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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-003252 09/11/2015

HONORABLE LORI HORN BUSTAMANTE

CLERK OF THE COURT
T. Nosker
Deputy

DANA FEATHER, et al. KELLY JO

v.

AUTO-OWNERS INSURANCE COMPANY, et al.

JILL ANN HERMAN
DONALD WILSON JR.

RULING MINUTE ENTRY

The court has reviewed all of the pleadings, including the attached exhibits, and considered the oral arguments presented. The court hereby addresses and rules on each of the Motions for Summary Judgment.

R & R Electronics' Motion for Summary Judgment Re: Auto-Owners

Breach of Contract

"It is well established that, in an action based on breach of contract, the plaintiff has the burden of proving the existence of a contract, breach of the contract, and resulting damages." *Chartone Inv. v. Bernini*¸207 Ariz. 162, 170 ¶ 30, 83 P.3d 1103, 1111 (Ariz. Ct. App. 2004) (citing to *Thunderbird Metallurgical, Inc. v. Ariz. Testing Lab.*, 5 Ariz.App. 48, 423 P.2d 124 (1976)). "Where coverage is not contested but the amount of the loss is disputed, the insurer is under a duty to pay any undisputed portion of the claim promptly." *Borland v. Safeco Ins. Co. of America*, 147 Ariz. 195, 200, 709 P.2d 552, 557 (Ariz. Ct. App. 1985).

R & R Electronics assert they are entitled to summary judgment as a result of Auto-Owners failure to pay the amounts owed under their policy. These coverages include: (1) business income/extra expense (2) debris removal (3) valuable papers (4) outdoor signs (5) contents of newly acquired location and (6) bailees coverage.

As to the business income/extra expense claim, there are factual disputes regarding R & R Electronics' cooperation, whether adequate documentation was provided, the extent of the loss, the value of the loss, and calculation of the loss. In regards to the valuable papers claim, the parties dispute the actual value of the papers, whether the papers were damaged or unusable, the necessity of proof of replacement of the papers, and the reasonableness of Auto-Owners internal policy regarding replacement of the papers. There are also genuine issues of material fact in regards to the outdoor signs coverage including the value of the signs, what signs were actually damaged as a result of the fire, the location of the signs at the time of the fire, and documentation regarding the loss of the signs. The claim for contents of newly acquired location also involves factual disputes including the calculation method and the actual cash value of the contents. There are numerous factual disputes regarding these areas of coverage; thus, the court is unable to grant summary judgment on these claims.

Auto-Owners admit that they owe the debris removal claim and that they paid SureClean out of the business personal property limits instead of under the newly acquired location limits. Auto-Owners also admits they belatedly paid the bailees coverage. The failure to promptly pay these claims is a breach of contract as a matter of law. R & R Electronics is entitled to summary judgment for breach of contract on its claims for policy benefits for the bailees coverage, the additional business personal property benefits that were improperly paid to SureClean, and the full debris removal coverage.

Bad Faith Claim

"The tort of bad faith arises when an insurance company denies coverage without a reasonable basis for such action." *Borland* at 199, 709 P.2d at 556. Additionally, "[t]he delay in adjusting the loss is a different matter. It will support a judgment for compensatory damages for bad faith." *Id*. at 200, 709 P.2d at 557. Finally, "to establish bad faith, 'a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim." *Deese v. State Farm Mut. Auto. Ins. Co.*, 172 Ariz. 504, 506-7, 838 P.2d 1265, 1267-8 (Ariz. 1992) (citing *Noble v. Nat. Life Ins. Co.*, 128 Ariz. 188, 190, 624 P.2d 866, 868 (1981)).

R & R Electronics allege facts and timelines to demonstrate their position that Auto-Owners was unreasonable in the processing, paying, delaying and/or denying of R & R Electronics' claims. Auto-Owners allege facts and timelines to demonstrate their position that

they were not unreasonable in their actions and they did not act in bad faith. The various disputed facts create genuine issues of material fact that prevent the court from entering summary judgment on R & R's bad faith claim against Auto-Owners. The claims investigation, the timeliness of processing R & R Electronics' claims and the reasonableness of Auto-Owners actions or inactions will be up to the trier of fact.

Conclusion

IT IS ORDERED denying in part and granting in part R & R Electronics Motion for Summary Judgment Re: Auto-Owners.

IT IS FURTHER ORDERED granting R & R Electronics Motion for Summary Judgment Re: Auto Owners on the breach of contract claim as it relates to bailee coverage, the benefits improperly paid to SureClean and the full debris removal coverage. However, any damages that may have resulted from the breach on these issues will be up to the jury to determine.

IT IS FURTHER ORDERED denying R & R Electronics' Motion for Summary Judgment Re: Auto Owners on the bad faith claim.

Defendants Western States and Hanson's Motion for Partial Summary Judgment Regarding Legal Duty Owed to Dana and Dathyl Feather

"A defendant can obtain summary judgment when the plaintiff is unprepared to establish a *prima facie case* . . . . [t]o do so, however, the defendant must 'point out by specific reference to the relevant discovery that no evidence exist[s] to support an essential element of the claim.'" *Mohave Elec. Co-op, Inc., v. Byers*, 189 Ariz. 292, 303, 942 P.2d 451, 462 (Ariz. Ct. App. 1997) (citing to *Orme School v. Reeves*, 166 Ariz. 301, 310, 802 P.2d 1000, 1009 (Ariz. 1990)). Additionally, "to establish a *prima facie* case for negligence, a plaintiff must prove four elements: (1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach by the defendant of that standard; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual damages." *Gipson v. Kasey*, 214 Ariz. 141, 143 at ¶ 9, 150 P.3d 228, 230 (Ariz. 2007) (citing to *Ontiveros v. Borak*, 136 Ariz. 500, 504, 667 P.2d 200, 204 (1983)). "In other words, 'duty' is a question of whether the defendant is under any obligation for the benefit of the particular plaintiff; and in negligence cases, the duty [if it exists] is always the same—to conform to the legal standard of reasonable conduct in the light of the apparent risk." *Coburn v. City of Tucson*, 143 Ariz. 50, 52, 691 P.3d 1078, 1080 (Ariz. 1948). "Whether the defendant owes the plaintiff a duty of care is a threshold issue; absent some duty, an action for negligence cannot be maintained." *Gibson* at 141, 150 P.3d at 228 (citing Marowitz v. Ariz. Parks Bd., 146 Ariz. 352, 354, 706 P.2d 364, 366 (1985)). Even when there is no relationship

between the parties, "[p]ublic policy may support the recognition of a duty of care." *Id.* Whether a duty exists is a legal question for the court to ascertain. *Id.*

The Feathers did not hire Western States to investigate the fire. Western States and Hanson have no contract with the Feathers and there is no applicable statute that would impose a duty upon Western States and Hanson as it relates to the Feathers. In addition, public policy does not support the finding of a duty upon a third party where a professional is hired by a separate party and the third party is not privy to that contract. There was no relationship between Western States, Hanson and the Feathers. The Feathers arguments regarding Justice Hurwitz' concurrence, Restatement § 7, and *Sage v. Blagg Appraisal Co*. are unpersuasive. There is no legally recognized duty; thus, the Feathers cause of action against Western States and Hanson cannot move forward.

IT IS ORDERED granting Defendants Western States and Hanson's Motion for Partial Summary Judgment Regarding Legal Duty Owed to Dana and Dathyl Feather.

Auto-Owners' Motion for Summary Judgment Against Dana and Dathyl Feather

Breach of Contract

"When recovery is sought under an insurance contract, the insured has the burden of proving that his loss was due to an insured risk." *Pacific Indem. Co. v. Kohlhase,* 9 Ariz.App. 595, 597, 455 P.2d 277, 279 (Ariz. Ct. App. 1969). "In order to establish a prima facie case, he must prove the insurance policy, the happening of the insured event, and the giving notice as provided in the policy." *Id*. (citing to *Fallins v. Durham Life Ins. Co.*¸247 N.C. 72, 100 S.E.2d 214 (1957)). On the other hand "the insurer. . . has the burden of showing that the loss was within a policy exclusion." *Id*. (citing to *Milliken v. Fidelity & Casualty Co. of N.Y.*, 338 F.2d 35 (10th Cir. 1964)).

"The interpretation of an insurance contract is a question of law to be determined by the Court." *Sparks v. Republic Nat. Life Ins. Co.*, 132 Ariz. 529, 534, 647 P.2d 1127, 1132 (Ariz. 1982) (citing to *State Farm Fire & Casualty Co. v. Rossini*¸107 Ariz. 561, 490 P.2d 567 (1971)). Additionally, "[i]f an insurer desires to limit its liability under a policy, it should employ language which clearly and distinctly communicates to the insured the nature of the limitation." *Id.* at 535, 647 P.2d at 1133 (citing to *Transamerica Ins. Co. v. McKee,* 27 Ariz.App. 158, 551 P.2d 1324 (1976)). "Provisions of insurance policies are to be construed in a manner according to their plain and ordinary meaning." *Id*. at 534, 1132. The court "must construe ambiguous provisions most favorably to the insured." *Manning v. Summit Home Ins. Co.*¸128 Ariz. 79, 82, 623 P.2d 1235, 1238 (Ariz. Ct. App. 1980).

At the time of the fire, the terms of the policy the Feathers had with Auto-Owners covered four buildings: (1) office/recreation hall; (2) pool room; (3) four-plex apartment building; and (4) laundry building. The policy did not include property coverage for the retail buildings. The fire occurred at one of the retail buildings and therefore was not covered at the time of the loss. The policy language is plain, unambiguous, and clearly sets forth those buildings that had property coverage.

Reasonable Expectations

Even when the court finds the contract terms unambiguous, the court may refuse to enforce the contract under the doctrine of reasonable expectations. *Gordinier v. Aetna Cas. & Sur. Co*., 154 Ariz. 266, 283, 742 P.2d 277, 283 (1987). "The reasonable expectations doctrine relieves an insured from 'certain clauses of an agreement which he did not negotiate, probably did not read, and probably would not have understood had he read them.'" *State Farm Fire & Cas. Ins. Co. v. Grabowski*, 214 Ariz. 188, 192, ¶ 14, 150 P.3d 275, 279 (Ariz. Ct. App. 2007) (citing to *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 394, 682 P.2d 388, 399 (1984)). "The doctrine. . . requires more than 'fervent hope' that coverage exists, and therefore only applies under certain limited circumstances.'" *Id*. (citing to *Darner* at 390, 682 P.2d at 395). The following are the limited circumstances where the doctrine of reasonable expectations may apply:

1. Where the contract terms, although not ambiguous to the court, cannot be understood by the reasonably intelligent consumer who might check on his or her rights, the court will interpret them in light of the objective, reasonable expectations of the average insured . . . ;
2. Where the insured did not receive full and adequate notice of the term in question, and the provision is either unusual or unexpected, or one that emasculates apparent coverage . . . ;
3. Where some activity which can be reasonably attributed to the insurer would create an objective apparent coverage in the mind of a reasonable insured . . . ;
4. Where some activity reasonably attributable to the insurer has induced a particular insured reasonably to believe that he has coverage, although such coverage is expressly and unambiguously denied by the policy . . . .

Gordinier at 272-73, 742 P.2d 277, 283-84 (citations omitted).

First, the Feathers indicated in their depositions that they did not review or read their insurance policies. To check on their rights, a reasonable consumer may have read the insurance policies, have someone explain the policy to them if they did not understand it, and/or educate themselves regarding what is covered under the policy and the meaning of terms within the policy. There is nothing to indicate the Feathers did anything a reasonable consumer may have done to check on their rights. Second, the Feathers were provided a brochure from Ms. Erickson,

their agent. The brochure provided a definition of "blanket coverage" and an example of how it would apply to the Feathers. The brochure provided sufficient notice and there is nothing unusual or unexpected regarding the application of "blanket coverage." The third and fourth circumstances are also inapplicable since the Feather's allegations regarding "activity" mostly relate to the actions or inactions of Ms. Erickson, not Auto-Owners. Whether the Feathers thought they should have had coverage or whether the coverage was adequately explained to them may be part of their claim against Ms. Erickson, but the Feathers are precluded from asserting a vicarious liability argument against Auto-Owners. Therefore, they are unable to use these allegations regarding Ms. Erickson against Auto-Owners.

The Feathers have failed to provide sufficient and relevant facts to support their reasonable expectation argument as it relates to Auto-Owners and the court finds no basis to impose any of the limited circumstances that would allow the reasonable expectations doctrine to apply to the Feathers policy with Auto-Owners.

Bad Faith and Punitive Damages

"[A]n insurer that intentionally and unreasonably denies or delays payment breaches the covenant of good faith owed to its insured." *Rawlings v. Apodaca*, 151 Ariz. 149, 156, 726 P.2d 565, 572 (Ariz. 1986) (citing to *Noble v. Nat'l. Am. Life Ins. Co*, 128 Ariz. 188, 190, 624 P.2d 866, 868 (1981)). "The tort of bad faith arises when an insurance company denies coverage without a reasonable basis for such action." *Borland v. Safeco Ins. Co. of America*, 147 Ariz. 195, 199, 709 P.2d 552, 556 (Ariz. Ct. App. 1985). "[T]o establish bad faith, 'a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant's knowledge or reckless disregard of the lack of a reasonable basis for denying the claim.'" *Deese v. State Farm Mut. Auto. Ins. Co.*, 172 Ariz. 504, 506-7, 838 P.2d 1265, 1267-8 (Ariz. 1992) (citing to *Noble v. Nat. Life Ins. Co.*, 128 Ariz. 188, 190, 624 P.2d 866, 868 (1981)). "[T]o obtain punitive damages, plaintiff must prove that defendant's evil hand was guided by an evil mind. . . It may also be found where, although not intending to cause injury, defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others." *Rawlings* at 162, 726 P.2d at 578. Punitive damages "are recoverable in bad faith tort actions when, and only when, the facts establish that defendant's conduct was aggravated, outrageous, malicious or fraudulent." *Id.*

It is undisputed that the Feathers waited several months to submit a formal claim directly to Auto-Owners and that they submitted their claim via a letter dated November 4, 2011. It is also undisputed that Auto-Owners investigated the claim and determined the retail building that was the subject of the claim was not covered by the policy. Auto-Owners denied coverage pursuant to a letter dated November 22, 2011. There is nothing to indicate Auto-Owners

unreasonably denied the claim. The claim was not covered pursuant to the contract between the Feathers and Auto-Owners.

In addition, the court was unable to find any evidence to indicate bad faith on the part of Auto-Owners before, after or during the investigation. Auto-Owners had conducted an investigation on behalf of R & R Electronics in June, 2011 and concluded their investigation prior to the Feathers initiating a claim in November, 2011. There would be no reason to hire a separate investigator on behalf of the Feathers since the building had no property coverage pursuant to the insurance policy and the Feathers did not submit a claim until months after the fire and the conclusion of the investigation. There does not appear to be any evidence demonstrating Auto-Owners pursued a course of unreasonable conduct in the denial of the Feathers' claim.

There is also no evidence to indicate Auto-Owners had an "evil hand . . . guided by an evil mind" or that Auto-Owners engaged in "oppressive conduct." Furthermore, the Feathers have presented nothing to demonstrate Auto-Owners consciously pursued a course of conduct knowing that it created a risk of harm to the Feathers or that Auto-Owners conduct was "outrageous, malicious, or fraudulent." Without any evidence of bad faith or punitive damages, the plaintiff's bad faith and punitive damage claims against Auto-Owners fail.

Conclusion

Although the Feathers set forth legal arguments and allegations regarding the policy, the reasonable expectations of the Feathers, bad faith claims and punitive damages, their arguments fail to provide relevant and sufficient facts related to Auto-Owners that create any issues of material fact. The court finds the policy language plain and unambiguous. The policy does not cover property damage to the retail buildings. It is unfortunate that the Feathers did not understand the policy and that they thought their retail buildings had property coverage but that does not create a genuine issue of material fact when the policy terms are unambiguous and the limited circumstances under the reasonable expectations doctrine are inapplicable. Finally, the Feathers did not set forth specific, relevant facts regarding Auto-Owners that would allow the Feathers to move forward on their bad faith and punitive damage claims.

IT IS ORDERED granting Auto-Owners' Motion for Summary Judgment Against Dana and Dathyl Feather.

Feathers' Motion for Partial Summary Judgment Re: Auto-Owners

The Feathers assert they are entitled to summary judgment against Auto Owners on their breach of contract and bad faith claims. First, as explained above, the policy language is plain

and unambiguous. There is no question that the policy does not cover the damaged building. Even when a contract is unambiguous there are certain limited circumstances in which the court may refuse to enforce the contract but, as explained above, none of the limited circumstances are applicable. Auto-Owners did not breach their contract with the Feathers. Second, as explained above, there is no evidence the Feathers were treated unfairly during the period of time their claim was being evaluated and ultimately denied. There is also insufficient evidence to demonstrate Auto-Owners did anything that would amount to bad faith throughout the fire investigation as it relates to the Feathers.

IT IS ORDERED denying Feathers' Motion for Partial Summary Judgment Re: Auto-Owners.

Defendants Cook Insurance. Inc. and Wade's Motion for Summary Judgment re: Causation and Damages

For a malpractice case against an insurance agent, the plaintiff must prove that the agent owed a legal duty to plaintiff, defendant breached that duty, the breach proximately caused the plaintiff's injury and damages. *Napier v. Bertram*, 191 Ariz. 238, 954 P.2d 1389 (Ariz. 1998); *Phillips v. Clancy*, 152 Ariz. 415, 418, 733 P.2d 300, 303 (App. 1986).

Plaintiffs are claiming Defendants Wade and Cook Insurance breached their standard of care and caused Plaintiffs to suffer damages. The entire analysis regarding Plaintiffs cause of action against Defendants Wade and Cook Insurance does not rest upon Plaintiffs proving what, if any, other coverage would have been available. The existence or non-existence of coverage is a factor that may be the subject of testimony and the "mythical coverage" may be argued by the defense but the lack of specificity by Plaintiffs and their expert regarding coverage does not rise to the level of the court being able to grant summary judgment on causation and damages. The weight and credibility of the Plaintiffs' testimony, the witnesses' testimony and the experts' testimony will be up to the jury to determine. Furthermore, the ultimate decision regarding duty, breach, causation, and damages is fact intensive and will be up to the trier of fact.

IT IS ORDERED denying Defendants Cook Insurance, Inc. and Wade's Motion for Summary Judgment Re: Causation and Damages.

Defendant Erickson's Motion for Summary Judgement

"To establish a claim for negligence, a plaintiff must prove four elements: (1) a duty requiring the defendant to conform to a certain standard of care; (2) a breach by the defendant of that standard; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual damages." *Gipson v. Kasey*, 214 Ariz. 141, 143, 150 P.3d 228, 230 (2007). In

procuring insurance for a client, a licensed insurance agent must exercise reasonable care, skill and diligence in carrying out their duties. *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co*., 140 Ariz. 383, 398, 682 P.2d 388, 403 (1984).

The Feathers are claiming Erickson had a duty to conform to a certain standard of care, Erickson breached that duty, Erickson's breach created their injury, and the Feathers incurred damages. The Feathers assert Erickson failed to communicate and failed to provide sufficient information to them regarding "blanket coverage," "umbrella coverage," and their overall insurance coverage needs causing them to be uninsured for the loss that is the subject of their Complaint. Erickson denies the Feathers allegations and asserts the Feathers have no evidence to establish their claim. Erickson provides correspondence and the testimony of the Feathers to indicate she did not breach her duty.

The testimony of the parties including misunderstandings and communications, or lack thereof, regarding coverage, and the written correspondence between the Feathers and Erickson including the explanation of "blanket coverage," and the analysis of the competing expert witnesses all provide genuine issues of material fact that must be decided by the jury. Whether Erickson breached her duty as a licensed insurance agent will be up to the trier of fact.

IT IS ORDERED denying Defendant Erickson's Motion for Summary Judgment.

Plaintiffs' Motion for Summary Judgment Re: Affirmative Defenses

When seeking summary judgment on affirmative defenses, the moving party is required to "point out, by referring to evidence in the record, that the [defendant] did not have enough evidence to carry their burden of proof on these affirmative defenses at trial." *Nat'l Bank of Arizona v. Thruston*, 218 Ariz. 112, 113, 180 P.3d 977, 978 (Ct. App. 2008). The moving party for summary judgment must "point out by specific reference to the relevant discovery that no evidence existed to support an essential element of the claim." *Id.* at 117, 180 P.3d at 982. "The moving party must do more than make bald assertions that the non-moving party cannot meet its burden of proof at trial or has no evidence supporting its claim or defense." *Id.* at 118, 180 P.3d at 983.

Plaintiffs have requested summary judgment on numerous defenses asserted by the defendants. Some defenses have been dismissed pursuant to stipulation so the court will address the defenses remaining that are the subject of Plaintiff's Motion for Summary Judgment and provide a ruling and brief explanation for each defense.

Auto-Owners

- Failure to cooperate – Denied. There are sufficient facts surrounding the allegations that the insureds failed to cooperate pursuant to their policy. Whether the insureds failed to cooperate is an issue for the jury to determine.
- Failure to mitigate - Denied. There are sufficient facts regarding the Plaintiffs' failure to mitigate. Whether the plaintiffs failed to mitigate their damages is a question for the jury to decide.
- Payment – Denied. In ascertaining damages, the jury may consider what claims have already been paid by Auto-Owners. If Plaintiff doesn't seek additional damages for claims already paid, this will not be an issue but if Plaintiff is seeking additional damages for claims already paid or asserts more should have been paid on certain claims, Auto-Owners may assert the payment defense.

Cook Insurance

- Failure to state a claim – Denied. Cook Insurance may present evidence and argue the Plaintiffs have failed to prove each and every element of their claim against them.
- Assumption of risk – Denied. Whether R & R Electronics knowingly assumed the risk in the storage of valuable papers is a question for the trier of fact.
- Comparative fault – Denied. Whether Plaintiffs caused or contributed to their damages by being underinsured, failing to secure the property, failing to read or understand their insurance policies or any other allegations asserted by the defense involve factual disputes that will be up to the jury to consider.
- Failure to mitigate - Denied. Whether the plaintiffs failed to mitigate sufficient damages is a question for the jury to decide.
- Apportionment of fault – Denied. A defendant is only responsible for their portion of fault and apportionment of fault is up to trier of fact.

Erickson

- Failure to state a claim – Denied. Erickson may present evidence and argue the Plaintiffs have failed to prove each and every element of their claim against her.
- Assumption of risk – Denied. Whether the Feathers knowingly assumed the risk that their commercial buildings were not insured for property coverage is in dispute and will be up to the jury to determine.
- Failure to mitigate – Denied. There are sufficient facts regarding the Plaintiffs' failure to mitigate. Whether the plaintiffs failed to mitigate their damages is a question for the jury to decide.

- All affirmative defenses enumerated in Rules 8(c) and 12(b), Ariz. R. Civ. P. – There are numerous defense listed in 8(c) and 12(b). Some of the defenses have already been dismissed and some of the defenses are already addressed in this section. The Motion for Summary Judgment is granted on the following defenses asserted by Erickson: accord and satisfaction, duress, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of frauds, and statute of limitations. The court has not reviewed any facts or law that would support any of these defenses. The Motion for Summary Judgment is denied for the affirmative defense of waiver since there are sufficient facts regarding a possible "waiver" as it relates to the lack of property coverage on the retail buildings.
- Intervening/superseding cause of a party or non-party – Granted in regards to any non-party since Erickson has not filed a Notice of Non-Party at Fault. Denied in regards to other parties in the lawsuit.
- Insufficiency of process – Granted. There does not appear to be any specific errors in the pleadings that would violate any laws or the Rules of Civil Procedure.
- Estoppel – Denied. There are sufficient facts to establish and argue any alleged inconsistencies in the Feathers' words or actions prior to and after the loss that may have been relied upon by Erickson.
- Negligence/tortious conduct of others defense/injuries caused by others defense - Granted in regards to any non-party since Erickson has not filed a Notice of Non-Party at Fault. Denied in regards to other parties in the lawsuit.

Western States

- Comparative fault – Denied. The jury may consider all factors and circumstances that may have caused or contributed to the fire and any damages that may have occurred after the fire.
- Apportionment of fault - Denied. A defendant is only responsible for their portion of fault and apportionment of fault is up to trier of fact.

IT IS ORDERED granting in part and denying in part Plaintiff's Motion for Summary Judgment Re: Affirmative Defenses as described above.