

8-13-2013

Cummings v. Stephens Clerk's Record v. 11 Dckt. 40793

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11 13
IN THE SUPREME COURT
OF THE STATE OF IDAHO

Supreme Court Docket No.
40793-2013

STEVEN CUMMINGS

Plaintiff/Appellant/ Cross Resp

vs. **LAW CLERK**

ROGER L. STEPHENS, et al

Defendant/Respondent/Cross-

DAVID C. NYE District Judge
Appealed from the District Court of the SIXTH
Judicial District of the State of Idaho, in and for
BEAR LAKE County.

Nathan M. Olsen,
Attorney for Plaintiff/Appellant/Cross-Respondent

Brad Bearnson,
Attorney for Defendant/Respondent/Cross-Appellant

FILED - COPY
AUG 13 2013
Supreme Court Court of Appeals
District of

40793

COPY
Supplemental Record

Volume 11 of 13

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual)
residing in Utah,)
Plaintiff/Appellant/Cross-Respondent,)

CASE NO. CV-2009-000183

vs.)

Supreme Court No. 40793-2013

ROGER L. STEPHENS, an individual)
residing in Providence, Utah;)
Defendant/Respondent/Cross-Respondent,)
and)
NORTHERN TITLE COMPANY OF IDAHO, INC.,)
an Idaho Corporation;)
Defendant/Respondent/Cross-Appellant.)

CLERK'S SUPPLEMENTAL RECORD ON APPEAL

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, in and for
the County of Bear Lake.

HONORABLE DAVID C. NYE
Sixth District Judge

NATHAN M. OLSEN
Peterson Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402
Attorney for Steven Cummings,
Plaintiff/Appellant/Cross-Respondent,

BRAD H. BEARNSON
Bearnson & Caldwell, LLC
399 North Main, Suite 270
Logan, UT 84321
Attorney for Northern Title Co of Idaho,
Defendant/Respondent/Cross-Appellant

RANDALL C. BUDGE
Racine Olson Nye Budge & Bailey
P.O. Box 1391
Pocatello, ID 83204-1391
Attorney for Roger Stephens,
Defendant/Respondent

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Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUN 29 PM 4:19

KERRY MADDOCK, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE**

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

**REPLY BRIEF SUPPORTING
MOTION TO EXCLUDE DEFENDANT,
NORTHERN TITLE COMPANY'S
EXPERT WITNESSES AND
TESTIMONY**

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing
in Eagle, Idaho, EVAN SKINNER, an
individual residing in Montpelier, Idaho,
RYAN OLSEN, an individual residing in

Georgetown, Idaho, EXIT REALTY OF
BEAR LAKE, LLC, an Idaho Limited
Liability Company, JOHN DOES I-X,

Third Party Defendants.

The Plaintiff (Cummings) offers the following reply in support of his Motion to Exclude Defendant Northern Title Company's Expert Witnesses and any other appropriate remedies, including sanctions.

I. Northern Title made several additional misrepresentations about their failure to disclose Mr. Warren's February 7, 2012, Report.

In responding to Cummings' motion, Northern Title attempts to justify its outright misrepresentations with additional misrepresentations by its attorneys that further bolster the need for sanctions. The thrust of Northern Title's argument is that the 33 page "Uniform Agricultural Appraisal Report" (UAAR) prepared by Mr. Warren was somehow not a "complete opinion" because it was a "preliminary" or "cursory" report. This is an absurd argument not supported by law or fact, including the UAAR itself on the "Appraiser Certification" sheet found on page 32, which makes it explicitly clear that this is a "complete" report, not the least of which is Section 2 which states:

(T)he reported analyses, opinions, and *conclusions* are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased *professional analyses, opinions and conclusions*. (See UAAR attached as Bergman Aff.

Ex. 1)

and Section 8:

(M)y analysis, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

(*Id.*)

Thus, Northern Title's argument is debunked by the certification of its own expert, who makes it clear that this was to be a formal and complete report.

In its response, Northern Title's attorney, Aaron Bergman, makes an egregious admission, that at the time Cummings issued his discovery on May 2, 2012, that "he (Mr. Bergman) was aware of the UAAR formulated by Craig Warren," and yet made a conscious decision not to disclose the report, expert credentials, supporting documents etc... as requested in the discovery (*Id.* at 3). There is simply no excuse for this failure to abide by the most basic rules of discovery, and it frankly warrants the attorneys themselves to be sanctioned.

Moreover, Northern Title makes another blatant misrepresentation in the response suggesting that "at the time of (Mr. Kelley's) deposition, Cummings was already aware that the admissibility of the UAAR was already pending before the Court" citing its "Request for Leave to make Expert Disclosures" as proof. (Northern Title Response to Motion for Sanctions at 7) Again, this is absolutely not true. The "Request for Leave" filed by Northern Title on June 6, 2012, states:

On June 4, 2012, Northern Title served its responses on Plaintiff, and also named the relevant expert, Craig Warren. *At this time, an expert report had not yet been formulated.*

(Northern Title Request for Leave to File Expert Disclosures at 3)

Again, this statement in the "Request" was an intentional perpetuation of a falsehood – that Northern Title then misrepresented in its response to Cummings' Motion!

3 | Reply Brief Supporting Motion to Exclude Defendant,
Northern Title Company's Expert Witnesses and Testimony

Finally, Northern Title falsely states that the expert witnesses were to be “rebuttal” witnesses. There is absolutely nothing in their disclosures or discovery responses to suggest that these were to be rebuttal witnesses. In fact, the opposite can be inferred. Mr. Warren’s report was prepared in February of 2012, well before Cummings’ witnesses were disclosed. At this point, Cummings still knows absolutely nothing about Northern Title’s other expert witness, Werner Rosenbaum, other than he is allegedly a realtor. Incredulously, notwithstanding the more than 700 pages of submissions it has made to the Court and Plaintiff in the last few days alone, Northern Title has yet to provide any supplemental information whatsoever with regard to Mr. Rosenbaum. Regardless of whether they were “rebuttal” witnesses, Northern Title is still obligated to disclose and produce the requested information with regard to these witnesses in a timely fashion. It has not.

Pursuant to Rule 11 of the Idaho Rules of Civil Procedure, the Court and other parties should be able to rely on statements made by attorneys to be well grounded in fact, warranted by existing law and made in good faith. When they are not, there is a considerable amount of time and resources diverted to diffuse such falsehoods that unnecessarily increases the cost of litigation. That has certainly been the case here. As a result, Cummings has been prejudiced and is entitled to relief from the Court

2. In contrast, Cummings’ expert disclosures were timely, proper and did not prejudice Defendants.

As an attempt to justify its purposeful withholding of information and utter lack of disclosure whatsoever, Northern Title argues that Cummings’ timely disclosure of his expert witnesses was insufficient. This is like a bank robber caught in the act trying to defend his actions by claiming that he is justified because the banker was jay walking. The argument itself

holds no weight and does not excuse whatsoever Northern Title and its attorney's egregious violation of the rules.

In any case, Cummings' disclosures did comply with the rule, and even if it fell short, Northern Title was not prejudiced. The expert disclosure rules under I.R.C.P. 26(a)(4) requires a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

(I.R.C.P. 26(a)(4)) (emphasis)

While Northern Title provided no information whatsoever required under the expert disclosure rules, Cummings disclosure clearly did. (See Exhibit "G" to Northern Title response) For instance, the disclosure with regard to Ms. Kari included a paragraph describing her experience and qualifications, a paragraph describing her analysis of the conduct of Northern Title as it relates to the industry practices, laws and regulations, and then listing 14 different and specific opinions or findings that she will discuss in her testimony. Mr. Kelley's disclosure includes a lengthy paragraph listing specific detail with regard to the analysis of the value of the subject property. Kelley's qualifications are laid out in specific detail in his vitae attached as an exhibit to the disclosure. The disclosure notifies the parties that he was in the process of preparing a written appraisal that will be provided. Both disclosures also indicated the

documents that the experts would rely on to form their testimony as well as their hourly compensation.

This rather lengthy and detailed disclosure "statement" was provided on March 13, 2012, more than 4 ½ months prior to trial. There has been no written interrogatory or any other such request from Northern Title or any of the parties seeking additional information about these witnesses, including any documents or reports. Rather, Northern Title requested their depositions to occur on June 14, 2012. Both Ms. Katri and Mr. Kelley allocated their time and preparation accordingly. With no request to obtain his appraisal ahead of time, Mr. Kelley managed his busy schedule so that his report would be prepared in time for the deposition. Only two days before the deposition, Northern Title's attorney, Aaron Bergman, made an informal request for Mr. Kelley's report, a draft of the report was provided the following day. Northern Title did not request any extension of time to review the report, but instead proceeded with the deposition of both Ms. Katri and Mr. Kelley for 11 hours of deposition on June 14, with only a 20 minute break. In those depositions, the Defendants went through Mr. Kelley's qualifications and report line by line. They also questioned Ms. Katri on every statement and opinion in the disclosures and obtained copies of the several hundred pages of documents that she reviewed, attaching the documents as an exhibit to the deposition. There is simply no question that Northern Title has had ample opportunity to obtain all the information they would need with regard to these witnesses to prepare for trial. They have not been prejudiced whatsoever by any alleged deficiencies in the initial disclosures.

CONCLUSION

In summary, Northern Title's failure to disclose witnesses, including the substance of their testimony, warrants an exclusion of the witnesses and any claims or defenses that Northern Title would rely on with regard to these witnesses. See *Clark v. Klein*, 137 Idaho 154, 45 P.3d 810 (2002). Moreover, Cummings is entitled to sanctions under I.R.C.P. 37(b) including his attorney fees and costs for Northern Title's purposeful withholding of information requested in discovery. Finally, given the additional misrepresentations and admissions made by Northern Title's counsel in its response to Cummings' motion, the Court should also consider appropriate sanctions under I.R.C.P. 11.

Simply put, the way that Northern Title has handled this matter is typical of the pattern of wrongful and improper conduct from the very beginning of when it was retained to handle the underlying transaction of this case. It is a continuation of the ongoing bad faith in not only the way it handled this transaction and its fiduciary responsibilities toward Mr. Cummings, but also in the way it has conducted itself during this litigation.

DATED this 29 day of June, 2012.

PETERSEN MOSS HALL & OLSEN

Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 29th day of June, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

() mail () hand (/) fax () email

Attorneys for Roger L. Stephens

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

() mail () hand (/) fax () email

Attorneys for Northern Title Company

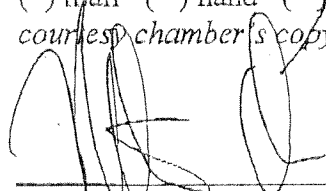
Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510
EMAIL: pcollaer@ajhlaw.com

() mail () hand (/) fax () email

Attorneys for Dorothy Julian, Evan, Skimmers, Ryan Olsen, and Exit Realty, of Bear Lake, LLC

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

() mail () hand (/) fax
courtesy chamber's copy



Nathan M. Olsen

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KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)

Case No. CV-2009-183

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)
)
Defendants.)

MOTION TO RECONSIDER

ROGER L. STEPHENS, an individual,)
)
Third Party Plaintiff,)

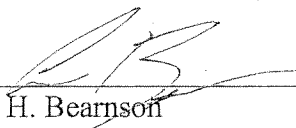
vs.)

DOROTHY JULIAN, an individual)
residing in Eagle, Idaho, EVAN)
SKINNER, an individual residing in)
Montpelier, Idaho, RYAN OLSEN, an)
individual residing in Georgetown,)
Idaho, EXIT REALTY OF BEAR)
LAKE, LLC an Idaho Limited Liability)
Company, JOHN DOES 1-X.)
)
Third Party Defendants.)

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,
(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, LLC, and pursuant to Rule
11(a)(2)(B) of the Idaho Rules of Civil Procedure respectfully moves this Court for an order
reconsidering its July 5, 2012 *Memorandum Decision on Plaintiff's Motion to Exclude Northern
Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline for Experts*. A
supporting memorandum and request for oral argument is filed herewith.

DATED this 11th day of July, 2012.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of July, 2012, I served a true and correct copy of the above and foregoing **MOTION TO RECONSIDER** to the following person(s) as follows:

Nathan M. Olsen	[x] U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	[] Hand Delivery
485 "E" Street	[] Overnight Mail
Idaho Falls, Idaho 83402	[] Facsimile (208-524-3391)
	[x] Email (Nathan@pmholaw.com)
Randall C. Budge	[x] U.S. Mail/Postage Prepaid
Jason E. Flaig	[] Hand Delivery
RACINE, OLSON, NYE, BUDGE &	[] Overnight Mail
BAILEY, CHARTERED	[] Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	[x] Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391	jef@racinelaw.net
Phillip J. Collaer	[x] U. S. Mail/Postage Prepaid
Anderson Julian & Hull, LLP	[] Hand Delivery
250 S. 5 th Street, Ste. 700	[] Overnight Mail
PO Box 7426	[] Facsimile (208-344-5510)
Boise, Idaho 83707-7426	[x] Email (pcollaer@ajhlaw.com)

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KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Case No. CV-2009-183

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

**MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER**

Defendants.)

ROGER L. STEPHENS, an individual,)

Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
residing in Eagle, Idaho, EVAN)
SKINNER, an individual residing in)
Montpelier, Idaho, RYAN OLSEN, an)
individual residing in Georgetown,)
Idaho, EXIT REALTY OF BEAR)
LAKE, LLC an Idaho Limited Liability)
Company, JOHN DOES 1-X.)

Third Party Defendants.)

I. THE COURT'S EXCLUSION OF NORTHERN TITLE'S APPRAISAL EXPERT WAS UNDULY HARSH, WHERE BOTH PLAINTIFF AND DEFENDANT WERE LATE IN MAKING EXPERT DISCLOSURES.

Where the value of real property is at dispute, Rule 702 of the Idaho Rules of Evidence require an expert. See *Boel v. Stewart Title Guar. Co.*, 137 Idaho 9, 14-15, 43 P.3d 768, 773-774 (Idaho 2002) (holding that while the Idaho Real Estate Appraisers Act did not impose additional requirements under Rule 702, a real estate agent who did opine on value had to still be properly qualified under Rule 702). Under the *Order Setting Jury Trial*, Plaintiff was required to make expert disclosures within 140 days before July 31, 2012. See *Order Setting Jury Trial* at ¶ 5, attached hereto as Exhibit "A." Similarly, expert disclosures were required to be made with the same level of "specificity required by I.R.C.P. 26(b)(4)(A)(i)." *Id.* Finally, Plaintiff's duty to disclose experts under the Court's *Order Setting Jury Trial* was "separate and distinct from any discovery demands served by the parties under IRCP 26 through IRCP 37." *Memorandum Decision*, 2 (July 6, 2012).

The record clearly establishes that both Northern Title and Cummings were late in making expert disclosures. In fact, the record establishes that the parties were both late, and both made their expert disclosures on the same day, namely June 14, 2012. Where expert disclosures were made late by both parties, even on the same day, the exclusion of Northern Title's expert appraiser was unduly harsh.

The record establishes that Cummings' failed to make expert disclosures compliant with Rule 26(b)(4)(A)(i), until June 14, 2012. Under Rule 26(b)(4)(a)(i), expert disclosures must include:

A complete statement of *all opinions to be expressed and the basis and reasons therefore*; the *data or other information considered by the witness in forming the opinions*; any *exhibits to be used as a summary of or support for the opinions*; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

I.R.C.P. 26(b)(4)(A)(i) (emphasis added). During the hearing of July 3, 2012, Cummings represented that its expert disclosures were contained in *Plaintiff's Supplemental Disclosures of Witnesses*, dated March 13, 2012. See *Pl's. Supp. Discl. Witnesses*, attached hereto as Exhibit "B." However, Plaintiff's "Disclosure of Witnesses" is a far cry from that required in Rule 26(b)(4)(A)(i).

Looking to Plaintiff's "Disclosure of Witnesses," Cummings does not reveal what his experts opinions will be, the reasons for those opinions, the data relied on by the experts or to be used as an exhibit by the experts. *Id.*; *Cf.* I.R.C.P. 26(b)(A)(i). As to his expert Lenore Katri, Cummings merely lists out fourteen (14) "[i]ssues that will be discussed in Ms. Katri's analysis and testimony." Ex. "B," *Pl's. Supp. Discl. Witnesses* at 2-4. In detail, Ms. Katri testified during her deposition that this "issue" list contained none of her actual opinions, the basis of those opinions or specifically referenced to exhibits she relied on in forming her opinions. *Depo. Katri* at 36:1-45:25, 47:11-52:11, attached hereto as Exhibit "C." Therefore, Plaintiff's "Disclosure of Witnesses" clearly left out the very heart of a 26(b)(4)(A)(i), which was not obtained until Northern Title deposed Katri on June 14, 2012.

Cummings "Disclosure of Witnesses" also fell far short in regards to expert Gregory Kelley. Cummings merely sets forth that Mr. Kelley "will testify as to the present and future

value of the subject property, and its diminished value resulting from the exclusion of the east side,” but says nothing about what Kelley’s actual opinions are. Ex. “B,” *Pl’s. Supp. Discl.*

Witnesses at 4. Cummings also merely states that “Mr. Kelley’s testimony will be based on his appraisal and evaluation of the property, a written report of which he is in the process of preparing and which will be available mid to late April.” *Id.* However, Plaintiff did not provide Kelley’s opinions or evaluation until a draft report was submitted to Northern Title the late afternoon just before his deposition. Per the Court’s *Order Setting Jury Trial*, the opinions and basis of Kelley’s opinions was due by Cummings on March 13, 2012, not in April and certainly not on June 14, 2012. See Ex. “A,” *Order Setting Jury Trial* at ¶ 5.

The record also discloses that Cummings’ “Disclosure of Witnesses” was served far before his experts formed their actual opinions. Cummings’ appraisal expert, Kelley, did not even formulate a draft report of his appraisal until June 13, 2012, the afternoon before his deposition. See *Kelley Depo.* 34:13-14, attached hereto as Exhibit “D” (stating he did not provide a draft report to Cumming’s counsel until the night before his deposition); See also *Aff’d. Nathan Olsen* at ¶ 6, attached hereto as Exhibit “E.” (“I pressed Mr. Kelley to finish his report which we then provided a draft of one day prior to the deposition”). Cummings even admits he did not intend to “have that report prepared and submitted [until] at the time of deposition.” Ex. “E,” *Aff’d. Nathan Olsen* at ¶6.

Katri, Cumming’s escrow officer expert, also disclosed that she did not form her opinions until after Cummings had served his “Witness Disclosures.” Specifically, Katri testified that she relied almost entirely on the documents supplied by Cumming’s counsel in forming her opinions, but that these documents were not provided until 30-60 days before her deposition. See Ex. “C,”

Depo. Katri at 54:3-10; 60:8-62:3. Plaintiff served his “Disclosure of Witnesses” more than ninety (90) days before Katri’s deposition, which means it was served before Katri even formed her opinions. Aside from Plaintiff’s “Disclosure of Witnesses,” he provided no other information on Katri’s opinions until June 14, 2012, where Katri disclosed her actual opinions and the seven hundred and sixteen (716) pages of documents she had relied on in forming those opinions.¹

As the record clearly establishes, Plaintiff was also late in making expert disclosures, for both of his experts. Even though both parties were late in making their expert disclosures, both made their expert disclosures on the same day, June 14, 2012. The record also discloses that the reason Plaintiff disclosed Katri’s and Kelley’s expert opinions by June 14, 2012 is attributable not to Plaintiff, but to Northern Title who took their depositions. Surely, it would be unjust for Plaintiff to be rewarded for its dilatory conduct, and Northern Title to be punished for its affirmative conduct, where Plaintiff’s duties to make expert disclosures were “separate and distinct from any discovery demands served by the parties under IRCP 26 through IRCP 37.” *Memorandum Decision*, 2 (July 6, 2012). Northern Title respectfully requests the Court to reconsider its exclusion of Craig Warren, as such was unduly harsh under the circumstances.

II. AN IMPORTANT CORRECTION TO THE JULY 3, 2012 HEARING HAS BEEN DISCOVERED, WHERE PLAINTIFF’S LATE EXPERT REPORT HAS IMPROPERLY PREJUDICED NORTHERN TITLE AND WOULD REQUIRE ITS EXPERT TO MAKE CHANGES TO HIS REPORT.

During the hearing, Northern Title’s counsel Aaron Bergman informed the Court that he believed Plaintiff’s late disclosed appraisal opinions would not impact Northern Title’s expert

¹ These 716 pages are not reproduced here, but were entered as Exhibits 3 and 4 to Katri’s deposition.

Craig Warren's opinions. After further discussion with Craig Warren, however, it became apparent that this statement needs correcting.

Specifically, both Mr. Warren's and Mr. Kelley's appraisals rely on a "Sales Comparison Approach" to determine the fair market value of the property. Under this method, both experts analyzed different but similar properties, to determine the fair market value of the subject property, or Mr. Stephen's property. An important difference in the two reports, however, is that Plaintiff's expert Kelley compares sales taking place from 2006 through 2008, looking to the value of Defendant Stephen's property as of 2007. In contrast, Northern Title's expert Warren compared sales taking place in 2011, looking to the value of Defendant Stephen's property in 2012. This is an important difference, and if the parties are to compare apples to apples, Plaintiff's late expert report has impacted and necessitated a change in Defendant Northern Title's expert report. See *Aaron Bergman Aff'd.*, attached hereto as Exhibit "F."

Obviously, where Plaintiff intentionally withheld Kelley's appraisal report, and has admitted he was intending not to disclose those opinions until June 14, 2012, there was no way for Northern Title to guess that a prejudicial discrepancy in the reports would have arisen. See Ex. "E," *Aff'd. Nathan Olsen* at ¶ 6 (admitting to fully intending not to disclose Kelley's report until June 14, 2012). This is critical information that should be considered by the Court, as such shows Plaintiff's withholding of an expert report prejudicially precluded Northern Title ability to make its own report. Therefore, Northern Title respectfully requests that the Court reconsider its exclusion of Craig Warren.

CONCLUSION


Northern Title respectfully requests the Court to reconsider its decision. First, both of the parties were late in making their expert disclosures, making those disclosures on the same day. Additionally, but for Northern Title's affirmative action in taking the deposition of Plaintiff's experts, Plaintiff's late disclosures would not have been made by June 14, 2012. Under these circumstances, the Court's exclusion of Craig Warren was unduly harsh.

Second, shortly after the hearing Northern Title became aware that indeed, Plaintiff's late expert appraisal disclosures prejudicially impacted Northern Title's own expert appraisal report. Obviously, this critical information was out of reach for so long as Plaintiff withheld Kelley's opinions and basis of those opinions until June 14, 2012.

With this information, a reconsideration of the Court's decision is warranted, and Craig Warren should be allowed to submit his report and testify.

DATED this 11th day of July, 2012.

BEARNSON & CALDWELL, LLC

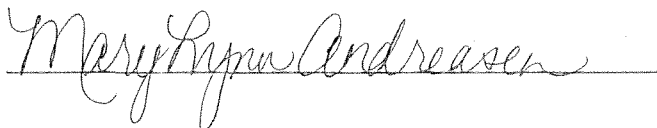


Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of July, 2012, I served a true and correct copy of the above and foregoing **MEMORANDUM IN SUPPORT OF MOTION TO RECONSIDER** to the following person(s) as follows:

Nathan M. Olsen	[x] U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	[] Hand Delivery
485 "E" Street	[] Overnight Mail
Idaho Falls, Idaho 83402	[] Facsimile (208-524-3391)
	[x] Email (Nathan@pmholaw.com)
Randall C. Budge	[x] U.S. Mail/Postage Prepaid
Jason E. Flaig	[] Hand Delivery
RACINE, OLSON, NYE, BUDGE &	[] Overnight Mail
BAILEY, CHARTERED	[] Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	[x] Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391	jef@racinelaw.net
Phillip J. Collaer	[x] U. S. Mail/Postage Prepaid
Anderson Julian & Hull, LLP	[] Hand Delivery
250 S. 5 th Street, Ste. 700	[] Overnight Mail
PO Box 7426	[] Facsimile (208-344-5510)
Boise, Idaho 83707-7426	[x] Email (pcollaer@ajhlaw.com)



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EXHIBIT "A"

DISTRICT COURT
 SIXTH JUDICIAL COURT
 BEAR LAKE COUNTY IDAHO
Jan 27, 2012 9:33 am
 DATE TIME
 CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE DEPUTY CASE NO.

Register # CV-2009-0000183

STEVEN CUMMINGS,
 Plaintiff,

-vs-

ROGER L STEPHENS,
 NORTHERN TITLE COMPANY OF IDAHO, INC.,
 JOHN DOES I - X,
 Defendants.

ORDER SETTING JURY TRIAL

NORTHERN TITLE COMPANY OF IDAHO, INC.,
 Third Party Plaintiff,

-vs-

DOROTHY S JULIAN,
 EVAN E SKINNER,
 RYAN L. OLSEN,
 EXIT REALTY OF BEAR LAKE,
 JOHN DOES I-X
 Third Party Defendants.

(1) **TRIAL DATE.** This matter is set for **JURY TRIAL** on the **31st day of July, 2012, AT THE HOUR OF 9:00 A.M.,** in the Bear Lake County Courthouse, Paris, Idaho. All deadlines listed below shall apply to the trial setting listed above. The parties should plan to try the case on that date. A continuance of the trial date shall occur only upon written Motion or Stipulated Motion

Case No. CV-2009-0000183
 ORDER SETTING JURY TRIAL
 Page 1

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to the Court which clearly states the reasons for the requested continuance and which certifies that the request or stipulation has been discussed with and agreed to by the party(ies). An Order continuing the trial date to the backup trial date will not alter the deadlines set forth in this Order, except for good cause shown.

(2) **PRE-TRIAL CONFERENCE.** No pre-trial conference will be held unless requested by any party in writing at least 30 days prior to trial and ordered by the Court. Pursuant to I.R.C.P. 16(e), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are ORDERED to meet and/or confer for the purpose of preparing a joint Pre-Trial Stipulation, which shall be submitted to the Court at least 21 days prior to Trial, and shall include:

(A) A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all exhibits to be offered at trial by both parties. The Exhibit List shall indicate: 1) by whom the exhibit is being offered, 2) a brief description of the exhibit, 3) whether the parties have stipulated to its admission, and if not, 4) the legal grounds for any objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B) A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C) A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witness' testimony will be objected to in its entirety and the legal grounds therefore.

(D) A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E) A statement that counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F) A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G) A statement of all issues of fact and law which remain to be litigated, listing which

party has the burden of proof as to each issue.

(H) A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I) A list of any orders requested by the parties which will expedite the trial.

(J) A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

(3) **MOTIONS TO ADD NEW PARTIES OR AMEND PLEADINGS** shall be filed no later than 60 days after the date of this Order.

(4) **DISCOVERY** must be served and completely responded to at least 60 days prior to trial. This includes supplementation of discovery responses required by I.R.C.P. 26(e), unless good cause is shown for late supplementation. Discovery requests must be responded to in a timely way as required by the I.R.C.P. The deadlines contained in this Order cannot be used as a basis or reason for failing to timely respond to or supplement properly served discovery, including requests for disclosure of witnesses and/or trial exhibits. Discovery disputes will not be heard by the Court without the written certification required by I.R.C.P. 37(a)(2).

(5) **WITNESS DISCLOSURE**. Except as previously disclosed in responses to discovery requests, Plaintiff shall disclose all fact and expert witnesses no later than 140 days before trial. Defendants shall disclose their fact and expert witnesses no later than 105 days before trial. Rebuttal witnesses shall be disclosed no later than 70 days before trial. Expert witnesses shall be disclosed in the manner and with the specificity required by I.R.C.P. 26(b)(4)(A)(i). Witnesses not disclosed in responses to discovery and/or as required herein will be excluded at trial, unless allowed by the Court in the interest of justice.

(6) **MOTIONS. DISPOSITIVE MOTIONS**, and responses thereto, shall comply in all respects with I.R.C.P. 56 and be filed no later than 90 days before trial. **ALL OTHER MOTIONS**, including any Motion in Limine, shall be filed and heard by the Court no later than 30 days before trial. **One duplicate Judge's Copy of all Motions, and any opposition thereto,**

together with supporting affidavits and documents, shall be submitted directly to the Court's chambers in Bannock County. All the duplicates must be stamped "Judge's Copy" to avoid confusion with the original pleading. All other pleadings, notices, etc., should be filed with the Clerk without copies to the Court's chambers.

(7) TRIAL BRIEFS. Trial briefs are encouraged but not required. If submitted, trial briefs should address substantive factual, legal and/or evidentiary issues the parties believe are likely to arise during the trial, with appropriate citation to authority. Any trial brief should be exchanged between the parties and submitted to the Court, including a duplicate Judge's Copy submitted to chambers in Bannock County, no later than 10 days prior to trial.

(8) PRE-MARKED EXHIBITS AND AN EXHIBIT LIST IN THE FORM ATTACHED HERETO shall be exchanged between the parties and filed with the Court no later than 10 days prior to trial. Each party shall also lodge with the Court at chambers a duplicate completed exhibit list together with one complete, duplicate marked set of that party's proposed exhibits for the Court's use during the trial. Unless otherwise ordered, Plaintiff shall identify exhibits beginning with the letter "A" and the Defendant shall identify exhibits beginning with the number "1."

(9) JURY INSTRUCTIONS. Proposed jury instructions and verdict forms requested by any party shall be prepared in conformity with I.R.C.P. 51(a), except that they shall be filed with the Court and exchanged between the parties at least 7 days prior to trial. Except for good cause shown, proposed jury instructions should conform to the pattern Idaho Jury Instructions (IDJI) approved by the Idaho Supreme Court. In addition to submitting written proposed instructions that comply with Rule 51(a), the parties shall also submit both a clean version and a version with cited authority by e-mail to the Court's Clerk, in Word format, at least 7 days prior to trial. Certain "stock" instructions need not be submitted. These will typically include IDJI 1.00, 1.01, 1.03,

1.03.1, 1.05, 1.09, 1.11, 1.13/1.13.1, 1.15.1, 1.17, 1.20.1, and 1.24.1. It is requested that the parties agree on the basic instruction giving the jury a short, plain statement of the claims, per IDJI 1.07.


(10) **MEDIATION**. Pursuant to I.R.C.P. 16(k)(4), the parties are ORDERED to mediate this matter, and the mediation shall comply with I.R.C.P. 16(k). Mediation must be held no later than 30 days prior to trial.

(11) **TRIAL PROCEDURES**. A total of THREE (3) trial days have been reserved for this trial. If the parties believe that more trial days will be required, the parties are ORDERED to notify the Court of this request no less than 60 days prior to trial. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, or as modified during trial as necessary, trial days will begin at 9:00 a.m. and close at or about 3:00 p.m., with two 20 minute recesses taken at approximately 11:00 a.m. and 1:00 p.m.

(12) **HEARINGS OR CONFERENCES WITH THE COURT**. All meetings, conferences, and/or hearings with the Court shall be scheduled in advance with the Court's Clerk by calling 208-945-2208, ext 23. No hearing shall be noticed without contacting the Clerk.

(13) **ALTERNATE JUDGES**. Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an alternate judge may be assigned to preside over the trial of this case, if the current presiding judge is unavailable. The list of potential alternate judges is: 1) Honorable Peter D. McDermott; 2) Honorable Stephen S. Dunn; 3) Honorable Mitchell W. Brown; 4) Honorable William H. Woodland; 5) Honorable Richard T. St. Clair.

DATED January 27, 2012.



DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January, 2012, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

PLAINTIFF ATTORNEY:

Nathan M Olsen
485 "E" Street
Idaho Falls ID
(208) 524-3391

- Faxed
- Hand Delivered
- Mailed

DEFENDANTS ATTORNEY:

Randall C. Budge
P.O. Box 1391
Pocatello ID 83204


- Faxed
- Hand Delivered
- Mailed

Brad H Bearnson
399 North Main, Suite 270
Logan UT 84321
(435) 752-6301

- Faxed
- Hand Delivered
- Mailed

Phillip John Collaer
PO Box 7426
Boise ID 83707
(208) 344-5510

- Faxed
- Hand Delivered
- Mailed



Deputy Clerk

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EXHIBIT "B"

Nathan M. Olsen, Esq.
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, Idaho 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
ISB # 7373

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X,)
)
Defendants.)

Case No. CV-2009-183

PLAINTIFF'S SUPPLEMENTAL
DISCLOSURE OF WITNESSES

In addition to the fact and expert witnesses previously disclosed by the Plaintiff, Steven Cummings, Plaintiff by and through the undersigned counsel, hereby discloses the following expert witnesses that may be called at trial:

Lenore Katri
President
Mountain West Title & Escrow
390 W. Sunnyside Road, Idaho Falls, ID 83402

Ms. Katri has been in the title & escrow industry for 32 years and has been the President of Mountain West Title & Escrow, an Idaho-licensed escrow agency, in Idaho Falls, Idaho since 2006.

Ms. Katri will testify with regard to the Idaho standards for title and escrow companies, as established by law, regulation and by long standing industry practices. She will provide her analysis of the conduct of the Defendant Northern Title Company, before during and after the subject real estate purchase closed. She will also discuss the standard procedures and document preparation that a title and escrow company is required to follow, and will analyze the actions taken by Northern Title, including the numerous anomalies. Her testimony will be based on the documents and testimony on the record obtained in this case. Issues that will be discussed in Ms. Katri's analysis and testimony include the following:

- 1) Northern Title's duty to complete the transaction according to the explicit direction of the written purchase and sale agreement.
- 2) Northern Title's duty to follow the instructions and obligations of the written closing and escrow agreement.
- 3) Northern Title's duty to seek the written approval from both parties before changing any of the terms of the contract or deed.
- 4) Northern Title's duty to inform the buyer or insured of any property contained within the contract's legal description that does not belong to the seller, or is otherwise encumbered.
- 5) Northern Title's duty to record a warranty deed that is consistent with the written purchase agreement.

- 6) Northern Title's duty to not modify a warranty deed after it has been recorded, without explicit authorization from both buyer and seller.
- 7) That the modifications by Northern Title made to the deed cannot be considered in any way, shape or form as merely correcting a "scriveners error."
- 8) Whether it is appropriate to issue a title policy more than eight months after the transaction has closed, including whether a title company justified in delaying that policy because it claims that it was waiting from instruction from buyer to deed the property to a trust.
- 9) Whether it is appropriate for Northern Title to issue a title policy for a legal description that is different from the title commitment and the purchase and sale agreement, and after explicit internal direction to issue the policy according to the contract and title commitment.
- 10) Northern Title's duty to remain a neutral party as escrow and closing officer, and to disclose any actual or perceived conflicts of interest.
- 11) Northern Title's fiduciary duty toward its insured, in particular after it has become aware of a potential claim.
- 12) Northern Title's duty not to delete or destroy records once it has become aware that there has been a claim.
- 13) Northern Title's duty to properly respond to and remedy its insured when it has become aware that there is a defect in the property insured.

- 14) Any and all relevant issues with regard to her expertise as it relates to the conduct of Northern Title, including any additional issues that may be learned through discovery.

Ms. Katri has not previously testified as an expert witness. She will be compensated \$50 per hour for her time.

Gregory Kelley
Kelley Real Estate Appraisers
520 W 15th St # 100
Idaho Falls, ID 83402

Mr. Kelley replaces Mr. Linford who was previously disclosed. Mr. Linford is not available for the rescheduled trial. Mr. Kelley will testify as to the present and future value of the subject property, and its diminished value resulting from the exclusion of the east side. His analysis will include a valuation of the property as a whole, including the acreage on the east side, compared to its diminished value as a whole without the west side acreage. He will also testify as to the value of the excluded west side property by itself. His analysis may also include valuation of portions of the property that was part of the purchase and sale agreement that was conveyed to Mr. Cummings that in fact was owned by different parties than the seller. Mr. Kelley's testimony will be based on his appraisal and evaluation of the property, a written report of which he is in the process of preparing and which will be available mid to late April. He will review pertinent materials, i.e. the various legal descriptions and any other relevant records to his analysis.

Mr. Kelley's qualifications and experience are attached and incorporated herein as exhibit "A." He will be paid \$3,500 for the appraisal and \$125 per hour for testimony. He has not testified in a case in the last four years.

Plaintiff reserves the right to further supplement this disclosure for the calling of rebuttal witnesses, or to address issues yet unknown that will be learned through discovery and further reserves the right to call any witness, expert or otherwise, designated or called by Defendants and/or Third Party Defendants.

DATED this 13th day of March, 2012.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 13th day of March, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109

() mail () hand (x) fax

Attorneys for Roger L. Stephens

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301

() mail () hand (x) fax

Attorneys for Northern Title Company



Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
C.W. Moore Plaza
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510

() mail () hand (x) fax

Attorneys for Dorothy Julian, Evan Skinner, Ryan Olsen, and Exit Realty of Bear Lake, LLC

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

() mail () hand (x) fax
courtesy chamber's copy

Nathan M. Olsen

QUALIFICATIONS OF THE APPRAISER

GREGORY G. KELLEY

Idaho Certified General Appraiser: #32
Wyoming Certified General Real Estate Appraiser: #369
Past President, Idaho/Utah Chapter, ASFMRA 2008

GENERAL EDUCATION:

Shelley High School, Shelley, Idaho
Brigham Young University, Provo, Utah
Utah Technical College, Provo, Utah

WORK HISTORY:

Construction Coordinator, Three Fountains of Idaho Falls - 1976-1978
Self Employed; Building Contractor - 1977-1980
Administrator; OHC Dental Group - 1980-1985
Appraiser - Kelley Real Estate Appraisers, Inc. - 1985-Present

APPRAISAL EDUCATION & TRAINING:

Residential Appraisal Course; EIVTS, Idaho Falls 1977
Report Writing Seminar; Bozeman, Montana ASFMRA 1985
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-1
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-2
Right-of-Way Training; Idaho Transportation Dept. Boise, Idaho - 1986
Mathematics of Finance Seminar, Twin Falls, ID ASFMRA 1988
Appraisal Course; Phoenix, Arizona, ASFMRA # A-20, 1988
Sales Analysis Seminar, Idaho Falls, ID ASFMRA, 1989
Standards of Professional Practice & Ethics, AIREA, Boise, Idaho 1990
Appraisal Course: Wichita, Kansas, ASFMRA # A-30, 1991
Certification School, Burley, ID, ASFMRA, # A-45, April 1991
Idaho Certified General Appraiser Exam, CGA # 32, June 1991
Highest and Best Use Seminar; Boise, Idaho, ASFMRA, January 1993
FIRREA Update - August 1994, Various Appraisal Seminars
Standards & Ethics, ASFMRA, Jackpot, NV, May 95
Rural Residential Appraisal Seminar, Jackpot, NV ASFMRA, May 1997
Conservation Easement Seminar, Denver, CO, ASFMRA, November 1998
Federal Land Exchange & Acquisition, Nashville, TN, ASFMRA, November 2000
Income Approach, Discounting & Leasing, Jackpot, NV ASFMRA, May 2003
Appraising Land in Transition Seminar, Jackpot NV ASFMRA, May 2004
USPAP Update Course, Idaho Falls, ID ASFMRA, January 2005
Water Rights Seminar, Idaho Falls, ID; ID/UT Chapter ASFMRA, January 2005
Livestock Ranch Appraisal Seminar, Jackpot, NV ASFMRA, May 2005
Various Current Appraisal Topic Seminar, Boise, ID; ID/UT ASFMRA, January 2006
USPAP Update Course, Twin Falls, ID ASFMRA, January 2006



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Code of Ethics, Twin Falls, ID ASFMRA, January 2006
 Understanding Conservation Easements, Atlanta, GA ASFMRA, February 2007
 Government Appraisal Seminar, Atlanta, GA ASFMRA, February 2007
 Recreational Properties Seminar, Atlanta, GA ASFMRA, February 2007
 2008 Appraisal Requirements, Atlanta, GA ASFMRA, February 2007
 Understanding the Next Farm Bill, Atlanta, GA ASFMRA, February 2007
 Mining Seminar, Jackpot, NV ASFMRA, May 2007
 Timber Seminar, Jackpot, NV ASFMRA, May 2007
 Yellow Book Seminar, Boise, ID Appraisal Institute, October 2007
 1031 Exchange Seminar, Salt Lake City, UT, Realtors Land Institute, January 2008
 Data Analysis Seminar, Jackpot, NV ASFMRA, May 2008
 Cost Estimating Seminar, Jackpot, NV ASFMRA, May 2008
 USPAP Update Course, Idaho Falls, ID; ASFMRA, January 2009
 Various Current Appraisal Topic Seminar, Idaho Falls, ID; ASFMRA, January 2009
 Wind Power & Conservation Easement Seminars, Boise, ID; ASFMRA, January 2010
 USPAP Update Course, Las Vegas, NV; Appraisal Institute, January 2011
 Appraisal of Nursing Home Facilities; On-line Course; Appraisal Institute, April 2011
 USPAP Update Course, Logan, UT; ASFMRA, January 2012

APPRAISAL ASSIGNMENTS INCLUDE THE FOLLOWING CLIENTS:

Attorneys	Major Lending Institutions
Accountants	Transfer Companies
Major Oil Companies	The Nature Conservancy
City of Idaho Falls	City of Pocatello
City of Driggs	Idaho Dept of Fish & Game
Idaho State Land Dept.	Idaho Transportation Dept.
Bureau of Land Management	Bureau of Reclamation
Internal Revenue Service	Small Business Administration
U.S. Forest Service	Farmers Home Administration
F.D.I.C.	Resolution Trust Corporation
U.S. Army Corps of Engineers	Utah Power and Light
Banks and Insurance Companies	Idaho Dept. Parks & Recreation
Teton Regional Land Trust	Union Pacific Railroad
Various other government agencies, companies and individuals	

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)

residing in Montana,)

Plaintiff,)

vs.)

Case No. CV-2009-183

ROGER L. STEPHENS, an individual)

residing in Providence, Utah,)

NORTHERN TITLE COMPANY OF IDAHO,)

INC., and Idaho Corporation, JOHN)

DOES I-X,)

Defendants.)

DEPOSITION OF

LENORE KATRI

JUNE 14, 2012

(Caption continued to next page)

REPORTED BY:

TIFFANY FISHER, CSR No. 979, RPR

Notary Public

1 Q. So my question is: Have you performed -- and
2 I'm not asking what the analysis was, I'm just asking:
3 Have you performed an analysis on this first issue,
4 Northern Title's duty to complete the transaction
5 according to the explicit direction of the written
6 purchase and sale agreement?

7 A. Yes.

8 Q. Have you written down your analysis of that
9 issue?

10 A. No.

11 Q. Do you have a written report that you
12 formulated regarding that issue?

13 A. No.

14 Q. When looking at No. 1 here, while it does say
15 that these are issues that may be discussed by you or
16 will be discussed by you, this No. 1 doesn't say what
17 your opinion is, does it?

18 A. No.

19 Q. It doesn't state any reasons or the basis
20 behind your opinion; correct?

21 A. No.

22 Q. And it also doesn't reference to any specific
23 documents or information that you may have relied on in
24 making that opinion; correct?

25 MR. OLSEN: Object.

Lenore Katri 6/14/2012

1 MR. BERGMAN: On what basis?

2 MR. OLSEN: It's in the previous paragraph.

3 But, anyway, I'll let the witness answer.

4 MR. BERGMAN: Well, I'm going to ask that you
5 don't coach the witness.

6 But go ahead.

7 THE WITNESS: And that question again, please?

8 Q. (BY MR. BERGMAN) Looking at paragraph No. 1,
9 does it make any reference to the specific documents
10 that you relied on --

11 A. No.

12 Q. -- in making that opinion?

13 A. No.

14 Q. Let's look up to this second paragraph as well
15 in the page. And I just want to read the -- well,
16 actually, can you read the second-to-last sentence of
17 that paragraph which starts "her testimony."

18 A. "Will be based on the documents and testimony
19 of the record obtained in this case."

20 Q. Okay. In reading that, does that specifically
21 reference to what particular documents you relied on in
22 forming your opinion?

23 A. It doesn't specifically say what documents I
24 looked at.

25 Q. Okay. Does it specifically say what

1 information you relied on?

2 A. No.

3 Q. If you could read this time a little bit more
4 in detail -- I don't know how much in detail you read
5 the other ones, but Nos. 2 through 13 of these
6 paragraphs for me.

7 A. "Northern Title's duty" --

8 Q. I'm sorry. I don't mean to cut you off.
9 But if you could read them in detail to
10 yourself. I don't want you to have to do that to
11 yourself.

12 A. Thank you.

13 Okay.

14 Q. Are you done?

15 A. Done.

16 Q. Okay. As to each of those that you just read,
17 have you formulated an opinion on each of those issues?

18 A. Yes.

19 Q. I want to ask you the same questions as I did
20 as to No. 1.

21 Did any of those state what your actual
22 opinion is?

23 A. No.

24 Q. Did any of them state the basis or the reason
25 behind your opinion?

Lenore Katri 6/14/2012

1 MR. OLSEN: Counsel, you know, I think you're
2 going down a road here that it's not going anywhere. I
3 mean, you're here to get her opinion.

4 I mean, this is a document that we filed with
5 you to say --

6 MR. BERGMAN: If you have an objection as to
7 form or that it's privileged --

8 MR. OLSEN: All right. Well, if you want to
9 waste time, go ahead.

10 MR. BERGMAN: I don't believe it's a waste of
11 time.

12 THE WITNESS: Be a little more specific in
13 that last question.

14 MR. BERGMAN: Not a problem, I can clarify.

15 THE WITNESS: Thank you.

16 Q. (BY MR. BERGMAN) So looking at paragraph
17 Nos. 2 through 13, you've testified that you have
18 formulated an opinion as to each of those issues?

19 A. Yes.

20 Q. Paragraph Nos. 2 through 13, does anything in
21 there explain or describe the basis of your opinion or
22 the reason of why your opinion is the way it is?

23 MR. OLSEN: Object. Compound. Vague.
24 Ambiguous. A few other things.

25 Q. (BY MR. BERGMAN) If you can answer it...

1 A. There are some things in these paragraphs
2 that, yes, I have a basis.

3 Q. That you do have a basis for?

4 A. Yes.

5 Q. Okay. Now, maybe I've confused you. My
6 question isn't so much whether you have a basis for your
7 opinions.

8 My question is: Do these paragraphs explain
9 what those bases are?

10 A. Yes.

11 Q. And where does it do that?

12 A. In No. 2. There is a duty to follow
13 instructions from all of the parties in the transaction.

14 Q. And why do you believe there's a duty to do
15 that?

16 A. Because you can't take instructions from one
17 party and not the other.

18 Q. And why is that?

19 A. Because you're probably going to have
20 conflicting instructions. And you want to make sure
21 that there is a meeting of the minds between all of the
22 parties in the transaction.

23 Q. So those would be the reasons for the basis of
24 your opinion; correct?

25 A. Um-hmm.

Lenore Katri 6/14/2012

1 Q. Are those things in here in paragraph No. 2?

2 A. Well, "follow instructions," we have an
3 obligation to -- I mean --

4 Q. Well, it's --

5 A. I don't understand where you're trying to get
6 to.

7 Q. My question is: You know, when you say
8 there's a duty to follow instructions and obligations of
9 the written closing and escrow agreement, is that what
10 you're saying is your opinion that you formed?

11 A. Yes.

12 Q. Now, we just talked about a few things about
13 why your opinion is that opinion.

14 Is any of that "why" included in that
15 paragraph No. 2?

16 I'm not trying to trick you. I'm just --

17 A. Well, I'm not sure --

18 MR. OLSEN: Asked and answered.

19 MR. BERGMAN: No, I don't believe she has
20 answered.

21 Q. (BY MR. BERGMAN) Well, let's go back.

22 So you said that you want to get with the
23 parties to make sure that you don't get conflicting
24 instructions; correct?

25 A. Correct.

1 Q. Is that in No. 2?

2 A. Yes. There's a duty to follow instructions
3 and obligations in the written and closing and escrow
4 agreement.

5 Q. But is there anything explaining how you need
6 to correspond with both parties to make sure you avoid
7 conflicting instructions?

8 A. In this paragraph?

9 Q. Yeah.

10 A. No.

11 Q. Now, how else do you know there's a duty to
12 follow the instructions and obligations of the written
13 closing and escrow agreement?

14 A. Because that's what the duty of an escrow
15 officer is.

16 Q. And how do you know that that's the duty?

17 A. It's general knowledge of what an escrow
18 officer is.

19 Q. So it's based on your general knowledge and
20 work experience?

21 A. Sure.

22 Q. Does it state in here in No. 2 that your
23 opinion of Northern Title's duty to follow the
24 instructions of the written closing and escrow agreement
25 are based on your general knowledge and work experience?

1 A. It doesn't say that, no.

2 Q. So that's what I'm asking. I'm asking if
3 these paragraphs explain the basis of the opinion.

4 And so looking at No. 3, "Northern Title's
5 duty to seek the written approval from both parties
6 before changing any of the terms of the contract or
7 deed," now, is it your opinion that that is a duty of
8 Northern Title's?

9 A. Yes.

10 Q. And how do you know that that's a duty of
11 Northern Title's?

12 A. It's a duty of any escrow officer.

13 Q. And how do you know that?

14 A. That's just what an escrow officer does.

15 Q. So that's what you've done in your work
16 experience?

17 A. Yes.

18 Q. And is that what you were trained to do?

19 A. Yes.

20 Q. Does it state in there that, again, you
21 believe that this was Northern Title's duty, due to your
22 work experience?

23 A. Yes.

24 Q. It does state that in there?

25 A. Well, it doesn't state that. But...

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Q. So it does or it does not?

A. It does not state that in there.

MR. OLSEN: Well, in that particular paragraph.

MR. BERGMAN: I'm going to object. I can't have you coach the witness.

MR. OLSEN: I'm not coaching the witness.

MR. BERGMAN: You're feeding her an answer.

MR. OLSEN: No.

MR. BERGMAN: And it's improper.

MR. OLSEN: I'm just clarifying the record here.

MR. BERGMAN: You're feeding her an answer, and it's improper.

MR. OLSEN: No.

Q. (BY MR. BERGMAN) So when you look at each of Nos. 2 through 13, are these essentially each stating what your opinion is?

Namely so, No. 4 says, "Northern Title's duty to inform the buyer insured of any property contained within the contract legal description that does not belong to the seller or is otherwise encumbered."

So is that basically what your opinion is, is that Northern Title has that duty?

A. Yes.

Lenore Katri 6/14/2012

1 Q. And looking at number -- I don't want to skip
2 them. I think we'll just have to go through them.

3 No. 5, "Northern Title's duty to record a
4 warranty deed that is consistent with the written
5 purchase agreement," is that your opinion as well that
6 Northern Title has that duty?

7 A. Yes.

8 Q. No. 6, "Northern Title's duty to not modify a
9 warranty deed after it has been recorded without
10 explicit authorization from both buyers and sellers."

11 Your opinion is Northern Title has that duty?

12 A. Yes.

13 Q. No. 7, "That the modifications by Northern
14 Title made to the deed cannot be considered in any way,
15 shape, or form as merely correcting a Scribner's error.

16 Now, you're aware that there were two deeds
17 recorded; correct?

18 A. Yes.

19 Q. So when it's talking about the modification by
20 Northern Title, what is that talking about to you?

21 A. That they made changes to the document
22 regarding the legal description.

23 (Mr. Cummings enters room.)

24 MR. BERGMAN: Okay. And just for the record,
25 can we announce who is --

1 MR. BERGMAN: Oh, you're right. I'm thinking
2 of the realtors. No, I'm glad you caught me on that.

3 MR. FLAIG: You're right.

4 MR. BERGMAN: No, and the rule states that he
5 can be here. So thank you, Nathan.

6 Okay. What number were we on? Do you
7 remember? I don't.

8 Can I have the court reporter tell us which
9 number we were on.

10 THE WITNESS: We were on No. 7.

11 MR. BERGMAN: You're right. We were on No. 7.

12 Q. (BY MR. BERGMAN) So what modification is that
13 talking about to you, or what do you understand that to
14 mean?

15 A. I understand it to mean that there was a
16 change in the legal description on the property.

17 Q. And, to your knowledge, is this referring to
18 the change that was made on the second deed?

19 A. Yes.

20 Q. Is it your opinion that the modifications that
21 were made on that second deed by Northern Title made to
22 the deed cannot be considered in any way, shape, or form
23 as merely correcting a Scribner's error?

24 A. Yes.

25 Q. Does it explain there why it could not be

Lenore Katri 6/14/2012

1 considered a Scribner's error?

2 A. It does not.

3 Q. Does it explain any documents that you relied
4 on as to why it could not be explained as a Scribner's
5 error?

6 A. No.

7 Q. Looking at No. 8, "Whether it is appropriate
8 to issue a title policy more than eight months after the
9 transaction has closed, including whether a title
10 company" -- there's a typo here, but "a title company
11 justified in delaying that policy because it claims that
12 it was waiting for instructions from the buyer to deed
13 the property to a trust."

14 Did I read that correctly?

15 A. Yes.

16 Q. Now, it states that there in a form of a
17 question of whether it is appropriate.

18 Have you formed an opinion on that issue?

19 A. No.

20 Q. You have not?

21 A. Hmm-um.

22 Q. Okay. No. 9, "Whether it is appropriate for
23 Northern Title to issue a title policy for a legal
24 description that is different from the title commitment
25 and the purchase and sale agreement and after explicit

1 internal direction to issue the policy according to the
2 contract and title commitment," again, that's stated in
3 the form of a question of whether it is appropriate.

4 Have you formed an opinion as to that issue?

5 A. Yes.

6 Q. And is your opinion essentially that it was
7 not appropriate for Northern Title to issue a title
8 policy for a legal description that is different from a
9 title commitment and a purchase and sale agreement and
10 after explicit internal direction to issue the policy
11 according to the contract and title commitment?

12 A. Yes.

13 Q. Does it say in No. 9 your reasons for why that
14 would be inappropriate?

15 A. No.

16 Q. Does it say in No. 9 the specific documents or
17 information you relied on in forming that opinion?

18 A. No.

19 Q. No. 10, "Northern Title's duty to remain a
20 neutral party as escrow and closing officer and to
21 disclose any actual or perceived conflicts of interest."

22 Is it your opinion that Northern Title has a
23 duty to remain a neutral party as escrow and closing
24 officer and disclose any actual or perceived conflicts
25 of interest?

Lenore Katri 6/14/2012

1 A. Yes.

2 Q. And does it state in No. 10 the reason for why
3 your opinion is that?

4 A. No.

5 Q. Does it state in No. 10 the documents that you
6 relied on --

7 A. No.

8 Q. -- in forming that opinion? Sorry.

9 A. No.

10 Q. This is fun.

11 No. 11, "Northern Title's fiduciary duty
12 toward its insured, in particular after it has become
13 aware of a potential claim."

14 Is it your opinion that Northern Title has a
15 fiduciary duty to its insured, in particular after it
16 has become aware of a potential claim?

17 A. Yes.

18 Q. Does it state in No. 11 the reason for your
19 opinion on that?

20 A. No.

21 Q. Does it state in No. 11 any documents that you
22 relied on in forming your opinion on that?

23 A. No.

24 Q. No. 12, "Northern Title's duty not to delete
25 or destroy records once it has become aware that there

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1 is a claim."

2 It is it your opinion that Northern Title had
3 a duty not to delete or destroy records once it has
4 become that there has been a claim?

5 A. Yes.

6 Q. Does it a say in No. 12 the reason of why your
7 opinion is that?

8 A. No.

9 Q. Does it say in No. 12 any documents or
10 specific data that you relied on for that?

11 A. No.

12 Q. No. 13, "Northern Title has a duty to properly
13 respond to and remedy its insured when it has become
14 aware that there's a defect in the property insured."

15 Is it your opinion that Northern Title has a
16 duty to properly respond to and remedy its insured when
17 it has become aware that there is a defect in the
18 property insured?

19 A. Yes.

20 Q. And does it explain in No. 13 the reason why
21 your opinion is that?

22 A. No.

23 Q. And in No. 13, does it explain any specific
24 documents or information you relied on in forming that
25 opinion?

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1 A. No.

2 Q. No. 14 is really a catchall.

3 So I'll just ask you: Aside from those issues
4 that we've just read and aside from No. 8 which you said
5 you haven't formed an opinion on, are there any other
6 issues not listed here that you have formed an opinion
7 on?

8 A. No.

9 Q. So these are all of the issues that you have
10 formed an opinion on to this date?

11 A. Yes.

12 Q. Sorry. I know that was tedious.

13 When did you first hear about this real estate
14 transaction between Cummings and Stephens?

15 A. When Mr. Olsen came to my office and asked if
16 I would be a witness.

17 Q. Okay. And when was that?

18 A. I don't recall.

19 Q. Do you think it was --

20 A. Three or four months ago maybe.

21 Q. Okay. So three or four months ago?

22 A. Yeah.

23 Q. Now, obviously, you've spoken with Mr. Olsen
24 about this matter; correct?

25 A. Yes.

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1 commitment that was issued in the case or at least that
2 was issued in the relevant time period of the case?

3 A. We haven't really discussed much of it. He
4 gave me copies of documents.

5 Q. Okay. Do you have with you the copies of the
6 documents that he gave you?

7 A. Yes.

8 Q. And so are these the documents that you relied
9 on in forming your opinion?

10 A. Yes.

11 Q. Aside from those documents that you've brought
12 with you, is there anything else that you've relied on
13 in forming your opinion?

14 A. Just the general -- I don't know what you'd
15 say, but generally what an escrow officer does in her
16 closings and what he or she needs to do.

17 Q. And that would be through your 34 years of
18 experience; right?

19 A. Yes.

20 MR. BERGMAN: Can we take a short break?

21 MR. OLSEN: Sure.

22 MR. BERGMAN: Is it all right if I look
23 through these documents and see what we're going to be
24 going through? I just want to see what you've got here.

25 (Off the record.) (Break taken from 10:10

Lenore Katri 6/14/2012

1 Q. Okay. So I'm kind of trying to take us at
2 least document-wise through the steps here.

3 So we have this order, we have what looks like
4 happened is this title commitment is getting prepared,
5 and then we also have what looks like there have been
6 some title searches that have been conducted; correct?

7 A. Yes.

8 Q. After that, we have the exhibit number -- it
9 has been previously marked as Exhibit No. 35. This is
10 also an exhibit that was previously produced in
11 Lori Thornock's deposition.

12 Have you seen this document before Ms. Katri?

13 A. I believe it was in the last booklet that I
14 received to review, which I got on Tuesday afternoon.
15 So these last documents I went through really fast.

16 Q. So you were just given a set of documents this
17 last Tuesday?

18 A. Yes.

19 Q. And what were you given last Tuesday?

20 A. This book.

21 Q. That whole binder there?

22 A. Yes.

23 MR. BERGMAN: I think what we're going to have
24 to do for this deposition, Nathan, is just mark that
25 whole binder as an exhibit so that we have the documents

Lenore Katri 6/14/2012

1 that she has relied on. And we'll mark it as exhibit --
2 the last exhibit.

3 MR. OLSEN: Maybe we'll do it -- I think we've
4 discussed before that this whole binder was submitted.

5 MR. BERGMAN: Right. I know it has been
6 submitted. But I aim to be able to look back and see
7 what we're talking about in this deposition.

8 MR. OLSEN: All right.

9 MR. FLAIG: Don't you want that other
10 loose-leaf stuff too?

11 MR. BERGMAN: Yeah, the whole thing. I'll
12 have this No. 3 and then this loose-leaf stuff be No. 4.

13 MR. OLSEN: Okay.

14 Q. (BY MR. BERGMAN) So the stuff that we're
15 going to be marking as No. 4, you received before?

16 A. This?

17 Q. Yes.

18 A. Yes.

19 Q. So, just for the record, the documents that
20 you received earlier, when did you receive these, do you
21 know?

22 A. Maybe 30 days ago.

23 Q. Okay. So about a month ago.

24 And then this binder that will be marked as
25 Exhibit No. 3 you received last Tuesday?

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A. Yes.

(Deposition Exhibit Nos. 3 and 4 were marked.)

Q. Do you recall ever looking at that Exhibit No. 35?

A. I'm pretty sure it's in this binder. If I looked at it, I just skimmed through it because I didn't have time.

Q. So it wouldn't be something you used to formulate your opinion today?

A. No.

MR. OLSEN: Counsel, I'm going to say that I'm going to need to make a copy of this because I think this is my original copy of this subpoena. I probably have a copy of this, but I want to make sure I have one before I -- so I guess we can --

MR. BERGMAN: We can make a copy at the end.

MR. OLSEN: A copy at the break. Okay.

MR. BERGMAN: I just ask on the record that it be preserved as it is now.

MR. OLSEN: Um-hmm.

Q. (BY MR. BERGMAN) I'm going to hand you what has been previously marked as Exhibit No. 42.

Have you ever seen this document before?

A. Yes.

Q. And when do you recall reviewing that

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)	
residing in Montana,)	
Plaintiff,)	
vs.	)	Case No. CV-2009-183
ROGER L. STEPHENS, an individual)	
residing in Providence, Utah,	)	DEPOSITION OF
NORTHERN TITLE COMPANY OF IDAHO,	)	GREGORY KELLEY
INC., and Idaho Corporation, JOHN	)	JUNE 14, 2012
DOES I-X,)	
Defendants.)	

(Caption continued to next page)

REPORTED BY:

TIFFANY FISHER, CSR No. 979, RPR

Notary Public

Gregory Kelley 6/14/2012

1 the attachment of the amendments and --

2 A. I think there was --

3 Q. Formatting changes?

4 A. -- formatting changes and grammatical changes,
5 just one or two that maybe that were made.

6 MR. BERGMAN: Can we have this marked as
7 Exhibit No. 11.

8 (Deposition Exhibit No. 11 was marked.)

9 Q. (BY MR. BERMAN) Now, do you know what's
10 contained in Exhibit No. 11?

11 A. Yes. It's the body of this report without the
12 information that's in the addendum.

13 Q. Did you provide that to Nathan last night?

14 A. I did.

15 Q. So Exhibit No. 11 isn't your complete report;
16 correct?

17 A. Yes, absent the addendum items, nine maps, and
18 the plats and the photos and all of the addendum items.

19 Q. The addendum items, are those the documents
20 that basically you relied on while you were doing this
21 appraisal?

22 A. Yes.

23 Q. Let's look at the addendums here that you have
24 in Exhibit No. 10. Let's see if we can start at the
25 right place.

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

Attorneys for Plaintiff, Steven B. Cummings

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing

Case No.: CV-09-183

AFFIDAVIT OF NATHAN M. OLSEN
IN SUPPORT OF MOTION TO
EXCLUDE DEFENDANT, NORTHERN
TITLE COMPANY'S EXPERT
WITNESSES AND TESTIMONY AND
FOR SANCTIONS INCLUDING
ATTORNEY FEES UNDER IRCP 37(b)

1 | Affidavit of Nathan M. Olsen in Support of Motion to
Exclude Defendant, Northern Title Company's Expert
Witnesses and Testimony and for Sanctions Including
Attorney Fees Under IRCP 37(b)

in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC, an Idaho Limited Liability Company, JOHN DOES I-X,

Third Party Defendants.

STATE OF IDAHO)
) ss.
County of Bonneville)

I, **Nathan M. Olsen**, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

1. On or about March 12, 2012, Defendant Northern Title Company of Idaho, Inc. (Northern Title) filed an "Amended Witness Disclosure and Third Party Plaintiff Witness Disclosure" naming only one expert witness, a "Craig Warren" as an expert Certified General Appraiser expected to "testify concerning the appraisal value of the property." (A true and correct copy is attached as "Exhibit A.") No other information was provided with regard to Mr. Warren pursuant to I.R.C.P. 26(b)(4)(A)(I), including any written report.

2. On or about May 2, 2012, I propounded written discovery to Northern Title, electing under I.R.C.P. 26(b)(4) to obtain information about Northern Title's expert by "interrogatory." I specifically requested the following:

- (1) a complete statement of all opinions to be expressed and the basis and reasons therefor;
- (2) the data or other information considered by the witness in forming

2 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

the opinions; (3) any exhibits to be used as a summary of or support for the opinions; (4) any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (5) the compensation to be paid for the testimony; and (6) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

3. On June 4, 2012, Northern Title responded to this interrogatory as such:

Defendant Northern Title has not yet obtained a statement of opinions from expert witnesses in this matter.

The response then indicates that Northern Title retained two expert witnesses "Craig Warren" and "Werner Rosenbaum." The response provides absolutely no other information about these potential witnesses, including even the topic of their testimony. A true and correct copy of Northern Title's responses are attached as "Exhibit B" (see page 8 and 9).

4. Northern Title's principal owner and agent, Jay Davis, signed a sworn verification of the responses testifying that he "read the foregoing" responses, and "knows and understands the contents thereof" and that "the same are true of his knowledge." (See Page 19 Exhibit B)

5. According to the Court's "Order Setting Jury Trial" Northern Title's expert witness disclosures were due no later than April 15, 2012. Moreover, all discovery should have been completely responded to and supplemented by June 2, 2012.

6. On behalf of the Plaintiff, I timely disclosed two experts, escrow officer, Lenore Katri, and appraiser, Greg Kelley. Pursuant to a May 8, 2012 "Amended Notice of Taking Deposition of Gregory Kelley," Northern Title elected to discover facts known and opinions of Mr. Kelley by deposition, which was taken on June 14, 2012. (A true and correct copy of which is attached

3 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

as Exhibit C.) I have never received any interrogatory from Northern Title requesting any additional information, opinions, etc... from Mr. Kelley. Further, Northern Title's notice of deposition requests no such information or documents, but simply that Mr. Kelley provide his oral examination. About two days before the deposition, I received an e-mail request from Northern Title attorney, Aaron Bergman, requesting Mr. Kelley's appraisal report. Because we had not received such a request before, Mr. Kelley was anticipating to have that report prepared and submitted at the time of the deposition. Nevertheless, after receiving this request, I pressed Mr. Kelley to finish his report which we then provided a draft of one day prior to the deposition. Mr. Kelley was questioned for more than six hours about his qualifications, report and opinion by Defendants' attorneys.

7. During Mr. Kelley's deposition, I noticed Roger Stephens' attorney, Jason Flaig, and Northern Title attorney, Aaron Bergman, referring to a document that I had never seen nor had been provided. At least a couple of times I observed Mr. Flaig and Mr. Bergman glancing at the document, nudging each other and even snickering at one point. About four hours into the deposition, Mr. Bergman marked as an exhibit a document entitled "Uniform Agricultural Appraisal Report" prepared by "Craig Warren" for "Northern Title" on February 7, 2012. I had not been provided this document on that very moment (about 6:00 PM on June 14, 2012.) Mr. Kelley had also never seen this report. Over my strenuous objection, the Defendants' attorneys proceeded to question Mr. Kelley for another two hours in relation to the document. A true and correct copy of the cover page of this report is attached as Exhibit D.

8. As of the date of this affidavit, I have yet to be provided any additional information

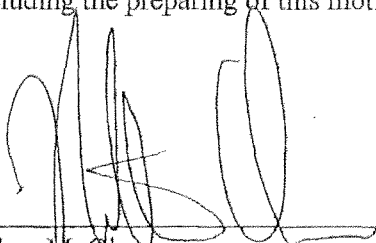
4 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

whatsoever with regard to Northern Title's named experts. I have not received any background or qualifications of these individuals, no opinions (other than the alleged "appraisal report" prepared several months ago but not provided until June 14), facts or documents relied upon in such opinions, etc...

9. In some fashion or another, Northern Title and its attorneys have been involved in this case since March of 2010. Stephens initially filed a 3rd party claim against Northern Title that was withdrawn. However, Northern Title's attorneys appeared as "co-counsel" for Stephens (in actuality was merely a disguise to represent Northern Title's own interest). The Plaintiff amended his complaint in June of 2011 to add Northern Title as a Defendant.

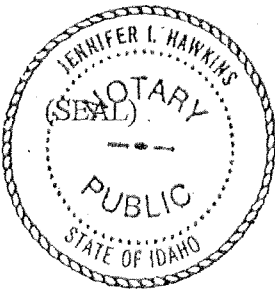
10. To date, I have incurred no less than 14 hours of attorney time to address the Defendants' violations with regard to expert disclosures, and in particular, the surprise appraisal report provided at Mr. Kelley's June 14, 2012, deposition. These costs include the time spent defending Mr. Kelley's deposition and the aftermath including the preparing of this motion.


DATED this 19 day of June, 2012.



Nathan M. Olsen

SUBSCRIBED AND SWORN to before me this 19 day of June, 2012.




Notary Public for State of Idaho
Residing at: Rigley, Idaho
My Commission Expires: 06-27-2012

5 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 19 day of June, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

mail () hand () fax email
Attorneys for Roger L. Stephens

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbeamson@bearnsonlaw.com

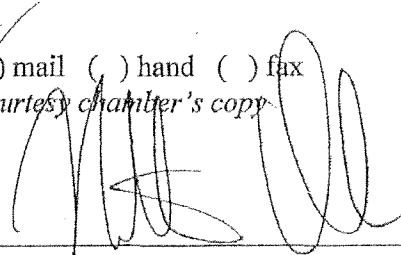
mail () hand () fax email
Attorneys for Northern Title Company

Phillip J. Collaer, Esq.
Brian K. Julian, Esq.
ANDERSON, JULIAN & HULL LLP
250 South Fifth Street, Suite 700
P.O. Box 7426
Boise, Idaho 83707-7426
FAX: (208) 344-5510
EMAIL: pcollaer@ajhlaw.com

mail () hand () fax email
*Attorneys for Dorothy Julian, Evan,
Skinners, Ryan Olsen, and Exit Realty,
of Bear Lake, LLC*

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

mail () hand () fax
courtesy chamber's copy



Nathan M. Olsen

6 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Brad H. Bearnson (I.S.B. 7086)
 Aaron K. Bergman (I.S.B. 8878)
 BEARNSON & CALDWELL, LLC
 399 North Main, Suite 270
 Logan, Utah 84321
 Telephone: (435) 752-6300
 Facsimile: (435) 752-6301
 Email: bbearnson@bearnsonlaw.com
 Email: abergman@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
 residing in Montana,)

Case No. CV-2009-183

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
 residing in Providence, Utah,)
 NORTHERN TITLE COMPANY OF)
 IDAHO, INC., an Idaho Corporation,)
 JOHN DOES I-X.)

**AFFIDAVIT OF AARON K. BERGMAN
 IN SUPPORT OF MOTION TO
 RECONSIDER**

Defendants.)

Case No. CV-09-183

ROGER L. STEPHENS, an Idaho)
 corporation,)

Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
 residing in Eagle, Idaho, EVAN)
 SKINNER, an individual residing in)
 Montpelier, Idaho, RYAN OLSEN, an)
 individual residing in Georgetown,)
 Idaho, EXIT REALTY OF BEAR)
 LAKE, LLC an Idaho Limited Liability)
 Company, JOHN DOES 1-X.)

Third Party Defendants.)

expert Kelley's testimony, Mr. Warren believes the change in time period would impact the valuation if the relevant sales period were 2007 rather than 2012.

5. Given the above information gained after the hearing of July 3, 2012, I am now of the belief that Plaintiff's late expert disclosures would directly impact Northern Title's expert opinions. Where Plaintiff intentionally withheld any appraisal report until the time of the deposition on June 14, 2012, this discrepancy was not detected until that late date.

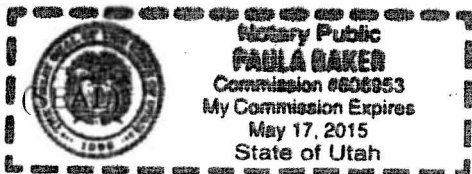
FURTHER AFFIANT SAYETH NOT.


Dated this 11th day of July, 2012.



AARON K. BERGMAN

SUBSCRIBED AND SWORN TO before me this 11th day of July, 2012.





NOTARY PUBLIC
Residing at: _____
My Commission Expires: _____

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)	
residing in Montana,)	
Plaintiff,)	
vs.	)	Case No. CV-2009-183
ROGER L. STEPHENS, an individual)	
residing in Providence, Utah,	)	DEPOSITION OF
NORTHERN TITLE COMPANY OF IDAHO,	)	GREGORY KELLEY
INC., and Idaho Corporation, JOHN	)	JUNE 14, 2012
DOES I-X,)	
Defendants.)	

(Caption continued to next page)

REPORTED BY:

TIFFANY FISHER, CSR No. 979, RPR

Notary Public

Gregory Kelley 6/14/2012

1 A. I'm not sure if it impacted significantly down
2 there because most of what's grown in this area is hay.
3 There's a lot of livestock generations. There's some
4 grain down there, but it has got a lot shorter growing
5 season that you've got out here than out west and
6 Pocatello. And growing season is a huge factor, so you
7 don't have the same quality of crop.

8 So that makes a difference when I talk about a
9 high-production property.

10 Q. I believe you mention in your report that
11 there's some properties that were just kind of
12 speculative properties that totally just tanked, and
13 then there's other properties -- or maybe it's something
14 you talked about today.

15 But there's some other properties that might
16 have some speculative component but also might have an
17 agricultural component that kept the price somewhat
18 stable; is that correct?

19 A. That's correct.

20 Q. Okay. So my question is: Is the subject
21 property, the area that this is in, looking at the
22 subject property specifically, is this the kind of
23 property that kind of even though it has some investment
24 potential was able to maintain some -- or at least be
25 stable despite the spike we see in the residential

Gregory Kelley 6/14/2012

1 housing industry, for instance?

2 A. I think, generally speaking, yes, this one --
3 this area didn't rise to too high. Therefore, it didn't
4 fall too far. It probably maintained relatively status
5 quo. You find some other areas that spiked really high,
6 and they dropped really far too.

7 Q. But this wasn't one of those areas?

8 A. I don't think so. Generally speaking, I don't
9 think it would be.

10 Q. Earlier you talked about this Western Ag
11 Credit place that you worked with in Logan?

12 A. I didn't work with them, but I --

13 Q. You didn't work with them?

14 A. I just turned to them for sales data. They're
15 one of my sources for sales data.

16 Q. Explain to me what your relationship is with
17 them.

18 A. Oh, I know a couple of guys that are
19 appraisers there. We go to a lot of the same meetings.
20 I guess in line of full disclosure, Jackson Love is
21 married to one of my nieces.

22 Q. Well, now you're on the hook.

23 A. But that -- he didn't influence me in any way.
24 And, again, he doesn't know which property I was
25 appraising. I was looking for sales in that area, and

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO
July 17, 2012 9:08 am
DATE TIME
CLERK

DEPUTY CASE NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual
residing in Montana,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah,
NORTHERN TITLE COMPANY OF IDAHO,
INC., an Idaho corporation,
JOHN DOES I-X,

Defendants.

CASE NO. CV-2009-183

MINUTE ENTRY
&
ORDER

On July 17, 2012, Nathan M. Olsen, counsel for Plaintiff Steven Cummings, Randall C. Budge, counsel for Defendant Roger Stephens and Aaron Bergman and Brad Bearson, counsel for Defendant Northern Title Company were present in the courtroom. The court reporter was Stephanie Morse and the court clerk was Karen Volbrecht.

This matter was set for motion hearings and pretrial conference. The following motions were noticed up for hearing; Cummings' Motion for Sanctions and Other Appropriate Remedies under IRCP 37b for Failure to Comply with Discovery, Cummings' Motion for Leave to Amend Complaint to Allege Punitive Damages, Northern Title's Motion in Limine to Exclude Lenore Katri and Gregory Kelley, Northern Title's 2nd Motion in Limine with Request to File Over-Length Memorandum, Northern Title's Motion to Reconsider the July 5th Memorandum Decision

on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline for Expert Witnesses, Northern Title's Motion to Reconsider to Exclude Curtis Baum and for the Imposition of Appropriate Sanctions, Northern Title's Third Motion in Limine and Stephens' Motion in Limine.

The Plaintiff's Motion for Sanctions & Other Appropriate Remedies under IRCP 37b for Failure to Comply with Discovery was argued by counsel. The Court DENIED the motion for sanctions. The Court will allow Evan Skinner and Jay Davis to be deposed within the next two weeks. The Court will not require Defendant Roger Stephens to be deposed by counsel for the Plaintiff.

The Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages was argued by counsel. The Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages was DENIED without prejudice.

The Defendant Northern Title's Motion in Limine to Exclude Lenore Katri and Gregory Kelley was argued by counsel. The Court ruled that Gregory Kelley and Lenore Katri will not be allowed to testify as expert witnesses due to the late disclosure. The Court will allow Ms. Katri to testify as an escrow officer regarding her opinions if the proper foundation is given to qualify her as an expert witness.

The Defendant Northern Title's Motion to Reconsider was heard. The Court DENIED the Motion to Reconsider.

The Defendant Northern Title's Motion to Reconsider to Exclude Curtis Baum and for the Imposition of Appropriate Sanctions was argued by counsel. The Court DENIED the Motion to Reconsider to Exclude Curtis Baum and for the Imposition of Appropriate Sanctions.

The Defendant Stephens' Motion in Limine shall be heard on July 30, 2012.

The Defendant Northern Title's Third Motion in Limine was argued. The Court will take this matter UNDER ADVISEMENT and issue a decision shortly.

The pretrial conference was held. The issue of the request for jury trial was addressed. The Plaintiff has requested a jury trial against the portion of the complaint involving Northern Title only. Counsel for the Defendant Roger Stephens requested a court trial be held their portion of the complaint. Counsel for the Plaintiff stated he is considering the entire matter being held as a court trial. Counsel for the Plaintiff is to advise the Court and opposing parties whether this matter shall be held as a court trial or jury trial by 5:00 pm on July 17, 2012.

The Court will take into consideration testimony that has been acquired prior to trial. Any new testimony shall be by stipulation only. Any witness testimony to be admitted by deposition only shall be by stipulation.

Each party shall disclose their potential witnesses and exhibit lists no later than seven (7) days before trial. Copies of the exhibits shall be submitted to the Court in chambers no later than two (2) days before trial. During trial, each party shall disclose the witnesses to be testifying the day prior to their testimony. The trial will run from 9:00 am to 5:00 pm each day, with an hour for lunch and fifteen (15) minute breaks in the morning and afternoon. The trial is scheduled for three (3) to four (4) days.

Any motions in limine shall be heard on Monday, July 30, 2012 at 2:00 pm at the Bear Lake County courtroom.

IT IS SO ORDERED.

DATED this 17th day of July, 2012.



DAVID C. NYE
Sixth District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 18th day of July, 2012, I mailed/served a true copy of the foregoing document on the attorney(s) / person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

ATTORNEY(S) / PERSON(S)

Nathan M. Olsen
BEARD ST. CLAIR GAFFNEY, PA
2105 Coronado Street
Idaho Falls, ID 83404

Facsimile 524-3391

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

Facsimile 232-6109

Brad Bearnson
BEARNSON & PECK
399 N. Main Street, Ste 300
Logan, UT 84321

Facsimile (435)752-6301

KERRY HADDOCK,
Clerk of the Court

By 
Deputy Clerk

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO
July 30, 2012 2:23pm
DATE TIME
CLERK

DEPUTY CASE NO.

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual
residing in Montana,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah,
NORTHERN TITLE COMPANY OF IDAHO,
INC., an Idaho corporation,
JOHN DOES I-X,
Defendants.

CASE NO. CV-2009-183

MINUTE ENTRY
&
ORDER

On July 30, 2012, Nathan M. Olsen, counsel for Plaintiff Steven Cummings, Randall C. Budge, counsel for Defendant Roger Stephens, Aaron Bergman and Brad Bearnson, counsel for Defendant Northern Title Company were present in the courtroom. The court reporter was Stephanie Morse and the court clerk was Karen Volbrecht.

This matter was set for motion hearing. The following motions were noticed up for hearing: Cummings' Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley, Stephens' Motion in Limine and Northern Title's 3rd Motion in Limine.

Cummings' Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley was argued by counsel. The Court DENIED the motion to reconsider.

Stephens' Motion in Limine and Northern Title's 3rd Motion in Limine were argued by

315

counsel. The Court will issue a ruling on these matters in the written decision following trial.

IT IS SO ORDERED.

DATED this 30th day of July, 2012.



DAVID C. NYE
Sixth District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 15th day of August, 2012, I mailed/served a true copy of the foregoing document on the attorney(s) / person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

ATTORNEY(S) / PERSON(S)

Nathan M. Olsen
BEARD ST. CLAIR GAFFNEY, PA
2105 Coronado Street
Idaho Falls, ID 83404

Hand Deliver

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

Hand Deliver

Brad Bearnson
BEARNSON & PECK
399 N. Main Street, Ste 300
Logan, UT 84321

Hand Deliver

By 
Deputy Clerk

Brad H. Bearson (I.S.B. 7086)
 Aaron K. Bergman (I.S.B. 8878)
 BEARNSON & CALDWELL, LLC
 399 North Main, Suite 270
 Logan, Utah 84321
 bbearson@bearsonlaw.com
 Attorneys for Defendant Northern Title

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO
 2019 FEB 12 PM 2:59
 KERRY HADDOCK, CLERK
 DEPUTY _____ CASE NO. _____

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)	
residing in Montana,	)	Case No. CV-2009-183
)	
Plaintiff,)	
)	
vs.)	
)	
ROGER L. STEPHENS, an individual	)	NORTHERN TITLE'S OBJECTION
residing in Providence, Utah,	)	AND MOTION TO QUASH
NORTHERN TITLE COMPANY OF	)	PLAINTIFF'S REQUEST FOR COSTS
IDAHO, INC., an Idaho Corporation,	)	AND ATTORNEY FEES
JOHN DOES I-X.)	
)	
Defendants.)	
)	

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,
 (hereinafter "Northern Title"), by and through counsel, and pursuant to Rule 54 submits this
Objection and Motion to Quash Plaintiff's Request for Costs and Attorney Fees.

I. FROM THE OVERALL VIEW OF THE CASE, CUMMINGS WAS NOT THE PREVAILING PARTY.

Under Rule 54, "the court must consider, among other things, the extent to which each party prevailed relative to the 'final judgment or result.'" *Puckett v. Verska*, 144 Idaho 161, 169, 158 P.3d 937, 945 (Idaho 2007). (citing *West Wood Invs., Inc. v. Acord*, 141 Idaho 75, 88, 106 P.3d 401, 414 (2005)). In regards to which party prevails, the Idaho Supreme Court explained "the

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IOWA

5018 FEB 13 PM 5:29

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

prevailing party question is examined and determined from an overall view, not a claim-by-claim analysis.” *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 719, 117 P.3d 130, 134 (Idaho 2005). (emphasis added).

Even though Northern Title is a Defendant, Northern Title was clearly the prevailing party.

A defendant’s successful defense is just as tangible as a plaintiff’s success:

The district court improperly undervalued the [defendant’s] successful defense. Avoiding liability is a significant benefit to a defendant. In baseball, it is said that a walk is as good as a hit. The latter, of course, is more exciting. In litigation, avoiding liability is as good for a defendant as winning a money judgment is for a plaintiff. The point is, while a plaintiff with a large money judgment may be more exalted than a defendant who simply walks out of court no worse for the wear, courts must not ignore the value of a successful defense.

Eighteen Mile Ranch, LLC, 141 Idaho at 719, 117 P.3d at 134.

Here, the case ultimately involved three parties, with Cummings as Plaintiff bringing his claims against Roger Stephens and Northern Title. Cummings failed to prevail as to any claims alleged against Stephens. See *Minute Entry and Order*, 5 (Aug. 3, 2012). As to Northern Title: Plaintiff failed to state a claim upon which relief could be granted¹ for his breach of warranty and conversion claims; Plaintiff’s negligence per se claims were barred by the specific terms of the Escrow General Provisions²; Plaintiff failed to prove Breach of Good Faith and Fair Dealing or Slander of Title where Northern Title acted in good faith³; Plaintiff’s Breach of Insurance Policy Agreement claim failed for lack of privity⁴; and Plaintiff failed to prove damages on his Breach of the General Escrow Provisions claim and Infliction of Emotional Distress claim. See

1 See Northern Title’s First Affirmative Defense.

2 See Northern Title’s Fifth Affirmative Defense.

3 See Northern Title’s Sixth Affirmative Defense.

4 See Northern Title’s Sixth and Eleventh and Twentieth Affirmative Defense.

Memorandum Decision, Findings of Fact and Conclusions of Law, 48 (Jan. 22, 2013). Therefore, of the nine (9) causes of action brought against Northern Title, Northern Title prevailed on eight (8). See *Minute Entry and Order*, 5 (Aug. 3, 2012); see also *Memorandum Decision, Findings of Fact and Conclusions of Law*, 48 (Jan. 22, 2013).

Plaintiff failed to prevail on all of his claims against Stephens, and on eight of his nine claims against Northern Title. Therefore, Plaintiff is not the prevailing parties, and under Rule 54 the Court should not award him costs and fees.

II. PLAINTIFF HAS MISCONSTRUED THE COURT'S DECISION: HE FAILED TO PREVAIL ON THE "GRAVAMAN" AND "CORE" OF HIS CASE.

When proving a breach of contract, "[t]he plaintiff has the burden of production and persuasion throughout the trial." *Watkins Co. v. Storms*, 152 Idaho 531, 539, 272 P.3d 503, 511 (Idaho 2012). (citing *Schroeder v. Partin*, 151 Idaho 471, 476, 259 P.3d 617, 622 (2011)). (discussing duty of plaintiff to prove damages at breach of contract claim). Hence, the "burden is upon the plaintiff to prove not only that it was injured, but that its injury was the result of the defendant's breach; both amount and causation must be proven with reasonable certainty." *Griffith v. Clear Lakes Trout Co., Inc.*, 143 Idaho 733, 740, 152 P.3d 604, 611 (Idaho 2007). (citing *Magic Valley Truck Brokers, Inc. v. Meyer*, 133 Idaho 110, 116, 982 P.2d 945, 951 (Ct.App.1999)). Similarly, a plaintiff must prove not only that a contract existed and that it was breached, but also that plaintiff has been damaged and the amount of the damages. See IDJI 6.10.1.

Cummings failed to prove the gravaman of his case. Cummings admits that the breach of the escrow agreement was "integral to Cummings' claims, or constitute[ed] the 'gravaman' of the lawsuit." *Mem. of Auth. In Supp. of Pl's. Mem. of Fees & Costs Against Def. Northern Title*, 4

(February 5, 2013). However, Cummings misconstrues the Court's order and final judgment. According to Cummings, he seeks fees and costs "for prevailing on his claims against defendant Northern Title Company of Idaho, Inc. (Northern Title) of breach of escrow contract, gross negligence and/or willful misconduct (as provided under the contract.)" *Id.* at 1-2. According to Cummings, he prevailed on the breach of contract claim, which was "his core claims." *Id.* at 5.

Cummings' interpretation does not comport with the *Memorandum Decision, Findings of Fact and Conclusions of Law*. The Court found that an Escrow General Provision had been breached with gross negligence, but stated "[t]he Court is unsure as to how Cummings is damaged by Northern Title's breach of the escrow agreements," and ultimately never awarded any damages on the basis of the Escrow General Provisions. *Memorandum Decision, Findings of Fact and Conclusions of Law*, 40. Rather, the "only harm that the Court can conclude that is outside the realm of speculation is that Cummings has been proximately harmed by this negligence [of the erroneous legal description] in an amount of \$50,000." *Id.* at 42.

Similarly in *Harris, Inc. v. Foxhollow Construction & Trucking, Inc.*, the plaintiff had proven breach of the contract, but failed to prove damages. 151 Idaho 761, 769, 264 P.3d 400, 408 (Idaho 2011). ("the court found Harris' evidence too speculative to attribute any amount of damages"). The Idaho Supreme Court held "Harris' contract action against Johnson fails because Harris failed to prove up its claim for damages. The burden is upon the plaintiff to prove not only that he was injured but that its injury was the result of the defendant's breach; both amount and causation must be proven with reasonable certainty." *Id.* at 770. (quoting *Griffith*, 143 Idaho at 740, 152 P.3d at 611).

Just as in Harris, Plaintiff failed to prove with reasonable certainty that any damages were caused by the breach of the General Escrow Provisions. See *Memorandum Decision, Findings of Fact and Conclusions of Law*, 40. Therefore, in reality Plaintiff failed to prove the very “gravaman” and “core” of his lawsuit that lasted for nearly four years.

At trial Plaintiff failed to produce or even persuade the Court that he had incurred damages in relationship to the very gravaman of his case. The Court should quash Plaintiff’s request for costs and attorney fees.

III. PLAINTIFF’S REQUEST FOR COSTS AND ATTORNEY FEES ARE BARRED BY EXPRESS CONTRACT.

Under Rule 54, in “any civil action the court may award reasonable attorney fees . . . to the prevailing party . . . when provided for by any . . . contract.” Idaho R. Civ. P. 54(e)(1).

As discussed *supra*, the only basis Cummings prevailed upon was his claim against Northern Title regarding the negligent preparation of the deed description. By contract however, Northern Title is not liable for attorney fees or costs respective to such a claim. The parties agreed:

The undersigned buyers and sellers hereby **acknowledge that they have [chosen not to] have a survey completed on subject property.** If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein **agree to hold NORTHERN TITLE COMPANY OF IDAHO and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.**

Escrow General Provisions, Exhibit 111, ¶ 14.5 The Court found the following, based on

Cummings' reliance upon the erroneously drafted legal description:

Cummings was willing to pay an additional \$50,000 and purchase an assignment from the Baums in order to purchase that he believed was the entire Stephens ranch situated on both sides of the highway. This belief came based upon the negligent preparation of the legal description by Northern Title . . . [t]he only harm that the Court can conclude that is outside the realm of speculation is that Cummings has been proximately harmed by this negligence in an amount of \$50,000. (Jan. 22, 2013).

Memorandum Decision, Findings of Fact and Conclusions of Law, 42. (emphasis added). Per the above contract provision however, Cummings waived and agreed to hold Northern Title harmless in respect to the contents of the legal description.

Furthermore, Cummings agreed to indemnify Northern Title on the very "gravaman" of Plaintiff's case:

If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent, **the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by gross negligence or willful misconduct of Escrow Agent.**

Escrow General Provisions, Exhibit 111, ¶ 17.6 As discussed *supra*, Plaintiff failed to prove causation or any amount of damages in regards to Northern Title's breach of the Escrow General Provisions. See *Memorandum Decision, Findings of Fact and Conclusions of Law*, 40. Where Plaintiff failed to prove any damages, it cannot be said that the Escrow Agent incurred "liabilities, damages and costs . . . **caused by** gross negligence or willful misconduct of Escrow Agent." *Id.*

⁵ Referring to Trial Exhibit 111.

⁶ Notably, the "Escrow Agent" never agreed to indemnify Cummings.

(emphasis added). Rather according to the Court, the sole “liabilities, damages and costs” incurred by Northern Title were caused by Northern Title’s erroneous legal description. See *Memorandum Decision, Findings of Fact and Conclusions of Law*, 40. Therefore, Cummings’s request for fees is barred, and indeed the contractual provisions indicate fees and costs are owed to Northern Title.

The Court should quash Plaintiff’s request for attorney fees where he has contractually indemnified Northern Title against an erroneous legal description, and where Plaintiff has agreed to indemnify Northern Title in the absence of “liabilities, damages and costs” caused from the breach of contract.

IV. PLAINTIFF’S PERSONAL ATTACKS ARE WITHOUT MERIT, AS ARE HIS ATTEMPTS TO ATTRIBUTE ALL OF HIS COSTS AND ATTORNEY FEES TO NORTHERN TITLE’S MOTIONS AGAINST PLAINTIFF.

Plaintiff’s alleged costs and attorney fees cannot be isolated against Northern Title. First, Plaintiff strives to paint Northern Title in an incredulous light. As to the cancelled mediation, such was cancelled not by Northern Title, but by Exit Realty and the Realtors who were then parties yet refused to participate in mediation. See *Bearnson Dec. 6, 2011 Ltr.*, attached hereto as Exhibit “A.” As to Mr. Brad Bearnson appearing as co-counsel for Roger Stephens, there was no “guise” in that process as Plaintiff alludes. Northern Title was not yet a party, and Roger Stephens accepted to having Mr. Bearnson as his co-counsel. See *Notice of Appearance of Co-Counsel* (filed Apr. 28, 2010). The Court should not be duped by Cummings’ personal attacks.

Second, the Court should not be fooled by Plaintiff’s attempt to attribute all of his costs and fees to Northern Title through repeated complaints regarding Northern Title’s motion practice.

Plaintiff filed his Complaint on July 28, 2009. (*Pl's. Compl.* July 28, 2009). Northern Title did not enter an appearance until over two years later. See *Appearance for Northern Title*, Oct. 6, 2011. Northern Title did not even file a motion against Plaintiff until over eight (8) months after Northern Title appeared. See Northern Title's *Request for Leave to Make Expert Disclosures* (filed June 12, 2012). By this time, Plaintiff had expended costs and attorney fees of forty-seven thousand, one hundred and sixty-seven dollars and twenty-six cents. (\$47,167.26). See *Pl's. Mem. of Costs & Atty. Fees & Aff'd. Nathan M. Olsen*, 2-12.

From Northern Title's first motion until the first day of trial, Plaintiff expended an additional forty thousand and thirty-one dollars and forty-five cents in attorney fees (\$40,031.45). *Id.* at 12-17. Of that, only six thousand, two hundred and ninety-four dollars and thirty cents (\$6,294.30) was incurred⁷ in direct relationship to motions by Northern Title:

06/06/2012	Receipt and review of Northern Title's "Request for Leave to Make Expert Disclosures"	\$350.00
06/18/2012	Receipt and review of Northern Title's Motion to Exclude Curtis Baum. Review prior correspondence. Draft correspondence to Northern Title's attorney.	\$385.00
06/18/2012	Receipt & review of Northern Title's objection to the depositions of Evan Skinner, Curtis Baum and Jay Davis.	\$315.00
06/21/2012	Receipt and review of Northern Title's 2 nd Motion in Limine.	\$787.50
06/25/2012	Working on Response in Opposition to Northern Title's Motion in Limine to Exclude the Testimony of Curtis Baum.	\$170.00
06/26/2012	Filing response in Opposition to Northern Title's Motion in Limine to Exclude the Testimony of Curtis Baum and Affidavit of NMO in Opposition with Court and Counsel	\$28.05

⁷ Importantly, the Court found that Northern Title did not contest Plaintiff's claims unreasonably, with malice, or with bad-faith. See *Memorandum Decision, Findings of Fact and Conclusions of Law*, 11-14, 21-31.

06/26/2012	Draft & revise response and affidavit to Northern Title's Motion to Exclude Deposition of Curtis Baum.	\$577.50
07/07/2012	Receipt & Review of Northern Title's Third Motion in Limine.	\$315.00
07/09/2012	Draft & revise Plaintiff's response and affidavit in opposition to Northern Title's motion to exclude Plaintiff's expert witnesses.	\$700.00
07/10/2012	Working on Response in Opposition to NT's Second Motion in Limine and supporting Affidavit; and Response in Opposition to NT's Motion to Exclude Lenore Katri and Greg Kelley and support Affidavit; mailing to court and Judge Nye and e-mailing to opposing counsel.	\$233.75
07/10/2012	Draft & revise response to Northern Title's Motion to Exclude the Testimony of Curtis Baum.	\$262.50
07/10/2012	Draft & revise response and affidavit in opposition to Northern Title's 2nd Motion in Limine.	\$612.50
07/11/2012	Receipt & review of Northern Title's Motion for Reconsideration of Decision to exclude expert witnesses.	\$192.50
07/14/2012	Receipt & review of Northern Title's Response to Plaintiff's Motion for Sanctions (regarding objection to continuing depositions of Evan Skinner & Jay Davis), reply memorandums for Northern Title's 2nd Motion in Limine, and its motion to exclude Plaintiff's expert witnesses.	\$875.00
07/23/2012	Draft & revise response to Northern Title's 3rd Motion in Limine.	\$490

*Pl's. Mem. of Costs & Atty. Fees & Aff'd. Nathan M. Olsen, 12-17.*⁸

When trial came, Plaintiff's case in chief against both Northern Title and Stephens was substantially longer than Northern Title's case in chief.⁹ Plaintiff none the less failed to prove any

⁸ Notably, while Cummings expended much time and effort to retain the admissibility of Baum's testimony, he never introduced any testimony of Baum at trial. Additionally, while Northern Title provided a motion to reconsider the Court's exclusion of Northern Title's expert, Cummings did the exact same thing as to his own experts, and failed. See *Plaintiff's Motion to Reconsider* (filed July 24, 2012).

claims against Stephens, and failed to muster sufficient evidence on eight of the nine claims against Northern Title.

Over the span of this case, numerous parties have been involved, including Plaintiff, Defendant Stephens, Exit Realty, the Realtors, and Northern Title. The Court should disregard Plaintiff's personal attacks and unsubstantiated attempt to attribute all costs and attorney fees to Northern Title.

V. PLAINTIFF AND HIS COUNSEL VOLUNTARILY UNDERTOOK THE RISK OF A CONTINGENCY ARRANGEMENT; PLAINTIFF'S FAILURE TO PROVE HIS CASE SHOULD NOT SHIFT THAT RISK UPON NORTHERN TITLE.

Under Rule 54, the Court has several factors as a guide in determining the amount of any fee award. See Idaho R. Civ. P. 54(e)(3)(A)-(L). While the Court is required to address each factor, a few factors will be addressed herein. See *Mihalka v. Shephard*, 145 Idaho 547, 181 P.3d 473 (Idaho 2008).

First, Cummings suit was litigated on a contingency fee. See Idaho R. Civ. P. 54(e)(3)(E). According to an unsupported allegation, "Cummings' fee agreement requires him to pay the greater of 33% of awarded damages or fees in the case." *Mem. of Auth. in Supp. of Pl's. Mem. of Fees and Costs Against Def. Northern Title*, 8 (Feb. 5, 2013). A contingency fee arrangement is a clear exception to the rule that an attorney or firm shall not have a direct financial share in the subject of the litigation. See IRPC 1.5(d), cmt. 4. As the Idaho Supreme Court explains, the "usual justification" for contingency fees is the risk of non-recovery. *Griffith v. Clear Lakes Trout Co., Inc.*, 146 Idaho 613, 624-625, 200 P.3d 1162, 1173-1174 (Idaho 2009). At times, the risk

⁹ See *Trial Transcript* (of the 851 pages total, 716 pages comprise Plaintiff's case in chief, 49 pages comprise motions for directed verdict, and Northern Title took less than 86 pages to present its case-in chief).

results in a loss. Cummings and his attorney voluntarily elected to take upon themselves the risk of a contingency fee arrangement. Ultimately, Cummings' claims substantially failed. To now disregard that contractually volunteered risk, and impose such upon Northern Title, counters the very policies justifying contingency fee arrangements.

Second, the Court should consider the "time and labor required." Idaho R. Civ. P. 54(e)(3)(A). Plaintiff has submitted alleged costs and attorney fees spanning from April 3, 2008 to February 4, 2013, many of which were ultimately not required. See *Mem. of Auth. in Supp. of Pl's. Mem. of Fees and Costs Against Def. Northern Title*, 2-19 (Feb. 5, 2013). For example, Plaintiff allegedly incurred: costs and fees for his expert Kelley, who was excluded from trial¹⁰; multiple over-night stays in Salt Lake City to track down an elusive witness who nonetheless refused to testify and was not called to testify¹¹; and costs of \$1,041.28 given to Curtis Baum as "witness expenses."¹²

Finally, the Court should consider the "amount involved and the results obtained." Idaho R. Civ. P. 54(e)(3)(G). The amounts of attorney fees involved between all the parties, and Plaintiff's near four-year litigation, amount to well over three hundred thousand dollars. (\$300,000.00). See *Pl's. Mem. of Costs & Atty. Fees & Aff'd. Nathan M. Olsen*; see also Northern Title's *Memorandum of Fees and Costs*; see also Stephen's *Motion for Order Awarding Attorney Fees and Costs*. Notwithstanding, Plaintiff was able to prove recovery of only fifty thousand dollars (\$50,000.00) on the basis of one negligence claim. The liability Plaintiff was able to

¹⁰ Costs and attorney fees for Kelley appear to come to somewhere near \$6,530.38, wherein "Kelley" is referred to in Plaintiff's *Memorandum of Costs and Attorney's Fees and Affidavit of Nathan M. Olsen*.

¹¹ See Plaintiff's *Memorandum of Costs and Attorney's Fees and Affidavit of Nathan M. Olsen*, 3-4, coming to \$1,669.10

¹² See Plaintiff's *Memorandum of Costs and Attorney's Fees and Affidavit of Nathan M. Olsen*, 2.

prove, compared to the large aggregate of costs and attorney fees, reveals the inequitable nature of Plaintiff's request for fees and costs.

Plaintiff voluntarily undertook the risk of a contingency arrangement and has failed to prove damages of even one-sixth the amount of the aggregate litigation costs and fees. The Court should not award Plaintiff any costs or attorney fees.

CONCLUSION

First, Rule 54 allows for the award of attorney fees to the "prevailing party." I.R.C.P. 54. However, Plaintiff failed to prove or persuade the Court that he had incurred any damages in connection with the "gravaman" of his lawsuit, and therefore did not prevail on the "core" of his claims. See *Harris, Inc.*, 151 Idaho at 770. Additionally, all of Cummings' claims against Stephens were dismissed, and of the nine (9) claims brought against Northern Title, the Plaintiff failed to prevail as to eight (8). Therefore, Plaintiff was not the prevailing party and the Court should quash his request.


Second, Plaintiff contractually waived and indemnified "Northern Title" against an erroneous legal description, and under circumstances where the "Escrow Agent" did not incur "liabilities, damages and costs" caused by the breach of the General Escrow Provisions. Here, the sole causation and amount of damages proven against Northern Title was on the basis of the erroneous legal description. Therefore, contract bars Plaintiff's request for costs fees.

Finally, the Court should disregard Plaintiff's personal attacks against Northern Title, and even Northern Title's counsel. Northern Title's motion practice, while vigorous, was always based upon a good faith legal argument matched with a good faith interpretation of the facts. Plaintiff's memorandum of costs makes clear that Northern Title's motion practice is not the

culprit for Plaintiff's extensive fees and costs. Rather, Plaintiff pursued an action for nearly four years, that in the end proved damages that did not amount to one-sixth (1/6) of aggregate litigation costs. Under such circumstances, an award of fees and costs to Plaintiff would be inequitable.

DATED this 12th day of February, 2013.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of February, 2013, I served a true and correct copy of the above and foregoing **NORTHERN TITLE'S OBJECTION AND MOTION TO QUASH PLAINTIFF'S REQUEST FOR COSTS AND ATTORNEY FEES** to the following person(s) as follows:

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402

- U. S. Mail/Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208-524-3391)
- Email (Nathan@pmholaw.com)

Randall C. Budge
Jason E. Flaig
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391

- U.S. Mail/Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 232-6109
- Email rbc@racinelaw.net
jef@racinelaw.net

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205

- U.S. Mail/Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 945-2780
- Email amyw@bannockcounty.us

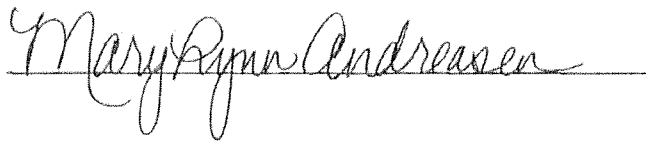
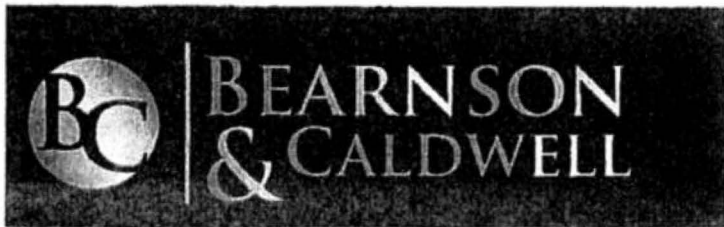


EXHIBIT "A"

NT Objection



Brad H. Bearnson
(c) 435-757-5756
bbearnson@bearnsonlaw.com

Licensed in Utah, Idaho, Arizona and Wyoming

December 6, 2011

Honorable Stephen S. Dunn
District Judge
Bannock County Courthouse
Pocatello, Idaho 83201

Re: Cummings v. Stephens, et al., Case No. CV-2009-183

Dear Judge Dunn:

Again, thank you for your willingness in mediating the above referenced matter. As you may remember, the matter is pending before Judge Nye of Bear Lake County.

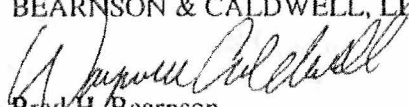
As indicated in Randall Budge's letter of October 20, 2011, several procedural matters needed to be addressed prior to bringing the case to mediation. On October 6, 2011, Defendants Stephens and Northern Title had amended their Answer to include third-party complaints against Dorothy Julian, Evan Skinner, Ryan Olsen and Exit Realty of Bear Lake. Julian and Skinner are the chief realtors who assisted Plaintiff Cummings in the disputed property sale. Exit Realty of Bear Lake (hereafter "Exit Realty") is the realty company of which Julian and Skinner were agents. Ryan Olsen was the registered broker of Exit Realty.

In the eyes of Stephens and Northern Title, the above mentioned third party defendants are critical in the correct assignment of any alleged liability. One of the chief goals in the upcoming mediation was to bring all potentially responsible parties together. See *Ltr. Randall C. Budge*, ¶ 9 (Oct. 6, 2011). While Skinner, Olsen and Exit Realty have been served, their counsel have refused, at this time, to participate in the upcoming mediation.

Given third party defendants' refusal to participate, the utility of the upcoming mediation, as it stands, is questionable. For these reasons, we believe postponement of the January 13, 2011, mediation is necessary until the participation of all parties is assured. The exact date of postponement is unknown at this time.

We understand this news comes at an inconvenience, but we desire our client's time, and your efforts, to be as productive as possible. We intend to correspond with counsel for third-party defendants to establish a concrete mediation date in the future. If you have any questions or concerns, please let me know.

Yours truly,
BEARNSON & CALDWELL, LLC


For: Brad H. Bearnson
Attorney for Northern Title Company of Idaho

cc: Randall C. Budge, Attorney for Defendant Stephens
Nathan M. Olsen, Attorney for Plaintiff Cummings
Phillip J. Collier, Attorney for Third Party Defendants

399 N. Main Street, Suite 270 | Logan, Utah 84321 | 435.752.6300 (O) | 435.752.6301 (F)
www.bearnsonlaw.com

NT Objection

332

2013 JUL -2 PM 2:25

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
Email: bbearnson@bearnsonlaw.com
Email: abergman@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Case No. CV-2009-183

Plaintiff, Appellant and)
Cross-Respondent,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

**NORTHERN TITLE COMPANY OF
IDAHO, INC.'S REQUEST FOR
ADDITIONS TO THE CLERK'S
RECORD**

Defendants, Respondent and)
Cross-Appellant)

COMES NOW Defendant, NORTHERN TITLE COMPANY OF IDAHO, INC., by and through counsel of Bearnson and Caldwell, LLC, and pursuant to Rule 29 of the Idaho Rules of Appellate Procedure hereby requests the following additions be made to the Clerk's Record.

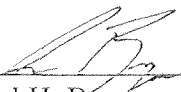
Exclusion of Experts. On May 13, 2013, Plaintiff/Appellant filed his *Notice of Amended Appeal*, stating for the first time his intent to raise the issue of whether the District Court erred in excluding his appraisal expert. See *Notice of Amended Appeal*, ¶ 3(D). In raising this issue, Plaintiff has elected to include the pleadings only relevant to the exclusion of his expert. However, the Court of Appeals would be misled if only that information were before it.

Specifically, Northern Title moved to exclude Plaintiff's expert appraiser, especially where Plaintiff had just moved and successfully excluded Northern Title's expert appraiser for the very same reason. The Court was patently aware of these circumstances, soundly reasoning "[i]t seems to me . . . if I'm going to exclude their expert, that I exclude your expert. Because he wasn't timely" Reporter's TT, Vol. 2, 1132:4-6. Those circumstances should be open to the Court of Appeals. Therefore, Northern Title respectfully requests that those pleadings identified in the attached Exhibit "A" be added to the Clerk's Record.

Fees and Costs. As set forth in their Amended Notice of Cross-Appeal, Northern Title stated its intent to raise the issue of whether "the Court erred in its assessment of costs and attorney fees against Northern Title." *Northern Title Amended Notice of Cross-Appeal*, ¶ 3(d). On review of the Clerk's Record, it appears that a pleading was inadvertently omitted. Therefore, Northern Title respectfully requests that those pleadings identified in the attached Exhibit "A" be added to the Clerk's Record.

DATED this 1st day of July, 2013.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of July, 2013, I served a true and correct copy of the above and foregoing **NORTHERN TITLE COMPANY OF IDAHO, INC.'S REQUEST FOR ADDITIONS TO THE CLERK'S RECORD** to the following person(s) as follows:

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402

U. S. Mail/Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile (208-524-3391)
 Email (Nathan@pmholaw.com)

Randall C. Budge
Jason E. Flaig
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391

U.S. Mail/Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile (208) 232-6109
 Email rcb@racinelaw.net
jef@racinelaw.net

Honorable David C. Nye
624 E. Center, Room 220
Pocatello, Idaho 83205

U.S. Mail/Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile (208) 945-2780
 Email amyw@bannockcounty.us

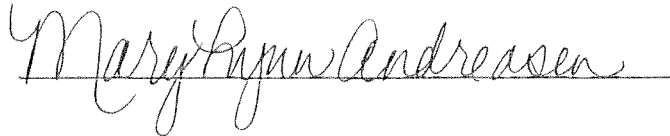

Mary Lynn Andreassen

EXHIBIT "A"

Case Number Result Page

Bear Lake

1 Cases Found.

Steven Cummings vs. Roger L Stephens, etal.

Case: **CV-2009-0000183** District Filed: **07/29/2009** Subtype: **Other Claims** Judge: **David C Nye** Status: **Closed pending clerk action 04/04/2013**

Defendants: **Does, John I - X Exit Realty of Bear Lake Julian, Dorothy S Northern Title Company of Idaho, Inc Olsen, Ryan L. Skinner, Evan E Stephens, Roger L**
 Plaintiffs: **Cummings, Steven**

Disposition: Date	Judgment Type	Disposition Date	Disposition Type	Parties	In Favor Of
05/11/2010	Dismissal W/out Prej			Stephens, Roger L (Defendant), Northern Title Company of Idaho, Inc (Defendant)	Dismissed
				Third Party Plaintiff, Roger Stephens complaint against Third Party Defendant, Northern Title, dismissed w/o prejudice	
07/03/2012	Dismissal W/out Prej			Stephens, Roger L (Defendant), Skinner, Evan E (Defendant), Olsen, Ryan L. (Defendant), Exit Realty of Bear Lake (Defendant)	Dismissed
				Stephens' Third Party Complaint against Exit Realty, Evan Skinner and Ryan Olson dismissed	
07/10/2012	Dismissal W/out Prej			Stephens, Roger L (Defendant), Julian, Dorothy S (Defendant)	Dismissed
				Stephens' Notice of Voluntary Dismissal of 3rd party defendant Dorothy Julian	
08/03/2012	Dismissal W/out Prej			Stephens, Roger L (Defendant), Cummings, Steven (Plaintiff)	Dismissed
				Amended complaint dismissed against Roger Stephens only	
01/22/2013	Money Judgment			Stephens, Roger L (Defendant), Cummings, Steven (Plaintiff)	Defendant
01/22/2013	Money Judgment			Northern Title Company of Idaho, Inc (Defendant), Cummings, Steven (Plaintiff)	Plaintiff

NT Req Additions

Comment: \$50,000.00
 04/12/2013 Money Northern Title Plaintiff
 Judgment Company of
 Idaho, Inc
 (Defendant),
 Cummings,
 Steven
 (Plaintiff)

Comment: \$112,448.09 costs and attorney fees
 04/12/2013 Money Stephens, Defendant
 Judgment Roger L
 (Defendant),
 Cummings,
 Steven
 (Plaintiff)

Comment: \$116,754.62 costs and attorney fees

Register Date
 of
 actions:

- 07/29/2009 New Case Filed - Other Claims
- 07/29/2009 Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Beard St. Clair Gaffney Receipt number: 0053038 Dated: 7/29/2009 Amount: \$88.00 (Check) For: Cummings, Steven (plaintiff)
- 07/29/2009 Plaintiff: Cummings, Steven Appearance Nathan M Olsen
- 07/29/2009 Complaint Filed
- 07/29/2009 Summons Issued
- 01/20/2010 Defendant: Stephens, Roger L Appearance Randall C. Budge Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Budge, Randall C. (attorney for Stephens, Roger L) Receipt number: 0000132 Dated: 1/20/2010 Amount: \$58.00 (Check) For: Stephens, Roger L (defendant)
- 01/20/2010 Notice Of Appearance
- 01/26/2010 Summons Returned
- 03/12/2010 Notice Of Intent To Take Default Filing: K4 - Cross Claim (defendant v defendant or plaintiff v. plaintiff) This fee is in addition to any fee filed as a plaintiff to initiate the case or as a defendant appearing in the case Paid by: Budge, Randall C. (attorney for Stephens, Roger L) Receipt number: 0000548 Dated: 3/18/2010 Amount: \$14.00 (Check) For: Cummings, Steven (plaintiff)
- 03/18/2010 Answer and Third Party Complaint
- 03/18/2010 Summons Issued
- 03/25/2010 Acceptance Of Service
- 03/26/2010 Motion For Disqualification
- 03/29/2010 Order Granting Disqualification
- 03/29/2010 Order of Reference
- 04/22/2010 Administrative Order of reference
- 04/22/2010 Change Assigned Judge
- 04/28/2010 Notice of Appearance of Co-Counsel
- 04/28/2010 Defendant: Stephens, Roger L Appearance Brad H Bearnson Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Budge, Randall C. (attorney for Stephens, Roger L) Receipt number: 0000874 Dated: 4/28/2010 Amount: \$58.00 (Check) For: Stephens, Roger L (defendant)
- 04/29/2010 Order For Submission of Information for Scheduling Order
- 05/11/2010 Notice of Voluntary Dismissal/third party complaint w/o prejudice

NT Reg Additions

Civil Disposition entered for: Northern Title Company of
 05/11/2010 Idaho, Inc, Defendant; Stephens, Roger L, Defendant. Filing
 date: 5/11/2010

05/13/2010 Hearing Scheduled (Motion for Summary Judgment
 06/18/2010 01:30 PM)

05/21/2010 Joint Statement of Pretrial Information

06/01/2010 Hearing Scheduled (Court Trial 02/23/2011 09:00 AM)

06/01/2010 Hearing Scheduled (Court Trial 06/15/2011 09:00 AM)

06/08/2010 Continued (Motion for Summary Judgment 08/10/2010 01:30
 PM)

06/08/2010 Notice of Deposition of Steven Cummings Duces Tecum

06/08/2010 Scheduling Order, Notice of Trial Setting and Initial Pretrial
 Order

06/25/2010 Notice Of Service

07/16/2010 Amended Notice of Deposition of Steven Cummings Duces
 Tecum

07/20/2010 Continued (Motion for Summary Judgment 09/03/2010 01:00
 PM)

07/27/2010 Notice of Service

08/06/2010 Motion for Summary Judgment

08/06/2010 Memorandum in support of Motion for Summary Judgment

08/06/2010 Affidavit of Steven Cummings

08/06/2010 Notice Of Hearing

08/12/2010 Continued (Motion for Summary Judgment 10/20/2010 10:00
 AM)

08/13/2010 Rule 56(f) Motion

08/13/2010 Rule 56(f) Affidavit

08/25/2010 Second Amended Notice of Deposition of Steven Cummings
 Duces Tecum

08/31/2010 Amended Notice Of Hearing

09/01/2010 Joint Stipulation Re: Defendant Roger L. Stephens's Rules
 56(f) Motion

09/01/2010 Rule 56(f) Order

09/22/2010 Notice of Hearing

09/22/2010 Motion For Summary Judgment

09/22/2010 Memorandum In Support of Motion for Summary Judgment

09/22/2010 Affidavit of Roger L Stephens

09/22/2010 Affidavit of Lori Thornock

09/22/2010 Affidavit of Dorothy Julian

09/22/2010 Affidavit of Evan Skinner

09/30/2010 Notice of Taking Deposition of Dorothy Julian

10/13/2010 Defendant's Response To Plaintiff's Motion for Summary
 Judgment

10/14/2010 Plaintiff's Response in Opposition to Defendants' Motion for
 Summary Judgment

10/14/2010 Affidavit of nathan M. Olsen

10/14/2010 Plaintiff's Motion to Amend Pursuant to I.R. C.P. 15 (b)

10/14/2010 Notice of Hearing

10/14/2010 Plaintiff's Motion to shorten Time

10/14/2010 Hearing Scheduled (Motion 10/20/2010 10:00 AM) Motion to
 Amend Pursuant to IRCP 15(b)

10/15/2010 Affidavit of Randall C. Budge

10/18/2010 Affidavit of Randall C. Budge

10/18/2010 Defendant's Reply Memorandum in Support of Motion for
 Summary Judgment

10/18/2010 Plaintiff's reply to Defendants' Response to Plaintiff's Motion
 for Summary Judgment

NT Reg Additions

Court Minutes Hearing type: Motion for Summary Judgment
 Hearing date: 10/19/2010 Time: 10:42 am Courtroom: Court
 10/19/2010 reporter: Stephanie Morse Minutes Clerk: Karen Volbrecht
 Tape Number: Nathan Olsen, counsel for Plaintiff Randall
 Budge, counsel for Defendant
 10/19/2010 Order Shortening Time
 10/20/2010 Motion Denied/Motion to Amend Pursuant to IRCP15(b)
 Hearing result for Motion held on 10/20/2010 10:00 AM:
 10/20/2010 District Court Hearing Held Court Reporter: Stephanie Morse
 Number of Transcript Pages for this hearing estimated: Motion
 to Amend Pursuant to IRCP 15(b)
 Hearing result for Motion for Summary Judgment held on
 10/20/2010 10/20/2010 10:00 AM: District Court Hearing Held Court
 10/20/2010 Reporter: Stephanie Morse Number of Transcript Pages for this
 hearing estimated:
 10/20/2010 Minute Entry & Order
 11/01/2010 Plaintiff's Expert Witness Disclosures
 01/04/2011 Decision On Motion for Summary Judgment
 01/18/2011 Plaintiff's Motion to Reconsider
 01/18/2011 Plaintiff's Motion To Continue trial Setting
 01/28/2011 Motion for Order Awarding Attorney's Fees and Costs
 01/28/2011 Memorandum of Fees and Costs
 01/28/2011 Affidavit of Randall C. Budge in Support of Fees and Costs
 01/28/2011 Affidavit of Brad H. Bearson in Support of Fees and Costs
 02/01/2011 Hearing Scheduled (Motion 02/23/2011 01:00 PM) Motion to
 Reconsider
 02/02/2011 Notice Of Hearing
 02/02/2011 Plaintiff's Memorandum in Support of Its Motion to Reconsider
 02/02/2011 Affidavit of counsel in Support of Plaintiff's Motion to
 Reconsider
 02/02/2011 Hearing result for Court Trial held on 02/23/2011 09:00 AM:
 Hearing Vacated 1st setting
 02/02/2011 Hearing result for Court Trial held on 06/15/2011 09:00 AM:
 Hearing Vacated 2nd setting
 02/09/2011 Plaintiff's Motion To Disallow Defendant's Attorneys Fees and
 Costs
 02/09/2011 Plaintiff's Motion To Object to Defendant's Proposed Judgment
 02/16/2011 Amended Notice of Hearing
 02/16/2011 Continued (Motion 03/17/2011 01:00 PM) Motion to
 Reconsider
 Hearing Scheduled (Hearing Scheduled 03/17/2011 01:00 PM)
 02/18/2011 objection to Defendant's Motion for Order Awarding Atty's
 Fees
 02/22/2011 Notice of Change of Counsel/Address
 02/23/2011 Plaintiff's Memorandum in Support of Motion to Disallow
 Defendant's Claim for Attorney Fees and Costs
 03/03/2011 Motion to strike Affidavit of Counsel
 03/03/2011 Memorandum In Support of Motion to Strike Affidavit of
 Counsel
 03/03/2011 Affidavit of Randall C Budge
 03/03/2011 Notice of Hearing
 03/03/2011 Hearing Scheduled (Motion 03/17/2011 01:00 PM) Motion to
 Strike Affidavit of Counsel
 03/09/2011 Defendant's Response To Plaintiff's Motion to Reconsider
 03/09/2011 Plaintiff's Memorandum in Opposition of Defendant's Motion to
 Strike Affidavit of Counsel
 03/09/2011 Affidavit of Nathan M. Olsen
 03/09/2011 Affidavit of Lori Thornock

NT Reg Additions

03/10/2011 Defendant's Response to Plaintiff's Motion to Disallow Fees and Costs
Court Minutes Hearing type: Hearing Scheduled Hearing date: 3/11/2011 Time: 1:30 pm Courtroom: Court reporter: Stephanie Morse Minutes Clerk: Karen Volbrecht Tape Number: Nathan Olsen Randall Budge Brad Bearnson

03/11/2011

03/15/2011 Defendant's Reply Memorandum in Support of Motion to Strike Affidavit of Counsel and Motion to Strike Affidavit of Nathan M. Olsen
Hearing result for Hearing Scheduled held on 03/17/2011 01:00 PM: District Court Hearing Held Court Reporter:none

03/17/2011 Number of Transcript Pages for this hearing estimated: objection to Defendant's Motion for Order Awarding Atty's Fees
Hearing result for Motion held on 03/17/2011 01:00 PM: District Court Hearing Held Court Reporter:none Number of Transcript Pages for this hearing estimated: Motion to Reconsider

03/17/2011

03/17/2011 Hearing result for Motion held on 03/17/2011 01:00 PM: District Court Hearing Held Court Reporter:Stephanie Morse Number of Transcript Pages for this hearing estimated: Motion to Strike Affidavit of Counsel

03/17/2011 Minute Entry & Order

03/30/2011 Notice of Unavailable Dates

04/13/2011 Notice Of Service

04/19/2011 Stipulation For Substitution of Counsel

05/10/2011 Hearing Scheduled (Court Trial 12/21/2011 09:00 AM)

05/11/2011 Order Setting Court Trial

05/16/2011 Notice of taking Deposition Duces Tecum of Roger L Stephens

05/16/2011 Notice of taking Deposition Duces Tecum of Evan Skinner

05/16/2011 Notice of taking Deposition Duces Tecum of Edward Stephens

05/16/2011 Notice of Taking Deposition Duces Tecum of Lori Thornock

05/16/2011 Notice of Taking Deposition Duces Tecum of Jay Davis

06/10/2011 Hearing Scheduled (Hearing Scheduled 07/14/2011 02:00 PM)

06/30/2011 Notice of hearing

06/30/2011 Motion for Leave to File First Amended Complaint

06/30/2011 Brief In Support of Motion for Leave to File First Amended Complaint

07/08/2011 Motion For Continuance of Hearing
Hearing result for Hearing Scheduled scheduled on 07/14/2011 02:00 PM: Continued Motion for Leave to File First Amended Complaint

07/14/2011

08/02/2011 Hearing Scheduled (Motion 09/09/2011 01:30 PM) Plaintiff's Motion for Leave to File 1st Amended Complaint

08/02/2011 Notice Of Hearing

08/03/2011 Disclosure of Witnesses/Plaintiff

08/04/2011 Defendant's Witness Disclosure

08/26/2011 Motion to Vacate Trial Setting

08/26/2011 Affidavit of Nathan M. Olsen in Support of Motion to Vacate Trial Setting

08/26/2011 Notice Of Hearing

08/26/2011 Hearing Scheduled (Motion 09/09/2011 01:30 PM) Motion to Vacate Trial Setting

09/01/2011 Stipulation and Notice of Conference Call Hearing

09/01/2011 Memorandum in Response to Plaintiff's Motion for Leave to File First Amended Complaint

09/01/2011 Memorandum in Response to Plaintiff's Motion to Vacate Trial Setting

NT Reg Additions

341

- 09/07/2011 Reply to Stephens' Response to Plaintiff's Motion for Leave to File First Amended Complaint and Motion to Vacate Trial Setting
Court Minutes Hearing type: Motion Hearing date: 9/8/2011 Time: 10:15 am Courtroom: Court reporter: none Minutes
- 09/08/2011 Clerk: Karen Volbrecht Tape Number: Nathan M. Olsen, counsel for Plaintiff Randall C. Budge, local counsel for Defendant Brad Bearnson, counsel for Defendant
Hearing result for Motion scheduled on 09/09/2011 01:30 PM:
- 09/09/2011 District Court Hearing Held Court Reporter:Stephanie Morse Number of Transcript Pages for this hearing estimated: Plaintiff's Motion for Leave to File 1st Amended Complaint
- 09/09/2011 Minute Entry & Order
- 09/09/2011 Hearing result for Court Trial scheduled on 12/21/2011 09:00 AM: Hearing Vacated
- 09/13/2011 First Amended Complaint Filed
- 10/06/2011 Defendant: Northern Title Company of Idaho, Inc Appearance Brad H Bearnson
Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Bearnson, Brad H (attorney for Northern Title Company of Idaho, Inc) Receipt number: 0002257 Dated: 10/6/2011 Amount: \$58.00 (Check) For: Northern Title Company of Idaho, Inc (defendant)
- 10/06/2011 Filing: K3 - Third party complaint - This fee is in addition to any fee filed as a plaintiff initiating the case or as a defendant appearing in the case. Paid by: Bearnson, Brad H (attorney for Northern Title Company of Idaho, Inc) Receipt number: 0002258 Dated: 10/6/2011 Amount: \$14.00 (Check) For: Northern Title Company of Idaho, Inc (defendant)
- 10/06/2011 Defendant Northern Title's Answer To Plaintiff's First Amended Complaint & Third Party Complaint
- 10/06/2011 Summons Issued/Dorothy Julian
- 10/06/2011 Summons Issued/Evan Skinner
- 10/06/2011 Summons Issued/Ryan Olsen
- 10/06/2011 Summons Issued/Exit Realty of Bear Lake
- 10/06/2011 Defendant Roger L. Stephens's Answer to Plaintiff's First Amended Complaint & Third Party-Complaint
- 10/06/2011 Summons Issued/Ryan Olsen
- 10/06/2011 Summons Issued/Exit Realty of Bear Lake
- 10/06/2011 Summons Issued/Dorothy Julian
- 10/06/2011 Summons Issued/Evan Skinner
Filing: K3 - Third party complaint - This fee is in addition to any fee filed as a plaintiff initiating the case or as a defendant appearing in the case. Paid by: Budge, Randall C. (attorney for Stephens, Roger L) Receipt number: 0002265 Dated: 10/7/2011 Amount: \$14.00 (Check) For: Stephens, Roger L (defendant)
- 10/07/2011 Stipulation for Leave to File a Substitute or Second Amended Complaint
- 10/24/2011 Second Amended Complaint Filed
- 10/27/2011 Sheriff's Return of Service/Exit Realty
- 10/27/2011 Sheriff's Return of Service/Ryan Olsen
- 11/02/2011 Stephens' Answer to Cummings' Second Amended Complaint and Stephens' Third Party Complaint
Filing: K3 - Third party complaint - This fee is in addition to any fee filed as a plaintiff initiating the case or as a defendant appearing in the case. Paid by: Budge, Randall C. (attorney for Stephens, Roger L) Receipt number: 0002444 Dated: 11/2/2011 Amount: \$14.00 (Check) For: Cummings, Steven (plaintiff)
- 11/02/2011

NT Reg Additions

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11/08/2011 Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Olsen, Ryan L. (defendant)
 Receipt number: 0002503 Dated: 11/8/2011 Amount: \$58.00
 (Check) For: Olsen, Ryan L. (defendant)

11/08/2011 Defendant's Answer to Plaintiff's Complaint

11/08/2011 Affidavit Of Service

11/09/2011 Sheriff's Return of Service/Ryan Olson

11/09/2011 Sheriff's Return of Service/Evan Skinner

11/09/2011 Sheriff's Return of Service/Ryan Olson for Roger Stephens

11/14/2011 Defendant Northern Title's Answer to Plaintiff's Second Amended Complaint & Third Party-Complaint

11/14/2011 Filing: K3 - Third party complaint - This fee is in addition to any fee filed as a plaintiff initiating the case or as a defendant appearing in the case. Paid by: Bearnson, Brad H (attorney for Northern Title Company of Idaho, Inc) Receipt number: 0002551 Dated: 11/14/2011 Amount: \$14.00 (Check) For: Northern Title Company of Idaho, Inc (defendant)

11/14/2011 Sheriff's Return of Service/Evan Skinner/Complaint & Summons

11/22/2011 Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Collaer, Phillip John (attorney for Skinner, Evan E) Receipt number: 0002625 Dated: 11/22/2011 Amount: \$58.00 (Credit card) For: Skinner, Evan E (other party)

11/22/2011 Filing: Technology Cost - CC Paid by: Collaer, Phillip John (attorney for Skinner, Evan E) Receipt number: 0002625 Dated: 11/22/2011 Amount: \$3.00 (Credit card) For: Skinner, Evan E (other party)

11/22/2011 Defendant: Skinner, Evan E Appearance Phillip John Collaer

11/22/2011 Notice Of Appearance

11/29/2011 Acceptance Of Service

11/30/2011 Answer and Demand for Jury Trial

01/10/2012 Hearing Scheduled (Status 01/27/2012 09:30 AM)

01/11/2012 Notice of Hearing

01/24/2012 Defendant Northern Title's Stipulated Motion to Appear by Telephone

01/26/2012 Order Granting Defendant Northern Title's Stipulated Motion to Appear by Telephone

01/27/2012 Hearing result for Status scheduled on 01/27/2012 09:30 AM: District Court Hearing Held Court Reporter:none Number of Transcript Pages for this hearing estimated:

01/27/2012 Hearing Scheduled (Motion for Summary Judgment 03/30/2012 10:00 AM)

01/27/2012 Hearing Scheduled (Jury Trial 07/31/2012 09:00 AM)

01/27/2012 Minute Entry & Order

01/27/2012 Order Setting Jury Trial

02/01/2012 Third Party Defendants' Motion for Summary Judgment

02/01/2012 Affidavit of Evan Skinner in Support of Third Party Defendants' Motion for Summary Judgment

02/01/2012 Affidavit of Ryan Olsen in Support of Third Party Defendants' Motion for Summary Judgment

02/01/2012 Affidavit of Dorothy Julian in Support of Third Party Defendants' Motion for Summary Judgment

02/01/2012 Memorandum in Support of Third Party Defendants' Motion for Summary Judgment

02/01/2012 Notice Of Hearing

02/10/2012 Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Jeannine Siragusa Receipt number: 0000299 Dated: 2/10/2012 Amount: \$118.00 (Credit card)

NT Reg Additions

Miscellaneous Payment: Technology Cost - CC Paid by:
 02/10/2012 Jeannine Siragusa Receipt number: 0000299 Dated:
 2/10/2012 Amount: \$3.00 (Credit card)

03/06/2012 Motion for Pro Hac Vice Admission

03/12/2012 Notice of Taking Deposition of Philip Baum

03/12/2012 Notice of Taking Deposition of Curtis Baum

03/13/2012 Stephens' Amended Witness Disclosure and third Party
 Plaintiff Witness Disclosure

03/13/2012 Order Granting Motion for Pro Hac Vice Admission

03/13/2012 Plaintiff's Supplemental Disclosure of Witnesses

03/15/2012 Northern Title Company of Idaho, Inc.'s Amended Witness
 Disclosure and Third Party Plaintiff Witness Disclosure

03/19/2012 Plaintiff's Response To Third Party Defendants' Motion for
 Summary Judgment

03/19/2012 Affidavit of nathan M. Olsen Supporting Plaintiff's Response to
 Third Party Defendants' Motion for Summary Judgment

03/19/2012 Northern Title's Memorandum in Opposition to Third-Party
 Defendants' Motion for Summary Judgment

03/22/2012 Reply Memorandum in Support of Third-Party Defendants'
 Motion for Summary Judgment

03/23/2012 Request to Appear Telephonically at Third Party Defendants'
 Motion for Summary Judgment Hearing

03/26/2012 Reply Memorandum in Support of Third-Party Defendants'
 Motion for Summary Judgment

03/29/2012 Court Minutes Hearing type: Motion for Summary Judgment
 Hearing date: 3/29/2012 Time: 10:19 am Courtroom: Court
 reporter: Minutes Clerk: Karen Volbrecht Tape Number:

03/29/2012 Defendant: Olsen, Ryan L. Appearance Phillip John Collaer

03/29/2012 Defendant: Julian, Dorothy S Appearance Brian K Julian

03/29/2012 Defendant: Exit Realty of Bear Lake Appearance Phillip John
 Collaer

03/30/2012 Hearing result for Jury Trial scheduled on 07/31/2012 09:00
 AM: District Court Hearing Held Court Reporter: Stephanie
 Morse Number of Transcript Pages for this hearing estimated:

03/30/2012 Minute Entry & Order

03/30/2012 Hearing result for Motion scheduled on 07/03/2012 10:00 AM:
 District Court Hearing Held Court Reporter: Stephanie Morse
 Number of Transcript Pages for this hearing estimated:
 Stephens' Motion for Leave to File Amended Answer to
 Cummings' Second Amended Complaint

03/30/2012 Hearing result for Motion for Summary Judgment scheduled
 on 03/30/2012 10:00 AM: District Court Hearing Held Court
 Reporter: Number of Transcript Pages for this hearing
 estimated:

04/12/2012 Amended Notice of Taking Deposition of Philip Baum

04/13/2012 Second Amended Notice of Taking Deposition of Philip Baum

04/23/2012 Amended Notice of Taking Deposition of Curtis Baum

04/23/2012 Amended Notice of Taking Deposition of Philip Baum

05/01/2012 Memorandum Decision on Third Party Defendants' Motion for
 Summary Judgment Against Northern Title

05/03/2012 Plaintiff's Motion For Partial Summary Judgment

05/03/2012 Plaintiff's Memorandum in Support of Partial Summary
 Judgment

05/03/2012 Affidavit of Nathan M Olsen

05/03/2012 Affidavit of Steven B Cummings

05/03/2012 Notice of Service

05/03/2012 Notice of Audio-Visual Deposition of Roger L Stephens To
 Preserve Trial Testimony

05/04/2012 Subpoena and Subpoena Duces Tecum of Philip
 Baum/Affidavit of Service

NT Reg Additions

05/04/2012 Notice of Audio-Visual Deposition of Roger L. Stephens to Preserve Trial Testimony

05/07/2012 Notice Of Hearing

05/07/2012 Hearing Scheduled (Motion for Partial Summary Judgment 06/11/2012 03:00 PM)

05/11/2012 Notice of Taking Deposition of Lenore Katri

05/11/2012 Notice of Taking Deposition of Gregory Kelley

05/11/2012 Amended Notice of Taking Deposition of Lenore Katri

05/11/2012 Amended Notice of Taking Deposition of Gregory Kelley

05/18/2012 Second Amended Notice of Taking Deposition of Curtis Baum

05/29/2012 Affidavit Of Service/Second Amended Subpoena and Subpoena Duces Tecum of Curtis Baum

05/29/2012 Northern Title's Response to Plaintiff's Motion for Partial Summary Judgment

06/04/2012 Plaintiff's Reply to Northern Title's Response to Plaintiff's Motion for Partial Summary Judgment
Court Minutes Hearing type: Motion for Partial Summary Judgment Hearing date: 6/6/2012 Time: 3:00 pm Courtroom: Court reporter: Stephanie Morse Minutes Clerk: Karen

06/06/2012 Volbrecht Tape Number: Nathan Olsen, counsel for Steven Cummings Randall Budge, counsel for Roger Stephens Brad Bearson, counsel for Northern Title Phillip Collaer, counsel for Dorothy Julian, Evan Skinner, Ryan Olsen & Exit Realty

06/07/2012 Certificate Of Mailing of Service of Defendant Northern Title's response to Interrogatories and Requests for Production fo Documents

06/08/2012 Notice of (Telephonic) Hearing Re Motion for Court Approval of Stipulation For Dismissal
Affidavit Of Phillip J Collaer In Support of Defendant Exit Realty's Motion for Court Approval Of Stipulation For Dismissal Of Stephens' Third Party Complaint

06/08/2012 Memorandum In Support of Defendant Exit Realty's Motion for Court Approval fo Stipulation For Dismissal Of Stephens' Third Party Complaint

06/08/2012 Defendant Exit Realty's Motion For Court Approval of Stipulation For Dismissal Of Stephens' Third Party Complaint

06/08/2012 Notice of Taking Deposition Duces Tecum of Roger L Stephens

06/11/2012 Hearing result for Motion for Partial Summary Judgment scheduled on 06/11/2012 03:00 PM: Hearing Held

06/11/2012 Minute Entry & Order

06/12/2012 Defendant Northern Title's Augmented Request For Leave to Make Expert Disclosures

06/12/2012 Notice of Hearing (Telephonic Requested)

06/12/2012 Affidavit of Brad H Bearson

06/12/2012 Certificate Of Service for Affidavit of Brad H Bearson
Hearing Scheduled (Motion 07/03/2012 10:00 AM)

06/12/2012 Defendant's Augmented Request for Leave to Make Expert Disclosures

06/15/2012 Motion In Limine to Exclude the testimony of Curtis Baum With Incorporated Memorandum

06/15/2012 Amended Notice of taking Deposition Duces Tecum of Evan Skinner

06/15/2012 Amended Notice of Taking Deposition Duces Tecum of Jay Davis

06/15/2012 Amended Notice of taking Deposition fo Curtis Baum
Notice of Non-Opposition To Defendant Exit Realty's Motion for Court Approval fo Stipulation For Dismissal of Stephens' third Party Complaint

06/15/2012 Notice of Hearing (Telephonic requested)

06/18/2012 Nocite of (Telephonic) Hearing

NT Reg Additions

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06/18/2012 Notice Of (Telephonic) Hearing

06/18/2012 Second Amended Notice of Taking Deposition of Curtis Baum
Hearing Scheduled (Motion 07/03/2012 09:00 AM) Stephen's

06/18/2012 Motion for Leave to File Amended Answer to Cumming's 2nd
Amended Complaint

06/19/2012 Objection to Notice of Taking Deposition of Roger L. Stephens
and Motion for Protective Order

06/19/2012 Notice of Objection to Notice of Taking Depositions of Jay
Davis and Evan Skinner

06/19/2012 Notice of Non-Opposition to Defendant Exit Realty's Motion for
Court Approval of Stipulation for Dismissal of Stephens' Third
Party Complaint

06/19/2012 Notice of Participation and Appearance by Telephone

06/19/2012 Stephens' Motion for Leave to File Amended Answer to
Cummings' Second Amended Complaint

06/19/2012 Hearing Scheduled (Motion 07/03/2012 10:00 AM) Stephens'
Motion for Leave to File Amended Answer to Cummings'
Second Amended Complaint

06/19/2012 Hearing Scheduled (Motion 07/03/2012 10:00 AM) Plaintiff's
Motion for Court Approval of Stipulation for Dismissal

06/19/2012 Hearing Scheduled (Motion 07/03/2012 10:00 AM)
Defendant's Motion in Limine to Exclude the Testimony of
Curtis Baum, Request for Leave to Make Expert
Disclosures0615

06/20/2012 Motion to Exclude Defendant, Northern Title Company's Expert
Witnesses and Testimony and for Sanctions Including Attorney
Fees under IRCP37(b)

06/20/2012 Affidavit of Nathan M. Olsen in Support of Motion to Exclude
Defendant, Northern Title Company's Expert Witnesses and
Testimony and for Sanctions Including Attorney Fees under
IRCP37(b)

06/20/2012 Memorandum Supporting Motion to Exclude Defendant
Northern Title Company's Expert Witnesses and Testimony

06/20/2012 Notice Of Hearing

06/20/2012 Hearing Scheduled (Motion 07/03/2012 10:00 AM) Motion to
Exclude Defendant Northern Title Co's Expert Witnesses and
Testimony and for Sanctions Including Atty Fees

06/21/2012 Objection to Plaintiff's Notice of Taking Deposition Duces
Tecum of Roger L. Stephens, Evan Skinner, Jay Davis & Curtis
Baum

06/25/2012 Request for Pre-Trial Conference

06/25/2012 Defendant Northern Title's Second Motion in Limine with
Request to File Over-Length Memorandum

06/25/2012 Notice Of Hearing

06/25/2012 Response in Opposition to Exit Realty's Motion for Court
Approval of Stipulation for Dismissal of Stephens' Third Party
Complaint

06/25/2012 Affidavit of Nathan M. Olsen in Ipposition to Exit Realty's
Motion for Court Approval of Stipulation for Dismissal of
Stephens' Third Party Complaint

06/25/2012 Defendant Northern Title's Memorandum in Support of Second
Motion in Limine

06/26/2012 Notice Vacating the Depositions of Roger Stephens, Jay Davis
and Evan Skinner

06/27/2012 Response in Opposition to Northern Title's Motion in Limine to
Exclude the Testimony of Curtis Baum

06/27/2012 Affidavit of Nathan M. Olsen in Opposition to Northern Title's
Motion in Limine to Exclude the Testimony of Curtis Baum

06/28/2012 Defendant Northern Title's Response Memorandum to
Plaintiff's Motion for Sanctions and Motion to Exclude
Defendant's Exper

NT Reg Additions

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- 06/29/2012 Notice Of Hearing
Hearing Scheduled (Motion 07/17/2012 10:00 AM)
- 06/29/2012 Defendant's 2nd Motion in Limine with Request to File Over-Length Memorandum
Reply Memorandum in Support of Defendant Exit Realty's
- 06/29/2012 Motion for Approval of Stipulation for Dismissal of Stephens Third Party Complaint
Reply Brief Supporting Motion to Exclude Defendant Northern Title Company's Expert Witnesses and Testimony
- 06/29/2012 Supplemental Affidavit of Phillip J. Collaer in Support of Defendant Exit Realty's Motion for Court Approval of Stipulation for Dismissal of Stephens' Third Party Complaint
- 07/02/2012 Northern Title's Motion to Strike and Reply in Support of Excluding the Testimony of Curtis Baum
- 07/02/2012 Defendant Northern Title's Motion in Limine to Exclude Lenore Katri and Gregory Kelley
- 07/02/2012 Defendant Northern Title's Memorandum in Support to Exclude Lenore Katri & Gregory Kelley
- 07/02/2012 Notice Of Hearing
Hearing Scheduled (Motion 07/17/2012 10:00 AM) Northern Title's Motion in Limine to Exclude Lenore Katri & Gregory Kelley
- 07/02/2012 Supplemental Affidavit of Phillip J. Collaer in Support of Defendant Exit Realty's Motion for Court Approval of Stipulation for Dismissal of Stephens' Third Party Complaint
- 07/02/2012 Reply Memorandum in Support of Defendant Exit Realty's Motion for Court Approval of Stipulation for Dismissal of Stephens' Third Party Complaint
- 07/02/2012 Hearing result for Motion scheduled on 07/03/2012 09:00 AM: District Court Hearing Held Court Reporter: Stephanie Morse
- 07/03/2012 Number of Transcript Pages for this hearing: 100 estimated: Exit Realty's Motion for Court Approval of Stipulation for Dismissal
Court Minutes Hearing type: Motion Hearing date: 7/3/2012 Time: 9:15 am Courtroom: Court reporter: Stephanie Morse Minutes Clerk: Karen Volbrecht Tape Number: Nathan Olsen
- 07/03/2012 for Steven Cummings, Plaintiff Randall Budge for Roger Stephens, Defendant Brad Bearson for Northern Title, Defendant Phillip Collaer for Exit Realty, Evan Skinner, Dorothy Julian & Ryan Olsen, Third Party Defendants
Hearing result for Motion scheduled on 07/03/2012 09:00 AM:
- 07/03/2012 Motion Granted Stephen's Motion for Leave to File Amended Answer to Cumming's 2nd Amended Complaint
Hearing result for Motion scheduled on 07/03/2012 09:00 AM:
- 07/03/2012 Hearing Held Northern Title's Motion in Limine to Exclude the Testimony of Curtis Baum/Denied w/o prejudice
Hearing result for Motion scheduled on 07/03/2012 09:00 AM:
- 07/03/2012 Hearing Held Northern Title's Augmented Request for Leave to Make Expert Disclosures/taken under advisement
Hearing result for Motion scheduled on 07/03/2012 09:00 AM:
- 07/03/2012 Hearing Held Cummings' Motion to Exclude Defendant Northern Title Co's Expert Witnesses and Testimony and for Sanctions Including Atty Fees/taken under advisement
- 07/03/2012 Hearing Scheduled (Pretrial Conference 07/17/2012 10:00 AM)
- 07/03/2012 Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages
- 07/03/2012 Affidavit of Nathan M. Olsen in Support of Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages
- 07/03/2012 Plaintiff's Memorandum in Support of Motion for Leave to Amend Complaint to Allege Punitive Damages
- 07/03/2012 Notice Of Hearing

NT Reg Additions

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- 07/03/2012 Hearing Scheduled (Motion 07/17/2012 10:00 AM) Cummings' Motion for Leave to Amend Complaint to Allege Punitive Damages
- 07/03/2012 Minute Entry & Order
Civil Disposition entered for: Stephens, Roger L, Defendant;
- 07/03/2012 Exit Realty of Bear Lake, Defendant; Olsen, Ryan L., Defendant; Skinner, Evan E, Defendant. Filing date: 7/3/2012
- 07/05/2012 Stephens' Amended Answer To Cummings' Second Amended Complaint
- 07/06/2012 Motion For Sanctions and Other Appropriate remedies Under IRCP 37(b)for Failure to Comply with Discovery
- 07/06/2012 Affidavit of Nathan M Olsen In Support of Plaintiff's Motion for Appropriate Remedies under IRCP 37(b) for failure to comply with discovery
- 07/06/2012 Notice of Hearing
Memorandum Decision on Plaintiff's Motion to Exclude
- 07/06/2012 Northern title's Expert and on Norther Title's Motion to Extend Disclosure Deadline for Experts
- 07/09/2012 Hearing Scheduled (Motion 07/17/2012 10:00 AM) Cummings' Motion for Sanctions & Other Appropriate Remedies Under IRCP 37b for Failure to Comply with Discovery
- 07/09/2012 Request for Clarification
- 07/09/2012 Third Amended Notice of Taking Deposition of Curtis Baum
- 07/09/2012 Defendant Northern Title's Third Motion in Limine
- 07/09/2012 Defendant Northern Title's Memorandum in Support of Third Motion in Limine
- 07/09/2012 Notice Of Hearing
- 07/09/2012 Hearing Scheduled (Motion 07/17/2012 10:00 AM) Northern Title's Third Motion in Limine
- 07/09/2012 Continued (Motion 07/17/2012 09:00 AM) Northern Title's Third Motion in Limine
- 07/10/2012 Notice of Voluntary Dismissal-Rule 41(a)(1),(c) IRCP
- 07/10/2012 Civil Disposition entered for: Julian, Dorothy S, Defendant; Stephens, Roger L, Defendant. Filing date: 7/10/2012
- 07/12/2012 Defendant Northern Title's Objection and Response to Plaintiff's Motion for Leave to Amend the Complaint
- 07/12/2012 Plaintiff's Response in Opposition to Northern Title's Second Motion in Limine
- 07/12/2012 Affidavit of Nathan M. Olsen in Support of Plaintiff's Response in Opposition to Northern Title's Second Motion in Limine
- 07/12/2012 Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley
- 07/12/2012 Affidavit of Nathan M. Olsen in Support of Plaintiff's Response in Opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley
- 07/13/2012 Motion to Reconsider
- 07/13/2012 Memorandum in Support of Motion to reconsider
- 07/13/2012 Notice of Hearing
- 07/13/2012 Hearing Scheduled (Motion 07/17/2012 09:00 AM) Northern Title's Motion to Reconsider
- 07/16/2012 Reply Brief Supporting Motion for Leave to Amend the Complaint to Allege Punitive Damages
- 07/16/2012 Motion to Reconsider Northern Title's Motion to Exclude Baum and for the Imposition of Appropriate Sanctions
- 07/16/2012 Notice Of Hearing
Memorandum in Reply to Plaintiff's Opposition to Excluding
- 07/16/2012 Lenore Katri and Gregory Kelley & Request to File Over-Length Reply Brief
- 07/16/2012 Reply for Northern Title's Second Motion in Limine & Request to File Over-Length Reply Brief

NT Req Additions

07/16/2012 Memorandum In Response to Plaintiff's Motion for Sanctions
Hearing Scheduled (Motion 07/17/2012 09:00 AM) Northern
07/16/2012 Title's Motion to Reconsider to Exclude Curtis Baum and for
the Imposition of Appropriate Sanctions

07/16/2012 Plaintiff's Objection to Untimely Filings by Defendant Northern
Title
Court Minutes Hearing type: Motions hearing Hearing date:
7/16/2012 Time: 3:08 pm Courtroom: Court reporter:
07/16/2012 Stephanie Morse Minutes Clerk: Karen Volbrecht Tape
Number: Nathan Olsen, Plaintiff Cummings Randall Budge,
Defendant Stephens Aaron Bergman, Defendant Northern Title

07/16/2012 Plaintiff's Motions in Limine
07/16/2012 Notice Of Hearing
07/16/2012 Hearing Scheduled (Motion in Limine 07/17/2012 09:00 AM)
Plaintiff's Motions in Limine

07/17/2012 Affidavit of Nathan M. Olsen in support of Plaintiff's Motions in
Limine
07/17/2012 Motion In Limine
07/17/2012 Exhibit List of Defendant Roger L. Stephens
07/17/2012 Notice Of Hearing
07/17/2012 Hearing Scheduled (Motion in Limine 07/17/2012 09:00 AM)
Stephens' Motion in Limine
Hearing result for Motion scheduled on 07/17/2012 09:00 AM:
District Court Hearing Held Court Reporter: Stephanie Morse
07/17/2012 Number of Transcript Pages for this hearing estimated:
Cummings' Motion for Sanctions & Other Appropriate
Remedies Under IRCP 37b for Failure to Comply with
Discovery
Hearing result for Motion scheduled on 07/17/2012 09:00 AM:
07/17/2012 Hearing Held Northern Title's Motion to Reconsider to Exclude
Curtis Baum and for the Imposition of Appropriate
Sanctions/Denied
Hearing result for Motion scheduled on 07/17/2012 09:00 AM:
07/17/2012 Hearing Held Northern Title's Motion to Reconsider/denied
Hearing result for Motion scheduled on 07/17/2012 09:00 AM:
07/17/2012 Hearing Held Northern Title's Motion in Limine to Exclude
Lenore Katri & Gregory Kelley
Hearing result for Motion scheduled on 07/17/2012 09:00 AM:
07/17/2012 Hearing Held Cummings' Motion for Leave to Amend
Complaint to Allege Punitive Damages
Hearing result for Motion scheduled on 07/17/2012 09:00 AM:
07/17/2012 Hearing Held Northern Title's Third Motion in Limine
Hearing result for Motion scheduled on 07/17/2012 09:00 AM:
07/17/2012 Hearing Held Northern Title 2nd Motion in Limine with Request
to File Over-Length Memorandum
Hearing result for Pretrial Conference scheduled on
07/17/2012 09:00 AM: Hearing Held
07/17/2012 Hearing Scheduled (Motion in Limine 07/30/2012 02:00 PM)
All motions in limine
07/17/2012 Minute Entry and Order
07/19/2012 Amended Notice Of Hearing
07/20/2012 Second Amended Notice Of Hearing
07/20/2012 Trial Brief of Defendant Stephens
07/20/2012 Witness List of Defendant Roger Stephens
07/20/2012 Continued (Motion in Limine 07/30/2012 02:00 PM) Stephens'
Motion in Limine
07/20/2012 Second Amended Notice of Taking Deposition Duces Tecum of
Jay Davis
07/20/2012 Second Amended Notice of Taking Deposition Duces Tecum of
Evan Skinner

NFT Reg Additions

07/23/2012 Northern Title Company of Idaho, Inc's Second Amended Witness Disclosure

07/23/2012 Amended Notice of hearing

07/24/2012 Plaintiff's Motion to Reconsider Order to exclude Plaintiff's Expert Gregory Kelley

07/24/2012 Affidavit of Nathan M Olsen In Support of Plaintiff's Motion to Reconsider Order to Exclude Plaintiff's Expert Greg Kelley

07/24/2012 Notice of Hearing

07/24/2012 Plaintiff's Motion to Shorten Time on Hearing His Motion to Reconsider Order to Exclude Plaintiff's Expert Greg Kelley

07/24/2012 Plaintiff's Objection and Response in Opposition to Northern Title's Third Motion in Limine

07/24/2012 Plaintiff's Objection and Response in Opposition to Stephens Motion in Limine

07/24/2012 Notice of Use of Dorothy Julian Deposition

07/24/2012 Plaintiff Witness List

07/24/2012 Plaintiff Exhibit List

07/24/2012 Notice Of Use of Phillip Baum Deposition

07/24/2012 Notice of Use of Dr Curtis Baum Deposition

07/25/2012 Defendant Northern title Company of Idaho, Inc's Joinder to Defendant Roger Stephens 'Notice of Use of Dorothy Julian Deposition

07/25/2012 Witness List of Defendant Northern Title Company of Idaho, Inc.

07/25/2012 Memorandum In Opposition to Plaintiff's Motion in Limine & Request to File Over-Length Brief

07/25/2012 Joint Exhibit List

07/26/2012 Plaintiff's Supplemental Exhibit List

07/27/2012 Defendant Northern Title Company of Idaho, Inc's Joinder to Defendant Roger Stephens' Notice of Use of Dorothy Julian deposition

07/27/2012 Defendant Northern Title Company of Idaho, Inc's Exhibit List

07/27/2012 Certificate Of Service of Defendant Northern Title's Supplemental Response to Interrogatoris and Requests for Production of Documents

07/30/2012 Hearing Scheduled (Motion in Limine 07/30/2012 02:00 PM) Northern Title's 3rd Motion in Limine

07/30/2012 Hearing Scheduled (Motion 07/30/2012 02:00 PM) Cumming's Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley

07/30/2012 Defendant Northern Title's Reply Memorandum in Support of third Motion in Limine & Request to file Over-Length Brief

07/30/2012 Defendant Northern Title's Objection and Memorandum in Opposition to Plaintiff's Motion to Reconsider

07/30/2012 Exhibit List of Defendant Roger L. Stephens

07/30/2012 Court Minutes Hearing type: Motion in Limine Hearing date: 7/30/2012 Time: 2:02 pm Courtroom: Court reporter: Stephanie Morse Minutes Clerk: Karen Volbrecht Tape Number: Nathan Olson Randall Budge Brad Bearnson Aaron Bergman

07/30/2012 Hearing result for Motion scheduled on 07/30/2012 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Cumming's Motion to Reconsider Order to Exclude Plaintiff's Expert Gregory Kelley

07/30/2012 Trial Brief on Behalf of Defendant Northern Title Company of Idaho, Inc.

07/30/2012 Hearing result for Motion in Limine scheduled on 07/30/2012 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Northern Title's 3rd Motion in Limine

NT Reg Additions

07/30/2012 Hearing result for Motion in Limine scheduled on 07/30/2012 02:00 PM: Hearing Held Stephens' Motion in Limine

07/30/2012 Hearing result for Motion in Limine scheduled on 07/30/2012 02:00 PM: Hearing Held All motions in limine

07/30/2012 Minute Entry & Order
Court Minutes Hearing type: Court Trial Hearing date: 7/31/2012 Time: 8:30 am Courtroom: Court reporter: Stephanie Morse Minutes Clerk: Karen Volbrecht Tape Number: Nathan Olsen Randall Budge Brad Bearnson Aaron Bergman

07/31/2012 Hearing result for Court Trial scheduled on 07/31/2012 09:00 AM: Court Trial Started

07/31/2012 Hearing result for Motion in Limine scheduled on 07/31/2012 09:00 AM: Hearing Held Plaintiff's Motions in Limine

08/03/2012 Civil Disposition entered for: Stephens, Roger L, Defendant; Cummings, Steven, Plaintiff. Filing date: 8/3/2012

08/03/2012 Minute Entry & Order

08/09/2012 Attorney's Lien Pursuant to Idaho Code 3-205

08/13/2012 Amended Attorney's Lien Pursuant to Idaho Code 3-205

08/29/2012 Defendant Stephens' Motion for Order Awarding Attorney Fees and Costs

08/29/2012 Memorandum of Fees and Costs

08/29/2012 Affidavit of Randall C. Budge in Support of Motion for Fees and Costs

08/29/2012 Defendant Stephens' Brief in Support of Motion for Attorneys' Fees and Costs

09/04/2012 Notice Of Service of Transcript

09/07/2012 Hearing Scheduled (Motion 10/24/2012 01:30 PM)

09/11/2012 Plaintiff's Motion Objecting to and Disallowing Defendant Roger L. Stephens' Attorneys' Fees and Costs

09/11/2012 Plaintiff's Objection to Defendant Roger L. Stephens' Request for IRCP 54(b) Certification

09/11/2012 Notice Of Hearing

09/11/2012 Hearing Scheduled (Motion 10/24/2012 01:30 PM)
Motion For Enlargement of time to File Memorandum

09/25/2012 Supporting Objection to Defendant, Roger L Stephens' Motion for Attorneys' Fees and Costs

09/25/2012 Affidavit of Nathan M Olsen

09/26/2012 Stipulation for Extension of time to File Post-Trial Brief and Response

09/28/2012 Order Granting Plaintiff's Motion for Enlargement of Time
Notice of Non-Opposition to Plaintiff's Motion for Enlargement of Time to File Memorandum Supporting Objection to Defendant, Roger L. Stephens' Motion for Attorneys' Fees and Costs

09/28/2012

10/03/2012 Plaintiff's Post Trial Brief
Plaintiff's Memorandum in Support of Motion Objecting to and Disallowing Defendant Roger I. Stephens' Attorneys' Fees and Costs

10/10/2012

10/22/2012 Amended Notice Of Hearing
Court Minutes Hearing type: Motion for Order Awarding Atty Fees & Costs Hearing date: 10/24/2012 Time: 1:30 pm

10/24/2012 Courtroom: Court reporter: Stephanie Morse Minutes Clerk: Karen Volbrecht Tape Number: Nathan Olsen Brad Bearnson Randall Budge
Hearing result for Motion scheduled on 10/24/2012 01:30 PM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: Stephens' Motion for Order Awarding Attorney Fees and Costs

10/24/2012 Minute Entry & Order

NT Reg Additions

10/24/2012 Hearing result for Motion scheduled on 10/24/2012 01:30 PM:
 District Court Hearing Held Court Reporter:Stephanie Morse
 Number of Transcript Pages for this hearing estimated: Motion
 Objecting to & Disallowing Def R Stephens' Attorneys' Fees &
 Cost and Objection to Def R. Stephens' Request for IRCP54(b)
 Certification

10/30/2012 Stipulation for Extension of Time to File Defendant Northern
 Title Company of Idaho, Inc.'s Post-Trial Brief

10/30/2012 Order Granting Stipulation for Extension of Time to File
 Defendant Northern Title Company of Idaho, INC.'s Post Trial
 Brief

11/02/2012 Northern Title's Request for Submission of it's Post-Trial Brief

11/06/2012 Plaintiff's Objection to Defendant Northern Title's Submission
 of Over Length Post-Trial Brief

11/07/2012 Reply in Support of Submission of Northern Title's Post-Trial
 Brief

11/07/2012 Order Denying Northern Title's Request to Submit Over-Sized
 Brief

11/08/2012 Defendant Northern Title Company of Idaho, Inc's Post-Trial
 Brief

11/08/2012 Defendant Northern Title Company of Idaho, Inc's Amended
 Post-Trial Brief

11/19/2012 Plaintiff's Reply to Defendant Northern Title's Post Trial Brief

11/26/2012 Notice of Under Advisement

12/11/2012 Notice of Replacement of Trial Exhibits

01/22/2013 Final Judgment

01/22/2013 Memorandum Decision, Findings of Fact and Conclusions of
 Law

01/22/2013 Civil Disposition entered for: Stephens, Roger L, Defendant;
 Cummings, Steven, Plaintiff. Filing date: 1/22/2013

01/22/2013 Civil Disposition entered for: Northern Title Company of
 Idaho, Inc, Defendant; Cummings, Steven, Plaintiff. Filing
 date: 1/22/2013

01/23/2013 Miscellaneous Payment: For Making Copy Of Any File Or
 Record By The Clerk, Per Page Paid by: Lance Schuster
 Receipt number: 0000185 Dated: 1/23/2013 Amount: \$2.00
 (Credit card)

01/23/2013 Miscellaneous Payment: Technology Cost - CC Paid by: Lance
 Schuster Receipt number: 0000185 Dated: 1/23/2013
 Amount: \$3.00 (Credit card)

01/30/2013 Hearing Scheduled (Motion 02/22/2013 01:30 PM) Motion for
 Judgment against Cummings by Beard St. Clair

01/31/2013 Filing: I1 - Initial Appearance by persons other than the
 plaintiff or petitioner Paid by: Lance J. Schuster Receipt
 number: 0000242 Dated: 1/31/2013 Amount: \$66.00 (Check)
 For: Cummings, Steven (plaintiff)

01/31/2013 Motion to Intervene

01/31/2013 Motion for Judgment

01/31/2013 Affidavit of Counsel

01/31/2013 Notice Of Hearing

02/05/2013 Memorandum of Authority in Support of Plaintiff's
 Memorandum of Fees and Costs Against Defendant Northern
 Title

02/05/2013 Memorandum of Costs and Attorney's Fees and Affidavit of
 Nathan M. Olsen

02/05/2013 Defendant Stephens' Renewed Motion for Order Awarding
 Attorneys' Fees and Costs

02/05/2013 Northern Title Company of Idaho, Inc's Motion for Attorney
 Fees and Costs

02/05/2013 Northern Title Company of Idaho, Inc.'s Brief in Support of
 Motion for Attorney Fees and Costs

NT Reg Additions

02/05/2013 Memorandum of Fees and Costs

02/05/2013 Second Affidavit of Brad H. Bearnson in Support of Motion for Fees and Costs

02/06/2013 Notice Of Hearing/Bearnson

02/06/2013 Hearing Scheduled (Motion 02/26/2013 11:00 AM) Northern Title's Motion for Attorney Fees and Costs

02/07/2013 Amended Notice of Hearing

02/07/2013 Hearing Scheduled (Motion 02/26/2013 11:00 AM) Stephen's Motion for Order Awarding Attorney Fees and Costs

02/11/2013 Opposition To Motion to Intervene and Motion to Quash Attorney's Liens

02/11/2013 Affidavit of Steven Cummings in Opposition to Motion to Intervene and Motion for Judgment

02/11/2013 Affidavit of Nathan M. Olsen in Opposition to Motion to Intervene and Motion for Judgment

02/11/2013 Brief in Opposition to Motion to Intervene and Motion for Judgment and in Support of Motion to Quash

02/11/2013 Notice Of Hearing

02/11/2013 Hearing Scheduled (Motion 02/26/2013 11:00 AM) Cummings' Motion to Quash Attorney's Lien, Motion to Strike Portions of Affd of Lance Schuster

02/11/2013 Objection to and Motion to Strike Portions of Affidavit of Lance J. Schuster

02/11/2013 Brief in Support of Motion to Strike Portions of Affidavit of Lance J. Schuster

02/12/2013 Northern Title's Objection and Motion to Quash Plaintiff's Request for Costs and Attorney Fees

02/12/2013 Plaintiff's Motion Objecting to and Disallowing Defendant Northern Title's Attorneys Fees and Costs

02/12/2013 Notice Of Hearing

02/12/2013 Hearing Scheduled (Motion 02/26/2013 11:00 AM) Cummings' Motion Objecting to and Disallowing Def Northern Title's Atty Fees & Costs

02/13/2013 Notice Of Hearing

02/13/2013 Hearing Scheduled (Motion 02/26/2013 11:00 AM) Northern Title's Objection & Motion to Quash Plntf's Request for Costs & Atty Fees

02/19/2013 Northern Title's Objection & Response to Plaintiff's Motion Objecting to & Disallowing Defendant Northern Title's Attorney Fees & Costs

02/19/2013 Intervener's Reply Memorandum in Support of Motions to Intervene, for Entry of Judgment and in Opposition to Plaintiff's Motion to Quash

02/19/2013 Intervener's Memorandum in Opposition to Motion to Strike Portions of Affidavit of Lance J. Schuster

02/20/2013 Plaintiff's Brief: in Response to Defendant Northern Title's Objection & Motion to Quash Plaintiff's Request for Costs & Attorneys' Fees; & in Support of Plaintiff's Motion Objecting to & Disallowing of Defendant Northern Title's Attorneys' Fees & Costs

02/20/2013 Plaintiff's Amended Memorandum in Support of Motion Objecting to & Disallowing Defendant Roger L. Stephens' Attorneys' Fees & Costs

02/20/2013 Notice of Intent to Offer Testimony & Present Evidence

02/22/2013 Northern Title's Reply in Support of its Motion for Attorney Fees & Costs & Response in Opposition to Plaintiff's Motion Objecting to Northern Title's Costs & Attorney Fees

02/22/2013 Objection to Notice of Evidentiary Hearing

02/22/2013 Reply Brief in Support of Motion to Quash

NT Reg Additions

Court Minutes Hearing type: Motion hearings Hearing date:
 2/25/2013 Time: 11:00 am Courtroom: Court reporter:
 Stephanie Morse Minutes Clerk: Karen Volbrecht Tape
 02/25/2013 Number: Nathan Olsen for Plntf Steven Cummings Randall
 Budge for Def Roger Stephens Brad Bearnson for Def Northern
 Title Lance Schuster for Intervenor, Beard St Clair
 Hearing result for Motion scheduled on 02/26/2013 11:00 AM:
 District Court Hearing Held Court Reporter:Stephanie Morse
 02/26/2013 Number of Transcript Pages for this hearing estimated:
 Northern Title's Objection & Motion to Quash Plntf's Request
 for Costs & Atty Fees
 Hearing result for Motion scheduled on 02/26/2013 11:00 AM:
 02/26/2013 Hearing Held Cummings' Motion Objecting to and Disallowing
 Def Northern Title's Atty Fees & Costs
 Hearing result for Motion scheduled on 02/26/2013 11:00 AM:
 02/26/2013 Hearing Held Cummings' Motion to Quash Attorney's Lien,
 Motion to Strike Portions of Affd of Lance Schuster
 Hearing result for Motion scheduled on 02/26/2013 11:00 AM:
 02/26/2013 Hearing Held Stephen's Motion for Order Awarding Attorney
 Fees and Costs
 Hearing result for Motion scheduled on 02/26/2013 11:00 AM:
 02/26/2013 Hearing Held Northern Title's Motion for Attorney Fees and
 Costs
 Hearing result for Motion scheduled on 02/26/2013 11:00 AM:
 02/26/2013 Hearing Held Motion to Intervene and for Judgment against
 Cummings by Beard St. Clair
 02/26/2013 Minute Entry and Order
 Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme
 Court Paid by: Cummings, Steven (plaintiff) Receipt number:
 03/05/2013 0000529 Dated: 3/5/2013 Amount: \$109.00 (Cash) For:
 Cummings, Steven (plaintiff)
 03/05/2013 NOTICE OF APPEAL
 03/05/2013 Appealed To The Supreme Court
 03/06/2013 Bond Posted - Cash (Receipt 545 Dated 3/6/2013 for 151.00)
 03/11/2013 Brief Regarding Jurisdiction on Motion to Intervene
 03/19/2013 Order
 03/19/2013 Decision on Motion to Intervene
 Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme
 Court Paid by: Bearnson, Brad H (attorney for Northern Title
 03/26/2013 Company of Idaho, Inc) Receipt number: 0000679 Dated:
 3/26/2013 Amount: \$109.00 (Combination) For: Northern
 Title Company of Idaho, Inc (defendant)
 Filing: Technology Cost - CC Paid by: Bearnson, Brad H
 (attorney for Northern Title Company of Idaho, Inc) Receipt
 03/26/2013 number: 0000679 Dated: 3/26/2013 Amount: \$3.00
 (Combination) For: Northern Title Company of Idaho, Inc
 (defendant)
 03/26/2013 Northern Title Company of Idaho, Inc's Notice of Cross Appeal
 03/26/2013 Bond Posted - Cash (Receipt 680 Dated 3/26/2013 for
 100.00)
 04/04/2013 Decision on Costs and Fees
 Civil Disposition entered for: Northern Title Company of
 04/04/2013 Idaho, Inc, Defendant; Cummings, Steven, Plaintiff. Filing
 date: 4/4/2013
 Civil Disposition entered for: Stephens, Roger L, Defendant;
 04/04/2013 Cummings, Steven, Plaintiff. Filing date: 4/4/2013
 04/12/2013 Final Judgment on Costs and Fees
 04/25/2013 Northern Title Company of Idaho, Inc.'s Amended Notice of
 Cross Appeal
 05/14/2013 Notice of Amended Appeal
 05/28/2013 Bond Posted - Cash (Receipt 1248 Dated 5/28/2013 for
 906.30)

NT Reg Additions

354

05/31/2013 Stipulated Notice of Lodging
06/03/2013 Bond Posted - Cash (Receipt 1333 Dated 6/3/2013 for 1112.80)

Connection: Public

NI Reg Additions

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