 are not present anywhere in the Sandin Defendants’ Motion for Summary Judgment.”  
11 Opposition at 6:23-24. In their reply brief in support of the motion for summary judgment, the  
12 Sandin Defendants included a declaration from Mr. Burkett and also Mr. Burkett’s initial  
13 expert report. *See* Exhibits BB and CC to the Reply in Support of Motion for Summary  
14 Judgment.

15 The Sandin Defendants should be awarded their costs, including the costs associated  
16 with their expert witnesses.

17 ///

18 ///

19 ///

20 ///

21 ///

---

22  
23  
24  
25  
26  
27 <sup>2</sup> For brevity, only the first two pages of the condensed transcript are attached as Exhibit  
28 G.

1 **5. Conclusion.**

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

4 DATED this 10<sup>th</sup> day of November, 2015.

6 HUTCHISON & STEFFEN, LLC

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

15 *Attorneys for defendants*  
16 *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 10<sup>th</sup> day of November, 2015, I caused the above and foregoing document entitled **REPLY IN SUPPORT OF DAVE SANDIN AND SANDIN & CO.'S MOTION FOR ATTORNEY'S FEES AND COSTS** 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;

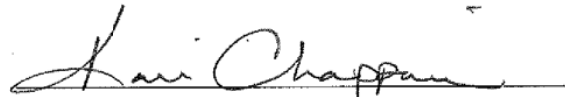
to the attorneys listed below at the address and emails indicated below:

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

**HUTCHISON & STEFFEN**  

---

A PROFESSIONAL LLC

**EXHIBIT G**

APP00604

DISTRICT COURT  
CLARK COUNTY NEVADA

oOo

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

Plaintiff,

vs.

CASE NO. A-12-672158-C

DEPT NO. XXVI

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

Defendants.

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

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

Page 1

Veritext Legal Solutions  
877-955-3855

APP00605



1 oOo  
2 APPEARANCES  
3 FOR THE PLAINTIFFS:  
4 LANGFORD MCLETHIE LLC  
5 Attorneys at Law  
6 616 S. Eighth Street  
7 Las Vegas, Nevada 89101  
8 By: Robert L. Langford, Esq.  
9  
10 FOR THE DEFENDANTS:  
11 HUTCHISON & STEFFEN, LLC  
12 Attorneys at Law  
13 Peccole Professional Park  
14 10080 West Alta Drive, Suite 200  
15 Las Vegas, Nevada 89145  
16 By: Patricia Loo, Esq.  
17  
18 FOR THE DEFENDANTS:  
19 (Via Video and Telephonically)  
20 LEWIS, BRISBOIS, BISGAARD & SMITH  
21 Attorneys at Law  
22 6385 S. Rainbow Boulevard, Suite 600 Suite 600  
23 Las Vegas Nevada 89118  
24 By: Priscilla L. O'Brian, Esq.  
25  
26 ALSO PRESENT:  
27  
28 oOo

Page 2

1	I N D E X	
2	EXAMINATION	PAGE
3	BY MR. LANGFORD:	4
4		
5	EXHIBITS	
6	NUMBER DESCRIPTION	PAGE
7	(None Marked)	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 3

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

Page 4

1 A Mailing address is 18124 Wedge Parkway,  
2 Suite 509, Reno, Nevada. We have an office at 12 -- I  
3 always have to look it up. 10775 Double R Boulevard,  
4 Reno, Nevada. That's where our offices are.  
5 Q In looking at your resume it appears you have  
6 been deposed before?  
7 A Yes, I have.  
8 Q Once or twice?  
9 A More than twice.  
10 Q How many times would you say you have been  
11 deposed?  
12 A I think at this point in time in excess of six  
13 times.  
14 Q Okay. And what kind of cases were those?  
15 A Varied from agents' standard of care for broker,  
16 to the uninsured motorist on a plaintiff's side, to a  
17 standard of care for a claims adjustor and how -- what  
18 they had to do under the Fair Claims Practice Act here in  
19 Nevada. And in a coverage issue about the interpretation  
20 of how a coverage should apply or should not apply,  
21 primarily for a builder's risk type policy.  
22 Q Now, in all of these depositions were you called  
23 as an expert witness?  
24 A Yes, I was.  
25 Q Fair to say that you are familiar with the rules

Page 5

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Breach of Contract**

**COURT MINUTES**

**November 17, 2015**

---

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

---

**November 17, 2015     9:00 AM             Motion for Attorney Fees  
and Costs**

**HEARD BY:** Sturman, Gloria

**COURTROOM:** RJC Courtroom 03H

**COURT CLERK:** Linda Denman

**RECORDER:** Kerry Esparza

<b>PARTIES</b>	Lee, Patricia	Attorney for
<b>PRESENT:</b>	Weaver, Melinda	Attorney

**JOURNAL ENTRIES**

**- DAVE SANDIN AND SANIN & CO'S MOTION FOR ATTORNEY FEES AND COSTS**

As to costs, Plaintiff disputed the amount requested for experts noting that the amount is statutorily capped at \$1500. Counsel argued the necessity of hiring an expert based on plaintiff's enquiries into custom and practice. COURT ORDERED costs GRANTED IN PART; FINDING the costs were verified by supporting documentation and found reasonable, customary, and necessarily incurred but only allowed the expert the statutorily mandated \$1500. As to fees, Plaintiff argued that during arbitration, attorney fees were capped at \$3000; however, when the plaintiff requested an exemption from arbitration, the fees were raised to \$35,000 for that time period. COURT ORDERED Motion for Attorney Fees CONTINUED PENDING A DECISION FROM CHAMBERS after reviewing the law.

CONTINUED TO 12/14/2015 AT 3:00AM (CHAMBERS CALENDAR)

1 RTRAN  
2  
3  
4

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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

8 Plaintiff,

9 vs.

10 Oregon Mutual Insurance Company

11 Defendant.  
12

CASE#: A-12-672158-C

DEPT. XXVI

13 BEFORE THE HONORABLE GLORIA J. STURMAN  
14 DISTRICT COURT JUDGE  
15 TUESDAY, NOVEMBER 17, 2015

16 **RECORDER'S TRANSCRIPT OF HEARING**  
17 **MOTION FOR ATTORNEY FEES AND COSTS**

18 APPEARANCES:

19 For the Plaintiff: MELINDA WEAVER, ESQ.

20 For Sandin Defendants: PATRICIA LEE, ESQ.

21  
22  
23  
24 RECORDED BY: KERRY ESPARZA, COURT RECORDER

25 INDEX

1		<u>Page</u>
2	Argument by Ms. Lee .....	3
3	Argument by Ms. Weaver .....	6
4	Further Argument by Ms. Lee.....	8
5	Court's Ruling.....	11
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 Las Vegas, Nevada; Tuesday, November 17, 2015

2

3 [Case called at 9:13 a.m.]

4 MS. WEAVER: Good morning, Your Honor. Melinda Weaver on  
5 behalf of O.P.H.

6 THE COURT: Okay.

7 MS. LEE: Good morning, Your Honor. Patricia Lee, Bar  
8 Number 8287, on behalf of the Sandin Defendants.

9 THE COURT: Okay. All right. And nobody present from -- on  
10 behalf of Oregon Mutual?

11 MS. LEE: I don't anticipate them --

12 THE COURT: They're -- the parties to this, they didn't -- okay.  
13 All right. Good enough. All right. Thanks.

14 All right. Counsel, if you want to begin.

15 MS. LEE: Sure. Your Honor, this is our motion for attorney's  
16 fees and costs under N.R.S. 68, offer of judgment Rule. After having  
17 reviewed the opposition that -- the court issues that counsel seems to take  
18 with the motion itself is that they argue that they did bring their claims against  
19 the Sandin Defendants in good faith, and that the offer was unreasonable in  
20 both timing and amount.

21 As far as the good faith element, Your Honor, you know, there  
22 was no case law to support liability for these brokers. Now, understanding  
23 that Your Honor did deny a motion to dismiss, understandably, we don't have  
24 an eight ball fan -- standard here in state court, and Your Honor fairly allowed  
25 the case to proceed on merits, but did admonish counsel that there was an

1 uphill battle to be fought. There was no statutory support for liability either  
2 because a broker's only duty to the insured is articulated in case law, and  
3 states clearly that they have a duty to procure the insurance requested or  
4 timely notify the insurer that they were unable to do so. None -- neither of  
5 those two duties were breached or alleged to have been breached. Instead,  
6 what they did is they took this inconsistent position in their pleadings where  
7 they said OMI failed to give notice to the brokers, and the brokers therefore  
8 did not know that the policy was in jeopardy of cancellation. Nonetheless, the  
9 brokers had a duty to notify them that their policy was in jeopardy and was  
10 facing cancellation.

11           This was not a good faith claim, Your Honor. They knew prior to  
12 the cancellation, it turns out that discovery showed, that the policy was in  
13 jeopardy of cancellation, and actually wrote a check to try to cover the  
14 balance so the policy would not cancel. Their controller or accountant actually  
15 testified during her deposition that somehow the check never got mailed out  
16 before the cancellation date, which then resulted in the policy termination.  
17 The only reason why that policy was terminated was because they did not pay  
18 their premium. It had nothing to do with Dave Sandin not being a licensed  
19 broker in Nevada. He had allowed his license to lapse temporarily. They tried  
20 to hang their hat on that; only to abandon that claim during the summary  
21 judgment stage, therefore admitting that it had no legs and no merit.

22           As far as the timing and amount, Your Honor, at the beginning of  
23 this case, Your Honor will recall that this was in mandatory court, Annexed  
24 Arbitration, where the amount in controversy is capped at \$550,000. We had  
25 discussions with Ms. McLetchie and Robert Langford in the beginning asking

1 if they were, in fact, going to exempt this case from arbitration. At which point,  
2 they declined to do so until they did offers of judgment in excess of \$500,000.  
3 And when we brought up again the cap in arbitration, I think they realized their  
4 issue, and then moved to have the case remanded and carried over -- bound  
5 over to the district court, which was permitted.

6 But these type of things, as well as not disclosing their expert on  
7 time, caused a lot of delays. We were doing discovery in this case for two-  
8 and-a-half years. Sixteen depositions were taken; twelve were out of state.  
9 There were multiple -- as well as multiple experts were retained. So we had  
10 to go through all of this -- all of this motion practice and discovery based on a  
11 really bad faith claim and based on the strength of the case, which was  
12 summarily disposed of during the summary judgment stage. Based on the  
13 maximum amount of recovery at the time, the amount offered was reasonable  
14 in both its amount and in the timing.

15 As for costs, Your Honor, they don't dispute any of the costs  
16 except for the expert witness fees. We understand that statutorily it is capped  
17 at \$1,500 per expert, however we would ask that we get all of our expert fees  
18 because we were forced to disclose an expert on broker liability based on  
19 their claims that they brought. They didn't even disclose an expert for broker  
20 liability. Again realizing their error, tried to do so in rebuttal, which is improper  
21 under the rules. If that issue is raised, they needed to have disclosed an  
22 expert preliminarily, which they failed to do. So then we had to kind of do the  
23 staggered disclosure, because the discovery commissioner didn't want to  
24 prejudice their defense, understandably, but again, our client bore the cost of  
25 that.

1           So as far as the amount of fees that we're seeking, Your Honor --  
2 we charged rock-bottom rates on this case. My normal hourly rate is 360 to  
3 420. We charged 160 an hour for my time in this case. I'm a partner at a law  
4 firm. The associates that worked on this case billed their time at \$140 an  
5 hour, which is a paralegal's rate by anyone's standards. And we competently  
6 handled the case, and we ended up winning on summary judgment. So when  
7 looking at the *Beattie* factors and the *Brunzell* factors, this Court has wide  
8 discretion to grant us our attorney's fees. We don't think that they're  
9 unreasonable in amount, and we'd ask that they be granted under Rule 68.

10           THE COURT: Thank you.

11           Counsel?

12           MS. WEAVER: Okay. Thank you, Your Honor. I'd like to start  
13 first with the expert amount. Again, experts are statutorily capped at 1,500.

14           THE COURT: Um-hum.

15           MS. WEAVER: Counsel's simultaneously arguing that this --  
16 shouldn't have survived a motion to dismiss, that the liability was apparent  
17 from the statute, but at the same time states that they needed an expert in  
18 broker liability.

19           As far as the merits of this claim, at the time that this claim was  
20 filed, a lot of the facts hadn't been flushed out in, for instance, whether or not  
21 there was an actual notice to O.P.H. that they were delinquent, whether or not  
22 there had been a check cut by the controller, also whether it was custom and  
23 practice for the broker at the time to notify his client that his insurance was  
24 about to be terminated, and whether custom and practice could actually  
25 establish a fiduciary duty to O.P.H.



1 In regard to the amount of the fees, for a majority of this case, it  
2 was in arbitration. We went through the -- those details just now.

3 THE COURT: What was the -- what were the -- what was the  
4 time frame when the case was in arbitration?

5 MS. WEAVER: Let me get those exact dates for you.  
6 August 18th, 2013, it was removed from arbitration. And the complaint was  
7 filed on November 19, 2012.

8 THE COURT: Um-hum.

9 MS. WEAVER: So it was approximately 10 months, if I'm doing  
10 my math correctly.

11 And during that time, when it was in arbitration, approximately  
12 \$35,000 was billed by the Defendants even though the statutory cap on  
13 attorney's fees in arbitration is \$3,000. Although it's not necessarily  
14 preclusive, it is -- it does tend to show that the billing on that case was  
15 unreasonable during the arbitration stage.

16 In addition, we -- we're not contesting that Ms. Lee or Mr. Kelley  
17 or Mr. Branson, or any of the people that billed on this case, were not  
18 qualified, however \$128,000 for something that ended at a summary judgment  
19 phase seems excessive in this case.

20 And on that, we'll submit.

21 THE COURT: Thank you. All right.

22 MS. LEE: If I may, Your Honor, as far as the argument that they  
23 had not fully vetted out the case at the time that we made the offer of  
24 judgment, that same argument was rejected by the Nevada Supreme Court in  
25 *LaForge v. State* matter. That is at 116 Nev. 415. And the Supreme Court

1 upheld the court's ruling granting the moving party's attorney's fees despite  
2 the argument that the case facts had not been fully flushed out. They did --  
3 you know, the case law had not been fully flushed out. That was rejected  
4 because they were in not only the same position we were in terms of figuring  
5 out what happened, they were in a superior position.

6 In this case, they had access to their controller. They should  
7 have done their due diligence to find out the strength of this case. And there  
8 was no case law to support a duty being created by custom and practice  
9 because they cited to none of that. If you look back at the opposition to our  
10 motion for a summary judgment, there was not a single case that they cited  
11 that would support the proposition that custom and practice somehow gives  
12 rise to a duty.

13 As we know from statutory construction, if it's not in the statute,  
14 then the legislators didn't intend that it apply. The statute does require the  
15 insurer, OMI, to notify them of any cancellations. And they intentionally did  
16 not impose that same duty on the broker. So to sit -- to say now, well, we  
17 were going to kind of vet out this argument that custom and practice gave rise  
18 to this duty, their own people testified that Mr. Sandin had only given notice on  
19 three separate occasions. Two of the occasions of which we learned could  
20 not have happened because he was not their broker of record at that time,  
21 and was subject to a noncompete. So at the most, he had notified them on  
22 one other occasion, if we're going to accept that fact as true, and that is not  
23 enough to rise to the level of custom or practice.

24 It was a poorly vetted case, Your Honor. There was absolutely  
25 no grounds in the law or in the facts to pursue these claims. And the reason

1 why we had to spend so much money is because they noticed a lot of  
2 depositions. This is an expert-driven case. It's about insurance duty of care.  
3 My clients are not experts on that. We had to retain an expert. So -- and as  
4 far as the -- you know, being in arbitration phase and limiting our fees, if we  
5 would have stayed in arbitration, I would agree with counsel that we would be  
6 capped at our fees. But they then moved after ten months, when we were  
7 ready to go -- this is supposed to -- you know, arbitration is designed to move  
8 this case along more quickly. Instead, what they did is they realized that there  
9 was a cap, which I suspect they didn't know before, even though we asked  
10 them, are you going to remove it from arbitration, and not until they served an  
11 offer of judgment on our clients in excess of \$500,000 and we responded, why  
12 would you -- why would you ask for 500 when you're capped at 50, shortly  
13 thereafter we got this motion seeking exemption from arbitration.

14               So it was just in bad faith, Your Honor. My client was forced to  
15 spend a lot of money to defend a case that it should -- that should never had  
16 to have gone. If they would have just accepted the offer, which was  
17 reasonable -- they ended up getting nothing because of a summary judgment,  
18 which just further underscores the weakness in their case. And we say that  
19 we should be entitled to our fees under 68. Costs are not discretionary.  
20 They're mandatory. The only costs that they are asking to retax is the expert  
21 fees.

22               As far as the reasonableness of attorney's fees, the only thing  
23 they say in their opposition, Your Honor, is that there was excessive billing.  
24 They don't point to any of the entries in the detailed billing statements that we  
25 submitted to give any examples of this excessive billing. I suspect that's

1 because there were no -- there was no excessive billing. This case was  
2 handled --

3 THE COURT: What are the references in the billing entries to  
4 communicating grant outside counsel?

5 MS. LEE: Utica Insurance Company was the insurer for the  
6 Sandin Defendants --

7 THE COURT: Um-hum.

8 MS. LEE: -- and they were indemnifying the Sandin Defendants  
9 for this case. So I communicated -- our office was in regular communications  
10 with Utica Insurance Company in New York.

11 THE COURT: Outside counsel?

12 MS. LEE: Oh, I'm sorry. So outside counsel actually means  
13 opposing counsel. So with clients. If they say -- if it says, "communicate with  
14 client," that means either Utica or the Sandin Defendants. Outside counsel  
15 refers to either Ms. McLetchie's office or Lewis Brisbois.

16 THE COURT: Okay. Thanks. All right.

17 MS. LEE: And we would submit. Thank you.

18 THE COURT: Well, with respect to -- with respect to the costs, I'll  
19 award costs, but I do agree that the costs should be reduced to the statutory  
20 amount of \$1,500 for the expert. So the -- otherwise, I think the -- mandatory  
21 costs satisfies *Cadle v. Woods & Erickson*. So we'll grant the costs less the  
22 expert witness fee, which will be reduced to \$1,500 from 15,350. So we'll  
23 award costs.

24 With respect to the attorney's fees, I'll take a look at the attorney's  
25 fees. It's kind of an interesting concept of whether -- even when the offer of

1 judgment is served during arbitration, before the case is exempted from  
2 arbitration -- it is later exempted from arbitration, does that affect in any way  
3 the amount of fees a party's entitled to recover based on the offer of  
4 judgment? Because offers of judgment being what they are, are very specific.

5           The bigger question here, though, is this question of is it  
6 reasonable in its timing and amount? \$2,000, I'm not even sure if that's  
7 enough to cover costs at the time. So that was kind of my question, was  
8 whether a \$2,000 offer of judgment was even a reasonable offer of judgment.  
9 With respect to the amount requested however, generally the amount of the  
10 fees, I don't think anybody's disputing counsel's competence or that this is for  
11 counsel a very low fee in this particular case that was requested. So to that  
12 extent, the amount of the fees that were requested isn't the concern. Like I  
13 said, that -- it is kind of an interesting argument as to whether that period of  
14 time in which there was an arbitration pending, if that should cap fees in any  
15 way. So that's kind of an interesting issue. Like I said, I'm going to take a  
16 look at that one.

17           But the bigger issue here is whether there -- and I just don't know  
18 if we have much in the way of case law, I don't really think we do, on this  
19 concept of reasonableness and timing and amount, because that's really the  
20 concern that I have is, is a \$2,000 offer -- if you believe you don't owe  
21 anything, that's a lot of money, and it's like, let's get out of here early. And the  
22 court had denied a motion to dismiss, saying they're entitled to at least try to  
23 prove their case. So I don't know if that is a reasonable amount.

24           So I'm going to take a look at that issue of the reasonableness of  
25 timing and amount, because, for me, that's really kind of the question of

1 whether fees should be even awarded at all. But the only other question I  
2 have with respect to the amount of the fees -- I don't question an incredibly  
3 reasonable amount, given counsel's abilities and reputation and the amount of  
4 work this took. I mean, I'm very familiar. I've read everything. I know all the  
5 work that was done in this case. Everybody worked really hard on it. But  
6 that's just, I guess, my only question, is does -- that period in arbitration,  
7 would that affect in any way the amount of fees requested. So those are the  
8 two questions I want to take a look at.

9 Because we still also have the issue on the award of costs to  
10 Oregon Mutual, which we had a difficult time working on because we had an  
11 extern who used to work for Ms. McLetchie. So it made it --

12 MS. LEE: Um-hum.

13 MS. WEAVER: Oh, I see.

14 THE COURT: So our extern had worked on this file. So that was  
15 kind of the period of time when we sort of wanted to not do anything on that  
16 file while she was --

17 MS. LEE: And Your Honor, I would just --

18 THE COURT: -- in chambers.

19 MS. LEE: And I would just to your -- when you go back to look at  
20 the issue of whether -- it is an interesting issue -- or not --

21 THE COURT: Um-hum.

22 MS. LEE: -- it would be capped because of the timing having  
23 been served in arbitration --

24 THE COURT: Yeah.

25 MS. LEE: -- and I would just think that logically -- because none

1 of the other restrictions of the arbitration --

2 THE COURT: Yeah.

3 MS. LEE: -- continue to apply post-exemption --

4 THE COURT: Right.

5 MS. LEE: -- that none of the benefits would otherwise be

6 capped, because otherwise it would be inequitable --

7 THE COURT: Well, I mean, I --

8 MS. LEE: -- punishment kind of, so --

9 THE COURT: Right. And I'm not saying that I think that the

10 entire attorney's fees would be capped or the fact that is done during

11 arbitration; I'm just questioning whether during that period of time it was in

12 arbitration --

13 MS. LEE: Oh, I see.

14 THE COURT: -- are fees during arbitration capped? That's an

15 interesting argument.

16 MS. LEE: That is an interesting -- it is an interesting issue,

17 Your Honor. I have to admit --

18 THE COURT: I've never really thought about it.

19 MS. LEE: -- I did not look at that, but --

20 THE COURT: I've never really thought about it. And I don't --

21 you know, unfortunately there's no case allow on it. It's such an obscure and

22 weird concept, that I don't know -- I've never -- I personally never had to deal

23 with it; this idea that an arbitration -- a case is in arbitration for a period of time

24 and then it's exempted, the offer of judgments during arbitration, does that

25 affect the amount of the fees you can request. I don't think anybody's ever --

1 MS. LEE: During that period?  
2 THE COURT: Yeah.  
3 MS. LEE: Yeah.  
4 THE COURT: I don't think --  
5 MS. LEE: That's a good question.  
6 THE COURT: -- anybody's ever raised that for me. So I will --  
7 MS. LEE: It's a good question.  
8 THE COURT: -- take a look at those issues.  
9 MS. LEE: Okay.  
10 THE COURT: And we do still have to finish up the other part of it.  
11 So we will do that in the next couple of weeks here, because, like I said, we  
12 had just held off while we had somebody who actually knew the file from  
13 having worked in the office. But she's gone to take her finals now, so --  
14 MS. LEE: So what should we --  
15 MS. WEAVER: So everything can be --  
16 THE COURT: Yeah. Yes.  
17 MS. LEE: So should we hold off then on preparing an order until  
18 Your Honor comes out with the --  
19 THE COURT: Well, yeah, costs, I don't have any problem if you  
20 want to go ahead and say --  
21 MS. LEE: We could do the costs --  
22 THE COURT: -- the cost awards --  
23 MS. LEE: -- portion?  
24 THE COURT: Yeah.  
25 MS. LEE: Okay.



1 THE COURT: But I -- and I -- so yeah, we probably better hold  
2 off on the question of fees until we take a look at the whole concept of fees.

3 MS. LEE: Sure.

4 THE COURT: But those are the two things that I'm going to take  
5 a look at --

6 MS. LEE: Okay. I'm going --

7 THE COURT: -- that raise issues --

8 MS. LEE: -- to go ahead and prepare an order --

9 THE COURT: -- for me.

10 MS. LEE: -- at least on the costs, and --

11 THE COURT: Yeah.

12 MS. LEE: -- I'll run it by counsel.

13 THE COURT: And then also do something on fees ASAP.

14 MS. LEE: Okay. Thank you, Your Honor.

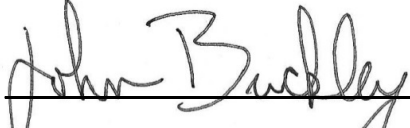
15 MS. WEAVER: Thank you.

16 MS. LEE: Have a great day.

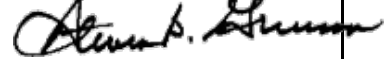
17 [Proceedings concluded at 9:31 a.m.]

18 \* \* \* \* \*

19  
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
21 audio/video proceedings in the above-entitled case to the best of my ability.

22  
23   
24 John Buckley, CET-623  
25 Court Reporter/Transcriber

1  
2  
3  
4  
5  
6



1 **MAFC**  
Patricia Lee (8287)  
2 **HUTCHISON & STEFFEN, PLLC**  
10080 West Alta Drive, Suite 200  
3 Las Vegas, NV 89145  
Tel: (702) 385-2500  
4 Fax: (702) 385-2086  
plee@hutchlegal.com  
5 kbranson@hutchlegal.com

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

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

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

11 Plaintiff,

12 v.

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

15 Defendants.

Case No.: A-12-672158-C

Dept. No.: XXVI

**MOTION FOR DECISION ON**  
**ATTORNEYS' FEES AND MOTION**  
**FOR ADDITIONAL ATTORNEYS'**  
**FEES AND COSTS ASSOCIATED**  
**WITH APPEAL**

16  
17 Defendants Dave Sandin and Sandin & Co (together "Sandin Defendants") bring the  
18 foregoing motion for a decision on attorneys' fees and motion for additional attorneys' fees and  
19 costs associated with defending Plaintiff's failed appeal.

20 This Motion is made pursuant to relevant case law as cited herein, as well as Nevada  
21 Rule of Appellate Procedure 39, EDCR 1.90(4) and is supported by the following

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 memorandum of points and authorities, all exhibits and affidavits / declarations attached  
2 thereto, and any oral arguments that this Court may allow.

3 DATED this 23<sup>rd</sup> day of October, 2017.

4 HUTCHISON & STEFFEN, PLLC

5  
6 */s/ Patricia Lee*

7 \_\_\_\_\_  
8 Patricia Lee (8287)  
9 Peccole Professional Park  
10 10080 West Alta Drive, Suite 200  
11 Las Vegas, NV 89145

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

14  
15 **NOTICE OF MOTION**

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

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

19 PLEASE TAKE NOTICE that the undersigned will bring **MOTION FOR DECISION**  
20 **ON ATTORNEYS' FEES AND COSTS AND MOTION FOR ADDITIONAL**

21 **ATTORNEYS' FEES AND COSTS ASSOCIATED WITH APPEAL** before Department  
22 XXVI of the above entitled Court in courtroom 3H on the 28 day of November,  
23 2017, at the hour of 9:00 am o'clock,    .m., or as soon thereafter as counsel may be heard.

24 DATED this 23<sup>rd</sup> day of October, 2017.

25 HUTCHISON & STEFFEN, PLLC

26 */s/ Patricia Lee*

27 \_\_\_\_\_  
28 Patricia Lee (8287)  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

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

1     **1.     Relevant Facts**

2             The origins of this action began when Plaintiff, O.P.H. of Las Vegas, Inc. (“OPH”)  
3     made the misguided decision to sue the Sandin Defendants as its insurance broker after OPH’s  
4     policy was terminated by co-defendant Oregon Mutual, Inc., for failure to timely pay its  
5     insurance premiums. *See* complaint dated November 19, 2012, on file with the Court.

6             In very general terms, OPH failed to timely pay its insurance premiums triggering a  
7     notice of cancellation to be sent by Oregon Mutual to OPH. *See id.* The day after the policy  
8     effectively terminated, OPH’s restaurant burned down. *Id.* OPH submitted a claim to Oregon  
9     Mutual to cover the cost of repair only to have its claim denied due to policy termination. *Id.*  
10    Thereafter, OPH sued both Oregon Mutual and its insurance broker, the Sandin Defendants  
11    under various theories of liability. *Id.*

12            The Sandin Defendants’ responded to OPH’s complaint with a Motion to Dismiss for  
13    failure to state a claim upon which relief can be granted, because, among other things, there was  
14    no duty in the law or in equity that would have obligated the Sandin Defendants to notify OPH  
15    that it had failed to make its premium payment and that, consequently, its policy was  
16    terminated. *See* Motion to Dismiss filed with the Court on December 26, 2012. The Court  
17    ultimately denied this motion without prejudice (*see* Order Denying the Sandin Defendants’  
18    Motion to Dismiss executed by the Court on March 12, 2013) and the parties subsequently  
19    engaged in protracted, contentious and multi-jurisdictional discovery. *See* Declaration of  
20    Patricia Lee attached hereto as Exhibit A.

21            After the close of discovery, the Sandin Defendants brought another dispositive motion  
22    in the form of a motion for summary judgment arguing, *inter alia*, that nothing in discovery had  
23    changed the legal duty, or lack thereof, running from an insurance broker to its client. *See*  
24    Sandin Defendants’ Motion for Summary Judgment filed with this Court on March 17, 2015.  
25    This time, the Court agreed and granted the Sandin Defendants’ Motion. *See* Order granting  
26    Motion for Summary Judgment in favor of Sandin Defendants on file with the Court.

27            Thereafter on September 2, 2015, the Sandin Defendants brought a Motion for  
28    Attorneys’ Fees and Costs which Motion was fully briefed by the Sandin Defendants and

1 opposed by OPH. *See* Sandin Defendants' Motion for Attorneys' Fees and Costs on file with  
2 the Court. The matter came before the Court for oral argument on November 17, 2015 at which  
3 the time the Court granted the Sandin Defendants' Motion for Costs<sup>1</sup> and took their Motion for  
4 Attorneys' Fees under advisement. This occurred almost two years ago.

5 After hearing no word from the Court after approximately one year following oral  
6 arguments, counsel's staff for the Sandin Defendants began calling the Court at regular intervals  
7 to inquire about the status of the Court's decision on attorneys' fees. *See* declaration of Patricia  
8 Lee at ¶¶ 4-11, attached hereto as Exhibit A. *See also* declaration of Nikki Trautman at ¶4,  
9 attached hereto as Exhibit B. The explanations given to counsel's staff varied from uncertainty  
10 to assurances that a decision was imminent. *Id.* Beginning in approximately mid-2017,  
11 counsel's staff's multiple voice mails to chambers went unanswered and all further efforts at  
12 contact were ultimately abandoned. *See* Lee Decl. at ¶ 11. *See also* Trautman decl. at ¶6.

13 In the meantime and following the notice of entry of judgment in favor of the Sandin  
14 Defendants, OPH appealed this Court's granting of the Sandin Defendants' Motion for  
15 Summary Judgment to the Nevada Supreme Court. *See* Notice of Appeal filed with the Nevada  
16 Supreme Court by OPH on July 30, 2015. On September 14, 2017, the Nevada Supreme Court  
17 affirmed the ruling of this Court as to the summary disposition of OPH's claims against the  
18 Sandin Defendants and a remittur was issued on October 9, 2017. *See* Order affirming the  
19 District Court's decision as to the Sandin Defendants' Motion for Summary Judgment issued by  
20 the Nevada Supreme Court on September 14, 2017, and the remittitur subsequently issued by  
21 the Nevada Supreme Court on October 9, 2017, on file with the Court.

22 In light of the fact that OPH has lost its appeal as it pertains to the Sandin Defendants,  
23 the Sandin Defendants now seek their attorneys' fees and costs associated with the defense of  
24 OPH's appeal. Additionally, the Sandin Defendants implore this Court to rule on its prior  
25 Motion for Attorneys' Fees which has been outstanding for almost 2 years.

---

27 <sup>1</sup>The Court first re-taxed the costs to adjust expert witness fees down to the maximum  
28 statutory cap. Ultimately, Sandin Defendants were awarded a total of \$7,448.63 in costs.

1 **2. Discussion**

2 **A. Decisions by the Court should issue within 20 to 30 days of submission**

3 The Sandin Defendants fully incorporate the entirety of their Motion for Attorneys' Fees  
4 and Costs filed with this Court on March 17, 2015, their Reply in support of the same, and all  
5 oral arguments made at the time of the hearing held before this Court on November 17, 2015.  
6 As a reminder, the Sandin Defendants seek recovery of fees associated with the defense of the  
7 underlying action in the total sum of \$140,857.00 which represents a total of 1,063.50 hours  
8 dedicated to the defense of OPH's tenuous claims. The Motion itself was predicated on a  
9 rejected offer of judgment presented by the Sandin Defendants to OPH during the litigation.

10 In Nevada, as in most jurisdictions, there is a "judicial commitment to the proposition  
11 that 'justice delayed is justice denied'." *See Dougan v. Gustaveson*, 108 Nev. 517, 523 (1992)  
12 (abrogated on other grounds). Moreover, EDCR 1.90 (4) governs the Court's time limits for  
13 decisions on matters under submission and states, in relevant part:

14 Unless the case is extraordinarily complex, a judge or other  
15 judicial officer shall issue a decision in all matters submitted for  
16 decision to him or her **not later than 20 days after said  
submission**. In extraordinarily complex cases, a decision must  
be rendered **not later than 30 days after said submission**.

17 Emphasis added.

18 The Court has exceeded this time limit by almost two years. It is unclear as to why the  
19 Court has not yet entered a decision on the Sandin Defendants' Motion for Attorneys' Fees after  
20 nearly two years of taking it under advisement. Whatever the reason, the Sandin Defendants are  
21 hopeful that whatever impediments have contributed to this delay will be resolved so that they  
22 can achieve finality with respect to this case. With the denial of OPH's appeal, the only  
23 lingering issue is that of fees and costs. It was unfortunate to have the matter of fees unresolved  
24 as the parties attempted numerous mediations following OPH's filing of its appeal. It was a  
25 material unknown factor hovering over the parties and impacting every portion of the settlement  
26 negotiations. *See Lee decl.* at ¶¶ 12-13. Moreover, in the event the Sandin Defendants were in  
27 any way successful on their motion, they have been deprived of two years worth of collection  
28 efforts and/or the benefit of a supersedeous bond.

1 All moving and opposition papers related to the Sandin Defendants' Motion for  
2 Attorneys' Fees have been lodged with the Court and oral arguments have concluded. All that  
3 remains is a decision from the Court. The Sandin Defendants respectfully request that this  
4 Court make a decision on its Motion by a date certain.

5 **B. The Sandin Defendants are entitled to their reasonable attorneys' fees and costs**  
6 **associated with the defense of OPH's tenuous appeal**

7 **1. Relevant Facts**

8 The Sandin Defendants fully incorporate the facts set forth in its original Motion for  
9 Attorneys' Fees and Costs filed with the Court on September 2, 2015. As a brief summary, the  
10 Sandin defendants served an Offer of Judgment on OPH pursuant to NRCP 68 and/or NRS  
11 17.115 on February 14, 2013, *See* Exhibit C attached hereto. *See also* Lee decl at ¶ 14. The  
12 Offer of Judgment provided that "defendants Dave Sandin and Sandin & Co. . . . offer judgment  
13 to be taken by plaintiff, OPH of Las Vegas, Inc., against the Sandin defendants in this action, in  
14 the amount of TWO THOUSAND DOLLARS AND NO/100 (\$2,000.00)." *Id.* OPH did not  
15 accept the offer and it expired ten days after the date of service pursuant to NRCP 68 and NRS  
16 17.115.

17 **2. Legal standard to enforce an offer of judgment**

18 Under NRCP 68(a), "[a]t any time more than 10 days before trial, any party may serve  
19 an offer in writing to allow judgment to be taken in accordance with its terms and conditions."  
20 NRCP 68(a). If the offeree rejects an offer and fails to obtain a more favorable judgment, "the  
21 offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time  
22 of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be  
23 allowed, actually incurred by the offeror from the time of the offer." NRCP 68(f)(2). Further,  
24 NRS 17.115 provides:

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

...



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

4                             . . .

5                   (c) Shall order the party to pay the taxable costs incurred  
6                   by the party who made the offer; and

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

9                             (2) Any applicable interest on the judgment for  
10                            the period from the date of service of the offer to  
11                            the date of entry of the judgment.

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

16 NRS 17.115(1) & (4).

17             Importantly, the Nevada Supreme Court has recognized that these statute and rules  
18             governing offers of judgment, permitting fee-shifting penalties to be assessed against an offeree  
19             who "rejects an offer and fails to obtain a more favorable judgment," **extend to fees incurred**  
20             **on and after appeal.** *In re: The Estate and Living Trust of Miller*, 125 Nev. 550, 555 (2009).  
21             This motion therefore seeks to recoup those fees that were incurred by the Sandin Defendants  
22             from the date of Plaintiff's motion for summary judgment, through the present.

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

1           **3. All Beattie Factors Weigh in Favor of Granting the Sandin Defendants’**  
2           **Motion for Fees**

3                   **(a) OPH’s appeal was not brought in good faith.<sup>2</sup>**

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

10           With regard to the first point, the Sandin Defendants had no idea of the pending  
11 cancellation and could not have reminded OPH to pay its premium<sup>3</sup>. OPH did not dispute that  
12 the Sandin Defendants did not have knowledge of the pending cancellation. As a practical  
13 matter, whether or not the Sandin Defendants had a legal obligation to notify OPH of the  
14 pending cancellation, the Sandin Defendants simply could not have informed OPH of the  
15 pending cancellation, because they didn’t know about it. See Order Granting Defendants Dave  
16 Sandin and Sandin & Co.’s Motion for Summary Judgment, ¶ 10 (Conclusions of Law), on file.

17           Further, in Nevada, insurance agents do not have a fiduciary relationship with their  
18 clients. An “insurance agent is obliged to use reasonable diligence to place the insurance and  
19 seasonably to notify the client if he is unable to do so.” *Keddie v. Beneficial Insurance, Inc.*, 94  
20  
21  
22

---

23           <sup>2</sup> 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           <sup>3</sup>See Defendant Dave Sandin’s Answers to Plaintiff O.P.H. of Las Vegas, Inc’s First Set  
27 Requests for Admission, attached to the Sandin Defendants’ Motion for Summary Judgment as Ex. N,  
28 Response No. 1. See also Defendant Oregon Mutual Insurance Company’s Response to David Sandin’s  
First Set of Requests for Admissions, attached to the Sandin Defendants’ Motion for Summary  
Judgment as Ex. O, Response Nos. 1 & 2 .

1 Nev. 418, 420, 580 P.2d 955, 956 (1978).<sup>4</sup> The Nevada Supreme Court has further stated that  
2 “[a]n insurance agent or broker does not owe the insured any additional duties other than  
3 procuring the requested insurance.” *Flaherty v. Kelly*, 2013 WL 7155078 (Nev. Dec. 18, 2013)

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

14 In granting summary judgment, this Court stated:

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

21 . . .

22 I think I have to grant both of these summary judgments.  
23 As I said, you know, maybe the federal system is better and

---

24 <sup>4</sup> *See also Havas v. Carter*, 89 Nev 497, 499-500, 515 P.2d 397, 399 (1973) (“the  
25 general rule [is] that an insurance agent or broker who undertakes to procure insurance for  
26 another owes an obligation to his client to use reasonable diligence in attempting to place the  
27 insurance and to seasonably notify the client if he, the agent or broker, is unable to obtain the  
28 insurance”).

<sup>5</sup> Plaintiff’s own expert agreed that the expired license was a non-issue.

1           you would have saved all this time you guys spent on the  
2           discovery. I don't know. You know, like I said, we want  
          to give people a chance here . . . .

3   *See* Transcript of Proceeding dated May 14, 2015, at 46:11-21; 48:16-20, attached hereto as  
4   Exhibit D.

5           OPH's claims were not based on the law or any legal principle. By extension, neither  
6   was its appeal. In opposition to the summary judgment motion, **Plaintiff never submitted any**  
7   **case law to support its two theories of the case.** OPH knew that it had no legal basis for its  
8   claims, which fact was underscored by the summary disposition of its claims by the Court but  
9   pursued the claims hoping that a jury would return a verdict in its favor out of sympathy for the  
10   tragic situation. OPH then doubled down on its house made of straw and filed an equally  
11   tenuous appeal which was rightfully rejected by the Nevada Supreme Court. The Sandin  
12   Defendants have demonstrated facts sufficient to meet the first factor; i.e. that OPH brought its  
13   underlying claims and appeal in bad faith.

14                           **(b)    The Sandin defendants' offer of judgment was reasonable**  
15                           **and in good faith in both its timing and amount.**

16           The Sandin defendants served their offer of judgment on February 14, 2013. *See*  
17   Exhibit C. This was one day after the hearing on the Sandin defendants' motion to dismiss,  
18   where the Court denied the motion. Thus, the offer of judgment was served early on in an effort  
19   to resolve the case before any of the parties expended a large sum of time and money on the  
20   case.

21           The offer of judgment for \$2,000 was also reasonable in its amount. The Sandin  
22   Defendants felt very confident that they would successfully defend against OPH's claims,  
23   whether on summary judgment or at trial. The Court ultimately granted summary judgment in  
24   the Sandin Defendants' favor on all OPH's claims. Additionally, at the time of the offer of  
25   judgment, the case was part of the mandatory arbitration program.<sup>6</sup> In the mandatory arbitration

---

26           <sup>6</sup> Six months after the offer of judgment, OPH filed a Request for Exemption from  
27   Arbitration. The Commissioner granted the request on September 17, 2013. *See*  
28   Commissioner's Decision on Request for Exemption - Granted, on file.

1 program, damages are limited to \$50,000. Nevada Arbitration Rules 16(B) (“The maximum  
2 award that can be rendered by the arbitrator is \$50,000 per plaintiff, exclusive of attorney’s fees,  
3 interest and costs.”). Given the \$50,000 cap on damages, the \$2,000 offer of judgment was  
4 reasonable at the time the Sandin Defendants filed their first Motion for Attorneys’ Fees and  
5 Costs, and they remain reasonable today in the context of the Sandin Defendants’ motion for  
6 additional fees expended on defending OPH’s appeal.

7 The amount is also reasonable in amount in terms of damages. Oregon Mutual’s and the  
8 Sandin Defendants’ damages expert, Kevin Kirkendall, calculated damages under the Policy at  
9 either \$10,748 or \$54,036.<sup>7</sup> See Expert Report dated November 29, 2014, Exhibit E. Mr.  
10 Kirdendall never apportioned liability among OMI and the Sandin defendants. The Sandin  
11 defendants, however, correctly assert that their liability would be less than that of OMI.  
12 Therefore, the \$2,000 offer of judgment was reasonable in both its timing and amount.

13 ( c ) OPH’s decision to reject the offer and proceed to discovery  
14 and towards trial was grossly unreasonable

15 OPH’s decision to reject the offer is just as unreasonable now as it was when the Sandin  
16 Defendants brought their first Motion for Attorneys’ Fees and Costs. As stated above, OPH’s  
17 claims were brought in bad faith and were not grounded in the law. There was no legal basis  
18 whatsoever for OPH’s claims against the Sandin defendants, and Plaintiff never cited to any.  
19 Therefore, OPH’s decision to reject the offer and proceed through almost two years of arduous  
20 contentious and multi-jurisdictional discovery was unreasonable.

21 ( d ) The fees sought by the Sandin Defendants are reasonable and  
22 justified in amount.

23 The penalty for rejecting the offer and failing to secure a more favorable outcome is that  
24 the rejecting party pays costs and fees from the date of the offer forward. The Sandin  
25 Defendants served the offer of judgment on February 14, 2013. At the time that the Sandin

---

26 <sup>7</sup> Mr. Kirkendall calculated damages under two scenarios. The first scenario provides  
27 that OPH’s lease would be terminate ending September 15, 2012 because the landlord had the  
28 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 E.

1 Defendants previously filed its initial Motion for Attorneys' Fees and Costs, the total amount  
2 expended by the Sandin Defendants was \$140,857.00. *See* the itemized fee analysis from  
3 February 14, 2013 to the present, attached as Exhibit F to the Sandin Defendants' originally  
4 filed Motion for Attorneys' Fees and Costs.

5 Since OPH filed its notice of appeal, the Sandin Defendants have expended an  
6 additional \$18,385.42 in attorneys' fees and costs for which they now seek recovery. These  
7 fees and costs were reasonably incurred in the usual and normal course of responding to and  
8 dealing with an appeal. A true and correct copy of the detailed billing statements reflecting the  
9 fees and costs incurred by the Sandin Defendant is attached hereto as Exhibit F.<sup>8</sup> *See also* Lee  
10 decl. at ¶¶ 15 -17, attached hereto as Exhibit A.

11 As reflected therein, counsel for the Sandin Defendants spent time, among other things,  
12 reviewing and responding to various communications with the Nevada Supreme Court,  
13 coordinating logistics for mandatory arbitration, preparing mediation briefs, participating in  
14 multiple mediations and settlement negotiations, preparing a motion for attorneys' fees and  
15 costs, preparing a reply in support of the same and attending the hearing related to the same,  
16 communicating extensively and routinely with all counsel and the clients, reviewing the record  
17 below in order to append the same to the opening brief, preparing the appendix to Opening  
18 Brief and preparing the Opening Brief on appeal. *See* Lee Aff. at ¶ 21.

19 The hourly rates of the Sandin defendants' counsel are more than reasonable. The  
20 primary attorney on the appeal billed his time at deeply discounted rates. *See* Exhibit F.  
21 Seasoned appellate attorney Michael Wall, billed his time at a discounted rate of \$160.00 per  
22 hour, as did the other partner Patricia Lee. *Id.* These attorneys' standard billable rates are  
23 \$475.00 and \$360.00, respectively. *See* Lee decl. at ¶¶ 22, 23. The hourly rate for the Sandin  
24 Defendants' counsel is more than reasonable based on the experience of counsel, the quality of  
25 representation, and results achieved in this case.

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

---

28 <sup>8</sup>All entries reflecting attorney client communications have been redacted.

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       There can be no credible dispute that the hourly rates of counsel staffing the appellate  
15 phase of this matter, were not well below industry standards, and therefore, inherently  
16 reasonable.

17                               **(e)     The Sandin Defendants are entitled to their attorneys’ fees**  
18                               **pursuant to the Brunzell factors.**

19       The fourth *Beattie* factor (whether the fees sought by the offeror are reasonable and  
20 justified in amount) implicates *Brunzell*, the 1969 Nevada Supreme Court case that sets forth  
21 factors for courts to consider in rendering attorneys’ fees awards. *See Gunderson v. D.R.*  
22 *Horton, Inc.*, — Nev. —, 319 P.3d 606, 616 (2014), *reh’g denied* (Apr. 23, 2014) (concluding  
23 that the district court’s failure to consider the *Brunzell* factors within its *Beattie* analysis  
24 constitutes an abuse of discretion); *see also Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345,  
25 349, 455 P.2d 31, 33 (1969).<sup>9</sup> *Brunzell* mandates that the trial court consider:

---

26               <sup>9</sup> However, the Nevada Supreme Court ruled that other accepted methods may be used  
27 to calculate attorneys’ fees, provided that the *Brunzell* factors are still considered. *See Haley v.*  
28 *Eighth Judicial Dist. Ct.*, — Nev. —, 273 P.3d 855, 860 (2012) (“[I]n determining the amount

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

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

The first *Brunzell* factor, i.e., the character and difficulty of the work performed, favors an additional award of attorneys' fees to the Sandin defendants. Appeals, by their very nature, are procedurally complex and require close attention to details including a comprehensive review and understanding of the record below, draconian briefing deadlines and substantive review of relevant case law in preparation for the Opening Brief. The character and difficulty of the work performed therefore supports an award of attorneys' fees in favor of the Sandin Defendants.

Concerning the second *Brunzell* factor, the work actually performed by the attorney, the Sandin Defendants were primarily represented by seasoned appellate attorney and partner, Michael Wall and Patricia Lee, also a partner. *See* Lee decl at ¶ 18. Mr. Wall conducted all levels of research and drafting in support of opposing OPH's appellate efforts. *Id.* at ¶ 19. Ms. Lee continued to engage in active mediation and settlement efforts and further managed the majority of communications with the clients and opposing counsel. *Id.* at ¶ 20. The Sandin Defendants have therefore demonstrated that the work actually performed warrants an award of attorneys' fees relative to the work performed on the appeal.

Considering the third *Brunzell* factor, the qualities of the advocate, the law firm of Hutchison & Steffen and its attorneys are well known in the Las Vegas community. *See* Lee decl. at ¶ 24. Ms. Lee has worked on this case since its inception as the lead attorney. *Id.* at ¶ 25. Ms. Lee has over fifteen years of experience in handling commercial litigation matters in

---

of fees to award, the court is not limited to one specific approach; its analysis may 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 Nevada, seven of which have been as a partner with H&S. *Id.* at ¶ 26. Ms. Lee has been  
2 consistently recognized as one of the Legal Elite, published in *Nevada Business Magazine* and  
3 has had her advocacy recognized by various groups and organization. *See* professional  
4 biography of Patricia Lee, attached hereto as Exhibit G.

5 Mr. Wall took the lead on handling the defense to OPH's appeal. *See* Lee decl. at ¶ 18.  
6 Mr. Wall is an AV Rated attorney by Martindell-Hubbel and has practiced law since 1984. *See*  
7 biography of Michael Wall, attached hereto as Exhibit H. *See also* Lee decl. at ¶ 28. Mr. Wall  
8 also served as a staff attorney for the Nevada Supreme Court for 13 years where he was quickly  
9 elevated to the position of Supervising Staff Attorney. *Id.* *See also* Lee decl. at ¶ 30. Mr. Wall  
10 has authored more than 100 legal opinions which were published in the Nevada Reports. *Id.* at  
11 ¶ 31. Mr. Wall is considered by many in the community to be an appellate specialist as  
12 evidenced by the countless CLE's, panel discussions and lectures given by him over the years  
13 on appellate law. *Id.* *See also* Lee decl. at ¶ 32. It cannot be argued with any sincerity that the  
14 quality of the advocates staffing the appeal is lacking, thus satisfying this factor in the *Brunzell*  
15 analysis.

16 Finally, concerning the fourth and final *Brunzell* factor, the result obtained, the Sandin  
17 Defendants prevailed on their motion for summary judgment on all claims asserted against them  
18 and then successfully defeated OPH's tenuous appeal. This factor clearly supports an award of  
19 additional attorneys' fees and costs associated with the Sandin Defendants' appellate efforts.

20 In sum, each of the *Brunzell* factors support a finding that the Sandin Defendants'  
21 attorneys' fees are reasonable. The Sandin Defendants respectfully request that the Court find  
22 that the attorneys' fees in the amount of \$18,385.42 are reasonable and orders an award of this  
23 full amount.

24 ///

25 ///

26 ///

27

28

1 **C. The Sandin defendants are entitled to costs pursuant to NRAP 39.<sup>10</sup>**

2 Pursuant to NRAP 39, the Sandin defendants are entitled to costs. NRAP 39 states, in  
3 relevant part,

4 **RULE 39. COSTS**

- 5  
6 (a) Against Whom Assessed. The following rules apply in civil appeals unless the  
7 law provides or the court orders otherwise:

8 \* \* \*

- 9 (2) if a judgment is affirmed, costs are taxed against the appellant. . .

- 10  
11 (b) Reserved.

- 12  
13 (c) Costs of Briefs, Appendices, Counsel's Transportation; Limitation.

- 14 (1) Costs of Copies. The cost of producing necessary copies of briefs or appendices  
15 shall be taxable in the Supreme Court or Court of Appeals at rates not higher  
16 than those generally charged for such work in the area where the district court is  
located.

- 17 (2) Costs of Counsel's Transportation. The actual costs of round trip transportation  
18 for one attorney, actually attending arguments before the Supreme Court or  
19 Court of Appeals, between the place where the district court is located and the  
20 place where the appeal is argued shall be taxable. For the purpose of this Rule,  
"actual costs" for private automobile travel shall be deemed to be 15 cents per  
21 mile, but where commercial air transportation is available at a cost less than  
22 private automobile travel, only the cost of the air transportation shall be taxable.

- 23 (3) Bill of Costs. A party who wants such costs taxed shall—within 14 days after  
24 entry of judgment—file an itemized and verified bill of costs with the clerk, with  
25 proof of service.

---

26 <sup>10</sup> 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
- 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

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

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

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

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

20  
21  
22  
23  
24  
25  
26  
27  
28

22  
23  
24  
25  
26  
27  
28

23  
24  
25  
26  
27  
28

24  
25  
26  
27  
28

25  
26  
27  
28

27  
28

28

1 **4. Conclusion.**

2 For the foregoing reasons, the Court should award the Sandin defendants their attorneys'  
3 fees from the date of the offer of judgment through the present day, including the additional  
4 costs associated with the appeal as mandated by the statutes.

5 Dated this 23<sup>rd</sup> day of October, 2017.

6 HUTCHISON & STEFFEN, PLLC

7  
8 */s/ Patricia Lee*

9 \_\_\_\_\_  
10 Patricia Lee (8287)

11 Peccole Professional Park

12 10080 West Alta Drive, Suite 200

13 Las Vegas, NV 89145

14 *Attorneys for defendants*

15 *Dave Sandin and Sandin & Co.*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC. and that on this 23<sup>rd</sup> day of October, 2017, I caused the above and foregoing document entitled **MOTION FOR DECISION ON ATTORNEYS' FEES AND COSTS AND MOTION FOR ADDITIONAL ATTORNEYS' FEES AND COSTS ASSOCIATED WITH APPEAL** 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 Administrative Order 14-2, N.E.F.C.R. 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.  
MCCLETSCHIE 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*

*/s/ Nikki L. Trautman*

---

An employee of Hutchison & Steffen, PLLC

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT A

**HUTCHISON & STEFFEN**  
A PROFESSIONAL LLC

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

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

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

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

15 v.

16 OREGON MUTUAL INSURANCE  
17 COMPANY, DAVE SANDIN, and SANDIN  
18 & CO.,  
19 Defendants.

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

) Dept. No.: XXVII

) **AFFIDAVIT OF PATRICIA LEE IN**  
) **SUPPORT OF MOTION FOR**  
) **ATTORNEYS' FEES AND COSTS**  
) **ASSOCIATED WITH APPEAL**

20 COUNTY OF CLARK )  
21 )ss.  
22 STATE OF NEVADA )

23 Patricia Lee, being first duly sworn, according to oath, deposes and says:

24 1. I am a partner with the law firm of Hutchison & Steffen, LLC ("H&S"), the  
25 attorneys of record for defendants Dave Sandin and Sandin & Co. (the "Sandin Defendants") in  
26 this case.

27 2. I am fully knowledgeable with respect to all matters herein averred and am  
28 competent to testify to each of them if called on to do so.

3. I make this affidavit in support of the Sandin defendants' Motion for Decision  
on Attorneys' Fees and Costs and Motion for Additional Attorneys' Fees and Costs Associated  
with Appeal (the "Motion").

4. Beginning approximately one year following oral arguments on the Sandin  
Defendants' Motion for Attorneys' Fees, having received no final ruling from the Court, I

1 instructed my legal assistant at the time, Kaci Chappius, to sporadically contact Chambers to  
2 check on status of the decision on the Sandin Defendants' Motion for Attorneys' Fees

3 5. Following a consolidation of practice groups and the hiring of a new legal  
4 assistant, Gabrielle Maas-Tyler, I similarly instructed Ms. Maas-Tyler to contact the Court at  
5 regular intervals to inquire as to the status of the Court's decision on the Sandin Defendants'  
6 Motion for Attorneys' Fees.

7 6. Ms. Maas-Tyler routinely reported back that the persons she spoke with were  
8 "hopeful" that a decision would be forthcoming.

9 7. Ms. Maas-Tyler's employment with the firm ultimately ceased approximately  
10 one year ago at which point Mrs. Nikki Trautman was hired to be my new legal assistant.

11 8. Similar to the two legal assistants before her, I instructed Ms. Trautman to  
12 contact the Court's chambers at regular intervals in hopes of prompting a decision on the  
13 Sandin Defendants' Motion for attorneys' fees.

14 9. Ms. Trautman routinely contacted the Court's chambers approximately every  
15 two weeks and was similarly informed that a decision was expected soon, or that there was no  
16 new information to divulge.

17 10. Beginning approximately mid-2017, Ms. Trautman began reporting leaving  
18 messages with the Court's chambers with no return call.

19 11. After a few months of receiving no return calls, I instructed Ms. Trautman to  
20 cease her efforts.

21 12. It was unfortunate to have the matter of fees unresolved as the parties attempted  
22 numerous mediations following OPH's filing of its appeal.

23 13. Whether or not the Sandin Defendants would prevail on its request for fees was  
24 a material unknown factor hovering over the parties and impacting every aspect of the  
25 settlement negotiations.

26 14. A true and correct copy of the offer of judgment this firm served on OPH is  
27 attached to the Sandin Defendants' Motion as Exhibit C.

28 15. Since OPH filed its notice of appeal, the Sandin Defendants have expended an



1 additional \$18,385.42 in attorneys' fees and costs for which they now seek recovery.

2 16. These fees and costs were reasonably incurred in the usual and normal course of  
3 responding to and dealing with an appeal.

4 17. A true, correct and redacted copy of the billing statements reflecting the work  
5 performed by this firm is attached to the Motion at Exhibit F.

6 18. Both myself and seasoned appellate attorney, Michael Wall, handled the bulk of  
7 the post-judgment activity associated with this case.

8 19. Mr Wall conducted all levels of research and drafting in support of opposing  
9 OPH's appellate efforts.

10 20. I continued to actively engage in mediation and settlement efforts and further  
11 managed the majority of communications with the clients and opposing counsel.

12 21. Moreover, and as reflected in the attached billing statements, our firm spent  
13 time, among other things, reviewing and responding to various communications with the  
14 Nevada Supreme Court, coordinating logistics for mandatory arbitration, preparing mediation  
15 briefs, participating in multiple mediations and settlement negotiations, preparing a motion for  
16 attorneys' fees and costs, preparing a reply in support of the same and attending the hearing  
17 related to the same, communicating extensively and routinely with all counsel and the clients,  
18 reviewing the record below in order to append the same to the Opening Brief, preparing the  
19 appendix to Opening Brief and preparing the Opening Brief on appeal.

20 22. The hourly rate of both myself and appellate partner, Michael Wall, were  
21 substantially discounted on this matter.

22 23. Mr. Wall's standard hourly rate is \$425.00 per hour and my hourly rate is  
23 \$360.00 per hour, however both of us charged \$160.00 per hour for our legal services on this  
24 matter.

25 24. The law firm of Hutchison & Steffen and its attorneys are well known in the Las  
26 Vegas community.

27 25. I have worked on this case since its inception as the lead attorney.

28 26. I have over fifteen years of experience in handling commercial litigation

1 matters in Nevada, seven of which have been as a partner with H&S.

2 27. Some of my other qualifications and accolades are reflected in my professional  
3 biography, a true and correct copy of which is attached to the Motion as Exhibit G.

4 28. Mr. Wall is an AV Rated attorney by Martindell-Hubbel and has practiced law  
5 since 1984.

6 29. A true and correct copy of Mr. Wall's professional biography is attached hereto  
7 as Exhibit H.

8 30. Mr. Wall served as a staff attorney for the Nevada Supreme Court for 13 years  
9 where he was quickly elevated to the position of Supervising Staff Attorney.

10 31. Mr. Wall has authored more than 100 legal opinions which were published in  
11 the Nevada Reports.

12 32 Mr. Wall is regarded by many in the legal community as an appellate specialist  
13 as evidenced by the countless CLE's, panel discussions and lectures given by him over the  
14 years on appellate law.

15 33. I declare under penalty of perjury that the foregoing is true and correct to the  
16 best of my knowledge and belief.

17  
18  
19 Dated this 23<sup>rd</sup> day of October, 2017.

20  
21   
22 Patricia Lee

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT B

---

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

- 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

1. I am over eighteen (18) years of age, and competent to testify, and if called I would testify to the facts set forth in this affidavit.

3. I make this declaration in support of the Motion for Decision on Attorneys' Fees and Motion for Additional Attorneys' Fees and Costs Associated with Appeal.

5. For several months, I left voice mails for Tamra Loudina every two, to three weeks, inquiring the status of the decision and never received a return phone call from the Court.

7. This declaration is made pursuant to NRS 14.090.

DATED this 20<sup>th</sup> day of October, 2017.

21  
22  
23  
24  
25  
26  
27  
28

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT C

---

**HUTCHISON & STEFFEN**

A PROFESSIONAL LLC

1 **OOJ**

2 Patricia Lee (8287)  
3 Z.Kathryn Branson (11540)  
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 kbranson@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.: XXVII

**OFFER OF JUDGMENT**

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

23 TO: MAGGIE MCLEITCHIE, ESQ., its attorney of record:

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

28 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

**HUTCHISON & STEFFEN**

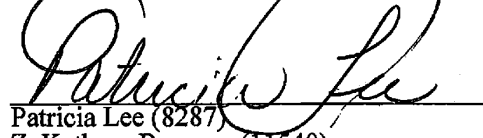
A PROFESSIONAL LLC  
PECCOLE PROFESSIONAL PARK  
10080 WEST ALTA DRIVE, SUITE 200  
LAS VEGAS, NV 89145

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

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

6 DATED this 14<sup>th</sup> day of February, 2013.

7 HUTCHISON & STEFFEN, LLC

8   
9

10 Patricia Lee (8287)  
11 Z. Kathryn Branson (11540)  
12 Peccole Professional Park  
13 10080 West Alta Drive, Suite 200  
14 Las Vegas, NV 89145  
15 pleeutchlegal.com  
16 kbranson@hutchlegal.com

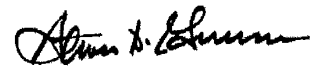
17 *Attorneys for defendants*  
18 *David Sandin and Sandin & Co.*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT D

**HUTCHISON & STEFFEN**  
A PROFESSIONAL LLC



  
CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

O.P.H. OF LAS VEGAS, INC.,	)	
	)	CASE NO. A-12-672158
Plaintiff,	)	
	)	
vs.	)	DEPT. NO. XXVI
	)	
OREGON MUTUAL INSURANCE	)	
COMPANY, DAVE SANDIN, SANDIN	)	Transcript of Proceedings
AND CO.,	)	
	)	
Defendants.	)	

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

THURSDAY, MAY 14, 2015

**APPEARANCES:**

For the Plaintiff: ROBERT L. LANGFORD, ESQ.

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

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

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

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

3 THE COURT: Thank you.

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

9 THE COURT: All right. Thanks.

10 MS. LEE: Thanks.

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

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

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

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

25           MS. LEE: Thank you, Your Honor.

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT E

---

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

# Kirkendall Consulting Group, LLC

---

1322 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.<sup>1</sup> 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:

---

<sup>1</sup> See Bates OPH0124 – OPH0163.

Priscilla L. O'Briant, Esq.  
Michael S. Kelley, Esq.  
November 29, 2014  
Page 2 of 5

- 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 &amp; 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."<sup>2</sup> 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

<sup>2</sup> 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."<sup>3</sup> 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

---

<sup>3</sup> 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 OPH0050POL. 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 Yountess 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.**  
**Last Profits Analyses**  
**Heinz Financial Projections**  
**Exhibit C**

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

	2012	% to	2013	% to	2014	% to	2015	% to	2016	% to
	Projected	Revenue	Projected	Revenue	Projected	Revenue	Projected	Revenue	Projected	Revenue
Gross Receipts or Sales	391,149	100.00%	1,352,077	100.00%	1,439,962	100.00%	1,533,560	100.00%	1,633,241	100.00%
Cost of Goods Sold	109,519	28.00%	378,482	28.00%	403,169	28.00%	439,393	28.00%	457,307	28.00%
Gross Profit	281,621	72.00%	973,595	72.00%	1,036,773	72.00%	1,104,163	72.00%	1,175,933	72.00%
Compensation of Officers	15,646	4.00%	54,083	4.00%	57,988	4.00%	61,342	4.00%	65,110	4.00%
Salaries & Wages	93,874	24.00%	374,498	24.00%	399,991	25.00%	383,390	25.00%	408,310	25.00%
Repair and Maintenance	7,823	2.00%	27,042	2.00%	28,799	2.00%	30,671	2.00%	32,665	2.00%
Rent	24,000	6.14%	80,853	5.92%	82,465	5.73%	84,928	5.54%	87,476	5.36%
Tax on License	19,547	5.00%	67,604	5.00%	71,968	5.00%	76,878	5.00%	81,602	5.00%
Advertising	3,911	1.00%	13,521	1.00%	14,400	1.00%	15,336	1.00%	16,332	1.00%
Other Deductions	46,957	12.00%	243,374	18.00%	259,193	18.00%	276,041	18.00%	293,593	18.00%
Management Fees	66,493	17.00%	148,728	11.00%	158,366	11.00%	168,692	11.00%	179,656	11.00%
Ordinary Business Income	3,320	0.86%	14,593	1.08%	3,943	0.27%	2,055	0.14%	10,518	0.64%

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT F

---

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

Bill to: Utica National Insurance Group  
 Greg Stewart  
 C/O ALLEGIENT ONLINE BILLING  
 P.O. Box 5310  
 Binghamton NY 13902

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

RA1 Patricia Lee  
 RA2 Michael S. Kelley  
 Ca Tp1 Commercial Litigation  
 Ca Tp2 Defense work

Status Codes      None      Alt Bill      Fmt      FWD  
 Finance Charges      N      FBCC      CBCC      Rate      Cd      UI  
 Sales Tax      None  
 Ret Acct      Min      0      No auto transfers chosen  
 Unbilled only      N

===== FEES =====

Date	Emp	Hours	Dollars	Gp	B	P	Description
07/30/15	MSK	4.80	672.00		B	P	L460 A103 Preparation of motion for attorneys' fees and costs.
07/30/15	MSK	0.10	14.00		B	P	L210 A104 Legal Analysis of notice of change of address filed by Plaintiff's counsel.
07/30/15	RKB	0.10	7.50		B	P	L210 A101 Plan and Prepare for motion for attorney's fees and preparation of same.
07/31/15	MSK	0.10	14.00		B	P	L510 A104 Legal Analysis of Notice of Appeal.
07/31/15	MSK	0.10	14.00		B	P	L510 A104 Legal Analysis of Case Appeal Statement.
07/31/15	MSK	0.60	84.00		B	P	L460 A104 Legal Analysis of opposition to OMI's motion for summary judgment.
07/31/15	MSK	0.20	28.00		B	P	L460 A103 Preparation of motion for attorney's fees and costs.
07/31/15	PL	0.20	32.00		B	P	L110 A111 Research and identify supporting documentation needed to substantiate memorandum of costs.
07/31/15	RKB	0.20	15.00		B	P	L210 A101 Plan and Prepare for preparing redacted billing statement for motion for attorneys' fees.
08/03/15	MSK	0.20	28.00		B	P	L120 A104 Legal Analysis of OPH's substitution of counsel and withdrawal of Robert Langford as counsel.
08/03/15	PL	0.10	16.00		B	P	L120 A104 Legal Analysis of notice of substitution of counsel for OPH.

Date	Emp	Hours	Dollars	Gp	B P	Description
08/04/15	PL	0.20	32.00		B P	L510 A104 Legal Analysis of Notice of Appeal filed by OPH; receipt, review and analysis of electronic notification from Nevada Supreme Court re: notice to submit appellate fees.
08/05/15	MKW	0.20	32.00		B P	L510 A104 Analyze and evaluate issues re appellate procedure issues.
08/05/15	MSK	0.40	56.00		B P	L120 A104 Legal Analysis of whether order granting summary judgment constitutes final judgment for appeal.
08/06/15	MSK	2.10	294.00		B P	L120 A102 Research whether order granting motion for summary judgment constitutes a final judgment or must be separate judgment.
08/06/15	PL	0.10	16.00		B P	L250 A103 Finalize and execute judgment.
08/06/15	PL	0.30	48.00		B P	L120 A104 Legal Analysis of proposed judgment.
08/06/15	RKB	0.10	7.50		B P	L210 A101 Begin preparing redacted billing statement in support of motion for attorney's fees.
08/07/15	PL	0.10	16.00		B P	L510 A104 Legal Analysis of electronic notification from Nevada Supreme Court re: matter referred to mandatory settlement program.
08/11/15	MSK	0.10	14.00		B P	L110 A106 Communicate (with client) Greg Stewart regarding [REDACTED].
08/11/15	PL	0.10	16.00		B P	L510 A104 Legal Analysis of electronic notification from Nevada Supreme Court re: assignment to settlement judge.
08/11/15	PL	0.30	48.00		B P	L250 A104 Legal Analysis of reply in support of motion for attorneys' fees filed by OMI.
08/13/15	MSK	0.10	14.00		B P	L510 A104 Legal Analysis of letter from appellate mediation judge regarding conference.
08/13/15	PL	0.10	16.00		B P	L510 A104 Receipt, review and analysis of correspondence from settlement administrator re: request to coordinate time to schedule mandatory pre-trial conference.
08/13/15	PL	0.10	16.00		B P	L250 A104 Legal Analysis of electronic notification of filing notice of entry of judgment.
08/14/15	PL	0.20	32.00		B P	L110 A101 Analyze and evaluate issues re: whether or not attending hearing on OMI's motion for attorneys' fees and costs is necessary (determined not to be necessary to save client costs).
08/17/15	PL	0.10	16.00		B P	L120 A104 Legal Analysis of proposed redactions made to billing statements by firm's paralegal, namely, which category of billing entries should be shielded / redacted from production, in support of motion for attorneys' fees.
08/17/15	RKB	1.30	97.50		B P	L250 A103 Continue redacting attorney-client and attorney-expert

Date	Emp	Hours	Dollars	Gp	
08/18/15	MSK	0.20	28.00	B P	privileged information from billing statement in anticipation of motion for attorneys' fees. L510 A108 Communicate (other external) with appellate mediator regarding mediation and dates.
08/18/15	PL	0.10	16.00	B P	L160 A106 Communicate (with client) re: desired settlement strategy going forward.
08/18/15	PL	0.10	16.00	B P	L510 A108 Receipt, review and analysis of correspondence from NV Supreme Court re: coordinating mandatory pre-mediation call.
08/20/15	PL	0.10	16.00	B P	L250 A104 Legal Analysis of Court's minutes granting OMI's motion for attorneys' fees and costs.
08/20/15	PL	0.20	32.00	B P	L510 A108 Receipt, review and analysis of correspondence from NV Supreme Court administrator re: continued efforts to schedule mandatory pre mediation conference; prepare response to the same.
08/20/15	PL	0.10	16.00	B P	L250 A104 Legal Analysis of attorneys' fees billing statement in support of motion for attorneys' fees.
08/20/15	RKB	0.80	60.00	B P	L210 A101 Continue reviewing pages 27-62 of billing statement to redact attorney-client and attorney-expert privileged information for motion for attorney's fees.
08/21/15	MSK	3.80	532.00	B P	L460 A103 Preparation of motion for attorney's fees and costs.
08/21/15	PL	0.40	64.00	B P	L160 A108 Receipt, review and analysis of further communications from Nevada Supreme Court administrator regarding logistics of mandatory pre-mediation conference; receipt, review and analysis of response from OMI's and OPH's counsel; prepare response to the same.
08/21/15	PL	0.10	16.00	B P	L160 A101 Plan and Prepare for status of confidential settlement brief.
08/22/15	MSK	1.20	168.00	B P	L460 A103 Preparation of motion for attorneys' fees and costs.
08/24/15	MSK	1.00	140.00	B P	L460 A103 Preparation of motion for attorneys' fees and costs.
08/24/15	MSK	1.30	182.00	B P	L460 A103 Preparation of declaration of Patricia Lee in support of motion for attorneys' fees and costs.
08/24/15	MSK	2.30	322.00	B P	L510 A103 Preparation of confidential settlement statement for settlement conference in appeal.
08/24/15	RKB	0.20	15.00	B P	L240 A104 Analyze and evaluate issues re: motion for attorney's fees and redactions thereto.
08/26/15	MSK	0.20	28.00	B P	L510 A103 Preparation of confidential settlement statement for appeal.



Date	Emp	Hours	Dollars	Gp	
08/29/15	MSK	0.20	28.00	B P	L460 A104 Legal Analysis of OMI's amended memorandum of costs.
09/01/15	MSK	0.10	14.00	B P	L210 A107 Communicate (outside counsel) with OMI's counsel regarding proposed order.
09/01/15	PL	0.80	128.00	B P	L250 A104 Legal Analysis of draft motion for attorneys' fees.
09/02/15	MSK	0.90	126.00	B P	L460 A103 Preparation of motion for attorney's fees and costs.
09/02/15	PL	0.40	64.00	B P	L250 A104 Legal Analysis of motion for attorneys' fees against OPH including redacted billing statements; review redacted billing statements for accuracy and appropriateness.
09/02/15	RKB	0.20	15.00	B P	L250 A103 Finalize redaction of attorneys' fees in support of motion for attorneys' fees.
09/08/15	MSK	0.20	28.00	B P	L120 A108 Communicate (other external) with Greg Stewart regarding [REDACTED].
09/08/15	PL	0.40	64.00	B P	L250 A107 Review and analysis of mandatory settlement conference notice; coordinate attorney and client staffing for the same (including possible telephonic attendance by Utica); receipt, review and analysis of correspondence from counsel for OMI re: request for feedback on proposed order granting OMI attorneys' fees.
09/09/15	MSK	0.10	14.00	B P	L460 A107 Communicate (outside counsel) with OMI's counsel regarding proposed order.
09/10/15	MSK	0.10	14.00	B P	L210 A104 Legal Analysis of motion to withdraw as counsel.
09/10/15	PL	0.10	16.00	B P	L510 A104 Legal Analysis of electronic notification of OPH's notice of appeal.
09/10/15	PL	0.10	16.00	B P	L250 A104 Legal Analysis of R. Langford's notice to withdraw as counsel for plaintiff.
09/11/15	MKW	0.20	0.00	B P	L510 A104 Legal Analysis of appellant's docketing statement to identify jurisdictional concerns.
09/11/15	MSK	0.20	28.00	B P	L510 A104 Legal Analysis of docketing statement filed by OPH.
09/14/15	PL	0.10	16.00	B P	L250 A104 Legal Analysis of electronic notification from Nevada Supreme Court that one of OPH's two counsels has withdrawn.
09/21/15	MSK	0.30	42.00	B P	L460 A107 Communicate (outside counsel) with opposing counsel regarding extension to respond to motion for attorney's fees.
09/21/15	PL	0.70	112.00	B P	L460 A107 Receipt, review and analysis of correspondence from opposing counsel re: request for enlargement of time to respond to motion for attorneys' fees; coordinate stipulation regarding the same.

Date	Emp	Hours	Dollars	Gp	B P	
09/28/15	MSK	0.10	14.00		B P	L210 A104 Legal Analysis of order from court setting hearing on motion for attorney's fees and costs.
10/07/15	MSK	0.10	14.00		B P	L160 A107 Communicate (outside counsel) with opposing counsel regarding settlement offer.
10/07/15	PL	0.30	48.00		B P	L160 A107 Prepare correspondence to opposing counsel re: settlement offer (walk away).
10/16/15	MSK	0.20	28.00		B P	L110 A103 Preparation of issues for mediation conference on Monday.
10/16/15	PL	0.40	64.00		B P	L230 A101 Plan and Prepare for mandatory settlement conference on Monday.
10/19/15	MSK	0.20	28.00		B P	L160 A108 Communicate (other external) with mediator regarding settlement conference scheduled for today.
10/19/15	PL	6.20	992.00		B P	L160 A109 Appear for/Attend mandatory settlement conference [not settled].
10/19/15	PL	0.20	32.00		B P	L160 A106 Communicate (with client) telephone conference with G. Stewart re: [REDACTED].
10/19/15	PL	0.10	16.00		B P	L230 A108 Receipt, review and analysis of electronic notification of non-settlement filed by mediator.
10/23/15	PL	0.10	16.00		B P	L160 A108 Receipt, review and analysis of electronic notification from Nevada Supreme Court re: notice of non-settlement.
11/02/15	MSK	1.40	196.00		B P	L120 A102 Research case law to support motion for for attorneys fees based on offer of judgment.
11/02/15	MSK	0.90	126.00		B P	L210 A104 Legal Analysis of Plaintiff's opposition to motion for attorney's fees and case law cited in opposition.
11/04/15	MSK	3.20	448.00		B P	L210 A103 Preparation of reply brief in support of motion for attorney's fees and costs.
11/04/15	PL	0.20	32.00		B P	L250 A104 Legal Analysis of content of anticipated reply in support of motion for attorneys' fees.
11/06/15	PL	0.10	16.00		B P	L510 A104 Legal Analysis of Order Reinstating Briefing.
11/06/15	PL	0.30	48.00		B P	L250 A104 Legal Analysis of opposition to motion for attorneys' fees.
11/09/15	PL	0.30	48.00		B P	L510 A104 Legal Analysis of opposing counsel's request regarding hearing transcript for appeal; receipt, review and analysis of electronic notification from Court re: OPH's request for hearing transcript.

Date	Emp	Hours	Dollars	Gp	
11/10/15	MSK	0.90	126.00	B P	L210 A103 Preparation of reply in support of motion for attorneys' fees.
11/10/15	MSK	0.60	84.00	B P	L510 A107 Communicate (outside counsel) with opposing counsel regarding ordering transcripts for appeal.
11/10/15	PL	0.60	96.00	B P	L250 A104 Legal Analysis of reply in support of motion for attorneys' fees and costs.
11/16/15	PL	1.20	192.00	B P	L530 A101 Plan and Prepare for hearing re: Sandin defendants' motion for attorneys' fees and costs.
11/17/15	MSK	0.10	14.00	B P	L120 A104 Legal Analysis of decision by court on motion for attorney's fees and costs.
11/17/15	PL	2.20	352.00	B P	L530 A109 Appear for/Attend hearing on Sandin Defendants' motion for attorneys' fees and costs.
11/17/15	PL	1.00	160.00	B P	L240 A103 Draft order reflecting the Court's ruling today on Sandin Defendants' motion for attorneys' fees and costs.
11/17/15	PL	0.10	16.00	B P	L430 A107 Prepare correspondence to opposing counsel re: proposed order memorializing Court's ruling on motion for attorneys' fees and costs.
11/17/15	PL	0.30	48.00	B P	L530 A106 Prepare correspondence to G. Stewart re: [REDACTED]
11/17/15	RKB billable	0.20 0.20	15.00 0.00	B P	L210 A102 Research evaluate and analyze expert invoices incorporated into memorandum of costs and omitting of same. [NO CHARGE]
11/18/15	PL	0.70	112.00	B P	L160 A106 Exchange correspondences with G. Stewart re: [REDACTED]
11/19/15	PL	0.10	16.00	B P	L250 A107 Communicate with opposing counsel re: approval of proposed order memorializing the Court's decision on Sandin defendants' motion for attorneys' fees and costs.
11/23/15	PL	0.10	16.00	B P	L250 A107 Communicate (outside counsel) re: signed order on Court's ruling on Sandin defendants' motion for attorneys' fees and costs.
11/25/15	MSK	0.10	14.00	B P	L120 A107 Communicate (outside counsel) with opposing counsel regarding due date for opening brief.
11/25/15	PL	0.60	96.00	B P	L520 A107 Communicate (outside counsel) re: OMI's request for extension of time to file opening brief in appeal.
11/25/15	PL	0.20	32.00	B P	L510 A104 Legal Analysis of motion to extend time to file opening brief filed by OPH; receipt, review and analysis of Supreme Court's re-setting of briefing schedule in light of the same.
12/03/15	MSK	0.10	14.00	B P	L510 A104 Legal Analysis of order from appellate court regarding

Date	Emp	Hours	Dollars	Gp	
					briefing schedule.
12/03/15	PL	0.20	32.00	B P	L510 A104 Legal Analysis of issues re: recent notices from Nevada Supreme Court regarding appeal.
12/07/15	MSK	0.20	28.00	B P	L510 A108 Communicate (other external) with Greg Stewart regarding [REDACTED]
01/11/16	PL	0.10	16.00	B P	L510 A104 Legal Analysis of electronic notification from Supreme Court re: confirmation of receipt of transcript.
01/25/16	PL	0.40	64.00	B P	L430 A107 Communicate (outside counsel) Receipt, review and analysis of correspondence from opposing counsel re: request for additional time to file opening brief; review record for evidence of prior requests.
01/26/16	PL	0.10	16.00	B P	L520 A107 Review and analysis of correspondence from OPH re: agreement to continue the time to submit opening brief.
01/28/16	PL	0.10	16.00	B P	L430 A107 Receipt, review and analysis of follow up correspondence from opposing counsel re: request for extension of time to file opening brief.
01/29/16	PL	0.10	16.00	B P	L520 A107 Receipt, review an analysis of correspondence from opposing counsel re: response to our rejection of second request to continue time to file opening brief by OPH.
02/05/16	PL	0.10	16.00	B P	L510 A104 Receipt, review and analysis of OPH's motion to extend time to file opening brief in appeal.
02/17/16	PL	0.10	16.00	B P	L510 A104 Receipt, review and analysis of correspondence from Supreme Court re: notice of date for filing opening brief in appellate matter.
02/18/16	PL	0.20	32.00	B P	L110 A102 Conduct research on status of Court's ruling on our motion for attorneys' fees and costs.
02/22/16	MSK	0.30	42.00	B P	L120 A106 Communicate (with client) with Dave Sandin regarding [REDACTED] l.
04/01/16	PL	0.10	0.00	B P	L110 A106 Receipt, review and analysis of correspondence from G. Stewart re: [REDACTED].
04/14/16	MKW	1.70	272.00	B P	L510 A104 Legal Analysis of plaintiff's opening brief and authorities cited.
04/14/16	MKW	3.60	576.00	B P	L520 A104 Begin analysis of appendix in preparation for briefing.
04/15/16	MKW	8.10	1,296.00	B P	L520 A104 Continued legal analysis of appendix documents in preparation for briefing.
04/18/16	MKW	3.10	496.00	B P	L520 A104 Finish analysis of appendix documents and related file

Date	Emp	Hours	Dollars	Gp	
					documents in preparation for briefing.
05/04/16	MKW	4.80	768.00	B P	L520 A103 Begin draft of answering brief.
05/05/16	MKW	8.10	1,296.00	B P	L520 A103 Continued work on drafting answering brief.
05/06/16	MKW	4.20	672.00	B P	L520 A103 Continued work on appellate brief.
05/09/16	MKW	6.20	992.00	B P	L520 A103 Continued work on draft of appellate brief.
05/10/16	MKW	6.10	976.00	B P	L520 A103 Finish first draft of brief.
05/11/16	MKW	5.10	816.00	B P	L520 A103 Redraft and edit entire brief, cite checking, finalization of text.
05/26/16	MKW	1.20	192.00	B P	L520 A103 Finalize answering brief, draft and revise certificates, cause filing.
06/07/16	MKW	0.60	96.00	B P	L120 A104 Legal Analysis of answering brief of respondent Oregon Mutual.
07/05/16	PL	0.80	128.00	B P	L160 A107 Communicate (outside counsel) re: coordinating further mediation efforts and ascertaining rates related to the same; receipt, review and analysis of correspondence from mediator with rate quotes to facilitate settlement.
07/07/16	PL	0.20	32.00	B P	L520 A107 Communicate (outside counsel) re: proposed unopposed motion to extend time to file responding appellate brief; receipt, review and analysis of OMI's counsel's approval of the same.
07/08/16	PL	0.10	16.00	B P	L460 A104 Receipt, review and analysis of electronic notification of filing motion to extend time to file reply brief by counsel for OPH.
07/11/16	PL	0.20	32.00	B P	L510 A104 Legal Analysis of Unopposed Motion for Extension to file Appellant's Reply Brief.
07/13/16	PL	0.50	80.00	B P	L160 A106 Communicate with client G. Stewart re: [REDACTED] [REDACTED]; prepare correspondence to OMI's counsel re: possible coordination of settlement efforts.
07/26/16	PL	0.10	16.00	B P	L160 A107 Communicate (outside counsel) re: willingness to use Mr. Gugiono to continue mediation discussions.
07/26/16	PL	0.10	16.00	B P	L510 A104 Legal Analysis of electronic notification from NSC re: motion to extend time to submit reply brief granted - new deadline August 10, 2016.
07/30/16	PL	0.10	16.00	B P	L160 A107 Communicate (outside counsel) re: status of coordinating settlement logistics.

Date	Emp	Hours	Dollars	Gp	
08/01/16	PL	0.20	32.00	B P	L160 A107 Communicate (outside counsel) regarding possible coordinated settlement.
08/03/16	PL	0.30	48.00	B P	L160 A107 Communicate (outside counsel) re: coordinating possible additional mediation efforts.
08/04/16	PL	0.30	48.00	B P	L160 A107 Communicate (outside counsel) re: continued coordination of settlement efforts; prepare response to the same.
08/08/16	PL	0.20	32.00	B P	L160 A107 Communicate (outside counsel) re: coordinate re-initiation of mediation efforts.
08/08/16	PL	0.80	128.00	B P	L160 A107 Communicate (outside counsel) re: her willingness to engage in further settlement efforts; exchange additional correspondences with opposing counsel re: briefing schedule on appeal in light of parties' willingness to re-engage in settlement discussions.
08/08/16	PL	0.30	48.00	B P	L160 A107 Communicate (outside counsel) regarding the coordination of settlement logistics.
08/09/16	PL	0.20	32.00	B P	L510 A107 Communicate (outside counsel) re: proposed motion to extend time to file reply on appeal; receipt, review and analysis of correspondence from counsel for OMI approving the same.
08/09/16	PL	0.10	16.00	B P	L510 A104 Legal Analysis of electronic notification from Nevada Supreme Court re: OPH's Motion to Extend Time to File Answering Brief received
08/25/16	PL	0.30	48.00	B P	L520 A104 Legal Analysis of Reply in support of appellate brief filed by counsel for OPH.
08/26/16	MKW	0.20	32.00	B P	L520 A104 Legal Analysis of appellant's reply brief.
08/29/16	PL	0.10	16.00	B P	L160 A108 Communicate (other external) with mediator re: proposed mediation strategy.
08/30/16	PL	0.10	16.00	B P	L160 A107 Communicate (outside counsel) for OPH re: willingness to participate in mediation and dates of availability for the same.
09/07/16	PL	0.10	16.00	B P	L120 A108 Communicate (other external) with mediator re: mediation logistics.
09/08/16	PL	0.70	112.00	B P	L160 A108 Communicate (other external) with OPH's counsel re: coordinating mediation date; receipt, review and analysis of mediator's response to the same; receipt, review and analysis of OMI's counsel's response to the same; prepare response to the same.
10/19/16	PL	3.90	624.00	B P	L160 A109 Appear for/Attend mediation; consultation with Greg Stewart of Utica regarding [REDACTED]

Date	Emp	Hours	Dollars	Gp	B P	
10/20/16	MKW	0.40	64.00			L120 A105 Communicate (in firm) receive email from Patricia Lee asking Legal questions as to notice raised at mediation, review statutes and Law and email a response.
01/12/17	PL	0.30	48.00			L460 A104 Legal Analysis of electronic notification of Final Order Submitting for Decision Without Oral Argument; consultation with Michael Wall regarding the same.
01/13/17	MKW	0.20	32.00			L510 A106 Analysis of order submitting appeal without oral argument, email to client explaining the significance of same.
01/13/17	PL	0.10	16.00			L510 A106 Receipt, review and analysis of correspondence from Mr. Sandin re: [REDACTED]
09/15/17	MKW	0.60	96.00			L520 A104 Legal Analysis of decision of Supreme Court in our favor, communicate decision and meaning of decision to client, analysis of attorney's fees issues.

	-----	-----	-----	-----	-----	(CP 07/30/15-10/18/17)
Total FEES	119.50	18,222.50	119.50	18,207.50	15.00	(CTD Through 10/18/17)
	1181.60	163,016.00	1181.60	158,727.50	4,455.00	
	=====	=====	=====	=====	=====	
	Actual Hours/\$		Billable Hours/\$		Write-up \$	Write-dn \$
	=====		=====		=====	=====
					166.50	

Fee Analysis				CP 07/30/15-10/18/17			
Code	Name	----- Hours	Actual Dollars	----- Hours	Actual \$/ Actual Hrs	----- Hours	Billable \$/ Actual Hrs
MKW	Michael K. Wall	54.60	8,704.00	54.60	159.41	54.60	159.41
MSK	Michael S. Kelley	29.30	4,102.00	29.30	140.00	29.30	140.00
PL	Patricia Lee	32.50	5,184.00	32.50	159.51	32.50	159.51
RKB	Risa K. Beck	3.10	232.50	3.10	75.00	3.10	70.16

COSTS - Direct		COSTS - Direct	
Date	Units	Dollars	Gp
08/13/15		3.50	B P
08/13/15		3.50	B P
08/19/15		3.50	B P
09/02/15		3.50	B P
11/10/15		3.50	B P
08/08/16		2.57	B P
-----			
Tot DIR COSTS		20.07	
		4,451.97	
-----			
	Actual Units/\$		Billable Units/\$
		20.07	
		4,451.97	
-----			
(CP 07/30/15-10/18/17)			
(CTD Through 10/18/17)			

COSTS - Indirect					COSTS - Indirect				
Date	Units	Dollars	Gp						
07/30/15	1537.00	76.85	5	B P	Total photocopies @ .05				
10/19/15	1.00	0.50	L	B P	E105 Long Distance Phone Charges				
05/25/16	1.00	0.50	L	B P	E105 Long Distance Phone Charges				
Tot IND COSTS									
		77.85							(CP 07/30/15-10/18/17)
		1,249.11							(CTD Through 10/18/17)
Total COSTS									
		97.92							(CP 07/30/15-10/18/17)
		5,701.08							(CTD Through 10/18/17)



INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT G

---

**HUTCHISON & STEFFEN**  
A PROFESSIONAL LLC



#### AREAS OF PRACTICE

Business & Commercial  
Litigation  
Family Law  
Healthcare  
Professionals  
Advocacy

702.385.2500  
HUTCHLEGAL.COM

PATRICIA LEE

PLEE@HUTCHLEGAL.COM

HUTCHISON & STEFFEN  
ATTORNEYS

Patricia Lee is a partner of the Firm practicing primarily in business and commercial litigation, including, but not limited to, partnership/shareholder disputes, contract enforcement/defense, non-competition agreements, and commercial lease review and litigation, and family law. In addition, Patricia also practices in the areas of trademark registration and litigation, collections, mechanic's liens/foreclosures, and medical claims billing. Patricia's range of experience allows her to manage the legal needs of entrepreneurs and small business owners through the Firm's program entitled The Legal Solution for Entrepreneurs & Small Businesses.

Patricia hails from the small town of Lompoc, California, where she graduated near the top of her class. She attended the University of Southern California and obtained a dual degree in psychology and communications in 1997. During her time at USC, Patricia received several accolades for her academic excellence and dedication to campus and community activism. Among the awards she received were the Thurgood Marshall Leadership Award and Order of Troy for academic achievement.

After graduating from USC, Patricia worked for one year as an employee at the California Science Center in Los Angeles, California, and assisted in the establishment of the Rosa Parks Community Computer and Learning Center for inner city youth. She then attended the prestigious George Washington University Law School where she obtained her juris doctorate in 2002. Patricia joined the team of Hutchison & Steffen immediately after her graduation from GWU.

Patricia's dedication to community activism continued at GWU where she was elected as the Community Service Director for the Student Bar Association as well as the Student Director over the Small Business Clinic where she assisted small businesses in economically distressed communities with their legal needs. She also gained valuable legal experience as an intern for the United States Department of Justice, the United States Postal Service, and for a private practitioner focused primarily in employment and labor law, and criminal law.

Today, Patricia serves as a volunteer attorney for the Child Advocacy Program where she represents abused and neglected children in Clark County, Nevada. In addition, she previously served as Treasurer of the Las Vegas Chapter of the National Bar Association, and is the current President of the Las Vegas Chapter of the National Bar Association Foundation. In 2010, Patricia was appointed by Governor Gibbons to serve as Chair of the newly-established Nevada Crime Commission. In 2011, Patricia was appointed to serve as a member of the Self Help Center's Steering Committee by Eighth District Court Judge Elizabeth Gonzalez. In 2012, Patricia began serving on the Pro Bono Advisory Council to support the efforts of Legal Aid Center's Pro Bono Project and she was named Legal Aid's Pro Bono Attorney of the Year. Also, the Las Vegas business publication In Business Las Vegas honored Patricia with its "Women to Watch 2010" award. In 2013, Patricia became the first Nevada attorney to receive the American Bar Association's national Pro Bono Publico Award for her demonstrated outstanding commitment to volunteer legal services for the poor and disadvantaged.

When Patricia is not working for the Firm, she enjoys spending time with her husband, Ronnie (a small business owner), and their two children, Brianna and Devin. Patricia also enjoys traveling and reading, and is an avid sports enthusiast.

### **Representative Engagements**

Patricia has litigated a wide spectrum of commercial cases born inside and outside of litigation, including a litany of evidentiary hearings related to preliminary injunctions. Patricia represented a medical provider against a large insurance carrier for, among other things, wrongfully denying numerous medical claims. The trial resulted in a judgment in the client's favor totaling over one million dollars and more than ten times the amount offered before trial. *Convention Center Drug, Inc., et. al. v. NevadaCare, et. al.* Case. No. A419252 (Dept. 15, Las Vegas, Nev. 2005).

A two-week trial before a three-judge arbitration panel regarding claims by a shareholder against officers and directors of an energy company raising issues of corporate governance, breach of fiduciary duties, and try-out of minority interest resulting in a judgment in favor of clients. *Mitchell v. Freeman, et al.*, Case No. A503996 (Dept. 20, Las Vegas, Nev. 2009).

Defense judgment in favor of client at trial involving alleged damages for constructive trust and interference with prospective business advantage and profit. *Conte et al. adv. Reed*, Case No. A416459 (Dept. 3, Las Vegas, Nev. 2009).

After week long evidentiary hearing, successful procurement of preliminary injunction restraining a former executive level employee from illegally competing against her former employer in contravention of her non-competition agreement and subsequently obtaining an order of contempt in violation of the injunction. *ESP Wireless Technologies, Inc. v. Fingl, et. al.*, Case No. A468139 (Dept. 13, Las Vegas, Nev. 2005).

Voided rescinded contract on motion for partial summary judgment avoiding multi-million dollar liability exposure for client. *Johnson Law Group, P.C., et. al., v. Advanced Client Solutions, LLC, et. al.*, Case No. A-10-612447-B, Dept. 11, Las Vegas, Nev. 2010).

On first day of trial, settled multi-million dollar marital estate in high value divorce action in Nevada Family Court. *Sharon D. Lipscomb v. F. Ronald Smith*, Case No. D-11-444324-D (Dept. J, Las Vegas, Nev. 2012).

Multiple successful trademark registration and renewals with the United States Patent and Trademark office including but not limited to: Michael Godard, Oh My Godard Gallery, Pool Studio, SS Structure Studios, Vizterra, SE3D (with design), SE3D (std. character), Leaf Design, Field Ready, Lunas Construction Clean Up, Lunas Recycling, Gelato Café.

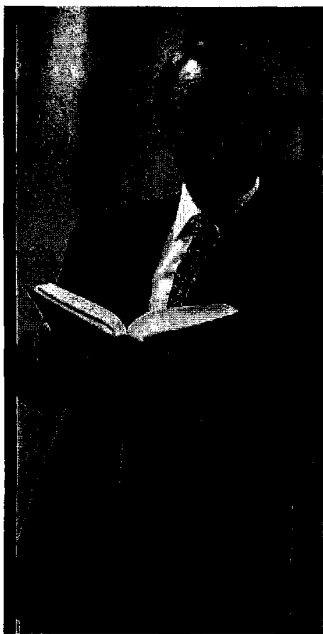
INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT H

---

HUTCHISON & STEFFEN

A PROFESSIONAL LLC



#### AREAS OF PRACTICE

Appellate Litigation  
Business & Commercial  
Litigation  
Insurance Defense  
Landlord/Tenant  
Professional Liability  
Defense



702.385.2500  
HUTCHLEGAL.COM

MICHAEL K. WALL

MWALL@HUTCHLEGAL.COM

HUTCHISON & STEFFEN

ATTORNEYS

Michael K. Wall is a partner and an AV-rated attorney by Martindale-Hubbell®. Michael practices primarily in the areas of appellate law, business and commercial litigation, landlord/tenant law, and insurance defense.

A native of Utah, Michael received his B.A. degree in English with a minor in German from the University of Utah in 1981, magna cum laude, and his Juris Doctorate degree from the University of Utah College of Law in 1984 (top 15% of his class). Michael was a semi-finalist in the Roger Traynor Moot Court Competition, which earned him a position on the National Moot Court team. He was also selected as a William O. Leary Scholar six times (the maximum number possible). As a law clerk in the Tax and Business Regulation Division of the Utah Attorney General's Office, Michael participated in the revision of Utah's Sales and Use Tax Code.

After law school, Michael became a Nevadan. He was employed by the Nevada Supreme Court as a staff attorney for 13 years. After only eighteen months at the Court, he was promoted to the position of Deputy Supervising Staff Attorney, and he was later elevated to the position of Supervising Staff Attorney. He served as the Supervisor of the Court's legal staff for eight years. While at the Court, Michael served as Chairman of the Committee on the Intermediate Appellate Court, and as a member of various other Supreme Court Committees. He participated as a lecturer and panel member in CLE seminars, and spoke before numerous groups on the subject of appellate practice. Michael drafted more than a hundred legal Opinions for publication in the Nevada reports, and edited and otherwise participated in the drafting of hundreds more.

After leaving the court, Michael practiced law privately in Carson City before joining Hutchison & Steffen in 1998. He also continues his participation as a lecturer on appellate practice. Michael has presented numerous CLE's and presentations on appellate practice to various groups, including Nevada Supreme Court Seminars, the NJA, the NTLA, and he has been a regular lecturer for NBI. He is presently a member of the Nevada Supreme Court's Bench Bar Committee, which provides advice and recommendations to the Court. He has served on various Supreme Court and District Court special committees, and has been involved in redrafting and studying multiple statutes and court rules. He is admitted to practice in both state and federal courts in Nevada and Utah.

Michael is married and has two children. His son is pursuing a Ph.D at the University of Utah and his daughter graduated valedictorian of two undergraduate classes at the University of Utah, earning two B.A. degrees, and is planning to go to law school. In his free time, he enjoys reading, dining, attending plays and the opera, the beach and skiing, among other pastimes.

#### **Representative Engagements**

Mr. Wall has extensive litigation experience in state court and before arbitrators. He has appeared before the Federal Tax Court, tried many bench and jury trials to

CONTINUED ON BACK....

0412

conclusion in District Courts in Nevada and Utah, and has argued on numerous occasions before the Nevada Supreme Court and the U.S. Ninth Circuit Court of Appeals. His cases include:

A defense award in the client's favor and a finding of defamation in favor of the client on the counterclaim in a week-long jury trial in an Americans with Disabilities and medical malpractice case in *Kim adv. Morehouse*, Case No. A403729 (Dept. 18, Las Vegas, Nev. 2001).

A reversal of a summary judgment and the adoption of a substantial change in the law of escrow agent duty in *Mark Properties v. National Title*, Case No. 32954 (Nevada Supreme Court, 1999).

Successfully limiting client's damages in a four-day bench trial in *Sunrise Park & Robbins adv. Kleve*, Case No. A352719 (Dept. 2, Las Vegas, Nev. 1998).

Successfully defending a homeowner's association from claims of improper incorporation in a bench trial in *Lake Mead Homeowners Assn. adv Whitehead & Byrd*, (Dept. 17, Las Vegas, Nev. 2002).

Obtaining a favorable judgment in favor of a landlord in a commercial lease dispute in a bench trial in *Bubbles Management v. Bubbles, LLC*, (Case No. 01C-011322-001 (Dept. 4, Justice Court, 2002).

Serving as lead appellate counsel and associate trial counsel in a case that ended in a 17-week jury trial (after 10 years of litigation) against the State of California's taxing authority involving numerous torts and resulting in a jury verdict in the client's favor of over \$138 million in compensatory damages and \$250 million in punitive damages, one of the largest jury verdict awards to a single plaintiff in U.S. history. Before trial, the case went before the Nevada Supreme Court on petitions for writs twice, and before the United States Supreme Court once. Both Courts affirmed the client's right to proceed to trial despite constitutional defenses asserted by the taxing authority. *Hyatt v. Franchise Tax Board*, Case No. A382999 (Dept. 9, Las Vegas, Nev. 2008). The case is now pending before the Nevada Supreme Court on appeal.

Obtaining a decision issuing a writ of mandamus in a case involving the application of the 5 year rule of NRCP 41(e), declaring that rule to be jurisdictional, which made substantial new law. *Cox v. Eighth Judicial Dist. Court*, \_\_\_ Nev. \_\_\_, 193 P.3d 530 (2008).

Representing NIGA in obtaining clarification of important statutes regarding coverage for claims in insolvency cases, both in district court and on appeal. *MGM Mirage v. Nevada Ins. Guar. Ass'n*, \_\_\_ Nev. \_\_\_, 209 P.3d 766 (2009).

Acting as lead appellate counsel in case involving many large pharmacies and successfully defending district court decision regarding the scope of pharmacist liability to third parties injured by customers, making substantial law. *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, \_\_\_ Nev. \_\_\_, 221 P.3d 1276 (2009).

Obtaining reversal of a district court order in an automobile accident involving claim of medical malpractice. This case made substantial new law in Nevada concerning statutes of limitation in contribution and indemnity cases. *Saylor v. Arcotta*, \_\_\_ Nev. \_\_\_, 225 P.3d 1276 (2010).

Obtaining reversal of a district court order, family division, in a third-party visitation rights case, making significant new law in Nevada. *Rennels v. Rennels*, \_\_\_ P.3d \_\_\_, 2011 WL 3359932 (Nev.), 127 Nev. Adv. Op. 49 (2011).

In addition, Mr. Wall has participated in numerous arbitrations on behalf of insurance carriers and their insureds and has limited the damages in those cases, and has tried dozens of cases in Justice Court.

Mr. Wall is regularly consulted for his experience in appellate litigation in various matters.