

Electronically Filed
Jun 18 2020 11:11 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS
Michael K. Wall (2098)
HUTCHISON & STEFFEN, PLLC
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mwall@hutchlegal.com

*Attorneys for Plaintiff
St. Paul Fire & Marine Ins. Co.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ST. PAUL FIRE & MARINE INSURANCE
COMPANY,

Plaintiff,

v.

ASPEN SPECIALITY INSURANCE
COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH
PA.; ROOF DECK ENTERTAINMENT, LLC
d/b/a MARQUEE NIGHTCLUB; and DOES 1
through 25, inclusive,

Defendants.

Case No.: A-17-758902-C
Dept. No.: XXVI

NOTICE OF APPEAL

Notice is given that St. Paul Fire & Marine Insurance Company, Plaintiff in the above-captioned matter, appeals to the Supreme Court of Nevada from the following Orders:

1. Findings of Fact, Conclusions of Law and Order Granting Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment, entered in this action on May 14, 2020;
2. Findings of Fact, Conclusions of Law and Order Granting National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment, entered in this action on May 14, 2020; and

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1 3. Any and all orders and judgments rendered appealable by any of the foregoing.

2 DATED this 12 day of June, 2020.

3 HUTCHISON & STEFFEN, PLLC

4
5 By 

6 Michael K. Wall (2098)
7 10080 W. Alta Drive, Suite 200
8 Las Vegas, NV 89145
9 mwall@hutchlegal.com

10 *Attorney for Plaintiff*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 12th day of June, 2020, I caused the above and foregoing document entitled **NOTICE OF 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 sent **via facsimile**; and/or
- ☒ 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 attorney(s) listed below at the address and/or facsimile number indicated below:

Michael M. Edwards, Esq. (6281)
Nicholas L. Hamilton, Esq. (10893)
MESSNER REEVES LLP
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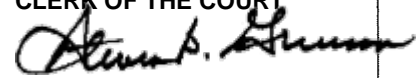
Attorneys for Defendant Aspen Specialty Company

Attorneys for Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub

Jennifer L. Keller, Esq. (Pro Hac Vice)
Jeremy Stamelman, Esq. (Pro Hac Vice)
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Attorneys for Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub


An employee of Hutchison & Steffen, PLLC



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*Attorneys for Plaintiff
St. Paul Fire & Marine Ins. Co.*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ST. PAUL FIRE & MARINE INSURANCE
COMPANY,

Plaintiff,

v.

ASPEN SPECIALITY INSURANCE
COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH
PA.; ROOF DECK ENTERTAINMENT, LLC
d/b/a MARQUEE NIGHTCLUB; and DOES 1
through 25, inclusive,

Defendants.

Case No.: A-17-758902-C
Dept. No.: XXVI

**PLAINTIFF'S CASE APPEAL
STATEMENT**

1. Party filing this Case Appeal Statement.

This appeal and case appeal statement is filed on behalf of Plaintiff St. Paul Fire & Marine Insurance Company.

2. Judge issuing the decision, judgment or order appealed from.

The Honorable District Judge Gloria Sturman, Eighth Judicial District Court, Clark County, Department 26, District Court Case No. A-17-758902-C.

3. Parties to the proceedings in the district court.

St. Paul Fire & Marine Insurance Company,	Plaintiff
Aspen Speciality Insurance Company,	Defendant
National Union Fire Insurance Company of Pittsburgh PA,	Defendant
Roof Deck Entertainment, LLC d/b/a Marquee Nightclub,	Defendant

4. Parties involved in this appeal.

St. Paul Fire & Marine Insurance Company,	Appellant
National Union Fire Insurance Company of Pittsburgh PA,	Respondent

HUTCHISON & STEFFEN

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

Roof Deck Entertainment, LLC d/b/a Marquee Nightclub, Respondent

5. The name, law firms, addresses and telephone numbers of all counsel on appeal, and the party or parties they represent.

Michael K. Wall (2098)
HUTCHISON & STEFFEN, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
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Attorney for St. Paul Fire & Marine Insurance Company

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-and-

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Jeremy Stamelman, Esq. (Pro Hac Vice)
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Attorneys for Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub

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efile@messner.com
T: 702-363-5100
F: 702-363-5101

Attorneys for Defendant Aspen Specialty Company

6. Whether Respondent was represented by appointed or retained counsel in the district court.

Respondent was represented by retained counsel in district court.

7. Whether Appellant was represented by appointed or retained counsel in the district court.

Appellant was represented by retained counsel in district court.

8. Whether Appellant was granted leave to proceed in forma pauperis in the district court.

Appellant was not granted leave to proceed in district court in forma pauperis.

9. The date the proceedings commenced in district court.

This action commenced with the filing of Plaintiff St. Paul Fire & Marine Insurance Company's Complaint, filed July 25, 2017.

10. Brief description of the nature of the action and result in district court.

This action arises from an underlying personal injury suit in which a jury awarded the plaintiff \$160,500,000.00 in compensatory damages, titled *Moradi v. Roof Deck Etnetainment, LLC, d/b/a Marquee Nightclub, et. al.*, District Court Clark County, Nevada, Case No. A-14-698824-C. After settling with the plaintiff for a confidential amount, St. Paul Fire and Marine Insurance Company, an excess insurance carrier, filed a complaint (this action) against the other insurance carriers seeking to recover the amount it contributed to the settlement on theories of equitable subrogation, and against one of the parties to the *Moradi* case on theories of equitable and statutory subrogation. The district court granted summary judgment in two separate orders in favor of National Union Fire Insurance Company and Roof Deck Entertainment, and certified those orders as final pursuant to NRCP 54(b).

11. Whether the case has been the subject of a previous appeal.

This matter is not the subject of a previous appeal.

12. Whether this appeal involves child custody or visitation.

There are no child custody or visitation issues in this case.

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13. Whether the appeal involves the possibility of settlement.

It is counsel's belief there is a possibility of settlement.

DATED this 12 day of June, 2020.

HUTCHISON & STEFFEN, PLLC

By 

Michael K. Wall (2098)
10080 W. Alta Drive, Suite 200
Las Vegas, NV 89145
mwall@hutchlegal.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 12th day of June, 2020, I caused the above and foregoing document entitled **PLAINTIFF'S CASE APPEAL STATEMENT** 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 sent **via facsimile**; and/or
- ☒ 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 attorney(s) listed below at the address and/or facsimile number indicated below:

Michael M. Edwards, Esq. (6281)
Nicholas L. Hamilton, Esq. (10893)
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nhamilton@messner.com
efile@messner.com
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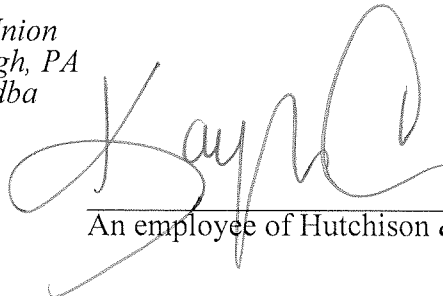
Attorneys for Defendant Aspen Specialty Company

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Attorneys for Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub



An employee of Hutchison & Steffen, PLLC

CASE SUMMARY**CASE NO. A-17-758902-C**

St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

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§
§
§
§

Location: **Department 26**
 Judicial Officer: **Sturman, Gloria**
 Filed on: **07/25/2017**
 Cross-Reference Case Number: **A758902**

CASE INFORMATIONCase Type: **Insurance Tort**

Case Status: **04/14/2020 Inactive**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-17-758902-C
 Court Department 26
 Date Assigned 07/25/2017
 Judicial Officer Sturman, Gloria

PARTY INFORMATION**Plaintiff****St. Paul Fire & Marine Insurance Company***Lead Attorneys*

Wall, Michael K.
Retained
 7023852500(W)

Defendant**Aspen Specialty Insurance Company**

Edwards, Michael M.
Retained
 702-363-5100(W)

National Union Fire Insurance Company of Pittsburgh PA

Herold, Andrew D.
Retained
 702-990-3624(W)

Roof Deck Entertainment LLC

Herold, Andrew D.
Retained
 702-990-3624(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

07/25/2017



Filed Under Seal

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
SEALED PER MINUTE ORDER 09/12/17 Complaint

07/25/2017



Summons Electronically Issued - Service Pending

Party: Plaintiff St. Paul Fire & Marine Insurance Company
Summons

07/25/2017



Initial Appearance Fee Disclosure

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Initial Appearance Fee Disclosure

07/28/2017



Errata

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Errata to Complaint










CASE SUMMARY

CASE NO. A-17-758902-C

08/04/2017	 Motion to Seal/Redact Records Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Notice of Motion and Motion to Seal or Redact Complaint</i>
08/04/2017	 Declaration Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Declaration of Ramiro Morales in Support of Motion to Seal or Redact Complaint</i>
08/25/2017	 Notice Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Notice of Related Case</i>
09/06/2017	 Notice of Non Opposition Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Notice of Non Opposition</i>
09/21/2017	 Order Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Order on Motion to Seal or Redact Complaint</i>
09/26/2017	 Complaint Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Redacted Complaint</i>
10/17/2017	 Proof of Service Filed by: Plaintiff St. Paul Fire & Marine Insurance Company <i>Proof of Service of Summons; Redacted Complaint; Civil Cover Sheet; Initial Appearance Fee Disclosure on Defendant Roof Deck Entertainment, LLC</i>
10/18/2017	 Proof of Service Filed by: Plaintiff St. Paul Fire & Marine Insurance Company <i>Proof of Service - Aspen Specialty Insurance Company</i>
10/18/2017	 Proof of Service Filed by: Plaintiff St. Paul Fire & Marine Insurance Company <i>Proof of Service - National Union Fire Insurance Co of Pittsburgh PA</i>
12/01/2017	 Motion to Seal/Redact Records Filed By: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment LLC d/b/a Marquee Nightclub's Motion to Seal and File Exhibit A to Appendix of Exhibits in Support of Its Motion to Dismiss</i>
12/04/2017	 Initial Appearance Fee Disclosure Filed By: Defendant Roof Deck Entertainment LLC <i>Initial Appearance Fee Disclosure</i>
12/04/2017	 Filed Under Seal Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Appendix of Exhibits in Support of Its Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company Complaint (File Under Temporary Seal Pursuant to S.C.R. Part VII, Rule 3.2)</i>
12/04/2017	 Motion to Dismiss

CASE SUMMARY

CASE NO. A-17-758902-C

	<p>Filed By: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i></p>
12/04/2017	<p> Declaration Filed By: Defendant Roof Deck Entertainment LLC <i>Declaration of Bill Bonbrest in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i></p>
12/04/2017	<p> Appendix Filed By: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Appendix of Exhibits in Support of Its Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint [Filed Under Temporary Seal Pursuant to S.C.R. Part VII, Rule 3.2]</i></p>
12/04/2017	<p> Initial Appearance Fee Disclosure Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Initial Appearance Fee Disclosure</i></p>
12/04/2017	<p> Motion to Dismiss Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant National Union Fire Insurance Company of Pittsburgh PA's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i></p>
12/04/2017	<p> Declaration Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Declaration of Michael F. Muscarella In Support of National Union Fire Insurance Company of Pittsburgh PA's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i></p>
12/04/2017	<p> Certificate of Mailing Filed By: Defendant Roof Deck Entertainment LLC <i>Certificate of Service by Mail of Defendant Roof Deck Entertainment LLC d/b/a Marquee Nightclub's Motion to Seal and File Exhibit A to Appendix of Exhibits in Support of Its Motion to Dismiss</i></p>
12/05/2017	<p> Certificate of Mailing Filed By: Defendant Roof Deck Entertainment LLC <i>Certificate of Service By Mail of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Night Club's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i></p>
12/05/2017	<p> Certificate of Mailing Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Certificate of Service by Mail of Defendant National Union Fire Insurance Company of Pittsburgh PA's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i></p>
12/13/2017	<p> Motion to Dismiss Filed By: Defendant Aspen Specialty Insurance Company <i>(SAO to Withdrawn 3/5/18) Defendant Aspen Specialty Insurance Company's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i></p>
12/13/2017	<p> Initial Appearance Fee Disclosure Filed By: Defendant Aspen Specialty Insurance Company <i>Defendant Aspen Specialty Insurance Company's Initial Appearance Fee Disclosure</i></p>

CASE SUMMARY

CASE NO. A-17-758902-C

12/13/2017



Declaration

Filed By: Defendant Aspen Specialty Insurance Company
Declaration of Michael Uzenski in Support of Aspen Specialty Insurance Company's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint

12/28/2017



Stipulation and Order

Filed by: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Stipulation and Order to Continue Hearings on (1) Motion to Seal, (2) Defendant National Union Fire Insurance Company's Motion to Dismiss, and (3) Defendant Roof Deck Entertainment's Motion to Dismiss, and Continue Briefing Schedule

12/29/2017



Certificate of Mailing

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Certificate of Service by Mail of Stipulation and Order to Continue Hearings on (1) Motion to Seal, (2) Defendant National Union Fire Insurance Company's Motion to Dismiss, and (3) Defendant Roof Deck Entertainment's Motion to Dismiss, and Continue Briefing Schedule

01/23/2018



Motion to Associate Counsel

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Motion to Associate Counsel on an Order Shortening Time

01/23/2018



Motion to Associate Counsel

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Motion to Associate Counsel on Order Shortening Time (Steven James Aaronoff, Esq.)

01/26/2018



Objection

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
St. Paul's Objections to Evidence Offered By National Union In Support Of Motion To Dismiss

01/26/2018



Opposition

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
St. Paul's Opposition To National Union's Motion To Dismiss Complaint

01/26/2018



Opposition

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
St. Paul's Opposition To Marquee's Motion To Dismiss Complaint

01/26/2018



Objection

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
St. Paul's Objections To Evidence Offered By Marquee In Support Of Motion To Dismiss

01/26/2018



Non Opposition

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
St. Paul's Statement Of Non-Opposition To Marquee's Motion To File Under Seal Exhibit A To Appendix Of Exhibits In Support Of Its Motion To Dismiss

01/29/2018



Proof of Service

Filed by: Plaintiff St. Paul Fire & Marine Insurance Company
Amended Proof of Service

02/06/2018

CASE SUMMARY

CASE NO. A-17-758902-C

	 Reply to Opposition Filed by: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Reply In Support of Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i>
02/06/2018	 Response Filed by: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Response to Plaintiff St. Paul Fire & Marine Insurance Company's Objections to Evidence</i>
02/06/2018	 Reply to Opposition Filed by: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant National Union Fire Insurance Company of Pittsburgh, PA.'s Reply In Support of Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company Complaint</i>
02/06/2018	 Response Filed by: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant National Union Fire Insurance Company of Pittsburgh, PA.'s Response to St. Paul Fire & Marine Insurance Company's Objections to Evidence</i>
02/06/2018	 Declaration Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Declatation of Richard C. Perkins In Support of National Union Fire Insurance Company of Pittsburgh, PA.'s Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i>
02/06/2018	 Response Filed by: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant National Union Fire Insurance Company of Pittsburgh, PA's Response to St. Paul Fire & Marine Insurance Company's Objections to Evidence</i>
02/07/2018	 Stipulation and Order Filed by: Defendant Aspen Specialty Insurance Company <i>Stipulation and Order to Continue Hearing and Briefing Schedule for Aspen Specialty Insurance Company's Motion to Dismiss</i>
02/08/2018	 Notice of Entry of Order Filed By: Defendant Aspen Specialty Insurance Company <i>Notice of Entry of Stipulation and Order to Continue Hearing and Briefing Schedule for Aspen Specialty Insurance Company's Motion to Dismiss</i>
02/09/2018	 Declaration Filed By: Defendant Roof Deck Entertainment LLC <i>Supplemental Declaration of Bill Bonbrest In Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i>
02/15/2018	 Order Admitting to Practice Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>Order Admitting Jennifer Lynn Keller to Practice Pro Hac Vice</i>
02/15/2018	 Order Admitting to Practice Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>Order Admitting Steven Jame Aaronoff to Practice Pro Hac Vice</i>

CASE SUMMARY

CASE NO. A-17-758902-C

02/15/2018



Order to Seal

Filed By: Defendant Roof Deck Entertainment LLC

Order to Seal Exhibit A to Appendix of Exhibits in Support of Roof Deck Entertainment LLC d/b/a Marquee Nightclub's Motion to Dismiss

02/20/2018



Notice of Entry of Order

Filed By: Defendant Roof Deck Entertainment LLC

Notice of Entry of Order to Seal Exhibit A to Appendix of Exhibits in Support of Roof Deck Entertainment LLC d/b/a Marquee Nightclub's Motion to Dismiss

02/20/2018



Notice of Entry of Order

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC

Notice of Entry of Order Admitting Jennifer Lynn Keller, Esq. to Practice Pro Hac Vice

02/20/2018



Notice of Entry of Order

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC

Notice of Entry of Order Admitting Steven James Aaronoff, Esq. to Practice Pro Hac Vice

02/26/2018



Statement

Filed by: Plaintiff St. Paul Fire & Marine Insurance Company

St. Paul's Statement That No Opposition To Aspen's Motion To Dismiss The Original Complaint Is Due Based On A Pending Withdrawal Of Motion And A Forthcoming Amended Pleading

03/01/2018



Recorders Transcript of Hearing

Recorder's Transcript of Hearing: All Pending Motions

03/05/2018



Stipulation and Order

Filed by: Defendant Aspen Specialty Insurance Company

Stipulation and Order to Withdraw Aspen's Motion to Dismiss St. Paul's Initial Complaint and Vacate Hearing Date

03/06/2018



Notice of Entry of Order

Filed By: Defendant Aspen Specialty Insurance Company

Notice of Entry of Stipulation and Order to Withdraw Aspen's Motion to Dismiss St. Paul's Initial Complaint and Vacate Hearing Date

03/21/2018



Order

Filed By: Defendant Roof Deck Entertainment LLC

Order Denying Roof Deck Entertainment LLC dba Marquee Nightclub's Motion to Dismiss Plaintiff's Complaint

03/21/2018



Order

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA

Order Granting National Union Fire Insurance Company Of Pittsburgh, PA.'s Motion to Dismiss Plaintiff's Complaint

03/22/2018



Notice of Entry of Order

Filed By: Defendant Roof Deck Entertainment LLC

Notice of Entry of Order Denying Roof Deck Entertainment LLC dba Marquee Nightclub's Motion to Dismiss Plaintiff's Complaint

03/22/2018

CASE SUMMARY

CASE NO. A-17-758902-C

	 Notice of Entry of Order Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Notice of Entry of Order Granting National Union Fire Insurance Company of Pittsburgh, PA.'s Motion to Dismiss Plaintiff's Complaint</i>
04/18/2018	 Stipulation and Order Filed by: Plaintiff St. Paul Fire & Marine Insurance Company <i>Stipulation and Order re Extension to File First Amended Complaint, First Amended Complaint to be Filed Under Seal</i>
04/18/2018	 Notice of Entry of Stipulation and Order Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Notice of Entry of Stipulation and Order re Extension to File First Amended Complaint, First Amended Complaint to be Filed Under Seal</i>
04/24/2018	 Filed Under Seal Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>First Amended Complaint</i>
04/25/2018	 Amended Complaint Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Redacted First Amended Complaint</i>
06/01/2018	 Stipulation and Order Filed by: Defendant Aspen Specialty Insurance Company <i>Stipulation and Order to Extend Deadline to Respond to First Amended Complaint and Continue Briefing Schedules</i>
06/04/2018	 Notice of Entry of Order Filed By: Defendant Aspen Specialty Insurance Company <i>Notice of Entry of Stipulation and Order to Extend Deadline to Respond to First Amended Complaint and Continue Briefing Schedules</i>
06/25/2018	 Motion to Dismiss Filed By: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's First Amended Complaint</i>
06/25/2018	 Declaration Filed By: Defendant Roof Deck Entertainment LLC <i>Declaration of Bill Bonbrest In Support of Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Dismiss</i>
06/25/2018	 Declaration Filed By: Defendant Roof Deck Entertainment LLC <i>Supplemental Declaration of Bill Bonbrest In Support of Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Dismiss</i>
06/25/2018	 Request for Judicial Notice Filed By: Defendant Roof Deck Entertainment LLC <i>Request for Judicial Notice in Support of Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Dismiss Plaintiff's First Amended Complaint</i>
06/25/2018	 Motion to Dismiss Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA

CASE SUMMARY

CASE NO. A-17-758902-C

National Union's Motion to Dismiss Plaintiff's Complaint

06/25/2018



Declaration

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA
Declaration of Michael F. Muscarella In Support of National Union's Motion to Dismiss

06/25/2018



Motion to Dismiss

Filed By: Defendant Aspen Specialty Insurance Company
Defendant Aspen Specialty Insurance Company's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Redacted First Amended Complaint

06/25/2018



Declaration

Filed By: Defendant Aspen Specialty Insurance Company
Declaration of Greg Irons in Support of Aspen Specialty Insurance Company's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Amended Complaint

06/27/2018



Certificate of Service

Filed by: Defendant National Union Fire Insurance Company of Pittsburgh PA
Certificate of Service

07/20/2018



Stipulation and Order

Filed by: Defendant Aspen Specialty Insurance Company
Stipulation and Order to Continue Hearings

07/23/2018



Notice of Entry of Order

Filed By: Defendant Aspen Specialty Insurance Company
Notice of Entry of Stipulation and Order to Continue Hearings

08/15/2018



Opposition to Motion to Dismiss

Opposition to Motion to Dismiss - Marquee

08/15/2018



Opposition to Motion to Dismiss

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Opposition to Motion To Dismiss - Aspen

08/15/2018



Opposition to Motion to Dismiss

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Opposition to Motion To Dismiss - AIG

08/15/2018



Declaration

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Declaration 1

08/15/2018



Declaration

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Declaration 2

08/16/2018



Errata

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Errata to Table of Contents to St. Paul's Opposition to Aspen's Motion to Dismiss First Amended Complaint

09/14/2018



Reply to Opposition

Filed by: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant

CASE SUMMARY

CASE NO. A-17-758902-C

	<p>Roof Deck Entertainment LLC</p> <p><i>Defendant National Union Fire Insurance Company of Pittsburgh PA s Reply In Support Of Motion To Dismiss Plaintiff St. Paul Fire & Marine Insurance Company s First Amended Complaint</i></p>
09/14/2018	<p> Reply to Opposition</p> <p>Filed by: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC</p> <p><i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub s Reply In Support of Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company s First Amended Complaint</i></p>
10/22/2018	<p> Response</p> <p>Filed by: Plaintiff St. Paul Fire & Marine Insurance Company</p> <p><i>Response To Additional Arguments Raised On Reply In Connections With Defendants' Motions To Dismiss</i></p>
10/23/2018	<p> Reply in Support</p> <p>Filed By: Defendant Aspen Specialty Insurance Company</p> <p><i>Defendant Aspen Specialty Insurance Co.'s Reply in Support of Motion to Dismiss Plaintiff's First Amended Complaint</i></p>
10/24/2018	<p> Objection</p> <p>Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC</p> <p><i>Defendant National Union Fire Insurance Comapny of Pittsburgh PA and Roof Deck Entertainment, LLC d/b/a Marquee Nighclub's Objection and Request to Strike St. Paul's Fire & Marine Insurance Company's Response to Additional Arguments Raised on Reply in Connection with Defendants' Motion to Dismiss</i></p>
10/26/2018	<p> Objection</p> <p>Filed By: Plaintiff St. Paul Fire & Marine Insurance Company</p> <p><i>Plaintiff St. Paul s Objection And Request To Strike Defendant Aspen Specialty Insurance Company s Untimely Reply In Support Of Motion To Dismiss First Amended Complaint</i></p>
10/29/2018	<p> Opposition</p> <p>Filed By: Defendant Aspen Specialty Insurance Company</p> <p><i>Defendant Aspen Specialty Insurance Company's Opposition to Plaintiff's Motion to Strike Reply in Support of Motion to Dismiss</i></p>
11/21/2018	<p> Motion to Associate Counsel</p> <p>Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC</p> <p><i>Motion to Associate Counsel Jeremy White Stamelman and Withdraw Counsel Steven James Aaronoff</i></p>
11/27/2018	<p> Certificate of Electronic Service</p> <p>Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC</p> <p><i>Certificate of Service</i></p>
12/26/2018	<p> Recorders Transcript of Hearing</p> <p>Party: Defendant Aspen Specialty Insurance Company</p> <p><i>Recorder's Transcript of Proceedings - See page 2, Recorder's Transcript of Proceedings Continued, Defendant Aspen Specialty Insurance Company's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Redacted First Amended Complaint, Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nighclub's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's First Amended Complaint, National Union's Motion to</i></p>

CASE SUMMARY

CASE NO. A-17-758902-C

Dismiss Plaintiff's Complaint, Tuesday, October 30, 2018

01/09/2019	 Order Admitting to Practice Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>Order Admitting to Practice Pro Hac Vice and Vacating hearing.</i>
01/22/2019	 Notice of Entry of Order Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>Notice of Entry of Order Admitting Jeremy White Stamelman, Esq. to Practice Pro Hac Vice and Vacating Hearing</i>
07/01/2019	 Order Denying Motion Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Order Re: Defendants' Motions To Dismiss</i>
07/10/2019	 Answer Filed By: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC dba Marquee Nightclub's Answer to St. Paul Fire & Marine Insurance Company's First Amended Complaint</i>
07/10/2019	 Answer Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant National Union Fire Insurance Company of Pittsburgh PA's Answer to St. Paul Fire & Marine Insurance Company's First Amended Complaint</i>
07/15/2019	 Answer Filed By: Defendant Aspen Specialty Insurance Company <i>Defendant Aspen Specialty Insurance Company's Answer to Plaintiff's First Amended Complaint</i>
07/17/2019	 Demand for Jury Trial Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>National Union Fire Ins. Co. of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub's Demand for Jury Trial</i>
07/17/2019	 Individual Case Conference Report Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>National Union Ins. Co. of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub's Separate Case Conference Report</i>
07/17/2019	 Individual Case Conference Report Filed By: Defendant Aspen Specialty Insurance Company <i>Defendant Aspen Specialty Insurance Company's Separate Case Conference Report</i>
07/17/2019	 Individual Case Conference Report Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Individual Case Conference Report</i>
07/18/2019	 Mandatory Rule 16 Conference Order <i>Mandatory Rule 16 Conference Order</i>
08/16/2019	

CASE SUMMARY

CASE NO. A-17-758902-C

	 Notice of Compliance Party: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment LLC dba Marquee Nightclub's Notice of Compliance re: Initial Disclosure Pursuant to NRCP 16.1(a)(1)(A)</i>
08/21/2019	 Request for Exemption From Arbitration Filed by: Plaintiff St. Paul Fire & Marine Insurance Company <i>Plaintiff's Unopposed Request for Arbitration Exemption</i>
08/22/2019	 Scheduling and Trial Order <i>Civil Jury Trial Order</i>
08/29/2019	 Motion for Partial Summary Judgment Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment as to Defendant Aspen Specialty Insurance Company</i>
08/29/2019	 Request for Judicial Notice Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Request for Judicial Notice in support of St. Paul's Motion for Partial Summary Judgment</i>
08/29/2019	 Declaration Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Declaration of Marc J. Derewetzky in support of St. Paul's Motion for Partial Summary Judgment</i>
08/29/2019	 Proof of Service Filed by: Plaintiff St. Paul Fire & Marine Insurance Company <i>Proof of Service of Moving Papers</i>
08/30/2019	 Notice of Motion Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>St. Paul Fire & Marine Insurance Company's Notice of Motion for Partial Summary Judgment as to Defendant Aspen Specialty Insurance Co.</i>
09/06/2019	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision Request for Exemption - GRANTED</i>
09/06/2019	 Request Filed by: Plaintiff St. Paul Fire & Marine Insurance Company <i>Request for Hearing</i>
09/09/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
09/10/2019	 Motion to Seal/Redact Records Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment LLC d/b/a Marquee Nightclub's Motion to Seal and File Exhibit 1 to Appendix of Exhibits in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment</i>
09/10/2019	 Declaration

CASE SUMMARY

CASE NO. A-17-758902-C


	<p>Filed By: Defendant Roof Deck Entertainment LLC <i>Declaration of Nicholas B. Salerno In Support of Defendant Roof Deck Entertainment LLC d/b/a Marquee Nightclub's Motion to Seal and File Exhibit 1 to Appendix of Exhibits in Support of Its Motion for Summary Judgment</i></p>
09/13/2019	<p> Motion for Summary Judgment Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant National Union Fire Insurance Company Of Pittsburgh PA's Motion For Summary Judgment</i></p>
09/13/2019	<p> Request for Judicial Notice Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Request For Judicial Notice In Support of Defendant National Union Fire Insurance Company Of Pittsburgh PA's Motion For Summary Judgment</i></p>
09/13/2019	<p> Declaration Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Declaration of Nicholas B. Salerno In Support of National Union Fire Insurance Company Of Pittsburgh PA's Motion For Summary Judgment</i></p>
09/13/2019	<p> Declaration Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Declaration Of Richard C. Perkins In Support Of National Union Fire Insurance Company Of Pittsburgh PA's Motion For Summary Judgment</i></p>
09/13/2019	<p> Appendix Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA <i>Defendant National Union Fire Insurance Company Of Pittsburgh PA's Appendix Of Exhibits In Support Of Motion For Summary Judgment</i></p>
09/13/2019	<p> Motion for Summary Judgment Filed By: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment</i></p>
09/13/2019	<p> Appendix Filed By: Defendant Roof Deck Entertainment LLC <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Appendix of Exhibits in Support of Motion for Summary Judgment</i></p>
09/13/2019	<p> Declaration Filed By: Defendant Roof Deck Entertainment LLC <i>Declaration of Nicholas B. Salerno in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment</i></p>
09/13/2019	<p> Declaration Filed By: Defendant Roof Deck Entertainment LLC <i>Declaration of Bill Bonbrest in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment</i></p>
09/13/2019	<p> Request for Judicial Notice Filed By: Defendant Roof Deck Entertainment LLC <i>Request for Judicial Notice in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment</i></p>
09/13/2019	<p> Filed Under Seal</p>

CASE SUMMARY


CASE NO. A-17-758902-C

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA
Exhibit 1 to Appendix of Exhibits in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment [Filed Under Temporary Seal Pursuant to S.C.R. Part VII, Rule 3.2] - Filed Under Seal Per 9/10/19 Defendant Roof Deck Entertainment LLC d/b/a Marquee Nightclub's Motion to Seal and File Exhibit 1 to Appendix of Exhibits in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment


09/14/2019

 Clerk's Notice of Hearing
Notice of Hearing

09/14/2019

 Clerk's Notice of Hearing
Notice of Hearing


09/19/2019

 Opposition and Countermotion
 Filed By: Defendant Aspen Specialty Insurance Company
Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment and Countermotion for Summary Judgment


09/20/2019

 Motion
 Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Phase Discovery


09/20/2019

 Declaration
 Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Declaration of Nicholas B. Salerno in Support of Defendants National Union Fire Insurance Company of Pittsburgh, PA and Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Phase Discovery


09/20/2019

 Clerk's Notice of Hearing
Notice of Hearing


09/25/2019

 Joinder To Motion
 Filed By: Defendant Aspen Specialty Insurance Company
Defendant's Aspen Specialty Insurance Company's Joinder to Defendant National Union Fire Insurance Company of Pittsburgh PA. and Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Phase Discovery


09/26/2019

 Order
 Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Conditional Order to Stay Discovery

09/26/2019

 Notice of Entry of Order
 Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC
Notice of Entry of Conditional Order to Stay Discovery

09/27/2019

 Appendix
 Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Consolidated Appendix of Exhibits

09/27/2019

 Declaration

CASE SUMMARY

CASE NO. A-17-758902-C

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Declaration of William Reeves

09/27/2019



Declaration

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Declaration of Marc Derewetzky

09/27/2019



Response

Filed by: Plaintiff St. Paul Fire & Marine Insurance Company
Reponse to Statement of Facts Offered by Marquee in Support of its Motion for Summary Judgment

09/27/2019



Response

Filed by: Plaintiff St. Paul Fire & Marine Insurance Company
Response to National Union Fire Insurance Company of Pittsburgh PA's Statement of Undisputed Facts in Support of Motion for Summary Judgment

09/27/2019



Opposition and Countermotion

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Opposition and Countermotion

09/27/2019



Opposition to Motion For Summary Judgment

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Opposition to Motion for Summary Judgment Filed by AIG and Request for Discovery Per NRCF 56(d)

09/30/2019



Opposition to Motion

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Plaintiff St. Paul Fire & Marine Insurance Company's Opposition to Defendants National Union Fire Insurance Company of Pittsburgh Pa's and Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Phase Discovery.

09/30/2019



Declaration

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Declaration of Marc J. Derewetzky In Support of Plaintiff's Opposition to Defendants' Motion to Phase Discovery

10/02/2019



Reply

Filed by: Plaintiff St. Paul Fire & Marine Insurance Company
St. Paul Reply Supporting its Motion for Partial Summary Judgment as to Defendant Aspen Specialty Insurance Company and Opposition to Aspen's Countermotion for Summary Judgment

10/07/2019



Ex Parte Motion for Enlargement of Time

Filed By: Defendant Aspen Specialty Insurance Company
Defendant's Ex Parte Motion to Extend Hearing Date for Plaintiff's Motion for Partial Summary Judgment and Aspen's Countermotion for Summary Judgment

10/07/2019



Reply in Support

Filed By: Defendant Aspen Specialty Insurance Company
Defendant Aspen Specialty Insurance Company's Reply in Support of Its Countermotion for Summary Judgment

10/07/2019



Opposition to Motion For Summary Judgment

Filed By: Defendant Roof Deck Entertainment LLC
Defendant Roof Deck Entertainment, LLC d/b/a/ Marquee Nightclub's Opposition to St. Paul

CASE SUMMARY

CASE NO. A-17-758902-C

Fire & Marine Insurance Company's Countermotion for Summary Judgment

10/07/2019



Objection

Filed By: Defendant Roof Deck Entertainment LLC

Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Objections to Facts Not Supported by Admissible Evidence Filed in Support of St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment and Countermotion re Duty to Indemnity

10/08/2019



Objection

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC

National Union Fire Insurance Company of Pittsburgh PA. and Roof Deck Entertainment, LLC dba Marquee Nightclub's Objections to Subpoena Duces Tecum for Production of Business Records

10/10/2019



Reply

Filed by: Plaintiff St. Paul Fire & Marine Insurance Company

Reply to Opposition to Plaintiff's Countermotion

10/10/2019



Reply in Support

Filed By: Defendant Roof Deck Entertainment LLC

Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Reply in Support for Summary Judgment

10/10/2019



Reply in Support

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA

Defendant National Union Fire Insurance Company of Pittsburgh PA's Reply In Support of Motion for Summary Judgment

10/10/2019



Objection

Filed By: Defendant National Union Fire Insurance Company of Pittsburgh PA

Defendant National Union Fire Insurance Company of Pittsburgh, PAs Objections to Facts Not Supported by Admissible Evidence Filed in Support of St. Paul Fire & Marine Insurance Company's Opposition to Motion for Summary Judgment and Request for Discovery per NRCP 56(d)

10/17/2019



Recorders Transcript of Hearing

Party: Defendant Aspen Specialty Insurance Company

Recorder's Transcript of Pending Motions, Tuesday, October 8, 2019

10/24/2019



Recorders Transcript of Hearing

Party: Plaintiff St. Paul Fire & Marine Insurance Company; Defendant Aspen Specialty Insurance Company; Defendant National Union Fire Insurance Company of Pittsburgh PA; Defendant Roof Deck Entertainment LLC

Recorder's Transcript of Pending Motions, Tuesday, October 15, 2019

10/24/2019



Recorders Transcript of Hearing

Party: Plaintiff St. Paul Fire & Marine Insurance Company

Recorder's Transcript of Pending Motions, Tuesday, February 13, 2018

10/24/2019



Recorders Transcript of Hearing

Party: Plaintiff St. Paul Fire & Marine Insurance Company

Recorder's Transcript of Pending Motions, Tuesday, October 30, 2018

11/12/2019



Order to Seal

CASE SUMMARY

CASE NO. A-17-758902-C

Filed By: Defendant Roof Deck Entertainment LLC
Order to Seal Exhibit 1 to Appendix of Exhibits in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment

11/13/2019



Notice of Entry of Order

Filed By: Defendant Roof Deck Entertainment LLC
Notice of Entry of Order to Seal Exhibit 1 to Appendix of Exhibits in Support of Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment

03/26/2020



Notice

Filed By: Defendant Aspen Specialty Insurance Company
Notice of Temporary Office Closure Due to COVID-19 - St. Paul

04/08/2020



Notice of Appearance

Party: Plaintiff St. Paul Fire & Marine Insurance Company
Notice of Appearance of Counsel

04/09/2020



Notice

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Notice Of Disassociation Of Counsel

04/13/2020



Stipulation and Order

Stay Discovery and Stay or Vacate Trial

04/27/2020



Notice of Entry of Stipulation and Order

Filed By: Defendant Aspen Specialty Insurance Company
Notice of Entry of Stipulation and Order to Stay Discovery and Stay or Vacate Trial (First Stipulated Request For Stay of Discovery Deadline)

05/06/2020



Filing Fee Remittance

Filed By: Defendant Aspen Specialty Insurance Company
Filing Fee Remittance

05/14/2020



Order

Order Denying St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment, and Order Granting in Part Defendant Aspen Speciality Insurance Company's Counter-Motion for Summary Judgment

05/14/2020



Findings of Fact, Conclusions of Law and Order

FFCL Roof Deck's MSJ

05/14/2020



Findings of Fact, Conclusions of Law and Order

Findings of Fact, Conclusions of Law and Order Granting National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment

05/27/2020



Notice of Entry of Order

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Notice of entry of Findings of Fact, Conclusions of Law and Order Granting Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment

05/27/2020






Notice of Entry of Order

Filed By: Plaintiff St. Paul Fire & Marine Insurance Company
Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting National Union Fire Insurance Company of Pittsburgh PA's Motion for Summary Judgment

CASE SUMMARY


CASE NO. A-17-758902-C

05/27/2020	 Notice of Entry of Order Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Notice of Entry of Order Denying St. Paul Fire & Marine Insurance Company's Motion for Partial Summary Judgment, and Order Granting in Part Defendant Aspen Specialty Insurance Company's Counter-Motion for Summary Judgment</i>
06/11/2020	 Motion for Summary Judgment Filed By: Defendant Aspen Specialty Insurance Company <i>Defendant Aspen's Renewed Motion for Summary Judgment</i>
06/11/2020	 Appendix Filed By: Defendant Aspen Specialty Insurance Company <i>APEN - Appendix of Exhibits to Def Aspen's Renewed Motion for Summary Judgment - St. Paul</i>
06/12/2020	 Notice of Appeal Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Notice of Appeal</i>
06/12/2020	 Case Appeal Statement Filed By: Plaintiff St. Paul Fire & Marine Insurance Company <i>Plaintiff's Case Appeal Statement</i>

DISPOSITIONS

03/21/2018	Order of Dismissal (Judicial Officer: Sturman, Gloria) Debtors: St. Paul Fire & Marine Insurance Company (Plaintiff) Creditors: Roof Deck Entertainment LLC (Defendant) Judgment: 03/21/2018, Docketed: 03/22/2018 Comment: In Part
05/14/2020	Summary Judgment (Judicial Officer: Sturman, Gloria) Debtors: St. Paul Fire & Marine Insurance Company (Plaintiff) Creditors: Aspen Specialty Insurance Company (Defendant) Judgment: 05/14/2020, Docketed: 05/14/2020 Comment: In Part
05/14/2020	Summary Judgment (Judicial Officer: Sturman, Gloria) Debtors: St. Paul Fire & Marine Insurance Company (Plaintiff) Creditors: National Union Fire Insurance Company of Pittsburgh PA (Defendant) Judgment: 05/14/2020, Docketed: 05/14/2020
05/14/2020	Summary Judgment (Judicial Officer: Sturman, Gloria) Debtors: St. Paul Fire & Marine Insurance Company (Plaintiff) Creditors: National Union Fire Insurance Company of Pittsburgh PA (Defendant) Judgment: 05/14/2020, Docketed: 05/14/2020

HEARINGS

09/12/2017	 Motion to Seal/Redact Records (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Notice of Motion and Motion to Seal or Redact Complaint</i> Granted; Journal Entry Details: <i>Mr. Morales stated if the complaint was sealed then the exhibits would also be sealed. COURT ORDERED, Motion to Seal GRANTED; counsel to provide an order specifically identifying which documents were to be sealed as the errata would remain on the record but the exhibits would be sealed and anything from the settlement conference would also be sealed.;</i>
02/13/2018	Motion to Seal/Redact Records (9:30 AM) (Judicial Officer: Sturman, Gloria)

CASE SUMMARY

CASE NO. A-17-758902-C

	<i>Defendant Roof Deck Entertainment LLC dba Marquee Nightclub's Motion to Seal and File Exhibit A to Appendix of Exhibit in Support of its Motion to Dismiss</i> Granted;
02/13/2018	Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Defendant Roof Deck Entertainment LLC dba Marquee Nightclub's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i> Denied Without Prejudice;
02/13/2018	Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Defendant National Union Fire Insurance Company of Pittsburgh PA's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i> Granted in Part;
02/13/2018	Motion to Associate Counsel (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Motion to Associate Counsel on an Order Shortening Time</i> Granted;
02/13/2018	Motion to Associate Counsel (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Motion to Associate Counsel on Order Shortening Time (Steven James Aaronoff, Esq.)</i> Granted;
02/13/2018	 All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria) Matter Heard; Journal Entry Details: <i>DEFENDANT ROOF DECK ENTERTAINMENT LLC DBA MARQUEE NIGHTCLUB'S MOTION TO SEAL AND FILE EXHIBIT A TO APPENDIX OF EXHIBIT IN SUPPORT OF ITS MOTION TO DISMISS: Mr. Salerno argued the parties found it to be proprietary. COURT ORDERED, Motion GRANTED. DEFENDANT ROOF DECK ENTERTAINMENT LLC DBA MARQUEE NIGHTCLUB'S MOTION TO DISMISS PLAINTIFF ST. PAUL FIRE & MARINE INSURANCE COMPANY'S COMPLAINT: Mr. Salerno argued the waiver of subrogation was part of the night club management agreement and the clause demonstrated the insured's decision to forgo claims, that they agreed to certain provisions in their policies, that there was no dispute the hotel didn't pay, and that this foreclosed the ability to bring an express indemnity claim and disabled other causes of action regarding contribution. Mr. Morales argued it was a duty that could not be delegated and that this was between Nevada Restaurant Corp (NVR) and Roof Deck as the Cosmopolitan was not NVR. Mr. Morales argued the Cosmopolitan owned the property, the night club was leased to NVR and NVR entered into a contract with Marquee. Mr. Morales argued NVR was not part of the litigation and that Marquee and the Cosmopolitan did not have a contract between each other. Mr. Aaronoff argued the language of management agreement holds the owner NVR and it's partners and subsidiaries harmless. Following further arguments by counsel, COURT ORDERED, Motion DENIED WITHOUT PREJUDICE as premature. DEFENDANT NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S MOTION TO DISMISS PLAINTIFF ST. PAUL FIRE & MARINE INSURANCE COMPANY'S COMPLAINT: Mr. Salerno argued the insurance company was not allowed to step into the shoes, that St. Paul and National were both excess carriers; however St. Paul indicated they were a high level carrier, and that there could only be a primary carrier and an excess carrier. Mr. Salerno argued they should amend the complaint and set out the legal provisions to show they were an excess carrier. Mr. Morales argued the action raised questions of law, that subrogation was a basic concept, and that this was not a novel legal issue; however Deft.'s just don't have a case to support disallowing it. COURT ORDERED, Motion GRANTED IN PART to allow leave to amend the pleading. MOTION TO ASSOCIATE COUNSEL ON AN ORDER SHORTENING TIME: There being no objection on file, COURT ORDERED, Motion GRANTED; local counsel must be present for any court appearances. MOTION TO ASSOCIATE COUNSEL ON ORDER SHORTENING TIME (STEVEN JAMES AARONOFF, ESQ.): There being no objection on file, COURT ORDERED, Motion GRANTED; local counsel must be present for any court appearances. ;</i>
03/13/2018	CANCELED Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i> <i>Defendant Aspen Specialty Insurance Company's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Complaint</i>

CASE SUMMARY

CASE NO. A-17-758902-C

10/30/2018	<p>Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) 10/30/2018, 01/25/2019, 02/22/2019, 02/28/2019 <i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's First Amended Complaint</i> Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied; Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied; Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied; Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied;</p>
10/30/2018	<p>Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) 10/30/2018, 01/25/2019, 02/22/2019, 02/28/2019 <i>National Union's Motion to Dismiss Plaintiffs Complaint</i> Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied Without Prejudice; Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied Without Prejudice; Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied Without Prejudice; Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied Without Prejudice;</p>
10/30/2018	<p>Motion to Dismiss (9:30 AM) (Judicial Officer: Sturman, Gloria) 10/30/2018, 01/25/2019, 02/22/2019, 02/28/2019 <i>Defendant Aspen Specialty Insurance Company's Motion to Dismiss Plaintiff St. Paul Fire & Marine Insurance Company's Redacted First Amended Complaint</i> Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days DECISION MADE - SEE 02/28/19 MINUTE ORDER Denied Without Prejudice; Continued for Chambers Decision; Continued for Chambers Decision; Continued for Chambers Decision; in 30 days</p>

CASE SUMMARY

CASE No. A-17-758902-C

DECISION MADE - SEE 02/28/19 MINUTE ORDER

Denied Without Prejudice;

Continued for Chambers Decision;

Continued for Chambers Decision;

Continued for Chambers Decision; in 30 days

DECISION MADE - SEE 02/28/19 MINUTE ORDER

Denied Without Prejudice;

Continued for Chambers Decision;

Continued for Chambers Decision;

Continued for Chambers Decision; in 30 days

DECISION MADE - SEE 02/28/19 MINUTE ORDER

Denied Without Prejudice;

10/30/2018



All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria)

Continued for Chambers Decision;

Journal Entry Details:

DEFENDANT ROOF DECK ENTERTAINMENT, LLC D/B/A MARQUEE NIGHTCLUB'S MOTION TO DISMISS PLAINTIFF ST. PAUL FIRE & MARINE INSURANCE COMPANY'S FIRST AMENDED COMPLAINT: Mr. Salerno argued the night club management agreement included subrogation, the subrogation waiver applied to the owner insured policies and the cause of action St. Paul was attempting subrogate to only applied to claims that weren't reimbursed under the policy. Mr. Salerno further argued the subrogation waiver agreement applied to all owner insured policies, that the Cosmo was required to carry and maintain a landlord insurance policy, and that there was an express indemnity provision that applied only to un-reimbursed losses. Mr. Salerno argued regarding the Calloway case, the Uniform Contribution Act, that contribution was not allowed when there was an express indemnity provision, and that the verdict found the Cosmo jointly and severally liable for intentional conduct. Mr. Reaves argued the Cosmo was not a party to the agreement, that on page one of the agreement indicating who the parties were the Cosmo was not listed, and that the Cosmo was not a signatory on the lease and they didn't obligate themselves to the agreement. Mr. Reaves argued the Cosmo and Marquis were jointly defended by the same lawyer and they never looked to each other as to who was responsible, that Marquis was running the show and they never tested the share between them, and that the Cosmo was a silent party. Mr. Salerno argued they were the project owner and their insurance requirements were indicated throughout the agreement and they agreed to procure insurance under the agreement. Mr. Salerno argued they claim the insurance they procured was not subject to the subrogation requirements of the agreement, which under this agreement require subrogation rights be waived. NATIONAL UNION'S MOTION TO DISMISS PLAINTIFFS COMPLAINT and DEFENDANT ASPEN SPECIALTY INSURANCE COMPANY'S MOTION TO DISMISS PLAINTIFF ST. PAUL FIRE & MARINE INSURANCE COMPANY'S REDACTED FIRST AMENDED COMPLAINT: Ms. Keller argued Pltf. was asking to create law in Nevada, that Nevada had not recognized equitable subrogation between insurers and even the jurisdictions that do, have never recognized a right to equitable subrogation between excess carriers in different towers, or excess carriers standing on the same footing. Ms. Keller argued Pltf. was asserting their coverage was excess and that they had the same rights; however they were not, rather they were both excess carriers in different towers. Ms. Keller argued in the Marquis tower Aspen was primary and National Union was excess and in the Cosmo tower Zurich was primary and St. Paul was excess. Ms. Keller further argued under the St. Paul policy Cosmo was a named insured and the Marquis was named under the Aspen policy, and that excess carriers cannot go after each other. Ms. Keller further argued regarding the Fireman's Fund case and stated the Pltf.'s should provide a copy of the policy if they wish to continue to argue they are excess. Mr. Loosvelt argued it was a question of law as to what Aspen's policy limits were, that this was based on whether Aspen refused settlement within policy limits, that each occurrence was a \$1 million limit, and that it was two occurrences. Mr. Derewetzky argued the management agreement provision 12.2.5 stated all insurance coverage maintained by operator shall be primary to insurance coverage maintained by owner, Cosmo was the owner, Marquis was the operator, and that St. Paul's insurance was excess to their insurance. Mr. Derewetzky further argued St. Paul paid a debt that AIG was primarily liable. Ms. Keller argued the provisions of an insurance policy control over the terms in an insured's contract pursuant to the Travelers Casualty vs. American Equity case, that you can't take an insurance policy and convert it into a different type of policy, that Pltf.'s plead they insured Cosmo as the named insured and that they had an excess policy. Ms. Kelly further argued National Union insured Marquis as it's named insured excess policy leaving you with two towers or excess carriers going after each other. Ms. Keller argued this was different from any previous law and would prevent every other tower from going after each other and as such the Supreme Court should

CASE SUMMARY**CASE NO. A-17-758902-C**

be making that decision. Ms. Keller stated this Court should grant her Motion to Dismiss and defer it to the Supreme Court because no one would be injured here since it was two insurance companies going after each other. Mr. Loosvelt argued if the Court was going to recognize these new causes of action that it was fatal to all the claims, that they fail because this was purely a legal question based on the fact that settlement offers were not within policy limits, that the claims were lacking in the elements, and that the insured never suffered a loss since they were indemnified in the post verdict settlement. Mr. Derewetzky argued in the issue regarding whether any insured suffered a loss, the insured isn't damaged because the insurance company pays on it's behalf which allows the insurance company to go after recovery. Mr. Derewetzky argued regarding the Aspen policy limits and that Aspen argued they had an endorsement amending the policy. The policy covered multiple coverage parts for the same occurrence and the maximum insurance would not exceed the highest limit of any one coverage part. Mr. Derewetzky further argued regarding the coverage parts and how it applied. Following further arguments by counsel, **COURT ORDERED**, Decision **CONTINUED** to Chambers. **CONTINUED TO: 01/25/19 Chambers ;**

01/07/2019

**Motion to Associate Counsel (9:00 AM)** (Judicial Officer: Sturman, Gloria)

Motion to Associate Counsel Jeremy White Stamelman and Withdraw Counsel Steven James Aaronoff

See Advance Decision

Granted;

Journal Entry Details:

COURT FINDS on Calendar for January 8, 2019 a Motion to Associate Counsel and pursuant to NSC 42 the motion has been reviewed by this Court. There being no opposition, **COURT ORDERED**, Motion **GRANTED** without oral argument and **REMOVED** from its civil motion calendar of January 8, 2019, pursuant to EDCR 2.23(c). Counsel is to note the Court does not waive local Nevada counsel from being present at all court hearings in this Department per to EDCR 7.44. Counsel is **DIRECTED** to promptly serve a copy of the Order on the State Bar of Nevada, pursuant to SCR 42(3)(c)(iv). **CLERK'S NOTE:** A copy of this minute order was e-mailed, mailed, or faxed as follows: Ramiro Morales, Esq. (702-699-9455), Michael Edwards, Esq. (medwards@messner.com), and Nicholas Salerno, Esq. (nsalerno@heroldsagerlaw.com) ./As 01-07-19;

02/28/2019

**Minute Order (3:00 PM)** (Judicial Officer: Sturman, Gloria)

Decision Made;

Journal Entry Details:

DEFENDANT ASPEN SPECIALTY INS. CO. S MOTION TO DISMISS .. PLAINTIFF ST PAUL FIRE AND MARINE INS. CO. S REDACTED FIRST AMENDED COMPLAINT .. DEFENDANT ROOF DECK ENTERTAINMENT LLC S MOTION TO DISMISS PLAINTIFF ST PAUL FIRE & MARINE INS. CO. S FIRST AMENDED COMPLAINT .. AND NATIONAL UNION S MOTION TO DISMISS PLAINTIFF S COMPLAINT Defendant Aspen Specialty Ins. Co. s Motion to Dismiss Plaintiff St Paul Fire and Marine Ins. Co. s redacted First Amended Complaint; Defendant Roof Deck Entertainment LLC s Motion to Dismiss Plaintiff St Paul Fire & Marine Ins. Co. s First Amended Complaint; and National Union s Motion to Dismiss Plaintiff s Complaint came on for hearing on October 30, 2018. Having reviewed the transcript filed December 26, 2018 and taken the matter under advisement, the **COURT HEREBY FINDS** as follows: With respect to the Roof Deck Motion to Dismiss, the Court raised the question of whether the standard of review for a Motion to Dismiss would change with the amendment of the Nevada Rules of Civil Procedure. **COURT FINDS** it is now clear from the Advisory Committee Notes to NRCP 12 that no change is anticipated Rule 12(b)(5) mirrors FRCP 12(b)(6). Incorporating the text of the federal rule does not signal intent to change existing Nevada pleading standards. **COURT FURTHER FINDS** Roof Deck s Motion introduces matters outside the scope of the initial pleadings and the issues related to the operating agreement in question are such that, under Nevada s rigorous pleading standards, it is not appropriate for disposition at the pleading stage. Nevada law provides that a complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the Plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief. *Vacation Village, Inc. v. Hitachi America, Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994). **COURT THEREFORE ORDERED**, Roof Deck s Motion to Dismiss **DENIED**. Similarly, both the National Union and Aspen Specialty Ins. Co. Motions require the Court to go beyond the pleadings and ask this Court to analyze insurance policies without testing through discovery whether those policies are complete and that there are no missing amendments, exhibits, riders, or endorsements. Notably the declarations in support of the admissibility of the respective policies are brief, stating only that the exhibit is a true and correct copy with only premium information redacted, with no explanation of how the declarant determined the

CASE SUMMARY

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completeness of the policy. Further, both National Union and Aspen argue that the indemnity action must fail as a matter of law, but it seems that at least one piece of evidence necessary to evaluate these legal issues is missing from the record before the Court, i.e. the St Paul policy. Nevada has not adopted the federal standard found in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Both National Union and Aspen Specialty have provided evidence outside the initial pleadings, but argue that the issue before the court is purely a matter of legal interpretation and appropriate for disposition at the pleading stage. Based on the record before the Court at this time, the court cannot say there are no material questions of fact and the only issues remaining are purely questions of law. **COURT THEREFORE ORDERED**, Motions to Dismiss filed respectively by National Union and Aspen Specialty **DENIED WITHOUT PREJUDICE** to raise these issues in a Motion for Summary Judgment. Counsel for Plaintiff is **DIRECTED** to provide Orders for signature by the Court within 30 days. **CLERK'S NOTE**: Minute Order corrected to reflect "the court cannot say there are" rather than "there appears to be" in the last sentence of the findings./s 02-28-19 A copy of this minute order was e-mailed, mailed, or faxed as follows: Nicholas Salerno, Esq. (nsalerno@heroldsagerlaw.com), Ryan Loosvelt, Esq. (rloosvelt@messner.com), and William Reeves, Esq. (702-699-9455) ;

08/21/2019



Mandatory Rule 16 Conference (10:30 AM) (Judicial Officer: Sturman, Gloria)

08/21/2019, 09/11/2019

Matter Continued;

Matter Heard;

Journal Entry Details:

MATTER TRAILED AND RECALLED AT THE HOUR OF 11:11 AM with Mr. Derewetzky now present telephonically. Mr. Salerno stated at the last hearing phased discovery was discussed and the Court recommended the parties discuss the issue to determine if they could come to a resolution, that they'd agreed on the authenticity of the documents, and that he was prepared to file a motion this week. Mr. Salerno further requested Phase II of discovery not move forward until the Motion for Summary Judgment was heard. Mr. Loosvelt requested discovery be suspended until the motion was heard. Mr. Derewetzky argued he did not believe phased discovery was appropriate; however he hadn't seen Mr. Salerno's motion yet, that it was not clear if there were factual issues with the motion, and that he wanted to move the case forward as it had been in a holding pattern for a few years. Mr. Loosvelt stated it was a primary issue based on policy limits, that it was a legal issue, and that it was only a month or so off. Court stated she was willing to discuss this with respect to hearing the responses after that hearing. Mr. Derewetzky stated he was not authorized to enter into that agreement; however he would abide by it if the Court were to order it. Following further arguments by counsel, **COURT ORDERED**, Oral Motion for a Stay **GRANTED**. Mr. Salerno stated he'd filed motions to dismiss as the case was left with purely legal issues and should be addressed before starting discovery. Mr. Derewetzky stated hadn't seen Mr. Salerno's motion and he didn't know if discovery was needed or if a 56(f) motion should be filed. **COURT FINDS** the request to stay discovery should be taken to the Discovery Commissioner **AND THEREFORE ORDERED**, Discovery stay request **REFERRED** to Discovery Commissioner and to be heard by September 20, 2019; Pending the filing and resolution of the discovery issues, National Union's requirement to respond **STAYED**; Mr. Salerno to prepare the order. ;

Matter Continued;

Matter Heard;

Journal Entry Details:

Mr. Salerno stated they'd propounded some initial discovery and both sides filed separate Early Case Conference Reports as they both wished to take different approaches. Mr. Salerno stated some materials needed to be authenticated before he could bring his Motion for Summary Judgment, that the Pltf.'s had over 25 witnesses, and that there was a lot of discovery in the underlying case; however he wanted to resolve this without going to great expense. Mr. Derewetzky stated there was no benefit to delaying discovery as Deft.'s were seeking a third bite at the apple. Court stated concern as the matter was thoroughly briefed and argued twice and that there were some issues that went beyond authenticating documents. Mr. Salerno argued his view was those were legal and binding contracts and unambiguous issues as to the nightclub management agreement and that it only pertained to uninsured losses and that the Court could decide if the carriers were co-access carriers. Mr. Edwards noted the July order stated after all briefing there was a piece of evidence regarding the St. Paul insurance policy to be investigated and they needed to get that policy in order to address those issues. Court inquired if they were just seeking 56(f) relief. Mr. Salerno stated they just wanted Pltf.'s to agree this was a true and correct policy and therefore additional discovery would be needed as they were back to the threshold issues. Mr. Derewetzky stated it sounded like Deft.'s can get a motion on quickly and therefore he didn't see any need to stay discovery or phase it and they

CASE SUMMARY

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should move forward with a standard discovery order. Following further arguments by counsel COURT ORDERED, Trial Dates SET; 16.1 Conference CONTINUED. CONTINUED TO: 09/11/19 10:30 AM 01/28/2021 9:00 AM CALENDAR CALL 02/15/2021 9:00 AM JURY TRIAL ;

10/08/2019	<p>Motion for Partial Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria)</p> <p><i>Dundi Investments LLC, Motion for Summary Judgment</i></p> <p>Denied;</p>
10/08/2019	<p>Opposition and Countermotion (9:30 AM) (Judicial Officer: Sturman, Gloria)</p> <p><i>Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment and Countermotion for Summary Judgment</i></p> <p>Granted;</p>
10/08/2019	<p> All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria)</p> <p><i>ALL PENDING - DUNDI INVESTMENTS LLC, MOTION FOR SUMMARY JUDGMENT...DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT</i></p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>ALL PENDING - DUNDI INVESTMENTS LLC, MOTION FOR SUMMARY JUDGMENT...DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT Mr. Morales advised the issue is whether the policy is for one million dollars or two million dollars. Mr Morales reviewed the policy via power point and argued as to the coverage. Mr. Loosvelt argued as to the endorsement and it being a million dollar policy. COURT STATED FINDINGS and ORDERED Motion for Summary Judgment DENIED; Counter-Motion GRANTED only as to coverage limits. Power Point admitted and marked as Court's exhibit 1. Mr. Loosvelt to prepare the Order.;</i></p>
10/15/2019	<p>Motion for Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria)</p> <p>Events: 09/13/2019 Motion for Summary Judgment</p> <p><i>Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's Motion for Summary Judgment</i></p> <p>Granted;</p>
10/15/2019	<p>Motion for Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria)</p> <p>Events: 09/13/2019 Motion for Summary Judgment</p> <p><i>Defendant National Union Fire Insurance Company Of Pittsburgh PA's Motion For Summary Judgment</i></p> <p>Granted;</p>
10/15/2019	<p>Opposition and Countermotion (9:30 AM) (Judicial Officer: Sturman, Gloria)</p> <p><i>Opposition to Motion for Summary Judgment Filed By Marquee and Countermotion Re: Duty to Indemnify</i></p> <p>Denied;</p>
10/15/2019	<p> All Pending Motions (9:30 AM) (Judicial Officer: Sturman, Gloria)</p> <p>Granted in Part;</p> <p>Journal Entry Details:</p> <p><i>DEFENDANT ROOF DECK ENTERTAINMENT, LLC D/B/A MARQUEE NIGHTCLUB'S MOTION FOR SUMMARY JUDGMENT .. DEFENDANT NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S MOTION FOR SUMMARY JUDGMENT .. OPPOSITION TO MOTION FOR SUMMARY JUDGMENT FILED BY MARQUEE AND COUNTERMOTION RE: DUTY TO INDEMNIFY Mr. Salerno argued regarding the operating agreements, the Gibbs case and he Calloway case, subrogation waver, express indemnity, the night club management agreement addressing capital losses, and that the funds at issue were funded by the insurance policy. Mr. Derewetzky argued regarding the agreement as to the operator, the master tenant, and the property owner, that the Cosmo was only party to portions of the agreement, the common law claim, non-delegable duty, relative fault, the weighing of culpability, and indemnity. Mr Salerno further argued regarding indemnity, the provision of the contract regarding losses, subrogation, indemnity agreement, and contribution. Mr Derewetzky argued regarding the Calloway case, that the Cosmo was not bound by the management</i></p>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-758902-C

	<p>agreement, that there were no facts that the Cosmo did anything, and there was no evidence of any conduct by the Cosmo. Mr. Salerno argued regarding the duty to indemnify claim and that National Union was entitled to reimbursement of funds paid on behalf of the Cosmo. Ms. Keller argued regarding subrogation, the excess insurance carrier, the two insurance towers, and that there was no subrogation of two excess carriers in two different towers. Ms. Keller argued there was a primary and excess carrier in each tower and if there wasn't then there would be no finality of a settlement ever. Mr. Reeves argued regarding the Traveler's Insurance case, that this was Cosmo's bad faith claim, and that the management agreement stated all insurance by Marquee was primary over the owner policy. Mr. Reeves argued regarding priority of coverage, the Rossmore decision, indemnity principles, and the intent of the parties. Following further arguments by counsel, COURT STATED FINDINGS AND ORDERED, Def't. Roof Deck/Marquee's Motion for Summary Judgment GRANTED; National Union's Motion for Summary Judgment GRANTED; Countermotion DENIED; Motions on calendar for October 23, 2019 before the Discovery Commissioner VACATED. ;</p>
10/23/2019	<p>CANCELED Motion (9:30 AM) (Judicial Officer: Truman, Erin) <i>Vacated</i> <i>Defendants National Union Fire Insurance Company of Pittsburgh PA. and Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Phase Discovery</i></p>
10/23/2019	<p>CANCELED Joinder (9:30 AM) (Judicial Officer: Truman, Erin) <i>Vacated</i> <i>Defendant's Aspen Specialty Insurance Company's Joinder to Defendant National Union Fire Insurance Company of Pittsburgh PA. and Roof Deck Entertainment, LLC dba Marquee Nightclub's Motion to Phase Discovery</i></p>
02/28/2020	<p>CANCELED Status Check (3:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated</i> <i>Dueling Orders</i></p>
07/17/2020	<p>Status Check: Trial Readiness (3:00 AM) (Judicial Officer: Sturman, Gloria) <i>Status of Stay</i></p>
01/28/2021	<p>CANCELED Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i></p>
02/16/2021	<p>CANCELED Jury Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i></p>
DATE	FINANCIAL INFORMATION

Defendant Aspen Specialty Insurance Company	
Total Charges	623.00
Total Payments and Credits	623.00
Balance Due as of 6/15/2020	0.00
Defendant National Union Fire Insurance Company of Pittsburgh PA	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 6/15/2020	0.00
Defendant Roof Deck Entertainment LLC	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 6/15/2020	0.00
Plaintiff St. Paul Fire & Marine Insurance Company	
Total Charges	764.00
Total Payments and Credits	764.00
Balance Due as of 6/15/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

A-17-758902-C

Clark

County, Nevada

Case No. _____

Department 26

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

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

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

ST. PAUL FIRE & MARINE INSURANCE COMPANY

ASPEN SPECIALTY INSURANCE COMPANY; NATIONAL UNION FIRE

INSURANCE COMPANY OF PITTSBURGH, PA; ROOF DECK ENTERTAINMENT,

LLC, d/b/a MARQUEE NIGHTCLUB; and DOES 1 through 25, inclusive

Attorney (name/address/phone):

Attorney (name/address/phone):

Ramiro Morales (Bar No. 7101); William C. Reeves [Bar No. 008235]; Morales Fierro & Reeves

600 South Tonopah Dr., Suite 300, Las Vegas, NV 89106

Tel: (702) 699-7822

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input checked="" type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

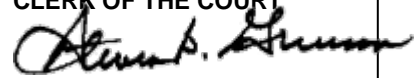
Business Court filings should be filed using the Business Court civil coversheet.

July 25, 2017

Date

Signature of initiating party or representative

See other side for family-related case filings.



1 **FFCO**

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14 Attorneys for Defendants NATIONAL UNION FIRE

15 INSURANCE COMPANY OF PITTSBURGH PA. and

16 ROOF DECK ENTERTAINMENT, LLC dba MARQUEE NIGHTCLUB

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 ST. PAUL FIRE & MARINE INSURANCE
20 COMPANY,

21 Plaintiffs,

22 vs.

23 ASPEN SPECIALTY INSURANCE
24 COMPANY; NATIONAL UNION FIRE
25 INSURANCE COMPANY OF
26 PITTSBURGH PA.; ROOF DECK
ENTERTAINMENT, LLC d/b/a MARQUEE
NIGHTCLUB; and DOES 1 through 25,
inclusive,

27 Defendants.
28

CASE NO.: A-17-758902-C
DEPT.: XXVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
ROOF DECK ENTERTAINMENT, LLC
d/b/a MARQUEE NIGHTCLUB'S
MOTION FOR SUMMARY JUDGMENT**

1 Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's ("Marquee") Motion
2 for Summary Judgment ("MSJ") came on for hearing on October 15, 2019 in Department XXVI of
3 this Court, the Honorable Gloria Sturman presiding. Nicholas A. Salerno of Herold & Sager and
4 Jennifer L. Keller of Keller/Anderle LLP appeared for Defendant Marquee, William Reeves and
5 Marc J. Derewetzky of Morales Fierro & Reeves appeared for Plaintiff St. Paul Fire & Marine
6 Insurance Company ("St. Paul"), and Ryan A. Loosvelt of Messner Reeves LLP appeared for
7 Defendant Aspen Specialty Insurance Company ("Aspen").

8 The Court, having reviewed and considered the voluminous pleadings and papers on file,¹
9 having heard and considered argument of counsel, and good cause appearing, hereby GRANTS
10 Marquee's Motion for Summary Judgment.

11 On October 15, 2019, the Court issued a minute order granting Marquee's Motion for
12 Summary Judgment. However, the Court's decision set out herein is not based solely on the
13 contents of the minute order, but is also based on the record on file herein. The Court hereby issues
14 the following Findings of Facts and Conclusions of Law.

15 I.

16 FINDINGS OF FACT

17 A. The Underlying Action

18 1. This action arises out of an underlying bodily injury action captioned *David Moradi*
19 *v. Nevada Property I, LLC dba The Cosmopolitan, et al.*, District Court Clark County, Nevada,
20 Case No. A-14-698824-C ("Underlying Action"). (See Plaintiff's First Amended Complaint
21 ("FAC") ¶ 6.)

22
23 ¹ Marquee's Motion for Summary Judgment, Marquee's Request for Judicial Notice in Support of Motion
24 for Summary Judgment, Marquee's Appendix of Exhibits in Support of Motion for Summary Judgment,
25 Declaration of Nicholas B. Salerno in Support of Motion for Summary Judgment, Declaration of Bill
26 Bonbrest in Support of Motion for Summary Judgment, St. Paul's Opposition to Motion for Summary
27 Judgment and Countermotion re: Duty to Indemnify, St. Paul's Response to Statement of Undisputed Facts,
28 St. Paul's Consolidated Appendix of Exhibits in Support of Opposition to Motions for Summary Judgment,
Declaration of Marc J. Derewetzky in Support of Opposition to Motion for Summary Judgment, Declaration
of William Reeves in Support of Opposition to Motion for Summary Judgment, National Union's (defined
below) Opposition to St. Paul's Countermotion for Summary Judgment, Marquee's Reply in Support of
Motion for Summary Judgment, and Marquee's Objections to Facts Not Supported by Admissible Evidence
Filed in Support of Opposition to Motion for Summary Judgment and Countermotion re: Duty to Indemnify.

1 2. Plaintiff David Moradi (“Moradi”) alleged that, on or about April 8, 2012, he went
2 to the Marquee Nightclub located within The Cosmopolitan Hotel and Casino to socialize with
3 friends, when he was beaten by Marquee employees. (FAC ¶¶ 6-7.)

4 3. Moradi filed a complaint against Nevada Property 1, LLC d/b/a The Cosmopolitan
5 of Las Vegas (“Cosmopolitan”) and Roof Deck Entertainment, LLC d/b/a Marquee Nightclub
6 (“Marquee”) on April 4, 2014, asserting causes of action for Assault and Battery, Negligence,
7 Intentional Infliction of Emotional Distress, and False Imprisonment. (FAC ¶¶ 8-10, Exhibit A.)

8 4. Moradi alleged that, as a result of his injuries, he suffered past and future lost
9 wages/income and sought general damages, special damages and punitive damages. (*Id.* ¶ 9, Exhibit
10 A.)

11 5. Roof Deck Entertainment, LLC owns and operates the Marquee Nightclub. (FAC ¶
12 4.)

13 6. Nevada Property 1, LLC owns and operates The Cosmopolitan of Las Vegas. (*Id.* ¶
14 10.)

15 7. Cosmopolitan is the owner of the subject property where the Marquee Nightclub is
16 located and leased the nightclub location to its subsidiary, Nevada Restaurant Venture 1, LLC
17 (“NRV1”). (FAC ¶ 10.)

18 8. NRV1 entered into a written agreement (discussed *infra* Section I.D) with Marquee
19 to manage the nightclub. (FAC ¶ 10.)

20 9. Marquee is a named insured under the National Union Excess Policy defined below.
21 (FAC ¶ 30.)

22 10. Cosmopolitan is a named insured under the St. Paul Excess Policy defined below.
23 Cosmopolitan is also an additional insured to the National Union Excess Policy defined below.
24 (FAC ¶¶ 40 and 44.)

25 11. Marquee is not an insured to the St. Paul Excess Policy defined below. (FAC ¶ 41.)

26 12. Aspen Insurance Company, which issued a primary insurance policy, agreed to
27 provide a joint defense to both Cosmopolitan and Marquee. National Union subsequently

28 ///

1 appointed separate counsel to jointly represent both Cosmopolitan and Marquee. (St. Paul
2 Appendix, Exs. C, D, L, M.)

3 13. During the course of the Underlying Action, Moradi alleged that Cosmopolitan, as
4 the owner of The Cosmopolitan Hotel and Casino (where the Marquee Nightclub was located),
5 faced exposure for breaching its non-delegable duty to keep patrons safe, including Moradi. (FAC ¶
6 13.)

7 14. The Court held in the Underlying Action that Cosmopolitan, as owner of the
8 property, “had a nondelegable duty and can be vicariously held responsible for the conduct of the
9 Marquee security officers” and that Marquee and Cosmopolitan can be jointly and severally liable
10 as a matter of law. (*See* Request for Judicial Notice in Support of Marquee’s Motion for Summary
11 Judgment, Ex. 3.)

12 15. After a five-week trial, the jury in the Underlying Action issued a special verdict on
13 April 26, 2017, finding that Moradi established his claims for assault, battery, false imprisonment
14 and negligence jointly and severally against Marquee and Cosmopolitan and awarded compensatory
15 damages in the amount of \$160,500,000. Because the jury found for Moradi on his intentional-tort
16 claims, the judgment would have been joint and several against Marquee and Cosmopolitan. *See*
17 NRS 41.141(5)(b). (FAC, Ex. C.)

18 16. After the verdict and during the punitive damages phase of the trial, Moradi made a
19 global settlement demand to Marquee and Cosmopolitan. (FAC ¶ 66.)

20 17. Aspen and National Union Fire Insurance Company of Pittsburgh PA (“National
21 Union”) as the primary and excess insurers of Marquee, and Zurich American Insurance Company
22 (“Zurich”) and St. Paul as the primary and excess insurers of Cosmopolitan, accepted the settlement
23 demand and resolved the Underlying Action with the confidential contributions set forth in the FAC
24 filed by St. Paul under seal. (FAC ¶¶ 67-70.)

25 18. The settlement was funded entirely by the insurance carriers for Cosmopolitan and
26 Marquee. No defendant in the underlying case contributed any money toward the settlement. (FAC
27 ¶¶ 67-70.)

28 ///

B. Insurance Policies and Insured Parties

19. Cosmopolitan is a named insured to a primary policy issued by Zurich American Insurance Company to Nevada Property 1 LLC, under policy number PRA 9829242-01, effective November 1, 2011 to November 1, 2012, with limits of \$1,000,000 per occurrence and \$2 million general aggregate (the “Zurich Primary Policy”). (FAC ¶ 69; MSJ p. 14, Undisputed Fact No. (“UF”) 25.)

20. Cosmopolitan is also a named insured to the St. Paul commercial umbrella liability policy number QK06503290, effective March 1, 2011 to March 1, 2013 issued to Premier Hotel Insurance Group (the “St. Paul Excess Policy”), which is excess to the Zurich Primary Policy. (FAC ¶ 40; MSJ pp. 13-14, UF 24 and 25.)

21. Marquee is a named insured to a primary policy issued by Aspen Specialty Insurance Company to The Restaurant Group et al., under policy number CRA8XYD11, effective October 6, 2011 to October 6, 2012 (the “Aspen Primary Policy”). (FAC ¶ 15.)

22. Marquee is also a named insured to the National Union commercial umbrella liability policy number BE 25414413, effective October 6, 2011 to October 6, 2012, issued to The Restaurant Group, et al. (the “National Union Excess Policy”), which is excess to the Aspen Primary Policy (FAC ¶ 30; MSJ p. 13, UF 23.) Cosmopolitan was an additional insured under the Aspen Primary Policy and the National Union Excess Policy. (FAC ¶¶ 24 and 30; MSJ p. 14, UF 26.)

23. The St. Paul Excess Policy contains an endorsement entitled “Waiver of Rights of Recovery Endorsement,” which provides that if Cosmopolitan has agreed in a written contract to waive its rights to recovery of payment for damages for bodily injury, property damage, or personal injury or advertising injury caused by an occurrence, then St. Paul agrees to waive its right of recovery of such payment. (MSJ p. 14, UF 27.)

C. St. Paul’s Claims Against Marquee

24. In the Fifth Cause of Action of the FAC for Statutory Subrogation – Contribution Per NRS 17.225 (“Fifth Cause of Action”), St. Paul asserts a subrogation right against Marquee under NRS 17.225 for contribution to recoup a share of St. Paul’s settlement payment. (FAC ¶ 113.)

1 St. Paul asserts that Moradi's injuries and damages were caused solely by Marquee's actions and
2 unreasonable conduct rather than any affirmative actions or unreasonable conduct on the part of
3 Cosmopolitan. (FAC ¶¶ 117-118.) St. Paul further asserts that Cosmopolitan was held merely
4 vicariously liable for Marquee's actions and Moradi's resulting damages. (FAC ¶ 118.) St. Paul
5 alleges that its settlement payment on behalf of Cosmopolitan was in excess of Cosmopolitan's
6 equitable share of this common liability such that St. Paul is entitled to subrogate to Cosmopolitan's
7 contribution rights against Marquee pursuant to NRS 17.225 and NRS 17.275 for all sums paid by
8 St. Paul as part of the settlement of the Underlying Action. (FAC ¶¶ 119-120.)

9 25. In the Sixth Cause of Action of the FAC for Subrogation – Express Indemnity
10 (“Sixth Cause of Action”), St. Paul asserts that “[p]er written agreement,” Marquee was obligated
11 to “indemnify, hold harmless and defend Cosmopolitan for Moradi's claims in the Underlying
12 Action.” (*Id.* ¶ 122.) St. Paul further alleges that Marquee did not provide indemnification to
13 Cosmopolitan for the claims asserted in the Underlying Action and that, as a result, St. Paul was
14 forced to contribute to the settlement of the Underlying Action to protect Cosmopolitan's interests
15 as well as its own. (*Id.* ¶¶ 125, 127.) St. Paul further alleges that “[p]er the terms of the written
16 agreement,” Marquee is liable to St. Paul for its attorneys' fees in prosecuting this action and
17 enforcing the terms of the express indemnity agreement. (*Id.* ¶ 129.)

18 **D. Nightclub Management Agreement**

19 26. Marquee and NRV1 entered the Nightclub Management Agreement (“NMA”), dated
20 April 21, 2010, with regard to the Marquee Nightclub located within The Cosmopolitan Hotel &
21 Casino. (MSJ p. 8, UF 17.) In the NMA, Marquee agreed to manage and operate the Marquee
22 nightclub in The Cosmopolitan Hotel & Casino.

23 27. Cosmopolitan is identified as the Project Owner in the Recitals section of the NMA
24 and is also a signatory to the agreement both on behalf of itself and NRV1, for which Cosmopolitan
25 is the Managing Member. (MSJ p. 8, UF 13.)

26 28. The NMA provides in pertinent part:

27 **1. Definitions**

28 . . .

1 **“Losses”** shall mean any and all liabilities, obligations, losses, damages,
2 penalties, claims, actions, suits, costs, expenses and disbursements of a Person not
3 reimbursed by insurance, including, without limitation, all reasonable attorneys’
4 fees and all other reasonable professional or consultants’ expenses incurred in
investigating, preparing for, serving as a witness in, or defending against any action
or proceeding, whether actually commenced or threatened.

5 (MSJ p. 9, UF 18.)

6 29. Section 12 of the NMA sets out the insurance requirements among the parties, and
7 provides, in pertinent, part as follows:

8 **12. Insurance**

9 12.1 [NRV1’s] Insurance. During the Term of this Agreement, [NRV1]
10 shall provide and maintain the following insurance coverage, at its sole cost and
11 expense . . .

12 . . .
13 12.1.2 Commercial general liability insurance, including contractual
14 liability and liability for bodily injury or property damage, with a combined single
15 limit of not less than Two Million Dollars (\$2,000,000) for each occurrence, and at
least Four Million Dollars (\$4,000,000) in the aggregate, including excess
coverage; and

16 12.1.3 Any coverage required under the terms of the Lease to the
17 extent such coverage is not the responsibility of [Marquee] to provide pursuant to
Section 12.2 below.

18 12.2 [Marquee’s] Insurance.

19 12.2.1 During the Term of this Agreement, [Marquee] shall provide
20 and maintain the following insurance coverage (the “[Marquee] Policies”), the cost
of which shall be an Operating Expense:

21 12.2.1.1 Commercial general liability insurance (occurrence
22 form), including broad form contractual liability coverage, with minimum
23 coverages as follows: general aggregate - \$4,000,000; products-completed
operations aggregate - \$4,000,000 personal and advertising injury - \$5,000,000;
24 liquor liability - \$1,000,000 with \$4,000,000 liquor liability annual aggregate each
occurrence - \$2,000,000; . . . and medical expense (any one person) - \$5,000;

25 12.2.1.2 Excess liability insurance (follow form excess or
26 umbrella), liquor liability, commercial general liability, automobile liability and
employers liability), with minimum coverages as follows: each occurrence -
27 \$25,000,000; aggregate - \$25,000,000;

28 . . .

1
2 12.2.3 Except with respect to workers compensation and the
3 employee practices liability insurance, [NRV1], [Cosmopolitan], the landlord and
4 tenant under the Lease, Hotel Operator, their respective parents, subsidiaries and
5 Affiliates, and their respective officers, directors, officials, managers, employees
6 and agents (collectively “Owner Insured Parties”), shall all be named as additional
7 insureds on all other [Marquee] Policies.

8 (MSJ pp. 9-11, UF 19.)

9 30. Section 12.2.6 of the NMA includes the following provision requiring that any
10 insurance required under the NMA by both NRV1 and Marquee include a waiver of subrogation:

11 **All Owner Policies and [Marquee] Policies shall contain a waiver of**
12 **subrogation against the Owner Insured Parties and [Marquee] and its officers,**
13 **directors, officials, managers, employees and agents and the [Marquee]**
14 **Principals.** The coverages provided by [NRV1] and [Marquee] shall not be limited
15 to the liability assumed under the indemnification provisions of this Agreement.

16 (MSJ p. 11, UF 19.) (emphasis added).

17 31. Section 13 of the NMA includes the following express indemnity provision:

18 **13. Indemnity**

19 13.1 By [Marquee]. [Marquee] shall indemnify, hold harmless and defend
20 [NRV1] and its respective parents, subsidiaries and Affiliates and all of each of
21 their respective officers, directors, shareholders, employees, agents, members,
22 managers, representatives, successors and assigns (“Owner Indemnitees”) from and
23 against any and all Losses to the extent incurred as a result of (i) the breach or
24 default by [Marquee] of any term or condition of this Agreement, or (ii) the
25 negligence or willful misconduct of [Marquee] or any of its owners, principals,
26 officers, directors, agents, employees, Staff, members, or managers (“[Marquee]
27 Representatives”) **and not otherwise covered by the insurance required to be**
28 **maintained hereunder.** [Marquee’s] indemnification obligation hereunder shall
include liability for any deductibles and/or self retained insurance retentions to the
extent permitted hereunder, and shall terminate on the termination of the Term;
provided however that such indemnification obligation shall continue in effect for a
period of three (3) years following the termination of the Term with respect to any
events or occurrences occurring prior to the termination of the Term.

23 13.2 By [NRV1]. [NRV1] shall indemnify, hold harmless and defend
24 [Marquee] and its respective parents, subsidiaries and Affiliates and all of each of
25 their respective officers, directors, shareholders, employees, agents, members,
26 managers, representatives, successors and assigns (“[Marquee] Indemnitees”) from
27 and against any and all Losses to the extent incurred as a result of (i) the breach or
28 default by [NRV1] of any term or condition of this Agreement or (ii) the
negligence or willful misconduct of [NRV1] or any of its owners, principals,
officers, directors, agents, employees, members, or managers **and not otherwise**
covered by the insurance required to be maintained hereunder. [NRV1’s]
indemnification obligation hereunder shall terminate on the termination of the

1 Term; provided, however, that such indemnification obligation shall continue in
2 effect for a period of three (3) years following the termination of the Term with
respect to any events or occurrences occurring prior to the termination of the Term.

3 (MSJ pp. 11-12, UF 20.)

4 32. Section 13 of the NMA expressly provides that any express indemnity obligation
5 owed by Marquee to Cosmopolitan applies only to the extent any and all Losses (as defined above)
6 are not reimbursed by insurance.

7 33. Section 17.2 of the Lease attached as Exhibit D to the NMA provides, in relevant
8 part, that Cosmopolitan shall procure “all insurance required to be obtained by” NRV1 under
9 Section 12.1 of the NMA. (Ex. 1 to MSJ, at T000183.)

10 34. Section 20 of the NMA provides as follows:

11 **20. Third Party Beneficiary**

12 Except as otherwise expressly provided herein, the Parties acknowledge and
13 agree that [NRV1] may assign, delegate or jointly exercise any or all of its rights
14 and obligations hereunder to or with any one or more of the following:
15 [Cosmopolitan], Hotel Operator, Casino Operator and/or their Affiliates, or any
16 successors thereto (collectively “Beneficiary Parties”). All such Beneficiary Parties
17 to whom certain rights and obligations of [NRV1] have been assigned shall, to the
18 extent of such assigned, delegated or shared rights and obligations, be an express
19 and intended third-party beneficiary of this Agreement. Without limiting the
generality of the foregoing, Beneficiary Parties shall have the right to enforce the
obligations of [NRV1] to the extent of the rights and obligations assigned to,
delegated to or shared with the Beneficiary Party by [NRV1]. Except as provided
above, nothing in this Agreement, express or implied, shall confer upon any person
or entity, other than the Parties, their authorized successors and assigns, any rights
or remedies under or by reason of this Agreement.

20 (MSJ pp. 12-13, UF 21.)

21 **II.**

22 **MARQUEE’S MOTION FOR SUMMARY JUDGMENT**

23 1. On September 13, 2019, Marquee filed Defendant Roof Deck Entertainment, LLC
24 d/b/a Marquee Nightclub’s Motion for Summary Judgment. Marquee’s MSJ asserts that the NMA
25 entered between Marquee and NRV1 contains a waiver of subrogation provision that prevents
26 Cosmopolitan from pursuing any claims against Marquee. As such, St. Paul cannot not step into

27 ///

Cosmopolitan's shoes to pursue the subrogation claims against Marquee set forth in the Fifth and Sixth Causes of Action of the FAC as a matter of law.

2. Marquee's MSJ further asserts as a separate and independent ground to grant summary judgment that the Sixth Cause of Action in the FAC for express indemnity fails because the express indemnity provisions set out in Section 13 of the NMA applies by its express terms only to losses not reimbursed by insurance. As such, Marquee contends the Sixth Cause of Action fails as a matter of law because the damages sought by St. Paul under the Sixth Cause of Action pertain to a loss that was reimbursed by insurance.

3. Marquee’s MSJ also asserts as a separate and independent ground to grant summary judgment that the Fifth Cause of Action fails as a matter of law because Cosmopolitan was found jointly and severally liable with Marquee in the Underlying Action for the intentional torts of assault, battery, and false imprisonment, and NRS 17.255 provides “[t]here is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury.” Marquee further asserts as a separate and independent ground to grant summary judgment that the Fifth Cause of Action fails as a matter of law because Nevada common law and NRS 17.265 provide that “[w]here one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his or her indemnity obligation.” As such, Marquee contends the Fifth Cause of Action in the FAC for Statutory Subrogation – Contribution Per NRS 17.225 fails as a matter of law based on the application of NRS 17.255 and NRS 17.265.

III.

CONCLUSIONS OF LAW

A. Standard of Review

1. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” NRCPP 56(a). While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party bears the burden “to do more than simply show that there is some metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in

1 the moving party's favor. *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586
2 (1986); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005). The non-moving
3 party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
4 genuine issue for trial or have summary judgment entered against him." *Bulbman Inc. v. Nevada*
5 *Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992); *Wood*, 121 Nev. at 732, 121 P.3d at 1031-32.
6 The non-moving party "is not entitled to build a case on the gossamer threads of whimsy,
7 speculation, and conjecture." *Bulbman*, 108 Nev. at 110, 825 P.2d 591 (quoting *Collins v. Union*
8 *Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

9 **B. St. Paul's Fifth And Sixth Causes of Action For Subrogation Are Barred By The**
10 **Subrogation Waiver Provisions Contained In The Nightclub Management Agreement**
11 **And The St. Paul Excess Policy**

12 2. St. Paul asserts that, as an insurer for Cosmopolitan, it is subrogated to the rights of
13 Cosmopolitan for contribution and express indemnity against Marquee. (FAC ¶¶ 116 and 126.)

14 3. Pursuant to Section 12.2.6 of the NMA, however, the insurance policies required
15 under the NMA must "contain a waiver of subrogation against the Owner Insured Parties and
16 [Marquee] and its officers, directors, officials, managers, employees and agents and the [Marquee]
17 Principals" as defined in the NMA.

18 4. Section 12.2.3 of the NMA defines "Owner Insured Parties" to include the Owner
19 (NRV1), the Project Owner (Cosmopolitan), the landlord and tenant under the Lease (also
20 Cosmopolitan and NRV1), their respective parents, subsidiaries, affiliates, and other related persons
21 and entities.

22 5. Section 12.2.6 of the NMA also provides that the waiver of subrogation requirement
23 applies to both "Operator Policies" and "Owner Policies."

24 6. "Operator Policies" are defined as Marquee's insurance policies, while "Owner
25 Policies" are defined in section 12.2.5 as insurance maintained by any "Owner Insured Parties."

26 7. In accordance with the requirement under Section 12.2.6 of the NMA, the St. Paul
27 Excess Policy contains an endorsement entitled "Waiver of Rights of Recovery Endorsement,"
28 which provides that if the Named Insured has agreed in a written contract to waive its rights to

1 recovery of payment for damages for bodily injury, property damage, or personal injury or
2 advertising injury caused by an occurrence, then St. Paul agrees to waive its right of recovery for
3 such payment. (Ex. 2 to MSJ, at T000038.)

4 8. Cosmopolitan is a Named Insured under the St. Paul Excess Policy pursuant to the
5 Designated Premises Limitation endorsement. (Ex. 2 to MSJ, at T000057.)

6 9. Waiver of subrogation provisions are universally enforced. *See Davlar Corp. v.*
7 *Superior Court*, 62 Cal. Rptr. 2d 199, 201-02 (Cal. Ct. App. 1997); *Lloyd's Underwriters v. Craig*
8 *& Rush, Inc.*, 32 Cal. Rptr. 2d 144, 146-49 (Cal. Ct. App. 1994) (waiver of rights for damages
9 covered by insurance barred insurer's subrogation suit.); *Fireman's Fund Ins. Co. v. Sizzler USA*
10 *Real Property, Inc.*, 86 Cal. Rptr. 3d 715, 718-20 (Cal. Ct App. 2008) (holding tenant's failure to
11 obtain the full amount of liability insurance required by lease did not preclude enforcement of
12 subrogation waiver); *Commerce & Indus. Ins. Co. v. Orth*, 458 P.2d 926, 929 (Or. 1969) (holding
13 insurer waived its subrogation rights against various contractors); *Touchet Valley Grain Growers,*
14 *Inc. v. Opp & Seibold General Constr., Inc.*, 831 P.2d 724, 728 (Wash. 1992) (finding subrogation
15 waiver to be valid); *Amco Ins. Co. v. Simplex Grinnell LP*, No. 14-cv-890 GBW/CG, 2016 WL
16 4425095, *7 (D. N.M. Feb. 29, 2016) (finding subrogation waivers serve important public policy
17 goals, such as "encouraging parties to anticipate risks and to procure insurance covering those risks,
18 thereby avoiding future litigation, and facilitating and preserving economic relations and activity"
19 (internal quotation marks omitted)).

20 10. The intent of the parties to the NMA to waive subrogation rights for losses paid by
21 insurance proceeds is clear and unambiguous as expressed in Section 12.2.6 of the NMA. To find
22 otherwise would be inconsistent with the terms of the NMA and the Waiver of Rights of Recovery
23 Endorsement contained within the St. Paul Excess Policy.

24 11. In opposition to Marquee's MSJ, St. Paul asserts that the subrogation waiver
25 requirements of the NMA and the St. Paul Excess Policy do not apply because Cosmopolitan, as the
26 Project Owner, only agreed to be bound with respect to certain provision of the NMA, which did
27 not include the subrogation waiver provision contained in 12.2.6 of the NMA. This argument fails
28 because it ignores that Section 17.2 of the Lease attached as Exhibit D to the NMA delegated

1 NRV1's insurance requirements under the NMA to Cosmopolitan. Section 17.2 of the Lease
2 provides that Cosmopolitan shall procure "all insurance required to be obtained by" NRV1 under
3 Section 12.1 of the NMA. (See National Union's Appendix of Exhibits in Support of MSJ, Ex. 1,
4 T000172, T000183.) Thus, Cosmopolitan assumed NRV1's obligation to provide the insurance as
5 required by Section 12.1 of the NMA. Accordingly, Cosmopolitan assumed the obligation to
6 procure insurance that complied with all of the terms of Section 12, including the waiver of
7 subrogation obligation set out in Section 12.2.6. Regardless of whether Cosmopolitan agreed to be
8 bound by the subrogation waiver provision contained in 12.2.6 of the NMA or assumed NRV1's
9 insurance obligations under the NMA, the clear intent of the parties to the NMA was to waive any
10 claims for losses against each other that were paid by insurance proceeds including claims against
11 the Owner Insured Parties (as defined in NMA), which includes Cosmopolitan.

12 12. St. Paul nonetheless contends that Cosmopolitan is not a party to the NMA. Even if
13 St. Paul's subrogation rights under the NMA are not based on Cosmopolitan's status as a party to
14 the NMA, Cosmopolitan is still a third-party beneficiary of the NMA and is bound by its terms.
15 (See NMA, Section 20); See also *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 779, 121
16 P.3d 599, 604-05 (2005) (recognizing that "an intended third-party beneficiary is bound by the
17 terms of a contract even if she is not a signatory"); *Gibbs v. Giles*, 96 Nev. 243, 246-247, 607 P.2d
18 118, 120 (1980) (recognizing that "a third-party beneficiary takes subject to any defense arising
19 from the contract that is ascertainable against the promisee"). St. Paul is pursuing subrogation
20 claims by attempting to step into Cosmopolitan's shoes as a third-party beneficiary of the NMA and
21 the intent of the parties to the NMA was to waive such subrogation rights.

22 13. Accordingly, St. Paul's subrogation claims set forth in the Fifth and Sixth Causes of
23 Action of the FAC fail as a matter of law.

24 C. **St. Paul's Sixth Cause of Action For Subrogation – Express Indemnity Also Fails**
25 **Because Cosmopolitan Did Not Sustain Any Uninsured Losses**

26 14. The Sixth Cause of Action against Marquee also fails as a matter of law for the
27 separate and independent reason that Cosmopolitan did not sustain any uninsured losses.

28 ///

1 15. Pursuant to Section 13.1 of the NMA, Marquee agreed to indemnify, hold harmless
2 and defend NRV1 and its parents, subsidiaries and affiliates (including Cosmopolitan), from and
3 against Losses (as defined in the NMA) to the extent incurred as a result of the breach or default by
4 Marquee of any term or condition of the Agreement, or the negligence or willful misconduct of
5 Marquee that is “not otherwise covered by the insurance required to be maintained” under the
6 NMA. (Emphasis added.)

7 16. The NMA defines “Losses”, in pertinent part, as “liabilities, obligations, losses,
8 damages, penalties, claims, actions, suits, costs, expenses and disbursements of a Person not
9 reimbursed by insurance.” (Emphasis added.)

10 17. Nevada courts strictly construe indemnity obligations and will enforce them in
11 accordance with the terms of the contracting parties’ agreement. *See United Rentals Hwy. Techs. v.*
12 *Wells Cargo*, 128 Nev. 666, 673, 289 P.3d 221, 226 (2012); *Reyburn Lawn & Landscape*
13 *Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 339-40, 255 P.3d 268, 274 (2011);
14 *Contreras v. American Family Mut. Ins. Co.*, 135 F. Supp. 3d 1208, 1231 (D. Nev. 2015); *D.E.*
15 *Shaw Laminar Portfolios, LLC v. Archon Corp.*, 570 F. Supp. 2d 1262, 1268 (D. Nev. 2008) (“It is
16 well settled that a court should enforce a contract as it is written, should not create a new contract
17 by rewriting unambiguous terms, and has no power to create a new contract.”).

18 18. As explained by the Nevada Supreme Court in *United Rentals Highway*
19 *Technologies*:

20 [T]his court will not attempt to increase the legal obligations of the parties where the
21 parties intentionally limited such obligations. Additionally, every word in a contract
must be given effect if at all possible.

22 128 Nev. at 677, 289 P.3d at 229 (internal quotation marks and citations omitted).

23 19. The exclusion of insurance payments from the definition of “Losses” in Section 1 of
24 the NMA and the indemnity provision set out in Section 13.1 expressly limits any purported
25 indemnity obligation by Marquee to Cosmopolitan to uninsured losses. (UF 18, 20.)

26 20. Cosmopolitan’s defense in the underlying action and its joint-and-several liability for
27 the verdict and resulting settlement were paid for by insurance. Thus, there is no uninsured loss for
28 which Cosmopolitan could pursue indemnity against Marquee.

1 21. Accordingly, St. Paul has no valid subrogation claim for express indemnity, and
2 thus, the Sixth Cause of Action against Marquee fails as a matter of law.

3 **D. St. Paul's Fifth Cause of Action For Statutory Subrogation For Contribution Pursuant**
4 **To NRS 17.225 Also Fails Pursuant to NRS 17.255 Because Cosmopolitan Was Found**
5 **Liable In The Underlying Action For Intentional Torts**

6 22. The Fifth Cause of Action against Marquee also fails as a matter of law for the
7 separate and independent reason that Cosmopolitan was found jointly and severally liable in the
8 underlying action for intentional torts.

9 23. NRS 17.255 provides, in relevant part, that “[t]here is no right of contribution in
10 favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.”

11 24. In the trial of the Underlying Action, Cosmopolitan was found liable with Marquee
12 on all of Moradi’s asserted claims, including the intentional tort claims for assault, battery, and false
13 imprisonment, which made Cosmopolitan jointly and severally liable with Marquee. *See* NRS
14 41.141(5)(b). Prior to trial, the Court held that Cosmopolitan, as owner of the property, “had a
15 nondelegable duty and can be vicariously held responsible for the conduct of the Marquee security
16 officers” and that Marquee and Cosmopolitan can be jointly and severally liable for Moradi’s
17 injuries. (*See* Request for Judicial Notice in Support of Motion for Summary Judgment, Ex. 5.)
18 Cosmopolitan had its own obligation pursuant to the nondelegable duty to keep patrons of The
19 Cosmopolitan Hotel & Casino safe. *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223,
20 925 P.2d 1175, 1179 (1996) (“[I]n the situation where a property owner hires security personnel to
21 protect his or her premises and patrons, that property owner has a personal and nondelegable duty to
22 provide responsible security personnel.”)

23 25. Given that the jury in the Underlying Action found Cosmopolitan liable with
24 Marquee for the intentional tort claims of assault, battery, and false imprisonment that contributed
25 to Moradi’s injury, Cosmopolitan is precluded from pursuing a contribution from Marquee pursuant
26 to the application of NRS 17.255. As such, St. Paul’s subrogation claim for contribution set out in
27 the Fifth Cause of Action premised on stepping into the shoes of Cosmopolitan is also precluded as
28 a matter of law.

1 **E. St. Paul's Fifth Cause of Action For Statutory Subrogation For Contribution Pursuant**
2 **To NRS 17.225 Also Fails Pursuant to NRS 17.265 Because A Claim For Contribution**
3 **Is Not Available When The Parties Have Contracted For Express Indemnity**

4 26. The Fifth Cause of Action against Marquee also fails as a matter of law for the
5 separate and independent reason that the parties have contracted for express indemnity.

6 27. When a tortfeasor has a right to indemnity from another tortfeasor, there is no right
7 to contribution under the Uniform Contribution Act. NRS 17.265 (Where one tortfeasor is entitled
8 to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution,
9 and the indemnity obligor is not entitled to contribution from the obligee for any portion of his or
10 her indemnity obligation.”); *Calloway v. City of Reno*, 113 Nev. 564, 578, 939 P.2d 1020, 1029
11 (1997) (“[I]mplied indemnity theories are not viable when an express indemnity agreement exists
12 between the parties.”)

13 28. Section 13 of the NMA contains an express indemnity provision in which Marquee
14 agreed to indemnify, hold harmless and defend NRV1 and Cosmopolitan unless the loss was paid
15 by insurance.

16 29. Given the existence of the contractually bargained for right to indemnity set out in
17 Section 13 of the NMA, Cosmopolitan has no statutory or equitable right to contribution under
18 Nevada common law or the Uniform Contribution Act pursuant to NRS 17.265. St. Paul asserts the
19 contribution claim is permitted because it is an alternative theory of recovery in the event the
20 express indemnity claim does not prevail. However, a contribution theory of recovery is not
21 permitted when a contract for express indemnity exists to govern the obligations of the respective
22 parties. Accordingly, St. Paul cannot pursue a contribution claim against Marquee based on the
23 alleged subrogation principles as a matter of law.

24 **F. Certification under NRCP 54(b)**


25 30. “When an action presents more than one claim for relief—whether as a claim,
26 counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court
27 may direct entry of final judgment as to one or more, but fewer than all, claims or parties only if the
28 court expressly determines that there is no just reason for delay.” NRCP 54(b).

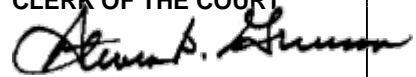
31. This Court finds, pursuant to NRCP 54(b), that there is no just reason for delay of entry of final judgment granting Marquee's MSJ against St. Paul's claims as discussed herein.

ORDER

Based on the pleadings, papers on file, the memorandum of points and authorities in support of Marquee's Motion for Summary Judgment, and the arguments of the parties and good cause existing, Marquee's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED this 14th day of May, 2020.


Honorable Gloria Sturman
District Judge, Department XXVI



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

12 ST. PAUL FIRE & MARINE INSURANCE
13 COMPANY,

14 Plaintiff,

15 v.

16 ASPEN SPECIALITY INSURANCE
17 COMPANY; NATIONAL UNION FIRE
18 INSURANCE COMPANY OF PITTSBURGH
19 PA.; ROOF DECK ENTERTAINMENT, LLC
20 d/b/a MARQUEE NIGHTCLUB; and DOES 1
21 through 25, inclusive,

22 Defendants.

Case No: A-17-758902-C
Dept. No: XXVI

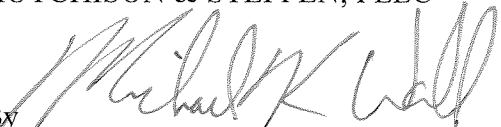
**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING ROOF
DECK ENTERTAINMENT, LLC
d/b/a MARQUEE NIGHTCLUB'S
MOTION FOR SUMMARY
JUDGMENT**

23 Please take notice the on the 14th day of May, 2020, the Court entered Findings of Fact,
24 Conclusions of Law and Order Granting Roof Deck Entertainment, LLC d/b/a Marquee
25 Nightclub's Motion for Summary Judgment in the above-entitled action. A copy of said Order
26 is attached hereto.

27 DATED this 27 day of May, 2020.

HUTCHISON & STEFFEN, PLLC

By


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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 21st day of May, 2020, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING ROOF DECK ENTERTAINMENT, LLC d/b/a MARQUEE NIGHTCLUB'S MOTION FOR SUMMARY JUDGMENT** to be served as follows:


- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be sent **via facsimile**; and/or
- ☒ 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 attorney(s) listed below at the address and/or facsimile number indicated below:

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24 ROOF DECK ENTERTAINMENT, LLC dba MARQUEE NIGHTCLUB

25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

27 ST. PAUL FIRE & MARINE INSURANCE
28 COMPANY,

Plaintiffs,

vs.

ASPEN SPECIALTY INSURANCE
COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH PA.; ROOF DECK
ENTERTAINMENT, LLC d/b/a MARQUEE
NIGHTCLUB; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: A-17-758902-C
DEPT.: XXVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
ROOF DECK ENTERTAINMENT, LLC
d/b/a MARQUEE NIGHTCLUB'S
MOTION FOR SUMMARY JUDGMENT**

1 Defendant Roof Deck Entertainment, LLC d/b/a Marquee Nightclub's ("Marquee") Motion
2 for Summary Judgment ("MSJ") came on for hearing on October 15, 2019 in Department XXVI of
3 this Court, the Honorable Gloria Sturman presiding. Nicholas A. Salerno of Herold & Sager and
4 Jennifer L. Keller of Keller/Anderle LLP appeared for Defendant Marquee, William Reeves and
5 Marc J. Derewetzky of Morales Fierro & Reeves appeared for Plaintiff St. Paul Fire & Marine
6 Insurance Company ("St. Paul"), and Ryan A. Loosvelt of Messner Reeves LLP appeared for
7 Defendant Aspen Specialty Insurance Company ("Aspen").

8 The Court, having reviewed and considered the voluminous pleadings and papers on file,¹
9 having heard and considered argument of counsel, and good cause appearing, hereby GRANTS
10 Marquee's Motion for Summary Judgment.

11 On October 15, 2019, the Court issued a minute order granting Marquee's Motion for
12 Summary Judgment. However, the Court's decision set out herein is not based solely on the
13 contents of the minute order, but is also based on the record on file herein. The Court hereby issues
14 the following Findings of Facts and Conclusions of Law.

15 I.

16 FINDINGS OF FACT

17 A. The Underlying Action

18 1. This action arises out of an underlying bodily injury action captioned *David Moradi*
19 *v. Nevada Property 1, LLC dba The Cosmopolitan, et al.*, District Court Clark County, Nevada,
20 Case No. A-14-698824-C ("Underlying Action"). (See Plaintiff's First Amended Complaint
21 ("FAC") ¶ 6.)

22
23 ¹ Marquee's Motion for Summary Judgment, Marquee's Request for Judicial Notice in Support of Motion
24 for Summary Judgment, Marquee's Appendix of Exhibits in Support of Motion for Summary Judgment,
25 Declaration of Nicholas B. Salerno in Support of Motion for Summary Judgment, Declaration of Bill
26 Bonbrest in Support of Motion for Summary Judgment, St. Paul's Opposition to Motion for Summary
27 Judgment and Countermotion re: Duty to Indemnify, St. Paul's Response to Statement of Undisputed Facts,
28 St. Paul's Consolidated Appendix of Exhibits in Support of Opposition to Motions for Summary Judgment,
Declaration of Marc J. Derewetzky in Support of Opposition to Motion for Summary Judgment, Declaration
of William Reeves in Support of Opposition to Motion for Summary Judgment, National Union's (defined
below) Opposition to St. Paul's Countermotion for Summary Judgment, Marquee's Reply in Support of
Motion for Summary Judgment, and Marquee's Objections to Facts Not Supported by Admissible Evidence
Filed in Support of Opposition to Motion for Summary Judgment and Countermotion re: Duty to Indemnify.

1 2. Plaintiff David Moradi (“Moradi”) alleged that, on or about April 8, 2012, he went
2 to the Marquee Nightclub located within The Cosmopolitan Hotel and Casino to socialize with
3 friends, when he was beaten by Marquee employees. (FAC ¶¶ 6-7.)

4 3. Moradi filed a complaint against Nevada Property 1, LLC d/b/a The Cosmopolitan
5 of Las Vegas (“Cosmopolitan”) and Roof Deck Entertainment, LLC d/b/a Marquee Nightclub
6 (“Marquee”) on April 4, 2014, asserting causes of action for Assault and Battery, Negligence,
7 Intentional Infliction of Emotional Distress, and False Imprisonment. (FAC ¶¶ 8-10, Exhibit A.)

8 4. Moradi alleged that, as a result of his injuries, he suffered past and future lost
9 wages/income and sought general damages, special damages and punitive damages. (*Id.* ¶ 9, Exhibit
10 A.)

11 5. Roof Deck Entertainment, LLC owns and operates the Marquee Nightclub. (FAC ¶
12 4.)

13 6. Nevada Property 1, LLC owns and operates The Cosmopolitan of Las Vegas. (*Id.* ¶
14 10.)

15 7. Cosmopolitan is the owner of the subject property where the Marquee Nightclub is
16 located and leased the nightclub location to its subsidiary, Nevada Restaurant Venture 1, LLC
17 (“NRV1”). (FAC ¶ 10.)

18 8. NRV1 entered into a written agreement (discussed *infra* Section I.D) with Marquee
19 to manage the nightclub. (FAC ¶ 10.)

20 9. Marquee is a named insured under the National Union Excess Policy defined below.
21 (FAC ¶ 30.)

22 10. Cosmopolitan is a named insured under the St. Paul Excess Policy defined below.
23 Cosmopolitan is also an additional insured to the National Union Excess Policy defined below.
24 (FAC ¶¶ 40 and 44.)

25 11. Marquee is not an insured to the St. Paul Excess Policy defined below. (FAC ¶ 41.)

26 12. Aspen Insurance Company, which issued a primary insurance policy, agreed to
27 provide a joint defense to both Cosmopolitan and Marquee. National Union subsequently

28 ///

1 appointed separate counsel to jointly represent both Cosmopolitan and Marquee. (St. Paul
2 Appendix, Exs. C, D, L, M.)

3 13. During the course of the Underlying Action, Moradi alleged that Cosmopolitan, as
4 the owner of The Cosmopolitan Hotel and Casino (where the Marquee Nightclub was located),
5 faced exposure for breaching its non-delegable duty to keep patrons safe, including Moradi. (FAC ¶
6 13.)

7 14. The Court held in the Underlying Action that Cosmopolitan, as owner of the
8 property, “had a nondelegable duty and can be vicariously held responsible for the conduct of the
9 Marquee security officers” and that Marquee and Cosmopolitan can be jointly and severally liable
10 as a matter of law. (*See* Request for Judicial Notice in Support of Marquee’s Motion for Summary
11 Judgment, Ex. 3.)

12 15. After a five-week trial, the jury in the Underlying Action issued a special verdict on
13 April 26, 2017, finding that Moradi established his claims for assault, battery, false imprisonment
14 and negligence jointly and severally against Marquee and Cosmopolitan and awarded compensatory
15 damages in the amount of \$160,500,000. Because the jury found for Moradi on his intentional-tort
16 claims, the judgment would have been joint and several against Marquee and Cosmopolitan. *See*
17 NRS 41.141(5)(b). (FAC, Ex. C.)

18 16. After the verdict and during the punitive damages phase of the trial, Moradi made a
19 global settlement demand to Marquee and Cosmopolitan. (FAC ¶ 66.)

20 17. Aspen and National Union Fire Insurance Company of Pittsburgh PA (“National
21 Union”) as the primary and excess insurers of Marquee, and Zurich American Insurance Company
22 (“Zurich”) and St. Paul as the primary and excess insurers of Cosmopolitan, accepted the settlement
23 demand and resolved the Underlying Action with the confidential contributions set forth in the FAC
24 filed by St. Paul under seal. (FAC ¶¶ 67-70.)

25 18. The settlement was funded entirely by the insurance carriers for Cosmopolitan and
26 Marquee. No defendant in the underlying case contributed any money toward the settlement. (FAC
27 ¶¶ 67-70.)

28 ///

1 **B. Insurance Policies and Insured Parties**

2 19. Cosmopolitan is a named insured to a primary policy issued by Zurich American
3 Insurance Company to Nevada Property 1 LLC, under policy number PRA 9829242-01, effective
4 November 1, 2011 to November 1, 2012, with limits of \$1,000,000 per occurrence and \$2 million
5 general aggregate (the “Zurich Primary Policy”). (FAC ¶ 69; MSJ p. 14, Undisputed Fact No.
6 (“UF”) 25.)

7 20. Cosmopolitan is also a named insured to the St. Paul commercial umbrella liability
8 policy number QK06503290, effective March 1, 2011 to March 1, 2013 issued to Premier Hotel
9 Insurance Group (the “St. Paul Excess Policy”), which is excess to the Zurich Primary Policy. (FAC
10 ¶ 40; MSJ pp. 13-14, UF 24 and 25.)

11 21. Marquee is a named insured to a primary policy issued by Aspen Specialty Insurance
12 Company to The Restaurant Group et al., under policy number CRA8XYD11, effective October 6,
13 2011 to October 6, 2012 (the “Aspen Primary Policy”). (FAC ¶ 15.)

14 22. Marquee is also a named insured to the National Union commercial umbrella
15 liability policy number BE 25414413, effective October 6, 2011 to October 6, 2012, issued to The
16 Restaurant Group, et al. (the “National Union Excess Policy”), which is excess to the Aspen
17 Primary Policy (FAC ¶ 30; MSJ p. 13, UF 23.) Cosmopolitan was an additional insured under the
18 Aspen Primary Policy and the National Union Excess Policy. (FAC ¶¶ 24 and 30; MSJ p. 14, UF
19 26.)

20 23. The St. Paul Excess Policy contains an endorsement entitled “Waiver of Rights of
21 Recovery Endorsement,” which provides that if Cosmopolitan has agreed in a written contract to
22 waive its rights to recovery of payment for damages for bodily injury, property damage, or personal
23 injury or advertising injury caused by an occurrence, then St. Paul agrees to waive its right of
24 recovery of such payment. (MSJ p. 14, UF 27.)

25 **C. St. Paul’s Claims Against Marquee**

26 24. In the Fifth Cause of Action of the FAC for Statutory Subrogation – Contribution
27 Per NRS 17.225 (“Fifth Cause of Action”), St. Paul asserts a subrogation right against Marquee
28 under NRS 17.225 for contribution to recoup a share of St. Paul’s settlement payment. (FAC ¶ 113.)

1 St. Paul asserts that Moradi's injuries and damages were caused solely by Marquee's actions and
2 unreasonable conduct rather than any affirmative actions or unreasonable conduct on the part of
3 Cosmopolitan. (FAC ¶¶ 117-118.) St. Paul further asserts that Cosmopolitan was held merely
4 vicariously liable for Marquee's actions and Moradi's resulting damages. (FAC ¶ 118.) St. Paul
5 alleges that its settlement payment on behalf of Cosmopolitan was in excess of Cosmopolitan's
6 equitable share of this common liability such that St. Paul is entitled to subrogate to Cosmopolitan's
7 contribution rights against Marquee pursuant to NRS 17.225 and NRS 17.275 for all sums paid by
8 St. Paul as part of the settlement of the Underlying Action. (FAC ¶¶ 119-120.)

9 25. In the Sixth Cause of Action of the FAC for Subrogation – Express Indemnity
10 (“Sixth Cause of Action”), St. Paul asserts that “[p]er written agreement,” Marquee was obligated
11 to “indemnify, hold harmless and defend Cosmopolitan for Moradi's claims in the Underlying
12 Action.” (*Id.* ¶ 122.) St. Paul further alleges that Marquee did not provide indemnification to
13 Cosmopolitan for the claims asserted in the Underlying Action and that, as a result, St. Paul was
14 forced to contribute to the settlement of the Underlying Action to protect Cosmopolitan's interests
15 as well as its own. (*Id.* ¶¶ 125, 127.) St. Paul further alleges that “[p]er the terms of the written
16 agreement,” Marquee is liable to St. Paul for its attorneys' fees in prosecuting this action and
17 enforcing the terms of the express indemnity agreement. (*Id.* ¶ 129.)

18 **D. Nightclub Management Agreement**

19 26. Marquee and NRV1 entered the Nightclub Management Agreement (“NMA”), dated
20 April 21, 2010, with regard to the Marquee Nightclub located within The Cosmopolitan Hotel &
21 Casino. (MSJ p. 8, UF 17.) In the NMA, Marquee agreed to manage and operate the Marquee
22 nightclub in The Cosmopolitan Hotel & Casino.

23 27. Cosmopolitan is identified as the Project Owner in the Recitals section of the NMA
24 and is also a signatory to the agreement both on behalf of itself and NRV1, for which Cosmopolitan
25 is the Managing Member. (MSJ p. 8, UF 13.)

26 28. The NMA provides in pertinent part:

27 1. **Definitions**

28 ...

1 “Losses” shall mean any and all liabilities, obligations, losses, damages,
2 penalties, claims, actions, suits, costs, expenses and disbursements of a Person not
3 reimbursed by insurance, including, without limitation, all reasonable attorneys’
4 fees and all other reasonable professional or consultants’ expenses incurred in
investigating, preparing for, serving as a witness in, or defending against any action
or proceeding, whether actually commenced or threatened.

5 (MSJ p. 9, UF 18.)

6 29. Section 12 of the NMA sets out the insurance requirements among the parties, and
7 provides, in pertinent, part as follows:

8 **12. Insurance**

9 12.1 [NRV1’s] Insurance. During the Term of this Agreement, [NRV1]
10 shall provide and maintain the following insurance coverage, at its sole cost and
11 expense . . .

12 . . .

13 12.1.2 Commercial general liability insurance, including contractual
14 liability and liability for bodily injury or property damage, with a combined single
15 limit of not less than Two Million Dollars (\$2,000,000) for each occurrence, and at
least Four Million Dollars (\$4,000,000) in the aggregate, including excess
coverage; and

16 12.1.3 Any coverage required under the terms of the Lease to the
17 extent such coverage is not the responsibility of [Marquee] to provide pursuant to
Section 12.2 below.

18 12.2 [Marquee’s] Insurance.

19 12.2.1 During the Term of this Agreement, [Marquee] shall provide
20 and maintain the following insurance coverage (the “[Marquee] Policies”), the cost
of which shall be an Operating Expense:

21 12.2.1.1 Commercial general liability insurance (occurrence
22 form), including broad form contractual liability coverage, with minimum
23 coverages as follows: general aggregate - \$4,000,000; products-completed
operations aggregate - \$4,000,000 personal and advertising injury - \$5,000,000;
24 liquor liability - \$1,000,000 with \$4,000,000 liquor liability annual aggregate each
occurrence - \$2,000,000; . . . and medical expense (any one person) - \$5,000;

25 12.2.1.2 Excess liability insurance (follow form excess or
26 umbrella), liquor liability, commercial general liability, automobile liability and
employers liability), with minimum coverages as follows: each occurrence -
27 \$25,000,000; aggregate - \$25,000,000;

28 . . .

1
2 12.2.3 Except with respect to workers compensation and the
3 employee practices liability insurance, [NRV1], [Cosmopolitan], the landlord and
4 tenant under the Lease, Hotel Operator, their respective parents, subsidiaries and
5 Affiliates, and their respective officers, directors, officials, managers, employees
6 and agents (collectively "Owner Insured Parties"), shall all be named as additional
7 insureds on all other [Marquee] Policies.

8 (MSJ pp. 9-11, UF 19.)

9 30. Section 12.2.6 of the NMA includes the following provision requiring that any
10 insurance required under the NMA by both NRV1 and Marquee include a waiver of subrogation:

11 **All Owner Policies and [Marquee] Policies shall contain a waiver of**
12 **subrogation against the Owner Insured Parties and [Marquee] and its officers,**
13 **directors, officials, managers, employees and agents and the [Marquee]**
14 **Principals.** The coverages provided by [NRV1] and [Marquee] shall not be limited
15 to the liability assumed under the indemnification provisions of this Agreement.

16 (MSJ p. 11, UF 19.) (emphasis added).

17 31. Section 13 of the NMA includes the following express indemnity provision:

18 **13. Indemnity**

19 13.1 By [Marquee]. [Marquee] shall indemnify, hold harmless and defend
20 [NRV1] and its respective parents, subsidiaries and Affiliates and all of each of
21 their respective officers, directors, shareholders, employees, agents, members,
22 managers, representatives, successors and assigns ("Owner Indemnitees") from and
23 against any and all Losses to the extent incurred as a result of (i) the breach or
24 default by [Marquee] of any term or condition of this Agreement, or (ii) the
25 negligence or willful misconduct of [Marquee] or any of its owners, principals,
26 officers, directors, agents, employees, Staff, members, or managers ("[Marquee]
27 Representatives") **and not otherwise covered by the insurance required to be**
28 **maintained hereunder.** [Marquee's] indemnification obligation hereunder shall
include liability for any deductibles and/or self retained insurance retentions to the
extent permitted hereunder, and shall terminate on the termination of the Term;
provided however that such indemnification obligation shall continue in effect for a
period of three (3) years following the termination of the Term with respect to any
events or occurrences occurring prior to the termination of the Term.

13.2 By [NRV1]. [NRV1] shall indemnify, hold harmless and defend
[Marquee] and its respective parents, subsidiaries and Affiliates and all of each of
their respective officers, directors, shareholders, employees, agents, members,
managers, representatives, successors and assigns ("[Marquee] Indemnitees") from
and against any and all Losses to the extent incurred as a result of (i) the breach or
default by [NRV1] of any term or condition of this Agreement or (ii) the
negligence or willful misconduct of [NRV1] or any of its owners, principals,
officers, directors, agents, employees, members, or managers **and not otherwise**
covered by the insurance required to be maintained hereunder. [NRV1's]
indemnification obligation hereunder shall terminate on the termination of the

1 Term; provided, however, that such indemnification obligation shall continue in
2 effect for a period of three (3) years following the termination of the Term with
respect to any events or occurrences occurring prior to the termination of the Term.

3 (MSJ pp. 11-12, UF 20.)

4 32. Section 13 of the NMA expressly provides that any express indemnity obligation
5 owed by Marquee to Cosmopolitan applies only to the extent any and all Losses (as defined above)
6 are not reimbursed by insurance.

7 33. Section 17.2 of the Lease attached as Exhibit D to the NMA provides, in relevant
8 part, that Cosmopolitan shall procure “all insurance required to be obtained by” NRV1 under
9 Section 12.1 of the NMA. (Ex. 1 to MSJ, at T000183.)

10 34. Section 20 of the NMA provides as follows:

11 **20. Third Party Beneficiary**

12 Except as otherwise expressly provided herein, the Parties acknowledge and
13 agree that [NRV1] may assign, delegate or jointly exercise any or all of its rights
14 and obligations hereunder to or with any one or more of the following:
15 [Cosmopolitan], Hotel Operator, Casino Operator and/or their Affiliates, or any
16 successors thereto (collectively “Beneficiary Parties”). All such Beneficiary Parties
17 to whom certain rights and obligations of [NRV1] have been assigned shall, to the
18 extent of such assigned, delegated or shared rights and obligations, be an express
19 and intended third-party beneficiary of this Agreement. Without limiting the
generality of the foregoing, Beneficiary Parties shall have the right to enforce the
obligations of [NRV1] to the extent of the rights and obligations assigned to,
delegated to or shared with the Beneficiary Party by [NRV1]. Except as provided
above, nothing in this Agreement, express or implied, shall confer upon any person
or entity, other than the Parties, their authorized successors and assigns, any rights
or remedies under or by reason of this Agreement.

20 (MSJ pp. 12-13, UF 21.)

21 **II.**

22 **MARQUEE’S MOTION FOR SUMMARY JUDGMENT**

23 1. On September 13, 2019, Marquee filed Defendant Roof Deck Entertainment, LLC
24 d/b/a Marquee Nightclub’s Motion for Summary Judgment. Marquee’s MSJ asserts that the NMA
25 entered between Marquee and NRV1 contains a waiver of subrogation provision that prevents
26 Cosmopolitan from pursuing any claims against Marquee. As such, St. Paul cannot not step into

27 ///

1 Cosmopolitan's shoes to pursue the subrogation claims against Marquee set forth in the Fifth and
2 Sixth Causes of Action of the FAC as a matter of law.

2. Marquee's MSJ further asserts as a separate and independent ground to grant summary judgment that the Sixth Cause of Action in the FAC for express indemnity fails because the express indemnity provisions set out in Section 13 of the NMA applies by its express terms only to losses not reimbursed by insurance. As such, Marquee contends the Sixth Cause of Action fails as a matter of law because the damages sought by St. Paul under the Sixth Cause of Action pertain to a loss that was reimbursed by insurance.

3. Marquee's MSJ also asserts as a separate and independent ground to grant summary judgment that the Fifth Cause of Action fails as a matter of law because Cosmopolitan was found jointly and severally liable with Marquee in the Underlying Action for the intentional torts of assault, battery, and false imprisonment, and NRS 17.255 provides "[t]here is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury." Marquee further asserts as a separate and independent ground to grant summary judgment that the Fifth Cause of Action fails as a matter of law because Nevada common law and NRS 17.265 provide that "[w]here one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his or her indemnity obligation." As such, Marquee contends the Fifth Cause of Action in the FAC for Statutory Subrogation – Contribution Per NRS 17.225 fails as a matter of law based on the application of NRS 17.255 and NRS 17.265.

III.

CONCLUSIONS OF LAW

23 **A. Standard of Review**

1. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” NRCP 56(a). While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party bears the burden “to do more than simply show that there is some metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in

1 the moving party's favor. *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586
2 (1986); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005). The non-moving
3 party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
4 genuine issue for trial or have summary judgment entered against him." *Bulbman Inc. v. Nevada*
5 *Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992); *Wood*, 121 Nev. at 732, 121 P.3d at 1031-32.
6 The non-moving party "is not entitled to build a case on the gossamer threads of whimsy,
7 speculation, and conjecture." *Bulbman*, 108 Nev. at 110, 825 P.2d 591 (quoting *Collins v. Union*
8 *Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

9 **B. St. Paul's Fifth And Sixth Causes of Action For Subrogation Are Barred By The**
10 **Subrogation Waiver Provisions Contained In The Nightclub Management Agreement**
11 **And The St. Paul Excess Policy**

12 2. St. Paul asserts that, as an insurer for Cosmopolitan, it is subrogated to the rights of
13 Cosmopolitan for contribution and express indemnity against Marquee. (FAC ¶¶ 116 and 126.)

14 3. Pursuant to Section 12.2.6 of the NMA, however, the insurance policies required
15 under the NMA must "contain a waiver of subrogation against the Owner Insured Parties and
16 [Marquee] and its officers, directors, officials, managers, employees and agents and the [Marquee]
17 Principals" as defined in the NMA.

18 4. Section 12.2.3 of the NMA defines "Owner Insured Parties" to include the Owner
19 (NRV1), the Project Owner (Cosmopolitan), the landlord and tenant under the Lease (also
20 Cosmopolitan and NRV1), their respective parents, subsidiaries, affiliates, and other related persons
21 and entities.

22 5. Section 12.2.6 of the NMA also provides that the waiver of subrogation requirement
23 applies to both "Operator Policies" and "Owner Policies."

24 6. "Operator Policies" are defined as Marquee's insurance policies, while "Owner
25 Policies" are defined in section 12.2.5 as insurance maintained by any "Owner Insured Parties."

26 7. In accordance with the requirement under Section 12.2.6 of the NMA, the St. Paul
27 Excess Policy contains an endorsement entitled "Waiver of Rights of Recovery Endorsement,"
28 which provides that if the Named Insured has agreed in a written contract to waive its rights to

1 recovery of payment for damages for bodily injury, property damage, or personal injury or
2 advertising injury caused by an occurrence, then St. Paul agrees to waive its right of recovery for
3 such payment. (Ex. 2 to MSJ, at T000038.)

4 8. Cosmopolitan is a Named Insured under the St. Paul Excess Policy pursuant to the
5 Designated Premises Limitation endorsement. (Ex. 2 to MSJ, at T000057.)

6 9. Waiver of subrogation provisions are universally enforced. *See Davlar Corp. v.*
7 *Superior Court*, 62 Cal. Rptr. 2d 199, 201-02 (Cal. Ct. App. 1997); *Lloyd's Underwriters v. Craig*
8 *& Rush, Inc.*, 32 Cal. Rptr. 2d 144, 146-49 (Cal. Ct. App. 1994) (waiver of rights for damages
9 covered by insurance barred insurer's subrogation suit.); *Fireman's Fund Ins. Co. v. Sizzler USA*
10 *Real Property, Inc.*, 86 Cal. Rptr. 3d 715, 718-20 (Cal. Ct App. 2008) (holding tenant's failure to
11 obtain the full amount of liability insurance required by lease did not preclude enforcement of
12 subrogation waiver); *Commerce & Indus. Ins. Co. v. Orth*, 458 P.2d 926, 929 (Or. 1969) (holding
13 insurer waived its subrogation rights against various contractors); *Touchet Valley Grain Growers,*
14 *Inc. v. Opp & Seibold General Constr., Inc.*, 831 P.2d 724, 728 (Wash. 1992) (finding subrogation
15 waiver to be valid); *Amco Ins. Co. v. Simplex Grinnell LP*, No. 14-cv-890 GBW/CG, 2016 WL
16 4425095, *7 (D. N.M. Feb. 29, 2016) (finding subrogation waivers serve important public policy
17 goals, such as "encouraging parties to anticipate risks and to procure insurance covering those risks,
18 thereby avoiding future litigation, and facilitating and preserving economic relations and activity"
19 (internal quotation marks omitted)).

20 10. The intent of the parties to the NMA to waive subrogation rights for losses paid by
21 insurance proceeds is clear and unambiguous as expressed in Section 12.2.6 of the NMA. To find
22 otherwise would be inconsistent with the terms of the NMA and the Waiver of Rights of Recovery
23 Endorsement contained within the St. Paul Excess Policy.

24 11. In opposition to Marquee's MSJ, St. Paul asserts that the subrogation waiver
25 requirements of the NMA and the St. Paul Excess Policy do not apply because Cosmopolitan, as the
26 Project Owner, only agreed to be bound with respect to certain provision of the NMA, which did
27 not include the subrogation waiver provision contained in 12.2.6 of the NMA. This argument fails
28 because it ignores that Section 17.2 of the Lease attached as Exhibit D to the NMA delegated

1 NRV1's insurance requirements under the NMA to Cosmopolitan. Section 17.2 of the Lease
2 provides that Cosmopolitan shall procure "all insurance required to be obtained by" NRV1 under
3 Section 12.1 of the NMA. (See National Union's Appendix of Exhibits in Support of MSJ, Ex. 1,
4 T000172, T000183.) Thus, Cosmopolitan assumed NRV1's obligation to provide the insurance as
5 required by Section 12.1 of the NMA. Accordingly, Cosmopolitan assumed the obligation to
6 procure insurance that complied with all of the terms of Section 12, including the waiver of
7 subrogation obligation set out in Section 12.2.6. Regardless of whether Cosmopolitan agreed to be
8 bound by the subrogation waiver provision contained in 12.2.6 of the NMA or assumed NRV1's
9 insurance obligations under the NMA, the clear intent of the parties to the NMA was to waive any
10 claims for losses against each other that were paid by insurance proceeds including claims against
11 the Owner Insured Parties (as defined in NMA), which includes Cosmopolitan.

12 12. St. Paul nonetheless contends that Cosmopolitan is not a party to the NMA. Even if
13 St. Paul's subrogation rights under the NMA are not based on Cosmopolitan's status as a party to
14 the NMA, Cosmopolitan is still a third-party beneficiary of the NMA and is bound by its terms.
15 (See NMA, Section 20); See also *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 779, 121
16 P.3d 599, 604-05 (2005) (recognizing that "an intended third-party beneficiary is bound by the
17 terms of a contract even if she is not a signatory"); *Gibbs v. Giles*, 96 Nev. 243, 246-247, 607 P.2d
18 118, 120 (1980) (recognizing that "a third-party beneficiary takes subject to any defense arising
19 from the contract that is ascertainable against the promisee"). St. Paul is pursuing subrogation
20 claims by attempting to step into Cosmopolitan's shoes as a third-party beneficiary of the NMA and
21 the intent of the parties to the NMA was to waive such subrogation rights.

22 13. Accordingly, St. Paul's subrogation claims set forth in the Fifth and Sixth Causes of
23 Action of the FAC fail as a matter of law.

24 C. **St. Paul's Sixth Cause of Action For Subrogation – Express Indemnity Also Fails**
25 **Because Cosmopolitan Did Not Sustain Any Uninsured Losses**

26 14. The Sixth Cause of Action against Marquee also fails as a matter of law for the
27 separate and independent reason that Cosmopolitan did not sustain any uninsured losses.

28 ///

1 15. Pursuant to Section 13.1 of the NMA, Marquee agreed to indemnify, hold harmless
2 and defend NRV1 and its parents, subsidiaries and affiliates (including Cosmopolitan), from and
3 against Losses (as defined in the NMA) to the extent incurred as a result of the breach or default by
4 Marquee of any term or condition of the Agreement, or the negligence or willful misconduct of
5 Marquee that is “not otherwise covered by the insurance required to be maintained” under the
6 NMA. (Emphasis added.)

7 16. The NMA defines “Losses”, in pertinent part, as “liabilities, obligations, losses,
8 damages, penalties, claims, actions, suits, costs, expenses and disbursements of a Person not
9 reimbursed by insurance.” (Emphasis added.)

10 17. Nevada courts strictly construe indemnity obligations and will enforce them in
11 accordance with the terms of the contracting parties’ agreement. *See United Rentals Hwy. Techs. v.*
12 *Wells Cargo*, 128 Nev. 666, 673, 289 P.3d 221, 226 (2012); *Reyburn Lawn & Landscape*
13 *Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 339-40, 255 P.3d 268, 274 (2011);
14 *Contreras v. American Family Mut. Ins. Co.*, 135 F. Supp. 3d 1208, 1231 (D. Nev. 2015); *D.E.*
15 *Shaw Laminar Portfolios, LLC v. Archon Corp.*, 570 F. Supp. 2d 1262, 1268 (D. Nev. 2008) (“It is
16 well settled that a court should enforce a contract as it is written, should not create a new contract
17 by rewriting unambiguous terms, and has no power to create a new contract.”).

18 18. As explained by the Nevada Supreme Court in *United Rentals Highway*
19 *Technologies*:

20 [T]his court will not attempt to increase the legal obligations of the parties where the
21 parties intentionally limited such obligations. Additionally, every word in a contract
must be given effect if at all possible.

22 128 Nev. at 677, 289 P.3d at 229 (internal quotation marks and citations omitted).

23 19. The exclusion of insurance payments from the definition of “Losses” in Section 1 of
24 the NMA and the indemnity provision set out in Section 13.1 expressly limits any purported
25 indemnity obligation by Marquee to Cosmopolitan to uninsured losses. (UF 18, 20.)

26 20. Cosmopolitan’s defense in the underlying action and its joint-and-several liability for
27 the verdict and resulting settlement were paid for by insurance. Thus, there is no uninsured loss for
28 which Cosmopolitan could pursue indemnity against Marquee.

21. Accordingly, St. Paul has no valid subrogation claim for express indemnity, and thus, the Sixth Cause of Action against Marquee fails as a matter of law.

D. St. Paul's Fifth Cause of Action For Statutory Subrogation For Contribution Pursuant To NRS 17.225 Also Fails Pursuant to NRS 17.255 Because Cosmopolitan Was Found Liable In The Underlying Action For Intentional Torts

22. The Fifth Cause of Action against Marquee also fails as a matter of law for the separate and independent reason that Cosmopolitan was found jointly and severally liable in the underlying action for intentional torts.

23. NRS 17.255 provides, in relevant part, that "[t]here is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death."

24. In the trial of the Underlying Action, Cosmopolitan was found liable with Marquee on all of Moradi's asserted claims, including the intentional tort claims for assault, battery, and false imprisonment, which made Cosmopolitan jointly and severally liable with Marquee. *See* NRS 41.141(5)(b). Prior to trial, the Court held that Cosmopolitan, as owner of the property, "had a nondelegable duty and can be vicariously held responsible for the conduct of the Marquee security officers" and that Marquee and Cosmopolitan can be jointly and severally liable for Moradi's injuries. (*See* Request for Judicial Notice in Support of Motion for Summary Judgment, Ex. 5.) Cosmopolitan had its own obligation pursuant to the nondelegable duty to keep patrons of The Cosmopolitan Hotel & Casino safe. *Rockwell v. Sun Harbor Budget Suites*, 112 Nev. 1217, 1223, 925 P.2d 1175, 1179 (1996) ("[I]n the situation where a property owner hires security personnel to protect his or her premises and patrons, that property owner has a personal and nondelegable duty to provide responsible security personnel.")

25. Given that the jury in the Underlying Action found Cosmopolitan liable with Marquee for the intentional tort claims of assault, battery, and false imprisonment that contributed to Moradi's injury, Cosmopolitan is precluded from pursuing a contribution from Marquee pursuant to the application of NRS 17.255. As such, St. Paul's subrogation claim for contribution set out in the Fifth Cause of Action premised on stepping into the shoes of Cosmopolitan is also precluded as a matter of law.

1 **E. St. Paul's Fifth Cause of Action For Statutory Subrogation For Contribution Pursuant**
2 **To NRS 17.225 Also Fails Pursuant to NRS 17.265 Because A Claim For Contribution**
3 **Is Not Available When The Parties Have Contracted For Express Indemnity**

4 26. The Fifth Cause of Action against Marquee also fails as a matter of law for the
5 separate and independent reason that the parties have contracted for express indemnity.

6 27. When a tortfeasor has a right to indemnity from another tortfeasor, there is no right
7 to contribution under the Uniform Contribution Act. NRS 17.265 (Where one tortfeasor is entitled
8 to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution,
9 and the indemnity obligor is not entitled to contribution from the obligee for any portion of his or
10 her indemnity obligation.”); *Calloway v. City of Reno*, 113 Nev. 564, 578, 939 P.2d 1020, 1029
11 (1997) (“[I]mplied indemnity theories are not viable when an express indemnity agreement exists
12 between the parties.”)

13 28. Section 13 of the NMA contains an express indemnity provision in which Marquee
14 agreed to indemnify, hold harmless and defend NRV1 and Cosmopolitan unless the loss was paid
15 by insurance.

16 29. Given the existence of the contractually bargained for right to indemnity set out in
17 Section 13 of the NMA, Cosmopolitan has no statutory or equitable right to contribution under
18 Nevada common law or the Uniform Contribution Act pursuant to NRS 17.265. St. Paul asserts the
19 contribution claim is permitted because it is an alternative theory of recovery in the event the
20 express indemnity claim does not prevail. However, a contribution theory of recovery is not
21 permitted when a contract for express indemnity exists to govern the obligations of the respective
22 parties. Accordingly, St. Paul cannot pursue a contribution claim against Marquee based on the
23 alleged subrogation principles as a matter of law.

24 **F. Certification under NRCP 54(b)**


25 30. “When an action presents more than one claim for relief—whether as a claim,
26 counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court
27 may direct entry of final judgment as to one or more, but fewer than all, claims or parties only if the
28 court expressly determines that there is no just reason for delay.” NRCP 54(b).

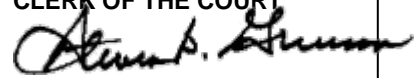
31. This Court finds, pursuant to NRCP 54(b), that there is no just reason for delay of entry of final judgment granting Marquee's MSJ against St. Paul's claims as discussed herein.

ORDER

Based on the pleadings, papers on file, the memorandum of points and authorities in support of Marquee's Motion for Summary Judgment, and the arguments of the parties and good cause existing, Marquee's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED this 14th day of May, 2020.


Honorable Gloria Sturman
District Judge, Department XXVI



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24 ROOF DECK ENTERTAINMENT, LLC dba MARQUEE NIGHTCLUB

25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

27 ST. PAUL FIRE & MARINE INSURANCE
28 COMPANY,

Plaintiffs,

vs.

ASPEN SPECIALTY INSURANCE
COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH PA.; ROOF DECK
ENTERTAINMENT, LLC d/b/a MARQUEE
NIGHTCLUB; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: A-17-758902-C
DEPT.: XXVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH PA'S
MOTION FOR SUMMARY JUDGMENT**

1 Defendant National Union Fire Insurance Company of Pittsburgh PA's ("National Union")
2 Motion for Summary Judgment ("MSJ") came on for hearing on October 15, 2019 in Department
3 XXVI of this Court, the Honorable Gloria Sturman presiding. Nicholas B. Salerno of Herold &
4 Sager and Jennifer L. Keller of Keller/Anderle LLP appeared for Defendant National Union,
5 William Reeves and Marc J. Derewetzky of Morales Fierro & Reeves appeared for Plaintiff St. Paul
6 Fire & Marine Insurance Company ("St. Paul"), and Ryan A. Loosvelt of Messner Reeves LLP
7 appeared for Defendant Aspen Specialty Insurance Company ("Aspen").

8 The Court, having reviewed and considered the pleadings and papers on file,¹ having heard
9 and considered argument of counsel, and good cause appearing, hereby GRANTS National Union's
10 Motion for Summary Judgment.

11 On October 15, 2019, the Court issued a minute order granting National Union's Motion for
12 Summary Judgment. However, the Court's decision set out herein is not based solely on the
13 contents of the minute order but includes the entire record on file herein. The Court hereby issues
14 the following Findings of Facts, Conclusions of Law and Order.

15 **I.**

16 **FINDINGS OF FACT**

17 **A. The Underlying Action**

18 1. This action arises out of an underlying bodily injury action captioned *David Moradi*
19 *v. Nevada Property I, LLC dba The Cosmopolitan, et al.*, District Court Clark County, Nevada,
20 Case No. A-14-698824-C ("Underlying Action"). (FAC ¶ 6.)

21 _____
22 ¹ The pleadings and papers reviewed and considered by the Court include, among other things, National
23 Union's Motion for Summary Judgment, National Union's Request for Judicial Notice in Support of Motion
24 for Summary Judgment, National Union's Appendix of Exhibits in Support of Motion for Summary
25 Judgment, Declaration of Nicholas B. Salerno in Support of Motion for Summary Judgment, Declaration of
26 Richard C. Perkins in Support of Motion for Summary Judgment, St. Paul's Opposition to Motion for
27 Summary Judgment and Request for Discovery Per NRCP 56(d), St. Paul's Response to Statement of
28 Undisputed Facts, St. Paul's Consolidated Appendix of Exhibits in Support of Opposition to Motions for
Summary Judgment, Declaration of Marc J. Derewetzky in Support of Opposition to Motion for Summary
Judgment, Declaration of William Reeves in Support of Opposition to Motion for Summary Judgment,
National Union's Reply in Support of Motion for Summary Judgment, and National Union's Objections to
Facts Not Supported by Admissible Evidence Filed in Support of Opposition to Motion for Summary
Judgment and Request for Discovery Per NRCP 56(d).

1 2. Plaintiff David Moradi (“Moradi”) alleged that, on or about April 8, 2012, he went
2 to the Marquee Nightclub located within The Cosmopolitan Hotel and Casino to socialize with
3 friends, when he was beaten by Marquee employees. (FAC ¶¶ 6-7.)

4 3. Moradi filed a complaint against Nevada Property 1, LLC d/b/a The Cosmopolitan
5 of Las Vegas (“Cosmopolitan”) and Roof Deck Entertainment, LLC d/b/a Marquee Nightclub
6 (“Marquee”) on April 4, 2014, asserting causes of action for Assault and Battery, Negligence,
7 Intentional Infliction of Emotional Distress, and False Imprisonment. (FAC ¶¶ 8-10, Exhibit A.)

8 4. Moradi alleged that, as a result of his injuries, he suffered past and future lost
9 wages/income and sought general damages, special damages and punitive damages. (*Id.* ¶ 9, Exhibit
10 A.)

11 5. Aspen, who issued a primary insurance policy to Marquee, agreed to provide a joint
12 defense to both Cosmopolitan and Marquee. National Union, who issued an excess policy to
13 Marquee, subsequently appointed separate counsel to jointly represent both Cosmopolitan and
14 Marquee. (St. Paul Appendix, Exs. C, D, L, M.)

15 6. During the course of the Underlying Action, Moradi alleged that Cosmopolitan, as
16 the owner of The Cosmopolitan Hotel and Casino (where the Marquee Nightclub was located),
17 faced exposure for the conduct of Marquee by breaching its non-delegable duty to keep patrons
18 safe, including Moradi. (FAC ¶ 13.)

19 7. The Court held in the Underlying Action that that Cosmopolitan, as owner of the
20 property, “had a nondelegable duty and can be vicariously held responsible for the conduct of the
21 Marquee security officers.” and that Marquee and Cosmopolitan can be jointly and severally liable
22 as a matter of law. (*See* Request for Judicial Notice in Support of Motion for Summary Judgment,
23 Ex. 5.)

24 8. After a five-week trial, the jury in the Underlying Action issued a special verdict on
25 April 26, 2017 finding that Moradi established his claims for assault, battery, false imprisonment
26 and negligence against Marquee and Cosmopolitan and awarded compensatory damages in the
27 amount of \$160,500,000. Because the jury found for Moradi on his intentional-tort claims, the

28 ///

1 judgment would have been joint and several against Marquee and Cosmopolitan. *See* NRS
2 41.141(5)(b). (FAC, Ex. C.)

3 9. After the verdict and during the punitive damages phase of the trial, Moradi made a
4 global settlement demand to Marquee and Cosmopolitan. (FAC ¶ 66.)

5 10. Aspen and National Union as the primary and excess insurers of Marquee, and
6 Zurich American Insurance Company and St. Paul as the primary and excess insurers of
7 Cosmopolitan, accepted the settlement demand and resolved the Underlying Action with the
8 confidential contributions set forth in the FAC filed by St. Paul under seal. (FAC ¶¶ 67-70.)

9 11. The settlement was funded entirely by the insurance carriers for Cosmopolitan and
10 Marquee. No defendant in the underlying case contributed any money out-of-pocket towards the
11 settlement. National Union on behalf of Marquee and St. Paul on behalf of Cosmopolitan
12 contributed the same amount towards the settlement of the Underlying Action. (FAC ¶ 67-70.)

13 12. National Union contends its contribution towards the settlement of the Underlying
14 Action on behalf of Marquee resulted in the exhaustion of the National Union Excess Policy. (MSJ
15 p. 10, Undisputed Fact No. (“UF”) 17.)

16 13. The combined defense of Cosmopolitan and Marquee was funded entirely by Aspen
17 and National Union. (FAC ¶¶ 27-28, 35-36.)

18 **B. Insurance Policies**

19 **1. The Cosmopolitan Insurance Tower**

20 **a. Cosmopolitan’s Primary Policy with Zurich American Insurance**
21 **Company**

22 14. Zurich American Insurance Company (“Zurich”) issued commercial general liability
23 policy number PRA 9829242-01, effective November 1, 2011 to November 1, 2012 to Nevada
24 Property 1 LLC (the “Zurich Primary Policy”). (FAC ¶ 69; National Union’s Appendix of Exhibits
25 in Support of MSJ (“NU Appx.”), Ex. 2, W005478.)

26 15. Cosmopolitan is a named insured under the Zurich Primary Policy. (FAC ¶ 69.)
27 Marquee is not an insured under the Zurich Primary Policy. (*Id.*)

28 ///

1 16. The Zurich Primary Policy contains limits of \$1,000,000 each occurrence and
2 \$2,000,000 general aggregate. (FAC ¶ 69; NU Appx., Ex. 2, W005508.)

3 17. The Zurich Primary Policy provides that Zurich will pay “those sums that the insured
4 becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to
5 which this insurance applies.” (NU Appx., Ex. 2, W005497 – W005498.)

6 18. The Zurich Primary Policy provides that it applies to “bodily injury” and “property
7 damage” only if caused by an “occurrence” that occurs during the policy period. (*Id.*)

8 **b. Cosmopolitan’s Excess Policy with St. Paul**

9 19. St. Paul issued commercial umbrella liability policy number QK06503290, effective
10 March 1, 2011 to March 1, 2013, to Premier Hotel Insurance Group (the “St. Paul Excess Policy”).
11 (FAC ¶ 40; MSJ p. 11, UF 20.)

12 20. Cosmopolitan is a named insured under the St. Paul Excess Policy. (FAC ¶ 40.)
13 Marquee is not an insured under the St. Paul Excess Policy. (FAC ¶ 41.)

14 21. The St. Paul Excess Policy contains liability limits of \$25,000,000 with each
15 occurrence and \$25,000,000 general aggregate. (MSJ p. 11, UF 22.)

16 22. The St. Paul Excess Policy provides that it will pay on behalf of: (1) the insured all
17 sums in excess of the “Retained Limit” that the insured becomes legally obligated to pay as
18 damages by reason of liability imposed by law; or (2) the named insured all sums in excess of the
19 “Retained Limit” that the named insured becomes legally obligated to pay as damages assumed by
20 the named insured under an “Insured Contract.” (MSJ p. 11, UF 23.)

21 23. The St. Paul Excess Policy contains an Other Insurance provision, which provides:
22 If Other Insurance applies to damages that are also covered by this policy,
23 this policy will apply excess of and shall not contribute with, that Other
24 Insurance, whether it is primary, excess, contingent or any other basis.
25 However, this provision will not apply if the Other Insurance is specifically
26 written to be excess of this policy.

27 (MSJ p. 11. UF 24.)

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1 2. **The Marquee Insurance Tower**

2 a. **Marquee's Primary Policy with Aspen Specialty Insurance Company**

3 24. Aspen issued a commercial general liability policy number CRA8XYD11, effective
4 October 6, 2011 to October 6, 2012 to The Restaurant Group et. al. (the "Aspen Primary Policy").
5 (FAC ¶ 15; NU Appx., Ex. 4, ASPEN000032.)

6 25. Marquee is a named insured under the Aspen Primary Policy. (FAC ¶ 15.)

7 26. Cosmopolitan qualified as an additional insured to the Aspen Primary Policy with
8 respect to the Underlying Action. (FAC ¶ 24.)

9 27. The Aspen Policy contains limits of \$1,000,000 each occurrence and \$2,000,000
10 general aggregate. (FAC ¶¶ 17, 23; NU Appx., Ex. 4, ASPEN000033.)

11 28. The Aspen Policy provides that Aspen will pay "those sums that the insured
12 becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to
13 which this insurance applies." (NU Appx., Ex. 4, ASPEN000042.)

14 29. The Aspen Policy provides that it applies to "bodily injury" and "property damage"
15 only if caused by an "occurrence" that occurs during the policy period. (*Id.*)

16 b. **Marquee's Excess Policy with National Union**

17 30. National Union issued commercial umbrella liability policy number BE 25414413,
18 effective October 6, 2011 to October 6, 2012, to The Restaurant Group, et al. (the "National Union
19 Excess Policy") (MSJ p. 10, UF 11.)

20 31. Marquee is a named insured under the National Union Excess Policy. (FAC ¶ 30.)

21 32. Cosmopolitan qualified as an additional insured to the National Union Excess Policy
22 with respect to the Underlying Action. (FAC ¶ 33; MSJ p. 11, UF 18.)

23 33. The National Union Excess Policy contains limits of \$25,000,000 each occurrence
24 and \$25,000,000 general aggregate. (MSJ p. 10, UF 13.)

25 34. The National Union Excess Policy provides that National Union will pay on behalf
26 of the insured "those sums in excess of the Retained Limit that the Insured becomes legally
27 obligated to pay as damages by reason of liability imposed by law because of Bodily Injury,
28 Property Damage, or Personal and Advertising Injury to which this insurance applies or because of

1 Bodily Injury or Property Damage to which this insurance applies assumed by the Insured under an
2 Insured Contract.” (MSJ p. 10, UF 14.)

3 35. The National Union Excess Policy defines Retained Limit, in pertinent part, as the
4 total applicable limits of Scheduled Underlying Insurance and any applicable Other Insurance
5 providing coverage to the Insured. (NU Appx., Ex. 1, p. 30.)

6 36. The policy defines Scheduled Underlying Insurance as the policy or policies of
7 insurance and limits of insurance shown in the Schedule of Underlying Insurance forming a part of
8 the National Union Excess Policy. (*Id.*)

9 37. Other Insurance is defined in the National Union Excess Policy as a valid and
10 collectible policy of insurance providing coverage for damages covered in whole or in part by this
11 policy. (NU Appx., Ex. 1, p. 29.)

12 38. The National Union Excess Policy contains an Other Insurance provision, which
13 provides:

14 If other valid and collectible insurance applies to damages that are also
15 covered by this policy, this policy will apply excess of the Other Insurance.
16 However, this provision will not apply if the Other Insurance is specifically
written to be excess of this policy.

17 (MSJ p. 10, UF 15.)

18 39. The National Union Excess Policy provides that the “Limits of Insurance” as set
19 forth in the declarations is the most that National Union will pay regardless of the number of
20 insureds, claims or suits brought, persons or organizations making claims or bringing suits, or
21 coverages provided under the policy. (MSJ p. 10, UF 16.)

22 40. National Union received notice of the Underlying Action against Marquee and
23 Cosmopolitan and provided coverage to Cosmopolitan and Marquee in the Underlying Action
24 under a reservation of rights. (FAC ¶ 35.)

25 41. Cosmopolitan and Marquee were insured under separate towers of insurance.
26 Cosmopolitan was insured under one of the towers of insurance where it was a named insured under
27 the Zurich Primary Policy and the St. Paul Excess Policy, and under the other tower of insurance

28 ///

1 where Cosmopolitan qualified as an additional insured under the Aspen Primary Policy and the
2 National Union Excess Policy that were issued to Marquee as the named insured.

3 **C. St. Paul's Claims Against National Union**

4 42. St. Paul's FAC asserts the following four causes of action against National Union:

5 1) Second Cause of Action for Subrogation – Breach of the Duty to Settle;

6 2) Fourth Cause of Action for Subrogation – Breach of the AIG Insurance
7 Contract;²

8 3) Seventh Cause of Action for Equitable Estoppel; and

9 4) Eighth Cause of Action for Equitable Contribution.

10 43. In the Second Cause of Action of the FAC for Subrogation – Breach of the Duty to
11 Settle, St. Paul asserts that National Union breached a duty owed to Cosmopolitan to settle by
12 refusing to settle the Underlying Action in response to pre-trial settlement demands within its
13 applicable policy limits and by failing to initiate and/or attempt settlement prior to or during trial for
14 an amount within the applicable policy limits. (FAC ¶¶ 88-89.) St. Paul further asserts that it is
15 subrogated under its policy and principles of equity to the rights Cosmopolitan possesses directly
16 against its insurers Aspen and National Union for breach of the duty to settle and seeks
17 reimbursement for the amount St. Paul paid towards the settlement of the Underlying Action. (*Id.* at
18 ¶¶ 93-95.)

19 44. In the Fourth Cause of Action of the FAC for Subrogation – Breach of the AIG
20 Insurance Contract, St. Paul makes similar allegations to those raised in the cause of action for
21 breach of the duty to settle. St. Paul asserts that National Union breached its obligations to
22 Cosmopolitan by failing to provide a conflict-free defense, favoring the interests of Marquee over
23 Cosmopolitan, failing to pay all available limits under the National Union Excess Policy to resolve
24 Cosmopolitan's liability, and failing to pay any amount on Cosmopolitan's behalf towards the
25 settlement of the Underlying Action. (FAC ¶ 105.) St. Paul asserts that, unlike National Union, St.

26
27
28 ² St. Paul's FAC refers to the National Union Excess Policy as the AIG Insurance Contract.

Paul did not breach its obligations to Cosmopolitan under the St. Paul Excess Policy in connection to the Underlying Action because Cosmopolitan's coverage under the St. Paul Excess Policy did not apply until the Aspen Primary Policy and National Union Excess Policy exhausted. St. Paul claims it was damaged because it was required to contribute to the settlement of the Underlying Action as a result of National Union's breach of its obligations to Cosmopolitan. (*Id.* ¶¶ 108, 111.) St. Paul alleges that pursuant to the express terms of the St. Paul Excess Policy and principles of subrogation, it is entitled to step into Cosmopolitan's shoes and pursue its rights of recovery against National Union for such breach. (*Id.* ¶ 110.)

45. In the Seventh Cause of Action of the FAC for Equitable Estoppel, St. Paul asserts that both National Union and Aspen asserted throughout the Underlying Action “through both words and actions” that their coverage to Cosmopolitan was primary to Cosmopolitan’s direct coverage under Cosmopolitan’s own policies, including the St. Paul Excess Policy. (FAC ¶ 132.) St. Paul alleges that it and Cosmopolitan’s other direct carriers did not participate in the defense or settlement negotiations on behalf of Cosmopolitan based on these representations. (*Id.* ¶ 134.) St. Paul alleges that equity requires that National Union be precluded from claiming that St. Paul and National Union were excess carriers and that St. Paul had the same obligation to resolve the Underlying Action.

46. In the Eighth Cause of Action of the FAC for Equitable Contribution, St. Paul asserts that in contributing to the settlement of the Underlying Action, it incurred amounts in excess of its equitable share and that National Union failed to contribute its fair and equitable share towards the settlement of the Underlying Action on behalf of Cosmopolitan (St. Paul's insured). (FAC ¶¶ 138-139.) St. Paul asserts that National Union is obligated under principles of equity to reimburse St. Paul for the amounts St. Paul contributed towards settlement of the Underlying Action that Aspen and National Union should have otherwise paid. (*Id.* ¶ 141.)

II.

NATIONAL UNION'S MOTION FOR SUMMARY JUDGMENT

47. On September 13, 2019, National Union's filed Defendant National Union Fire Insurance Company of Pittsburgh PA's MSJ. National Union's MSJ asserts that the Second and

1 Fourth Causes of Action for subrogation fail as a matter of law because the St. Paul Excess Policy is
2 not excess to the National Union Excess Policy, rather St. Paul and National Union are both excess
3 insurers at the same level of coverage in separate towers of coverage with equal obligations to their
4 insured(s).

5 48. National Union's MSJ further asserts as a separate and independent ground to grant
6 summary judgment that the Fourth Cause of Action for Subrogation – Breach of the AIG Insurance
7 Contract fails as a matter of law because St. Paul has no legal basis or standing to step into the
8 shoes of Cosmopolitan to pursue subrogation for breach of contract against National Union when
9 Cosmopolitan was fully defended and indemnified by the insurers in the Underlying Action and,
10 thus, has suffered no damages under the insurance contract. Additionally, National Union argues
11 that the damages sought by St. Paul are extra-contractual damages that are not available under a
12 breach of contract cause of action.

13 49. National Union's MSJ further asserts as a separate and independent ground to grant
14 summary judgment that the Eighth Cause of Action for Equitable Contribution fails as a matter of
15 law because National Union exhausted its policy limit in settlement of the Underlying Action and a
16 claim for contribution does not apply to seek extra-contractual damages that fall outside of policy
17 limits.

18 50. National Union's MSJ further asserts that the Seventh Cause of Action for Equitable
19 Estoppel fails as a matter of law because such a claim is dependent on the legal viability of the
20 other causes of action against National Union, which all fail for the reasons each cause of action
21 against National Union fails as a matter of law.

22 III.

23 CONCLUSIONS OF LAW

24 A. Standard of Review

25 1. "The court shall grant summary judgment if the movant shows that there is no
26 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
27 NRCP 56(a). While the pleadings and other proof must be construed in a light most favorable to the
28 non-moving party, that party bears the burden "to do more than simply show that there is some

1 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in
2 the moving party’s favor. *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586
3 (1986); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005). The non-moving
4 party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
5 genuine issue for trial or have summary judgment entered against him.” *Bulbman Inc. v. Nevada*
6 *Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992); *Wood*, 121 Nev. at 732, 121 P.3d at 1031-32.
7 The non-moving party “is not entitled to build a case on the gossamer threads of whimsy,
8 speculation, and conjecture.” *Bulbman*, 108 Nev. at 110, 825 P.2d 591 (quoting *Collins v. Union*
9 *Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

10 **B. St. Paul’s Second Cause of Action For Subrogation – Breach of The Duty To Settle**

11 2. In the Second Cause of Action of the FAC for Subrogation – Breach of the Duty to
12 Settle (“Second Cause of Action”), St. Paul asserts a right of subrogation against National Union on
13 the premise the St. Paul Excess Policy is excess to the National Union Excess Policy. (*see, e.g.*,
14 FAC ¶ 44.)

15 3. As a threshold matter, the Second Cause of Action fails as a matter of law because
16 the Nevada Supreme Court has never recognized an equitable subrogation claim between insurers,
17 and this Court is unwilling to do so in the first instance.

18 4. The Second Cause of Action also fails as a matter of law for the separate and
19 independent reason that no jurisdiction, let alone Nevada, recognizes an equitable subrogation claim
20 between excess carriers in separate towers of coverage. And this Court is unwilling to be the first to
21 do so.

22 5. General insurance principles and the subject policies outlined above demonstrate that
23 Cosmopolitan and Marquee are named insureds in separate towers of coverage. Cosmopolitan is a
24 named insured under a separate tower of insurance that includes the Zurich Primary Policy and the
25 St. Paul Excess Policy. Marquee is a named insured under a separate tower of insurance that
26 includes the Aspen Primary Policy and the National Union Excess Policy. Cosmopolitan qualified
27 as an additional insured under the Aspen Primary Policy and the National Union Excess Policy
28 issued to Marquee as the named insured.

1 6. It is well-established that “[p]rimary coverage is insurance coverage whereby, under
2 the terms of the policy, liability attaches immediately upon the happening of the occurrence that
3 gives rise to liability,” and that “[e]xcess or secondary coverage is coverage whereby, under the
4 terms of the policy, liability attaches only after a predetermined amount of primary coverage has
5 been exhausted.” *Travelers Cas. & Sur. Co. v. Am. Equity Ins. Co.*, 113 Cal. Rptr. 2d 613, 618 (Cal.
6 Ct. App. 2001) (citing *Olympic Ins. Co. v. Employers Surplus Lines Ins. Co.*, 178 Cal. Rptr. 908
7 (Cal. Ct. App. 1981); *Carmel Dev. Co. v. RLI Ins. Co.*, 24 Cal. Rptr. 3d 588, 595 (2005)
8 (“[U]mbrella coverage is generally regarded as true excess over and above any type of primary
9 coverage, excess provisions arising in any manner, or escape clauses.” (internal quotation marks
10 omitted))).

11 7. St. Paul issued an umbrella policy to Cosmopolitan while National Union issued an
12 umbrella policy to Marquee. Thus, St. Paul’s and National Union’s respective umbrella policies
13 remain in separate towers of coverage and, as such, St. Paul and National Union are co-excess
14 insurers that provided coverage to Cosmopolitan at equal levels of coverage under two separate and
15 distinct coverage towers.

16 8. The St. Paul Excess Policy is a general excess policy over scheduled underlying
17 insurance and applicable other insurance providing coverage to the insured, Cosmopolitan. The
18 scheduled underlying insurance to the St. Paul Excess Policy is the Zurich Primary Policy.

19 9. The National Union Excess Policy is also a general excess policy over scheduled
20 underlying insurance and applicable other insurance providing coverage to the insured
21 Cosmopolitan. The scheduled underlying insurance to the National Union Excess Policy is the
22 Aspen Primary Policy.

23 10. Based on the aforementioned discussions herein, the St. Paul Excess Policy and the
24 National Union Excess Policy contain nearly identical “other insurance” provisions. When two
25 policies contain such language, neither policy shall be excess to the other. *See Everest Nat. Ins. Co.*
26 *v. Evanston Ins. Co.*, No. 2:09-cv-2077-RLH-PAL, 2011 WL 534007 at *3 (D. Nev. Feb. 8, 2011)
27 (ruling that judgment and defense costs were to be shared equally between insurers that contained
28 the same amounts of limits and both contained Other Insurance clauses providing they were excess

1 to other available insurance); *CSE Ins. Group v. Northbrook Property & Cas. Co.*, 29 Cal. Rptr. 2d
2 120, 121-23 (Cal. Ct. App. 1994); *Century Surety Co. v. United Pac. Ins. Co.*, 135 Cal. Rptr. 2d
3 879, 884-85 (Cal. Ct. App. 2003).

4 11. The St. Paul Excess Policy is not excess to the National Union Excess Policy with
5 regard to any coverage provided to Cosmopolitan. Both St. Paul and National Union had
6 independent obligations to Cosmopolitan, both discharged those obligations by settlement of the
7 Underlying Action, both had the same limits of insurance, and neither is in an equitably superior
8 position to the other.

9 12. Accordingly, St. Paul's Second Cause of Action For Subrogation – Breach of the
10 Duty to Settle fails as a matter of law.

11 **B. St. Paul's Fourth Cause of Action For Subrogation – Breach of The AIG Insurance**
12 **Contract**

13 13. Although St. Paul is not a party to the National Union Excess Policy, in the Fourth
14 Cause of Action for Subrogation – Breach of the AIG Insurance Contract ("Fourth Cause of
15 Action"), St. Paul is pursuing a claim against National Union for an alleged breach of National
16 Union's insurance contract as an alleged subrogee of Cosmopolitan.

17 14. However, for the same reasons proffered above in concluding that the Second Cause
18 of Action fails as a matter of law, the Fourth Cause of Action must also fail as a matter of law.
19 Specifically, the Nevada Supreme Court has never recognized the viability of an equitable
20 subrogation claim between insurers, and this Court is unwilling to do so in the first instance.

21 15. And even if equitable subrogation claims among carriers were viable in Nevada, for
22 the reasons explained above, the St. Paul Excess Policy is not excess to the National Union Excess
23 Policy with regard to any coverage provided to Cosmopolitan. As such, St. Paul cannot pursue any
24 claims against National Union based on an equitable subrogation theory of recovery.

25 16. The Fourth Cause of Action also fails as a matter of law because Nevada courts have
26 expressly rejected contractual subrogation claims between insurers. In the insurance context,
27 contractual subrogation generally is not applied by an excess insurer against a primary insurer, but
28 between an insurer and a third-party tortfeasor. *See Colony Ins. Co. v. Colorado Cas. Ins. Co.*, No.

1 2:12-cv-01727-RFB-NJK, 2016 WL 3360943 at *6 (D. Nev. June 9, 2016). As noted by the *Colony*
2 court, the Nevada Supreme Court has held that contractual subrogation in the context of insurers
3 and insureds may contravene public policy and contractual subrogation may provide for windfalls
4 in the insurance context. *Id.* (citing *Maxwell v. Allstate Ins. Cos.*, 102 Nev. 502, 506, 728 P.2d 812,
5 815 (1986)). As such, St. Paul cannot pursue claims against National Union based on a contractual
6 subrogation theory of recovery.

7 17. The Second Cause of Action also fails as a matter of law for the separate and
8 independent reason that Cosmopolitan has suffered no contractual damages.

9 18. General principles of subrogation allow an insurer to step into the shoes of its
10 insured, but the insurer has no greater rights than the insured and is subject to all of the same
11 defenses that can be asserted against the insured. *State Farm General Ins. Co. v. Wells Fargo Bank,*
12 *N.A.*, 49 Cal. Rptr. 3d 785, 790-91 (Cal. Ct. App. 2006).

13 19. A breach of contract claim requires (1) the existence of a valid contract, (2) a breach
14 by the defendant, and (3) damage as a result of the breach. *See Contreras v. American Family Mut.*
15 *Ins. Co.*, 135 F. Supp. 3d 1208, 1224 (D. Nev. 2015) (citing *Richardson v. Jones*, 1 Nev. 405, 409
16 (1865)).

17 20. A claim for breach of contract is not actionable without damage. *Nalder ex rel.*
18 *Nalder v. United Auto. Ins. Co.*, No. 70504, 2019 WL 5260073, 449 P.3d 1268 (Nev. 2019)
19 (unpublished) (“It is beyond cavil that a party must suffer actual loss before it is entitled to
20 damages.” (quoting *Riofrio Anda v. Ralston Purina Co.*, 959 F.2d 1149, 1153 (1st Cir. 1992));
21 *California Capital Ins. Co. v. Scottsdale Indem. Ins. Co.*, 2018 WL 2276815, at *4 (Cal.Ct.App.
22 May 18, 2018) (unpublished); *Bramalea California, Inc. v. Reliable Interiors, Inc.*, 14 Cal. Rptr. 3d
23 302, 306 (Cal. Ct. App. 2004). In the insurance context, damages for breach of an insurance policy
24 are based on the failure to provide benefits owed under the policy. *Morris v. Paul Revere Life Ins.*
25 *Co.*, 135 Cal. Rptr. 2d 718, 726 (Cal. Ct. App. 2003); *Avila v. Century Nat’l Ins. Co.*, No. 2:09-cv-
26 00682-RCJ-GWF, 2010 WL 11579031 (D. Nev. Feb. 10, 2010). If the insured does not suffer
27 “actual loss” from the insurer’s breach of a duty under the policy, there can be no claim for

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1 damages. *Nalder ex rel. Nalder v. United Auto. Ins. Co.*, No. 70504, 2019 WL 5260073, 449 P.3d
2 1268 (Nev. 2019) (unpublished).

3 21. Here, St. Paul alleges that National Union breached its obligations to Cosmopolitan
4 under the National Union Excess Policy and seeks extra-contractual damages for such breach.
5 However, it is undisputed that Cosmopolitan's defense and indemnity in the Underlying Action
6 were fully paid for by insurers. The damages sought by St. Paul are not contract damages suffered
7 by Cosmopolitan due to any failure to provide policy benefits, but are instead an attempt to recoup
8 extra-contractual damages to reimburse St. Paul for the money it was required to pay under its
9 policy in discharge of its separate obligation to Cosmopolitan.

10 22. It is undisputed that Cosmopolitan was indemnified by National Union when it
11 exhausted its policy limit by participating in the settlement of the Underlying Action.
12 Cosmopolitan's defense in the Underlying Action was funded entirely by insurers. Accordingly,
13 Cosmopolitan suffered no contract damages as a matter of law and, as such, has no viable claim for
14 breach of contract against National Union. As Cosmopolitan has no viable claim for breach of
15 contract against National Union, neither does St. Paul under subrogation principles as it holds no
16 greater rights than Cosmopolitan.

17 23. The facts of this case are similar to *California Capital*, in which an insurer sued
18 another insurer to recover amounts it paid in settlement (and defense) of its named insureds in an
19 underlying bodily injury action. Like St. Paul, California Capital asserted causes of action against a
20 co-carrier for breach of contract and breach of the covenant of good faith and fair dealing, among
21 others, alleging its named insureds were additional insureds under the defendant insurer's policy
22 and that its named insureds had expressly assigned all of their rights under the defendant insurer's
23 policy to California Capital. 2018 WL 2276815, at *2-4. California Capital alleged the defendant
24 insurer breached its policy by refusing to provide the additional insureds the benefits due under the
25 policy and also alleged defendant insurer breached its obligations of good faith by failing to defend
26 and indemnify the insureds when it knew they were entitled to overage under the policy,
27 withholding payments under the policy when defendant insurer knew plaintiff's claim was valid,
28 failing to properly investigate the insureds' request for policy benefits, and failing to provide a

1 reasonable explanation of the factual basis for denial of the insureds' claim for benefits under the
2 policy. *Id.* at *4. The trial court held that California Capital had no cause of action for breach of
3 contract or breach of the covenant of good faith and fair dealing because the insureds had sustained
4 no damage as a result of defendant insurer's alleged failure to defend and indemnify them or its
5 failure to settle the claim within its policy limit. *Id.* Given the insureds' defense and post-judgment
6 settlement had been fully paid by California Capital, the trial court found the essential element of
7 contract damages was absent from the breach of contract cause of action such that the insureds had
8 no viable claims to assign to California Capital. *Id.* The trial court further found that California
9 Capital had no direct cause of action against the defendant insurer because it was not a party to
10 defendant insurer's policy. *Id.* at *6. The trial court in *California Capital* found that both insurers
11 provided primary coverage for the loss. *Id.* at *8. The Court of Appeal affirmed the foregoing
12 findings by the trial court and held that California Capital could not pursue assigned claims for
13 breach of contract or breach of the covenant of good faith and fair dealing against the defendant
14 insurer. *Id.* at *1, *30.

15 24. Like the plaintiff insurer in *California Capital*, St. Paul is not a party to the National
16 Union Excess Policy and has no direct cause of action against National Union for breach of contract
17 or breach of the covenant of good faith and fair dealing. Both St. Paul and National Union had
18 independent obligations to Cosmopolitan, and both insurers discharged those obligations by
19 settlement of the Underlying Action. As such, neither insurer is in an equitably superior position as
20 to the other. Further, given the cost of Cosmopolitan's defense and the post-verdict settlement was
21 fully funded by insurers in the Underlying Action, Cosmopolitan has no contract damages for
22 policy benefits against National Union. Therefore, Cosmopolitan has no viable breach-of-contract
23 claim for St. Paul to step into its shoes to pursue against National Union. Accordingly, St. Paul's
24 Fourth Cause of Action For Subrogation – Breach of The AIG Insurance Contract fails as a matter
25 of law.

26 **C. St. Paul's Eighth Cause of Action for Equitable Contribution**

27 25. The National Union Excess Policy provides that the "Limits of Insurance" as set
28 forth in the declarations is the most that National Union will pay regardless of the number of

1 insureds, claims or suits brought, persons or organizations making claims or bringing suits, or
2 coverages provided under the policy.

3 26. The National Union Excess Policy further provides the most National Union will pay
4 for damages on behalf of any person or organization to whom the named insured is obligated to
5 provide insurance is the lesser of the limits shown in the declarations or the minimum limits of
6 insurance the named insured agrees to procure in a written insured contract.

7 27. Here, National Union exhausted its policy limit in contributing towards the
8 settlement of the Underlying Action.

9 28. Given the National Union Excess Policy is exhausted, National Union has no further
10 obligation under the policy. *See Everest Indem. Ins. Co. v. Aventine-Tramonti Homeowners Ass'n*,
11 No. 2:09-cv-01672-RCJ-RJJ, 2012 WL 870289 at *3 (D. Nev. Mar. 14, 2012) (concluding that
12 “once the [limits are] reached, the insurer’s duties under the policy are extinguished”); *Deere & Co.*
13 *v. Allstate Ins. Co.*, 244 Cal. Rptr. 3d 100, 112 (Cal. Ct. App. 2019) (holding that “[a] ‘policy limit’
14 or ‘limit of liability’ is the maximum amount the insurer is obligated to pay in contract benefits on a
15 covered loss.” (internal quotation marks omitted)).

16 29. St. Paul seeks to step into Cosmopolitan’s shoes to pursue extra-contractual damages
17 outside National Union’s policy benefits based a claim for equitable contribution. However, a
18 claim for contribution is not available to pursue damages from a carrier that is in excess of the
19 carrier’s policy limit. Accordingly, St. Paul’s Eighth Cause of Action for Equitable Contribution
20 against National Union fails as a matter of law.

21 **D. St. Paul’s Seventh Cause of Action for Equitable Estoppel**

22 30. In the FAC, St. Paul asserts the Seventh Cause of Action for Equitable Estoppel
23 (“Seventh Cause of Action”), seeking to preclude National Union from asserting that: (1) National
24 Union’s policies were not primarily responsible for the defense and resolution of the Underlying
25 Action; and (2) St. Paul, a non-defending carrier, had the same obligation to resolve the Underlying
26 Action as Aspen and National Union. (FAC ¶ 135.)

27 ///

28 ///

1 31. Typically, equitable estoppel is raised as an affirmative defense. However, under
2 Nevada Law, equitable estoppel can be treated as an affirmative claim under the appropriate
3 circumstances.

4 32. To establish equitable estoppel, the plaintiff must prove the following: (1) the party
5 to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted
6 upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3)
7 the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must have
8 relied to his detriment on the conduct of the party to be estopped. *See Chequer, Inc. v. Painters &*
9 *Decorators Joint Comm., Inc.*, 98 Nev. 609, 614, 655 P.2d 996, 999 (1982); *In re Harrison Living*
10 *Trust*, 121 Nev. 217, 223, 112 P.3d 1058, 1061-1062 (2005).

11 33. Because the Second, Fourth, and Eighth Causes of Action fail as a matter of law,
12 including for reasons that are unaffected by National Union's assertions that St. Paul seeks to estop,
13 this Seventh Cause of Action must also fail.

14 **E. St. Paul's Request for Discovery Per NRCP 56(d)**

15 34. True and correct copies of the Nightclub Management Agreement ("NMA") and the
16 St. Paul Excess Policy at issue in this matter have been provided as part of National Union's MSJ.
17 As such, all necessary and potentially relevant exhibits to properly consider and determine National
18 Union's MSJ are included in the moving papers and the record is complete.

19 35. There remains no genuine dispute of material facts with respect to National Union's
20 MSJ that require further discovery.

21 36. Accordingly, St. Paul's Request for Discovery per NRCP 56(d) is denied.

22 **F. Certification under NRCP 54(b)**

23 37. "When an action presents more than one claim for relief—whether as a claim,
24 counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court
25 may direct entry of final judgment as to one or more, but fewer than all, claims or parties only if the
26 court expressly determines that there is no just reason for delay." NRCP 54(b).

27 ///

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38. This Court finds, pursuant to NRCP 54(b), that there is no just reason for delay of entry of final judgment granting National Union's MSJ against St. Paul's claims as discussed herein.

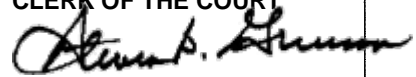
ORDER

Based on the pleadings, papers on file, the memorandum of points and authorities in support of National Union's Motion for Summary Judgment, and the arguments of the parties and good cause existing, National Union's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED this 14th day of May, 2019.



Honorable Gloria Sturman
District Judge, Department XXVI



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

12 ST. PAUL FIRE & MARINE INSURANCE
13 COMPANY,

14 Plaintiff,

15 v.

16 ASPEN SPECIALITY INSURANCE
17 COMPANY; NATIONAL UNION FIRE
18 INSURANCE COMPANY OF PITTSBURGH
19 PA.; ROOF DECK ENTERTAINMENT, LLC
20 d/b/a MARQUEE NIGHTCLUB; and DOES 1
21 through 25, inclusive,

22 Defendants.

Case No: A-17-758902-C
Dept. No: XXVI


**NOTICE OF ENTRY OF FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND ORDER GRANTING
NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH PA'S MOTION FOR
SUMMARY JUDGMENT**

23 Please take notice the on the 14th day of May, 2020, the Court entered Findings of Fact,
24 Conclusions of Law and Order Granting National Union Fire Insurance Company of Pittsburgh
25 PA's Motion for Summary Judgment in the above-entitled action. A copy of said Order is
26 attached hereto.

27 DATED this 27 day of May, 2020.

HUTCHISON & STEFFEN, PLLC

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this 21st day of May, 2020, I caused the above and foregoing document entitled **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S MOTION FOR SUMMARY JUDGMENT** to be served as follows:

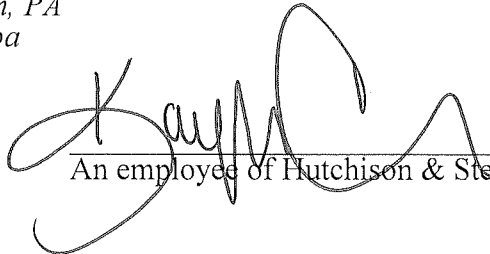
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or
- ☐ to be sent **via facsimile**; and/or
- ☒ to be electronically served through the Eighth Judicial District Court's electronic filing 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;

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DISTRICT COURT

CLARK COUNTY, NEVADA

19 ST. PAUL FIRE & MARINE INSURANCE
20 COMPANY,

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Plaintiffs,

vs.

23 ASPEN SPECIALTY INSURANCE
24 COMPANY; NATIONAL UNION FIRE
25 INSURANCE COMPANY OF
26 PITTSBURGH PA.; ROOF DECK
27 ENTERTAINMENT, LLC d/b/a MARQUEE
28 NIGHTCLUB; and DOES 1 through 25,
inclusive,

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Defendants.

CASE NO.: A-17-758902-C
DEPT.: XXVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH PA'S
MOTION FOR SUMMARY JUDGMENT**

1 Defendant National Union Fire Insurance Company of Pittsburgh PA's ("National Union")
2 Motion for Summary Judgment ("MSJ") came on for hearing on October 15, 2019 in Department
3 XXVI of this Court, the Honorable Gloria Sturman presiding. Nicholas B. Salerno of Herold &
4 Sager and Jennifer L. Keller of Keller/Anderle LLP appeared for Defendant National Union,
5 William Reeves and Marc J. Derewetzky of Morales Fierro & Reeves appeared for Plaintiff St. Paul
6 Fire & Marine Insurance Company ("St. Paul"), and Ryan A. Loosvelt of Messner Reeves LLP
7 appeared for Defendant Aspen Specialty Insurance Company ("Aspen").

8 The Court, having reviewed and considered the pleadings and papers on file,¹ having heard
9 and considered argument of counsel, and good cause appearing, hereby GRANTS National Union's
10 Motion for Summary Judgment.

11 On October 15, 2019, the Court issued a minute order granting National Union's Motion for
12 Summary Judgment. However, the Court's decision set out herein is not based solely on the
13 contents of the minute order but includes the entire record on file herein. The Court hereby issues
14 the following Findings of Facts, Conclusions of Law and Order.

15 I.

16 FINDINGS OF FACT

17 A. The Underlying Action

18 1. This action arises out of an underlying bodily injury action captioned *David Moradi*
19 *v. Nevada Property 1, LLC dba The Cosmopolitan, et al.*, District Court Clark County, Nevada,
20 Case No. A-14-698824-C ("Underlying Action"). (FAC ¶ 6.)

21 _____
22 ¹ The pleadings and papers reviewed and considered by the Court include, among other things, National
23 Union's Motion for Summary Judgment, National Union's Request for Judicial Notice in Support of Motion
24 for Summary Judgment, National Union's Appendix of Exhibits in Support of Motion for Summary
25 Judgment, Declaration of Nicholas B. Salerno in Support of Motion for Summary Judgment, Declaration of
26 Richard C. Perkins in Support of Motion for Summary Judgment, St. Paul's Opposition to Motion for
27 Summary Judgment and Request for Discovery Per NRCP 56(d), St. Paul's Response to Statement of
28 Undisputed Facts, St. Paul's Consolidated Appendix of Exhibits in Support of Opposition to Motions for
Summary Judgment, Declaration of Marc J. Derewetzky in Support of Opposition to Motion for Summary
Judgment, Declaration of William Reeves in Support of Opposition to Motion for Summary Judgment,
National Union's Reply in Support of Motion for Summary Judgment, and National Union's Objections to
Facts Not Supported by Admissible Evidence Filed in Support of Opposition to Motion for Summary
Judgment and Request for Discovery Per NRCP 56(d).

1 2. Plaintiff David Moradi (“Moradi”) alleged that, on or about April 8, 2012, he went
2 to the Marquee Nightclub located within The Cosmopolitan Hotel and Casino to socialize with
3 friends, when he was beaten by Marquee employees. (FAC ¶¶ 6-7.)

4 3. Moradi filed a complaint against Nevada Property 1, LLC d/b/a The Cosmopolitan
5 of Las Vegas (“Cosmopolitan”) and Roof Deck Entertainment, LLC d/b/a Marquee Nightclub
6 (“Marquee”) on April 4, 2014, asserting causes of action for Assault and Battery, Negligence,
7 Intentional Infliction of Emotional Distress, and False Imprisonment. (FAC ¶¶ 8-10, Exhibit A.)

8 4. Moradi alleged that, as a result of his injuries, he suffered past and future lost
9 wages/income and sought general damages, special damages and punitive damages. (*Id.* ¶ 9, Exhibit
10 A.)

11 5. Aspen, who issued a primary insurance policy to Marquee, agreed to provide a joint
12 defense to both Cosmopolitan and Marquee. National Union, who issued an excess policy to
13 Marquee, subsequently appointed separate counsel to jointly represent both Cosmopolitan and
14 Marquee. (St. Paul Appendix, Exs. C, D, L, M.)

15 6. During the course of the Underlying Action, Moradi alleged that Cosmopolitan, as
16 the owner of The Cosmopolitan Hotel and Casino (where the Marquee Nightclub was located),
17 faced exposure for the conduct of Marquee by breaching its non-delegable duty to keep patrons
18 safe, including Moradi. (FAC ¶ 13.)

19 7. The Court held in the Underlying Action that that Cosmopolitan, as owner of the
20 property, “had a nondelegable duty and can be vicariously held responsible for the conduct of the
21 Marquee security officers.” and that Marquee and Cosmopolitan can be jointly and severally liable
22 as a matter of law. (*See* Request for Judicial Notice in Support of Motion for Summary Judgment,
23 Ex. 5.)

24 8. After a five-week trial, the jury in the Underlying Action issued a special verdict on
25 April 26, 2017 finding that Moradi established his claims for assault, battery, false imprisonment
26 and negligence against Marquee and Cosmopolitan and awarded compensatory damages in the
27 amount of \$160,500,000. Because the jury found for Moradi on his intentional-tort claims, the

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1 judgment would have been joint and several against Marquee and Cosmopolitan. *See* NRS
2 41.141(5)(b). (FAC, Ex. C.)

3 9. After the verdict and during the punitive damages phase of the trial, Moradi made a
4 global settlement demand to Marquee and Cosmopolitan. (FAC ¶ 66.)

5 10. Aspen and National Union as the primary and excess insurers of Marquee, and
6 Zurich American Insurance Company and St. Paul as the primary and excess insurers of
7 Cosmopolitan, accepted the settlement demand and resolved the Underlying Action with the
8 confidential contributions set forth in the FAC filed by St. Paul under seal. (FAC ¶¶ 67-70.)

9 11. The settlement was funded entirely by the insurance carriers for Cosmopolitan and
10 Marquee. No defendant in the underlying case contributed any money out-of-pocket towards the
11 settlement. National Union on behalf of Marquee and St. Paul on behalf of Cosmopolitan
12 contributed the same amount towards the settlement of the Underlying Action. (FAC ¶ 67-70.)

13 12. National Union contends its contribution towards the settlement of the Underlying
14 Action on behalf of Marquee resulted in the exhaustion of the National Union Excess Policy. (MSJ
15 p. 10, Undisputed Fact No. (“UF”) 17.)

16 13. The combined defense of Cosmopolitan and Marquee was funded entirely by Aspen
17 and National Union. (FAC ¶¶ 27-28, 35-36.)

18 **B. Insurance Policies**

19 **1. The Cosmopolitan Insurance Tower**

20 **a. Cosmopolitan’s Primary Policy with Zurich American Insurance**
21 **Company**

22 14. Zurich American Insurance Company (“Zurich”) issued commercial general liability
23 policy number PRA 9829242-01, effective November 1, 2011 to November 1, 2012 to Nevada
24 Property 1 LLC (the “Zurich Primary Policy”). (FAC ¶ 69; National Union’s Appendix of Exhibits
25 in Support of MSJ (“NU Appx.”), Ex. 2, W005478.)

26 15. Cosmopolitan is a named insured under the Zurich Primary Policy. (FAC ¶ 69.)
27 Marquee is not an insured under the Zurich Primary Policy. (*Id.*)

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1 16. The Zurich Primary Policy contains limits of \$1,000,000 each occurrence and
2 \$2,000,000 general aggregate. (FAC ¶ 69; NU Appx., Ex. 2, W005508.)

3 17. The Zurich Primary Policy provides that Zurich will pay “those sums that the insured
4 becomes legally obligated to pay as damages because of ‘bodily injury’ or ‘property damage’ to
5 which this insurance applies.” (NU Appx., Ex. 2, W005497 – W005498.)

6 18. The Zurich Primary Policy provides that it applies to “bodily injury” and “property
7 damage” only if caused by an “occurrence” that occurs during the policy period. (*Id.*)

8 **b. Cosmopolitan’s Excess Policy with St. Paul**

9 19. St. Paul issued commercial umbrella liability policy number QK06503290, effective
10 March 1, 2011 to March 1, 2013, to Premier Hotel Insurance Group (the “St. Paul Excess Policy”).
11 (FAC ¶ 40; MSJ p. 11, UF 20.)

12 20. Cosmopolitan is a named insured under the St. Paul Excess Policy. (FAC ¶ 40.)
13 Marquee is not an insured under the St. Paul Excess Policy. (FAC ¶ 41.)

14 21. The St. Paul Excess Policy contains liability limits of \$25,000,000 with each
15 occurrence and \$25,000,000 general aggregate. (MSJ p. 11, UF 22.)

16 22. The St. Paul Excess Policy provides that it will pay on behalf of: (1) the insured all
17 sums in excess of the “Retained Limit” that the insured becomes legally obligated to pay as
18 damages by reason of liability imposed by law; or (2) the named insured all sums in excess of the
19 “Retained Limit” that the named insured becomes legally obligated to pay as damages assumed by
20 the named insured under an “Insured Contract.” (MSJ p. 11, UF 23.)

21 23. The St. Paul Excess Policy contains an Other Insurance provision, which provides:

22 If Other Insurance applies to damages that are also covered by this policy,
23 this policy will apply excess of and shall not contribute with, that Other
24 Insurance, whether it is primary, excess, contingent or any other basis.
25 However, this provision will not apply if the Other Insurance is specifically
26 written to be excess of this policy.

27 (MSJ p. 11, UF 24.)

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1 2. **The Marquee Insurance Tower**

2 a. **Marquee's Primary Policy with Aspen Specialty Insurance Company**

3 24. Aspen issued a commercial general liability policy number CRA8XYD11, effective
4 October 6, 2011 to October 6, 2012 to The Restaurant Group et. al. (the "Aspen Primary Policy").
5 (FAC ¶ 15; NU Appx., Ex. 4, ASPEN000032.)

6 25. Marquee is a named insured under the Aspen Primary Policy. (FAC ¶ 15.)

7 26. Cosmopolitan qualified as an additional insured to the Aspen Primary Policy with
8 respect to the Underlying Action. (FAC ¶ 24.)

9 27. The Aspen Policy contains limits of \$1,000,000 each occurrence and \$2,000,000
10 general aggregate. (FAC ¶¶ 17, 23; NU Appx., Ex. 4, ASPEN000033.)

11 28. The Aspen Policy provides that Aspen will pay "those sums that the insured
12 becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to
13 which this insurance applies." (NU Appx., Ex. 4, ASPEN000042.)

14 29. The Aspen Policy provides that it applies to "bodily injury" and "property damage"
15 only if caused by an "occurrence" that occurs during the policy period. (*Id.*)

16 b. **Marquee's Excess Policy with National Union**

17 30. National Union issued commercial umbrella liability policy number BE 25414413,
18 effective October 6, 2011 to October 6, 2012, to The Restaurant Group, et al. (the "National Union
19 Excess Policy") (MSJ p. 10, UF 11.)

20 31. Marquee is a named insured under the National Union Excess Policy. (FAC ¶ 30.)

21 32. Cosmopolitan qualified as an additional insured to the National Union Excess Policy
22 with respect to the Underlying Action. (FAC ¶ 33; MSJ p. 11, UF 18.)

23 33. The National Union Excess Policy contains limits of \$25,000,000 each occurrence
24 and \$25,000,000 general aggregate. (MSJ p. 10, UF 13.)

25 34. The National Union Excess Policy provides that National Union will pay on behalf
26 of the insured "those sums in excess of the Retained Limit that the Insured becomes legally
27 obligated to pay as damages by reason of liability imposed by law because of Bodily Injury,
28 Property Damage, or Personal and Advertising Injury to which this insurance applies or because of

1 Bodily Injury or Property Damage to which this insurance applies assumed by the Insured under an
2 Insured Contract.” (MSJ p. 10, UF 14.)

3 35. The National Union Excess Policy defines Retained Limit, in pertinent part, as the
4 total applicable limits of Scheduled Underlying Insurance and any applicable Other Insurance
5 providing coverage to the Insured. (NU Appx., Ex. 1, p. 30.)

6 36. The policy defines Scheduled Underlying Insurance as the policy or policies of
7 insurance and limits of insurance shown in the Schedule of Underlying Insurance forming a part of
8 the National Union Excess Policy. (*Id.*)

9 37. Other Insurance is defined in the National Union Excess Policy as a valid and
10 collectible policy of insurance providing coverage for damages covered in whole or in part by this
11 policy. (NU Appx., Ex. 1, p. 29.)

12 38. The National Union Excess Policy contains an Other Insurance provision, which
13 provides:

14 If other valid and collectible insurance applies to damages that are also
15 covered by this policy, this policy will apply excess of the Other Insurance.
16 However, this provision will not apply if the Other Insurance is specifically
written to be excess of this policy.

17 (MSJ p. 10, UF 15.)

18 39. The National Union Excess Policy provides that the “Limits of Insurance” as set
19 forth in the declarations is the most that National Union will pay regardless of the number of
20 insureds, claims or suits brought, persons or organizations making claims or bringing suits, or
21 coverages provided under the policy. (MSJ p. 10, UF 16.)

22 40. National Union received notice of the Underlying Action against Marquee and
23 Cosmopolitan and provided coverage to Cosmopolitan and Marquee in the Underlying Action
24 under a reservation of rights. (FAC ¶ 35.)

25 41. Cosmopolitan and Marquee were insured under separate towers of insurance.
26 Cosmopolitan was insured under one of the towers of insurance where it was a named insured under
27 the Zurich Primary Policy and the St. Paul Excess Policy, and under the other tower of insurance

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1 where Cosmopolitan qualified as an additional insured under the Aspen Primary Policy and the
2 National Union Excess Policy that were issued to Marquee as the named insured.

3 **C. St. Paul's Claims Against National Union**

4 42. St. Paul's FAC asserts the following four causes of action against National Union:

- 5 1) Second Cause of Action for Subrogation – Breach of the Duty to Settle;
6 2) Fourth Cause of Action for Subrogation – Breach of the AIG Insurance
7 Contract;²
8 3) Seventh Cause of Action for Equitable Estoppel; and
9 4) Eighth Cause of Action for Equitable Contribution.

10 43. In the Second Cause of Action of the FAC for Subrogation – Breach of the Duty to
11 Settle, St. Paul asserts that National Union breached a duty owed to Cosmopolitan to settle by
12 refusing to settle the Underlying Action in response to pre-trial settlement demands within its
13 applicable policy limits and by failing to initiate and/or attempt settlement prior to or during trial for
14 an amount within the applicable policy limits. (FAC ¶¶ 88-89.) St. Paul further asserts that it is
15 subrogated under its policy and principles of equity to the rights Cosmopolitan possesses directly
16 against its insurers Aspen and National Union for breach of the duty to settle and seeks
17 reimbursement for the amount St. Paul paid towards the settlement of the Underlying Action. (*Id.* at
18 ¶¶ 93-95.)

19 44. In the Fourth Cause of Action of the FAC for Subrogation – Breach of the AIG
20 Insurance Contract, St. Paul makes similar allegations to those raised in the cause of action for
21 breach of the duty to settle. St. Paul asserts that National Union breached its obligations to
22 Cosmopolitan by failing to provide a conflict-free defense, favoring the interests of Marquee over
23 Cosmopolitan, failing to pay all available limits under the National Union Excess Policy to resolve
24 Cosmopolitan's liability, and failing to pay any amount on Cosmopolitan's behalf towards the
25 settlement of the Underlying Action. (FAC ¶ 105.) St. Paul asserts that, unlike National Union, St.

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² St. Paul's FAC refers to the National Union Excess Policy as the AIG Insurance Contract.

Paul did not breach its obligations to Cosmopolitan under the St. Paul Excess Policy in connection to the Underlying Action because Cosmopolitan's coverage under the St. Paul Excess Policy did not apply until the Aspen Primary Policy and National Union Excess Policy exhausted. St. Paul claims it was damaged because it was required to contribute to the settlement of the Underlying Action as a result of National Union's breach of its obligations to Cosmopolitan. (*Id.* ¶¶ 108, 111.) St. Paul alleges that pursuant to the express terms of the St. Paul Excess Policy and principles of subrogation, it is entitled to step into Cosmopolitan's shoes and pursue its rights of recovery against National Union for such breach. (*Id.* ¶ 110.)

45. In the Seventh Cause of Action of the FAC for Equitable Estoppel, St. Paul asserts that both National Union and Aspen asserted throughout the Underlying Action “through both words and actions” that their coverage to Cosmopolitan was primary to Cosmopolitan’s direct coverage under Cosmopolitan’s own policies, including the St. Paul Excess Policy. (FAC ¶ 132.) St. Paul alleges that it and Cosmopolitan’s other direct carriers did not participate in the defense or settlement negotiations on behalf of Cosmopolitan based on these representations. (*Id.* ¶ 134.) St. Paul alleges that equity requires that National Union be precluded from claiming that St. Paul and National Union were excess carriers and that St. Paul had the same obligation to resolve the Underlying Action.

46. In the Eighth Cause of Action of the FAC for Equitable Contribution, St. Paul asserts that in contributing to the settlement of the Underlying Action, it incurred amounts in excess of its equitable share and that National Union failed to contribute its fair and equitable share towards the settlement of the Underlying Action on behalf of Cosmopolitan (St. Paul's insured). (FAC ¶¶ 138-139.) St. Paul asserts that National Union is obligated under principles of equity to reimburse St. Paul for the amounts St. Paul contributed towards settlement of the Underlying Action that Aspen and National Union should have otherwise paid. (*Id.* ¶ 141.)

II.

NATIONAL UNION'S MOTION FOR SUMMARY JUDGMENT

47. On September 13, 2019, National Union's filed Defendant National Union Fire Insurance Company of Pittsburgh PA's MSJ. National Union's MSJ asserts that the Second and

1 Fourth Causes of Action for subrogation fail as a matter of law because the St. Paul Excess Policy is
2 not excess to the National Union Excess Policy, rather St. Paul and National Union are both excess
3 insurers at the same level of coverage in separate towers of coverage with equal obligations to their
4 insured(s).

5 48. National Union's MSJ further asserts as a separate and independent ground to grant
6 summary judgment that the Fourth Cause of Action for Subrogation – Breach of the AIG Insurance
7 Contract fails as a matter of law because St. Paul has no legal basis or standing to step into the
8 shoes of Cosmopolitan to pursue subrogation for breach of contract against National Union when
9 Cosmopolitan was fully defended and indemnified by the insurers in the Underlying Action and,
10 thus, has suffered no damages under the insurance contract. Additionally, National Union argues
11 that the damages sought by St. Paul are extra-contractual damages that are not available under a
12 breach of contract cause of action.

13 49. National Union's MSJ further asserts as a separate and independent ground to grant
14 summary judgment that the Eighth Cause of Action for Equitable Contribution fails as a matter of
15 law because National Union exhausted its policy limit in settlement of the Underlying Action and a
16 claim for contribution does not apply to seek extra-contractual damages that fall outside of policy
17 limits.

18 50. National Union's MSJ further asserts that the Seventh Cause of Action for Equitable
19 Estoppel fails as a matter of law because such a claim is dependent on the legal viability of the
20 other causes of action against National Union, which all fail for the reasons each cause of action
21 against National Union fails as a matter of law.

22 III.

23 CONCLUSIONS OF LAW

24 A. Standard of Review

25 1. "The court shall grant summary judgment if the movant shows that there is no
26 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."
27 NRCP 56(a). While the pleadings and other proof must be construed in a light most favorable to the
28 non-moving party, that party bears the burden "to do more than simply show that there is some

1 metaphysical doubt” as to the operative facts in order to avoid summary judgment being entered in
2 the moving party’s favor. *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586
3 (1986); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1030 (2005). The non-moving
4 party “must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a
5 genuine issue for trial or have summary judgment entered against him.” *Bulbman Inc. v. Nevada*
6 *Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992); *Wood*, 121 Nev. at 732, 121 P.3d at 1031-32.
7 The non-moving party “is not entitled to build a case on the gossamer threads of whimsy,
8 speculation, and conjecture.” *Bulbman*, 108 Nev. at 110, 825 P.2d 591 (quoting *Collins v. Union*
9 *Fed. Savings & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

10 **B. St. Paul’s Second Cause of Action For Subrogation – Breach of The Duty To Settle**

11 2. In the Second Cause of Action of the FAC for Subrogation – Breach of the Duty to
12 Settle (“Second Cause of Action”), St. Paul asserts a right of subrogation against National Union on
13 the premise the St. Paul Excess Policy is excess to the National Union Excess Policy. (*see, e.g.*,
14 FAC ¶ 44.)

15 3. As a threshold matter, the Second Cause of Action fails as a matter of law because
16 the Nevada Supreme Court has never recognized an equitable subrogation claim between insurers,
17 and this Court is unwilling to do so in the first instance.

18 4. The Second Cause of Action also fails as a matter of law for the separate and
19 independent reason that no jurisdiction, let alone Nevada, recognizes an equitable subrogation claim
20 between excess carriers in separate towers of coverage. And this Court is unwilling to be the first to
21 do so.

22 5. General insurance principles and the subject policies outlined above demonstrate that
23 Cosmopolitan and Marquee are named insureds in separate towers of coverage. Cosmopolitan is a
24 named insured under a separate tower of insurance that includes the Zurich Primary Policy and the
25 St. Paul Excess Policy. Marquee is a named insured under a separate tower of insurance that
26 includes the Aspen Primary Policy and the National Union Excess Policy. Cosmopolitan qualified
27 as an additional insured under the Aspen Primary Policy and the National Union Excess Policy
28 issued to Marquee as the named insured.

1 6. It is well-established that “[p]rimary coverage is insurance coverage whereby, under
2 the terms of the policy, liability attaches immediately upon the happening of the occurrence that
3 gives rise to liability,” and that “[e]xcess or secondary coverage is coverage whereby, under the
4 terms of the policy, liability attaches only after a predetermined amount of primary coverage has
5 been exhausted.” *Travelers Cas. & Sur. Co. v. Am. Equity Ins. Co.*, 113 Cal. Rptr. 2d 613, 618 (Cal.
6 Ct. App. 2001) (citing *Olympic Ins. Co. v. Employers Surplus Lines Ins. Co.*, 178 Cal. Rptr. 908
7 (Cal. Ct. App. 1981); *Carmel Dev. Co. v. RLI Ins. Co.*, 24 Cal. Rptr. 3d 588, 595 (2005)
8 (“[U]mbrella coverage is generally regarded as true excess over and above any type of primary
9 coverage, excess provisions arising in any manner, or escape clauses.” (internal quotation marks
10 omitted)).

11 7. St. Paul issued an umbrella policy to Cosmopolitan while National Union issued an
12 umbrella policy to Marquee. Thus, St. Paul’s and National Union’s respective umbrella policies
13 remain in separate towers of coverage and, as such, St. Paul and National Union are co-excess
14 insurers that provided coverage to Cosmopolitan at equal levels of coverage under two separate and
15 distinct coverage towers.

16 8. The St. Paul Excess Policy is a general excess policy over scheduled underlying
17 insurance and applicable other insurance providing coverage to the insured, Cosmopolitan. The
18 scheduled underlying insurance to the St. Paul Excess Policy is the Zurich Primary Policy.

19 9. The National Union Excess Policy is also a general excess policy over scheduled
20 underlying insurance and applicable other insurance providing coverage to the insured
21 Cosmopolitan. The scheduled underlying insurance to the National Union Excess Policy is the
22 Aspen Primary Policy.

23 10. Based on the aforementioned discussions herein, the St. Paul Excess Policy and the
24 National Union Excess Policy contain nearly identical “other insurance” provisions. When two
25 policies contain such language, neither policy shall be excess to the other. *See Everest Nat. Ins. Co.*
26 *v. Evanston Ins. Co.*, No. 2:09-cv-2077-RLH-PAL, 2011 WL 534007 at *3 (D. Nev. Feb. 8, 2011)
27 (ruling that judgment and defense costs were to be shared equally between insurers that contained
28 the same amounts of limits and both contained Other Insurance clauses providing they were excess

1 to other available insurance); *CSE Ins. Group v. Northbrook Property & Cas. Co.*, 29 Cal. Rptr. 2d
2 120, 121-23 (Cal. Ct. App. 1994); *Century Surety Co. v. United Pac. Ins. Co.*, 135 Cal. Rptr. 2d
3 879, 884-85 (Cal. Ct. App. 2003).

4 11. The St. Paul Excess Policy is not excess to the National Union Excess Policy with
5 regard to any coverage provided to Cosmopolitan. Both St. Paul and National Union had
6 independent obligations to Cosmopolitan, both discharged those obligations by settlement of the
7 Underlying Action, both had the same limits of insurance, and neither is in an equitably superior
8 position to the other.

9 12. Accordingly, St. Paul's Second Cause of Action For Subrogation – Breach of the
10 Duty to Settle fails as a matter of law.

11 **B. St. Paul's Fourth Cause of Action For Subrogation – Breach of The AIG Insurance**
12 **Contract**

13 13. Although St. Paul is not a party to the National Union Excess Policy, in the Fourth
14 Cause of Action for Subrogation – Breach of the AIG Insurance Contract ("Fourth Cause of
15 Action"), St. Paul is pursuing a claim against National Union for an alleged breach of National
16 Union's insurance contract as an alleged subrogee of Cosmopolitan.

17 14. However, for the same reasons proffered above in concluding that the Second Cause
18 of Action fails as a matter of law, the Fourth Cause of Action must also fail as a matter of law.
19 Specifically, the Nevada Supreme Court has never recognized the viability of an equitable
20 subrogation claim between insurers, and this Court is unwilling to do so in the first instance.

21 15. And even if equitable subrogation claims among carriers were viable in Nevada, for
22 the reasons explained above, the St. Paul Excess Policy is not excess to the National Union Excess
23 Policy with regard to any coverage provided to Cosmopolitan. As such, St. Paul cannot pursue any
24 claims against National Union based on an equitable subrogation theory of recovery.

25 16. The Fourth Cause of Action also fails as a matter of law because Nevada courts have
26 expressly rejected contractual subrogation claims between insurers. In the insurance context,
27 contractual subrogation generally is not applied by an excess insurer against a primary insurer, but
28 between an insurer and a third-party tortfeasor. *See Colony Ins. Co. v. Colorado Cas. Ins. Co.*, No.

2:12-cv-01727-RFB-NJK, 2016 WL 3360943 at *6 (D. Nev. June 9, 2016). As noted by the *Colony* court, the Nevada Supreme Court has held that contractual subrogation in the context of insurers and insureds may contravene public policy and contractual subrogation may provide for windfalls in the insurance context. *Id.* (citing *Maxwell v. Allstate Ins. Cos.*, 102 Nev. 502, 506, 728 P.2d 812, 815 (1986)). As such, St. Paul cannot pursue claims against National Union based on a contractual subrogation theory of recovery.

17. The Second Cause of Action also fails as a matter of law for the separate and independent reason that Cosmopolitan has suffered no contractual damages.

18. General principles of subrogation allow an insurer to step into the shoes of its insured, but the insurer has no greater rights than the insured and is subject to all of the same defenses that can be asserted against the insured. *State Farm General Ins. Co. v. Wells Fargo Bank, N.A.*, 49 Cal. Rptr. 3d 785, 790-91 (Cal. Ct. App. 2006).

19. A breach of contract claim requires (1) the existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the breach. *See Contreras v. American Family Mut. Ins. Co.*, 135 F. Supp. 3d 1208, 1224 (D. Nev. 2015) (citing *Richardson v. Jones*, 1 Nev. 405, 409 (1865)).

20. A claim for breach of contract is not actionable without damage. *Nalder ex rel. Nalder v. United Auto. Ins. Co.*, No. 70504, 2019 WL 5260073, 449 P.3d 1268 (Nev. 2019) (unpublished) (“It is beyond cavil that a party must suffer actual loss before it is entitled to damages.” (quoting *Riofrio Anda v. Ralston Purina Co.*, 959 F.2d 1149, 1153 (1st Cir. 1992)); *California Capital Ins. Co. v. Scottsdale Indem. Ins. Co.*, 2018 WL 2276815, at *4 (Cal.Ct.App. May 18, 2018) (unpublished); *Bramalea California, Inc. v. Reliable Interiors, Inc.*, 14 Cal. Rptr. 3d 302, 306 (Cal. Ct. App. 2004). In the insurance context, damages for breach of an insurance policy are based on the failure to provide benefits owed under the policy. *Morris v. Paul Revere Life Ins. Co.*, 135 Cal. Rptr. 2d 718, 726 (Cal. Ct. App. 2003); *Avila v. Century Nat’l Ins. Co.*, No. 2:09-cv-00682-RCJ-GWF, 2010 WL 11579031 (D. Nev. Feb. 10, 2010). If the insured does not suffer “actual loss” from the insurer’s breach of a duty under the policy, there can be no claim for

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1 damages. *Nalder ex rel. Nalder v. United Auto. Ins. Co.*, No. 70504, 2019 WL 5260073, 449 P.3d
2 1268 (Nev. 2019) (unpublished).

3 21. Here, St. Paul alleges that National Union breached its obligations to Cosmopolitan
4 under the National Union Excess Policy and seeks extra-contractual damages for such breach.
5 However, it is undisputed that Cosmopolitan's defense and indemnity in the Underlying Action
6 were fully paid for by insurers. The damages sought by St. Paul are not contract damages suffered
7 by Cosmopolitan due to any failure to provide policy benefits, but are instead an attempt to recoup
8 extra-contractual damages to reimburse St. Paul for the money it was required to pay under its
9 policy in discharge of its separate obligation to Cosmopolitan.

10 22. It is undisputed that Cosmopolitan was indemnified by National Union when it
11 exhausted its policy limit by participating in the settlement of the Underlying Action.
12 Cosmopolitan's defense in the Underlying Action was funded entirely by insurers. Accordingly,
13 Cosmopolitan suffered no contract damages as a matter of law and, as such, has no viable claim for
14 breach of contract against National Union. As Cosmopolitan has no viable claim for breach of
15 contract against National Union, neither does St. Paul under subrogation principles as it holds no
16 greater rights than Cosmopolitan.

17 23. The facts of this case are similar to *California Capital*, in which an insurer sued
18 another insurer to recover amounts it paid in settlement (and defense) of its named insureds in an
19 underlying bodily injury action. Like St. Paul, California Capital asserted causes of action against a
20 co-carrier for breach of contract and breach of the covenant of good faith and fair dealing, among
21 others, alleging its named insureds were additional insureds under the defendant insurer's policy
22 and that its named insureds had expressly assigned all of their rights under the defendant insurer's
23 policy to California Capital. 2018 WL 2276815, at *2-4. California Capital alleged the defendant
24 insurer breached its policy by refusing to provide the additional insureds the benefits due under the
25 policy and also alleged defendant insurer breached its obligations of good faith by failing to defend
26 and indemnify the insureds when it knew they were entitled to overage under the policy,
27 withholding payments under the policy when defendant insurer knew plaintiff's claim was valid,
28 failing to properly investigate the insureds' request for policy benefits, and failing to provide a

1 reasonable explanation of the factual basis for denial of the insureds' claim for benefits under the
2 policy. *Id.* at *4. The trial court held that California Capital had no cause of action for breach of
3 contract or breach of the covenant of good faith and fair dealing because the insureds had sustained
4 no damage as a result of defendant insurer's alleged failure to defend and indemnify them or its
5 failure to settle the claim within its policy limit. *Id.* Given the insureds' defense and post-judgment
6 settlement had been fully paid by California Capital, the trial court found the essential element of
7 contract damages was absent from the breach of contract cause of action such that the insureds had
8 no viable claims to assign to California Capital. *Id.* The trial court further found that California
9 Capital had no direct cause of action against the defendant insurer because it was not a party to
10 defendant insurer's policy. *Id.* at *6. The trial court in *California Capital* found that both insurers
11 provided primary coverage for the loss. *Id.* at *8. The Court of Appeal affirmed the foregoing
12 findings by the trial court and held that California Capital could not pursue assigned claims for
13 breach of contract or breach of the covenant of good faith and fair dealing against the defendant
14 insurer. *Id.* at *1, *30.

15 24. Like the plaintiff insurer in *California Capital*, St. Paul is not a party to the National
16 Union Excess Policy and has no direct cause of action against National Union for breach of contract
17 or breach of the covenant of good faith and fair dealing. Both St. Paul and National Union had
18 independent obligations to Cosmopolitan, and both insurers discharged those obligations by
19 settlement of the Underlying Action. As such, neither insurer is in an equitably superior position as
20 to the other. Further, given the cost of Cosmopolitan's defense and the post-verdict settlement was
21 fully funded by insurers in the Underlying Action, Cosmopolitan has no contract damages for
22 policy benefits against National Union. Therefore, Cosmopolitan has no viable breach-of-contract
23 claim for St. Paul to step into its shoes to pursue against National Union. Accordingly, St. Paul's
24 Fourth Cause of Action For Subrogation – Breach of The AIG Insurance Contract fails as a matter
25 of law.

26 **C. St. Paul's Eighth Cause of Action for Equitable Contribution**

27 25. The National Union Excess Policy provides that the "Limits of Insurance" as set
28 forth in the declarations is the most that National Union will pay regardless of the number of

1 insureds, claims or suits brought, persons or organizations making claims or bringing suits, or
2 coverages provided under the policy.

3 26. The National Union Excess Policy further provides the most National Union will pay
4 for damages on behalf of any person or organization to whom the named insured is obligated to
5 provide insurance is the lesser of the limits shown in the declarations or the minimum limits of
6 insurance the named insured agrees to procure in a written insured contract.

7 27. Here, National Union exhausted its policy limit in contributing towards the
8 settlement of the Underlying Action.

9 28. Given the National Union Excess Policy is exhausted, National Union has no further
10 obligation under the policy. *See Everest Indem. Ins. Co. v. Aventine-Tramonti Homeowners Ass'n*,
11 No. 2:09-cv-01672-RCJ-RJJ, 2012 WL 870289 at *3 (D. Nev. Mar. 14, 2012) (concluding that
12 “once the [limits are] reached, the insurer’s duties under the policy are extinguished”); *Deere & Co.*
13 *v. Allstate Ins. Co.*, 244 Cal. Rptr. 3d 100, 112 (Cal. Ct. App. 2019) (holding that “[a] ‘policy limit’
14 or ‘limit of liability’ is the maximum amount the insurer is obligated to pay in contract benefits on a
15 covered loss.” (internal quotation marks omitted)).

16 29. St. Paul seeks to step into Cosmopolitan’s shoes to pursue extra-contractual damages
17 outside National Union’s policy benefits based a claim for equitable contribution. However, a
18 claim for contribution is not available to pursue damages from a carrier that is in excess of the
19 carrier’s policy limit. Accordingly, St. Paul’s Eighth Cause of Action for Equitable Contribution
20 against National Union fails as a matter of law.

21 **D. St. Paul’s Seventh Cause of Action for Equitable Estoppel**

22 30. In the FAC, St. Paul asserts the Seventh Cause of Action for Equitable Estoppel
23 (“Seventh Cause of Action”), seeking to preclude National Union from asserting that: (1) National
24 Union’s policies were not primarily responsible for the defense and resolution of the Underlying
25 Action; and (2) St. Paul, a non-defending carrier, had the same obligation to resolve the Underlying
26 Action as Aspen and National Union. (FAC ¶ 135.)

27 ///

28 ///

1 31. Typically, equitable estoppel is raised as an affirmative defense. However, under
2 Nevada Law, equitable estoppel can be treated as an affirmative claim under the appropriate
3 circumstances.

4 32. To establish equitable estoppel, the plaintiff must prove the following: (1) the party
5 to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted
6 upon, or must so act that the party asserting estoppel has the right to believe it was so intended; (3)
7 the party asserting the estoppel must be ignorant of the true state of facts; and (4) he must have
8 relied to his detriment on the conduct of the party to be estopped. *See Chequer, Inc. v. Painters &*
9 *Decorators Joint Comm., Inc.*, 98 Nev. 609, 614, 655 P.2d 996, 999 (1982); *In re Harrison Living*
10 *Trust*, 121 Nev. 217, 223, 112 P.3d 1058, 1061-1062 (2005).

11 33. Because the Second, Fourth, and Eighth Causes of Action fail as a matter of law,
12 including for reasons that are unaffected by National Union's assertions that St. Paul seeks to estop,
13 this Seventh Cause of Action must also fail.

14 **E. St. Paul's Request for Discovery Per NRCP 56(d)**

15 34. True and correct copies of the Nightclub Management Agreement ("NMA") and the
16 St. Paul Excess Policy at issue in this matter have been provided as part of National Union's MSJ.
17 As such, all necessary and potentially relevant exhibits to properly consider and determine National
18 Union's MSJ are included in the moving papers and the record is complete.

19 35. There remains no genuine dispute of material facts with respect to National Union's
20 MSJ that require further discovery.

21 36. Accordingly, St. Paul's Request for Discovery per NRCP 56(d) is denied.

22 **F. Certification under NRCP 54(b)**

23 37. "When an action presents more than one claim for relief—whether as a claim,
24 counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court
25 may direct entry of final judgment as to one or more, but fewer than all, claims or parties only if the
26 court expressly determines that there is no just reason for delay." NRCP 54(b).

27 ///

28 ///

38. This Court finds, pursuant to NRCP 54(b), that there is no just reason for delay of entry of final judgment granting National Union's MSJ against St. Paul's claims as discussed herein.

ORDER

Based on the pleadings, papers on file, the memorandum of points and authorities in support of National Union's Motion for Summary Judgment, and the arguments of the parties and good cause existing, National Union's Motion for Summary Judgment is GRANTED.

IT IS SO ORDERED this 14th day of May, 2019.



Honorable Gloria Sturman
District Judge, Department XXVI

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

September 12, 2017

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

September 12, 2017 9:00 AM

**Motion to Seal/Redact
Records**

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Morales, Ramiro

Attorney

JOURNAL ENTRIES

- Mr. Morales stated if the complaint was sealed then the exhibits would also be sealed. COURT ORDERED, Motion to Seal GRANTED; counsel to provide an order specifically identifying which documents were to be sealed as the errata would remain on the record but the exhibits would be sealed and anything from the settlement conference would also be sealed.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

February 13, 2018

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

February 13, 2018 9:30 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Edwards, Michael M. Attorney
 Morales, Ramiro Attorney
 Salerno, Nicholas B Attorney

JOURNAL ENTRIES

- DEFENDANT ROOF DECK ENTERTAINMENT LLC DBA MARQUEE NIGHTCLUB'S MOTION TO SEAL AND FILE EXHIBIT A TO APPENDIX OF EXHIBIT IN SUPPORT OF ITS MOTION TO DISMISS:

Mr. Salerno argued the parties found it to be proprietary. COURT ORDERED, Motion GRANTED.

DEFENDANT ROOF DECK ENTERTAINMENT LLC DBA MARQUEE NIGHTCLUB'S MOTION TO DISMISS PLAINTIFF ST. PAUL FIRE & MARINE INSURANCE COMPANY'S COMPLAINT:

Mr. Salerno argued the waiver of subrogation was part of the night club management agreement and the clause demonstrated the insured's decision to forgo claims, that they agreed to certain provisions in their policies, that there was no dispute the hotel didn't pay, and that this foreclosed the ability to bring an express indemnity claim and disabled other causes of action regarding contribution. Mr. Morales argued it was a duty that could not be delegated and that this was between Nevada Restaurant Corp (NVR) and Roof Deck as the Cosmopolitan was not NVR. Mr. Morales argued the Cosmopolitan owned the property, the night club was leased to NVR and NVR entered into a contract with Marquee. Mr. Morales argued NVR was not part of the litigation and that Marquee and the Cosmopolitan did not have a contract between each other. Mr. Aaronoff argued the language of

management agreement holds the owner NVR and it's partners and subsidiaries harmless. Following further arguments by counsel, COURT ORDERED, Motion DENIED WITHOUT PREJUDICE as premature.

DEFENDANT NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S
MOTION TO DISMISS PLAINTIFF ST. PAUL FIRE & MARINE INSURANCE COMPANY'S
COMPLAINT:

Mr. Salerno argued the insurance company was not allowed to step into the shoes, that St. Paul and National were both excess carriers; however St. Paul indicated they were a high level carrier, and that there could only be a primary carrier and an excess carrier. Mr. Salerno argued they should amend the complaint and set out the legal provisions to show they were an excess carrier. Mr. Morales argued the action raised questions of law, that subrogation was a basic concept, and that this was not a novel legal issue; however Deft.'s just don't have a case to support disallowing it. COURT ORDERED, Motion GRANTED IN PART to allow leave to amend the pleading.

MOTION TO ASSOCIATE COUNSEL ON AN ORDER SHORTENING TIME:

There being no objection on file, COURT ORDERED, Motion GRANTED; local counsel must be present for any court appearances.

MOTION TO ASSOCIATE COUNSEL ON ORDER SHORTENING TIME (STEVEN JAMES
AARONOFF, ESQ.):

There being no objection on file, COURT ORDERED, Motion GRANTED; local counsel must be present for any court appearances.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

October 30, 2018

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

October 30, 2018 9:30 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Derewetzky, Marc J. Attorney
 Keller, Jennifer L. Attorney
 Loosvelt, Ryan A. Attorney
 Reeves, William C. Attorney
 Salerno, Nicholas B Attorney

JOURNAL ENTRIES

- DEFENDANT ROOF DECK ENTERTAINMENT, LLC D/B/ A MARQUEE NIGHTCLUB'S
MOTION TO DISMISS PLAINTIFF ST. PAUL FIRE & MARINE INSURANCE COMPANY'S FIRST
AMENDED COMPLAINT:

Mr. Salerno argued the night club management agreement included subrogation, the subrogation waiver applied to the owner insured policies and the cause of action St. Paul was attempting subrogate to only applied to claims that weren't reimbursed under the policy. Mr. Salerno further argued the subrogation waiver agreement applied to all owner insured policies, that the Cosmo was required to carry and maintain a landlord insurance policy, and that there was an express indemnity provision that applied only to un-reimbursed losses. Mr. Salerno argued regarding the Calloway case, the Uniform Contribution Act, that contribution was not allowed when there was an express indemnity provision, and that the verdict found the Cosmo jointly and severally liable for intentional conduct.

Mr. Reeves argued the Cosmo was not a party to the agreement, that on page one of the agreement

indicating who the parties were the Cosmo was not listed, and that the Cosmo was not a signatory on the lease and they didn't obligate themselves to the agreement. Mr. Reaves argued the Cosmo and Marquis were jointly defended by the same lawyer and they never looked to each other as to who was responsible, that Marquis was running the show and they never tested the share between them, and that the Cosmo was a silent party.

Mr. Salerno argued they were the project owner and their insurance requirements were indicated throughout the agreement and they agreed to procure insurance under the agreement. Mr. Salerno argued they claim the insurance they procured was not subject to the subrogation requirements of the agreement, which under this agreement require subrogation rights be waived.

NATIONAL UNION'S MOTION TO DISMISS PLAINTIFFS COMPLAINT
and

DEFENDANT ASPEN SPECIALTY INSURANCE COMPANY'S MOTION TO DISMISS PLAINTIFF
ST. PAUL FIRE & MARINE INSURANCE COMPANY'S REDACTED FIRST AMENDED
COMPLAINT:

Ms. Keller argued Pltf. was asking to create law in Nevada, that Nevada had not recognized equitable subrogation between insurers and even the jurisdictions that do, have never recognized a right to equitable subrogation between excess carriers in different towers, or excess carriers standing on the same footing. Ms. Keller argued Pltf. was asserting their coverage was excess and that they had the same rights; however they were not, rather they were both excess carriers in different towers. Ms. Keller argued in the Marquis tower Aspen was primary and National Union was excess and in the Cosmo tower Zurich was primary and St. Paul was excess. Ms. Keller further argued under the St. Paul policy Cosmo was a named insured and the Marquis was named under the Aspen policy, and that excess carriers cannot go after each other. Ms. Keller further argued regarding the Fireman's Fund case and stated the Pltf.'s should provide a copy of the policy if they wish to continue to argue they are excess.

Mr. Loosvelt argued it was a question of law as to what Aspen's policy limits were, that this was based on whether Aspen refused settlement within policy limits, that each occurrence was a \$1 million limit, and that it was two occurrences.

Mr. Derewetzky argued the management agreement provision 12.2.5 stated all insurance coverage maintained by operator shall be primary to insurance coverage maintained by owner, Cosmo was the owner, Marquis was the operator, and that St. Paul's insurance was excess to their insurance. Mr. Derewetzky further argued St. Paul paid a debt that AIG was primarily liable.

Ms. Keller argued the provisions of an insurance policy control over the terms in an insured's contract pursuant to the Travelers Casualty vs. American Equity case, that you can't take an insurance policy and convert it into a different type of policy, that Pltf.'s plead they insured Cosmo as the named insured and that they had an excess policy. Ms. Kelly further argued National Union insured Marquis as it's named insured excess policy leaving you with two towers or excess carriers going after each other. Ms. Keller argued this was different from any previous law and would

prevent every other tower from going after each other and as such the Supreme Court should be making that decision. Ms. Keller stated this Court should grant her Motion to Dismiss and defer it to the Supreme Court because no one would be injured here since it was two insurance companies going after each other.

Mr. Loosvelt argued if the Court was going to recognize these new causes of action that it was fatal to all the claims, that they fail because this was purely a legal question based on the fact that settlement offers were not within policy limits, that the claims were lacking in the elements, and that the insured never suffered a loss since they were indemnified in the post verdict settlement.

Mr. Derewetzky argued in the issue regarding whether any insured suffered a loss, the insured isn't damaged because the insurance company pays on it's behalf which allows the insurance company to go after recovery. Mr. Derewetzky argued regarding the Aspen policy limits and that Aspen argued they had an endorsement amending the policy. The policy covered multiple coverage parts for the same occurrence and the maximum insurance would not exceed the highest limit of any one coverage part. Mr. Derewetzky further argued regarding the coverage parts and how it applied.

Following further arguments by counsel, COURT ORDERED, Decision CONTINUED to Chambers.

CONTINUED TO: 01/25/19 Chambers

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

January 07, 2019

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

**January 07, 2019 9:00 AM Motion to Associate
Counsel**

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS on Calendar for January 8, 2019 a Motion to Associate Counsel and pursuant to NSC 42 the motion has been reviewed by this Court. There being no opposition, COURT ORDERED, Motion GRANTED without oral argument and REMOVED from its civil motion calendar of January 8, 2019, pursuant to EDCR 2.23(c). Counsel is to note the Court does not waive local Nevada counsel from being present at all court hearings in this Department per to EDCR 7.44. Counsel is DIRECTED to promptly serve a copy of the Order on the State Bar of Nevada, pursuant to SCR 42(3)(c)(iv).

CLERK'S NOTE: A copy of this minute order was e-mailed, mailed, or faxed as follows: Ramiro Morales, Esq. (702-699-9455), Michael Edwards, Esq. (medwards@messner.com), and Nicholas Salerno, Esq. (nsalerno@heroldsagerlaw.com) ./ls 01-07-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

February 28, 2019

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

February 28, 2019 3:00 PM Minute Order

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFENDANT ASPEN SPECIALTY INS. CO. S MOTION TO DISMISS .. PLAINTIFF ST PAUL FIRE AND MARINE INS. CO. S REDACTED FIRST AMENDED COMPLAINT .. DEFENDANT ROOF DECK ENTERTAINMENT LLC S MOTION TO DISMISS PLAINTIFF ST PAUL FIRE & MARINE INS. CO. S FIRST AMENDED COMPLAINT .. AND NATIONAL UNION S MOTION TO DISMISS PLAINTIFF S COMPLAINT

Defendant Aspen Specialty Ins. Co. s Motion to Dismiss Plaintiff St Paul Fire and Marine Ins. Co. s redacted First Amended Complaint; Defendant Roof Deck Entertainment LLC s Motion to Dismiss Plaintiff St Paul Fire & Marine Ins. Co. s First Amended Complaint; and National Union s Motion to Dismiss Plaintiff s Complaint came on for hearing on October 30, 2018. Having reviewed the transcript filed December 26, 2018 and taken the matter under advisement, the COURT HEREBY FINDS as follows:

With respect to the Roof Deck Motion to Dismiss, the Court raised the question of whether the standard of review for a Motion to Dismiss would change with the amendment of the Nevada Rules of Civil Procedure. COURT FINDS it is now clear from the Advisory Committee Notes to NRCP 12 that no change is anticipated Rule 12(b)(5) mirrors FRCP 12(b)(6). Incorporating the text of the federal rule does not signal intent to change existing Nevada pleading standards. COURT

FURTHER FINDS Roof Deck s Motion introduces matters outside the scope of the initial pleadings and the issues related to the operating agreement in question are such that, under Nevada s rigorous pleading standards, it is not appropriate for disposition at the pleading stage. Nevada law provides that a complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the Plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him [or her] to relief. *Vacation Village, Inc. v. Hitachi America, Ltd.*, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994). COURT THEREFORE ORDERED, Roof Deck s Motion to Dismiss DENIED.

Similarly, both the National Union and Aspen Specialty Ins. Co. Motions require the Court to go beyond the pleadings and ask this Court to analyze insurance policies without testing through discovery whether those policies are complete and that there are no missing amendments, exhibits, riders, or endorsements. Notably the declarations in support of the admissibility of the respective policies are brief, stating only that the exhibit is a true and correct copy with only premium information redacted, with no explanation of how the declarant determined the completeness of the policy. Further, both National Union and Aspen argue that the indemnity action must fail as a matter of law, but it seems that at least one piece of evidence necessary to evaluate these legal issues is missing from the record before the Court, i.e. the St Paul policy.

Nevada has not adopted the federal standard found in *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Both National Union and Aspen Specialty have provided evidence outside the initial pleadings, but argue that the issue before the court is purely a matter of legal interpretation and appropriate for disposition at the pleading stage. Based on the record before the Court at this time, the court cannot say there are no material questions of fact and the only issues remaining are purely questions of law. COURT THEREFORE ORDERED, Motions to Dismiss filed respectively by National Union and Aspen Specialty DENIED WITHOUT PREJUDICE to raise these issues in a Motion for Summary Judgment.

Counsel for Plaintiff is DIRECTED to provide Orders for signature by the Court within 30 days.

CLERK'S NOTE: Minute Order corrected to reflect "the court cannot say there are" rather than "there appears to be" in the last sentence of the findings./ls 02-28-19

A copy of this minute order was e-mailed, mailed, or faxed as follows: Nicholas Salerno, Esq. (nsalerno@heroldsagerlaw.com), Ryan Loosvelt, Esq. (rloosvelt@messner.com), and William Reeves, Esq. (702-699-9455)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

August 21, 2019

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

**August 21, 2019 10:30 AM Mandatory Rule 16
Conference**

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Derewetzky, Marc J. Attorney
 Edwards, Michael M. Attorney
 Salerno, Nicholas B Attorney
 Stamelman, Jeremy White Attorney

JOURNAL ENTRIES

- Mr. Salerno stated they'd propounded some initial discovery and both sides filed separate Early Case Conference Reports as they both wished to take different approaches. Mr. Salerno stated some materials needed to be authenticated before he could bring his Motion for Summary Judgment, that the Pltf.'s had over 25 witnesses, and that there was a lot of discovery in the underlying case; however he wanted to resolve this without going to great expense.

Mr. Derewetzky stated there was no benefit to delaying discovery as Deft.'s were seeking a third bite at the apple.

Court stated concern as the matter was thoroughly briefed and argued twice and that there were some issues that went beyond authenticating documents.

Mr. Salerno argued his view was those were legal and binding contracts and unambiguous issues as to the nightclub management agreement and that it only pertained to uninsured losses and that the

Court could decide if the carriers were co-access carriers.

Mr. Edwards noted the July order stated after all briefing there was a piece of evidence regarding the St. Paul insurance policy to be investigated and they needed to get that policy in order to address those issues.

Court inquired if they were just seeking 56(f) relief.

Mr. Salerno stated they just wanted Pltf.'s to agree this was a true and correct policy and therefore additional discovery would be needed as they were back to the threshold issues.

Mr. Derewetzky stated it sounded like Deft.'s can get a motion on quickly and therefore he didn't see any need to stay discovery or phase it and they should move forward with a standard discovery order.

Following further arguments by counsel COURT ORDERED, Trial Dates SET; 16.1 Conference CONTINUED.

CONTINUED TO: 09/11/19 10:30 AM

01/28/2021 9:00 AM CALENDAR CALL

02/15/2021 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

September 11, 2019

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

**September 11, 2019 10:30 AM Mandatory Rule 16
Conference**

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Derewetzky, Marc J. Attorney
Loosvelt, Ryan A. Attorney
Salerno, Nicholas B Attorney
Stamelman, Jeremy White Attorney

JOURNAL ENTRIES

- MATTER TRAILED AND RECALLED AT THE HOUR OF 11:11 AM with Mr. Derewetzky now present telephonically.

Mr. Salerno stated at the last hearing phased discovery was discussed and the Court recommended the parties discuss the issue to determine if they could come to a resolution, that they'd agreed on the authenticity of the documents, and that he was prepared to file a motion this week. Mr. Salerno further requested Phase II of discovery not move forward until the Motion for Summary Judgment was heard.

Mr. Loosvelt requested discovery be suspended until the motion was heard.

Mr. Derewetzky argued he did not believe phased discovery was appropriate; however he hadn't seen Mr. Salerno's motion yet, that it was not clear if there were factual issues with the motion, and that he wanted to move the case forward as it had been in a holding pattern for a few years.

Mr. Loosvelt stated it was a primary issue based on policy limits, that it was a legal issue, and that it was only a month or so off.

Court stated she was willing to discuss this with respect to hearing the responses after that hearing.

Mr. Derewetzky stated he was not authorized to enter into that agreement; however he would abide by it if the Court were to order it.

Following further arguments by counsel, COURT ORDERED, Oral Motion for a Stay GRANTED.

Mr. Salerno stated he'd filed motions to dismiss as the case was left with purely legal issues and should be addressed before starting discovery.

Mr. Derewetzky stated hadn't seen Mr. Salerno's motion and he didn't know if discovery was needed or if a 56(f) motion should be filed.

COURT FINDS the request to stay discovery should be taken to the Discovery Commissioner AND THEREFORE ORDERED, Discovery stay request REFERRED to Discovery Commissioner and to be heard by September 20, 2019; Pending the filing and resolution of the discovery issues, National Union's requirement to respond STAYED; Mr. Salerno to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

October 08, 2019

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

October 08, 2019 9:30 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Michele Tucker

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Loosvelt, Ryan A. Attorney
 Morales, Ramiro Attorney

JOURNAL ENTRIES

- ALL PENDING - DUNDI INVESTMENTS LLC, MOTION FOR SUMMARY JUDGMENT...DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

Mr. Morales advised the issue is whether the policy is for one million dollars or two million dollars. Mr Morales reviewed the policy via power point and argued as to the coverage. Mr. Loosvelt argued as to the endorsement and it being a million dollar policy. COURT STATED FINDINGS and ORDERED Motion for Summary Judgment DENIED; Counter-Motion GRANTED only as to coverage limits. Power Point admitted and marked as Court's exhibit 1. Mr. Loosvelt to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Insurance Tort

COURT MINUTES

October 15, 2019

A-17-758902-C St. Paul Fire & Marine Insurance Company, Plaintiff(s)
vs.
Aspen Specialty Insurance Company, Defendant(s)

October 15, 2019 9:30 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Derewetzky, Marc J. Attorney
 Keller, Jennifer L. Attorney
 Loosvelt, Ryan A. Attorney
 Reeves, William C. Attorney
 Salerno, Nicholas B Attorney

JOURNAL ENTRIES

- DEFENDANT ROOF DECK ENTERTAINMENT, LLC D/B/ A MARQUEE NIGHTCLUB'S
MOTION FOR SUMMARY JUDGMENT .. DEFENDANT NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH PA'S MOTION FOR SUMMARY JUDGMENT .. OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT FILED BY MARQUEE AND COUNTERMOTION RE:
DUTY TO INDEMNIFY

Mr. Salerno argued regarding the operating agreements, the Gibbs case and the Calloway case, subrogation waiver, express indemnity, the night club management agreement addressing capital losses, and that the funds at issue were funded by the insurance policy.

Mr. Derewetzky argued regarding the agreement as to the operator, the master tenant, and the property owner, that the Cosmo was only party to portions of the agreement, the common law claim, non-delegable duty, relative fault, the weighing of culpability, and indemnity.

Mr Salerno further argued regarding indemnity, the provision of the contract regarding losses, subrogation, indemnity agreement, and contribution.

Mr Derewetzky argued regarding the Calloway case, that the Cosmo was not bound by the management agreement, that there were no facts that the Cosmo did anything, and there was no evidence of any conduct by the Cosmo.

Mr. Salerno argued regarding the duty to indemnify claim and that National Union was entitled to reimbursement of funds paid on behalf of the Cosmo.

Ms. Keller argued regarding subrogation, the excess insurance carrier, the two insurance towers, and that there was no subrogation of two excess carriers in two different towers. Ms. Keller argued there was a primary and excess carrier in each tower and if there wasn't then there would be no finality of a settlement ever.

Mr. Reeves argued regarding the Traveler's Insurance case, that this was Cosmo's bad faith claim, and that the management agreement stated all insurance by Marquee was primary over the owner policy. Mr. Reeves argued regarding priority of coverage, the Rossmore decision, indemnity principles, and the intent of the parties.

Following further arguments by counsel, COURT STATED FINDINGS AND ORDERED, Deft. Roof Deck/Marquee's Motion for Summary Judgment GRANTED; National Union's Motion for Summary Judgment GRANTED; Countermotion DENIED; Motions on calendar for October 23, 2019 before the Discovery Commissioner VACATED.

EXHIBIT(S) LIST

Case No.: A758902

Hearing Date: 10/8/19

Dept. No.: 26

Judge: Sturman

Court Clerk: Michele Tucker

Plaintiff: St Paul Fire + Marine
Ins. Co.

Recorder: Kerry Esparza

Counsel for Plaintiff: Ramiro Morales

VS.

Defendant: Aspen Specialty Ins.
Co.

Counsel for Defendant: Ryan Loosvelt

HEARING BEFORE THE COURT

Court's EXHIBITS

[illegible]



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

MICHAEL K. WALL, ESQ.
10080 W. ALTA DR., STE 200
LAS VEGAS, NV 89145

DATE: June 15, 2020
CASE: A-17-758902-C

RE CASE: ST. PAUL FIRE & MARINE INSURANCE COMPANY vs. ASPEN SPECIALITY INSURANCE COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA.; ROOF DECK ENTERTAINMENT, LLC, DBA MARQUEE NIGHTCLUB

NOTICE OF APPEAL FILED: June 12, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

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

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

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

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

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

Certification of Copy

State of Nevada
County of Clark } **SS:**

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

NOTICE OF APPEAL; PLAINTIFF'S CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING ROOF DECK ENTERTAINMENT, LLC D/B/A MARQUEE NIGHTCLUB'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING ROOF DECK ENTERTAINMENT, LLC D/B/A MARQUEE NIGHTCLUB'S MOTION FOR SUMMARY JUDGMENT; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH PA'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

ST. PAUL FIRE & MARINE INSURANCE
COMPANY,

Plaintiff(s),

vs.

ASPEN SPECIALITY INSURANCE
COMPANY; NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH
PA.; ROOF DECK ENTERTAINMENT, LLC,
DBA MARQUEE NIGHTCLUB,

Defendant(s),

Case No: A-17-758902-C

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 15 day of June 2020.

Steven D. Grierson, Clerk of the Court

A handwritten signature in black ink, appearing to read 'A. Hampton', is written over a faint, circular court seal. The seal contains the text 'UNITED STATES DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT LAS VEGAS, NEVADA'.

Amanda Hampton, Deputy Clerk
A-17-758902-C