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U.S. District Court
District of Nebraska (8 Omaha)
CIVIL DOCKET FOR CASE #: 8:18-cv-00315-RFR-MDN

United of Omaha Life Insurance Company v. PHL Variable Insurance Company, et al
Assigned to: Judge Robert F. Rossiter, Jr.
Referred to: Magistrate Judge Michael D. Nelson
Cause: 15:1051 Trademark Infringement
Date Filed: 07/05/2018
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

United of Omaha Life Insurance Company
a Nebraska corporation

represented by **Carol A. Svolos**
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V.

Defendant

PHL Variable Insurance Company
a Connecticut corporation

represented by **Eric J. Shimanoff**
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ATTORNEY TO BE NOTICED

Defendant

Phoenix Life Insurance Company
a New York corporation

represented by **Eric J. Shimanoff**
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/05/2018	1	COMPLAINT with jury demand <i>Complaint for Service Mark Infringement, Unfair Competition, and Deceptive Trade Practices</i> against PHL Variable Insurance Company, Phoenix Life Insurance Company (Filing fee \$ 400, receipt number ANEDC-3716931), by Attorney Carol A. Svolos on behalf of United of Omaha Life Insurance Company (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Svolos, Carol) (Entered: 07/05/2018)
07/05/2018	2	TEXT NOTICE OF JUDGE ASSIGNED: Magistrate Judge Susan M. Bazis assigned. (LKO) (Entered: 07/05/2018)
07/05/2018	3	ATTORNEY LETTER by Clerk that Attorney Edmund J. Haughey has not registered for admittance to practice. If the requested action is not taken within fifteen (15) days of the date of this letter, this matter will be referred to the assigned magistrate judge for the entry of a show cause order. (LKO) (Entered: 07/05/2018)
07/05/2018	4	TEXT NOTICE REGARDING CORPORATE DISCLOSURE STATEMENT by Deputy Clerk as to Plaintiff United of Omaha Life Insurance Company. Pursuant to Fed. R. Civ. P. 7.1, non-governmental corporate parties are required to file Corporate Disclosure Statements (Statements). The parties shall use the form Corporate Disclosure Statement, available on the Web site of the court at http://www.ned.uscourts.gov/forms/ . If you have not filed your Statement, you must do so within 15 days of the date of this notice. If you have already filed your Statement in this case, you are reminded to file a Supplemental Statement within a reasonable time of any change in the information that the statement requires. (LKO) (Entered: 07/05/2018)
07/05/2018	5	

		REPORT on the filing of an action regarding trademark number 3,420,619. Complaint filed on 7/5/18. Notification to the U.S. Trademark Office. (Attachments: # 1 Complaint) (LKO) (Entered: 07/05/2018)
07/05/2018	6	CORPORATE DISCLOSURE STATEMENT pursuant to Fed. R. Civ. P. 7.1 identifying Corporate Parent Mutual of Omaha Insurance Company for United of Omaha Life Insurance Company. by Attorney Carol A. Svolos on behalf of Plaintiffs United of Omaha Life Insurance Company, Mutual of Omaha Insurance Company.(Svolos, Carol) (Entered: 07/05/2018)
07/06/2018	7	MOTION for Admission Pro Hac Vice of <i>Edmund J. Haughey</i> Filing fee \$ 100, receipt number ANEDC-3717690 by Attorney Edmund J. Haughey on behalf of Plaintiff United of Omaha Life Insurance Company.(Haughey, Edmund) (Entered: 07/06/2018)
07/06/2018	8	TEXT ORDER granting Motion for Admission Pro Hac Vice 7 for attorney Edmund Haughey. Ordered by Deputy Clerk. (DKM) (Entered: 07/06/2018)
07/17/2018	9	WAIVER OF SERVICE Returned Executed upon defendant PHL Variable Insurance Company. Waiver sent on 7/11/2018. (Svolos, Carol) (Entered: 07/17/2018)
07/17/2018	10	WAIVER OF SERVICE Returned Executed upon defendant Phoenix Life Insurance Company. Waiver sent on 7/11/2018. (Svolos, Carol) (Entered: 07/17/2018)
09/07/2018	11	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Attorney Eric J. Shimanoff on behalf of Defendants PHL Variable Insurance Company, Phoenix Life Insurance Company.(Shimanoff, Eric) (Entered: 09/07/2018)
09/07/2018	12	BRIEF in support of MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 11 by Attorney Eric J. Shimanoff on behalf of Defendants PHL Variable Insurance Company, Phoenix Life Insurance Company.(Shimanoff, Eric) (Entered: 09/07/2018)
09/07/2018	13	INDEX in support of MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 11 by Attorney Eric J. Shimanoff on behalf of Defendants PHL Variable Insurance Company, Phoenix Life Insurance Company. (Attachments: # 1 Declaration of Richard L. Claverie in Support of Motion to Dismiss, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12,

		# 14 Exhibit 13, # 15 Exhibit 14)(Shimanoff, Eric) (Entered: 09/07/2018)
09/07/2018	14	CORPORATE DISCLOSURE STATEMENT pursuant to Fed. R. Civ. P. 7.1 identifying Corporate Parent The Phoenix Companies, Inc., Corporate Parent Nassau Reinsurance Group Holdings, L.P., Corporate Parent Nassau Holdings, L.P., Corporate Parent Nassau Reinsurance Group Holdings GP, LLC, Corporate Parent Golden State Capital Funds for PHL Variable Insurance Company. by Attorney Eric J. Shimanoff on behalf of Defendants PHL Variable Insurance Company, The Phoenix Companies, Inc., Nassau Reinsurance Group Holdings, L.P., Nassau Holdings, L.P., Nassau Reinsurance Group Holdings GP, LLC, Golden State Capital Funds.(Shimanoff, Eric) (Entered: 09/07/2018)
09/07/2018	15	CORPORATE DISCLOSURE STATEMENT pursuant to Fed. R. Civ. P. 7.1 identifying Corporate Parent The Phoenix Companies, Inc., Corporate Parent Nassau Reinsurance Group Holdings, L.P., Corporate Parent Nassau Holdings, L.P., Corporate Parent Nassau Reinsurance Group Holdings GP, LLC, Corporate Parent Golden State Capital Funds for Phoenix Life Insurance Company. by Attorney Eric J. Shimanoff on behalf of Defendants Phoenix Life Insurance Company, The Phoenix Companies, Inc., Nassau Reinsurance Group Holdings, L.P., Nassau Holdings, L.P., Nassau Reinsurance Group Holdings GP, LLC, Golden State Capital Funds.(Shimanoff, Eric) (Entered: 09/07/2018)
09/10/2018	16	TEXT REASSIGNMENT ORDER - A Consent to Exercise of Jurisdiction by United States Magistrate Judge has not been filed. Accordingly, this case is reassigned to District Judge Robert F. Rossiter, Jr., for disposition and to Magistrate Judge Michael D. Nelson for judicial supervision and processing of all pretrial matters. Ordered by Chief Judge Laurie Smith Camp. (LKO) (Entered: 09/10/2018)
09/14/2018	17	JOINT MOTION to Stay by Attorney Carol A. Svolos on behalf of Plaintiff United of Omaha Life Insurance Company.(Svolos, Carol) (Entered: 09/14/2018)
09/17/2018	18	TEXT ORDER granting 17 Joint Motion to Stay. This case is stayed through October 29, 2018, while the parties discuss settlement. Plaintiff's brief in opposition to Defendants' Motion to Dismiss 11 is due on October 29, 2018, unless the parties jointly request a continuation of the stay. Ordered by Magistrate Judge Michael D. Nelson. (SMN) (Entered: 09/17/2018)
10/22/2018	19	JOINT MOTION to Continue <i>Stay</i> by Attorney Carol A. Svolos on behalf of Plaintiff United of Omaha Life Insurance Company.(Svolos, Carol) (Entered: 10/22/2018)
10/23/2018	20	TEXT ORDER granting 19 Joint Motion to Continue Stay. This case shall continue to be stayed through November 30, 2018, while the parties discuss settlement. Plaintiff's brief in opposition to Defendants' Motion to Dismiss 11 is due on November 30, 2018, unless the parties jointly request a further continuance of the stay or if the parties notify the Court they have settled their claims. Ordered by Magistrate Judge Michael D. Nelson. (SMN) (Entered: 10/23/2018)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED OF OMAHA LIFE)	
INSURANCE COMPANY)	
(a Nebraska corporation))	
)	Case No. 8:18-cv-_____
Plaintiff,)	
)	COMPLAINT FOR SERVICE MARK
v.)	INFRINGEMENT, UNFAIR
)	COMPETITION, AND DECEPTIVE
)	TRADE PRACTICES
PHL VARIABLE INSURANCE)	
COMPANY (a Connecticut corporation))	
and PHOENIX LIFE INSURANCE)	Demand for Jury Trial
COMPANY (a New York corporation))	
)	
Defendants)	

Plaintiff United of Omaha Life Insurance Company, for its complaint against Defendants PHL Variable Insurance Company and Phoenix Life Insurance Company, hereby alleges as follows:

THE PARTIES

1. Plaintiff United of Omaha Life Insurance Company (“United of Omaha”) is a Nebraska corporation having its principal place of business at Mutual of Omaha Plaza, Omaha, Nebraska 68175.

2. On information and belief, Defendant PHL Variable Insurance Company (“PHL”) is a Connecticut corporation having its principal place of business at One American Row, Hartford, Connecticut 06103.

3. On information and belief, Defendant Phoenix Life Insurance Company (“Phoenix”) is a New York corporation having its principal place of business at One American Row, Hartford, Connecticut 06103.

4. On information and belief, PHL and Phoenix are related companies at least insofar as they both are wholly-owned subsidiaries of The Phoenix Companies, Inc.

5. On information and belief, PHL and Phoenix share many of the same officers and directors, including but not limited to the same President, the same VP, CFO, and Treasurer, and the same VP and Secretary.

JURISDICTION AND VENUE

6. This is an action for service mark infringement, unfair competition, and deceptive trade practices arising under the Federal Trademark Act, 15 U.S.C. § 1051 *et seq.*, and the statutes and common law of the State of Nebraska, based on PHL's and Phoenix's unauthorized use of United of Omaha's federally-registered service mark TERM LIFE EXPRESS in connection with a life insurance policy that PHL and Phoenix market under the name "Phoenix Safe Harbor Term Life Express." The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000, and arises in part under the laws of the United States.

7. This Court has jurisdiction over this action under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338, and 1367 and has personal jurisdiction over PHL and Phoenix pursuant to Neb. Rev. Stat. § 25-536 based on their transaction of business, including but not limited to contracting to insure Nebraska residents, and causation of tortious injury in the State of Nebraska, as described herein. For example, on information and belief, both PHL and Phoenix are licensed to do business in Nebraska; at least PHL markets the "Safe Harbor Term Life Express" insurance policy to Nebraska residents; PHL has collected over \$3.25 million in life insurance premiums and annuity considerations from Nebraska residents since the beginning of 2017; and Phoenix has collected over \$1.3 million in life insurance premiums from Nebraska residents during that same period. As such, the exercise of personal jurisdiction over PHL and

Phoenix in this case is authorized by Neb. Rev. Stat. § 25-536 and comports with the Due Process Clause of the 14th Amendment.

8. Venue is proper in the United States District Court for the District of Nebraska pursuant to 28 U.S.C. §§ 1391(b) and (c).

BACKGROUND FACTS COMMON TO ALL COUNTS

9. Since 1926, United of Omaha has been continuously engaged in the business of providing a variety of insurance and financial services to the general public, including life insurance policies.

10. One of United of Omaha's most popular and successful life insurance policies is its TERM LIFE EXPRESS policy, which United of Omaha has continuously offered to the general public since October 2006.

11. In 2017 alone, United of Omaha sold approximately \$30 million worth of new TERM LIFE EXPRESS life insurance policies. United Omaha expects that 2018 sales of new TERM LIFE EXPRESS policies will be even greater.

12. United of Omaha is the owner of U.S. Registration No. 3,420,619 for the TERM LIFE EXPRESS service mark, issued by the U.S. Patent and Trademark Office on April 29, 2008 on the Principal Register, for "insurance underwriting in the field of life insurance." United of Omaha is the owner of this valid, subsisting, and incontestable registration. A true copy of U.S. Registration No. 3,420,619 is attached hereto as Exhibit A.

13. On information and belief, in October 2014, without United of Omaha's authorization, PHL and Phoenix adopted and began using the name "Phoenix Safe Harbor Term Life Express" for a life insurance policy that competes directly with United of Omaha's TERM LIFE EXPRESS life insurance policy. This was eight years after United Omaha began using the

TERM LIFE EXPRESS mark, more than six years after the U.S. Patent and Trademark Office granted United of Omaha a registration for TERM LIFE EXPRESS, and more than one year after United of Omaha's TERM LIFE EXPRESS registration became incontestable.

14. On information and belief, PHL is the issuer of the "Phoenix Safe Harbor Term Life Express" insurance policy in all states other than Maine and New York, including but not limited to Nebraska, and Phoenix is the issuer of the "Phoenix Safe Harbor Term Life Express" insurance policy in Maine and New York.

15. On information and belief, Phoenix is the owner of U.S. Registration No. 4,713,986 for the service mark PHOENIX SAFE HARBOR TERM for "insurance services, namely, underwriting, issuing and administration of life insurance."

16. On information and belief, as the owner of the registered service mark PHOENIX SAFE HARBOR TERM, Phoenix directly or indirectly controls PHL's use of the name "Phoenix Safe Harbor Term Life Express" and the quality of the insurance services offered thereunder, both in and outside of Nebraska.

17. Both United of Omaha's TERM LIFE EXPRESS policy and PHL's and Phoenix's "Phoenix Safe Harbor Term Life Express" policies are term life insurance policies that are marketed and sold to the same class or classes of consumers in direct competition with each other.

18. On information and belief, United of Omaha's TERM LIFE EXPRESS life insurance policy and PHL's and Phoenix's "Phoenix Safe Harbor Term Life Express" life insurance policy are marketed and sold through the same trade channels, and, indeed, through some of the same insurance agents and brokers.

19. On information and belief, PHL's and Phoenix's "Phoenix Safe Harbor Term Life Express" life insurance policy is sometimes referred to by agents and brokers as Phoenix's "Term Life Express" policy.

20. A link to a webpage for PHL's and Phoenix's "Phoenix Safe Harbor Term Life Express" life insurance policy (<https://phoenix.nsre.com/safe-harbor-term-life.html>) appears on the first page of Google search results for "TERM LIFE EXPRESS," alongside links to United of Omaha's TERM LIFE EXPRESS life insurance policy. A true copy of a printout of the aforementioned Google search results is attached hereto as Exhibit B, and a true copy of a printout of the aforementioned webpage (<https://phoenix.nsre.com/safe-harbor-term-life.html>) is attached hereto as Exhibit C. As such, consumers searching for United of Omaha's policy by name (TERM LIFE EXPRESS) are likely to encounter PHL's and Phoenix's policy.

21. Concerned about PHL's and Phoenix's use of the name "Phoenix Safe Harbor Term Life Express," United of Omaha sent a letter to Phoenix dated September 25, 2017, in which it alerted Phoenix to United of Omaha's registered and incontestable TERM LIFE EXPRESS mark and requested information regarding Phoenix's use of the name "Phoenix Safe Harbor Term Life Express." Phoenix's response to this letter did not alleviate United of Omaha's concern, and in a letter dated December 21, 2017, United of Omaha demanded that Phoenix remove the words "Life Express" from the name "Phoenix Safe Harbor Term Life Express." Phoenix has refused to do so and continues to use the name "Phoenix Safe Harbor Term Life Express" in willful disregard of United of Omaha's rights, thereby causing United of Omaha to suffer immediate and irreparable injury, for which it has no adequate remedy at law.

Count I

SERVICE MARK INFRINGEMENT

22. As a cause of action and ground for relief, United of Omaha alleges that PHL and Phoenix have engaged and continue to engage in acts of service mark infringement under § 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at Nebraska common law, and United of Omaha incorporates paragraphs 1 through 21 of the complaint as if fully set forth herein.

23. U.S. Registration No. 3,420,619 is prima facie evidence of the validity of the TERM LIFE EXPRESS mark and provides constructive notice of United of Omaha's ownership thereof, as provided by §§ 7(b) and 22 of the Federal Trademark Act, 15 U.S.C. §§ 1057(b) and 1072. Moreover, because U.S. Registration No. 3,420,619 has become incontestable, this registration is conclusive evidence of the validity of the TERM LIFE EXPRESS mark, of United of Omaha's ownership of the TERM LIFE EXPRESS mark, and of United of Omaha's exclusive right to use the TERM LIFE EXPRESS mark in commerce, as provided by §§ 15 and 33(b) of the Federal Trademark Act, 15 U.S.C. §§ 1065 and 1115(b).

24. Notwithstanding United of Omaha's prior-established, incontestable rights in the TERM LIFE EXPRESS mark, PHL and Phoenix are currently marketing and selling, in direct competition with United of Omaha, to the same class or classes of consumers, and through the same trade channels, a term life insurance policy under the "Phoenix Safe Harbor Term Life Express" name, which name incorporates the entirety of United of Omaha's TERM LIFE EXPRESS mark.

25. PHL's and Phoenix's use of the name "Phoenix Safe Harbor Term Life Express" in connection with the marketing and sale of their term life insurance policy is likely to cause confusion, cause mistake, or deceive. For example, such use is likely to cause consumers to

believe, mistakenly, that the “Phoenix Safe Harbor Term Life Express” policy is the policy marketed under United of Omaha’s TERM LIFE EXPRESS mark and/or that the TERM LIFE EXPRESS mark is a shortened version of the name “Phoenix Safe Harbor Term Life Express.” As another example, consumers looking or asking for United of Omaha’s policy by name (TERM LIFE EXPRESS) are likely to be confused about which policy they are looking or asking for when presented with both United of Omaha’s policy and PHL’s and Phoenix’s policy. As a further example, PHL’s and Phoenix’s incorporation of United of Omaha’s entire TERM LIFE EXPRESS mark in their policy name is likely to deceive consumers desiring United of Omaha’s policy, such that the consumers purchase PHL’s and Phoenix’s policy instead.

26. Accordingly, PHL’s and Phoenix’s use of the name “Phoenix Safe Harbor Term Life Express” infringes United of Omaha’s exclusive rights in the TERM LIFE EXPRESS mark under § 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at Nebraska common law.

27. On information and belief, PHL’s and Phoenix’s use of the name “Phoenix Safe Harbor Term Life Express” has been in knowing and willful disregard of United of Omaha’s rights.

28. Unless enjoined by this Court, PHL and Phoenix will continue to infringe United of Omaha’s TERM LIFE EXPRESS mark, thereby deceiving the public and causing United of Omaha to suffer immediate and irreparable injury, for which it has no adequate remedy at law.

Count II

UNFAIR COMPETITION

29. As a cause of action and ground for relief, United of Omaha alleges that PHL and Phoenix have engaged and continue to engage in acts of unfair competition under § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), and at Nebraska common law, and United of

Omaha incorporates by reference paragraphs 1 through 28 of the complaint as if fully set forth herein.

30. PHL's and Phoenix's use of the name "Phoenix Safe Harbor Term Life Express" in the manner alleged herein constitutes a false designation of origin within the meaning of § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), which is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, and/or association of PHL and Phoenix with United of Omaha, and/or as to the origin, sponsorship, and/or approval of PHL's and Phoenix's "Phoenix Safe Harbor Term Life" life insurance policy by United of Omaha. Such false designation of origin is material and is likely to influence consumer purchasing decisions.

31. PHL's and Phoenix's use of the name "Phoenix Safe Harbor Term Life Express" unfairly trades and free-rides on the goodwill and reputation that United of Omaha has developed in the TERM LIFE EXPRESS mark and the services associated therewith. Such conduct constitutes unfair competition and is causing United of Omaha to suffer immediate and irreparable injury, for which it has no adequate remedy at law.

32. Further, United of Omaha has no control over the nature and quality of the "Phoenix Safe Harbor Term Life Express" life insurance policy marketed and sold by PHL and Phoenix. Any dissatisfaction with PHL's and Phoenix's policy is likely to irreparably impair the goodwill and reputation associated with the TERM LIFE EXPRESS mark that United of Omaha has developed over the years.

33. Upon information and belief, PHL's and Phoenix's use of the name "Phoenix Safe Harbor Term Life Express" has been in knowing and willful disregard of United of Omaha's rights.

34. Unless enjoined by this Court, the Defendants will continue to engage in acts of unfair competition, thereby deceiving the public and causing United of Omaha to suffer immediate and irreparable injury, for which it has no adequate remedy at law.

Count III

DECEPTIVE TRADE PRACTICES

35. As a cause of action and ground for relief, United of Omaha alleges that PHL has engaged and continues to engage in deceptive trade practices in violation of the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 *et. seq.*, and United of Omaha incorporates by reference paragraphs 1 through 34 of the complaint as if fully set forth herein.

36. PHL's use of the name "Phoenix Safe Harbor Term Life Express" in the manner alleged herein constitutes a false, misleading, and deceptive trade practice within the meaning of § 87-302 of the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 *et seq.*, which is likely to cause confusion or misunderstanding as to the source, sponsorship, and/or approval of PHL's "Phoenix Safe Harbor Term Life Express" life insurance policy. Such likelihood of confusion or misunderstanding as to source, sponsorship, and/or approval is material and is likely to influence consumer purchasing decisions.

37. Upon information and belief, PHL's use of the name "Phoenix Safe Harbor Term Life Express" has been in knowing and willful disregard of United of Omaha's rights.

38. Unless enjoined by this Court, PHL will continue to engage in deceptive trade practices, thereby deceiving the public and causing United of Omaha to suffer immediate and irreparable injury, for which it has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, United of Omaha respectfully prays that:

A. The Court enter judgment that PHL and Phoenix have engaged in acts of service mark infringement in violation of § 32(1) of the Federal Trademark Act, 15 U.S.C. § 1114(1), and at Nebraska common law; that PHL and Phoenix have engaged in acts of unfair competition under § 43(a) of the Federal Trademark Act, 15 U.S.C. § 1125(a), and at Nebraska common law; that PHL has engaged in deceptive trade practices under the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 *et seq.*; that PHL and Phoenix otherwise have injured United of Omaha in the manner complained of herein; and that PHL's and Phoenix's actions in these regards have been willful.

B. The Court order that PHL and Phoenix and each of their subsidiaries, agents, employees, sales representatives, servants, attorneys, successors, and assigns, and all others in privity or acting in concert therewith, be preliminarily and permanently enjoined from:

(i) using the name "Phoenix Safe Harbor Term Life Express" or any other name, service mark, or trademark that incorporates or is confusingly similar to United of Omaha's TERM LIFE EXPRESS mark;

(ii) otherwise infringing United of Omaha's TERM LIFE EXPRESS mark;
and

(iii) competing unfairly with United of Omaha or otherwise injuring United of Omaha in the manner complained of herein.

C. The Court order that PHL and Phoenix be required to pay to United of Omaha compensatory damages, with interest, in an amount to be determined at trial for their acts of service mark infringement, unfair competition, and deceptive trade practices, and that such

damages caused by their acts of service mark infringement, unfair competition, and deceptive trade practices be trebled in accordance with § 35(a) of the Federal Trademark Act, 15 U.S.C. § 1117(a).

D. The Court order that PHL and Phoenix be required in equity to account for and pay to United of Omaha the profits realized by them which are attributable to their acts of service mark infringement, unfair competition, and deceptive trade practices, and that said profits be trebled.

E. The Court order, pursuant to § 36 of the Federal Trademark Act, 15 U.S.C. § 1118, that PHL and Phoenix be directed to destroy all advertisements, brochures, literature, and other materials in their possession, custody, or control that bear the name “Phoenix Safe Harbor Term Life Express,” or any other name, service mark, or trademark that incorporates or is confusingly similar to United of Omaha’s TERM LIFE EXPRESS mark.

F. The Court order that PHL and Phoenix be required to pay to United of Omaha the costs of this action and United of Omaha’s reasonable attorney fees, in accordance with § 35 of the Federal Trademark Act, 15 U.S.C. § 1117(a), and the Nebraska Uniform Deceptive Trade Practices Act and Trademark Registration Act.

G. The Court order that United of Omaha be granted such other, different, and additional relief as this Court deems equitable and proper under the circumstances.

DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Nebraska Local Civil Rule 38.1, United of Omaha hereby demands trial by jury as to all issues so triable in this civil action.

Dated this 5th day of July, 2018.

By: /s/ Carol A. Svolos

Carol A. Svolos #24731

John P. Passarelli #16018

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*Attorneys for Plaintiff United of
Omaha Life Insurance Company*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED OF OMAHA LIFE)
INSURANCE COMPANY)
(a Nebraska corporation))

Plaintiff,)

v.)

PHL VARIABLE INSURANCE)
COMPANY (a Connecticut corporation))
and PHOENIX LIFE INSURANCE)
COMPANY (a New York corporation))

Defendants)

Case No. 8:18-cv-315

JOINT MOTION TO CONTINUE STAY

Pursuant to Federal Rule of Civil Procedure 7(b), plaintiff United of Omaha Life Insurance Company (“United of Omaha”) and defendants PHL Variable Insurance Company and Phoenix Life Insurance Company (“Defendants”) (together with United of Omaha, collectively, the “Parties”) hereby jointly move the Court to enter an order to continue the stay of this litigation. In support of this motion, the Parties state as follows:

1. Counsel for the Parties file this motion in good faith and not to cause undue delay.
2. Counsel for the Parties file this motion in an effort “to secure the just, speedy, and inexpensive determination” of this action. Fed. R. Civ. P. 1. *See also* Fed. R. Civ. P. 16(a) (encouraging “expedit[ed] disposition of the action” and “discouraging wasteful pretrial activities”).
3. The Court has full discretion to issue a stay, because “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”

Cottrell v. Duke, 737 F.3d 1238, 1248 (8th Cir. 2013) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)); *see also id.* at 1249 (remanding and allowing the district court to “impose a more finite and less comprehensive stay, if it concludes that such a stay properly balances the rights of the parties and serves the interests of judicial economy”).

4. On September 7, 2018, Defendants filed a motion to dismiss, Doc # 11. Pursuant to Nebraska Civil Rule 7.1(b)(1)(B), United of Omaha’s opposition brief was due 21 days later, or September 28, 2018.

5. On September 14, 2018, the Parties filed a Joint Motion to Stay the due date for United of Omaha’s opposition brief such that the parties could continue active settlement discussions. Doc # 17. The Court granted the motion, extending the due date for United of Omaha’s opposition brief to “October 29, 2018, unless the parties jointly request a continuation of the stay.” Doc # 18. That date has not yet passed.

6. The Parties have made significant progress toward a settlement and are continuing to negotiate some of the terms. An additional stay would allow the Parties to complete their settlement negotiations without the burden and distraction of having to prepare opposition and reply briefs in parallel with their negotiations.

7. Counsel for the Parties believe that good cause exists for this motion to continue stay of litigation and that a stay would serve the interests of judicial economy.

WHEREFORE the Parties jointly move the Court for an order continuing the stay of this litigation up until November 30, 2018, such that United of Omaha’s opposition brief due date is extended from October 29, 2018 to November 30, 2018, or for some other time deemed proper by this Court.

Dated this 22nd day of October, 2018.

Respectfully submitted,

UNITED OF OMAHA LIFE INSURANCE
COMPANY,
Plaintiff

PHL VARIABLE INSURANCE COMPANY
and
PHOENIX LIFE INSURANCE COMPANY,
Defendants

By: /s/ Carol A. Svolos
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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record.

/s/ Carol A. Svolos
Carol A. Svolos