

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

OCT 3 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

<p>BROTHERHOOD MUTUAL INSURANCE COMPANY, an Indiana corporation,</p> <p style="text-align: center;">Plaintiff-Appellee,</p> <p style="text-align: center;">v.</p> <p>SERGEI VINKOV, an individual,</p> <p style="text-align: center;">Defendant-Appellant.</p>	<p>No. 21-55857</p> <p>D.C. No. 5:19-cv-01821-SB-SP</p> <p>MEMORANDUM*</p>
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Appeal from the United States District Court  
for the Central District of California  
Stanley Blumenfeld, Jr., District Judge, Presiding

Submitted September 30, 2022\*\*  
San Francisco, California

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

Sergei Vinkov appeals from the district court’s summary judgment and motions to dismiss order in favor of Brotherhood Mutual Insurance Company (BMIC) in BMIC’s action alleging it does not have a duty to defend or indemnify

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Vinkov in a separate lawsuit. We have jurisdiction under 28 U.S.C. § 1291. We review summary judgment de novo and a district court order under Federal Rule of Civil Procedure 37(b)(2) for abuse of discretion. *Edgerly v. City & Cnty. of San Francisco*, 599 F.3d 946, 960 (9th Cir. 2010); *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1337 (9th Cir.1985). We affirm.

The district court properly granted summary judgment in favor of BMIC because Vinkov failed to establish a triable issue as to whether he is covered by BMIC's insurance policy. Vinkov failed to genuinely dispute any material fact that his social media posts were not "leadership activity undertaken on the church's behalf," as required to be a covered person under BMIC's policy. *See Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (holding that a conclusory affidavit lacking detailed facts and any supporting evidence is insufficient to create a genuine issue of material fact).

The district court properly dismissed Vinkov's counterclaims for insurance bad faith and prompt payment. The district court did not abuse its discretion because when a party fails to obey an order to provide discovery, a trial court may, in its discretion, "make such orders in regard to the failure as are just." *David v. Hooker, Ltd.*, 560 F.2d 412, 418-19 (9th Cir. 1977). The district did not abuse its discretion in concluding that by disregarding multiple court orders and providing only evasive responses, Vinkov sufficiently failed to abide by discovery orders and

that such obstructive behavior warranted dismissal of his counterclaims. *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007).

The district court properly exercised subject matter jurisdiction. The action is between citizens of different states and the amount in controversy exceeds \$75,000, as required by 28 U.S.C. § 1332.

All pending motions are denied.

**AFFIRMED.**

**United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**  
95 Seventh Street  
San Francisco, CA 94103

**Information Regarding Judgment and Post-Judgment Proceedings****Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)****Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)****(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

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- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

#### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

#### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

#### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

#### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista ([maria.b.evangelista@tr.com](mailto:maria.b.evangelista@tr.com)));
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**Form 10. Bill of Costs**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>*

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The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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BROTHERHOOD MUTUAL INSURANCE  
COMPANY, an Indiana corporation,

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SERGEI VINKOV, an individual,

Defendant-Appellant.

No. 21-55857

D.C. No.

5:19-cv-01821-SB-SP

Central District of California,  
Riverside

ORDER

Before: WALLACE, FERNANDEZ, and SILVERMAN, Circuit Judges.

Judges Wallace, Fernandez, and Silverman recommend to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for rehearing en banc is **DENIED**.