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No. 70504

CASE NO. 13-17441

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INITIAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 07 2016

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CLERK OF SUPREME COURT
BY *[Signature]*
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JAMES NALDER, Guardian Ad Litem on
Behalf of Cheyanne Nalder and GARY
LEWIS, individually,

No. 13-17441

D.C. No. 2:09-cv-01348-
RJC-GWF
District of Nevada,
Las Vegas

Appellants,

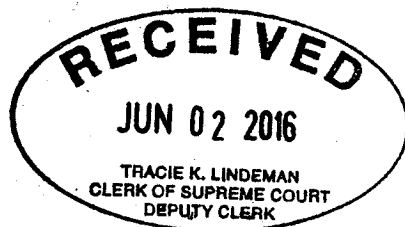
vs.

UNITED AUTOMOILE INSURANCE
COMPANY,

Respondent.

APPELLANTS' APPENDIX – VOLUME I

THOMAS CHRISTENSEN, ESQ.
Nevada State Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, NV 89107
Telephone: (702) 216-1475
Facsimile: (702) 870-6152
courtnotices@injuryhelpnow.com
Attorneys for Appellants



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Matthew Douglass, Esq.
ATKIN WINNER & SHERROD
1117 S. Rancho Dr.
Las Vegas NV 89102

/s/ Jennifer M. Gooss
An employee of CHRISTENSEN LAW OFFICES, LLC



October 23, 2007

Via Facsimile: 866-209-4163

UAI
Attn: Manny Cordova
PO Box 14950
Las Vegas, NV 89114

Re: Your Insured:	Gary Lewis
Our Client:	CheyAnne Nalder
Claim No.:	14 NV 020021926
Date of Incident:	7/8/2007

Dear Mr. Cordova:

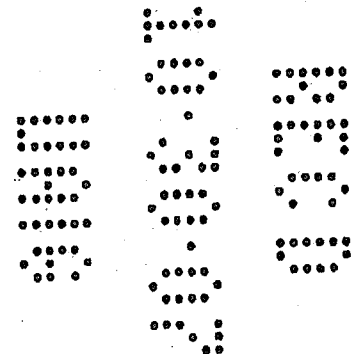
Enclosed please find a copy of the Complaint filed in this matter. Please provide us with your insured's residence address so that we may serve him personally. If we do not receive the same, we will serve your insured through the Department of Motor Vehicles.

Very truly yours,
CHRISTENSEN LAW OFFICES, LLC


Thomas Christensen, Esq.,
David F. Sampson, Esq.,

DS:sd

Enclosure



FILED

DEC 17 2012

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES NALDER, Guardian Ad Litem on
behalf of Cheyanne Nalder and GARY
LEWIS, individually,

Plaintiffs - Appellants,

v.

UNITED AUTOMOBILE INSURANCE
COMPANY,

Defendant - Appellee.

No. 11-15010

D.C. No. 2:09-cv-01348-ECR-
GWF

MEMORANDUM*

JAMES NALDER, Guardian Ad Litem on
behalf of Cheyanne Nalder and GARY
LEWIS, individually,

Plaintiffs - Appellees,

v.

UNITED AUTOMOBILE INSURANCE
COMPANY,

Defendant - Appellant.

No. 11-15462

D.C. No. 2:09-cv-01348-ECR-
GWF

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

-2-

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Senior District Judge, Presiding

Argued and Submitted December 7, 2012
San Francisco, California

Before: SILVERMAN, GOULD, and CHRISTEN, Circuit Judges.

Plaintiffs James Nalder, guardian *ad litem* of his daughter Cheyanne Nalder, and Gary Lewis appeal from the district court's grant of Defendant United Automobile Insurance Company's motion for summary judgment on all of Plaintiffs' claims. United Automobile Insurance Company cross-appeals from the district court's denial of United Automobile Insurance Company's motion for attorney's fees. We have jurisdiction under 28 U.S.C. § 1291, and we reverse in part and affirm in part.

We reverse the district court's grant of United Automobile Insurance Company's motion for summary judgment with respect to whether there was coverage by virtue of the way the renewal statement was worded. Plaintiffs came forward with facts supporting their tenable legal position that a reasonable person could have interpreted the renewal statement to mean that Lewis's premium was *due* by June 30, 2007, but that the policy would not *lapse* if his premium were "received prior to expiration of [his] policy," with the "expiration date" specifically

-3-

stated to be July 31, 2007. We remand to the district court for trial or other proceedings consistent with this memorandum. The portion of the order granting summary judgment with respect to the statutory arguments is affirmed.

United Automobile Insurance Company's cross-appeal regarding attorney's fees is moot in light of our disposition. We therefore affirm the district court's denial of attorney's fees. *Electro Source, LLC v. Brandess-Kalt-Aetna Grp., Inc.*, 458 F.3d 931, 941 (9th Cir. 2006).

Each party shall bear its own costs.

REVERSED AND REMANDED IN PART, AFFIRMED IN PART.

MOT

THOMAS CHRISTENSEN, ESQ.
Nevada Bar #2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 216-1471 Phone
(702) 870-6152 Fax
courtnotices@injuryhelpnow.com
Attorneys for Plaintiff,
JAMES NALDER

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

JAMES NALDER, Guardian Ad Litem for minor)
Cheyanne Nalder, real party in interest, and)
GARY LEWIS, Individually;)
Plaintiffs,)

Case No.: 2:09-cv-1348

vs.)

UNITED AUTOMOBILE INSURANCE CO,)
DOES I through V, and ROE CORPORATIONS)
I through V, inclusive)

Defendants.)

MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, JAMES NALDER, by and through his attorney of record,
Thomas Christensen, Esq., of the law firm of CHRISTENSEN LAW OFFICES, LLC, and
moves this Honorable Court for partial summary judgment as to liability as against
Defendant, UNITED AUTOMOBILE INSURANCE CO.

This Motion is made and based on the papers and pleadings herein, the attached
memorandum of Points and Authorities, and any oral argument at the hearing hereof.

1 DATED this 12th day of February, 2013.

2 CHRISTENSEN LAW OFFICES, LLC

3
4 By: [Signature] #12456
5 Thomas Christensen, Esq.
6 Nevada Bar No. 2326
7 1000 S. Valley View Blvd.
8 Las Vegas, NV 89107
9 (702) 216-1471 Phone
10 (702) 870-6152 Fax
11 courtnotices@injuryhelpnow.com
12 Attorneys for Plaintiff,
13 JAMES NALDER

14 **NOTICE OF MOTION**

15 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the undersigned
16 will bring the above and foregoing MOTION FOR SUMMARY JUDGMENT on for
17 hearing before the above-entitled Court on the _____ day of _____, 2012 at in
18 Dept _____ of the above referenced court at _____ .m. or as soon thereafter as
19 counsel may be heard.

20 DATED this 12th day of February, 2013.

21 CHRISTENSEN LAW OFFICES, LLC

22
23 By: [Signature] #12456
24 Thomas Christensen, Esq.
25 Nevada Bar No. 2326
26 1000 S. Valley View Blvd.
27 Las Vegas, NV 89107
28 (702) 216-1471 Phone
(702) 870-6152 Fax
courtnotices@injuryhelpnow.com
Attorneys for Plaintiff,
JAMES NALDER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **INTRODUCTION**

4
5 Ambiguous insurance contracts, such as the one in question presently, must be
6 construed liberally in favor of the insured and strictly against the insurer. As such, because
7 the Renewal Statements were ambiguous, they must be construed in favor of GARY
8 LEWIS, resulting in the policy being effective the date of the accident. Furthermore,
9 UAIC breached the contract in failing to investigate for coverage, failing to provide
10 coverage and other duties of an insurer. Additionally, it should be established as a matter
11 of law that the default judgment, including pre- and post-judgment interest, was
12 proximately caused by the failure to provide coverage.
13

14 **II**

15 **FACTUAL AND PROCEDURAL BACKGROUND**

16
17 This action arose when GARY LEWIS ran over CHEYENNE NALDER, a nine year old
18 girl at the time, with GARY LEWIS's truck. CHEYENNE was nearly killed as a result of the
19 truck running over her head.

20
21 At the time of the incident Mr. Lewis was insured with Defendant UAIC. Mr. Lewis
22 first purchased insurance through UAIC on March 29, 2007. The period of the policy was
23 March 29, 2007 through April 29, 2007. See Exhibit 1 P. 1. The records from UAIC
24 specifically list the policy as "New Business". See Exhibit 1 P. 6. In mid-April 2007 (Invoice
25 Date April 26, 2007) UAIC sent Gary Lewis a "Renewal Statement" offering to "Renew" Gary's
26 policy with UAIC for from April 29, 2007 through May 29, 2007. See Exhibit 1 at P. 15. The
27 "Renewal Statement" indicates that payment to "Renew" the policy had to be made by May 6,
28

1 2007, which was seven days after the policy's "Effective Date" of April 29, 2007". The
2 "Renewal Statement" also stated "To avoid lapse in coverage, payment must be received prior
3 to (sic) expiration of your policy." The only expiration date listed on the "Renewal Statement"
4 is "May 29, 2007". Gary Lewis made the payment and renewed the policy. The records from
5 UAIC specifically list the policy as "RENEWAL". See Exhibit 1 at P. 25.

7 In mid-May 2007 (Invoice Date May 9, 2007) UAIC sent Gary Lewis a "Renewal
8 Statement" offering to "Renew" Gary's policy with UAIC for from May 29, 2007 through June
9 29, 2007. See Exhibit 1 at P. 27. The "Renewal Statement" indicates that payment to "Renew"
10 the policy had to be made by May 29, 2007. The "Renewal Statement" also stated "To avoid
11 lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only
12 expiration date listed on the "Renewal Statement" is "June 29, 2007". Gary Lewis made the
13 payment on May 31, 2007, two days after the "Due Date" of "May 29, 2007", and renewed the
14 policy. The records from UAIC specifically list the policy as "RENEWAL". See Exhibit 1 at P.
15 32.

18 In mid-June 2007 (Invoice Date June 11, 2007) UAIC sent Gary Lewis a "Renewal
19 Statement" offering to "Renew" Gary's policy with UAIC for from June 30, 2007 through July
20 31, 2007. See Exhibit 1 at P. 33. The "Renewal Statement" indicates that payment to "Renew"
21 the policy had to be made by June 30, 2007. The "Renewal Statement" also stated "To avoid
22 lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only
23 expiration date listed on the "Renewal Statement" is "July 31, 2007". Gary Lewis made the
24 payment on July 10, 2007, and renewed the policy. The records from UAIC specifically list the
25 policy as "RENEWAL". See Exhibit 1 at P. 38.

1 UAIC continued to "Renew" Gary's policy in August 2007, *See Exhibit 1 at P. 44*,
2 September 2007, *See Exhibit 1 at P. 60*¹, October 2007, *See Exhibit 1 at P. 69*, November 2007,
3 *See Exhibit 1 at P. 81*, December 2007, *See Exhibit 1 at P. 87*², and through September 2008.
4 *See Exhibit 1.*
5

6 Gary Lewis, having been insured with UAIC for several months and UAIC having
7 renewed Mr. Lewis insurance through UAIC on multiple occasions as noted above. It was
8 Gary's understanding that he had insurance covering the damages done to Cheyenne Nalder.
9 After the incident however UAIC claimed Mr. Lewis was not its insured, and that there was no
10 coverage for the incident. UAIC nevertheless continued to renew Mr. Lewis' policy for another
11 year, but claimed that the policy had lapsed from July 1, 2007 through July 10, 2007.
12

13 Plaintiff JAMES NALDER, on behalf of his daughter Cheyenne, brought a claim for the
14 proceeds of the UAIC policy. UAIC claimed there was no policy in effect. Suit was then
15 brought against Mr. Lewis with notice being provided to UAIC. UAIC took no steps to defend
16 the lawsuit and did nothing to investigate coverage or to determine whether Gary's payment on
17 July 10, 2007, long before the expiration of the policy, warranted Gary being covered under the
18 policy UAIC renewed with Gary. Because UAIC took no steps to protect Gary, judgment was
19 entered against Gary in the amount of \$3,500,000.00. *See Exhibit 2.* After Judgment Mr.
20 Lewis, along with NALDER on behalf of Cheyenne, the real party in interest, pursued this
21 action against UAIC.
22

23
24 Mr. Lewis testified:
25

26 ¹ Payment for the September Renewal was made on September 14, 2007 even though the
27 "Due Date" for the Renewal was September 13, 2007. Even though the payment was late,
28 UAIC, as it had multiple times previously, renewed the policy nonetheless.

1 I was covered by a policy of insurance through UAIC, which UAIC renewed on
2 multiple occasions with me. It is my understanding I was covered by policy No.
3 NVA020021926, which UAIC advised me it was renewing and that I would have
4 no lapse in coverage as long as payment was made prior to the expiration of my
5 policy, which the "Renewal Notice" said was July 31, 2007. I made the payment
long before July 31, 2007 and understood the policy had been renewed again and
there was no lapse in coverage.

6 *See Exhibit 3.*

7 The policy's "Renewal Statement" UAIC sent Gary clearly stated that so long as
8 payment was received "prior to (sic) expiration of your policy" there would be no lapse in
9 coverage. Again, the only "Expiration Date" listed on the policy's "Renewal Statement" was
10 "July 31, 2007". *See Exhibit 1.* Gary understood this language to indicate that even though the
11 "Due Date" was June 30, 2007, Gary had a grace period through the "Expiration Date" of July
12 31, 2007 to make the requisite payment, renew the policy, and "avoid lapse in coverage" as the
13 policy's "Renewal Statement" indicated. *See Exhibit 3.* Gary's understanding was more than
14 reasonable and was further supported by the fact that Gary had previously, in May 2007, been
15 given the policy's "Renewal Statement" that specifically indicated Gary could renew his policy
16 with an effective date of April 29, 2007 if he made the payment on or before May 6, 2007,
17 seven days after the "Effective Date" of the policy UAIC sought to renew.³ *See Exhibit 1.* The
18 policy's May "Renewal Statement" thus commenced a course of dealing between Gary and
19 UAIC wherein UAIC advised Gary it was permissible for Gary to pay the policy premium after
20 the "Effective Date" of the policy and yet still renew the policy as of the "Effective Date" and
21 avoid any lapse in coverage. This course of dealing was repeated in September and December
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26 ² Payment for the December Renewal was made on December 15, 2007 even though the
27 "Due Date" for the Renewal was December 14, 2007. Even though the payment was late,
28 UAIC, as it had multiple times previously, renewed the policy nonetheless.

1 2007 when Gary's policy payment was made after the "Due Date" yet the policy was renewed
2 nonetheless with no lapse. See Exhibit 1.

3
4 As discovery proceeded, the PMK of UAIC was asked regarding Gary's understanding
5 that the requirement that he pay prior to the "expiration date" when the only "expiration date"
6 listed on the renewal notice was July 31, 2007, was a fair interpretation by the insured. The
7 PMK acknowledged that the "Renewal Statements" do not contain the words "expiration of
8 your current policy", and simply state "expiration of your policy" without any explanation of
9 what the words "your policy" reference. See Exhibit "4" (the Deposition of Denise Davis, P. 61
10 L. 23 - P. 62 L. 1). The UAIC PMK was unable to point to any language in the "Renewal
11 Statements" that would indicate to a lay person, like Mr. Lewis", that the words "expiration of
12 your policy" meant expiration of your *current* policy rather than the "Expiration Date" stated
13 right on the face of the "Renewal Statements" themselves as Mr. Lewis understood it. See
14 Exhibit 4 (the Deposition of Denise Davis, P. 61 L. 8-15; P. 61 L. 23 - P. 62 L. 1; P. 133 L. 4 -
15 P. 134 L. 22).

16
17
18 Manny Cordova and Lisa Watson, who worked for UAIC at the time the claim was
19 brought against Gary Lewis, but who are no longer employed with UAIC, admitted that the
20 language in the "Renewal Statements" is ambiguous, difficult to understand, and certainly
21 consistent with Gary Lewis' interpretation that "expiration of your policy" meant the "Expiration
22 Date" listed at the top of the "Renewal Statements". Mr. Cordova, when shown the "Renewal
23 Statements", stated that, to him, the "Renewal Statements" indicated that payment had to be
24 made before the expiration of the *prior* policy as UAIC interprets it. When asked about whether
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27
28 ³ Despite the fact that UAIC had informed GARY LEWIS that he had until May 6, 2007 to
make his payment under the policy that would commence April 29, 2007, Gary took it
upon himself to make the payment on April 29, 2007.

1 Mr. Lewis' interpretation that expiration of "your policy" meant the "Expiration Date" on the
2 very face of the "Renewal Statement" itself, Mr. Cordova testified as follows: "certainly people
3 can interpret documents differently. You know, I mean, that's the way I read the document.
4 Could someone else read it differently? Of course, they can." *See* Exhibit "5" (Cordova
5 Deposition at P. 106 L. 16-20). Mr. Cordova went on to testify, "So this is the way I read the
6 document. Could you interpret it differently? Of course. Could she interpret it differently? Of
7 course. This is the way that I interpret it. I cannot tell you that, you know, my way is right or
8 your way is right, but that's the way I read the document." *See* Exhibit 5 (Cordova Deposition
9 P. 107 L. 11-16).

12 Lisa Watson, who testified she has worked in insurance for over 20 years, when shown
13 the "Renewal Statements" and asked what the term "expiration of your policy" meant, testified
14 that she does not know what the phrase means. *See* Exhibit 6 (Watson Deposition P. 52 L. 4-8).

16 In the testimony, Mr. Cordova and Ms. Watson not contest that Gary Lewis'
17 interpretation was valid. When she was told that Mr. Lewis interpreted the language as
18 indicating that payment had to be made before the "Expiration Date" listed right on the
19 "Renewal Statements", Ms. Watson testified that she could not comment on whether Mr. Lewis'
20 interpretation was correct or not. *See* Exhibit 6 (Watson Deposition P. 53 L. 20 - P. 4 L. 4).

22 UAIC was granted Summary Judgment on all of Plaintiff's claims. However, on
23 Appeal, the Ninth Circuit Court of Appeals reversed the District Court's grant of summary
24 judgment with respect to whether there was coverage by virtue of the way the renewal
25 statement was worded. The Court found that

26
27 Plaintiffs came forward with facts supporting their tenable legal position that a
28 reasonable person could have interpreted the renewal statement to mean that
Lewis's premium was *due* by June 30, 2007, but that the policy would not *lapse* if

1 his premium were 'received prior to the expiration of [his] policy,' with the
2 'expiration date' specifically stated to be July 31, 2007.

3 See Exhibit 7 Memorandum.

4 III

5 STANDARD FOR GRANTING

6 Summary judgment under Fed. R. Civ. P. 56 may be granted only if the evidence
7 presented shows that there is no genuine issue as to any material fact and that the moving
8 party is entitled to a judgment as a matter of law. The party moving for summary judgment
9 has "the burden of showing the absence of a genuine issue as to any material fact. . ."

10 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970).

11 "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is,
12 if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."
13 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "[A]t the
14 summary judgment stage the judge's function is not himself to weigh the evidence and
15 determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Id.*
16 at 249.

17 The law is well established that in reviewing a motion for summary judgment, the
18 evidence "must be viewed in the light most favorable to the opposing party." *Adickes v. S.H.*
19 *Kress & Co.*, 398 U.S. 144, 159-160 (1970). "[T]he inferences to be drawn from the underlying
20 facts contained in [the moving party's materials] must be viewed in the light most favorable to
21 the party opposing the motion." *Id.*, quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655
22 (1962). Therefore, this Court must view the evidence presented by both parties and the
23 inferences to be drawn there from in the light most favorable to the Plaintiffs.
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1 The standard for summary judgment is essentially the same as the standard for granting a
2 directed verdict or judgment notwithstanding the verdict under Fed. R. Civ. P. 50. *See*
3 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). The inquiry under each is
4 "[W]hether the evidence presents a sufficient disagreement to require submission to a jury."
5 *Id.* Summary judgment is only appropriate if "the evidence . . . is so one-sided that one
6 party must prevail as a matter of law." *Id.* If there are facts sufficient to support a jury
7 verdict for the Plaintiff, the Court is not to interfere with the jury's role as the finder of fact.
8 To do so would deny the Plaintiff's right to a jury trial.
9

10 IV

11 ARGUMENT

12
13 **A. Because the Renewal Statement was Ambiguous, it Must be Strictly Construed**
14 **Against the Insurance Company According to the Nevada Law, therefore,**
15 **Providing Coverage was in Place at the Time of the Incident.**

16 There is no dispute UAIC sent Gary the policy's "Renewal Statement" (invoice date June
17 11, 2007). *See* Exhibit 1 P. 33. There is no dispute the policy's "Renewal Statement" offered to
18 again renew Gary's policy with UAIC, as Gary had repeatedly done since March 2007. There is
19 no dispute that the policy's "Renewal Statement" says Gary would not have a lapse in coverage
20 if he made the required payment prior to the expiration date. There is no dispute that the only
21 expiration date mentioned on the policy's "Renewal Statement" is "July 31, 2007." *See* Exhibit
22 1 P. 33. There is no dispute Gary made the requisite payment on July 10, 2007, which was
23 twenty-one days before the "Expiration Date" listed on the policy's "Renewal Statement". *See*
24 Exhibit 1 P. 38. There is certainly no dispute that Gary Lewis' understanding of the policy's
25 "Renewal Statement" was that as long as he made the premium payment prior to the expiration
26 of the policy, which the policy's "Renewal Statement" said was July 31, 2007, Gary would not
27
28

1 have a lapse in coverage. *See* Exhibit 1 at P. 6 of 12. There is also no dispute that UAIC had
2 previously advised Gary that he could pay his policy premium after the date the policy became
3 effective, and still be covered from the effective date. *See* Exhibit 1 P. 15.

4
5 An insurance policy, which would include the renewal statements of the policy, is a
6 contract and is governed by contract law. *United Insurance Co., v. Frontier Insurance*
7 *Company, Inc.*, 120 Nev. 678 684, 99 P.3d 1152, 1156 (2004). Under general contract law, the
8 Nevada Supreme Court has noted, "When a contract is ambiguous, it will be construed against
9 the drafter." *Glenbrook Homeowners Ass'n v. Glenbrook Co.* 111 Nev. 909, 917, 901 P.2d 132,
10 138 (1995). The Court has gone even further in its discussion of insurance contracts, holding,
11 "Contracts of insurance are always construed most strongly against the insurance company."
12 Stated another way, a policy of insurance is to be construed liberally in favor of the insured and
13 strictly against the insurer." *Hartford Ins. Group v. Winkler*, 89 Nev. 131, 135, 508 P.2d 8, 11
14 (1973) (Citations omitted).

15
16
17 In addition, the Nevada Supreme Court has held, "An insurance policy is a contract of
18 adhesion." *Id.* As a result "the language of an insurance policy is broadly interpreted in order
19 to afford 'the greatest possible coverage to the insured.'" *Id.*, citing *Farmers Insurance Group v.*
20 *Stonik*, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994). The pivotal language from the UAIC
21 contract comes from the policy's "Renewal Statements" which UAIC drafted, and which UAIC
22 sent to Gary Lewis on multiple occasions advising Gary how the contract of insurance could be
23 renewed and continue to be in effect with UAIC. The statements provide a due date for
24 payment, but also specifically state that if payment is "received prior the expiration of your
25 policy" there will be no lapse in coverage. The only "Expiration Date" listed in the policy's
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1 "Renewal Statements" is the expiration date for the offered policy that UAIC invited Gary
2 Lewis to renew.

3 The policy's "Renewal Statement" for June 30, 2007 through July 31, 2007 (Exhibit 1 P.
4 33) had a "Due Date" of 6/20/07, but then contained the statement that payment must be
5 received prior to the expiration of "your policy" in order to avoid a lapse in coverage. The only
6 "Expiration Date" listed in the statement is "July 31, 2007". Such language clearly indicates
7 that UAIC was advising Gary, as the insured, that payment was due 6/30/07, but that if he made
8 the requisite payment before July 31, 2007 he would be covered and would "avoid a lapse in
9 coverage". There is no dispute this was Gary's subjective understanding of the terms of the
10 policy's "Renewal Statement". See Exhibit 3 at P. 6 of 12.

11 Gary's subjective understanding that he could pay for the policy after it was put into
12 effect was all the more reasonable given that in April 2007 UAIC had specifically told Gary that
13 the due date of his premium payment for the policy effective April 29, 2007 through May 29,
14 2007 was after the policy's effective date of "5/6/07". There was an established course of
15 dealing between Gary and UAIC wherein UAIC had previously advised Gary that he could
16 make his payment after the effective date of the policy and still be covered, and wherein UAIC
17 had previously advised Gary that he could made his premium payment after the effective date of
18 the policy, but prior to the expiration date, of the policy and avoid any lapse in coverage.

19 The policy's "Renewal Statements" which give a due date but then state that the
20 policyholder can avoid a lapse in coverage by paying before the expiration of the policy, and
21 providing an "Expiration Date" for the policy that is different than the "Due Date" are
22 ambiguous. As noted above, **ambiguous language in a contract, or in a writing seeking to**
23 **renew a contract, is construed against the drafter of the contract, or the writing seeking to**
24
25
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28

1 **renew the contract.** See, *Glenbrook Homeowners Ass'n v. Glenbrook Co.* 111 Nev. 909, 917,
2 901 P.2d 132, 138 (1995). The Nevada Supreme Court has noted that an insurance company
3 does business as a quasi-public institution, and cannot avoid liability under ambiguous
4 provisions of policy. *Hartford Ins. Group v. Winkler*, 89 Nev. 131, 136, 508 P.2d 8, 12 (1973).
5 The language of the "Renewal Statements" from UAIC is ambiguous, and therefore, must be
6 construed against UAIC.
7

8 "Contracts of insurance are always construed most strongly against the insurance
9 company. Stated another way, a policy of insurance is to be construed liberally in favor of the
10 insured and strictly against the insurer." *Hartford Ins. Group v. Winkler*, 89 Nev. 131, 135, 508
11 P.2d 8, 11 (1973) (Citations omitted). The language of the "Renewal Statements" of the policy
12 Gary Lewis had with UAIC, when construed liberally in favor of Gary and construed most
13 strongly against UAIC and broadly interpreted in order to afford the greatest possible coverage
14 to the insured, must be construed as permitting Gary Lewis to pay anytime before July 31, 2007
15 in order to avoid a lapse in coverage and maintain insurance from the "Effective Date" of June
16 30, 2007 to the "Expiration Date" of July 31, 2007. As there is no dispute Gary made the
17 requisite payment on July 10, 2007, and there is no dispute July 10, 2007 is long before July 31,
18 2007, summary judgment as to UAIC's coverage of Gary Lewis under the policy is warranted as
19 the evidence clearly establishes Gary was covered.
20
21
22

23 **B. UAIC Breached the Contract by Failing to Investigate Coverage and Refusing**
24 **to Cover its Insured**

25 In general, there are a few different areas of litigation that involve "bad faith" by an
26 insurance company. All of these actions, regardless of the parties involved, however, are
27 founded in the general principle of contract law that in every contract, including policies of
28 insurance, there is an implied covenant of good faith and fair dealing that neither party will do

1 anything which will injure the right of the other to receive the benefits of the agreement.
2 *Comunale v. Traders & General Insurance Company*, 50 Cal.2d 654, 328 P.2d 198, 68
3 A.L.R.2d 883. Most courts, including Nevada, have held that an insurance company always
4 acts in bad faith whenever it breaches its duty to settle by failing to adequately consider the
5 interest of the insured. Windt, Allan D., *1 Insurance Claims & Disputes 5th*, Section 5:13
6 (Updated March, 2009). This is true whether there is a "genuine dispute" as to whether
7 payment of the third-party policy limits is warranted or not. The Nevada Supreme Court
8 recently defined bad faith by holding that "an insurer must give equal consideration to the
9 insured's interests" and "the nature of the relationship [between insured and insurer] requires
10 that the insurer adequately protect the insured's interests." *Miller v. Allstate*, 125 N.A.O. 28,
11 212 P.3d 318 (2009).

14 Within the area of first-party bad faith, there are essentially three standards which courts
15 have imposed on liability insurers in determining whether the insurer has met its duty to the
16 insured. Those standards involve strict liability, negligence, and bad faith. *Shamblin v.*
17 *Nationwide Mutual Insurance Company*, 396 S.E.2d 766 (W.Va. 1990), citing, *Schwartz,*
18 *Statutory Strict Liability for an Insurer's Failure to settle: A Balanced Plan for an Unresolved*
19 *Problem*, 1975 Duke L.J. 901; Annotation, *Liability Insurer's Negligence for Bad Faith in*
20 *Conducting Defense as Ground of Liability to Insured*, 34 A.L.R.3d 533 (1970 & Supp. 1989).

23 The courts which have applied the strict liability standard have held that an insurer who
24 fails to settle within policy limits does so at its own risk, and even if its position is not entirely
25 groundless, if the failure to settle later exposes the insured, the carrier is liable for the full
26 amount which will compensate the insured for all the detriment caused by the insurer's breach
27 of the express and implied obligations of the contract. *Id.*, citing, *Crisci v. Security Ins. Co.*, 66
28

1 Cal2d 425, 58 Cal.Rptr. 13, 426 P.2d 173 (1967); *Rova Farms Resort, Inc. v. Investors*
 2 *Insurance Co.*, 65 N.J. 474, 323 A.2d 495 (1974).

3
 4 The *Crisci* Court recognized that the insured's expectation of protection provides a basis
 5 for imposing strict liability in failure to settle cases because it will always be in the insured's
 6 best interest to settle within the policy limits when there is any danger, no matter how slight, of
 7 a judgment in excess of those limits. *Crisci v. Security Insurance Company of New Haven,*
 8 *Conn.*, 426 P.2d 173, 66 Cal.2d 425, 58 Cal. Rptr. 13, (1967). *Cirsci* recognized there is more
 9 than a small amount of elementary justice in a rule that would require that, in this situation,
 10 where the insurer's and insured's interests necessarily conflict, the insurer, which may reap the
 11 benefits of its determination not to settle, should also suffer the detriments of its decision. *Id.*

12
 13 This standard makes sense, as Chief Justice Neely concurred with the *Shamblin* Court:

14
 15 Can you honestly imagine a situation where an insurance
 16 company fails to settle within the policy limits, the
 17 policyholder gets stuck with an excess judgment, and this
 18 court *does not* require the insurance company to indemnify
 19 the policy holder? That will happen the same day the sun
 20 rises in the West! As far as I am concerned, even if the
 21 insurance company is run by angels, archangels, cherubim
 22 and seraphim, and the entire heavenly host sing of due
 23 diligence and reasonable care, I will *never*, under any
 24 circumstances, vote that a policyholder instead of an
 25 insurer pays the excess judgment when it was possible to
 26 settle a case within the coverage limits.

27
 28 When I buy insurance, I buy protection from untoward
 events. I do not object to an insurance company's vigorous
 defense of a claim, including going to jury trial and
 exhausting every appeal. Furthermore, as a policyholder, I
 will diligently assist my insurer to vindicate its rights and
 protect its reserves. However, I draw the line when the
 insurer decides that in the process of protecting its reserves,
 it will play "you bet *my* house." The insurance company
 can bet as much of its own money as it wants, and it can bet
 its own money at any odds that it wants, but it cannot bet

1 one single penny of my money even when the odds are ten
2 million to one in its favor!

3 *Id.* at 780.

4 The California Court has implemented a reasonableness or negligence aspect to its
5 standard when it expanded on this rule, giving the following analysis:

6 The only permissible consideration in evaluating the
7 reasonableness of the settlement offer becomes whether, in
8 light of the victim's injuries and the probable liability of the
9 insured, the ultimate judgment is likely to exceed the
10 amount of the settlement offer. Such factors as the limits
11 imposed by the policy, a desire to reduce the amount of
12 future settlements, or a belief that the policy does not
13 provide coverage, should **not** affect a decision as to
14 whether the settlement offer is a reasonable one.

15 *Johansen v. California State Automobile Association Inter-Insurance Bureau*, 15 Cal.3d 9, 123
16 Cal.Rptr. 288, 538 P.2d 744, (1975) (emphasis added). Moreover, in deciding whether or not to
17 compromise the claim, the insurer must conduct itself as though it alone were liable for the
18 entire amount of the judgment. *Id.*, citing *Crisci*.

19 Nevada has long recognized that there is a fiduciary relationship between the insurer and
20 the insured. *Powers v. USAA*, 114 Nev. 690, 962 P.2d 596 (1998), citing *Ainsworth v.*
21 *Combined Ins. Co.*, 104 Nev. 587, 763 P.2d 673 (1988). Nevada has also established standards
22 for applying in other types of bad faith situations. In *Pemberton v. Farmers Insurance*
23 *Exchange*, 109 Nev. 789, 858 P.2d 380 (1993), the Nevada Supreme Court established
24 standards to apply when an action is brought related to bad faith denial of first-party benefits
25 under uninsured or underinsured coverage. There, the court noted numerous that appellate court
26 decisions affirm that an insurer's failure to deal fairly and in good faith with an insured's UM
27 claim is actionable. *Id.* at 794 (citations omitted).

1 The Nevada Supreme Court and Federal District Court of Nevada articulated a
2 negligence or reasonableness standard in bad faith cases. "To establish a prima facie case of
3 bad-faith refusal to pay an insurance claim, the plaintiff must establish that there was no
4 reasonable basis for disputing coverage." *Powers v. United Services Auto. Ass'n*, 962 P.2d 596,
5 604 (Nev. 1998), citing *Falline v. GNLV Corp.*, 823 P.2d 888 (Nev. 1991). See also *Pemberton*
6 *v. Farmers Ins. Exch.*, 858 P.2d 380, 384 (Nev. 1990).

8 One of the more instructional cases in Nevada, however, on the standard to be applied
9 when dealing with negative effects resulting from an insurer's failure to settle a claim prior to
10 litigation is *Landow v. Medical Ins. Exchange*, 892 F.Supp. 239 (D.Nev. 1995). The *Landow*
11 Court, following the rationale of California courts in excess verdict situations accepted that, "the
12 litmus test for bad faith is whether the insurer, in determining whether to settle a claim, gave as
13 much consideration to the welfare of its insured as it gave to its own interests," citing, *Egan v.*
14 *Mutual of Omaha Ins. Co.*, 24 Cal.3d. 809, 818, 169 Cal.Rptr. 691, 620 P.2d 141 (1979).

17 The above-noted principles were most recently codified and adopted by the Nevada
18 Supreme Court in *Allstate Ins. Co. v. Miller*, 212 P.3d 318 (2009). In *Miller*, the court held that
19 "an insurer must give equal consideration to the insured's interest". The court further stated that
20 the insurer's duty to its insured is "similar to a fiduciary relationship" and noted "the nature of
21 the relationship requires that the insurer adequately protect the insured's interest." The court's
22 conclusion mirrored that in *Landow* as the *Miller* court recognized "at a minimum, an insurer
23 must equally consider the insured's interests and its own." The court also recognized the
24 wisdom from decisions from California holding that "the insurer must give the interests of the
25 insured at least as much consideration as it gives its own interests, and the insurer must act as a
26 prudent insurer without policy limits." *Id.* (citation omitted).

1 Additionally, insurers have a duty to investigate. *Pemberton v. Farmers Ins. Exchange*,
2 109 Nev. 789, 858 P.2d 380, 382 (Nev., 1993). "Insurers have the duty to investigate claims
3 and coverage in a prompt fashion." *Troutt v. CO W. Ins. Co.*, 246 F.3d 1150, 1162. See also
4 *Tynes v. Bankers Life Co.*, 730 P.2d 1115, 1124 (Mont. 1986) (9th Cir., 2001). The duty to
5 investigate is an extension of the duty of good faith and fair dealing that the insurer owes its
6 insured and, in a claims-made-and-reported policy, extends to the handling of reported claims.
7 *KPFF, Inc. v. California Union Ins. Co.*, 56 Cal.App.4th 963, 66 Cal.Rptr.2d 36, 44 (1997)
8 UAIC utterly failed to investigate whether coverage existed for Gary on the claim, and failed to
9 abide by established insurance claims handling practices in its handling of this claim.
10 Furthermore, as discussed in detail above, there was coverage under this claim. Therefore, their
11 failure to provide such coverage was a breach of contract.
12

13 UAIC also made absolutely no efforts to inform Gary Lewis of the demand for the
14 policy limits and the offer to settle Cheyenne's significant claim for a mere \$15,000.00. UAIC
15 completely ignored Cheyenne's claim and did absolutely nothing other than send Cheyenne's
16 counsel a letter stating that there was no coverage. As noted above, the Court has continually
17 held "at a minimum, an insured must equally consider the insured's interest and its own."
18 *Allstate v. Miller*, 212 P.3d 318, 326 (Nev. 2009). If the insurer fails to equally consider its
19 insured's interests and its own it violates the implied covenant of good faith and fair dealing and
20 can be held responsible for any resulting damages suffered by its insured. *Id.*
21

22 There is no question that the rejection of a settlement offer within the policy limits is an
23 element of a bad faith claim. *Id.* The *Miller* Court held that the rejection by an insurer of a
24 settlement offer within the policy limits is indeed an element making up a bad faith claim, but
25 also noted that a bad faith claim can be based on far more than just the rejection of such an
26 settlement offer within the policy limits is indeed an element making up a bad faith claim, but
27 also noted that a bad faith claim can be based on far more than just the rejection of such an
28

1 offer. *Id.* The Court specifically noted that "an insurer's failure to adequately inform an insured
 2 of a settlement offer is a factor for the trier of fact to consider when evaluating a bad-faith
 3 claim." *Id.* at 325. UAIC never informed Gary Lewis of the settlement offer that was proposed
 4 to resolve Cheyenne's claim. This failure to inform, on its own, is sufficient to present the facts
 5 to the jury to determine whether the carrier violated the duty of good faith and fair dealing and
 6 is thus liable for a judgment entered against its insured in excess of the applicable policy limits.
 7
 8 *Id.*

9
 10 Plaintiffs have noted in the preceding sections the facts indicating: Gary Lewis properly
 11 renewed his policy pursuant to the policy's "Renewal Statements"; that UAIC renewed Gary's
 12 policy and nevertheless claimed there was a lapse in coverage; and other such facts, all of which
 13 clearly indicate Gary had coverage for the claim Cheyenne brought against him. UAIC never
 14 investigated any of the above to determine whether Gary was covered, and instead made the
 15 snap decision that there was no coverage, and left Gary completely bereft of protection against
 16 Cheyenne's lawsuit. These facts constitute bad faith, provide that there was coverage for
 17 Cheyenne's claim and therefore constitute a breach of contract, and warrant UAIC
 18 compensating Gary, paying for the judgment currently entered against him, as well as paying
 19 other compensatory and even punitive damages.
 20
 21

22 **C. It Should be Established as a Matter of Law that the Default Judgment,**
 23 **Including Pre- and Post-Judgment Interest, was Proximately Caused by the**
Failure to Provide Coverage.

24 Primary liability insurance policies create a duty to defend and the duty to indemnify.
 25 *Allstate Ins. Co. v. Miller*, 125 N.A.O. 28, 212 P.3d 318 (Nev., 2009) citing *Crawford v.*
 26 *Weather Shield Mfg. Inc.*, 44 Cal.4th 541, 79 Cal.Rptr.3d 721, 187 P.3d 424, 427 (2008). The
 27
 28

1 duty to defend is a “legal duty that arises under the law, as opposed to a contractual duty arising
2 from the policy.” *Allstate Ins. Co. v. Miller*, 125 N.A.O. 28, 212 P.3d 318 (Nev., 2009).

3 “If there is any doubt about whether the duty to defend arises, this doubt must be
4 resolved in favor of the insured.” *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 120
5 Nev. 678 (Nev., 2004) citing *Aetna Cas. & Sur. Co. v. Centennial Ins. Co.*, 838 F.2d 346, 350
6 (9th Cir. 1988). “The purpose behind construing the duty to defend so broadly is to prevent an
7 insurer from evading its obligation to provide a defense for an insured without at least
8 investigating the facts behind a complaint.” *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d
9 1153, 120 Nev. 678 (Nev., 2004) See also *Helca Min. Co. v. New Hampshire Ins. Co.*, 811 P.2d
10 1083, 1090 (Colo. 1991). A potential for coverage only exists when there is **arguable or**
11 **possible coverage.** (emphasis added) *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153,
12 120 Nev. 678 (Nev., 2004) See also *Morton v. Safeco Ins. Co.*, 905 F.2d 1208, 1212 (9th Cir.
13 1990).

14 Because of there was “arguable or possible coverage” under the policy, UAIC had a
15 duty to defend GARY LEWIS. Further, as explained in detail above, there was actual coverage
16 under the policy. As such, UAIC has a duty to indemnify GARY LEWIS. See *United Nat’l Ins.*
17 *Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 120 Nev. 678 (Nev., 2004).

18 UAIC’s failure provide coverage and their breach of their duty to defend was the
19 proximate cause of the Default Judgment being entered against GARY LEWIS. “When the
20 insurer refused to defend and the insured does not employ counsel and presents no defense, it
21 can be said the ensuing default judgment is proximately caused by the insurer’s breach of the
22 duty to defend.” *Pershing Park Villas v. United Pac. Ins. Co.*, 219 F.3d 895 (9th Cir. 2000). As,
23 such, this should be established as a matter of law.
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CONCLUSION

Plaintiff respectfully requests that this court grant this Motion for the reasons set forth in the points and authorities noted above.

DATED this 12th day of February, 2013.

CHRISTENSEN LAW OFFICES, LLC

By:  #12456

Thomas Christensen, Esq.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, NV 89107
(702) 216-1471 Phone
(702) 870-6152 Fax
courtnotices@injuryhelpnow.com
Attorneys for Plaintiff,
JAMES NALDER

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 and LR 5-1, I certify that I am an employee of
CHRISTENSEN LAW OFFICES, LLC, and that on this ^{4th} ~~12th~~ day of ^{March} ~~FEBRUARY~~,
2013, I served a copy of the foregoing MOTION FOR SUMMARY JUDGMENT as
follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class
postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
number(s) shown below and in the confirmation sheet filed herewith. Consent to
service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
facsimile transmission is made in writing and sent to the sender via facsimile
within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Thomas E. Winner, Esq.
Matthew J. Douglas, Esq.
ATKIN, WINNER, & SHERROD
1117 S. Rancho Dr.
Las Vegas, NV 89102


An employee of CHRISTENSEN LAW OFFICES, LLC

“EXHIBIT 1”

ORIGINAL POLICY DECLARATIONS
MONTHLY NEVADA PERSONAL AUTO POLICY
UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
LAS VEGAS, NV 89114-5007

PAGE 1

POLICY #: NVA 000021926
AGENT #: 850-85-850006
DATE PROCESSED: March 29, 2007

COVERAGE PROVIDED

FROM: March 29, 2007 @ 1:18 P.M.
TO: April 29, 2007 @ 12:01 A.M.

NAMED INSURED:
GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119-2007

AGENT:
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

This declaration page with "policy provisions" and all other applicable endorsements complete your policy.

DRIVER NAME
1 GARY S LEWIS

TYPE OF DRIVER SR-22
Principal N

DESCRIPTION OF VEHICLE

VEHICLE	YEAR	MAKE/MODEL	VEHICLE ID #	TER	CLASS	PTS	DISC
1	1996	CHEV PICKUP1500	1GCEC19M6TE214944	012	30MS	1	

INSURED PROPERTY IS PRINCIPALLY GARAGED AT ABOVE ADDRESS OR:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

	VEHICLE 1 PREMIUM DED.
Bodily Injury	15000/person 42.00
Property Damage	30000/accdnt 42.00
	10000/accdnt 42.00
FULL TERM PREMIUM	84.00

POLICY FEE 10.00

TOTAL CHARGES 94.00



ENDORSEMENT MADE PART OF THIS POLICY AT TIME OF ISSUE:

COUNTER SIGNED: DATE 03/29/2007

By Glenn M. Calera

0028

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards

 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company <small>P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9431</small></p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119-2007</p> <p>AGENCY: US AUTO INS AGENCY, INC. Phone # : (702)876-0072</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Policy Number:</td> <td style="width: 30%;">Effective Date</td> <td style="width: 10%; text-align: center;">TO</td> <td style="width: 30%;">Expiration Date</td> </tr> <tr> <td>NVA - 21926</td> <td>03/29/2007</td> <td style="text-align: center;">TO</td> <td>04/29/2007</td> </tr> <tr> <td>Year/Make/Model</td> <td colspan="3" style="text-align: center;">VIN</td> </tr> <tr> <td>1996 CHEV PICKUP1500</td> <td colspan="3">1GCEC19M6TE214944</td> </tr> </table> <p style="text-align: center;">THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number:	Effective Date	TO	Expiration Date	NVA - 21926	03/29/2007	TO	04/29/2007	Year/Make/Model	VIN			1996 CHEV PICKUP1500	1GCEC19M6TE214944			 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company <small>P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9431</small></p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119-2007</p> <p>AGENCY: US AUTO INS AGENCY, INC. Phone # : (702)876-0072</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Policy Number:</td> <td style="width: 30%;">Effective Date</td> <td style="width: 10%; text-align: center;">TO</td> <td style="width: 30%;">Expiration Date</td> </tr> <tr> <td>NVA - 21926</td> <td>03/29/2007</td> <td style="text-align: center;">TO</td> <td>04/29/2007</td> </tr> <tr> <td>Year/Make/Model</td> <td colspan="3" style="text-align: center;">VIN</td> </tr> <tr> <td>1996 CHEV PICKUP1500</td> <td colspan="3">1GCEC19M6TE214944</td> </tr> </table> <p style="text-align: center;">THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number:	Effective Date	TO	Expiration Date	NVA - 21926	03/29/2007	TO	04/29/2007	Year/Make/Model	VIN			1996 CHEV PICKUP1500	1GCEC19M6TE214944		
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<p>In the event of an accident or loss:</p> <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. <p>COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185</p>	<p>In the event of an accident or loss:</p> <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. <p>COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185</p>																																

United Automobile Insurance Company, Inc. P.O. Box 15007 * Las Vegas, NV 89114 - 5007 Phone 702-369-0312 Fax 702-369-0386 Toll Free 1-866-209-4163 * Fax 1-866-209-9631				Agency Name: US AUTO INS AGENCY, INC. Brokering Agent's Register No.: Address 3909 W. SAHARA AVE., STE. 4 City, State, Zip Code LAS VEGAS, NV 89102 Phone (702)876-0072 Agent Code 850-85-850006 Home Phone (626)926-7654 Work Phone						
FOR OFFICE USE ONLY: CLIENT ID 000002986523 POLICY# NVA - 21926										
1	Name of Applicant GARY S LEWIS			Mailing Address 5049 SPENCER ST Apt D		City LAS VEGAS State NV Zip 89119				
	Garaging Address 5049 SPENCER ST Apt D			City LAS VEGAS		State NV Zip 89119				
COVERAGE REQUESTED EFFECTIVE: FROM: 03/29/2007 TO: 04/29/2007 (1Month)										
APPLICANT WARRANTS THERE ARE NO OTHER DRIVERS IN THE HOUSEHOLD, OTHER THAN THOSE LISTED BELOW Any driver, whose driver's license under suspension or has no license, must be excluded by completing the Exclusion form										
2	Show Name and Date of Birth for all Principal Drivers and Residents of Household over the age of 14. Non-operators should be excluded.		BIRTH DATE MM/ DD / YYYY	Class (Gender/ Marital)	SR22	Territory	Driver Point	DRIVER'S LICENSE NUMBER	State	OCCUPATION
	APPLICANT GARY S LEWIS		04/28/1974	30MS	N	012	1	1701866927	NV	PLUMBER
DESCRIPTION OF AUTOMOBILE (S)										
3	Auto	Year	Make and Model	Body Type	VIN	Symbol				
	1	1996	CHEV PICKUP1500	PKP 4X2	1GCEC19M6TE214944	10				
LOSS PAYEE INFORMATION										
4	Auto	Loss Payee	Address			City/ State / Zip				
	1	(NONE)								
DESCRIPTION OF COVERAGE										
COVERAGES			LIMITS OF LIABILITY			PREMIUMS				
LIABILITY COVERAGE			BODILY INJURY LIABILITY		\$ 15000.00 each person \$ 30000.00 each accident	AUTO 1	AUTO	AUTO		
			PROPERTY DAMAGE LIABILITY		\$ 10000.00 each accident	\$ 42.00	\$	\$		
MEDICAL PAYMENTS COVERAGE			N/A		each person	\$	\$	\$		
UNINSURED / UNDERINSURED MOTORIST COVERAGE			BODILY INJURY LIABILITY		\$ N/A each person \$ N/A each accident	\$	\$	\$		
COVERAGE FOR DAMAGE TO YOUR AUTO OTHER THAN COLLISION			ACV LESS DEDUCTIBLE	AUTO \$ N/A	AUTO \$ N/A	AUTO \$ N/A	\$	\$	\$	
COLLISION			ACV LESS DEDUCTIBLE	\$ N/A	\$ N/A	\$ N/A	\$	\$	\$	
TOWING AND RENTAL				\$	\$	\$	\$	\$	\$	
Policy Fees and SR-22 fee are fully earned upon submission of this application to this Company. A "Vehicle Inspection Form" or photos must be completed and attached for each vehicle purchasing comprehensive or collision coverage.					SUB TOTALS		\$ 84.00	\$	\$	
							SR-22 FEE		\$	
							POLICY FEE		\$ 10.00	
							TOTAL PREMIUM		\$ 94.00	
5	Photos are required for all Vehicles with Comprehensive and Collision. Comments:									
6	TOTAL DISC BI/PD	%	MULTI-CAR PAID IN FULL	%	TRANSFER	%	RENEWAL	%	SR. DRIVER	%
7	TOTAL DISC MP/UM-UM	%	PASSIVE RESTRAINT	%						
8	TOTAL DISC COMP-COLL	%	TRANSFER	%	RENEWAL	%	PAID IN FULL			%

LIST ALL ACCIDENTS AND VIOLATIONS FOR ALL DRIVERS BELOW

Driver#	Driver Name	Date	Description of Accident or Violation	Location
1	GARY S LEWIS	08/01/2006	SPEEDING OVER 11-20 MPH ABOVE LIMIT	
1	GARY S LEWIS	08/01/2006	MINOR VIOLATION	

NOTICE OF OFFER AND REJECTION OF COVERAGE

Section 687B.145 of the Nevada law requires an insurer to offer you (the insured) Uninsured/Underinsured Motorist coverage at limits equal to the Bodily Injury limits in your policy and Medical Payments in an amount of at least \$1000. These coverages must be provided unless you elect not to carry one or both of these coverages by signing and dating the Notice of Rejection for each.

1. **Uninsured and Underinsured Motorist Coverage** protects the Named Insured (as shown on the application), the Named Insured's resident relatives, and occupants in the insured vehicle if they sustain bodily injury in an accident for which the owner or operator of a motor vehicle is legally liable and does not have insurance (uninsured) or does not have enough insurance (underinsured).
2. **Medical Payments Coverage** provides protection to you and your resident relatives without regard to legal liability for reasonable and necessary medical expenses resulting from accidental bodily injury while operating or occupying your insured auto or being struck as a pedestrian by a motor vehicle or trailer. Coverage is also provided to any other person while occupying your insured auto.

UNINSURED AND UNDERINSURED MOTORISTS COVERAGE REJECTION – REJECTION MUST BE SIGNED IF NOT DESIRED

I have read and understand the provisions of Uninsured and Underinsured Motorist Coverage and I hereby reject this coverage.

Date 03/29/2007

Signature of Applicant: X

MEDICAL PAYMENT COVERAGE REJECTION – REJECTION MUST BE SIGNED IF NOT DESIRED

I have read and understand the provisions of Medical Payments coverage and I hereby reject this coverage

Date 03/29/2007

Signature of Applicant: X

EXCLUSION OF NAMED DRIVER & PARTIAL REJECTION OF COVERAGES
WARNING – READ THIS ENDORSEMENT CAREFULLY!

This acknowledgement and rejection is applicable to all renewals or rewrites issued by any affiliated insurer or us. I agree that none of the insurance coverage afforded by this policy shall, except bodily injury liability coverage, apply while the following listed driver(s) (the excluded driver) is/are operating your covered auto or any other motor vehicle. You further agree that this endorsement will also serve as a rejection of Uninsured / Underinsured Motorist Coverage while your covered auto or any other motor vehicle is operated by the excluded driver.

NAME OF EXCLUDED DRIVER(S)	HAND WRITTEN NAME BY INSURED	BIRTHDATE	GENDER

As a condition for acceptance of this request by the Company, I agree to reimburse the Company for any Payment, including loss adjustment expenses, imposed upon the Company by law or to any Loss Payee or other third party of interest, as a result of a claim for loss, damage, or liability while any auto covered by the policy is being driven, operated or controlled with or without permission by the named insured.

I UNDERSTAND THAT THIS POLICY EXCLUDES, REDUCES, AND LIMITS COVERAGE FOR BODILY INJURY TO MEMBERS OF MY FAMILY AND OTHER NAMED INSURED, INCLUDED THE NAMES OF EXCLUDED DRIVERS I LISTED ABOVE.

Date 03/29/2007

Signature of Applicant: X

NON-BUSINESS USE

I hereby state that I do not use my Vehicle for any business purposes or delivery service of any type.

Should my Vehicle be used for any business or delivery, I understand that there will be no coverage afforded under my current policy for any loss.

Date 03/29/2007

Signature of Applicant: X

14

UNDERWRITING QUESTIONS

- | | | |
|---|-----|----|
| | Yes | No |
| 1. Does the applicant or any driver have a handicap or physical disability that substantially impairs the applicant(s)/driver(s) driving ability, which is NOT corrected by medical assistance? | — | NO |
| 2. Has any vehicle(s) listed on this application ever been salvaged, rebuilt or purchased in the "gray market"? (ie., not manufactured for original sale in the U.S.) | — | NO |
| 3. Are all household residents, whether licensed or not, disclosed on this application? | YES | — |
| 4. Have you failed to list any drivers, such as children away from home or in college, who may operate your vehicle on a REGULAR or INFREQUENT basis? (If yes, please disclose all drivers). | — | NO |

REMARKS: (Include reference to vehicle and driver for each explanation)

Date: 03/29/2007

Signature of Applicant: X

Page 3 of 3

15

UNDERWRITING AND BINDING

The Brokering Agent has no authority to Bind the Company without first obtaining confirmation through a TELEPHONE, FAX or INTERNET BINDER and receiving a corresponding BINDER NUMBER. The Brokering Agent has no right to MAKE, ALTER, MODIFY or DISCHARGE any CONTRACT or POLICY issued on the basis of this application. This application for insurance must always be signed by the proposed insured. It is understood by the applicant that the premium on any policy issued on the basis of this application may be adjusted as a result of the motor vehicle report on any operator. It is further understood that the applicant shall be responsible for any additional premium from (1) additional coverages being added to this policy, (2) motor vehicle reports, (3) or any changes of classification which may develop. The undersigned by signature hereto, represents the statements and answers and understands that falsity, incompleteness, or incorrectness may jeopardize the coverage under such policy so issued or renewed. It is also hereby agreed and understood that misrepresentation of a material fact on this application may cause this coverage to be declared null and void as of the effective date. I (we) hereby agree and understand that any and all policy fees charged hereon may be declared fully earned by the company.

I AGREE THAT IF ANY PORTION OF MY DOWN PAYMENT OR FULL PAYMENT CHECK IS RETURNED BY THE BANK FOR ANY REASON, COVERAGE WILL BE NULL AND VOID FROM INCEPTION.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

I understand that this application is not a binder unless indicated as such on this form by the brokering agent. A copy of this application has been furnished to the applicant or insured and coverage is:

☒ Bound

Effective Date and Time: 03 / 29 / 2007 1:18 a.m. / p.m.

☐ Not Bound

Date: 03/29/2007

Signature of Applicant: X

Date: 03/29/2007

Signature of Sales Agent: X

ID: 850-85-850006 Agency:

FOR OFFICE USE: CLIENT ID 000002986523

POLICY #: NVA - 21926

US AUTO INS AGENCY, INC.

NV APP 1-07

0032

UNITED AUTOMOBILE INSURANCE COMPANY

PO Box 15007
Las Vegas, NV 89114-5007
Phone (702) 369-0312 • Fax (702) 369-0386
Toll Free (866) 209-4163 • Fax (866) 209-9631

NON-BUSINESS USE

*** Please read this document carefully! ***

I hereby state I **do not** use my Vehicle for any business purposes or delivery service of any type. Should my Vehicle be used for any business or delivery, I understand that there will be no coverage afforded under my current policy for any loss.

Agency Name US AUTO INS AGENCY, INC. Agent Code 850006

Named Insured GARY S LEWIS Policy # NVA - 21926

Insured's Signature _____

Date 03/29/2007

UNITED AUTOMOBILE INSURANCE GROUP

NOTICE OF PRIVACY POLICY

Our Privacy Policy applies to all companies within the United Automobile Insurance Group family of companies, which includes the following:

United Automobile Insurance Company
Argus Fire & Casualty Insurance Company
National Insurance Management Company
NIMC Insurance Services, Inc.
United Premium Finance Company
Southwest Underwriters, Inc.
3iComp, Inc.

The United Automobile Insurance Group ("UAIG") protects customer information. We maintain physical, electronic and organizational safeguards to protect this information. We continually review our policies and practices, monitor our computer networks, and test the security of our systems to ensure safety of this information.

Information We May Collect

We collect and use information we believe is necessary to administer our business, to advise you about our products and services, and to provide you with customer service. We may collect and maintain several types of customer information needed for these purposes, such as those listed below:

Types of information we may collect and how we gather it:

1. From you, on applications or on other forms for our insurance products, through telephone or in-person interviews and from your insurance agent.
2. From your transactions with us, such as your payment history and underwriting and claim documents.
3. From non-UAIG companies, such as your driving record and claim history.

How We Use Information About You

We use customer information to underwrite your policies, process your claims, ensure proper billing, service your accounts and offer you other UAIG insurance and/or financial products we believe may suit your needs.

Information Disclosure

We share information about our transactions (such as payment of premium) and experiences with you (such as an auto accident) within UAIG and with UAIG agents to better serve you and to assist in meeting our current product and service needs. We may also disclose customer information about you to persons or organizations inside or outside our family of companies as permitted or required by law.

We share customer information as necessary to handle any claims that you may have and to protect you against fraud and unauthorized transactions. For example, we might share customer information such as name, address, and coverage information with an auto body shop to facilitate repairs on an auto damage claim.

Your Choice to Share Information

There are two types of information sharing – information sharing within UAIG and information sharing outside UAIG. We do not sell customer information. We do not provide customer information to persons or organizations outside UAIG for their own marketing purposes. The choice in the Special Notice, which follows, applies only to sharing of information within UAIG and your insurance agent. For example, if you are an auto policyholder, our ability to share information among other UAIG companies allows us not to ask again about your driving record if you apply for a commercial auto policy.

Special Notice Regarding the Sharing of Certain Information Within the UAIG Family of Companies

This notice applies only to the sharing of information within UAIG that does not involve your transactions or experiences with us.

What Information We Share: Unless you tell us not to, we may share information within UAIG that was obtained from your application, such as your occupation; or information obtained from your driving record or claims history. We may also verify information provided by you, such as information about the operators of your vehicles and members of your household.

Why We Share: We may share information about you within UAIG to enhance our service to you, to underwrite your policies, to measure your interest in our products and services, to improve existing products, to develop new products and to monitor customer trends.

Who We Share With: We may share information within the UAIG family of companies and with your insurance agent.

If you prefer that we not share this information within UAIG, call us toll free at 1-800-551-2110. Your choice will also apply to your joint accounts, if any. Your direction not to share this information does not limit UAIG from sharing certain information about you which is essential to conducting our business, such as processing any claim you may have, or information permitted or required by law. Your choice does limit our effort to market new products and services to you.

UAIG PP (06/06)

AMENDED POLICY DECLARATIONS
MONTHLY NEVADA PERSONAL AUTO POLICY
UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
LAS VEGAS, NV 89114-5007

PAGE 1

POLICY #: NVA 000021926
AGENT #: 850-85-850006
DATE PROCESSED: April 25, 2007

COVERAGE PROVIDED

FROM: April 25, 2007 @ 4:09 P.M.
TO: April 29, 2007 @ 12:01 A.M.

NAMED INSURED:
GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

AGENT:
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

This declaration page with "policy provisions" and all other applicable endorsements complete your policy.

DRIVER NAME
1 GARY S LEWIS
2 KRISTEN A SCOTT

TYPE OF DRIVER SR-22
Principal N
Principal N

DESCRIPTION OF VEHICLE

VEHICLE	YEAR	MAKE/MODEL	VEHICLE ID #	TER	CLASS	PTS	DISC
1	1996	CHEV PICKUP	1GCEC19M6TE214944	012	30FS	0	.200
2	1994	FORD RANGER	1FTCR10UXRPC26207	012	30MS	1	.200

INSURED PROPERTY IS PRINCIPALLY GARAGED AT ABOVE ADDRESS OR:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

	VEHICLE 1 PREMIUM DED.	VEHICLE 2 PREMIUM DED.
Bodily Injury	15000/person 30000/accnt 29.00	33.00
Property Damage	10000/accnt 29.00	33.00
FULL TERM PREMIUM	58.00	66.00

TOTAL PREMIUM 124.00
CHANGE IN PREMIUM 6.00

ENDORSEMENT MADE PART OF THIS POLICY AT TIME OF ISSUE:

ENDORSEMENT SUMMARY

Unit 2 added on 04/25/2007, Driver 2 added on 04/25/2007

04/25/2007

Date Time

Signature of Name insured required

04/25/2007

Date Time

Agent signature required

COUNTER SIGNED: DATE 04/25/2007

BY Gisela M. Cabrera

0036

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards





 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company <small>P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631</small></p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119</p> <p>AGENCY: US AUTO INS AGENCY, INC. Phone #: (702)876-0072</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Policy Number: NVA - 21926</td> <td>Effective Date 03/29/2007</td> <td>TO</td> <td>Expiration Date 04/29/2007</td> </tr> <tr> <td>Year/Make/Model 1996 CHEV PICKUP1500</td> <td colspan="3">VIN 1GCEC19M6TE214944</td> </tr> </table> <p>THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number: NVA - 21926	Effective Date 03/29/2007	TO	Expiration Date 04/29/2007	Year/Make/Model 1996 CHEV PICKUP1500	VIN 1GCEC19M6TE214944			 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company <small>P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631</small></p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119</p> <p>AGENCY: US AUTO INS AGENCY, INC. Phone #: (702)876-0072</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Policy Number: NVA - 21926</td> <td>Effective Date 03/29/2007</td> <td>TO</td> <td>Expiration Date 04/29/2007</td> </tr> <tr> <td>Year/Make/Model 1996 CHEV PICKUP1500</td> <td colspan="3">VIN 1GCEC19M6TE214944</td> </tr> </table> <p>THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number: NVA - 21926	Effective Date 03/29/2007	TO	Expiration Date 04/29/2007	Year/Make/Model 1996 CHEV PICKUP1500	VIN 1GCEC19M6TE214944		
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<p>In the event of an accident or loss:</p> <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. <p>COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185</p>	<p>In the event of an accident or loss:</p> <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. <p>COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185</p>																

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards

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UNITED AUTOMOBILE INSURANCE COMPANY NEVADA

DRIVER AND ADDRESS ENDORSEMENT REQUEST FORM

Policy Number: <u>NVA - 21926</u>	Agent Name: _____
Named Insured: <u>GARY S LEWIS</u>	Agency Name: <u>US AUTO INS AGENCY, INC.</u>
Endorsement Effective Date: <u>04/25/2007</u>	Agency Address: <u>3909 W. SAHARA AVE., STE. 4</u>
Brokering Agent's Register No.: _____	<u>LAS VEGAS, NV 89102</u>

☐ **CHANGE GARAGE ADDRESS:** _____

☐ **Change Mailing Address:** _____

☒ **ADD NEW PRINCIPAL DRIVER:**

DRIVER	<u>KRISTEN A SCOTT</u>	<u>09/16/1976</u>	<u>F</u>	<u>S</u>	<u>2102503674</u>	<u>NV</u>
Name	DOB	Gender	Marital Status	Drivers License No	DL State	
Other	<u>2003</u>					
Relationship to Insured	<u>Licensed >= 36 months</u>	<u>SR-22 Requirement</u>	<u>Case Number</u>			
ACCOUNT RECEIVABLE WEST CORE CONSTRUCTION						
Occupation	Employer Name	Employer Address	City	State	Zip	
Violations:	_____					

☐ **UPDATED PRINCIPAL DRIVER:**

DRIVER	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Name	DOB	Gender	Marital Status	Drivers License No	DL State	
Relationship to Insured	<u>Licensed >= 36 months</u>	<u>SR-22 Requirement</u>	<u>Case Number</u>			
Occupation	Employer Name	Employer Address	City	State	Zip	
Violations:	_____					

☐ **ADD NEW EXCLUDED DRIVER: (Exclusion Form Attached)**

<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Name	DOB	Gender	Marital Status	Drivers License No	DL State
Relationship	_____				

☐ **DELETE EXISTING DRIVER:** _____ (Exclusion Form Attached)

☐ **CORRECT DRIVERS LICENSE NUMBER FOR** _____

☐ **CORRECT NAME FOR** _____

Date: 04/25/2007 **Named Insured Signature:** _____

Date: 04/25/2007 **Agent Signature:** _____ **Producer ID:** 850 - 85 - 850006

PO BOX 15007
LAS VEGAS, NV 89114-5007
PHONE: (866) 209-4163
FAX: (866) 209-9631



UNITED AUTOMOBILE INSURANCE COMPANY NEVADA

VEHICLE AND COVERAGE ENDORSEMENT REQUEST FORM

Policy Number: <u>NVA - 21926</u>	Agent Name: _____
Named Insured: <u>GARY S LEWIS</u>	Agency Name: <u>US AUTO INS AGENCY, INC.</u>
Endorsement Effective Date: <u>04/25/2007</u>	Agency Address: <u>3909 W. SAHARA AVE., STE. 4</u>
Brokering Agent's Register No.: _____	<u>LAS VEGAS, NV 89102</u>

☒ **ADD NEW VEHICLE**

1994	FORD	RANGER	PKP 4X2	1FTCR10UXRPC26207	06	
Year	Make	Model	Body Style	VIN	Symbol	Odometer

Owned

Ownership (Owned / Leased / Financed)	Loss Payee Name	Address	City	State	Zip
---------------------------------------	-----------------	---------	------	-------	-----

☒ **Liability Only**
☐ **Physical Damage**

Deductible: \$ _____

☐ **REPLACE BELOW VEHICLE WITH ABOVE NEW VEHICLE** (remove below vehicle from policy and add above vehicle)

Year	Make	Model	VIN	Ownership	Loss Payee Name	City	State
------	------	-------	-----	-----------	-----------------	------	-------

☐ **REMOVE VEHICLE FROM POLICY**

Year	Make	Model	VIN	Ownership	Loss Payee Name	City	State
------	------	-------	-----	-----------	-----------------	------	-------

☐ **UPDATE LOSS PAYEE ON EXISTING VEHICLE**
☐ **PAID OFF**

Year	Make	Model	VIN	Loss Payee Name	Address	City	State	Zip
------	------	-------	-----	-----------------	---------	------	-------	-----

☐ **UPDATE VEHICLE VIN**

Year	Make	Model	Correct VIN #	Ownership	Loss Payee Name
------	------	-------	---------------	-----------	-----------------

☐ **ADD MEDICAL PAYMENTS TO POLICY**
☐ **REMOVE MEDICAL PAYMENTS ALTOGETHER FROM THE POLICY** (Med Pay Rejection form required)

☐ **ADD UNINSURED/UNDERINSURED MOTORIST TO POLICY**
☐ **REMOVE UNINSURED/UNDERINSURED MOTORIST ALTOGETHER FROM THE POLICY** (UM Rejection form required)

☐ **ADD PHYSICAL DAMAGE COVERAGE**
FOR THE FOLLOWING VEHICLES

Year	Make	Model	VIN	Deductible
------	------	-------	-----	------------

Year	Make	Model	VIN	Deductible
------	------	-------	-----	------------

☐ **REMOVE PHYSICAL DAMAGE COVERAGE**
FOR THE FOLLOWING VEHICLES

Year	Make	Model	VIN
------	------	-------	-----

Year	Make	Model	VIN
------	------	-------	-----

Date: 04/25/2007

Named Insured Signature: _____

Date: 04/25/2007Agent Signature: _____ Producer ID: 850 - 85 - 8500

PO Box 15007
LAS VEGAS, NV 89114-5007
PHONE: (866) 209-4163
FAX: (866) 209-9631

0040

United Automobile Insurance Company

P.O. BOX 15007 LAS VEGAS, NV 89114-5007

Phone: (866) 209-4163 Fax: (866) 209-9631

SEMI-ANNUAL / MONTHLY PROGRAM

RECEIPT OF PAYMENT

Date of Payment 04/25/2007 16:09:12

Policy Number NVA -21926

UAIC Producer Number 850006

UAIC User ID

Type of Business ENDORSEMENT

Insured Details

GARY S LEWIS

5049 SPENCER ST Apt.D

LAS VEGAS, NV 89119

Agency Details

US AUTO INS AGENCY, INC.

3909 W. SAHARA AVE., STE. 4

LAS VEGAS, NV 89102

PHONE# (702)876-0072

UAIC Premium Downpayment \$ 6.00

Total Now Due \$ 6.00

Payment Breakdown

Cash \$ 6.00

Check # \$ 0.00

Credit / Debit Card \$ 0.00

Money Order \$ 0.00

Total Payment Received \$ 6.00

Comments:

Policy Number
NVA 000021926

UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
LAS VEGAS, NV 89114-5007

Effective Date
April 29, 2007
Expiration Date
May 29, 2007
Invoice Date
April 26, 2007
DB01

* * * * *
* R E V I S E D *
* R E N E W A L *
* S T A T E M E N T *
* * * * *

INSURED:
GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119-2007

AGENT: 850-85 -850006
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

Renewal Amount

:* \$ 134.00 *

* No Later Than * 05/06/07 *

To avoid lapse in coverage, payment must be received prior to expiration of your policy. Please select from the payment options below. Once payment is received you will receive a new policy declaration sheet and insurance identification cards. IF THERE ARE ANY CHANGES TO YOUR EXISTING POLICY, PLEASE CONTACT YOUR AGENT BEFORE EXECUTING THIS RENEWAL.
Revised amount due to recent change in policy

Keep this stub as your record
Please detach and return this bottom portion with your payment

___ Pay my policy in full. Enclosed is my payment of \$ 134.00

___ Pay in installments. Enclosed is my down payment of \$ 134.00
and the remaining balance in 1 payments of \$.00
(Includes installment fee)

Company 14
Policy Number NVA -000021926
Agent Number 850-85 -850006
Due Date 05/06/07
Invoice Date 04/26/07
Invoice Number 3719592
Amount Due \$ 134.00

UNITED AUTOMOBILE INSURANCE-NV
GARY S LEWIS
US AUTO INS AGENCY, INC.

*** RENEWAL STATEMENT ***

Payor _____ CK# _____ Amt _____

Mail To: UAIG - P.O. BOX 15007 LAS VEGAS, NV 89114

Payment Plan DB01 - FULL PAY
FILE COPY

0042

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards



 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company <small>P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631</small></p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119-2007</p> <p>AGENCY: US AUTO INS AGENCY, INC.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Policy Number:</td> <td>Effective Date</td> <td>TO</td> <td>Expiration Date</td> </tr> <tr> <td>14 NVA - 000021926</td> <td>4/29/07</td> <td></td> <td>5/29/07</td> </tr> <tr> <td><small>Year/Make/Model</small></td> <td colspan="3"><small>VIN</small></td> </tr> <tr> <td>96 CHEV PICKUP1500</td> <td colspan="3">1GCEC19M6TE214944</td> </tr> </table> <p>THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number:	Effective Date	TO	Expiration Date	14 NVA - 000021926	4/29/07		5/29/07	<small>Year/Make/Model</small>	<small>VIN</small>			96 CHEV PICKUP1500	1GCEC19M6TE214944			 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company <small>P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631</small></p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119-2007</p> <p>AGENCY: US AUTO INS AGENCY, INC.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Policy Number:</td> <td>Effective Date</td> <td>TO</td> <td>Expiration Date</td> </tr> <tr> <td>14 NVA - 000021926</td> <td>4/29/07</td> <td></td> <td>5/29/07</td> </tr> <tr> <td><small>Year/Make/Model</small></td> <td colspan="3"><small>VIN</small></td> </tr> <tr> <td>96 CHEV PICKUP1500</td> <td colspan="3">1GCEC19M6TE214944</td> </tr> </table> <p>THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number:	Effective Date	TO	Expiration Date	14 NVA - 000021926	4/29/07		5/29/07	<small>Year/Make/Model</small>	<small>VIN</small>			96 CHEV PICKUP1500	1GCEC19M6TE214944		
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<p>In the event of an accident or loss:</p> <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. <p>COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185</p>	<p>In the event of an accident or loss:</p> <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. <p>COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185</p>																																

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards

NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631		NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631	
INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119-2007		INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119-2007	
AGENCY: US AUTO INS AGENCY, INC.		AGENCY: US AUTO INS AGENCY, INC.	
Policy Number:	Effective Date	Expiration Date	
14 NVA - 000021926	4/29/07	TO 5/29/07	
Year/Make/Model	VIN		
94 FORD RANGER	1FTCR10UXRPC26207		
THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND			
The drivers listed below are on this policy:		The drivers listed below are on this policy:	
Driver Name	Driver's License Number	Driver Name	Driver's License Number
1 GARY S LEWIS	1701866927	1 GARY S LEWIS	1701866927
2 KRISTEN AMY SCOTT	2102503674	2 KRISTEN AMY SCOTT	2102503674
This card has been approved by the Commissioner of Insurance		This card has been approved by the Commissioner of Insurance	
In the event of an accident or loss: <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. 		In the event of an accident or loss: <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. 	
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United Automobile Insurance Company

PO Box 15007
Las Vegas, NV 89114-5007
Fax: (866) 209-9631

Policy # NVA - 21926

Named Insured

GARY S LEWIS

NEVADA COVERAGE OFFER

OFFER OF UNINSURED / UNDERINSURED MOTORIST COVERAGE

The Nevada Statute (NRS 687B.145) requires that Uninsured and Underinsured Motorist Coverage must be offered at limits equal to the Bodily Injury Liability Limit of your policy unless you reject this coverage. You have the legal right to purchase Uninsured / Underinsured Motorist Coverage and we recommend that you purchase it.

Uninsured / Underinsured Motorist Coverage protects the named insured's resident relatives and occupants in the insured vehicle if they sustain bodily injury in an accident for which the owner or operator of the vehicle is legally liable and does not have insurance (uninsured) or does not have enough insurance (underinsured).

IF YOU ARE CURRENTLY CARRYING UNINSURED / UNDERINSURED MOTORIST COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Uninsured and Underinsured Motorist Coverage

☒ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 04/26/07

Signature of Named Insured

OFFER OF MEDICAL PAYMENT COVERAGE

The Nevada Statute (NRS 687B.145) requires that Medical Payment Coverage be offered in an amount of at least \$1,000 unless you reject this coverage. You may accept or reject this coverage.

Medical Payment Coverage provides protection to you and your resident relatives without regard to legal liability for reasonable and necessary medical expenses resulting from accidental bodily injury while operating or occupying your insured auto or being struck as a pedestrian by a motor vehicle or trailer.

IF YOU ARE CURRENTLY CARRYING MEDICAL PAYMENT COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Medical Payment Coverage.

☒ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 04/26/07

Signature of Named Insured

NOTE: Please contact your Agent in writing if you care to change these selections in the future.

NV UM 1-07

0045

Effective Date
April 29, 2007
Expiration Date
May 29, 2007
Invoice Date
April 09, 2007
DB01

 *
 *
 * R E N E W A L *
 * S T A T E M E N T *
 *
 *

INSURED:
GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119-2007

AGENT: 850-85 -850006
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

Renewal Amount

: * \$ 94.00 *

No Later Than * 04/29/07 *

To avoid lapse in coverage, payment must be received prior to expiration of your policy. Please select from the payment options below. Once payment is received you will receive a new policy declaration sheet and insurance identification cards. IF THERE ARE ANY CHANGES TO YOUR EXISTING POLICY, PLEASE CONTACT YOUR AGENT BEFORE EXECUTING THIS RENEWAL.

Keep this stub as your record
Please detach and return this bottom portion with your payment

— Pay my policy in full. Enclosed is my payment of \$ 94.00

— Pay in installments. Enclosed is my down payment of \$ 94.00
and the remaining balance in 1 payments of \$.00
(Includes installment fee)

Company	14
Policy Number	NVA -000021926
Agent Number	850-85 -850006
Due Date	04/29/07
Invoice Date	04/09/07
Invoice Number	3637491
Amount Due	\$ 94.00

UNITED AUTOMOBILE INSURANCE-NV
GARY S LEWIS
US AUTO INS AGENCY, INC.

*** RENEWAL STATEMENT ***



Payor	<u> </u>	CK#	<u> </u>	Amt	
-------	-------------------	-----	-----------------	-----	--

Mail To: UAIG - P.O. BOX 15007 LAS VEGAS, NV 89114

Payment Plan DB01 - FULL PAY
FILE COPY

0046

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards

 NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631	 NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631																																
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United Automobile Insurance Company

PO Box 15007
Las Vegas, NV 89114-5007
Fax: (866) 209-9631

Policy # NVA - 21926

Named Insured

GARY S LEWIS

NEVADA COVERAGE OFFER

OFFER OF UNINSURED / UNDERINSURED MOTORIST COVERAGE

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IF YOU ARE CURRENTLY CARRYING UNINSURED / UNDERINSURED MOTORIST COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Uninsured and Underinsured Motorist Coverage

☒ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 04/09/07

Signature of Named Insured _____

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I have read and understand the provisions of Medical Payment Coverage.

☒ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 04/09/07

Signature of Named Insured _____

NOTE: Please contact your Agent in writing if you care to change these selections in the future.

NV UM 1-07

0048

RENEWAL POLICY DECLARATIONS
MONTHLY NEVADA PERSONAL AUTO POLICY
UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
LAS VEGAS, NV 89114-5007

PAGE 1

POLICY #: NVA 010021926
AGENT #: 850-85-850006
DATE PROCESSED: April 28, 2007

COVERAGE PROVIDED

FROM: April 29, 2007 @ 12:01 A.M.
TO: May 29, 2007 @ 12:01 A.M.

NAMED INSURED:
GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

AGENT:
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

This declaration page with "policy provisions" and all other applicable endorsements complete your policy.

DRIVER NAME
1 GARY S LEWIS
2 KRISTEN A SCOTT

TYPE OF DRIVER SR-22
Principal N
Principal N

DESCRIPTION OF VEHICLE

VEHICLE	YEAR	MAKE/MODEL	VEHICLE ID #	TER	CLASS	PTS	DISC
1	1996	CHEV PICKUP1500	1GCEC19M6TE214944	012	30FS	0	.200
2	1994	FORD RANGER	1FTCR10UXRPC26207	012	30MS	1	.200

INSURED PROPERTY IS PRINCIPALLY GARAGED AT ABOVE ADDRESS OR:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

		VEHICLE 1 PREMIUM DED.	VEHICLE 2 PREMIUM DED.
Bodily Injury	15000/person	29.00	33.00
Property Damage	30000/accdnt		
	10000/accdnt	29.00	33.00
FULL TERM PREMIUM		58.00	66.00

POLICY FEE 10.00

TOTAL CHARGES 134.00

ENDORSEMENT MADE PART OF THIS POLICY AT TIME OF ISSUE:

COUNTER SIGNED: DATE 04/28/2007



BY Glenn M. Cabrera

0049

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards

NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631		NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631	
INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119		AGENCY: US AUTO INS AGENCY, INC. Phone #: (702)876-0072	
Policy Number: NVA - 10021926	Effective Date 04/29/2007	Expiration Date TO 05/29/2007	Policy Number: NVA - 10021926
Year/Make/Model 1996 CHEV PICKUP1500	VIN 1GCEC19M6TE214944		Year/Make/Model 1996 CHEV PICKUP1500
THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND		THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND	
The drivers listed below are on this policy:		The drivers listed below are on this policy:	
Driver Name GARY S LEWIS KRISTEN AMY SCOTT	Driver's License Number 1701866927 2102503674	Driver Name GARY S LEWIS KRISTEN AMY SCOTT	Driver's License Number 1701866927 2102503674
This card has been approved by the Commissioner of Insurance		This card has been approved by the Commissioner of Insurance	
In the event of an accident or loss: <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. 		In the event of an accident or loss: <ul style="list-style-type: none"> ✓ Help any injured. ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses. ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative. ✓ Protect your auto and any property from further damage. ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours. ✓ Notify your claims service center toll free at (866)-209-9417. 	
COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185		COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185	

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards

 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631</p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119</p> <p>AGENCY: US AUTO INS AGENCY, INC. Phone #: (702)876-0072</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Policy Number:</td> <td style="width: 33%;">Effective Date</td> <td style="width: 33%;">Expiration Date</td> </tr> <tr> <td>NVA - 10021926</td> <td>04/29/2007 TO</td> <td>05/29/2007</td> </tr> <tr> <td>Year/Make/Model</td> <td colspan="2">VIN</td> </tr> <tr> <td>1994 FORD RANGER</td> <td colspan="2">1FTCR10UXRPC26207</td> </tr> </table> <p>THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number:	Effective Date	Expiration Date	NVA - 10021926	04/29/2007 TO	05/29/2007	Year/Make/Model	VIN		1994 FORD RANGER	1FTCR10UXRPC26207		 <p>NEVADA AUTOMOBILE INSURANCE CARD United Automobile Insurance Company P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631</p> <p>INSURED: GARY S LEWIS 5049 SPENCER ST D LAS VEGAS, NV 89119</p> <p>AGENCY: US AUTO INS AGENCY, INC. Phone #: (702)876-0072</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Policy Number:</td> <td style="width: 33%;">Effective Date</td> <td style="width: 33%;">Expiration Date</td> </tr> <tr> <td>NVA - 10021926</td> <td>04/29/2007 TO</td> <td>05/29/2007</td> </tr> <tr> <td>Year/Make/Model</td> <td colspan="2">VIN</td> </tr> <tr> <td>1994 FORD RANGER</td> <td colspan="2">1FTCR10UXRPC26207</td> </tr> </table> <p>THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND</p>	Policy Number:	Effective Date	Expiration Date	NVA - 10021926	04/29/2007 TO	05/29/2007	Year/Make/Model	VIN		1994 FORD RANGER	1FTCR10UXRPC26207	
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Year/Make/Model	VIN																								
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United Automobile Insurance Company

P.O. BOX 15007 LAS VEGAS, NV 89114-5007

Phone: (866) 209-4163 Fax: (866) 209-9631

**SEMI-ANNUAL / MONTHLY PROGRAM
RECEIPT OF PAYMENT**Date of Payment 04/28/2007 12:02:57Policy Number NVA -10021926UAIC Producer Number 850006

UAIC User ID _____

Type of Business RENEWAL**Insured Details**

GARY S LEWIS

5049 SPENCER ST Apt.D

LAS VEGAS, NV 89119

Agency Details

US AUTO INS AGENCY, INC.

3909 W. SAHARA AVE., STE. 4

LAS VEGAS, NV 89102

PHONE# (702)876-0072

UAIC Premium Downpayment \$ 134.00Total Now Due \$ 134.00**Payment Breakdown**Cash \$ 134.00Check # _____ \$ 0.00Credit / Debit Card \$ 0.00Money Order \$ 0.00Total Payment Received \$ 134.00Comments: _____

UNITED AUTOMOBILE INSURANCE COMPANY

PO Box 15007
Las Vegas, NV 89114-5007
Phone (702) 369-0312 • Fax (702) 369-0386
Toll Free (866) 209-4163 • Fax (866) 209-9631

NON-BUSINESS USE

*** Please read this document carefully! ***

I hereby state I **do not** use my Vehicle for any business purposes or delivery service of any type. Should my Vehicle be used for any business or delivery, I understand that there will be no coverage afforded under my current policy for any loss.

Agency Name US AUTO INS AGENCY, INC. Agent Code 850006

Named Insured GARY S LEWIS Policy # NVA-10021926

Insured's Signature _____

Date 04/28/2007

Policy Number
NVA 010021926

UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
LAS VEGAS, NV 89114-5007

Effective Date
May 29, 2007
Expiration Date
June 29, 2007
Invoice Date
May 09, 2007
DB01

* * * * *
*
*
* R E N E W A L *
* S T A T E M E N T *
*
* * * * *

* * * * *

INSURED:
GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENT: 850-85 -850006
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

Renewal Amount : * \$ 134.00 * No Later Than * 05/29/07 *

To avoid lapse in coverage, payment must be received prior to expiration of your policy. Please select from the payment options below. Once payment is received you will receive a new policy declaration sheet and insurance identification cards. IF THERE ARE ANY CHANGES TO YOUR EXISTING POLICY, PLEASE CONTACT YOUR AGENT BEFORE EXECUTING THIS RENEWAL.

Keep this stub as your record
Please detach and return this bottom portion with your payment

___ Pay my policy in full. Enclosed is my payment of \$ 134.00

___ Pay in installments. Enclosed is my down payment of \$ 134.00 and the remaining balance in 1 payments of \$.00 (Includes installment fee)

Company 14
Policy Number NVA -010021926
Agent Number 850-85 -850006
Due Date 05/29/07
Invoice Date 05/09/07
Invoice Number 3778428
Amount Due \$ 134.00

UNITED AUTOMOBILE INSURANCE-NV
GARY S LEWIS
US AUTO INS AGENCY, INC.

*** RENEWAL STATEMENT ***

Payor _____ CK# _____ Amt _____

Mail To: UAIG - P.O. BOX 15007 LAS VEGAS, NV 89114

Payment Plan DB01 - FULL PAY
FILE COPY

0054



United Automobile Insurance Company

PO Box 15007
Las Vegas, NV 89114-5007
Fax: (866) 209-9631

Policy # NVA - 10021926

Named Insured

GARY S LEWIS

NEVADA COVERAGE OFFER

OFFER OF UNINSURED / UNDERINSURED MOTORIST COVERAGE

The Nevada Statute (NRS 687B.145) requires that Uninsured and Underinsured Motorist Coverage must be offered at limits equal to the Bodily Injury Liability Limit of your policy unless you reject this coverage. You have the legal right to purchase Uninsured / Underinsured Motorist Coverage and we recommend that you purchase it.

Uninsured / Underinsured Motorist Coverage protects the named Insured's resident relatives and occupants in the insured vehicle if they sustain bodily injury in an accident for which the owner or operator of the vehicle is legally liable and does not have insurance (uninsured) or does not have enough insurance (underinsured).

IF YOU ARE CURRENTLY CARRYING UNINSURED / UNDERINSURED MOTORIST COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Uninsured and Underinsured Motorist Coverage

☐ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 05/09/07

Signature of Named Insured _____

OFFER OF MEDICAL PAYMENT COVERAGE

The Nevada Statute (NRS 687B.145) requires that Medical Payment Coverage be offered in an amount of at least \$1,000 unless you reject this coverage. You may accept or reject this coverage.

Medical Payment Coverage provides protection to you and your resident relatives without regard to legal liability for reasonable and necessary medical expenses resulting from accidental bodily injury while operating or occupying your insured auto or being struck as a pedestrian by a motor vehicle or trailer.

IF YOU ARE CURRENTLY CARRYING MEDICAL PAYMENT COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Medical Payment Coverage.

☐ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 05/09/07

Signature of Named Insured _____

NOTE: Please contact your Agent in writing if you care to change these selections in the future.

NV UM 1-07

0055

RENEWAL POLICY DECLARATIONS
MONTHLY NEVADA PERSONAL AUTO POLICY
UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
702-369-0312
LAS VEGAS, NV 89114-5007

PAGE 1

POLICY #: NVA 020021926
AGENT #: 850-85-850006
DATE PROCESSED: May 31, 2007

COVERAGE PROVIDED

FROM: May 31, 2007 @ 9:12 A.M. P.D.T.
TO: June 30, 2007 @ 12:01 A.M. P.D.T.

NAMED INSURED:
GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

AGENT:
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

This declaration page with "policy provisions" and all other applicable endorsements complete your policy.

DRIVER NAME
1 GARY S LEWIS
2 KRISTEN A SCOTT

TYPE OF DRIVER SR-22
Principal N
Principal N

DESCRIPTION OF VEHICLE
VEHICLE YEAR MAKE/MODEL VEHICLE ID #
1 1996 CHEV PICKUP1500 1GCEC19M6TE214944
2 1994 FORD RANGER 1FTCR10UXRPC26207

UNIT#	SYM	TER	CLASS	PTS	SURC	DISC	AIRBAG	TRAN	SENIOR	REN	MC	PIF	NONOWN	EFT
1	10	012	30FS	0	.200		Y	N	N	N	Y	N	N	N
2	06	012	30MS	1	.200		Y	N	N	N	Y	N	N	N

INSURED PROPERTY IS PRINCIPALLY GARAGED AT ABOVE ADDRESS OR:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

	VEHICLE 1 PREMIUM DED.	VEHICLE 2 PREMIUM DED.
Bodily Injury	15000/person 30000/accdnt 29.00	33.00
Property Damage	10000/accdnt 29.00	33.00
FULL TERM PREMIUM	58.00	66.00

POLICY FEE 10.00

TOTAL CHARGES 134.00

ENDORSEMENT MADE PART OF THIS POLICY AT TIME OF ISSUE:

COUNTER SIGNED: DATE 05/31/2007

By Glenn M. Cabrera

0056

Please cut on dotted lines



NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 20021926	05/31/2007		06/30/2007

Year/Make/Model
 1996 CHEV PICKUP1500

VIN
 1GCEC19M6TE214944

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

GARY S LEWIS
 KRISTEN AMY SCOTT

1701866927
 2102503674

This card has been approved by the Commissioner of Insurance

In the event of an accident or loss:

- Help any injured.
- Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185



NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 20021926	05/31/2007		06/30/2007

Year/Make/Model
 1996 CHEV PICKUP1500

VIN
 1GCEC19M6TE214944

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

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 KRISTEN AMY SCOTT

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Please cut on dotted lines

**NEVADA AUTOMOBILE INSURANCE CARD**

United Automobile Insurance Company
PO Box 14950, Las Vegas, NV 89114-4950
Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
Phone #: (702)876-0072

Policy Number Effective Date Expiration Date
NVA - 20021926 05/31/2007 TO 06/30/2007

Year/Make/Model
1994 FORD RANGER

VIN
1FTCR10UXRPC26207

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

Driver Name Driver's License Number

GARY S LEWIS 1701866927
KRISTEN AMY SCOTT 2102503674

This card has been approved by the Commissioner of Insurance

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**NEVADA AUTOMOBILE INSURANCE CARD**

United Automobile Insurance Company
PO Box 14950, Las Vegas, NV 89114-4950
Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
Phone #: (702)876-0072

Policy Number Effective Date Expiration Date
NVA - 20021926 05/31/2007 TO 06/30/2007

Year/Make/Model
1994 FORD RANGER

VIN
1FTCR10UXRPC26207

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

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GARY S LEWIS 1701866927
KRISTEN AMY SCOTT 2102503674

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United Automobile Insurance Company

P.O. BOX 15007
LAS VEGAS, NV 89114
PHONE: 866-209-4163 FAX: 866-209-9631

**MONTHLY/SEMI-ANNUAL/ANNUAL PROGRAM
RECEIPT OF PAYMENT**Date of Payment 05/31/2007 09:12:19Policy Number NVA -20021926UAIC Producer Number 850006

UAIC User ID _____

Type of Business RENEWAL**Insured Details**

GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

Agency Details

US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102
PHONE# (702)876-0072

UAIC Premium Downpayment \$ 134.00Total Now Due \$ 134.00

* Indicates amount paid for agency use only.

Payment BreakdownCash \$ 0.00Check # _____ \$ 0.00Credit / Debit Card \$ 0.00Money Order \$ 134.00Total Payment Received \$ 134.00

Comments: _____

Policy Number
NVA 020021926

UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
LAS VEGAS, NV 89114-5007

Effective Date
June 30, 2007
Expiration Date
July 31, 2007
Invoice Date
June 11, 2007
DB01

* * * * *
*
* R E N E W A L *
* S T A T E M E N T *
*
* * * * *

INSURED:
GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENT: 850-85 -850006
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

Renewal Amount

:* \$ 134.00 *

* No Later Than * 06/30/07 *

To avoid lapse in coverage, payment must be received prior to expiration of your policy. Please select from the payment options below. Once payment is received you will receive a new policy declaration sheet and insurance identification cards. IF THERE ARE ANY CHANGES TO YOUR EXISTING POLICY, PLEASE CONTACT YOUR AGENT BEFORE EXECUTING THIS RENEWAL.

Keep this stub as your record
Please detach and return this bottom portion with your payment

___ Pay my policy in full. Enclosed is my payment of \$ 134.00

Company 14
Policy Number NVA -020021926
Agent Number 850-85 -850006
Due Date 06/30/07
Invoice Date 06/11/07
Invoice Number 3932327
Amount Due \$ 134.00

UNITED AUTOMOBILE INSURANCE-NV
GARY S LEWIS
US AUTO INS AGENCY, INC.

*** RENEWAL STATEMENT ***

Payor ___ CK# ___ Amt ___

Mail To: UAIG - P.O. BOX 15007 LAS VEGAS, NV 89114

Payment Plan DB01 - FULL PAY
FILE COPY

0060



United Automobile Insurance Company

PO Box 15007
Las Vegas, NV 89114-5007
Fax: (866) 209-9631

Policy # NVA - 20021926

Named Insured GARY S LEWIS

NEVADA COVERAGE OFFER

OFFER OF UNINSURED / UNDERINSURED MOTORIST COVERAGE

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Uninsured / Underinsured Motorist Coverage protects the named insured's resident relatives and occupants in the insured vehicle if they sustain bodily injury in an accident for which the owner or operator of the vehicle is legally liable and does not have insurance (uninsured) or does not have enough insurance (underinsured).

IF YOU ARE CURRENTLY CARRYING UNINSURED / UNDERINSURED MOTORIST COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Uninsured and Underinsured Motorist Coverage

☐ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 06/11/07

Signature of Named Insured _____

OFFER OF MEDICAL PAYMENT COVERAGE

The Nevada Statute (NRS 687B.145) requires that Medical Payment Coverage be offered in an amount of at least \$1,000 unless you reject this coverage. You may accept or reject this coverage.

Medical Payment Coverage provides protection to you and your resident relatives without regard to legal liability for reasonable and necessary medical expenses resulting from accidental bodily injury while operating or occupying your insured auto or being struck as a pedestrian by a motor vehicle or trailer.

IF YOU ARE CURRENTLY CARRYING MEDICAL PAYMENT COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Medical Payment Coverage.

☐ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 06/11/07

Signature of Named Insured _____

NOTE: Please contact your Agent in writing if you care to change these selections in the future.

NV UM 1-07

0061

RENEWAL POLICY DECLARATIONS
MONTHLY NEVADA PERSONAL AUTO POLICY
UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
702-369-0312
LAS VEGAS, NV 89114-5007

PAGE 1

POLICY #: NVA 030021926
AGENT #: 850-85-850006
DATE PROCESSED: July 10, 2007

COVERAGE PROVIDED

FROM: July 10, 2007 @ 12:50 P.M. P.D.T.
TO: August 10, 2007 @ 12:01 A.M. P.D.T.

NAMED INSURED:
GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

AGENT:
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

This declaration page with "policy provisions" and all other applicable endorsements complete your policy.

DRIVER NAME
1 GARY S LEWIS
2 KRISTEN A SCOTT

TYPE OF DRIVER SR-22
Principal N
Principal N

DESCRIPTION OF VEHICLE
VEHICLE YEAR MAKE/MODEL VEHICLE ID #
1 1996 CHEV PICKUP1500 1GCEC19M6TE214944
2 1994 FORD RANGER 1FTCR10UXRPC26207

UNIT#	SYM	TER	CLASS	PTS	SURC	DISC	AIRBAG	TRAN	SENIOR	REN	MC	PIF	NONOWN	EFT
1	10	012	30FS	0		.200	Y	N	N	N	Y	N	N	N
2	06	012	30MS	1		.200	Y	N	N	N	Y	N	N	N

INSURED PROPERTY IS PRINCIPALLY GARAGED AT ABOVE ADDRESS OR:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

	VEHICLE 1 PREMIUM DED.	VEHICLE 2 PREMIUM DED.
Bodily Injury	15000/person	33.00
Property Damage	30000/accdnt	33.00
	10000/accdnt	33.00
FULL TERM PREMIUM	58.00	66.00

POLICY FEE 10.00

TOTAL CHARGES 134.00

ENDORSEMENT MADE PART OF THIS POLICY AT TIME OF ISSUE:

COUNTER SIGNED: DATE 07/10/2007

By

Jose M. Cabrera

0062

Please cut on dotted lines



NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 30021926	07/10/2007		08/10/2007

Year/Make/Model
 1996 CHEV PICKUP1500

VIN
 1GCEC19M6TE214944

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

GARY S LEWIS	1701866927
KRISTEN AMY SCOTT	2102503674

This card has been approved by the Commissioner of Insurance

In the event of an accident or loss:

- Help any injured.
- Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185



NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 30021926	07/10/2007		08/10/2007

Year/Make/Model
 1996 CHEV PICKUP1500

VIN
 1GCEC19M6TE214944

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

GARY S LEWIS	1701866927
KRISTEN AMY SCOTT	2102503674

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- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185

Please cut on dotted lines


NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163
INSURED:
 GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119
AGENCY:
 US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 30021926	07/10/2007		08/10/2007

 Year/Make/Model
 1994 FORD RANGER

 VIN
 1FTCR10UXRPC26207

**THIS CARD MUST BE CARRIED IN THE INSURED MOTOR
 VEHICLE FOR PRODUCTION UPON DEMAND**
The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

 GARY S LEWIS
 KRISTEN AMY SCOTT

 1701866927
 2102503674

This card has been approved by the Commissioner of Insurance
In the event of an accident or loss:

- Help any injured.
- Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

**COVERAGE UNDER THE POLICY NOTED ON THIS CARD
 MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185**

NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163
INSURED:
 GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119
AGENCY:
 US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 30021926	07/10/2007		08/10/2007

 Year/Make/Model
 1994 FORD RANGER

 VIN
 1FTCR10UXRPC26207

**THIS CARD MUST BE CARRIED IN THE INSURED MOTOR
 VEHICLE FOR PRODUCTION UPON DEMAND**
The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

 GARY S LEWIS
 KRISTEN AMY SCOTT

 1701866927
 2102503674

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In the event of an accident or loss:

- Help any injured.
- Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

**COVERAGE UNDER THE POLICY NOTED ON THIS CARD
 MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185**

United Automobile Insurance Company

P.O. BOX 15007
LAS VEGAS, NV 89114
PHONE: 866-209-4163 FAX: 866-209-9631

MONTHLY/SEMI-ANNUAL/ANNUAL PROGRAM **RECEIPT OF PAYMENT**

Date of Payment 07/10/2007 12:50:27

Policy Number NVA -30021926

UAIC Producer Number 850006

UAIC User ID

Type of Business RENEWAL

Insured Details

GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

Agency Details

US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102
PHONE# (702)876-0072

UAIC Premium Downpayment \$ 134.00

Total Now Due \$ 134.00

* Indicates amount paid for agency use only.

Payment Breakdown

Cash \$ 0.00

Check # \$ 0.00

Credit / Debit Card \$ 0.00

Money Order \$ 134.00

Total Payment Received \$ 134.00

Comments:



United Automobile Insurance Company

PO Box 15007
Las Vegas, NV 89114-5007
Fax: (866) 209-9631

Policy # NVA - 30021926

Named Insured

GARY S LEWIS

NEVADA COVERAGE OFFER

OFFER OF UNINSURED / UNDERINSURED MOTORIST COVERAGE

The Nevada Statute (NRS 687B.145) requires that Uninsured and Underinsured Motorist Coverage must be offered at limits equal to the Bodily Injury Liability Limit of your policy unless you reject this coverage. You have the legal right to purchase Uninsured / Underinsured Motorist Coverage and we recommend that you purchase it.

Uninsured / Underinsured Motorist Coverage protects the named Insured's resident relatives and occupants in the insured vehicle if they sustain bodily injury in an accident for which the owner or operator of the vehicle is legally liable and does not have insurance (uninsured) or does not have enough insurance (underinsured).

IF YOU ARE CURRENTLY CARRYING UNINSURED / UNDERINSURED MOTORIST COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Uninsured and Underinsured Motorist Coverage

☐ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 07/25/07

Signature of Named Insured _____

OFFER OF MEDICAL PAYMENT COVERAGE

The Nevada Statute (NRS 687B.145) requires that Medical Payment Coverage be offered in an amount of at least \$1,000 unless you reject this coverage. You may accept or reject this coverage.

Medical Payment Coverage provides protection to you and your resident relatives without regard to legal liability for reasonable and necessary medical expenses resulting from accidental bodily injury while operating or occupying your insured auto or being struck as a pedestrian by a motor vehicle or trailer.

IF YOU ARE CURRENTLY CARRYING MEDICAL PAYMENT COVERAGE, PLEASE DISREGARD. IF YOU WISH TO ADD THIS COVERAGE, PLEASE COMPLETE THIS FORM AND SUBMIT TO YOUR AGENT.

I have read and understand the provisions of Medical Payment Coverage.

☐ I hereby **REJECT** this coverage

☐ I hereby **SELECT** this coverage

Date 07/25/07

Signature of Named Insured _____

NOTE: Please contact your Agent in writing if you care to change these selections in the future.

NV UM 1-07

0067

RENEWAL POLICY DECLARATIONS
MONTHLY NEVADA PERSONAL AUTO POLICY
UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
702-369-0312
LAS VEGAS, NV 89114-5007

PAGE 1

POLICY #: NVA 040021926
AGENT #: 850-85-850006
DATE PROCESSED: August 13, 2007

COVERAGE PROVIDED

FROM: August 13, 2007 @ 9:34 A.M. P.D.T.
TO: September 13, 2007 @ 12:01 A.M. P.D.T.

NAMED INSURED:
GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

AGENT:
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

This declaration page with "policy provisions" and all other applicable endorsements complete your policy.

DRIVER NAME
1 GARY S LEWIS
2 KRISTEN A SCOTT

TYPE OF DRIVER SR-22
Principal N
Principal N

DESCRIPTION OF VEHICLE
VEHICLE YEAR MAKE/MODEL VEHICLE ID #
1 1996 CHEV C1500 1GCEC19M6TE214944
2 1994 FORD RANGER 1FTCR10UXRPC26207

UNIT#	SYM	TER	CLASS	PTS	SURC	DISC	AIRBAG	TRAN	SENIOR	REN	MC	PIF	NONOWN	EFT
1	10	012	30FS	0	.200	Y	N	N	N	N	Y	N	N	N
2	06	012	30MS	1	.200	Y	N	N	N	N	Y	N	N	N

INSURED PROPERTY IS PRINCIPALLY GARAGED AT ABOVE ADDRESS OR:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

	VEHICLE 1 PREMIUM DED.	VEHICLE 2 PREMIUM DED.
Bodily Injury	15000/person 29.00	33.00
Property Damage	30000/accdnt 10000/accdnt 29.00	33.00
FULL TERM PREMIUM	58.00	66.00

POLICY FEE 10.00

TOTAL CHARGES 134.00

ENDORSEMENT MADE PART OF THIS POLICY AT TIME OF ISSUE:

COUNTER SIGNED: DATE 08/13/2007

By

Esio m. maldonado

0068

Please cut on dotted lines

**NEVADA AUTOMOBILE INSURANCE CARD**

United Automobile Insurance Company
PO Box 14950, Las Vegas, NV 89114-4950
Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 40021926	08/13/2007		09/13/2007

Year/Make/Model	VIN
1996 CHEV C1500	1GCEC19M6TE214944

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

GARY S LEWIS	1701866927
KRISTEN AMY SCOTT	2102503674

This card has been approved by the Commissioner of Insurance

In the event of an accident or loss:

- Help any injured.
- Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185

**NEVADA AUTOMOBILE INSURANCE CARD**

United Automobile Insurance Company
PO Box 14950, Las Vegas, NV 89114-4950
Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 40021926	08/13/2007		09/13/2007

Year/Make/Model	VIN
1996 CHEV C1500	1GCEC19M6TE214944

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

GARY S LEWIS	1701866927
KRISTEN AMY SCOTT	2102503674

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- Help any injured.
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- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185

Please cut on dotted lines



NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 40021926	08/13/2007		09/13/2007

Year/Make/Model
 1994 FORD RANGER

VIN
 1FTCR10UXRPC26207

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

GARY S LEWIS
 KRISTEN AMY SCOTT

1701866927
 2102503674

This card has been approved by the Commissioner of Insurance

In the event of an accident or loss:

- Help any injured.
- Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- Protect your auto and any property from further damage.
- Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- Notify your claims service center toll free at 866-209-4163.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185



NEVADA AUTOMOBILE INSURANCE CARD
 United Automobile Insurance Company
 PO Box 14950, Las Vegas, NV 89114-4950
 Toll Free: 866-209-4163

INSURED:

GARY S LEWIS
 5049 SPENCER ST D
 LAS VEGAS, NV 89119

AGENCY:

US AUTO INS AGENCY, INC.
 Phone #: (702)876-0072

Policy Number	Effective Date	TO	Expiration Date
NVA - 40021926	08/13/2007		09/13/2007

Year/Make/Model
 1994 FORD RANGER

VIN
 1FTCR10UXRPC26207

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

<u>Driver Name</u>	<u>Driver's License Number</u>
--------------------	--------------------------------

GARY S LEWIS
 KRISTEN AMY SCOTT

1701866927
 2102503674

This card has been approved by the Commissioner of Insurance

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- Help any injured.
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- Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
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COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185

United Automobile Insurance Company

P.O. BOX 15007
LAS VEGAS, NV 89114
PHONE: 866-209-4163 FAX: 866-209-9631

MONTHLY/SEMI-ANNUAL/ANNUAL PROGRAM RECEIPT OF PAYMENT

Date of Payment 08/13/2007 09:34:05

Policy Number NVA -40021926

UAIC Producer Number 850006

UAIC User ID

Type of Business RENEWAL

Insured Details

GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

Agency Details

US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102
PHONE# (702)876-0072

UAIC Premium Downpayment \$ 134.00

Total Now Due \$ 134.00

* Indicates amount paid for agency use only.

Payment Breakdown

Cash \$ 0.00

Check # \$ 0.00

Credit / Debit Card \$ 0.00

Money Order \$ 134.00

Total Payment Received \$ 134.00

Comments:

14001

E

/24/2007 05:12 FAX 17028762801



UNITED AUTOMOBILE INSURANCE COMPANY

PO Box 15007, Las Vegas, NV 89114-5007

Phone: 866-209-4163 U/W Fax: 866-209-9631 Claims Fax: 866-209-9417

August 21, 2007

GARY S LEWIS
5049 SPENCER ST #D
LAS VEGAS, NV 89119

7/23/07 - Called & left message on Lewis's
cellphone. Call time was at 4:47 PM

Sent Oct Post Card.

Re: Policy Number NVA 10021926
Policy Term 4/29/2007 to 5/29/2007

Dear Named Insured:

We received notice from the Nevada Department of Motor Vehicles that there is a discrepancy with the registration for the **1994 FORD RANGER**. In order to provide DMV with proof of insurance during the above policy term, please complete the following information or provide a copy of the vehicle registration and return in the enclosed envelope by **9/12/2007**:

Vehicle Identification Number (VIN): _____

Registered Owner(s) Name: _____

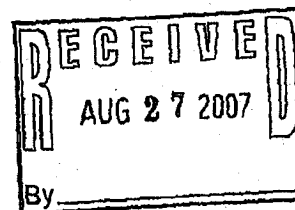
Provide the STATE where the vehicle registered: _____

Failure to respond could result in future problems with the Nevada Department of Motor Vehicles.

Thank you,

United Automobile Insurance Company

cc: Agent # 8500016
File



051507A

0072

08/24/2007 05:12 FAX 17028782801

E

This certificate shows registered ownership only. Legal ownership is shown on the certificate of title. You Must:

- Maintain security (insurance or qualified self-insurer) for a motor vehicle for the entire time the vehicle is registered in Nevada. **VEHICLE MUST BE INSURED BY AN INSURANCE COMPANY LICENSED IN THE STATE OF NEVADA.**
- If you cancel your insurance you must cancel your registration certificate and license plates in order to avoid registration suspension and reinstatement fees of up to \$250.00.
- Remove your plates if you sell this vehicle. As soon as possible, either officially transfer your plates to another vehicle owned by you, or surrender the plates to the Department of Motor Vehicles. If plates are not transferred or surrendered within 44 days, the registered owner may be subject to monetary sanctions.
- Carry this certificate, or a legible copy, in the vehicle.
- Immediately apply for a duplicate if your registration certificate or license plates/decals are lost, mutilated, or illegible.
- Notify the Department of Motor Vehicles within 30 days of moving to a new address.
- Keep evidence of insurance in the motor vehicle.

Field Here



Issue Date: 05/19/2007

05/19/2007

Plate Style: SUNSET

Plate Background: SUNSET

Expires: 05/19/2008

Decal Number: C08348

License Number	Year	Make	Type	Model Name	Cyl	MSRP	Fuel	Axle	Weight	Unladen Weight
283UJE	1994	FORD	TPK	RANGER	6	\$9,389.00	G	2	5999	0
Vehicle Identification Number					County Based					
1FTCR10UXRPC26207					CLARK					

SCOTT, KRISTEN AMY
LEWIS, GARY SCOTT
5049 SPENCER ST APT D
LAS VEGAS NV 89119-2007

20-1 (05/03 Rev. 1-00)

CJ 503

0073

AMENDED POLICY DECLARATIONS
MONTHLY NEVADA PERSONAL AUTO POLICY
UNITED AUTOMOBILE INSURANCE-NV
P.O. BOX 15007
702-369-0312
LAS VEGAS, NV 89114-5007

PAGE 1

POLICY #: NVA 040021926
AGENT #: 850-85-850006
DATE PROCESSED: August 29, 2007

COVERAGE PROVIDED

FROM: August 29, 2007 @ 4:42 P.M. P.D.T.
TO: September 13, 2007 @ 12:01 A.M. P.D.T.

NAMED INSURED:
GARY S LEWIS
5049 SPENCER ST Apt.D
LAS VEGAS, NV 89119

AGENT:
US AUTO INS AGENCY, INC.
3909 W. SAHARA AVE., STE. 4
LAS VEGAS, NV 89102

This declaration page with "policy provisions" and all other applicable endorsements complete your policy.

DRIVER NAME
1 GARY S LEWIS
2 KRISTEN A SCOTT

TYPE OF DRIVER SR-22
Principal N
Principal N

VEHICLE	YEAR	MAKE/MODEL	VEHICLE ID #
1	1996	CHEV C1500	1GCEC19M6TE214944
2	1994	FORD RANGER	1FTCR10UXRPC26207
3	1995	TYTA COROLLA DX	JT2AE09B4S0085205

UNIT#	SYM	TER	CLASS	PTS	SURC	DISC	AIRBAG	TRAN	SENIOR	REN	MC	PIF	NONOWN	EFT
1	10	012	30FS	0		.200	Y	N	N	N	Y	N	N	N
2	06	012	0MM	0		.200	Y	N	N	N	Y	N	N	N
3	13	012	30MS	1		.200	Y	N	N	N	Y	N	N	N

INSURED PROPERTY IS PRINCIPALLY GARAGED AT ABOVE ADDRESS OR:

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM AND LIMIT OR DEDUCTIBLE ARE SHOWN:

	VEHICLE 1 PREMIUM DED.	VEHICLE 2 PREMIUM DED.	VEHICLE 3 PREMIUM DED.	
Bodily Injury	15000/person 30000/accdnt	29.00	29.00	33.00
Property Damage	10000/accdnt	29.00	29.00	33.00
FULL TERM PREMIUM	58.00	58.00	66.00	
			TOTAL PREMIUM	182.00
			CHANGE IN PREMIUM	28.00

ENDORSEMENT MADE PART OF THIS POLICY AT TIME OF ISSUE:

ENDORSEMENT SUMMARY

Unit 3 added on 08/29/2007

08/29/2007

Date Time

Signature of Name insured required

08/29/2007

Date Time

Agent signature required

COUNTER SIGNED: DATE 08/29/2007

By

Emilio H. Lacasa

0074

“EXHIBIT 2”

1 **JUDG**

2 DAVID F. SAMPSON, ESQ.,

3 Nevada Bar #6811

4 THOMAS CHRISTENSEN, ESQ.,

5 Nevada Bar #2326

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,

10 JAMES NALDER As Guardian Ad

11 Litem for minor, CHEYENNE NALDER

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JAMES NALDER, individually)

13 and as Guardian ad Litem for)

14 CHEYENNE NALDER, a minor.)

15 Plaintiffs,)

16 vs.)

CASE NO: A549111

DEPT. NO: VI

17 GARY LEWIS, and DOES I)

18 through V, inclusive ROES I)

19 through V)

20 Defendants.)

21 **NOTICE OF ENTRY OF JUDGMENT**

22 PLEASE TAKE NOTICE that a Judgment against Defendant, GARY LEWIS, was
23 entered in the above-entitled matter on June 2, 2008. A copy of said Judgment is attached
24 hereto.

25 DATED this 5 day of June, 2008.

26 CHRISTENSEN LAW OFFICES, LLC

27 By: _____

28 DAVID F. SAMPSON, ESQ.

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

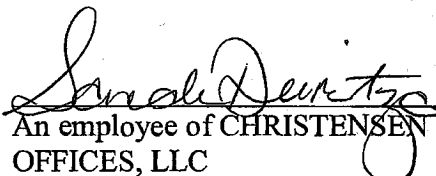
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW
OFFICES, LLC., and that on this 5th day of June, 2008, I served a copy of the
foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class
postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
number(s) shown below and in the confirmation sheet filed herewith. Consent to
service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
facsimile transmission is made in writing and sent to the sender via facsimile within
24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Gary Lewis
5049 Spencer St. #D
Las Vegas, NV 89119


An employee of CHRISTENSEN LAW
OFFICES, LLC

1 **JMT**

2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326

4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811

6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000

9 Attorney for Plaintiff,

Chaf
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 JAMES NALDER,)
13 as Guardian ad Litem for)
14 CHEYENNE NALDER, a minor.)

15 Plaintiffs,)

16 vs.)

CASE NO: A549111

DEPT. NO: VI

17 GARY LEWIS, and DOES I)
18 through V, inclusive)

19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

JUDGMENT

29 In this action the Defendant, GARY LEWIS, having been regularly served with the
30 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
31 legal time for answering having expired, and no answer or demurrer having been filed, the
32 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
33 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
34 follows:

35 ...

36 ...

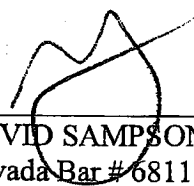
37 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 _____
10 DISTRICT JUDGE

11
12
13 Submitted by:
14 CHRISTENSEN LAW OFFICES, LLC.

15
16 BY: 
17 _____
18 DAVID SAMPSON
19 Nevada Bar #6811
20 1000 S. Valley View
21 Las Vegas, Nevada 89107
22 Attorney for Plaintiff
23
24
25
26
27
28

“EXHIBIT 3”

1 **INTG**
2 THOMAS CHRISTENSEN, ESQ.
3 Nevada Bar No. 2326
4 DAVID F. SAMPSON, ESQ.
5 Nevada Bar No. 6811
6 CHRISTENSEN LAW OFFICES, LLC
7 1000 S. Valley View Blvd.
8 Las Vegas, Nevada 89107
9 Attorneys for Plaintiffs

7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEVADA**

10 JAMES NALDER, Guardian Ad Litem for minor)
11 Cheyanne Nalder, real party in interest, and)
12 GARY LEWIS, Individually;)

12 Plaintiffs,)

) Case No.: 2:09-cv-1348

13 vs.)

14 UNITED AUTOMOBILE INSURANCE CO,)
15 DOES I through V, and ROE CORPORATIONS)
16 I through V, inclusive)

) JURY DEMAND REQUESTED

17 Defendants.)
18)

19 **ANSWER TO INTERROGATORIES**

20
21 COMES NOW the Plaintiff, GARY LEWIS, and for his Answers to Interrogatories
22 propounded to him, states, under oath, and in accordance with Rule 33 of the Nevada Rules of
23 Civil Procedure, as follows:

24 **INTERROGATORY NO. 1:** State your name and all names by which you have ever been
25 known, your present residence address, any other address at which you have lived during the
26 past five years, and if you are married, state the name and address of your spouse and the date
27 and place of your marriage.
28

1
2 ANSWER TO INTERROGATORY NO. 1: OBJECTION: This Interrogatory is objected to on
3 the grounds it is overly broad, unduly burdensome, compound and seeks information not
4 reasonably calculated to lead to the discovery of admissible evidence. However without
5 waiving said objections Plaintiff responds as follows: Gary Scott Lewis, 4908 Brightview,
6 Covina, CA 91722 (present address); 5049 Spencer Unit D, Las Vegas, NV 89119; 113
7 Templewood Ct. Las Vegas, NV 89149; I am single. Plaintiff reserves the right to supplement
8 this answer as discovery continues.
9
10

11 INTERROGATORY NO. 2: State your date of birth, and Social Security Number.

12 ANSWER TO INTERROGATORY NO. 2: OBJECTION: This Interrogatory is objected to on
13 the grounds it is overly broad, unduly burdensome, compound and seeks information not
14 reasonably calculated to lead to the discovery of admissible evidence. However without
15 waiving said objections Plaintiff responds as follows: Date of Birth 4/28/1974, social XXX-
16 XX-7750. Plaintiff reserves the right to supplement this answer as discovery continues.
17

18 INTERROGATORY NO. 3: If you have ever been convicted of a felony, state the date of the
19 conviction and the offense involved.
20

21 ANSWER TO INTERROGATORY NO. 3: OBJECTION: This Interrogatory is objected to on
22 the grounds it is overly broad, unduly burdensome, compound and seeks information not
23 reasonably calculated to lead to the discovery of admissible evidence. However without
24 waiving said objections, Plaintiff responds as follows: 1998, Grand theft and forgery. Plaintiff
25 reserves the right to supplement this answer as discovery continues.
26

27 INTERROGATORY NO. 4: Give a complete employment and educational history for the ten
28 (10) years preceding the incident in question, setting forth details such as the name and address

1 of your employers, the date of commencement and termination, the place and nature of
2 employment duties performed, the name of your supervisor, etc.

3 ANSWER TO INTERROGATORY NO. 4: OBJECTION: This Interrogatory is objected to on
4 the grounds it is overly broad, unduly burdensome, compound and seeks information not
5 reasonably calculated to lead to the discovery of admissible evidence. However without
6 waiving said objections, Plaintiff responds as follows: (2000-2002)ACB Components and
7 Fasteners, Covina, CA , warehouse associate, purchasing agent and sales representative,
8 supervisor-David Hanson; (2002-2007) American Leak Detection, Las Vegas, NV, plumber
9 technician/customer service representative, supervisor-Rich Welsh; (2007-2010)Self
10 employed. Plaintiff reserves the right to supplement this answer as discovery continues.

11 INTERROGATORY NO. 5: If you involved in an incident on July 8, 2007, state the time and
12 location of said incident and describe the details of the incident in your own words, describing
13 factually (without legal conclusion) what caused it to happen.

14 ANSWER TO INTERROGATORY NO. 5: OBJECTION: This Interrogatory is objected to on
15 the grounds it is overly broad, unduly burdensome, compound and calls for a narrative
16 response. However without waiving said objections, Plaintiff responds as follows: I ran over
17 Cheyanne Nalder with my truck. Plaintiff reserves the right to supplement this answer as
18 discovery continues.

19 INTERROGATORY NO. 6: Please state your relationship to Cheyanne Nalder.

20 ANSWER TO INTERROGATORY NO. 6: OBJECTION: This Interrogatory is objected to on
21 the grounds it is overly broad, unduly burdensome, compound and seeks information not
22 reasonably calculated to lead to the discovery of admissible evidence. However without
23

1 waiving said objections, Plaintiff responds as follows: I was friends with Cheyanne's father.

2 Plaintiff reserves the right to supplement this answer as discovery continues. friends

3 INTERROGATORY NO. 7: Please state your relationship to James Nalder.

4
5 ANSWER TO INTERROGATORY NO. 7: OBJECTION: This Interrogatory is objected to on
6 the grounds it is overly broad, unduly burdensome, compound and seeks information not
7 reasonably calculated to lead to the discovery of admissible evidence. However without
8 waiving said objections, Plaintiff responds as follows: friends. Plaintiff reserves the right to
9 supplement this answer as discovery continues.
10

11 INTERROGATORY NO. 8: If you consumed any intoxicating beverages or consumed any
12 type of drug within twenty-four (24) hours preceding each accident, please state the time and
13 place of each drink or consumption and the kind and amount of intoxicating beverages or drug
14 used or consumed.

15
16 ANSWER TO INTERROGATORY NO. 8: OBJECTION: This Interrogatory is objected to on
17 the grounds it is overly broad, unduly burdensome, compound and seeks information not
18 reasonably calculated to lead to the discovery of admissible evidence. However without
19 waiving said objections, Plaintiff responds as follows: None. Plaintiff reserves the right to
20 supplement this answer as discovery continues.
21

22 INTERROGATORY NO. 9: If you maintain you were insured under a policy of automobile
23 insurance issued by United Automobile Insurance Company please state the dates of coverage
24 for said policy and policy number.

25 ANSWER TO INTERROGATORY NO. 9: OBJECTION: This Interrogatory is objected to on
26 the grounds it is overly broad, unduly burdensome and compound. However without waiving
27 said objections, Plaintiff responds as follows: I was covered by a policy of insurance through
28

1 UAIC, which UAIC renewed on multiple occasions with me. It is my understanding I was
2 covered by policy No. NVA020021926, which UAIC advised me it was renewing and that I
3 would have no lapse in coverage as long as payment was made prior to the expiration of my
4 policy, which the "Renewal Notice" said was July 31, 2007. I made the payment long before
5 July 31, 2007 and understood the policy had been renewed again and there was no lapse in
6 coverage. Plaintiff reserves the right to supplement this answer as discovery continues. look on
7 insurance card. It is my understanding I was covered with insurance through UAIC which
8 coverage and insurance UAIC continually renewed from early 2007 through I believe
9 September 2009.

12 INTERROGATORY NO. 10: If you maintain you attempted, or made a payment of policy
13 premium to United Automobile Insurance Company for automobile insurance coverage
14 between June 12, 2007 and July 10, 2007 please state the (a) form or method of such payment
15 (b) the location of said payment, (c) the date of said payment, and (d) proof of any such
16 payment.

18 ANSWER TO INTERROGATORY NO. 10: OBJECTION: This Interrogatory is objected to
19 on the grounds it is overly broad, unduly burdensome and compound. However without
20 waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received
21 said that I would not have a lapse in coverage if payment was made before the expiration of my
22 policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10,
23 2007. Plaintiff reserves the right to supplement this answer as discovery continues.

25 INTERROGATORY NO. 11: If you maintain any payment, alleged in answer to interrogatory
26 No. 10, herein, was via credit card, please state the card issuing company and account number.
27
28

1 ANSWER TO INTERROGATORY NO. 11: OBJECTION: This Interrogatory is objected to
2 on the grounds it is overly broad and unduly burdensome. However without waiving said
3 objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received said that I
4 would not have a lapse in coverage if payment was made before the expiration of my policy,
5 which the "Renewal Notice said was July 31, 2007. Payment was made on July 10, 2007.
6 Plaintiff reserves the right to supplement this answer as discovery continues.
7

8 INTERROGATORY NO. 12: If you maintain any payment, alleged in answer to interrogatory
9 no. 10, herein, was via check, please state the (a) bank account holder's name, (b) the check
10 number, (c) the name of the bank, and (d) the bank account number and account number.
11

12 ANSWER TO INTERROGATORY NO. 12: OBJECTION: This Interrogatory is objected to
13 on the grounds it is overly broad, unduly burdensome and compound. However without
14 waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received
15 said that I would not have a lapse in coverage if payment was made before the expiration of my
16 policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10,
17 2007. Plaintiff reserves the right to supplement this answer as discovery continues.
18

19 INTERROGATORY NO. 13: If you maintain any payment, alleged in answer to interrogatory
20 no. 10, herein was via money order, please state the (a) issuing entity name, and (b) the
21 location issued from.
22

23 ANSWER TO INTERROGATORY NO. 13: OBJECTION: This Interrogatory is objected to
24 on the grounds it is overly broad, unduly burdensome and compound. However without
25 waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received
26 said that I would not have a lapse in coverage if payment was made before the expiration of my
27
28

1 policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10,
2 2007. Plaintiff reserves the right to supplement this answer as discovery continues.

3 INTERROGATORY NO. 14: If you have obtained, or are aware of the existence of, any oral,
4 written, or recorded statement or description made or claimed to have been made by any party
5 or witness, state the name of the person giving the statement and the date given.

6 ANSWER TO INTERROGATORY NO. 14: OBJECTION: This Interrogatory is objected to
7 on the grounds it is overly broad, unduly burdensome and compound. However without
8 waiving said objections, Plaintiff responds as follows: Please see Plaintiff's List of Witnesses
9 and Documents and Supplements (particularly the reports of Charles Miller and any and all
10 statements contained in Defendant's claims file). Plaintiff reserves the right to supplement this
11 answer as discovery continues.

12 INTERROGATORY NO. 15: State the name and specialty of any person you intend to use as
13 an expert witness in this case and give a summary of the expert's opinion concerning the case.

14 ANSWER TO INTERROGATORY NO. 15: OBJECTION: This Interrogatory is objected to
15 on the grounds it is overly broad, unduly burdensome, compound and is premature as the time
16 for disclosure of experts is not upon us. However, without waiving said objections, Plaintiff
17 responds as follows: Charles M. Miller, 1442A Walnut St. #55 Berkeley, CA 94709; is
18 expected to testify as an expert regarding any subject matter related to his expertise in the field
19 of insurance, findings on his review and examinations, including but not limited to testing
20 results, as well as the damages as a result of this incident and his report and opinions. Plaintiff
21 reserves the right to supplement this answer as discovery continues. Charles Miller.

22 INTERROGATORY NO. 16: Please state the name of any checking and savings accounts in
23 your name in June and July 2007 and, of each, state the bank name and account number.
24
25
26
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1 ANSWER TO INTERROGATORY NO. 16: OBJECTION: This Interrogatory is objected to
2 on the grounds it is overly broad, unduly burdensome, compound and seeks information not
3 reasonably calculated to lead to the discovery of admissible evidence. However without
4 waiving said objections, Plaintiff responds as follows: I think I may have had an account with
5 Community Bank, however, I do not recall the account number. Plaintiff reserves the right to
6 supplement this answer as discovery continues.
7

8 INTERROGATORY NO. 17: Please state the name of any credit card accounts in your name
9 in June and July 2007 and for each, state the issuing entity name and account number.
10

11 ANSWER TO INTERROGATORY NO. 17: OBJECTION: This Interrogatory is objected to
12 on the grounds it is overly broad, unduly burdensome, compound and seeks information not
13 reasonably calculated to lead to the discovery of admissible evidence. However without
14 waiving said objections, Plaintiff responds as follows: None. Plaintiff reserves the right to
15 supplement this answer as discovery continues. None
16

17 INTERROGATORY NO. 18: If you have ever made any claim or filed any lawsuit against any
18 person, group, organization, corporation, industrial commission or any other entity, describe in
19 detail the nature of the claim or lawsuit or how it was resolved.
20

21 ANSWER TO INTERROGATORY NO. 18: OBJECTION: This Interrogatory is objected to
22 on the grounds it is overly broad, unduly burdensome, compound and seeks information not
23 reasonably calculated to lead to the discovery of admissible evidence. However without
24 waiving said objections, Plaintiff responds as follows: None. Plaintiff reserves the right to
25 supplement this answer as discovery continues.
26

27 INTERROGATORY NO. 19: The date you first spoke to, were contacted by, contacted,
28 corresponded with, or otherwise communicated with counsel for James Nalder, Guardian Ad

1 Litem for minor Cheyanne Nalder, or any individual at the Christensen Law Offices and the
2 method of contact.

3 ANSWER TO INTERROGATORY NO. 19: OBJECTION: This Interrogatory is objected to
4 on the grounds it is overly broad, unduly burdensome, compound and seeks information not
5 reasonably calculated to lead to the discovery of admissible evidence. However without
6 waiving said objections, Plaintiff responds to the best of his recollection, I do not recall the
7 exact date, it was shortly after the accident, James Nalder asked me to call David Sampson and
8 I called him. Plaintiff reserves the right to supplement this answer as discovery continues.
9

10 INTERROGATORY NO. 20: The date your first spoke to, were contacted by, contacted,
11 corresponded with, or otherwise communicated with counsel for James Nalder, Guardian Ad
12 Litem for minor Cheyanne Nalder, or any individual at the Christensen Law Offices wherein a
13 covenant not to execute and/or assignment of rights or chose in action against United
14 Automobile Insurance Company was discussed, proposed or presented and the method of said
15 contact.
16

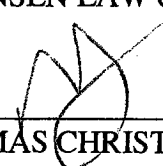
17 ANSWER TO INTERROGATORY NO. 20: OBJECTION: This Interrogatory is objected to
18 on the grounds it is overly broad, unduly burdensome, compound and seeks information not
19 reasonably calculated to lead to the discovery of admissible evidence. However without
20 waiving said objections, Plaintiff responds as follows: I spoke with David Sampson about a
21 possible assignment on multiple occasions. I do not recall the exact dates. The assignment
22 was executed on February 28, 2010. Plaintiff reserves the right to supplement this answer as
23 discovery continues.
24
25
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1 INTERROGATORY NO. 21: The date you signed or executed a covenant not to execute and
2 assignment of rights to choses in action with counsel for James Nalder, Guardian Ad Litem for
3 minor Cheyanne Nalder, or any individual at the Christensen Law Offices.

4
5 ANSWER TO INTERROGATORY NO. 21: OBJECTION: This Interrogatory is objected to
6 on the grounds it is overly broad, unduly burdensome, compound and seeks information not
7 reasonably calculated to lead to the discovery of admissible evidence. However without
8 waiving said objections, Plaintiff responds as follows: February 28, 2010. Plaintiff reserves the
9 right to supplement this answer as discovery continues.
10

11
12 DATED this 3rd day of March, 2010.

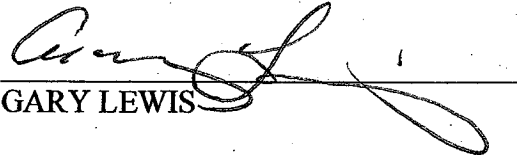
13
14 CHRISTENSEN LAW OFFICES, LLC

15
16 BY: 
17 THOMAS CHRISTENSEN, ESQ.
18 Nevada Bar No. 2326
19 DAVID F. SAMPSON, ESQ.
20 Nevada Bar No. 6811
21 1000 S. Valley View Blvd.
22 Las Vegas, Nevada 89107
23 Attorney for Plaintiffs
24
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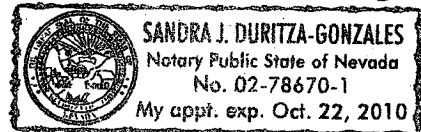
1 STATE OF NEVADA)
2 :ss
3 COUNTY OF CLARK)

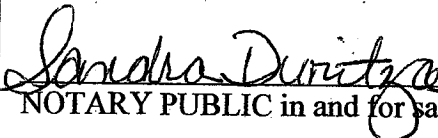
4 GARY LEWIS, being first duly sworn, deposes and says:

5 That he is the Plaintiff in the above-entitled action; that he has read the foregoing
6 Answers to Interrogatories and knows the contents thereof, and that the same is true of his
7 own knowledge except for those matters therein stated on information and belief, and as for
8 those matters he believes them to be true.
9

10
11
12
13 
GARY LEWIS

14 SUBSCRIBED and SWORN to before me
15 this 28 day of Feb, 2010.



17 
18 NOTARY PUBLIC in and for said County and State.
19
20
21
22
23
24
25
26
27
28

“EXHIBIT 4”

Danice Davis - July 28, 2010
Nalder vs. United Automobile Insurance Company

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

--oOo--

JAMES NALDER, Guardian Ad Litem)
for minor Cheyanne Nalder, real)
party in interest, and GARY)
LEWIS, Individually,)

Plaintiffs,)

vs.)

UNITED AUTOMOBILE INSURANCE CO,)
DOES I through V, and ROE)
CORPORATIONS I through V,)
inclusive,)
Defendants.)

**CONDENSED
CERTIFIED
TRANSCRIPT**

Case No.
2:09-cv-1348

DEPOSITION OF DANICE DAVIS

Scottsdale, Arizona
July 28, 2010
1:46 p.m.

PREPARED FOR:
DISTRICT COURT

(Original)

Prepared by:
Sandra L. Munter
Certified Reporter
Certificate No. 50348
CANYON STATE REPORTING
2415 East Camelback Road
Suite 700
Phoenix, Arizona 85016

Danice Davis - July 28, 2010
Nalder vs. United Automobile Insurance Company

Page 2	Page 4
<p>1 Pursuant to Rule 39(f)(2) of the Arizona Rules of Civil 2 Procedure, which states, "Upon payment of reasonable charges 3 therefor, the officer shall furnish a copy of the deposition 4 to any party or to the deponent," the "Prepared For" 5 attorney has received a copy of this proceeding. 6 I, the officer, will provide a certified copy to each 7 ordering party at the same copy rate, thus complying with 8 Section 7-206, Appendix A Standard 3(a) of the Arizona Code 9 of Judicial Administration (ACJA) Court Reporter Standard 10 Certification (Effective January 1, 2003). 11 Each purchased copy of this transcript will be signed and 12 certified by myself, thus complying with ACJA Section 13 7-206F(3). 14 A.R.S. 32-4003(B) provides, "Beginning July 1, 2000, a 15 certified reporter shall sign and certify each transcript 16 that the certified reporter prepares before the transcript 17 may be used in court, except for transcripts that the court 18 reporter prepares for proceedings that occurred before July 19 1, 2000." Thus, only an originally signed copy of my work 20 product can be used in any proceeding before the Court. 21 Any copies of this transcript (paper or electronic) made for 22 any other party who has not paid Canyon State Reporting, 23 (thus the reporter) for such copy of this transcript, or 24 received written permission for same, will be considered 25 theft of services, a violation of property rights, and be considered restraint of trade with appropriate penalties sought.</p>	<p>1 DEPOSITION OF DANICE DAVIS 2 was taken on July 28, 2010, commencing at 1:46 p.m., at 3 UNITED AUTOMOBILE INSURANCE CO., 8800 East Raintree Drive, 4 Scottsdale, AZ 85260, before Sandra L. Munter, Certified 5 Reporter No. 50348 for the State of Arizona. 6 7 APPEARANCES 8 For the Plaintiffs: 9 BY: DAVID F. SAMPSON, ESQ. 10 CHRISTENSEN LAW OFFICES, LLC 11 1000 South Valley View Boulevard 12 Las Vegas, Nevada 89107 13 14 For the Defendants: 15 16 BY: MATTHEW J. DOUGLAS, ESQ. 17 ATKIN WINNER & SHERROD 18 1117 South Rancho Drive 19 Las Vegas, Nevada 89102 20 21 22 23 24 25</p>
Page 3	Page 5
<p>1 INDEX 2 WITNESS: 3 DANICE DAVIS 4 EXAMINATION 5 Page Line 6 By Mr. Sampson 5 13 7 By Mr. Douglas 120 14 8 By Mr. Sampson 122 24 9 By Mr. Douglas 135 1 10 By Mr. Sampson 136 3 11 12 EXHIBITS 13 Number Page Line 14 9 Nevada Evidence of Motor Vehicle 5 3 15 Liability Cards 16 (1 page) 17 10 Note Detail 15 13 18 (2 pages) 19 20 RECESSES 21 Page Line 22 (Recess at 3:20 p.m.; resumed at 3:27 p.m.) 89 21 23 24 25</p>	<p>1 PROCEEDINGS 2 3 (Deposition Exhibit No. 9 was marked for 4 identification.) 5 6 DANICE DAVIS, 7 the witness herein, having been first duly sworn to speak 8 the truth and nothing but the truth, was examined and 9 testified as follows: 10 11 EXAMINATION 12 BY MR. SAMPSON: 13 Q Could you please spell your name, say your name 14 and spell your last name for our record, if you would? 15 A Danice Davis, D-a-a-v-i-s. 16 Q All right. Do you understand you've been 17 designated by UAIC as the person most knowledgeable 18 regarding several different areas related to underwriting? 19 A Uh-huh. 20 Q Is that a yes? 21 A Yes. 22 Q Okay. Have you ever testified as a person most 23 knowledgeable before? 24 A No. 25 Q Do you understand that UAIC has advised that of</p>

2 (Pages 2 to 5)

Danice Davis - July 28, 2010
Nalder vs. United Automobile Insurance Company

Page 6	Page 8
<p>1 all the people at UAIC for these areas I've identified, you</p> <p>2 are the one who has the most knowledge for the whole company</p> <p>3 as to what went on.</p> <p>4 Do you understand that?</p> <p>5 A Yes.</p> <p>6 Q Do you understand that if you tell me at any</p> <p>7 point in time that if I ask about an area and you say,</p> <p>8 "Well, I don't know," that you're essentially saying nobody</p> <p>9 at UAIC knows because you have the most knowledge?</p> <p>10 Do you understand that?</p> <p>11 A Depends on what area you're talking about.</p> <p>12 Q Okay. Let's do this. If during the course of</p> <p>13 the deposition, there's ever any questions I ask you that</p> <p>14 you say there's somebody else here that would know better</p> <p>15 than me, can you advise me as to who that is?</p> <p>16 A Yes.</p> <p>17 Q Let me explain to you briefly the why behind it</p> <p>18 because what we're trying to avoid is getting a deposition</p> <p>19 today and then going to trial and UAIC saying yeah, Danice</p> <p>20 said that, but she doesn't really know what she's talking</p> <p>21 about. There's this other person at UAIC that would know</p> <p>22 better, and now there's all of a sudden surprise testimony</p> <p>23 at trial and we tried to confirm, from the outset, what</p> <p>24 UAIC's position was.</p> <p>25 Do you understand that?</p>	<p>1 Q And that Jan Cook is the person that is most</p> <p>2 knowledgeable when it comes to the claims and how the claim</p> <p>3 was handled.</p> <p>4 Do you understand that?</p> <p>5 A Yes.</p> <p>6 Q Do you have any involvement in the handling of</p> <p>7 the claim that was brought against Gary Lewis?</p> <p>8 A Involvement in what manner?</p> <p>9 Q Let me back up a second because I did this with</p> <p>10 Jan and I didn't do this with you, actually.</p> <p>11 You understand we're here in relation to a</p> <p>12 lawsuit that arose due to a claim that was brought by an</p> <p>13 individual against Gary Lewis?</p> <p>14 A Yes.</p> <p>15 Q All right. If I refer to that as the claim, the</p> <p>16 claim that was brought against Gary Lewis, do you understand</p> <p>17 what I'm talking about?</p> <p>18 A Yes.</p> <p>19 Q All right. Once the claim was brought, which was</p> <p>20 brought in, I think, early July of 2007, did you have any</p> <p>21 involvement in the claims process?</p> <p>22 A No.</p> <p>23 Q Did you have any involvement -- Well...</p> <p>24 MR. DOUGLAS: Are you asking her personally,</p> <p>25 obviously, or underwriting in general?</p>
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<p>1 A Yes.</p> <p>2 Q All right. How long have you worked at UAIC?</p> <p>3 A Over five years now, going on six.</p> <p>4 Q What is your current position with UAIC?</p> <p>5 A I am the western regional marketing and</p> <p>6 underwriting manager.</p> <p>7 Q Manager?</p> <p>8 A Uh-huh.</p> <p>9 Q Is that a yes?</p> <p>10 A Yes.</p> <p>11 Q I'm going to have to ask you from now on, for a</p> <p>12 clear transcript.</p> <p>13 Is Jan Cook in your office?</p> <p>14 A Yes.</p> <p>15 Q Is Eric Cook in your office?</p> <p>16 A Yes.</p> <p>17 Q Are they husband and wife?</p> <p>18 A Yes.</p> <p>19 Q I went through -- Well, let me back up a second.</p> <p>20 I've been told that, of the areas I've</p> <p>21 designated, that you are the person who is most</p> <p>22 knowledgeable related to the areas that speak to</p> <p>23 underwriting.</p> <p>24 Do you understand that?</p> <p>25 A Yes.</p>	<p>1 MR. SAMPSON: No, her personally.</p> <p>2 Q (By Mr. Sampson) Did you have any involvement in</p> <p>3 the claims handling at all?</p> <p>4 A No.</p> <p>5 Q No. From the point of the claim, from early July</p> <p>6 of '07 through today, when was the first time you were even</p> <p>7 notified that there was a claim brought against Gary?</p> <p>8 A When the --</p> <p>9 Q You don't have to tell me if your lawyer said</p> <p>10 something. I just want to know when you became aware.</p> <p>11 A When you brought it up, basically, when I was</p> <p>12 informed as far as the case itself.</p> <p>13 Q And are you talking about this current lawsuit in</p> <p>14 federal court?</p> <p>15 A Correct.</p> <p>16 Q So if this current lawsuit was filed sometime in</p> <p>17 2009, then you would have not been apprised that there ever</p> <p>18 even was a claim brought against Gary Lewis prior to 2009?</p> <p>19 A No, I was not.</p> <p>20 Q I would be correct?</p> <p>21 A That would be correct.</p> <p>22 Q Okay. We're going to do that probably quite a</p> <p>23 bit. You'll say no and I'll say, "Am I correct," and make</p> <p>24 sure we're clear.</p> <p>25 Are you aware of anyone in underwriting having</p>

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1 any involvement in the claims handling of the claim that was	1 coverages, not your higher limits. In our industry you have
2 brought against Gary Lewis?	2 nonstandard, preferred standard, so it's more the lower
3 A No.	3 limits, not standard.
4 Q Is there -- Well, Jan Cook testified just a	4 Q So it's standard versus preferred?
5 moment ago regarding the claims handling. And I asked her	5 A Uh-huh.
6 what went on, and she went through what went on and reviewed	6 Q Nonstandard versus preferred?
7 some documents and said the documents verified what	7 A Correct. Nonstandard versus preferred.
8 occurred.	8 Q Any other distinction on nonstandard, other than
9 A Uh-huh.	9 it's generally the minimal requirements?
10 Q And I asked her are you aware of anything else	10 A Generally lower limits, more activity, driving
11 that went on, and she said she wasn't. I'll just ask you,	11 activity, items like that.
12 even though it's not your area, are you aware of anything	12 Q All right. On the web page, you may or may not
13 that went on in the claims handling process, first of all,	13 have seen this before, it talks about the success being due
14 period?	14 to disciplined underwriting.
15 A No. As far as the handling the claim itself, no.	15 Do you see that?
16 Q All right.	16 A Uh-huh.
17 A Huh-uh.	17 Q Is that a yes?
18 Q What is the nature and scope of defendant's	18 A Yes. I see that.
19 activities, business activities in Nevada, UAIC's business	19 Q What is the education, training, and experience
20 activities in Nevada?	20 that goes on with those who work in underwriting at UAIC?
21 A We sell auto insurance policies.	21 A In underwriting themselves, we, on an individual
22 Q Anything else?	22 basis, sit and train each employee as they come in on board
23 A Uh-huh.	23 in regards to the type of risk that we write.
24 COURT REPORTER: Is that a no?	24 Q Now, what does the training consist of? Is it on
25 Q (By Mr. Sampson) Is that a no?	25 the job?
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1 A No.	1 A On-the-job training.
2 Q She'll ask, I'll ask. It happens.	2 Q Anything else?
3 Let me show you what's been marked as Exhibit A	3 A No. I mean, you're training as you go along, our
4 to Jan's deposition and also to yours. Take a look at that.	4 system, the policy for that state, the guidelines that the
5 First question is an easy one. Look through it and let me	5 agents can write business for. It's programmed into our
6 know if you've seen that before today.	6 system. We review that with them and go over that.
7 A The mission statement?	7 Q How long does the one-on-one training take,
8 Q Just the whole document in general.	8 generally?
9 A Oh, the whole document?	9 A It depends on the individual. May take a week,
10 Q Sure.	10 up to, you know, however long it takes. Depends on how many
11 A Some of these I have not seen prior to today	11 segments you do at one point, so it varies.
12 because they are not associated with Nevada.	12 Q So if it takes a week, is it a week of constant
13 Q The documents aren't associated with Nevada?	13 one on one, they're together the whole, someone is training
14 A Right.	14 them the whole time?
15 Q Okay. What are they associated with?	15 A Again, it varies on what they are being trained
16 A This commercial involves Florida. We don't write	16 on, and there's different functions within the department.
17 it in Nevada.	17 So it depends on what functions they are being trained on
18 Q All right. Let me take a look at it.	18 and how detailed and in-depth that function is. So there's
19 A So you've obviously printed off pages for another	19 not a set, this is as long as the training is going to be.
20 state.	20 It's not a classroom setting, by any means. It's a
21 Q It was off of a web page through UAIC.	21 one-on-one training, you go along.
22 A Uh-huh.	22 Q On the job?
23 Q What is -- it's a statement here in the mission	23 A Yes.
24 statement. What is nonstandard automobile insurance?	24 Q Okay. There's a -- I'm trying to read upside
25 A Nonstandard is more of your state minimum	25 down may be the best way to handle it.

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<p>1 "UAIC has a world class information technology 2 department." 3 Did I read that much correctly? 4 A Yes. 5 Q "Our web technology is rated year after year as 6 the easiest to use and most dependable by our agents." 7 Did I read that much correct? 8 A Yes. 9 Q Is that website? I can't -- 10 A Yes. 11 Q "On our website, agents can write new and renewal 12 business, do endorsements and reinstatements, check the 13 status of a policy, reprint documents, and pay by cash, 14 check, or credit/debit card." 15 Did I read that correct? 16 A Yes. 17 Q What is, when it says an agent can write new and 18 renewal business -- 19 A Uh-huh. 20 Q -- what are those? 21 A New business being a new application of a client 22 that's come in, and the renewal being existing customers. 23 Q All right. What is endorsements? 24 A Endorsements are changes to an existing policy. 25 Q What is reinstatement?</p>	<p>1 claims. 2 Q There's a note here from 10/10/07, M. Cordova, 3 which I think, is that -- 4 A Manny. 5 Q Manuel Cordova? 6 A Uh-huh. 7 Q Is that yes? 8 A Yes. 9 Q And it says 12:38 reviewed all facts of this 10 claim and verified with Lisa in underwriting that policy 11 lapsed 6/30/07 and reinstated on 7/10/07, two days after the 12 loss. 13 Did I read that correctly? 14 A You read that, yes. 15 Q Okay. Who is the Lisa with underwriting? 16 A Lisa was my Nevada manager. 17 Q All right. In working for -- Back up a second. 18 Let me lay a little foundation. 19 You worked for an insurance company that conducts 20 business in the state of Nevada, correct? 21 A Yes. 22 Q And in working for an insurance company that 23 conducts business in the state of Nevada, are you familiar 24 with the obligations an insurance company has to its 25 insureds, in general?</p>
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<p>1 A Policy that has been canceled for nonpayment in 2 that term and they've reinstated it. 3 Q Okay. Are there reinstatements at UAIC? 4 A On six- and 12-month terms, yes. 5 Q There wouldn't be, then, a reinstatement if the 6 policy only lasted for a month? 7 A No. 8 Q I'm correct? 9 A You are correct. 10 Q All right. Sorry. 11 Let me show you, we may be marking this. In 12 fact, yeah, let me go ahead and mark it as Exhibit 10. 13 (Deposition Exhibit No. 10 was marked for 14 identification.) 15 Q (By Mr. Sampson) Take a look at that. First, tell 16 me if you've seen that document before today. 17 A No. 18 Q Do you recognize the document for what it is? 19 A Yeah. It's something you pulled from the claims. 20 Q All right. Can I see it for a moment? 21 A Uh-huh. 22 Q It says Note Detail. Do you know, is this 23 something that's kept by people who handle claims or do you 24 even know? 25 A That's not on the underwriting side. That's on</p>	<p>1 A Yes. 2 Q I understand there may be some that relate 3 directly to claims that you don't know about, but in terms 4 of, for example -- well, let me ask you. 5 What is it that you do for UAIC? 6 A I manage the underwriting and marketing 7 departments, so I'm involved with the underwriting 8 functions, marketing functions with independent agents. I'm 9 also involved with the rates and the implementation of the 10 programs. 11 Q Why don't you walk me through what underwriting 12 is. 13 A Underwriting as the department itself? 14 Q Sure. Or what underwriting means. 15 A Underwriting itself is basically reviewing risk, 16 making sure that all signatures, data, criteria, any 17 questions in regards to a risk itself is obtained so that in 18 the event of a claim, all of our documentation is signed and 19 appropriate to what it needs to be, based on the policy we 20 sold. 21 Q What do you do in terms of underwriting with 22 UAIC? 23 A Well, customer service to the agents. We also 24 review, like I said, to make sure signatures are obtained on 25 applications. Say they are rejecting a portion of the</p>

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<p>1 policy, we need to make sure the signatures are there.</p> <p>2 Validate that, if we're running a motor vehicle report, so</p> <p>3 the rate is being rated on the correct premium amount. And</p> <p>4 corresponding back and forth with the agent or insured for</p> <p>5 additional documentation as needed.</p> <p>6 Q So in terms of UAIC's obligations to an insured</p> <p>7 to make sure the insured understands what their policy is,</p> <p>8 how it works, how it's reviewed, how it's canceled, who</p> <p>9 would be responsible for that? Would that fall</p> <p>10 under your--</p> <p>11 A The independent agent.</p> <p>12 Q All right. And do you know who the independent</p> <p>13 agent was who sold the policy to Mr. Lewis?</p> <p>14 A Yes, I do.</p> <p>15 Q What was that person's name?</p> <p>16 A That was U.S. Auto.</p> <p>17 Q All right. So the agent wouldn't be, then, an</p> <p>18 individual?</p> <p>19 A At the agency?</p> <p>20 Q Right.</p> <p>21 A Yeah. I don't know specifically. I know who the</p> <p>22 agent was, but I didn't look at that. I don't know</p> <p>23 specifically the agent's name who wrote the policy.</p> <p>24 Q When you say you know who the agent was --</p> <p>25 A I know it was U.S. Auto. The individual in the</p>	<p>1 A Clarify what you're asking.</p> <p>2 Q Sure. I just want to ask questions about, you</p> <p>3 know, for example, what, if I were to ask the question --</p> <p>4 and I think I did already -- what does UAIC do to make sure</p> <p>5 its customers understand, its policyholders understand the</p> <p>6 policy and everything around the policy, you've given me an</p> <p>7 answer, but I'm not sure, are you aware of anyone else who</p> <p>8 would be more knowledgeable about that than yourself?</p> <p>9 A No. It would be myself.</p> <p>10 Q That's what I wanted to confirm.</p> <p>11 All right. In the process of, if I call it</p> <p>12 providing a policy, do you understand what I'm talking</p> <p>13 about?</p> <p>14 A In selling a policy?</p> <p>15 Q Sure. Selling a policy, making sure the -- and</p> <p>16 what I would say is, here's what I was going to ask, and you</p> <p>17 tell me if there's a better way to phrase it, maybe there</p> <p>18 is.</p> <p>19 In the process of providing an insured with a</p> <p>20 policy and making sure that insured understands the deal</p> <p>21 they've made, how they renew, how they cancel, what's</p> <p>22 covered, all of those type of things, are you comfortable</p> <p>23 with that verbiage, or is there anything you want to change?</p> <p>24 A No. I'm following you.</p> <p>25 Q All right, then. I want to talk about, in doing</p>
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<p>1 office, I didn't look at the specific signature to</p> <p>2 confidently tell you it was a specific person.</p> <p>3 Q So is the agent, what's the agent's relationship</p> <p>4 with UAIC?</p> <p>5 A UAIC only sells policies through independent</p> <p>6 agents, so we go out, that's what the marketing side of it</p> <p>7 is, and appoint independent agencies in order to write</p> <p>8 policy for United Auto.</p> <p>9 Q I want to talk about how UAIC makes sure that its</p> <p>10 customers, its policyholders understand what the policy is,</p> <p>11 how it works.</p> <p>12 Does UAIC do anything to make sure their</p> <p>13 customers understand that, or is it all left to the agent?</p> <p>14 A When we appoint an agency, we go over the</p> <p>15 information with the agent and provide the agent with</p> <p>16 materials to do so.</p> <p>17 Q That's how UAIC makes sure that the agent makes</p> <p>18 sure that the customer understands the deal they've made?</p> <p>19 Is that a fair statement?</p> <p>20 A Yes.</p> <p>21 Q All right then. In that process, in making</p> <p>22 sure -- and I understand there's an agent in the middle --</p> <p>23 but in making sure, UAIC making sure the customer is aware</p> <p>24 and understands what's going on, are you the person most</p> <p>25 knowledgeable as to that, or would that be someone else?</p>	<p>1 that, again, providing the policy, making sure the insured</p> <p>2 understands the deal they've made, I want to know if you and</p> <p>3 I can agree on a couple of things that relate to that</p> <p>4 process. So, for example, number one, in that process,</p> <p>5 would you agree with me that the insurance company has an</p> <p>6 obligation to treat the policyholder's interest with equal</p> <p>7 regard as it does its own interest?</p> <p>8 MR. DOUGLAS: Object to the extent it calls for a</p> <p>9 legal conclusion.</p> <p>10 But you can answer.</p> <p>11 THE WITNESS: I'm not clear as far as exactly</p> <p>12 what you're trying to get at.</p> <p>13 Q (By Mr. Sampson) Sure. In dealing with an</p> <p>14 insured -- and by the way, let me back up for a second and</p> <p>15 tell you from outset, you don't have to agree with any of</p> <p>16 these. I may say something and you go, "Mr. Sampson, that's</p> <p>17 crazy. You're out of your mind. I completely disagree."</p> <p>18 That's fine. I just want to know if you agree or not much.</p> <p>19 And so the notion on this first question is when an</p> <p>20 insurance company deals with their insured --</p> <p>21 A We don't deal directly with the insured. We deal</p> <p>22 with the independent agent.</p> <p>23 MR. DOUGLAS: Yeah. And I would just object --</p> <p>24 Q (By Mr. Sampson) At any point in time?</p> <p>25 MR. DOUGLAS: Before you ask the next question,</p>

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<p>1 we've designated Jan in regard to those issues, if you want 2 to ask her. Danice is here for underwriting. 3 Q (By Mr. Sampson) That's what I'm talking about. 4 Well, so no one at UAIC ever deals with an insured until a 5 claim is made? 6 A No. The insured may call and make a payment over 7 the phone, but in regards to any changes in a policy, 8 writing a policy or any changes, it's through the 9 independent agent. 10 Q All right. 11 A We don't deal with them directly. 12 Q So, then, in initially providing the policy -- 13 A Agent. 14 Q -- setting them up, the agent would handle that, 15 is it that you're saying? 16 A Correct. 17 Q I just wanted to be clear for the record. I know 18 what you're telling me. 19 In terms of wanting to add someone as an insured, 20 the agent would handle all that? 21 A Correct. 22 Q In terms of upping coverage, adding additional 23 coverage, adding UIM, adding med-pay, dropping someone off 24 the policy, changing vehicles, that would all be through the 25 agent?</p>	<p>1 THE WITNESS: I am vague in what you're saying. 2 Q (By Mr. Sampson) Sure. Let's talk just John Doe 3 off the street -- 4 A Uh-huh. 5 Q -- wants a policy with UAIC. 6 A Uh-huh. 7 Q Goes through U.S. Auto, since that's the one we 8 know that they deal with and writes the policy and gets an 9 insurance policy. The policy is a UAIC policy, correct? 10 A Yes. 11 Q All right. And so would you agree, then, it's 12 fair for the policyholder to believe that U.S. Auto has 13 authority to speak and deal on behalf of UAIC because they 14 are the one that brokered the deal that they now have with 15 UAIC? 16 Fair statement? 17 MR. DOUGLAS: I'll object, calls for legal 18 conclusion, misstates testimony. She said it's an 19 independent agency. 20 To the extent you know, you can answer. 21 THE WITNESS: It is an independent agent. They 22 are dealing with the agent, as an independent agent. Yes, 23 the agent can write and does write a policy through United 24 Auto. 25 Q (By Mr. Sampson) Right.</p>
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<p>1 A Correct. 2 Q All right. In terms of, I want to make sure I 3 understand the whole process in terms of making sure the 4 insured understands the deal they've made, that the agent is 5 the one that's going to have the communication with the 6 insured about that, correct? 7 MR. DOUGLAS: Object, may call for a legal 8 conclusion. It's also vague. 9 But you can answer. 10 THE WITNESS: Correct. 11 Q (By Mr. Sampson) All right. And then you said 12 UAIC makes sure the agents understand how they are supposed 13 to explain it to the insured, the customer ultimately 14 understands the deal they've made, correct? 15 A Correct. And they are licensed agents with the 16 state. 17 Q All right. When the agent sends a communication 18 to the insured with regard to the policy, you would agree 19 with me, wouldn't you, that that's, they are doing that on 20 behalf of UAIC? 21 MR. DOUGLAS: I'll just object to the extent that 22 calls for a legal conclusion. I think it also lacks 23 foundation, misstates testimony because she said they are an 24 independent agent. 25 But you can answer.</p>	<p>1 A As far as how the John Doe perceives it... 2 Q Well, let me back up for a second. 3 If, again, John Doe off the street buys a policy 4 with UAIC through U.S. Auto in Las Vegas -- 5 A Uh-huh. 6 Q -- a claim arises, they make a claim, and UAIC 7 comes in. And you would agree it would be unfair for UAIC 8 to say hold on, you never made a deal with us, your deal was 9 with U.S. Auto? They are your agent, the deal is the UAIC, 10 you understand? 11 A Correct. 12 MR. DOUGLAS: I'm going to object to the extent 13 it calls for legal conclusion and it's hypothetical, vague. 14 But go on. 15 Q (By Mr. Sampson) Sure. When I say the "deal," 16 such as it is, whatever the deal is, if UAIC were to say, 17 "Hey, you bought that from our agent, you don't have, we 18 don't have any obligations to you," that would be improper? 19 A Correct. 20 Q Okay. All right. That's what I was trying to 21 make sure I understood. That's what I thought you were 22 saying, but I wanted to make sure. 23 I'm sorry. A lot of these relate to claim 24 handling, and I want to make sure it's nothing you need to 25 worry about, or that you would need to be answering</p>

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<p>1 questions about.</p> <p>2 Would you agree with me that in determining the</p> <p>3 meaning of an insurance policy, the language of the policy</p> <p>4 should be examined from the viewpoint of one who doesn't</p> <p>5 have any training in law or business?</p> <p>6 MR. DOUGLAS: Object to the extent that this is,</p> <p>7 Jan was already designated in regard to policy language.</p> <p>8 But you can answer, to the extent you know.</p> <p>9 THE WITNESS: I'm not clear on what you're</p> <p>10 saying.</p> <p>11 Q (By Mr. Sampson) Sure. When you look at an</p> <p>12 insurance policy and read what it says --</p> <p>13 A Uh-huh.</p> <p>14 Q -- I would propose, you can disagree with me, I</p> <p>15 would propose that you should interpret that policy based on</p> <p>16 what laypeople with no special training in law or business,</p> <p>17 whatever they think the words would mean, then that's what</p> <p>18 it should mean. It shouldn't have some specialized verbiage</p> <p>19 that a layperson would misunderstand. That would be</p> <p>20 inappropriate.</p> <p>21 Do you understand what I'm saying?</p> <p>22 MR. DOUGLAS: Again, I'll just object that calls</p> <p>23 for a legal conclusion, as you phrased that question.</p> <p>24 You can answer if you know.</p> <p>25 THE WITNESS: No, I'm not -- I mean, I think what</p>	<p>1 that, I mean, that -- it's all a different perspective, as</p> <p>2 far as where you're at. So to me I could say I agree with</p> <p>3 you thinking this at this certain level, and you're thinking</p> <p>4 on a totally different level.</p> <p>5 Q Let me make it a little simpler then, maybe.</p> <p>6 Would you agree with me that the terms of an</p> <p>7 insurance policy should be understood in their plain,</p> <p>8 ordinary, and popular sense?</p> <p>9 A An insurance policy should be, lay out the</p> <p>10 coverages, lays out your policy.</p> <p>11 Q Let me give you an example. Maybe this will help</p> <p>12 clarify things a little bit.</p> <p>13 Let's say the insurance policy says that you are</p> <p>14 insured if you are driving an insured vehicle.</p> <p>15 With me so far?</p> <p>16 A Uh-huh.</p> <p>17 Q Is that a yes?</p> <p>18 A Yes.</p> <p>19 Q Okay. And then so someone is driving an insured</p> <p>20 vehicle and they get in an auto accident and they make a</p> <p>21 claim. And in my hypothetical situation, UAIC says, "Yes,</p> <p>22 your policy says you're insured if you're driving an insured</p> <p>23 vehicle, but here at UAIC, we take that to mean if you're</p> <p>24 driving an insured vehicle with a dog in the backseat, and</p> <p>25 you weren't, so your policy doesn't cover you," you can</p>
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<p>1 you're stating is that everything in all your dealings in</p> <p>2 life itself should all be in what you classify as a basic</p> <p>3 language.</p> <p>4 Q (By Mr. Sampson) No. I'm not talking about every</p> <p>5 dealing in life itself. I'm talking about an insurance</p> <p>6 policy. When you have an insurance policy, that there</p> <p>7 shouldn't be technical language that an average Joe off the</p> <p>8 street would think means one thing that those in the</p> <p>9 industry think it means something else.</p> <p>10 A What's the terminology of technical? That varies</p> <p>11 based on an individual.</p> <p>12 Q Right. That's kind of my whole point, that in</p> <p>13 assessing language of an insurance policy, the language</p> <p>14 shouldn't be given some hypertechnical explanation, it</p> <p>15 should be afforded the language that, again, an average Joe</p> <p>16 with no special training would take it to mean.</p> <p>17 MR. DOUGLAS: Objection; overly broad and calls</p> <p>18 for legal conclusion and speculation.</p> <p>19 But you can answer, to the extent you know.</p> <p>20 Q (By Mr. Sampson) And if you disagree, that's fine.</p> <p>21 If you want to tell me no, I think we should apply</p> <p>22 hypertechnical and --</p> <p>23 A No, I just think you're not, it makes -- I see</p> <p>24 what you're trying to get at, but you're working with such a</p> <p>25 wide range, for me to pinpoint and say I agree or disagree,</p>	<p>1 easily see that's unfair, right?</p> <p>2 In the hypothetical situation, that's insane,</p> <p>3 right?</p> <p>4 A You're throwing out a hypothetical, but without</p> <p>5 knowing what's written, what's stated, what may -- I don't</p> <p>6 feel comfortable in answering because I have no idea what</p> <p>7 exactly you're looking at. You're throwing out this portion</p> <p>8 of it, but you're not bringing in the whole portion as far</p> <p>9 as, if it was something that was laid out and explained to</p> <p>10 them up front --</p> <p>11 Q Sure.</p> <p>12 A -- sure, totally different than if it was</p> <p>13 something that wasn't explained. So what you're getting at</p> <p>14 I...</p> <p>15 Q Well, all I'm getting at is the notion that an</p> <p>16 insurance policy should be understood by the plain meaning</p> <p>17 of its terms.</p> <p>18 A Uh-huh.</p> <p>19 Q And the terms any average person with average</p> <p>20 intelligence and without any specialized training in</p> <p>21 insurance or law would understand the terms to be. That's</p> <p>22 all I'm trying to get at.</p> <p>23 A Again, there's an interpretation as far as the</p> <p>24 level of understandability. Everybody is at different</p> <p>25 levels, as far as understanding terms. So at what level are</p>

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<p>1 you referencing?</p> <p>2 Q Well, let me do this, make it a little bit</p> <p>3 easier, maybe.</p> <p>4 There's a case in the state of Nevada called</p> <p>5 National Union Fire Insurance Company versus Rio Executive</p> <p>6 Air. And in that case, the supreme court, state of Nevada</p> <p>7 said the following. Quote, "In determining the meaning of</p> <p>8 an insurance policy, the language should be examined from</p> <p>9 the viewpoint of one not trained in law or business, the</p> <p>10 terms should be understood in their plain, ordinary, and</p> <p>11 popular sense," close quote.</p> <p>12 Do you understand the quote from the case as I've</p> <p>13 read it to you, or do you need me to reread it?</p> <p>14 A No. I understand that.</p> <p>15 Q Do you disagree with the supreme court, state of</p> <p>16 Nevada?</p> <p>17 MR. DOUGLAS: Objection; calls for a legal</p> <p>18 conclusion. I think it's also argumentative.</p> <p>19 You can answer, to the extent...</p> <p>20 THE WITNESS: Again, it's an interpretation as to</p> <p>21 what level.</p> <p>22 Q (By Mr. Sampson) So depending on circumstances,</p> <p>23 you may or may not agree with the statement?</p> <p>24 A Correct.</p> <p>25 Q Okay. Fair enough.</p>	<p>1 A Has been in effect at least 70 days.</p> <p>2 Q Right. Can I see that for a second?</p> <p>3 Right. It says been in effect for at least 70</p> <p>4 days or has been renewed. It says that correct?</p> <p>5 MR. DOUGLAS: I'll just object to the extent this</p> <p>6 calls for a legal conclusion. You're asking her to</p> <p>7 interpret the statute.</p> <p>8 THE WITNESS: This is a midterm cancellation, by</p> <p>9 the way.</p> <p>10 Q (By Mr. Sampson) Right.</p> <p>11 A The policies we're talking about were never</p> <p>12 midterm canceled.</p> <p>13 Q We'll talk about that, but I just want to know</p> <p>14 right now, are you familiar with the statute?</p> <p>15 A Yes.</p> <p>16 Q Okay. Are you familiar with the purpose behind</p> <p>17 the statute?</p> <p>18 A Yes.</p> <p>19 Q What is your understanding of the purpose behind</p> <p>20 the statute?</p> <p>21 A Giving the insured acceptable time frame in order</p> <p>22 to advise them that their coverage will cease.</p> <p>23 Q Like a grace period, you could say?</p> <p>24 A Legal notice, ten-day notification.</p> <p>25 Q The cancellation is not good until the ten days</p>
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<p>1 MR. DOUGLAS: By the way, I'll make an objection</p> <p>2 as to legal conclusion as to the last question as well. And</p> <p>3 foundation.</p> <p>4 Q (By Mr. Sampson) In terms of issuing a policy,</p> <p>5 canceling a policy, renewing a policy, and how that's done,</p> <p>6 would you be the person most knowledgeable at UAIC related</p> <p>7 to all of that?</p> <p>8 A Yes.</p> <p>9 Q Okay. Are you aware of -- and I can show you a</p> <p>10 copy of the statute if you'd like to review it. But in</p> <p>11 general, are you aware of a statute in Nevada that says</p> <p>12 before you cancel a policy, you have to give ten-days'</p> <p>13 notice --</p> <p>14 A Yes.</p> <p>15 Q -- to the insured?</p> <p>16 A Yes.</p> <p>17 Q And that the cancellation isn't valid until the</p> <p>18 ten days' notice has been given?</p> <p>19 A Yes.</p> <p>20 Q Let me go through, and I can show it to you.</p> <p>21 It's NRS 687B.320. You're free to review it, if you would</p> <p>22 like. I think it applies to, what does it say on there,</p> <p>23 policies that have been in effect for 70 days?</p> <p>24 A 320? Midterm cancellation.</p> <p>25 Q Right. What's the time frame on that?</p>	<p>1 runs from when the notification is given?</p> <p>2 A On midterm cancellations, yes.</p> <p>3 Q Right, right. Are you aware of the purpose</p> <p>4 behind that is so individuals don't go around thinking</p> <p>5 they've got insurance when in fact they've been canceled.</p> <p>6 They have to be notified and given a chance to fix the</p> <p>7 problem, if it's a midterm cancellation?</p> <p>8 MR. DOUGLAS: Objection. That calls for a legal</p> <p>9 conclusion.</p> <p>10 You can answer if you know.</p> <p>11 THE WITNESS: You're going to have to re-ask that</p> <p>12 one.</p> <p>13 Q (By Mr. Sampson) Sure. Are you familiar with one</p> <p>14 of the purposes of this statute --</p> <p>15 A Uh-huh.</p> <p>16 Q (By Mr. Sampson) -- is that so if one is canceled</p> <p>17 midterm, for whatever failure, generally nonpayment but for</p> <p>18 whatever failure, the insurance company has to give them a</p> <p>19 ten-day notice, which includes an opportunity to cure the</p> <p>20 defect, get the payment in, get it taken care of --</p> <p>21 A Yes.</p> <p>22 Q -- on midterm cancellations?</p> <p>23 A Correct.</p> <p>24 Q Are you familiar with the financial</p> <p>25 responsibility rules of the state of Nevada?</p>

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1 A Yes.	1 It's not a new policy, I'm correct, correct?
2 Q All right. The general notion that there ought	2 A Correct.
3 to be coverage, policy should be interpreted to extend	3 Q All right. And in order to get a new policy, it
4 coverage, that kind of thing. You're familiar with that?	4 would have to be a whole new application?
5 MR. DOUGLAS: Objection. That calls for a legal	5 A Correct.
6 conclusion, counsel.	6 Q And what would that involve, if you know?
7 But you can answer, if you know.	7 A A new application with the agent, going in and
8 Q (By Mr. Sampson) Sure.	8 fill out a new application.
9 A No. You need to expand more, as far as what	9 Q All right. If that's not done, then, if there's
10 you're asking.	10 no new application, then there's no new policy, correct?
11 Q Sure. That insurance policies should be	11 A In reference to, well, you've got a new term.
12 interpreted in a way that extends coverage, rather than	12 Q Right. There's a new term in the same policy?
13 restricts it?	13 I'm trying to --
14 MR. DOUGLAS: Objection; calls for a legal	14 A A new term is the same policy, it's just the next
15 conclusion, counsel.	15 term.
16 Q (By Mr. Sampson) If you're not familiar with it,	16 Q Do you know how many terms Mr. Lewis had with
17 say "I've never heard of it before."	17 UAIC?
18 A No. I'm not sure I'm clear with what you're	18 A I believe he had 15.
19 saying in regards to that. You're saying that all policies	19 Q Fifteen terms?
20 should not restrict any coverages?	20 A If I remember correctly, yes.
21 Q No, that the language of a policy, for example,	21 Q That's about 15 months? The terms were all for a
22 if there's two interpretations of a sentence in a policy,	22 month, right?
23 two fair interpretations of a sentence, the interpretation	23 A Right, but not consistent.
24 that would extend coverage is the one that should be	24 Q And the first term started in -- I can show you
25 applied, rather than the one that would restrict coverage.	25 the documents, it's not a memory test, but I think the first
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1 Do you understand that? If that's all news to	1 term started in March of 2007. Does that sound right?
2 you and you don't think you can, you can tell me that.	2 A That sounds correct.
3 A I'm not clear on what you're stating so...	3 Q Take a look at Exhibit No. 1, refresh your
4 Q All right.	4 recollection.
5 MR. DOUGLAS: Same objection for the record, that	5 A Yes.
6 that calls for a legal conclusion.	6 Q So then the subsequent policy -- I'm sorry. The
7 Q (By Mr. Sampson) Well, I'm not asking you to,	7 subsequent -- I'm trying to get my mind around this.
8 whether you're aware of it. If you're not, you're not.	8 Any subsequent insurance Mr. Lewis had would have
9 That's fair.	9 been subsequent terms of the same policy?
10 This process that UAIC, it's my understanding	10 A Correct.
11 UAIC's position is that Mr. Lewis had monthly policies?	11 Q All right. So then, to your knowledge, at no
12 A Correct.	12 point was a new policy ever issued?
13 Q And that at the end of each month, the policy	13 A Correct.
14 would expire?	14 Q I'll just ask you because I don't want to proffer
15 A Correct.	15 anything, I guess.
16 Q And Mr. Lewis was given an opportunity to, it's	16 When a term ends --
17 UAIC's position, to have a brand new policy?	17 A Uh-huh.
18 A No. He would open another term.	18 Q -- and no payment's been made for the next term,
19 Q What do you mean by that?	19 does UAIC, per your understanding, have an obligation to
20 A Policy number would just go another term.	20 send a ten-day notice --
21 Q What do you mean by "term"?	21 A No.
22 A Being a monthly policy, being a 30 days.	22 Q -- of cancelation?
23 Q Okay. So it's not a new policy, then?	23 A No, the term expired.
24 A No. A new policy would require an application.	24 Q Okay.
25 Q All right. Let me back up because you said no.	25 A They get a renewal offer to go to the next term.

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1 Q And do you know why UAIC does it that way?	1 you don't know whether or not the agent offered those other
2 MR. DOUGLAS: Are you talking in regard to these	2 options to Mr. Lewis, correct?
3 monthly policies?	3 A The availability is to the agent. What the agent
4 Q (By Mr. Sampson) Sure.	4 did, I do not know.
5 A Because the term, at the end of a term, you have	5 Q All right. Is this monthly term for the same
6 to offer a renewal offer, not a ten-day notice of	6 policy, is that process designed to circumvent the midterm
7 cancelation. I'm not canceling that term. That term has	7 cancelation of those requirements?
8 now expired.	8 A No.
9 Q Right. I understand that that's the way UAIC	9 MR. DOUGLAS: Objection. That calls for legal
10 does it. My question is why.	10 conclusion and it's argumentative, counsel.
11 A Because that's how industry-wide, when you have	11 You can answer.
12 an end of a term, you're offering a renewal offer, not a	12 THE WITNESS: No.
13 notice of cancelation midterm.	13 Q (By Mr. Sampson) What is the purpose, then?
14 Q So I guess maybe the better question is if	14 A To give the option for an agent to write a month,
15 Mr. Lewis was insured for over 15 different terms, each term	15 two month, three, six or 12, whatever fits their client.
16 after month long, right?	16 Q Do you have any information related to when
17 A Uh-huh.	17 renewal notices are sent, when a copy of the policy is
18 Q That's a yes?	18 received, anything like that on these new terms?
19 A Yes.	19 A As far as when the notices, when the renewal
20 Q Tell me if I'm misquoting, I'm trying not to.	20 offers go out?
21 If Mr. Lewis was insured in a 15 month, 15	21 Q Right.
22 monthly terms, why not just write him a policy for like six	22 A Yes.
23 months or 12 months or 15 months and --	23 Q What happens?
24 A That decision --	24 A The system generates a renewal offer to the
25 Q Let me at least finish my question because we've	25 insured notifying them of the date that it needs to be paid
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1 got a court reporter.	1 in order to avoid a lapse in coverage. They don't pay, the
2 -- and have him make monthly payments?	2 next term doesn't start.
3 A That decision is between the customer and the	3 Q And anything else that's sent with that -- I've
4 agent at the time they write the app.	4 seen some documents called a renewal notice. Is that what
5 Q Do you know if that option to have the six-month	5 you're talking about?
6 or 12-month policy was ever provided to Mr. Lewis?	6 A Uh-huh.
7 A We always have a one-, two-, three-, six- or	7 Q Is that a yes?
8 12-month term available to the agent.	8 A Yes.
9 Q Do you know whether those options were extended	9 Q Okay. Anything else that's sent to the
10 to Mr. Lewis?	10 policyholder when a renewal notice is sent?
11 A I was not present at the time the application was	11 A Couldn't answer that, to be honest. I'm not sure
12 made.	12 if there's a form that goes with it or not, off the top of
13 Q And so you don't have, you don't know whether	13 my head.
14 they were extended or not?	14 Q Do you know if a copy of the policy is sent?
15 MR. DOUGLAS: Objection; calls for speculation.	15 A No. The policy is provided at the time the
16 Q (By Mr. Sampson) No, I'm not. I want to know what	16 application is taken.
17 you know and actually --	17 Q All right. Do you know, for example, if an
18 A I was not there at the time. I can't tell you	18 insurance card is sent?
19 whether it was or whether it was not. I was not there at	19 A They do generate ID cards, along with the renewal
20 the time the application was issued.	20 offer, yes.
21 Q I just want to make sure. Those are two	21 Q Anything else that's sent with the renewal
22 different things. Saying "I wasn't there" and saying "I	22 notice --
23 don't know what happened" aren't always the same. And so I	23 A I believe it's the two, but I'm not positive.
24 just want to make sure, when you say you weren't there,	24 Q You believe what?
25 you're saying you don't know? As you sit here right now,	25 A It's the renewal offer and ID cards. And I think

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<p>1 there's a disclosure form, but I'm not positive.</p> <p>2 Q And then anything else that's sent that you're</p> <p>3 aware of, you just wouldn't know?</p> <p>4 A Not off the top of my head, I don't recall.</p> <p>5 Q All right. So is there any grace period in this</p> <p>6 term renewal process?</p> <p>7 A No. The term expires.</p> <p>8 Q I want to show you and ask you if you're familiar</p> <p>9 with NRS 687B.340 that talks about a requirement to send a</p> <p>10 notice of non-renewal. And, again, the statute is there,</p> <p>11 feel free to take a look at it. My initial question is</p> <p>12 simply are you familiar with that rule, that statute?</p> <p>13 A Yes, I'm familiar with it.</p> <p>14 Q Okay. Are you familiar with the fact that under</p> <p>15 statute, an insurance policy -- let me get the exact --</p> <p>16 well, let's go through a couple different things.</p> <p>17 That an insurance policyholder has a right to</p> <p>18 have their policy renewed, correct?</p> <p>19 A Correct.</p> <p>20 Q And then it talks in here about --</p> <p>21 MR. DOUGLAS: I mean, the statute speaks for</p> <p>22 itself, counsel. Let me state that for the record, my</p> <p>23 objection.</p> <p>24 Q (By Mr. Sampson) We're talking about renewals</p> <p>25 here. Sorry, I don't mean to stand over you.</p>	<p>1 itself. We can all read what the statute says.</p> <p>2 MR. SAMPSON: Then I can ask questions about it.</p> <p>3 MR. DOUGLAS: And she's not an attorney. She's</p> <p>4 told you three times this wasn't a non-renewal situation,</p> <p>5 but you keep asking.</p> <p>6 Q (By Mr. Sampson) If an insurer fails to provide a</p> <p>7 timely notice of non-renewal, you would agree with me UAIC</p> <p>8 would fit in that category, if it failed to provide a --</p> <p>9 A No, we didn't fail. We didn't send him a</p> <p>10 non-renewal. You're referencing a regulation that states we</p> <p>11 are going to notify the insured for a reason we are not</p> <p>12 going to renew his policy. We never did that. We offered</p> <p>13 him a renewal offer, which he did not pay in a timely</p> <p>14 manner. We never notified him we were not going to renew</p> <p>15 him for a certain reason.</p> <p>16 Q All right. Okay. Good.</p> <p>17 Then the statute says, when you don't notify them</p> <p>18 of non-renewal, the insurer shall provide the insured with a</p> <p>19 policy of insurance on the identical terms as in the</p> <p>20 expiring policy.</p> <p>21 Did I read that --</p> <p>22 A Which has gone out with the renewal.</p> <p>23 MR. DOUGLAS: Yeah. And I'll just mention, that</p> <p>24 may call for a legal conclusion. The statute speaks for</p> <p>25 itself.</p>
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<p>1 A You're talking about a non-renewal. We never</p> <p>2 non-renewed Mr. Lewis's policy.</p> <p>3 Q That's what I want to get to. Let me ask that</p> <p>4 question first, then.</p> <p>5 There was never any notice of non-renewal sent to</p> <p>6 Mr. Lewis?</p> <p>7 A There was never a notice sent to Mr. Lewis that</p> <p>8 we would be non-renewing his policy for any reason. We</p> <p>9 offered him renewal offers.</p> <p>10 Q So when it says here the insurance carrier needs</p> <p>11 to mail or deliver to him a notice of intention not to</p> <p>12 renew, that was never sent to Mr. Lewis?</p> <p>13 A We never sent him a non-renewal that there was no</p> <p>14 intent to not renew. His terms expired and we sent him a</p> <p>15 renewal offer.</p> <p>16 Q All right. So then we have on here, this</p> <p>17 underlined portion says if the insurer -- I'm sorry. Yes.</p> <p>18 A "If the insurer fails to provide a timely notice</p> <p>19 of non-renewal." Again, we never non-renewed Mr. Lewis's</p> <p>20 policy. So this isn't applicable at all.</p> <p>21 Q Hold on. Now, your counsel doesn't want you</p> <p>22 making legal conclusions but laughs when you do, I don't</p> <p>23 understand, but in any event --</p> <p>24 MR. DOUGLAS: I'm sorry. I'm not laughing,</p> <p>25 counsel, but you're pointing out a statute you can read for</p>	<p>1 Q (By Mr. Sampson) I just asked to make sure. I'm</p> <p>2 reading upside down. I want to make sure I read it</p> <p>3 correctly. Let me go again, then.</p> <p>4 It says if the insured failed to provide a timely</p> <p>5 notice of non-renewal, the insured shall provide, the</p> <p>6 insurer shall provide the insured with a policy of insurance</p> <p>7 on the identical terms as in the expiring policy.</p> <p>8 Did I read that much correctly?</p> <p>9 A If --</p> <p>10 MR. DOUGLAS: Listen to his question. The</p> <p>11 statute speaks for itself. He's asking you if he read it</p> <p>12 correctly.</p> <p>13 THE WITNESS: Yes.</p> <p>14 Q (By Mr. Sampson) Okay. You have some comment.</p> <p>15 You "if." Is there some comment you have?</p> <p>16 A If the insured, again, you're talking about a</p> <p>17 non-renewal notice.</p> <p>18 Q Right.</p> <p>19 A Which was never generated for Mr. Lewis.</p> <p>20 Q Right. You're absolutely right. And the statute</p> <p>21 says if you don't generate a non-renewal, you're obligated</p> <p>22 to provide a policy of insurance, correct? Isn't that what</p> <p>23 it says?</p> <p>24 MR. DOUGLAS: Object; calls for legal conclusion.</p> <p>25 And I think, again, you're asking her to interpret a portion</p>

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<p>1 of the statute I think that clearly, a clear meaning is also</p> <p>2 that if you are doing a non-renewal and you fail to comply</p> <p>3 with the statute, you have to offer the insured that. But</p> <p>4 we could quibble about the meaning of a statute, but I think</p> <p>5 that's better for a court of law than here at a deposition.</p> <p>6 Q (By Mr. Sampson) The statute says if you don't</p> <p>7 provide a notice of non-renewal, the insurer shall provide</p> <p>8 the insured with a policy of insurance on the identical</p> <p>9 terms of the expiring policy.</p> <p>10 Did UAIC provide Gary Lewis with a policy of</p> <p>11 insurance on the identical terms as his expiring policy?</p> <p>12 A We provided him a renewal offer.</p> <p>13 Q Okay. So a policy of insurance was never</p> <p>14 provided, an opportunity to renew was provided; fair</p> <p>15 statement?</p> <p>16 A Policy of -- say your first portion again.</p> <p>17 Q Sure. A policy of insurance, where he's actually</p> <p>18 insured now for the next month, was never provided. UAIC</p> <p>19 provided an opportunity for Mr. Lewis to obtain a policy of</p> <p>20 insurance --</p> <p>21 A For another term.</p> <p>22 Q -- if he made a payment?</p> <p>23 A Yes.</p> <p>24 Q I want to make sure that I understand what's</p> <p>25 going on. That's what it sounds like to me. UAIC didn't</p>	<p>1 I'm concerned, to disagree vehemently, if she'd like to.</p> <p>2 MR. DOUGLAS: That's not the way you're phrasing</p> <p>3 the question.</p> <p>4 MR. SAMPSON: Is there an objection?</p> <p>5 MR. DOUGLAS: Yeah. I want you to move on. I</p> <p>6 mean, you've asked her three times, she's given you an</p> <p>7 answer, and you keep asking the same question. It's been</p> <p>8 asked and answered.</p> <p>9 MR. SAMPSON: Okay. Your objection is noted for</p> <p>10 the record. I vehemently disagree with you.</p> <p>11 Q (By Mr. Sampson) My only question is, my only</p> <p>12 question is when Mr. Lewis's policies expired, did UAIC</p> <p>13 provide him with a policy of insurance on the identical</p> <p>14 terms as the expiring policy?</p> <p>15 A We provided him a renewal offer for the next</p> <p>16 term. We did not issue a non-renewal; therefore, this</p> <p>17 regulation was not applicable because no non-renewal notice</p> <p>18 was issued. We offered him a renewal for another term.</p> <p>19 Q Okay. I'm confused, then. Why is it that the</p> <p>20 statute specifically speaks to what happens when you don't</p> <p>21 offer renewal, and you told me UAIC didn't offer renewal?</p> <p>22 A No. We did offer a renewal.</p> <p>23 MR. DOUGLAS: Counsel, again, I'm going to have</p> <p>24 to object. This calls for legal conclusion of what --</p> <p>25 MR. SAMPSON: I've misspoken. The witness is</p>
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<p>1 provide a policy to him, it provided an opportunity where he</p> <p>2 could make a payment, and then get a policy for the next</p> <p>3 term?</p> <p>4 A He had a policy, which a renewal offer was issued</p> <p>5 on, that he could pay and get another term issued.</p> <p>6 Q Right. But that's not my, my question is the</p> <p>7 statute says the carrier has to provide a policy --</p> <p>8 A The statute references non-renewals. We did not</p> <p>9 non-renew his term.</p> <p>10 Q Right. And the statute says when you don't do</p> <p>11 that, you have to provide a policy --</p> <p>12 A Wow.</p> <p>13 Q -- for the next term.</p> <p>14 MR. DOUGLAS: You know, counsel, if you're going</p> <p>15 to argue, that calls for legal conclusion. If you're going</p> <p>16 to argue the meaning of a statute with a witness, this</p> <p>17 deposition is, I mean, this is just a waste of time.</p> <p>18 MR. SAMPSON: I'm not arguing with anybody, I'm</p> <p>19 asking --</p> <p>20 MR. DOUGLAS: I think she's given you a fair</p> <p>21 answer three times. You're not happy with it, so you're</p> <p>22 trying to get her to agree to something that's in your</p> <p>23 opinion.</p> <p>24 MR. SAMPSON: I'm not asking her to agree. In</p> <p>25 fact, I specifically told her she's authorized, as far as</p>	<p>1 absolutely correct. Danice is right. I've misspoke.</p> <p>2 Q (By Mr. Sampson) The statute speaks for what</p> <p>3 happens when an insurance company fails to send a</p> <p>4 non-renewal. And you've told me UAIC never sent a</p> <p>5 non-renewal. We agree with each other so far, right?</p> <p>6 A Correct.</p> <p>7 Q And the statute says when you don't send a notice</p> <p>8 of non-renewal --</p> <p>9 A When you don't send a notice of non-renewal that</p> <p>10 is compliant with the regulation. The policy never got a</p> <p>11 non-renewal notice; therefore, the regulation does not apply</p> <p>12 because we did not send a non-renewal. This is if you're</p> <p>13 not in compliance with the regulation on a non-renewal</p> <p>14 notice.</p> <p>15 Q Can you explain to me what you mean by that?</p> <p>16 And, by all means, you can show me the language in the</p> <p>17 statute you're talking about.</p> <p>18 MR. DOUGLAS: Counsel, again, I think this calls</p> <p>19 for a legal conclusion. I think she's given a very good</p> <p>20 explanation.</p> <p>21 MR. SAMPSON: That's what you're paid to think.</p> <p>22 That's fine.</p> <p>23 MR. DOUGLAS: Excuse me?</p> <p>24 MR. SAMPSON: That's what you're paid to think.</p> <p>25 I understand. If you have an objection, you can make your</p>

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<p>1 objection. Stop the speaking objections. It's</p> <p>2 inappropriate.</p> <p>3 MR. DOUGLAS: But, counsel, you're badgering her</p> <p>4 over the meaning of a statute, and she's given you the same</p> <p>5 answer three times. It's asked and answered. At a certain</p> <p>6 point you have to move on.</p> <p>7 MR. SAMPSON: Your objection is noted.</p> <p>8 Q (By Mr. Sampson) Okay. I just asked, explain to</p> <p>9 me what you mean. We can read your answer back if you're</p> <p>10 confused about what I've asked you to explain. You made a</p> <p>11 statement. I'd like you to explain what you mean.</p> <p>12 A This regulation states non-renewals. We never</p> <p>13 non-renewed Mr. Lewis's policy. We offered, we sent a</p> <p>14 renewal offer to Mr. Lewis; therefore, this regulation is</p> <p>15 not applicable to his policy because we never non-renewed</p> <p>16 it.</p> <p>17 Q Okay. Then the only other one question I'm going</p> <p>18 to ask, I hope, is when it talks in here about what happens</p> <p>19 when you don't send a non-renewal --</p> <p>20 A When you don't send a non-renewal that's in</p> <p>21 compliance with the regulation.</p> <p>22 Q Right.</p> <p>23 A We didn't send a non-renewal.</p> <p>24 Q Right. And the statute says when you don't do</p> <p>25 that, here's what happens. That's why I'm confused why you</p>	<p>1 that calls for legal conclusion. I mean, you disagree with</p> <p>2 her interpretation. You say this does apply, she says it</p> <p>3 doesn't. Great. Let's have the court work it out.</p> <p>4 MR. SAMPSON: Okay. I just want to make sure I</p> <p>5 understand her explanation.</p> <p>6 MR. DOUGLAS: I think you asked her to explain,</p> <p>7 she has. I think you're done with this question.</p> <p>8 Q (By Mr. Sampson) You can go ahead and answer.</p> <p>9 A The regulation is referenced to non-renewals, was</p> <p>10 not applicable to this policy.</p> <p>11 Q All right. Did UAIC, regardless of what the</p> <p>12 statute says, did UAIC ever provide Mr. Lewis with a policy</p> <p>13 of insurance when his terms would expire?</p> <p>14 A We sent him a renewal offer.</p> <p>15 Q An offer that gave Mr. Lewis an opportunity to</p> <p>16 make a payment and obtain a new term was sent --</p> <p>17 A Correct.</p> <p>18 Q -- correct?</p> <p>19 A policy itself was never provided for that new</p> <p>20 term, just a chance for him to get a policy, if he made the</p> <p>21 payment?</p> <p>22 A Correct.</p> <p>23 Q All right. I think I asked this already. I've</p> <p>24 got it on here. It's a very simple question. I apologize</p> <p>25 if it's a repeat.</p>
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<p>1 think that's inapplicable. I don't understand. I'm trying</p> <p>2 to understand.</p> <p>3 MR. DOUGLAS: Objection. That definitely calls</p> <p>4 for a legal conclusion. I think she's fairly explained.</p> <p>5 She's not an attorney. She has fairly explained to you at</p> <p>6 least four times now her interpretation of the statute --</p> <p>7 MR. SAMPSON: That's not true.</p> <p>8 MR. DOUGLAS: -- and you're now, and you're</p> <p>9 badgering her --</p> <p>10 MR. SAMPSON: I'm not going to have an argument</p> <p>11 with you, counsel.</p> <p>12 MR. DOUGLAS: You're trying to badger her over an</p> <p>13 explanation of a statute.</p> <p>14 MR. SAMPSON: I'm not badgering anybody. Please</p> <p>15 lower your voice. I'm talking respectfully here.</p> <p>16 MR. DOUGLAS: So am I.</p> <p>17 MR. SAMPSON: The statute specifically talks</p> <p>18 about what happens when you don't send a non-renewal, and</p> <p>19 the witness keeps telling me it doesn't apply because we</p> <p>20 didn't send the non-renewal. It says it does apply when you</p> <p>21 send a non-renewal. I'm just asking for her explanation as</p> <p>22 to why that's not the case. If there's some other language</p> <p>23 I'm missing or an annotation I'm not seeing, I'd like to</p> <p>24 have it directed.</p> <p>25 MR. DOUGLAS: Again, I'm going to object that</p>	<p>1 There was never any notice of cancelation sent,</p> <p>2 correct?</p> <p>3 A Correct.</p> <p>4 Q And it's UAIC's position that that was never</p> <p>5 required, right? There was never any obligation to send a</p> <p>6 notice of cancelation?</p> <p>7 A On Mr. Lewis's policy --</p> <p>8 Q Right.</p> <p>9 A -- there was never a time that we needed to send</p> <p>10 a notice of cancelation to him.</p> <p>11 Q Okay. I want to go through these exhibits.</p> <p>12 Exhibit No. 1. Have you seen that document</p> <p>13 before today?</p> <p>14 A Yes.</p> <p>15 Q All right. I asked Ms. Cook in her deposition</p> <p>16 what was done when the claim was being assessed, and she</p> <p>17 went through everything that she was aware of and referenced</p> <p>18 to me the documents and whatnot. I showed her this</p> <p>19 document, she said she had never seen it before today, at</p> <p>20 least that's my recollection. If I'm wrong, I apologize.</p> <p>21 The record will speak to what happened. And I asked her did</p> <p>22 anyone at UAIC ever look at this particular document,</p> <p>23 Exhibit No. 1, as part of assessing the claim that was</p> <p>24 brought against Mr. Lewis. She said nobody looked at it, as</p> <p>25 far as she knew, but that you might have more information.</p>

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<p>1 Do you understand what I'm saying so far?</p> <p>2 A I was not involved in the claims handling</p> <p>3 process.</p> <p>4 Q Right. I'm just trying to get clarified.</p> <p>5 Jan told me she wasn't aware of anyone looking at</p> <p>6 these documents as part of the claims process but Danice</p> <p>7 might have more information. You told me you didn't do</p> <p>8 anything in relation to the claims process whatsoever,</p> <p>9 correct?</p> <p>10 A I reviewed this after the fact.</p> <p>11 Q After the fact would have been 2009, I think you</p> <p>12 said?</p> <p>13 A Yeah.</p> <p>14 Q Okay. So I've got a whole stack. There's nine</p> <p>15 different, ten different documents here now.</p> <p>16 A Uh-huh.</p> <p>17 Q Since you've told me you never did anything as</p> <p>18 part of the claims process, I'm going to take that to mean</p> <p>19 you certainly would have never looked at any of these</p> <p>20 documents, no matter what they are, as part of the claims</p> <p>21 process because you didn't look at anything until 2009.</p> <p>22 Fair statement?</p> <p>23 A Yes.</p> <p>24 Q That will save doing that on each one of these.</p> <p>25 What is this document?</p>	<p>1 Exhibit No. 2. Actually I think these two correlate, you've</p> <p>2 got a 3/9/07, 3/9/07. It mentions new business?</p> <p>3 A This is the receipt for the new application, and</p> <p>4 that's what generated this dec page.</p> <p>5 MR. SAMPSON: I'm sorry. Did I screw something</p> <p>6 up?</p> <p>7 MR. DOUGLAS: 3/29.</p> <p>8 MR. SAMPSON: What did I say?</p> <p>9 MR. DOUGLAS: 3/09.</p> <p>10 Q (By Mr. Sampson) Oh, geez. 3/29/07 and 3/29/07 on</p> <p>11 both documents, and it's listed as new business, correct?</p> <p>12 A Correct.</p> <p>13 Q And this new business would be the reference</p> <p>14 that --</p> <p>15 A It's a new client application.</p> <p>16 Q -- new policy, the first time, he didn't -- new</p> <p>17 application --</p> <p>18 A Uh-huh.</p> <p>19 Q -- it's not -- okay. All right.</p> <p>20 A Correct.</p> <p>21 Q Thank you.</p> <p>22 These documents, Exhibit 1, was generated by</p> <p>23 UAIC? I'm sorry. Was this document generated by UAIC?</p> <p>24 A Yes.</p> <p>25 Q What about Exhibit No. 2?</p>
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<p>1 A This is a declaration page.</p> <p>2 Q For Mr. Lewis's policy?</p> <p>3 A Yes.</p> <p>4 Q And that would be the policy that you, I think</p> <p>5 you told me earlier, it's got all these terms, renew the</p> <p>6 terms, same policy. It's never a new policy because he</p> <p>7 doesn't fill out a new application?</p> <p>8 A This was issued as a new application. This is</p> <p>9 the first term.</p> <p>10 Q All right. And this is the one that would have</p> <p>11 been, as he made payments, new terms issued on the same</p> <p>12 policy, correct?</p> <p>13 A This would have been as he signed the</p> <p>14 application.</p> <p>15 Q Great. Well, I hope that means the same thing.</p> <p>16 My question is this would be the policy that was issued and</p> <p>17 then the new terms would arise whenever the new payments</p> <p>18 were made, correct?</p> <p>19 A As the term expired.</p> <p>20 Q Right. The new terms would kick in when the new</p> <p>21 payments were made?</p> <p>22 A Correct.</p> <p>23 Q And that's all the new terms of this same policy?</p> <p>24 A Correct.</p> <p>25 Q All right, then. Let me have you take a look at</p>	<p>1 A Yes.</p> <p>2 Q All right. Do you know if either one of these</p> <p>3 were ever sent to Mr. Lewis?</p> <p>4 A They print out at the time of the application.</p> <p>5 Q Do you know if either one --</p> <p>6 A The agent, the agent provides the documentation</p> <p>7 right there, point of sale.</p> <p>8 Q So Exhibits 1 and 2 would have both been provided</p> <p>9 to Mr. Lewis --</p> <p>10 A Uh-huh. At the point of sale. It's generated</p> <p>11 off the system.</p> <p>12 Q So that's a yes?</p> <p>13 A Yes.</p> <p>14 Q All right. This first policy indicated it was</p> <p>15 going to run -- I'm sorry. The policy, the first term said</p> <p>16 it was going to run April 29 of '07, correct?</p> <p>17 A March 29 to April 29.</p> <p>18 Q All right. Of '07?</p> <p>19 A Correct.</p> <p>20 Q And then in April '07, I show you Exhibit 3, have</p> <p>21 you seen this document before today?</p> <p>22 A Yes.</p> <p>23 Q What is it?</p> <p>24 A It's the revised renewal statement.</p> <p>25 Q All right.</p>

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1 MR. DOUGLAS: For what date?	1 Q (By Mr. Sampson) What we're looking at right here.
2 MR. SAMPSON: Sure. That's fine.	2 A For this term, yes.
3 THE WITNESS: It was issued out on 4/26 showing	3 Q All right. And then we've got some language that
4 effective dates of 4/29 to 5/29.	4 says to avoid a lapse in coverage, payment must be received
5 Q (By Mr. Sampson) All right. This would be the	5 prior to expiration of your policy.
6 opportunity for Mr. Lewis to get a second term of his	6 Did I read that correctly?
7 policy?	7 A Yes.
8 A Correct.	8 Q All right. Is there any expiration date -- Let
9 Q All right, then. And under here it states the	9 me just show you.
10 amount he's going to have to pay, \$134, correct?	10 The expiration date on the policy is May 29th
11 A Correct.	11 '07, correct?
12 Q And it says the payment's got to be made no later	12 MR. DOUGLAS: Well, object. Are you talking
13 than 5/6/07, correct?	13 about the next policy?
14 A Correct.	14 THE WITNESS: Yeah. This is a renewal offer.
15 Q You would agree with me that 5/6 of '07 is after	15 Your renewal offer will show the term of the next term
16 the effective date of the policy, which is April 29th, '07,	16 that's being offered.
17 wouldn't you?	17 Q (By Mr. Sampson) All right. Let me get back to my
18 A Correct, but this is a revised renewal statement.	18 question.
19 Q Okay. My question is, it's math, calendar,	19 Would you agree with me that there's an
20 whatever you want to call it, you would agree with me that	20 expiration date on this letter of May 29th of 2007?
21 May 6th of '07 is after April 29th of '07?	21 A For the next term.
22 A Uh-huh.	22 Q Okay. There's an expiration date, you say for
23 Q Correct? So in this circumstance, this letter,	23 the next term, expiration date May 29th, 2007. Am I reading
24 and this gets back to an earlier conversation, average Joe	24 that correctly?
25 off the street looking at this letter would think, I can	25 A Which is not his current policy.
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1 make a payment, I can make this payment up to and including	1 Q I understand that. I'm just asking you, I'm
2 5/6/07 and have a policy in force starting April 29th?	2 looking at the document and I'm seeing where it says
3 A Correct. And on this term Mr. Lewis did make his	3 expiration date May 29th.
4 payment prior to the actual renewal, I believe --	4 Do you see that?
5 Q Sure.	5 A Yes.
6 A -- which was the day before, and the next term	6 Q Okay.
7 was issued.	7 MR. DOUGLAS: The record speaks for itself.
8 Q Exhibit 4, is that what you're talking about?	8 Q (By Mr. Sampson) All right. And my question, is
9 A Uh-huh.	9 there anything on this document that you can point me to,
10 Q Is that a yes?	10 besides what we just looked at, that has an expiration date,
11 A Yes.	11 that gives a different expiration date besides May 29th of
12 Q Okay. I understand that Mr. Lewis could have	12 '07?
13 made a payment anytime up to and including May 6th of '07,	13 A On this specific document?
14 correct?	14 Q Right.
15 A On this term B because it was a revised renewal	15 A No.
16 statement off an endorsement that he had done to his policy.	16 Q And when it says payment must be received prior
17 Q Right. But in fact he made the payment, even	17 to expiration of your policy --
18 though he had up to 5/6, he made the payment on 4/28?	18 A Which is your current, existing policy.
19 A Correct.	19 Q Does it say that? Can you show me where it says
20 Q My only question was, you would agree with me	20 that?
21 that a policyholder not having specialized knowledge in	21 A This states revised renewal statement. This is
22 insurance or law could look at this and say, oh, I can make	22 an offer for your next term.
23 a payment for the policy anytime before 5/6/07 and have a	23 Q Right. And it says you can make your payment
24 policy that's in effect as of April 29th of '07, correct?	24 prior to the expiration of your policy. It doesn't say your
25 MR. DOUGLAS: You're talking about for this term?	25 current policy, does it?

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<p>1 A No.</p> <p>2 Q Okay. Over here it talks about if you have</p> <p>3 changes to your existing policy. Do you see that?</p> <p>4 A Uh-huh.</p> <p>5 Q That's a yes?</p> <p>6 A Yes.</p> <p>7 Q All right. But up here it doesn't say your</p> <p>8 existing policy, does it?</p> <p>9 MR. DOUGLAS: Counsel, the document speaks for</p> <p>10 itself.</p> <p>11 Q (By Mr. Sampson) Sure. Is there any language on</p> <p>12 this whole page that you think indicates that when it says</p> <p>13 your policy, it means your current policy and when it talks</p> <p>14 about expiration, it means expiration of your current</p> <p>15 policy?</p> <p>16 A Your policy in force is your policy in force.</p> <p>17 It's a renewal offer of your existing policy.</p> <p>18 Q So when you talk about, you think that anytime on</p> <p>19 the document, on this document where it talks about your</p> <p>20 policy, it's referring to the previous one?</p> <p>21 MR. DOUGLAS: Objection. I think that misstates</p> <p>22 her testimony.</p> <p>23 MR. SAMPSON: Okay. Well, clarify, by all means.</p> <p>24 I'm not trying to misstate. I want to understand what's</p> <p>25 going on.</p>	<p>1 policy in full." That's not talking about the current</p> <p>2 policy, right?</p> <p>3 A That's talking the policy that if he pays this,</p> <p>4 it also says here, "To avoid a lapse in coverage, payment</p> <p>5 must be received prior to expiration of your policy." So he</p> <p>6 submits a payment prior to this, his next term is issued.</p> <p>7 So when he's going to pay, meaning he's going to submit</p> <p>8 payment, that will then initiate his next term.</p> <p>9 Q And certainly if someone read this, "pay my</p> <p>10 policy," there's no reason they would ever think that means</p> <p>11 my current policy because that's already been paid for,</p> <p>12 correct?</p> <p>13 A Correct.</p> <p>14 Q So the interpretation of this "pay my policy in</p> <p>15 full," that can't mean the current policy because they've</p> <p>16 already paid for that and that's already a done deal,</p> <p>17 correct?</p> <p>18 A Correct.</p> <p>19 Q So this has to be, when you say "pay my policy,"</p> <p>20 pay my future term, my new policy, right?</p> <p>21 A Yes.</p> <p>22 Q Okay. Up here, though, where it says "prior to</p> <p>23 expiration of your policy," can you see where a layperson</p> <p>24 with no understanding of, no specialized understanding of</p> <p>25 the law or insurance, would read this and think I can pay my</p>
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<p>1 THE WITNESS: Your policy being your current</p> <p>2 policy. This offer is sent while you have an active policy</p> <p>3 in force.</p> <p>4 Q (By Mr. Sampson) Okay. All right.</p> <p>5 A So it's a renewal offer to go another term. So</p> <p>6 when I'm referencing your policy, it would be your policy</p> <p>7 that you have in force at the time you get this offer in</p> <p>8 order to extend to another term.</p> <p>9 Q I think you said, when I say "your policy," I'm</p> <p>10 referring to the current one that we can extend?</p> <p>11 A Correct.</p> <p>12 Q All right. Is that what you meant down here when</p> <p>13 it says: Pay my policy?</p> <p>14 A Uh-huh.</p> <p>15 MR. DOUGLAS: Objection. That doesn't say "your</p> <p>16 policy." That says "my policy."</p> <p>17 Q (By Mr. Sampson) Quote, it says, "Pay my policy in</p> <p>18 full."</p> <p>19 Did I read that correctly?</p> <p>20 A For your next term. If I pay my policy, I issue</p> <p>21 another term that becomes your policy. This is an offer to</p> <p>22 issue another term.</p> <p>23 Q Again, I'm just trying to, a moment ago you said</p> <p>24 when I say "your policy," I'm talking about the current</p> <p>25 policy. I'm showing you right here where it says "pay my</p>	<p>1 policy prior to the expiration of my policy, which says</p> <p>2 right here, is May 29th of '07?</p> <p>3 A You have this no later than with stars all around</p> <p>4 it saying you need to pay by this date.</p> <p>5 Q Sure. I see that.</p> <p>6 A So if you reference any person, when they are</p> <p>7 looking at an invoice, they are looking at how much is due</p> <p>8 and when is my due date. Here's my amount due, here's in</p> <p>9 stars no later than this date, and down here is also a due</p> <p>10 date of 5/6/07 as well.</p> <p>11 Q Sure. Those are actually, this 5/6/07 --</p> <p>12 A Uh-huh.</p> <p>13 Q -- is after the expiration date of the current</p> <p>14 policy, right?</p> <p>15 A Because it's a revised renewal offer. He made an</p> <p>16 endorsement on the policy, so an additional offer was issued</p> <p>17 on this term.</p> <p>18 Q I just want to get your testimony here on this.</p> <p>19 The 5/6/07 date is after the expiration of the</p> <p>20 current policy, correct?</p> <p>21 A Based on an endorsement that was done on this</p> <p>22 term.</p> <p>23 Q Is that correct, then? What I said is correct?</p> <p>24 A That is correct.</p> <p>25 Q All right. So if someone were to look at this,</p>

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<p>1 can you see how an average person -- by the way, this was</p> <p>2 Mr. Lewis's first renewal, correct?</p> <p>3 A Uh-huh, which he paid, as you show, on</p> <p>4 April 28th, and the next term was issued.</p> <p>5 Q Right.</p> <p>6 A So obviously there wasn't a confusion, as you're</p> <p>7 referencing, because he actually paid it in time and the</p> <p>8 next term was issued.</p> <p>9 Q I don't understand what the confusion, like you</p> <p>10 said a moment ago, there's stars all over the place that</p> <p>11 says 5/6/07.</p> <p>12 A I just referenced the confusion you keep trying</p> <p>13 to state. Obviously, there was not because he paid it on</p> <p>14 time, and the next term was issued.</p> <p>15 Q Wouldn't that show he actually is confused, then,</p> <p>16 because he paid before the expiration date when it said he</p> <p>17 had another week?</p> <p>18 A No later than.</p> <p>19 Q Sure. I'm just trying to get an understanding.</p> <p>20 A Does that mean he has to wait to the last date to</p> <p>21 pay?</p> <p>22 Q Mr. Lewis, at least in this circumstance, showed</p> <p>23 he has no problem paying early, right?</p> <p>24 A Right.</p> <p>25 Q Okay. That's what this shows?</p>	<p>1 Q You really have no idea whether that's what he</p> <p>2 was thinking at all in terms of understanding anything, he</p> <p>3 just made the payment when he made the payment, which was</p> <p>4 actually a week early, right?</p> <p>5 A Uh-huh, right.</p> <p>6 Q And in terms of why he made it a week early, you</p> <p>7 don't know?</p> <p>8 A No.</p> <p>9 Q Okay.</p> <p>10 A He did receive a renewal offer prior to this one.</p> <p>11 Q Right.</p> <p>12 A So he was aware at the time that his renewal was</p> <p>13 coming up, that the next term needed to be paid. He made an</p> <p>14 endorsement, a revised one was sent. He obviously made his</p> <p>15 payment in the timely manner needed, and the next term was</p> <p>16 issued without a lapse.</p> <p>17 Q I understand that. My only question is -- and I</p> <p>18 know you want to talk about a whole bunch of other stuff and</p> <p>19 you're certainly welcome to, my question is Mr. Lewis has</p> <p>20 indicated, I think it was in an interrogatory answer, that</p> <p>21 it was his understanding that when this said he could pay,</p> <p>22 to avoid a lapse, he could pay prior to the expiration of</p> <p>23 his policy, he thought that meant this date, expiration date</p> <p>24 May 29th '07? Were you aware that Mr. Lewis indicated that</p> <p>25 his understanding?</p>
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<p>1 A Right.</p> <p>2 Q He had an extra week, and he still paid early?</p> <p>3 A Right.</p> <p>4 Q So... Okay. Can you see how, if I can get back</p> <p>5 to my question, an average Joe with no specialized knowledge</p> <p>6 when it comes to insurance would look at this document and</p> <p>7 say, well, to avoid a lapse, they want me to pay by 5/6/07,</p> <p>8 which is after the effective date, after the expiration of</p> <p>9 my current policy, and if I pay before the expiration of</p> <p>10 your policy, that means I avoid a lapse? Can you see where</p> <p>11 someone would read this and go, well, certainly, they're not</p> <p>12 talking about my current policy because that expires 4/28,</p> <p>13 this says I got until 5/6/07? Could you see how someone</p> <p>14 would read that and get that understanding from what it</p> <p>15 says?</p> <p>16 MR. DOUGLAS: Objection. I think that's vague,</p> <p>17 and I also think the document speaks for itself. And it</p> <p>18 also calls, obviously, calls for speculation.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: He clearly understood it because he</p> <p>21 paid it on time and it was a revised renewal statement based</p> <p>22 on an endorsement that was processed on his policy.</p> <p>23 Q (By Mr. Sampson) What else was Mr. Lewis thinking</p> <p>24 on 4/28 of '07?</p> <p>25 A I have no idea.</p>	<p>1 A No, I was not.</p> <p>2 Q I'm the first one telling you about that right</p> <p>3 now?</p> <p>4 A Yes, you are.</p> <p>5 Q Okay. Given that this document, Exhibit 3,</p> <p>6 specifically says payment can be made after the expiration</p> <p>7 date of the current policy, can you see where Mr. Lewis</p> <p>8 would have gotten that impression, or is it just crazy, in</p> <p>9 your mind?</p> <p>10 A The notice here states the amount due and being</p> <p>11 paid no later than this date. Renewal offers will always</p> <p>12 generate and show the term of that renewal offer as well.</p> <p>13 Q Okay.</p> <p>14 A So the document itself is telling him this is a</p> <p>15 renewal statement for these dates, if paid prior to this</p> <p>16 date.</p> <p>17 MR. DOUGLAS: I'd just like to state for the</p> <p>18 record, I'd like to object that that question calls for</p> <p>19 speculation and probably a legal conclusion.</p> <p>20 Q (By Mr. Sampson) Again, I don't want speculation</p> <p>21 or legal conclusion. I've told you what Mr. Lewis said</p> <p>22 his --</p> <p>23 MR. DOUGLAS: You're asking her can you see his</p> <p>24 confusion --</p> <p>25 MR. SAMPSON: Can you make objections every now</p>

18 (Pages 66 to 69)

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1 and then just --	1 A Yes.
2 MR. DOUGLAS: I did. It calls for speculation.	2 Q All right. And on here it indicates renewal
3 You're asking her can you see if an individual could be	3 amount 134, correct?
4 confused by this. She explained to you why she doesn't	4 A Correct.
5 think it is, and you keep asking her the same question.	5 Q No later than 5/29/07, correct?
6 MR. SAMPSON: That's not what I asked.	6 A Correct.
7 MR. DOUGLAS: You don't think that's a	7 Q Up here it says expiration date June 29th, '07,
8 speculative question.	8 and that's the expiration of the new term, correct?
9 MR. SAMPSON: I don't think the question I asked	9 A Based on the renewal statement offering that this
10 was speculative. The one you morphed it into is.	10 is the next term, correct.
11 MR. DOUGLAS: If that's what you think, then we	11 Q Do you see -- well, let me back up.
12 can read it back.	12 The first line, again, "To avoid a lapse in
13 MR. SAMPSON: If you --	13 coverage, payment must be received prior to expiration of
14 MR. DOUGLAS: Do you see how a person can be	14 your policy."
15 confused, you said it four or five times. You've asked her	15 Did I read that much correctly?
16 six different ways, she's given you an answer, and you're	16 A Yes, you did.
17 not happy with it so you keep badgering her. And it's a	17 Q Down here it says, in all capital letters, "Your
18 legal conclusion, anyway.	18 existing policy," right?
19 MR. SAMPSON: Tell me when you're done.	19 A Uh-huh.
20 Are you done?	20 Q Is that a yes?
21 Or are you going to wait until I start talking	21 A Yes.
22 before you interrupt me again? If you're done, I'm taking	22 Q It specifies specifically here "your existing
23 your silence as an admission that you're done. And I'll let	23 policy," but up here it just says "your policy," agreed?
24 the record reflect I've waited several seconds and counsel	24 A Yes.
25 stood there and stared at me when I asked him are you done	25 Q Okay. Can you show me anything on this document
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1 so...	1 that references, that says there's an expiration date, other
2 With that as a tacit admission he's done, I'll	2 than June 29th of '07?
3 proceed with my question, which is: Mr. Lewis, not some	3 A "To avoid lapse in coverage, payments must be
4 vague person off the street, Mr. Lewis has testified it was	4 received prior to expiration of your policy," and then it
5 his understanding that when these renewal notices talked	5 references that no later than 5/29/07 must payment be made,
6 about paying before expiration of your policy, he thought	6 and it also references a due date of 5/29/07 that payment
7 that meant the expiration date that's right here in the	7 must be made.
8 document, you said you weren't aware of that, I'm telling	8 MR. SAMPSON: Okay. Can you read my question
9 you now that's what he's indicated, can you see where he's	9 back.
10 coming from, or do you think that's just crazy?	10 (The requested portion of the transcript was read
11 MR. DOUGLAS: Objection; calls for speculation	11 by the court reporter.)
12 and probably a legal conclusion.	12 Q (By Mr. Sampson) Can you answer that question,
13 You can answer, if you know.	13 please?
14 THE WITNESS: I don't know what he was thinking,	14 THE WITNESS: Yes --
15 and obviously he paid in advance.	15 MR. DOUGLAS: Asked and answered.
16 Q (By Mr. Sampson) Sure. He paid in advance,	16 THE WITNESS: -- I did.
17 whether he understood a prior expiration date or whatever	17 Q (By Mr. Sampson) Where is it?
18 the due date was, he paid in advance no matter what. We all	18 A Again, references your due date that you must pay
19 agree on that?	19 by, which is the expiration date of his current term that he
20 A Uh-huh.	20 was on. The renewal offer is to extend beyond that current
21 Q That's a yes?	21 term and it, in two locations, indicates the date that the
22 A Yes.	22 payment needs to be received by.
23 Q Let's take a look at Exhibit No. 5. This is the	23 Q It says this is the date the payment needs to be
24 next renewal notice, renewal statement. Have you seen this	24 received by, but down here it says to avoid a lapse in
25 document before today?	25 coverage, you've got to pay prior to the expiration of the

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1 policy, right?	1 MR. DOUGLAS: I'm not, counsel.
2 A You want to pull --	2 MR. SAMPSON: You're the one that said you don't
3 MR. DOUGLAS: The document speaks for itself.	3 want to be here all night. Stop obstructing things. Make
4 THE WITNESS: If you want to pull his prior	4 your objections. They're reserved for the record. Let your
5 document --	5 witness testify.
6 Q (By Mr. Sampson) Sure.	6 MR. DOUGLAS: She has, and you're just not happy
7 A -- you can see that 5/29/07 is the term, the	7 with her answers, so you're yelling at her.
8 ending of that term.	8 MR. SAMPSON: I'm actually thrilled with her
9 Q Sure. This time they happen to match up, right?	9 answers. If I could feed her answers, I wouldn't give her
10 A Because it's not a revised. This one was revised	10 better answers than the ones I'm getting right now.
11 because of an endorsement that he made.	11 MR. DOUGLAS: Okay.
12 Q I'm just pointing you to where it says expiration	12 MR. SAMPSON: So don't try to flip this on me.
13 date June 29th, '07. Can you show me anywhere in the	13 You don't like the way this is going, and you're trying to
14 document where it says expiration date and gives some other	14 nip it in the bud and it's not appropriate.
15 date?	15 MR. DOUGLAS: That's not the case at all,
16 A As far as --	16 counsel.
17 Q There isn't anything there.	17 MR. SAMPSON: Okay. All right.
18 A -- what term?	18 MR. DOUGLAS: You just, you know, you can only
19 Q I've showed you where it says expiration date	19 badger her about what a document stays that's black and
20 June 29th, '07?	20 white for so long before it's just clearly badgering.
21 A Renewal offers, as I stated before, always show	21 MR. SAMPSON: Your objection is noted.
22 the term of what I am renewing this offer for.	22 Q (By Mr. Sampson) If I can get back to my question,
23 Q Right.	23 which is: Says right here expiration date June 29th, '07.
24 A Okay? That is pretty standard in the industry.	24 Can you show me the words "expiration date" combined
25 So this is the term that I'm offering. Now, based on the	25 anywhere on this policy, other than where I already showed
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1 fact that you make this payment prior to the expiration of	1 you?
2 your current term that you're on, which references a	2 MR. DOUGLAS: And I'll object; asked and answered
3 specific date to him as the due date and indicates that to	3 and the document speaks for itself.
4 avoid the lapse, it must be paid by this date, in order to	4 You can answer.
5 extend coverage without a lapse.	5 THE WITNESS: No.
6 Q Right. But the things you're telling me this	6 Q (By Mr. Sampson) All right. I'll go ahead and ask
7 letter says, though, first of all, you said it says you've	7 the question I asked previously. This is on this one now.
8 got to pay prior to this date. It doesn't ever say that,	8 Again, Mr. Lewis testified it was his understanding when it
9 does it?	9 said "prior to expiration of your policy," it meant the only
10 A Yes, it does, no later than 5/29/07.	10 place where the words "expiration date" are found on the
11 Q That's when the company wants payment made, but	11 document, June 29, '07. Can you see why he would get that
12 when it says to avoid a lapse in coverage, it doesn't say	12 impression, based on the way this is drafted?
13 prior to the expiration of this date, does it? It says	13 MR. DOUGLAS: Objection; speculation, legal
14 prior to the expiration of your policy, right?	14 conclusion.
15 MR. DOUGLAS: Counsel, the document speaks for	15 THE WITNESS: I think it clearly states when the
16 itself.	16 due date is required and when the payment is required to be
17 MR. SAMPSON: Do you have an objection?	17 made.
18 MR. DOUGLAS: Yeah. The document speaks for	18 Q (By Mr. Sampson) You're certainly familiar, we
19 itself. Are you going to badger her?	19 talked earlier about grace periods. You know what a grace
20 MR. SAMPSON: Have you taken a CLE on defending	20 period is, right?
21 depositions? Do you have an objection?	21 A Yes. And your policy expired. And as I
22 MR. DOUGLAS: Yes. The document speaks for	22 indicated previously, too, we have no grace periods.
23 itself.	23 Q Well, right. But it doesn't say that on this
24 MR. SAMPSON: The objection is noted. Stop	24 letter, does it?
25 obstructing the deposition.	25 A Doesn't say there's a grace period.

20 (Pages 74 to 77)

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<p>1 Q Yeah. We can both agree the words "grace period"</p> <p>2 aren't on this document?</p> <p>3 A Correct.</p> <p>4 Q All right. Could you see where Mr. Lewis would</p> <p>5 think they want the payment by this date, but they've told</p> <p>6 me I can avoid a lapse and I've got a grace period prior to</p> <p>7 the expiration of the policy, which the only other place</p> <p>8 where the word "expiration date" is used is June 29, '07?</p> <p>9 MR. DOUGLAS: Again, I'm going to object; legal</p> <p>10 conclusion, foundation, documents speaks for itself, and</p> <p>11 speculation, and asked and answered, counsel.</p> <p>12 THE WITNESS: I've gone over the document. I</p> <p>13 don't know what else you're wanting from me at this point.</p> <p>14 MR. DOUGLAS: He just wants to badger you.</p> <p>15 Q (By Mr. Sampson) No, that's not true. I actually</p> <p>16 want to get on my flight and go home, but your counsel is</p> <p>17 making it very difficult.</p> <p>18 I've told you what Mr. Lewis thought this</p> <p>19 document meant and I'm asking you if you think, if you</p> <p>20 understand where he's coming from or if you think that's</p> <p>21 just crazy. You can tell me, "I see where he's coming</p> <p>22 from," or, "No, I think that's crazy."</p> <p>23 I don't understand why any further comment would</p> <p>24 be warranted, but if you want to make it, you're certainly</p> <p>25 welcome to.</p>	<p>1 by the court reporter.)</p> <p>2 Q (By Mr. Sampson) My question is: What was</p> <p>3 renewed, if anything? You can tell me nothing was renewed</p> <p>4 or what, if anything, was renewed?</p> <p>5 A The existing policy --</p> <p>6 MR. DOUGLAS: Objection; foundation.</p> <p>7 THE WITNESS: -- policy he has.</p> <p>8 Q (By Mr. Sampson) Okay. The existing policy that</p> <p>9 he has was renewed?</p> <p>10 A We issued another term.</p> <p>11 Q That's what I wanted to make sure I understood.</p> <p>12 For example, Exhibit No. 7, renewal statement,</p> <p>13 right?</p> <p>14 A Uh-huh.</p> <p>15 Q Is that a yes?</p> <p>16 A Yes.</p> <p>17 Q What is it that UAIC is offering to renew?</p> <p>18 A We're offering to issue another term to him,</p> <p>19 another monthly term.</p> <p>20 Q So you're offering to renew his current policy?</p> <p>21 A His policy that he has, to issue another term,</p> <p>22 yes.</p> <p>23 Q Right. And for each one of these we've looked</p> <p>24 at, the renewal statements that go out, it's an offer to</p> <p>25 renew the current policy?</p>
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<p>1 MR. DOUGLAS: Objection; asked and answered for</p> <p>2 probably the fifth time on two different documents,</p> <p>3 foundation, speculation, document speaks for itself.</p> <p>4 You can go ahead and answer, and you don't have</p> <p>5 to limit yourself to what he's given you.</p> <p>6 THE WITNESS: Again, as I stated, it clearly</p> <p>7 states in two places on this policy the due date that the</p> <p>8 policy must be paid from.</p> <p>9 Q (By Mr. Sampson) Then Exhibit 6, of course this</p> <p>10 indicates that the payment was made on 5/31 and it was</p> <p>11 renewed, correct?</p> <p>12 A New term was issued, yes.</p> <p>13 Q All right. By the way, is there anything on here</p> <p>14 that says new term was issued, anything you can point me to?</p> <p>15 A No. It generates out with a dec page with the</p> <p>16 new term and new ID cards.</p> <p>17 Q And under here, under type of business, it says</p> <p>18 renewal, correct?</p> <p>19 A Uh-huh, existing client.</p> <p>20 Q What was renewed?</p> <p>21 A It's not a new application, it's an existing</p> <p>22 client, that another term has been issued based off of the</p> <p>23 renewal offer that was issued out to the insured.</p> <p>24 MR. SAMPSON: Can you read the answer back?</p> <p>25 (The requested portion of the transcript was read</p>	<p>1 A Correct.</p> <p>2 Q All right. And then when it says renew,</p> <p>3 that's -- on these, back to Exhibit 7, is that receipt of</p> <p>4 payment?</p> <p>5 A Yes.</p> <p>6 Q This is indicating the policy was renewed?</p> <p>7 A We issued another term, correct.</p> <p>8 Q Great. We'll try to get through this, but we'll</p> <p>9 see.</p> <p>10 Do you see here where it says expiration date,</p> <p>11 July 31st, '07?</p> <p>12 A Yes.</p> <p>13 (An off-the-record discussion ensued.)</p> <p>14 Q (By Mr. Sampson) Can you point me to anything else</p> <p>15 in the document that shows any other expiration dates,</p> <p>16 besides July 31st of '07?</p> <p>17 A No.</p> <p>18 Q Were you aware Mr. Lewis testified or indicated</p> <p>19 at some point that when he looked at this and it said in</p> <p>20 order to avoid a lapse, payment must be received prior to</p> <p>21 expiration of your policy, he thought that meant the</p> <p>22 expiration date listed here in the document of July 31st,</p> <p>23 '07? Did you know Mr. Lewis indicated that?</p> <p>24 MR. DOUGLAS: Asked and answered.</p> <p>25 MR. SAMPSON: Not in relation to this document.</p>

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<p>1 THE WITNESS: No, I wasn't aware of that.</p> <p>2 Q (By Mr. Sampson) All right. Does it surprise you</p> <p>3 to hear that?</p> <p>4 A Yeah, based on the fact that it clearly states</p> <p>5 that your payment must be received no later than 6/30/07 on</p> <p>6 this specific document, with a due date of 6/30/07 on this</p> <p>7 specific document.</p> <p>8 Q Okay. So Mr. Lewis's interpretation, his</p> <p>9 understanding, you don't understand that at all, correct?</p> <p>10 A Correct.</p> <p>11 MR. DOUGLAS: Calls for speculation, counsel.</p> <p>12 Q (By Mr. Sampson) You're the only person on this</p> <p>13 planet who knows whether you understand at all, actually, so</p> <p>14 I'm not asking you to speculate at all.</p> <p>15 MR. DOUGLAS: You asked her if she understood --</p> <p>16 THE WITNESS: -- if I understood how he saw it.</p> <p>17 Q (By Mr. Sampson) Sure. Mr. Lewis's understanding,</p> <p>18 his interpretation of this document, you don't understand</p> <p>19 it, correct?</p> <p>20 MR. DOUGLAS: Well, objection; foundation,</p> <p>21 speculation, counsel.</p> <p>22 Q (By Mr. Sampson) Okay. I'm correct, right?</p> <p>23 A How am I supposed to understand his</p> <p>24 interpretation?</p> <p>25 Q Well, UAIC has said their interpretation of this</p>	<p>1 A Correct.</p> <p>2 Q Do you see the ambiguities here or not?</p> <p>3 MR. DOUGLAS: Objection; legal conclusion and</p> <p>4 speculation.</p> <p>5 MR. SAMPSON: Okay.</p> <p>6 THE WITNESS: I don't agree with you.</p> <p>7 Q (By Mr. Sampson) Okay. You don't even see how</p> <p>8 this would be unclear to a layperson who doesn't have,</p> <p>9 you're talking about my policy, which is the new one,</p> <p>10 existing policy when you mean my current one, expiration</p> <p>11 date, expiration, you don't see that that could be subject</p> <p>12 to multiple interpretations at all, correct?</p> <p>13 A I think a person, individual that's getting this</p> <p>14 billing indicates my renewal amount is this amount and I</p> <p>15 need to pay it no later than this date.</p> <p>16 Q Okay. And in terms of the language regarding "in</p> <p>17 order to avoid a lapse, pay before the expiration," you</p> <p>18 don't see any other way to read that, other than expiration</p> <p>19 of your current policy?</p> <p>20 A For me, yes, correct.</p> <p>21 Q All right. This one says, Exhibit 8, payment was</p> <p>22 made?</p> <p>23 A Uh-huh.</p> <p>24 Q Renewal, again, as I talked to you before, this</p> <p>25 means -- well, what is it that was renewed?</p>
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<p>1 document was the expiration referenced in this first</p> <p>2 sentence in the full paragraph meant the expiration of the</p> <p>3 current policy.</p> <p>4 A Uh-huh.</p> <p>5 Q You know that, right?</p> <p>6 A Yes.</p> <p>7 Q And you understand UAIC's interpretation, right?</p> <p>8 A Right.</p> <p>9 Q Based on what you see here, correct?</p> <p>10 A Right.</p> <p>11 Q But you have no way of telling me whether you</p> <p>12 understand or don't understand Mr. Lewis's, correct?</p> <p>13 A Because I stated the fact that you can clearly</p> <p>14 see, based on this document, that the payment is due no</p> <p>15 later than 6/30/07 --</p> <p>16 Q Okay. I understand.</p> <p>17 A -- in stars, stated here and in the due date.</p> <p>18 Q But then it also says if you pay before the</p> <p>19 expiration of your policy, you can avoid a lapse?</p> <p>20 A Which he gets this document, while he has a</p> <p>21 current policy in force.</p> <p>22 Q Right. But then down here where it says "pay my</p> <p>23 policy in full," we already talked about that's not</p> <p>24 representing the current policy in force, that would be</p> <p>25 ridiculous, he's already paid for that, correct?</p>	<p>1 A The next term was issued.</p> <p>2 Q Was it the policy we've been talking about all</p> <p>3 along?</p> <p>4 A Yeah.</p> <p>5 Q What is it that was renewed?</p> <p>6 A Yes. The policy he had with us, we re -- we</p> <p>7 issued another --</p> <p>8 MR. DOUGLAS: Objection. That --</p> <p>9 MR. SAMPSON: No, don't change her answer,</p> <p>10 counsel. I will give you an objection to foundation. Don't</p> <p>11 coach the witness.</p> <p>12 MR. DOUGLAS: I didn't coach her at all.</p> <p>13 MR. SAMPSON: Good. I'm glad.</p> <p>14 All right. Can you read the question and answer</p> <p>15 back, please?</p> <p>16 (The requested portion of the transcript was read</p> <p>17 by the court reporter.)</p> <p>18 Q (By Mr. Sampson) So when you say "yeah," that's a</p> <p>19 yes, right?</p> <p>20 A Yes.</p> <p>21 Q And then it's Y-A. I want to make sure it's</p> <p>22 clear. All right, then. Let me take a look at Exhibit</p> <p>23 No. 9, please.</p> <p>24 A Uh-huh.</p> <p>25 Q Have you seen that before today?</p>

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<p>1 A Yes.</p> <p>2 Q What is it?</p> <p>3 A It's an ID card that's issued with the renewal</p> <p>4 offer.</p> <p>5 Q And what are the dates on the ID card in terms of</p> <p>6 effective date and expiration date of the policy?</p> <p>7 A 6/30/07 to 7/31/07, which clearly states that it</p> <p>8 was, this was issued with the renewal offer for those dates,</p> <p>9 if the payment was received prior to the due date.</p> <p>10 Q Okay. This would have gone, this Exhibit 9 would</p> <p>11 have been sent in the same communication that Exhibit 7 was</p> <p>12 sent to Mr. Lewis, correct?</p> <p>13 A Yes.</p> <p>14 Q So once again we've got the words "expiration</p> <p>15 date" on here a couple different times on Exhibit No. 9,</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q All right. Why is this sent? Exhibit No. 9.</p> <p>19 A It's sent along with the renewal offer, being</p> <p>20 that it's a monthly statement. And if they pay that on</p> <p>21 time, then they have something in regards to their coverage.</p> <p>22 When the payment is made, a new revised, and it states in</p> <p>23 here, once payment is received, you'll receive a new policy</p> <p>24 declaration sheet and insurance identification cards.</p> <p>25 The 14 in prefix here indicates this was a</p>	<p>1 MR. DOUGLAS: Objection.</p> <p>2 Q (By Mr. Sampson) -- looking at Exhibit 9?</p> <p>3 MR. DOUGLAS: Objection. That calls for a legal</p> <p>4 conclusion.</p> <p>5 MR. SAMPSON: That's what she said a moment ago.</p> <p>6 She said this is to show, if they need proof, they have</p> <p>7 proof.</p> <p>8 Q (By Mr. Sampson) Isn't that what you told me a</p> <p>9 minute ago?</p> <p>10 A Yes. The card that goes with the renewal offer,</p> <p>11 payment is received. And again it states that --</p> <p>12 MR. DOUGLAS: She said if payment is received.</p> <p>13 THE WITNESS: -- new card and ID cards will be</p> <p>14 issued once payment is received.</p> <p>15 Q (By Mr. Sampson) Sure. I understand that. Let's</p> <p>16 back up.</p> <p>17 You had talked about this being, you know, I said</p> <p>18 why do you send these? It's our procedure. They can have</p> <p>19 proof, if they make the payment, they can show their</p> <p>20 insurance.</p> <p>21 This is a copy of an insurance card that says</p> <p>22 Mr. Lewis is insured with UAIC from 6/30/07 through 7/31/07,</p> <p>23 correct?</p> <p>24 A Correct.</p> <p>25 MR. DOUGLAS: Objection; that calls for legal</p>
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<p>1 renewal offer. When he gets the dec page and the actual ID</p> <p>2 cards, the 14 is no longer there.</p> <p>3 Q Why is it sent, though? Why send him, if you're</p> <p>4 going to send him a new one once he makes payment, why send</p> <p>5 him the first one?</p> <p>6 A It's just our procedure that we send the offer</p> <p>7 along with it, so that they do have, as long as they are</p> <p>8 paying on time, they do have documentation.</p> <p>9 Q But they also have documentation if they don't</p> <p>10 pay?</p> <p>11 A Yeah.</p> <p>12 Q Is that a yes?</p> <p>13 A Yes.</p> <p>14 Q Other than, I think you said it's our</p> <p>15 procedure --</p> <p>16 A Uh-huh.</p> <p>17 Q -- any other reason why you would send someone</p> <p>18 proof of insurance when it's UAIC's position that they don't</p> <p>19 have insurance?</p> <p>20 A It's the intent of the offer to issue that next</p> <p>21 term, if payment is received prior.</p> <p>22 Q I understand the intent. Other than the fact</p> <p>23 that it's your policy, my question was -- Let me back up.</p> <p>24 This is a card that indicates Mr. Lewis had</p> <p>25 insurance effective 6/30/07 through 7/31/07, right --</p>	<p>1 conclusion.</p> <p>2 Q (By Mr. Sampson) All right. And it is UAIC's</p> <p>3 position Mr. Lewis did have insurance from 6/30/07 to</p> <p>4 7/31/07, correct?</p> <p>5 A Correct.</p> <p>6 Q So we've got an insurance card, copy of an</p> <p>7 insured card that Mr. Lewis can show police officers or</p> <p>8 whoever else he needs to show to prove he's got insurance,</p> <p>9 for a time frame where UAIC claims there actually wasn't</p> <p>10 insurance for at least a portion of the time frame stated,</p> <p>11 correct?</p> <p>12 A Correct. I can clearly tell you from this that</p> <p>13 this was based off of renewal offer.</p> <p>14 Q I'm sorry?</p> <p>15 A This came with a renewal offer.</p> <p>16 Q Right. It would have come with Exhibit 7?</p> <p>17 A That again indicated that new cards and ID's</p> <p>18 would be sent, once payment was received.</p> <p>19 Q Right, right.</p> <p>20 (An off-the-record discussion ensued.)</p> <p>21 (Recess was taken from 3:20 p.m. to 3:27 p.m.)</p> <p>22 Q (By Mr. Sampson) I had asked you this before. I</p> <p>23 just want to make sure, because we've discussed some other</p> <p>24 stuff in the interim, a couple of different things since I</p> <p>25 asked the question previously.</p>

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<p>1 As you sit here right now, other than what we've</p> <p>2 talked about already today, any other reasons why UAIC sent</p> <p>3 Exhibit 9 to Mr. Lewis?</p> <p>4 A Any other reason?</p> <p>5 Q Other than what you've already told us today?</p> <p>6 A No.</p> <p>7 Q I'm sorry?</p> <p>8 A No.</p> <p>9 Q Thank you.</p> <p>10 Then we won't go through them, but you</p> <p>11 understand, don't you, that subsequent to July, Mr. Lewis</p> <p>12 was renewed in, I think, August, September, for multiple</p> <p>13 months after all of that in 2007?</p> <p>14 MR. DOUGLAS: Objection; legal conclusion, as to</p> <p>15 renewed, and foundation as well.</p> <p>16 Q (By Mr. Sampson) Okay.</p> <p>17 A He had additional terms that were issued, yes.</p> <p>18 Q Same thing we talked about earlier with, for</p> <p>19 example, Exhibit 8, when it says renewal? Same thing?</p> <p>20 A No. That means new term.</p> <p>21 Q Right.</p> <p>22 A This is an existing client of the agent, somebody</p> <p>23 we already have insured --</p> <p>24 Q Right.</p> <p>25 A -- and a new term was issued effective this date</p>	<p>1 told me previously in your deposition.</p> <p>2 Do you recall that?</p> <p>3 A I told you what?</p> <p>4 Q Gave me testimony about what you thought it</p> <p>5 meant. Do you remember giving that testimony?</p> <p>6 A Previously here today?</p> <p>7 Q Right.</p> <p>8 A You want to read to me what you're referencing.</p> <p>9 Q Not really. I mean, I want to get out of here at</p> <p>10 some point in time.</p> <p>11 A I'm telling you right now that this is stating</p> <p>12 the payment was received, it's an existing customer, we've</p> <p>13 issued another term for this customer.</p> <p>14 Q For our record, we just took a break, as our</p> <p>15 court reporter was fighting carpal tunnel or something</p> <p>16 indicating her arms and hands and wrists were hurting, you</p> <p>17 and your counsel went off into the offices of UAIC, I</p> <p>18 watched you, do you deny that you didn't go back into the</p> <p>19 offices? You did that, right?</p> <p>20 A Yeah, yeah.</p> <p>21 Q All right. And all I'm asking you right now is</p> <p>22 you've given testimony before you guys went back --</p> <p>23 A Right.</p> <p>24 Q -- about what these words mean on Exhibits 2 and</p> <p>25 5 that we looked at, and I'm just asking you, as Mr. Nalder,</p>
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<p>1 that the receipt was noted. So that term was issued at the</p> <p>2 time the money was taken.</p> <p>3 And the same, as far as his consecutive ones,</p> <p>4 same thing happened. And as you can see on a lot of the</p> <p>5 consecutive as well, he didn't pay in a timely manner and</p> <p>6 the terms did issue with lapse.</p> <p>7 Q Right. My only question is -- I don't want to do</p> <p>8 it over and over and over again, but we've talked about</p> <p>9 these receipt of payments multiple times previously, and</p> <p>10 you've explained what the verbiage means.</p> <p>11 Do you remember doing that here today?</p> <p>12 A I explained what the verbiage means.</p> <p>13 Q Sure. What the words mean.</p> <p>14 A Well, what are you referencing?</p> <p>15 Q For example, where it says "renewal," I've asked</p> <p>16 you -- geez, let's take a look at them, regarding Exhibit 2,</p> <p>17 regarding Exhibit 4, and regarding Exhibit 6.</p> <p>18 A Uh-huh.</p> <p>19 Q And also Exhibit 8. For each one of those, I had</p> <p>20 you discuss what this entry of renewal meant.</p> <p>21 A It means an existing customer that is not a new</p> <p>22 applicant.</p> <p>23 Q Let me finish my question.</p> <p>24 As we went through those exhibits, I asked you to</p> <p>25 go through with me what this entry of renewal meant, and you</p>	<p>1 as Mr. Lewis renewed beyond July of 2007, were those renewal</p> <p>2 statements, and the language we looked at and already</p> <p>3 discussed multiple times over, it's all the same thing going</p> <p>4 on, right?</p> <p>5 MR. DOUGLAS: I'm just going to object, not only</p> <p>6 to insinuation, counsel, but I think also, I think that</p> <p>7 you're misstating testimony and not laying foundation.</p> <p>8 MR. SAMPSON: Hold on. What testimony am I</p> <p>9 misstating? All I said is we went over these documents and</p> <p>10 she gave an explanation.</p> <p>11 A And I just gave the same explanation and you're</p> <p>12 telling me that I, that I -- that I stated something</p> <p>13 earlier. I'm telling you exactly what it was.</p> <p>14 Q (By Mr. Sampson) Right. Again, you've testified</p> <p>15 multiple times before we took a break about what this</p> <p>16 language means?</p> <p>17 A That another term was issued, and this is an</p> <p>18 existing client. And I also testified previously as well</p> <p>19 that new applications, the new business as we stated was a</p> <p>20 new application --</p> <p>21 Q Right.</p> <p>22 A -- and when it's stating renewals and existing</p> <p>23 client. We have a new term that's issued, therefore, that's</p> <p>24 why you have a date here, a new dec page and ID card is</p> <p>25 issued for those terms that that policy term is now issued</p>

24 (Pages 90 to 93)

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<p>1 for.</p> <p>2 Q I thought you told me earlier renewing the</p> <p>3 policy, the new policy is issued initially, right, when the</p> <p>4 application is filled out with the agent?</p> <p>5 A New policy issued, yes.</p> <p>6 Q Then subsequently new terms of the same policy</p> <p>7 are issued as the payments are made?</p> <p>8 A Which is what this is, a new term has been</p> <p>9 issued --</p> <p>10 Q All right. Exactly.</p> <p>11 A -- because it's an existing client.</p> <p>12 Q And the entry in the receipt of payment says</p> <p>13 "renewal," correct?</p> <p>14 A 7/10/07.</p> <p>15 Q Right. But it says "renewal"? Down here under</p> <p>16 type of business.</p> <p>17 MR. DOUGLAS: You're referencing next to type of</p> <p>18 business.</p> <p>19 Q (By Mr. Sampson) Yeah. Under type of business,</p> <p>20 that says "renewal," right?</p> <p>21 A It says "renewal," yes.</p> <p>22 Q And we can go through them if you think we need</p> <p>23 to, but certainly as future renewals beyond July of 2007</p> <p>24 were made, there would have been a similar receipt of</p> <p>25 payment generated that said type of business renewal? Any</p>	<p>1 issued, each time a term would have been issued, there would</p> <p>2 be a receipt of payment that under type of business would</p> <p>3 indicate again the word "renewal," correct?</p> <p>4 A Right. Being it's an existing customer.</p> <p>5 Q Right. I understand. That's all I'm asking.</p> <p>6 We've got the same thing here. And, again, you've already</p> <p>7 explained multiple times, as we've gone through these, what</p> <p>8 that means and how that works.</p> <p>9 Do you know whether or not an insurance company</p> <p>10 has an obligation to report someone who no longer has</p> <p>11 insurance with them to the DMV?</p> <p>12 A Yeah. We report to the DMV.</p> <p>13 Q And under what circumstances do you report</p> <p>14 customers or prior customers, whatever you want to call</p> <p>15 them, to the DMV?</p> <p>16 A On the old system, we reported twice a month.</p> <p>17 And on the new system, they tag in on a daily basis.</p> <p>18 Q When new versus old, when was the change?</p> <p>19 A I believe it was the first part of this year, was</p> <p>20 the new. First part of 2010.</p> <p>21 Q All right. Do you know what the obligation is</p> <p>22 for an insurance company to report someone to the DMV, under</p> <p>23 what circumstances that's appropriate?</p> <p>24 A Twice a month. We had to provide a tape to them</p> <p>25 twice a month.</p>
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<p>1 reason to dispute that?</p> <p>2 MR. DOUGLAS: Well, I'll just object to legal</p> <p>3 conclusion, your characterization of renewal. She testified</p> <p>4 there were several new policy terms issued where he didn't</p> <p>5 pay timely. So I'm just saying, counsel, if you need to,</p> <p>6 you're going to have to go through it. I don't think it's</p> <p>7 fair for you to categorize every future thing.</p> <p>8 MR. SAMPSON: Are you able to object? Can you</p> <p>9 give that a shot? Do you have an objection? You've</p> <p>10 interrupted us. Do you have an objection?</p> <p>11 MR. DOUGLAS: I just stated it, counsel.</p> <p>12 MR. SAMPSON: Well, okay. Then it's on the</p> <p>13 record.</p> <p>14 MR. DOUGLAS: If you're going to, like I said --</p> <p>15 MR. SAMPSON: I'm not putting any, all I'm</p> <p>16 putting is Exhibit 8 in front of the witness and saying --</p> <p>17 MR. DOUGLAS: Yeah. And you're --</p> <p>18 MR. SAMPSON: Hold on. Let me say what I'm</p> <p>19 saying, instead of you telling me what I'm saying, please,</p> <p>20 if you don't mind.</p> <p>21 Where it says type of business, the entry is</p> <p>22 renewal. We've gone over that. The document speaks for</p> <p>23 itself.</p> <p>24 All I've asked her is as future payments were</p> <p>25 made over, I think she said a total of 15-some terms were</p>	<p>1 Q All right. And maybe I'm asking the question</p> <p>2 wrong.</p> <p>3 Did UAIC ever report Gary Lewis to the DMV?</p> <p>4 A All of the records on existing and current</p> <p>5 policies, when they are effective, when they've expired,</p> <p>6 lapsed, or such is generated to the DMV on a tape twice a</p> <p>7 month.</p> <p>8 Q All right. So every customer you have, whether</p> <p>9 they have a current policy, even if, for example, someone</p> <p>10 paid 12 months in advance --</p> <p>11 A Uh-huh.</p> <p>12 Q -- you would still report to the DMV each month</p> <p>13 or twice a month or every day now, that that person has</p> <p>14 insurance with UAIC?</p> <p>15 A Yeah, any activity. If it's a current policy, it</p> <p>16 stays current. If it's expired or lapsed or canceled or</p> <p>17 activated, the notification is sent to the DMV on the tape</p> <p>18 at that time.</p> <p>19 Q Earlier in your answer you said "yeah," that</p> <p>20 meant yes?</p> <p>21 A Yes.</p> <p>22 Q Did anyone at UAIC ever tell the DMV that Gary</p> <p>23 Lewis's policy was lapsed?</p> <p>24 A As an individual?</p> <p>25 MR. DOUGLAS: Object to foundation.</p>

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<p>1 Q (By Mr. Sampson) As opposed to what?</p> <p>2 MR. DOUGLAS: Foundation. For "lapse."</p> <p>3 THE WITNESS: You just asked if anybody has told</p> <p>4 the DMV? Are you talking about an individual?</p> <p>5 Q (By Mr. Sampson) Anyone at UAIC.</p> <p>6 MR. DOUGLAS: In what time frame, counsel?</p> <p>7 Q (By Mr. Sampson) At any point in time, ever. In</p> <p>8 the history of UAIC.</p> <p>9 A You're referencing as an individual or as data</p> <p>10 that's been transmitted.</p> <p>11 Q I'm asking you as the person most</p> <p>12 knowledgeable --</p> <p>13 A Uh-huh.</p> <p>14 Q -- was there ever any, did UAIC in any capacity</p> <p>15 ever tell the DMV Mr. Lewis's insurance has lapsed?</p> <p>16 A By the data that was submitted to them, they are</p> <p>17 provided the data on policies that have been expired and if</p> <p>18 there's been a period of time with no insurance, it would</p> <p>19 have showed an activation.</p> <p>20 Q Do you know whether or not the DMV has any</p> <p>21 records of UAIC ever advising the DMV of Nevada that Gary</p> <p>22 Lewis had a policy that lapsed?</p> <p>23 MR. DOUGLAS: Asked and answered, counsel.</p> <p>24 THE WITNESS: I don't have the fact. I mean, I</p> <p>25 don't have -- you're asking me if I know specifically they</p>	<p>1 A His policy. The offers, renewal offers. The</p> <p>2 revised dec pages that were issued out to him. The receipts</p> <p>3 of payment. All of the underwriting documentation.</p> <p>4 Q Did --</p> <p>5 Sorry.</p> <p>6 A The underwriting documentation.</p> <p>7 Q Anything else?</p> <p>8 A I reviewed some of the documentations that were</p> <p>9 submitted. I don't know what you're referencing to, as far</p> <p>10 as that, but I did review some.</p> <p>11 Q I just want to know, what documents have you</p> <p>12 reviewed?</p> <p>13 A I can't tell you specifically the name of them.</p> <p>14 I'm just saying that I did review some of those.</p> <p>15 Q Other than what you've already identified, can</p> <p>16 you give me any specific description of any other documents</p> <p>17 you reviewed in preparing to testify? Anything you recall?</p> <p>18 A No. Mainly all of the underwriting documentation</p> <p>19 is what I reviewed.</p> <p>20 Q The underwriting documentation, you mentioned the</p> <p>21 renewal statements, the receipts, the policy. Any other</p> <p>22 documents in the underwriting documentation you recall</p> <p>23 reviewing?</p> <p>24 A The dec pages, the endorsements that were done.</p> <p>25 Q Anything else?</p>
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<p>1 haven't?</p> <p>2 Q (By Mr. Sampson) Sure.</p> <p>3 A The data would have been provided. Specifically</p> <p>4 if they have it, haven't seen it specifically, so I can't</p> <p>5 tell you specifically yes or no.</p> <p>6 Q Okay. Do you know how many times Mr. Lewis</p> <p>7 renewed his policy with UAIC?</p> <p>8 MR. DOUGLAS: Objection; foundation with regard</p> <p>9 to renewal.</p> <p>10 But you can answer.</p> <p>11 THE WITNESS: New terms were issued, I believe,</p> <p>12 15.</p> <p>13 Q (By Mr. Sampson) Have you reviewed the answers to</p> <p>14 requests for admissions that UAIC submitted in this case?</p> <p>15 A Which ones?</p> <p>16 Q There's a request for admissions, then UAIC</p> <p>17 provided us answers to those requests for admissions. I</p> <p>18 just want to know if you've ever seen those answers, to your</p> <p>19 knowledge.</p> <p>20 A I've seen documents. I don't know specifically</p> <p>21 which one you're referring to.</p> <p>22 Q Okay. All right. What, if any, documents did</p> <p>23 you review in preparation to give deposition testimony?</p> <p>24 A What documents did I review?</p> <p>25 Q Uh-huh.</p>	<p>1 A Not off the top of my head, no.</p> <p>2 Q Are you aware of any communications that UAIC</p> <p>3 ever sent to Mr. Lewis regarding his policy and/or the claim</p> <p>4 that was brought against him, other than what you've already</p> <p>5 identified?</p> <p>6 A Am I aware of any documentation that underwriting</p> <p>7 or claims?</p> <p>8 Q Correct.</p> <p>9 A I've seen a reference of a letter that was sent,</p> <p>10 but that's all, in regards to claims.</p> <p>11 Q Okay. So other than what we've talked about,</p> <p>12 you're not aware of any other communications UAIC sent to</p> <p>13 Mr. Lewis about his policy or the claim that was brought</p> <p>14 against him, correct?</p> <p>15 A Correct.</p> <p>16 Q UAIC is a business that's in business to make</p> <p>17 money, right?</p> <p>18 A Yeah.</p> <p>19 Q Area of inquiry number 15 was the corporate name,</p> <p>20 trade name of UAIC, where it started up, where the home</p> <p>21 offices are. What can you tell me?</p> <p>22 A Where it started up?</p> <p>23 Q Sure.</p> <p>24 A '89, I believe, was the year in Florida. I'm</p> <p>25 sorry. What else were you looking for?</p>

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<p>1 Q Current corporate headquarters?</p> <p>2 A Florida.</p> <p>3 Q And the business structure?</p> <p>4 A The business structure in regards to?</p> <p>5 Q Of UAIC, do you know if it's a corporation?</p> <p>6 A Corporation, privately owned.</p> <p>7 Q Okay. And your position, you're the head of</p> <p>8 underwriting for -- tell me again.</p> <p>9 A Western region.</p> <p>10 Q How many regions are there, if you know?</p> <p>11 A We have four.</p> <p>12 Q What are the regions?</p> <p>13 A Florida, the regional office is in Florida,</p> <p>14 Texas, Chicago, and Arizona.</p> <p>15 Q I have two areas of inquiry that you may not have</p> <p>16 information on, but I've got to ask because they have, no</p> <p>17 one at UAIC has identified a person most knowledgeable. One</p> <p>18 is the number of injury claims that UAIC processed in '04,</p> <p>19 '05, '06, '07, and '08. You don't have any information on</p> <p>20 that, correct?</p> <p>21 A No.</p> <p>22 Q I'm correct?</p> <p>23 A Correct.</p> <p>24 Q Number two, next one is with regards to the</p> <p>25 injury claims processed in those years, how many of them</p>	<p>1 no idea what direction it would go.</p> <p>2 Q (By Mr. Sampson) Whether there's a process</p> <p>3 involved to sort that out, it's just outside of what you</p> <p>4 have knowledge about, correct?</p> <p>5 A Depending on what it is. If you're talking in</p> <p>6 reference to, obviously, coverage on a claim, I'm not</p> <p>7 involved with that.</p> <p>8 Q Well, let me give you an example. If an insured</p> <p>9 came to UAIC and said, "Wait, when my renewal notice said I</p> <p>10 had to pay before the expiration of my policy, I thought it</p> <p>11 meant the expiration date that was in the renewal notice,</p> <p>12 you guys are telling me it meant something else," do you</p> <p>13 know how that dispute would be resolved?</p> <p>14 MR. DOUGLAS: Objection; speculation, legal</p> <p>15 conclusion.</p> <p>16 THE WITNESS: It would be discussed with him at</p> <p>17 that point explaining and showing him the fact that this is</p> <p>18 a new term, showing the dates of the future terms, as long</p> <p>19 as it's paid by this date. Same way I explained to you.</p> <p>20 Q (By Mr. Sampson) Who would be responsible for</p> <p>21 doing that?</p> <p>22 A Initially, I would discuss it with them. If that</p> <p>23 didn't take care of it, it would go up from there.</p> <p>24 Q To where?</p> <p>25 A To upper management.</p>
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<p>1 were resolved within 30 days of receiving Notice of Claim.</p> <p>2 Again, you wouldn't know?</p> <p>3 A Correct.</p> <p>4 Q Area of inquiry number 20 asks about the</p> <p>5 policies, protocols, or other tactics UAIC implements to</p> <p>6 sell insurance policies, including all auto insurance</p> <p>7 policies and other such policies.</p> <p>8 Is there anything you're aware of, other than</p> <p>9 what we've talked about today?</p> <p>10 A No. We go through the independent agent.</p> <p>11 Q If a dispute arises about what a policy says,</p> <p>12 UAIC says hold on, this word means this thing and an insured</p> <p>13 says no, we think it means something else, do you know how</p> <p>14 those disputes are resolved?</p> <p>15 A In regards to a claim on coverage?</p> <p>16 Q In regards to any dispute for whatever reason.</p> <p>17 If there's ever a circumstance where an insured says, "I</p> <p>18 think this is our deal," and UAIC says, "No, we think this</p> <p>19 other thing is our deal," do you know how those disputes are</p> <p>20 resolved?</p> <p>21 MR. DOUGLAS: Object; calls for speculation and</p> <p>22 legal conclusion. It also may be outside the area of her</p> <p>23 knowledge as underwriter.</p> <p>24 You can answer, if you know.</p> <p>25 THE WITNESS: Based on the circumstances, I have</p>	<p>1 Q How often, in a given week, do you have</p> <p>2 communications with insureds about things that are, where</p> <p>3 there's disagreements?</p> <p>4 A I don't.</p> <p>5 Q When is the last time you had any such</p> <p>6 communication? Don't give me any details, just time</p> <p>7 frame-wise.</p> <p>8 A In regards to...</p> <p>9 Q Whenever there's been a dispute, where the</p> <p>10 insured says I think our deal is this, and UAIC says no, I</p> <p>11 think our deal is this other thing.</p> <p>12 A I have not.</p> <p>13 Q I think you said you've been with UAIC five</p> <p>14 years?</p> <p>15 A Over five years, almost six years.</p> <p>16 Q Let me read to you a portion of the request for</p> <p>17 admissions that were sent to UAIC. Request number eight,</p> <p>18 "Admit that UAIC continued to renew Gary Lewis's policy</p> <p>19 through 2007 and continued to renew Lewis's policy in 2008."</p> <p>20 And the response was, "UAIC objects to the request as vague</p> <p>21 and ambiguous in terms of, quote, 'continued to renew,'"</p> <p>22 close quote.</p> <p>23 Did you know that UAIC had stated that?</p> <p>24 MR. DOUGLAS: I'd just like you to read the</p> <p>25 complete answer, if you're going to ask her that, counsel.</p>

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<p>1 MR. SAMPSON: Go ahead. I don't want to read the</p> <p>2 whole thing and ask her about that. If you have a question</p> <p>3 for her, go ahead, take over.</p> <p>4 MR. DOUGLAS: The rule of completeness requires</p> <p>5 you to, if you're going to reference her to something. The</p> <p>6 rest of the answer says, "notwithstanding or without waiving</p> <p>7 such objection, defendant continued issuing new policy terms</p> <p>8 of insurance to Lewis, subject to payment of requested</p> <p>9 premium."</p> <p>10 THE WITNESS: Yes. I agree with this.</p> <p>11 Q (By Mr. Sampson) You agree with the response?</p> <p>12 A Yeah. We continued to issue the terms, based on</p> <p>13 the payments received.</p> <p>14 Q This is why I didn't want to get muddled into</p> <p>15 something that's not my question.</p> <p>16 A You're not --</p> <p>17 Q Is the phrase "continued to" --</p> <p>18 MR. DOUGLAS: Are you asking her a complete</p> <p>19 question, a complete response, or are we just getting a half</p> <p>20 response?</p> <p>21 MR. SAMPSON: If you have an objection, you</p> <p>22 really ought to look into this objection thing. I think</p> <p>23 you'll like what you learn. Or maybe you won't, so then you</p> <p>24 won't do it.</p> <p>25 Q (By Mr. Sampson) UAIC said the phrase "continued</p>	<p>1 one, the website, all these other documents, 1 through 10,</p> <p>2 these were all generated by UAIC, correct?</p> <p>3 A Correct, yes.</p> <p>4 Q So the language that's on there is language UAIC</p> <p>5 chose to put on those documents --</p> <p>6 A Correct.</p> <p>7 Q -- correct?</p> <p>8 A Yes.</p> <p>9 Q All right. So if I point to a word that UAIC</p> <p>10 chose to put in a document --</p> <p>11 A Right.</p> <p>12 Q -- how is that being confusing and manipulative?</p> <p>13 A That's what I'm saying as far as vague, it is</p> <p>14 vague.</p> <p>15 Q Okay.</p> <p>16 A It's what are you trying to reference? You're</p> <p>17 being vague as far as what you're stating.</p> <p>18 MR. DOUGLAS: You can't confuse that, counsel.</p> <p>19 And this I do have to have a speaking objection because here</p> <p>20 you can't pull out part of a response, okay, which you</p> <p>21 changed the word to "continued to renew," which is vague and</p> <p>22 ambiguous, and then you want to reference it to renewal in a</p> <p>23 document in type of business.</p> <p>24 MR. SAMPSON: I haven't referenced anything.</p> <p>25 MR. DOUGLAS: Yes, you have. If you want to ask</p>
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<p>1 to renew" is vague and ambiguous.</p> <p>2 Do you agree?</p> <p>3 A It depends on your definition, as far as what</p> <p>4 you're renewing. You state on the receipts, you keep</p> <p>5 referencing the renewal. This is an existing client that</p> <p>6 has a policy month to month, and when the payment is</p> <p>7 received, that next term is then issued, based on the</p> <p>8 receipt of that payment, which shows the date and time that</p> <p>9 that was issued.</p> <p>10 Q Okay. And I appreciate you, once again, telling</p> <p>11 me what UAIC means when it enters renewal under type of</p> <p>12 business. My question is do you think the phrase "continued</p> <p>13 to renew" is vague and ambiguous?</p> <p>14 MR. DOUGLAS: Calls for a legal conclusion,</p> <p>15 counsel. You know that.</p> <p>16 THE WITNESS: Yeah. It's based on -- you, as far</p> <p>17 as reading the full verbiage here and stating it, clarifies</p> <p>18 it. Where you keep pulling this out, you're being vague, as</p> <p>19 far as what you're trying to get at and what you're trying</p> <p>20 to state by it, because I continually keep telling you, as</p> <p>21 far as where we're at and the terms that are issued, and you</p> <p>22 continually keep pulling this out and stating this renewed</p> <p>23 statement.</p> <p>24 Q (By Mr. Sampson) All the documents we've looked at</p> <p>25 today, other than, I think, exhibit number -- Letter A, this</p>	<p>1 her, why don't you clearly ask her, instead of jumping</p> <p>2 around and playing hide the bag, why don't you ask her what</p> <p>3 it means there where it says type of business? Why don't</p> <p>4 you just ask her? That's a clear question. Try that.</p> <p>5 MR. SAMPSON: I've done that a dozen times over.</p> <p>6 MR. DOUGLAS: I know. We've all been sitting</p> <p>7 here watching you do it.</p> <p>8 MR. SAMPSON: Why are you asking me to do it</p> <p>9 again?</p> <p>10 MR. DOUGLAS: Obviously, you're still confused</p> <p>11 about it.</p> <p>12 MR. SAMPSON: I'm not confused about it at all.</p> <p>13 MR. DOUGLAS: Okay.</p> <p>14 Q (By Mr. Sampson) I know what the word "renew"</p> <p>15 means. I know what it means when a policy is renewed. I</p> <p>16 asked UAIC, in request number eight, to admit that it</p> <p>17 continued to renew the policy, and the insurance company</p> <p>18 said "continue to renew" is a vague and ambiguous term. I'm</p> <p>19 just trying to find out if you agree or not.</p> <p>20 MR. DOUGLAS: It's been asked and answered. It</p> <p>21 also calls for a legal conclusion.</p> <p>22 Q (By Mr. Sampson) It's my understanding you</p> <p>23 answered yes, you do agree that's an ambiguous term, right?</p> <p>24 A Based on the fact --</p> <p>25 MR. DOUGLAS: In response to request number</p>

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<p>1 eight.</p> <p>2 MR. SAMPSON: Sure.</p> <p>3 MR. DOUGLAS: Okay.</p> <p>4 Q (By Mr. Sampson) And I think one of your concerns</p> <p>5 is, as the word "renew" is used in the receipts of payment,</p> <p>6 would you agree it's ambiguous there too?</p> <p>7 MR. DOUGLAS: Objection; misstates testimony,</p> <p>8 also calls for a legal conclusion.</p> <p>9 Q (By Mr. Sampson) I'm not misstating anything. I</p> <p>10 want to know if you agree the word that, when I use it, is</p> <p>11 ambiguous, but then when you use it, do you agree it's still</p> <p>12 ambiguous, or does it change somehow when you use it?</p> <p>13 MR. DOUGLAS: Objection; calls for legal</p> <p>14 conclusion and also misstating testimony.</p> <p>15 You can answer.</p> <p>16 THE WITNESS: You're vague in what you're -- not</p> <p>17 vague, but you're, I feel like there's -- I'm not clear on</p> <p>18 specifically what you're stating because it's like you keep</p> <p>19 hounding on something I am continuing to state in regards to</p> <p>20 the monthly policies, the renewal offer that's issued, the</p> <p>21 term that has been issued based on receipt of the payment.</p> <p>22 Don't know what it is that you're trying to get.</p> <p>23 Q (By Mr. Sampson) I'm not trying to get anything</p> <p>24 other than an explanation. When UAIC tells me, in response</p> <p>25 to request for admission --</p>	<p>1 THE WITNESS: Yeah.</p> <p>2 MR. SAMPSON: Let's have the question read back,</p> <p>3 then. I'd like to get an answer.</p> <p>4 (The requested portion of the transcript was read</p> <p>5 by the court reporter as follows:</p> <p>6 "Question (By Mr. Sampson): I'm not trying to</p> <p>7 get anything other than an explanation. When UAIC tells me,</p> <p>8 in response to request for admission --</p> <p>9 "Answer: Uh-huh.</p> <p>10 "Question: -- that a word is vague and</p> <p>11 ambiguous, it would be my assumption that UAIC would</p> <p>12 consider that word or that phrase vague and ambiguous</p> <p>13 whenever it's used.</p> <p>14 "MR. DOUGLAS: Okay.</p> <p>15 "Question (By Mr. Sampson): I can't imagine that</p> <p>16 UAIC thinks that when I use a word it's ambiguous, but then</p> <p>17 if someone else uses it, somehow magically it's clear and</p> <p>18 not ambiguous anymore. I'm trying to find out if you agree</p> <p>19 the word in the phrase is ambiguous whenever it's used.")</p> <p>20 THE WITNESS: The objection in here was based on</p> <p>21 the fact, as far as what was vague in what you were asking</p> <p>22 in regards to the question at hand, that you asked here.</p> <p>23 Q (By Mr. Sampson) The phrase is somehow unclear,</p> <p>24 right?</p> <p>25 A Yeah.</p>
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<p>1 A Uh-huh.</p> <p>2 Q -- that a word is vague and ambiguous, it would</p> <p>3 be my assumption that UAIC would consider that word or that</p> <p>4 phrase vague and ambiguous whenever it's used.</p> <p>5 MR. DOUGLAS: Okay.</p> <p>6 Q (By Mr. Sampson) I can't imagine that UAIC thinks</p> <p>7 that when I use a word it's ambiguous, but then if someone</p> <p>8 else uses it, somehow magically it's clear and not ambiguous</p> <p>9 anymore. I'm trying to find out if you agree the word in</p> <p>10 the phrase is ambiguous whenever it's used.</p> <p>11 MR. DOUGLAS: Object; calls for a legal</p> <p>12 conclusion, misstates testimony, and additionally it's been</p> <p>13 asked and answered. And you're continuing to misstate</p> <p>14 testimony because clearly your request, request number 8,</p> <p>15 your request for admission, says continue to renew. But you</p> <p>16 want her to use the word renewal under type of business and</p> <p>17 you want to say they're synonymous. She's already explained</p> <p>18 to you the difference. You're taking snippets out. Why</p> <p>19 don't you just ask her if you, ask her a direct question,</p> <p>20 counsel, instead of asking her legal conclusion.</p> <p>21 MR. SAMPSON: The objection has been made, or the</p> <p>22 speech has been made. Can you answer the question, please.</p> <p>23 Do you need it read back?</p> <p>24 THE WITNESS: Do I need what?</p> <p>25 MR. SAMPSON: Do you need the question read back?</p>	<p>1 MR. DOUGLAS: Again, calls for legal conclusion.</p> <p>2 Q (By Mr. Sampson) I just want UAI's position that</p> <p>3 the phrase is unclear, and that's fine. I don't begrudge</p> <p>4 you that, but I don't want to do a big tap dance to get</p> <p>5 around the phrase that, yes, we think that phrase is</p> <p>6 unclear. That's all I'm looking to do.</p> <p>7 MR. DOUGLAS: Counsel, you know full well that</p> <p>8 these objections are lodged by counsel. She's answering as</p> <p>9 best she can. You're asking her for legal conclusions over</p> <p>10 types of objections raised.</p> <p>11 MR. SAMPSON: No, I'm not.</p> <p>12 MR. DOUGLAS: You're bordering on, really, all</p> <p>13 day today, you hound her and hound her. What do you expect</p> <p>14 from her? Why not ask her questions about this case.</p> <p>15 MR. SAMPSON: How about truthful answers to the</p> <p>16 case.</p> <p>17 MR. DOUGLAS: Why don't you ask her questions</p> <p>18 about the case? Why don't you get back to that?</p> <p>19 MR. SAMPSON: I've been doing that this whole</p> <p>20 time.</p> <p>21 MR. DOUGLAS: Okay. Instead of legal</p> <p>22 conclusions.</p> <p>23 MR. SAMPSON: Stop being obstreperous. And at</p> <p>24 some point in time, I'd really like you to say something</p> <p>25 like: Objection; foundation.</p>

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<p>1 MR. DOUGLAS: I've been doing that, counsel,</p> <p>2 but --</p> <p>3 MR. SAMPSON: The record will show you haven't.</p> <p>4 MR. DOUGLAS: You also have to ask clear</p> <p>5 questions and not just badger a witness over legal</p> <p>6 conclusions. Really, I'd love to see how you argue that</p> <p>7 that last question was not asking for a legal conclusion.</p> <p>8 MR. SAMPSON: I would be happy to argue it, but</p> <p>9 I'm not going to convince you anyway because you're getting</p> <p>10 paid not to understand, so that's fine.</p> <p>11 Q (By Mr. Sampson) Again, I just want to get a</p> <p>12 clarification that if the phrase is ambiguous --</p> <p>13 MR. DOUGLAS: Counsel, asked and answered. If</p> <p>14 you're going to ask --</p> <p>15 MR. SAMPSON: I haven't asked anything yet. Wait</p> <p>16 until I ask a question before you have an objection. And</p> <p>17 stop being completely unprofessional and interrupting me</p> <p>18 over and over again. That's out of line, and you've got to</p> <p>19 know it. You've got to know it.</p> <p>20 Q (By Mr. Sampson) I'll have you take a look at</p> <p>21 Exhibit No. 4, since it's the one in front of you.</p> <p>22 Is there any portion of that document that you</p> <p>23 think is unclear?</p> <p>24 MR. DOUGLAS: Objection; vague, calls for</p> <p>25 speculation.</p>	<p>1 on that. I'm not going to ask you what are the business</p> <p>2 activities, because we've already gone over that but...</p> <p>3 Q (By Mr. Sampson) Are you familiar with a case</p> <p>4 involving UAIC, I believe it was out of Florida, involving</p> <p>5 Jose Hernandez, the insured Jose Hernandez?</p> <p>6 A No.</p> <p>7 Q Who's Richard Parrillo? P-a-r --</p> <p>8 A Parrillo, Senior or Junior?</p> <p>9 Q I've got Richard Parrillo, P-a-r-r-i-l-l-o,</p> <p>10 Senior?</p> <p>11 A That's the owner.</p> <p>12 MR. DOUGLAS: Is there a lawsuit or claim? What</p> <p>13 are you referencing there, counsel, just so we're clear.</p> <p>14 MR. SAMPSON: It's a lawsuit brought in</p> <p>15 February 2002 by the estate of Judge Steven D. Levine, who</p> <p>16 was killed by an insured driver of UAIC.</p> <p>17 MR. DOUGLAS: Okay.</p> <p>18 MR. SAMPSON: And there was an ultimate verdict</p> <p>19 for UAIC's bad faith in the amount of \$6.8 million.</p> <p>20 Are you familiar at all with that case?</p> <p>21 THE WITNESS: Not at all.</p> <p>22 MR. DOUGLAS: Do you have a case number, just as</p> <p>23 a reference or anything?</p> <p>24 MR. SAMPSON: I do not.</p> <p>25 MR. DOUGLAS: Okay.</p>
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<p>1 Q (By Mr. Sampson) Or ambiguous, if there's a better</p> <p>2 word. Whatever word you want to apply?</p> <p>3 MR. DOUGLAS: Same objection.</p> <p>4 THE WITNESS: No.</p> <p>5 Q (By Mr. Sampson) Same question, Exhibit No. 3.</p> <p>6 Anything in there you believe is vague, ambiguous, unclear,</p> <p>7 whatever word you want to use?</p> <p>8 A No.</p> <p>9 Q And the other documents you've looked at that are</p> <p>10 renewal notices and receipts of payment, in general, other</p> <p>11 than dates they have and maybe price, they have the same</p> <p>12 language?</p> <p>13 A Yes.</p> <p>14 Q Would you agree with me on that? All right.</p> <p>15 That will save us from going over each one of them.</p> <p>16 MR. SAMPSON: She's PMK for number one is what I</p> <p>17 have on here, correct?</p> <p>18 MR. DOUGLAS: Give me a second.</p> <p>19 MR. SAMPSON: Sure.</p> <p>20 MR. DOUGLAS: What was item number one?</p> <p>21 MR. SAMPSON: The nature and scope of defendant's</p> <p>22 business --</p> <p>23 MR. DOUGLAS: Asked and answered, but yeah.</p> <p>24 Sure.</p> <p>25 MR. SAMPSON: I've got some follow-up questions</p>	<p>1 Q (By Mr. Sampson) Does UAIC ever field complaints</p> <p>2 about the way it conducts business, to your knowledge?</p> <p>3 A What do you mean field complaints?</p> <p>4 Q If someone's got a complaint. For example, I</p> <p>5 have one here, "Stay away from this company and hope to God</p> <p>6 that you don't get in an accident with one of their</p> <p>7 insureds."</p> <p>8 A What do you mean field?</p> <p>9 Q If someone brought a complaint against the</p> <p>10 company, do you know if there's any process set up to</p> <p>11 address it?</p> <p>12 A Well, yeah. We've had complaints come in that,</p> <p>13 yeah, we've addressed.</p> <p>14 Q I just want to know, what is the process for</p> <p>15 addressing those kinds of complaints?</p> <p>16 A Reviewing, making sure that things were handled</p> <p>17 in the proper manner and addressing it back to them and</p> <p>18 solving the solution, as far as that goes.</p> <p>19 Q Who's responsible for doing that?</p> <p>20 A Are you referencing the Department of Insurance</p> <p>21 complaints?</p> <p>22 Q Or any complaints, sure.</p> <p>23 A I handle all the underwriting for the western</p> <p>24 region, and Jan handles the western region for claims.</p> <p>25 Q Have you reviewed the complaint that was filed in</p>

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<p>1 this lawsuit, the complaint that was filed in this action,</p> <p>2 the current action, Nalder and Lewis versus UAIC?</p> <p>3 A Not recently but, yes, I have.</p> <p>4 Q Are you familiar in general about what the</p> <p>5 allegations are?</p> <p>6 A In regards to?</p> <p>7 Q The lawsuit --</p> <p>8 A Vaguely.</p> <p>9 Q -- what's being claimed.</p> <p>10 A Yeah, yeah.</p> <p>11 Q Do you know, are you aware of anything, I would</p> <p>12 say are you aware of any evidence regarding the allegations</p> <p>13 in the complaint, other than what we've talked about today?</p> <p>14 MR. DOUGLAS: I'll just object. I think that's</p> <p>15 overly broad and not reasonably calculated to lead to</p> <p>16 discoverable information. May call for speculation.</p> <p>17 Discovery is obviously ongoing.</p> <p>18 You can answer, to the extent you know.</p> <p>19 THE WITNESS: I'm aware of what you've presented</p> <p>20 today, yes.</p> <p>21 Q (By Mr. Sampson) This is my, you know, no trial by</p> <p>22 ambush question. Nobody gets to come to trial and say,</p> <p>23 "We've got new evidence. This person who testified as the</p> <p>24 PMK is now going to offer all this other testimony that we</p> <p>25 didn't tell you about before."</p>	<p>1 we discussed today?</p> <p>2 A No.</p> <p>3 MR. SAMPSON: That's all the questions I have.</p> <p>4 Thank you very much.</p> <p>5 MR. DOUGLAS: Okay. Can I just take a look at</p> <p>6 those exhibits, counsel, for a second?</p> <p>7 MR. SAMPSON: Should be A and 1 through 10.</p> <p>8 MR. DOUGLAS: Sure.</p> <p>9 Just so we're clear --</p> <p>10 MR. SAMPSON: Are we on the record still?</p> <p>11 MR. DOUGLAS: Of course.</p> <p>12</p> <p>13 EXAMINATION</p> <p>14 BY MR. DOUGLAS:</p> <p>15 Q Let's just talk about Exhibit 8. And since</p> <p>16 counsel didn't want to ask you and apparently there's some</p> <p>17 confusion over your testimony, Danice -- Danice, you see</p> <p>18 Exhibit 8 here. It's a receipt for the payment that was</p> <p>19 made after the accident on July 10th, 2007, by Mr. Lewis?</p> <p>20 A Right.</p> <p>21 Q Is that correct?</p> <p>22 A Correct.</p> <p>23 Q The accident here happened, what, July 8th, '07,</p> <p>24 I believe?</p> <p>25 A Yes.</p>
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<p>1 I don't want that to happen. The whole point of</p> <p>2 this discovery process is so that that is not supposed to</p> <p>3 happen, can't happen. Every now and then, though, I get a</p> <p>4 defense lawyer -- and I'm not impugning him. I don't know</p> <p>5 that your counsel has ever done it or anyone at his firm has</p> <p>6 ever done it, but I've got to protect against everybody --</p> <p>7 where a defense lawyer will come to trial and try to spring</p> <p>8 new evidence and say, well, she has had this information,</p> <p>9 you just didn't ask her about it.</p> <p>10 So I've asked about every area I can think to ask</p> <p>11 where I think you might have information, but I'm not you.</p> <p>12 A Right.</p> <p>13 Q I don't know everything. I admit that freely.</p> <p>14 Is there anything else you're aware of that went on in this</p> <p>15 case related to the allegations of the complaint --</p> <p>16 A Uh-huh.</p> <p>17 Q -- other than what we've talked about today?</p> <p>18 A No.</p> <p>19 MR. DOUGLAS: I'll just object that's overly</p> <p>20 broad and calls for speculation and, you know, to the extent</p> <p>21 she can answer that now.</p> <p>22 THE WITNESS: Nope.</p> <p>23 Q (By Mr. Sampson) Okay. When this case goes to</p> <p>24 trial, can you think of anything that you would be giving</p> <p>25 testimony about that's not part of what we, wasn't something</p>	<p>1 Q So Mr. Lewis actually went in and paid for this</p> <p>2 policy after the accident?</p> <p>3 A Correct.</p> <p>4 Q I don't think counsel ever asked you that.</p> <p>5 A Right. And the term was issued effective the</p> <p>6 date of the receipt.</p> <p>7 Q When it says "renewal" there under type of</p> <p>8 business, you know, counsel has said many things. Why don't</p> <p>9 you, just so the record is clear, why don't you tell us what</p> <p>10 "renewal" next to type of business, what that indicates.</p> <p>11 A It's an existing --</p> <p>12 MR. SAMPSON: I'm going to object. I need to</p> <p>13 lodge an objection to the form of that question and also</p> <p>14 note for our record, that when I asked this exact question,</p> <p>15 counsel told me it had been asked and answered multiple</p> <p>16 times previously. And I told him at the time I thought he</p> <p>17 was being obstreperous, and now apparently given he doesn't</p> <p>18 think it's really been answered, it's quite clear he was</p> <p>19 being obstreperous.</p> <p>20 With that being said, you may answer the</p> <p>21 question.</p> <p>22 THE WITNESS: Again, it's an existing client of</p> <p>23 the agent's, and the new term is now being issued based on</p> <p>24 the 7/10 payment.</p> <p>25 Q (By Mr. Douglas) Okay. So renewal refers to the</p>

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<p>1 fact this was not a new customer, is that what you're</p> <p>2 saying?</p> <p>3 A Right. If it was a new customer, it would say</p> <p>4 new application.</p> <p>5 Q And just real quick --</p> <p>6 MR. SAMPSON: Hold on. She might want to</p> <p>7 correct.</p> <p>8 THE WITNESS: New business. I apologize.</p> <p>9 Q (By Mr. Douglas) Sure.</p> <p>10 I think you talked about there were something</p> <p>11 like 15 different policy terms that Mr. Lewis eventually had</p> <p>12 with United Auto; is that right?</p> <p>13 A Correct.</p> <p>14 Q Can you tell us, more than half or less than half</p> <p>15 were paid on time?</p> <p>16 A I believe there was ten out of 15 that were paid</p> <p>17 late.</p> <p>18 Q Okay. Were there, then, gaps in coverage?</p> <p>19 A Yes.</p> <p>20 MR. DOUGLAS: Okay. That's all I have.</p> <p>21</p> <p>22 FURTHER EXAMINATION</p> <p>23 BY MR. SAMPSON:</p> <p>24 Q Regardless of whether there were gaps in coverage</p> <p>25 or not, the policies, up until when Mr. Lewis no longer did</p>	<p>1 Q (By Mr. Sampson) Let's go ahead and take a look.</p> <p>2 Exhibit No. 2, No. 3. It says revised renewal</p> <p>3 statement, right?</p> <p>4 A Yes.</p> <p>5 Q And that's the word UAIC chose to put in that</p> <p>6 document, "renewal" statement, right?</p> <p>7 A Yes.</p> <p>8 Q Doesn't say revised, we're going to issue a new</p> <p>9 term, does it?</p> <p>10 A No. But it also indicates to avoid a lapse in</p> <p>11 coverage, payment must be made by this date. The terms then</p> <p>12 generate by it when the payment is received.</p> <p>13 Q Actually, it says, in order to avoid a lapse in</p> <p>14 coverage, payment must be received prior to expiration of</p> <p>15 your policy, right?</p> <p>16 A Yep.</p> <p>17 Q Doesn't say prior to this specific date, does it?</p> <p>18 It says prior to expiration of your policy, right?</p> <p>19 A Right.</p> <p>20 MR. DOUGLAS: Where in this document are you</p> <p>21 referring to, counsel?</p> <p>22 MR. SAMPSON: The line I've been pointing to a</p> <p>23 couple different times since the question's been asked.</p> <p>24 MR. DOUGLAS: Okay. Obviously, you know, the</p> <p>25 document speaks for itself, so I'll just object.</p>
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<p>1 business with UAIC, were renewed, correct?</p> <p>2 A New terms were issued.</p> <p>3 Q And previously you talked about what UAIC takes</p> <p>4 renewal to mean and what it means on the form. With that</p> <p>5 interpretation, the policies, whether payments were made</p> <p>6 late or whatever else, the renewals occurred as documented</p> <p>7 in the records, right?</p> <p>8 MR. DOUGLAS: Objection. That calls for a legal</p> <p>9 conclusion; possible objection to foundation regarding your</p> <p>10 use of the word "renewal" again, counsel.</p> <p>11 MR. SAMPSON: What's the problem with the use of</p> <p>12 the word "renewal"?</p> <p>13 MR. DOUGLAS: I'm not going to explain --</p> <p>14 MR. SAMPSON: You are, if you're going to object</p> <p>15 and not give me a chance to cure the question.</p> <p>16 MR. DOUGLAS: Yeah. She just told you repeatedly</p> <p>17 new policy terms were issued. You keep saying, using the</p> <p>18 word they were "renewed," and there's a difference there.</p> <p>19 MR. SAMPSON: That's what the document says. I'm</p> <p>20 using the word that's in the document. I don't want to use</p> <p>21 the word you guys have invented now that this lawsuit has</p> <p>22 come up. I want to use the word that was used and told to</p> <p>23 the insured when the policy was going on.</p> <p>24 MR. DOUGLAS: No. You're misstating her</p> <p>25 testimony if you say that, so that's why.</p>	<p>1 Q (By Mr. Sampson) The document did speak for</p> <p>2 itself, but can you show me anywhere in here where it talks</p> <p>3 about we're going to give you a new term on a new, whatever</p> <p>4 you guys are calling it nowadays? Can you show me any of</p> <p>5 the language you guys are using in this deposition in here?</p> <p>6 A Referencing to avoid a lapse in coverage, so when</p> <p>7 the payment was received later than the due date that is</p> <p>8 indicated no later than this time, the next term was then</p> <p>9 issued, based on the receipt of that payment.</p> <p>10 Q Can you show me the term "new term" anywhere in</p> <p>11 the document?</p> <p>12 MR. DOUGLAS: Again, objection. The document</p> <p>13 speaks for itself.</p> <p>14 THE WITNESS: No. The document doesn't use the</p> <p>15 word "term."</p> <p>16 Q (By Mr. Sampson) Can you show me any of the</p> <p>17 language that you guys are using today to try to explain all</p> <p>18 this away in the renewal notices that were sent? And you</p> <p>19 can look at all of them.</p> <p>20 MR. DOUGLAS: Objection. That mischaracterizes</p> <p>21 testimony. I think it's also argumentative. She's</p> <p>22 discussed this document to you several times. The effective</p> <p>23 date and the expiration dates are in the right-hand corner</p> <p>24 for the new policy. I don't know what more...</p> <p>25 You can answer.</p>

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<p>1 Q (By Mr. Sampson) Do you remember the question?</p> <p>2 A Yes. You asked me what it states as far as --</p> <p>3 Q No, that's not the question. The question was</p> <p>4 can you show me in any of the renewal notices where this,</p> <p>5 where we're going to write you a new term to your existing</p> <p>6 policy, the language you guys are using today to try to</p> <p>7 explain what the word "renewal" means, can you show me that</p> <p>8 anywhere in the documents that were sent to Mr. Lewis before</p> <p>9 the accident happened?</p> <p>10 A It references here giving him the proposal on the</p> <p>11 effective dates of the policy showing on the renewal offer</p> <p>12 that's here that these are going to be the dates that it's</p> <p>13 issued, but in order to avoid a lapse, payment must be</p> <p>14 received by this date.</p> <p>15 Q Okay.</p> <p>16 A So payment was not received by the date in</p> <p>17 question and so, therefore, the policy, payment was received</p> <p>18 on 7/10, after the day of loss. The policy, then next term</p> <p>19 was issued effective 7/10. The renewal offer he received</p> <p>20 prior to this indicated to avoid a lapse in coverage,</p> <p>21 payment needed to be made no later than the date that was</p> <p>22 indicated on the renewal offer.</p> <p>23 Q Why do you keep jumping from what the paragraph</p> <p>24 says to what the box says?</p> <p>25 A To avoid a lapse in coverage, payment must be</p>	<p>1 anything other than it's going to be a renewal, not a new</p> <p>2 term on an old policy or whatever you guys want to call it</p> <p>3 nowadays. That's the only question I want answered.</p> <p>4 MR. DOUGLAS: Okay. I'm just going to object for</p> <p>5 the record. I think that misstates testimony. It may call</p> <p>6 for a legal conclusion. Additionally, it's probably vague,</p> <p>7 but most importantly, it's been asked and answered.</p> <p>8 She gave an explanation of why she believes it</p> <p>9 shows a new term with an effective date, an expiration date,</p> <p>10 and a due date. And you have asked her and she gave you an</p> <p>11 answer, but you don't like it, once again, so you're asking</p> <p>12 it again.</p> <p>13 If you want to add anything, you can go ahead</p> <p>14 beyond that.</p> <p>15 THE WITNESS: I don't.</p> <p>16 MR. SAMPSON: You're right. If I ask what color</p> <p>17 the sky is and the answer is the grass is green, I don't</p> <p>18 like that answer. You're right. I'm entitled to an answer</p> <p>19 to my question, not to whatever question the witness decides</p> <p>20 she wants to morph it into.</p> <p>21 MR. DOUGLAS: That's not true.</p> <p>22 MR. SAMPSON: Don't interrupt me. You're being</p> <p>23 very rude to the court reporter, as well as to me. Or</p> <p>24 whatever you tell her behind closed doors to make the</p> <p>25 question become.</p>
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<p>1 received prior to expiration date of the policy. It also</p> <p>2 indicates here --</p> <p>3 (An off-the-record discussion ensued.)</p> <p>4 MR. SAMPSON: She needs to write this down.</p> <p>5 THE WITNESS: In reading this form, to avoid</p> <p>6 lapse in coverage, payment must be received prior to</p> <p>7 expiration date of your policy, with the statement, the same</p> <p>8 form indicates renewal amount due no later than this date,</p> <p>9 also indicating a due date in the lower half of the</p> <p>10 document.</p> <p>11 Q (By Mr. Sampson) Okay. Again, I think I asked you</p> <p>12 about if there's language about new term. I'm not asking</p> <p>13 you about, I mean, I'll just let you know. When an attorney</p> <p>14 asks you a question like, "Is the sky blue," if your answer</p> <p>15 talks all about how the grass is green and the sun makes the</p> <p>16 grass turn green, they are still going to then say but is</p> <p>17 the sky blue. So when I ask you a question about these</p> <p>18 terms you're using today about we're issuing a new term,</p> <p>19 this language you're using today, is that language anywhere,</p> <p>20 can you point it to me anywhere in the renewal notices that</p> <p>21 were sent to Mr. Lewis before the policy, before the</p> <p>22 accident occurred?</p> <p>23 Now, in answering that, you've talked to me about</p> <p>24 due dates and expiration dates. All I want to know is is</p> <p>25 there anything in the renewal notice that talks about</p>	<p>1 Q (By Mr. Sampson) All I want to know is, did</p> <p>2 anybody ever tell Mr. Lewis, to your knowledge, before the</p> <p>3 accident happened, about this new term? Was that language</p> <p>4 ever sent to him in any form? Can you show me where the</p> <p>5 word --</p> <p>6 A His policy --</p> <p>7 Q -- "new term" -- Please, for our court reporter.</p> <p>8 Show me where the word "new term" was ever</p> <p>9 conveyed to Mr. Lewis, show me those words anywhere before</p> <p>10 the accident happened.</p> <p>11 A The term that was prior to this term, where the</p> <p>12 accident occurred, there was a lapse in between that period</p> <p>13 of time as well. So he had made a payment late, the next</p> <p>14 term was issued with the lapse in coverage. So he was</p> <p>15 aware, as far as the procedure goes, if the payment was not</p> <p>16 received in a timely manner, that the new term would be</p> <p>17 issued with the effective date of the receipt.</p> <p>18 Q You're assuming he was aware, he had gone through</p> <p>19 all this with a fine-tooth comb and understood --</p> <p>20 A A new declaration page and ID was issued with</p> <p>21 those term dates, showing him that it did not carry on.</p> <p>22 Q Then again, you're assuming he went through all</p> <p>23 that and appreciated what it said, right?</p> <p>24 MR. DOUGLAS: Objection. That calls for</p> <p>25 speculation, counsel.</p>

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<p>1 MR. SAMPSON: She's the one speculated. I'm</p> <p>2 trying to find out how she got there.</p> <p>3 MR. DOUGLAS: No, she's not. She's answering</p> <p>4 your questions, and you continue to ask the same, you want</p> <p>5 to go round and round and round. And it's, I mean, you can</p> <p>6 do it but...</p> <p>7 MR. SAMPSON: Boy, at some point in time, you</p> <p>8 really need to make an objection.</p> <p>9 MR. DOUGLAS: Yeah. Asked and answered, counsel.</p> <p>10 MR. SAMPSON: Okay. Good.</p> <p>11 Q (By Mr. Sampson) Do you need the question read</p> <p>12 back?</p> <p>13 A Uh-huh.</p> <p>14 MR. DOUGLAS: Was there a pending question, even?</p> <p>15 MR. SAMPSON: There was, before you interrupted</p> <p>16 me. We'll see how far I got.</p> <p>17 (The requested portion of the transcript was read</p> <p>18 by the court reporter as follows:</p> <p>19 "Question: No, that's not the question. The</p> <p>20 question was can you show me in any of the renewal notices</p> <p>21 where this, where we're going to write you a new term to</p> <p>22 your existing policy, the language you guys are using today</p> <p>23 to try to explain what the word "renewal" means, can you</p> <p>24 show me that anywhere in the documents that were sent to</p> <p>25 Mr. Lewis before the accident happened?</p>	<p>1 different manner than another person, which means that they</p> <p>2 might see the sky as green. So that answer is a fair</p> <p>3 answer. Just because you think it's an incorrect answer,</p> <p>4 does not make it so.</p> <p>5 So I think she's answering the question. If you</p> <p>6 feel the need to ask her again, you know what, we can go</p> <p>7 back and we'll count for Judge Foley how many times you've</p> <p>8 asked vague and ambiguous legal conclusions of this witness.</p> <p>9 MR. SAMPSON: I'll ask you to listen more</p> <p>10 carefully this time. Please, just humor me. Listen more</p> <p>11 carefully.</p> <p>12 MR. DOUGLAS: Sure.</p> <p>13 MR. SAMPSON: I'm not talking about eye</p> <p>14 astigmatisms. The question, "Is the sky blue" --</p> <p>15 MR. DOUGLAS: But --</p> <p>16 MR. SAMPSON: Don't talk. You're not listening.</p> <p>17 You're not paying attention. I'm not asking you any</p> <p>18 questions.</p> <p>19 "Is the sky blue," and the answer given is, "The</p> <p>20 grass is green." I don't care what's wrong with someone's</p> <p>21 eyes, that's a nonresponsive answer. And if you disagree,</p> <p>22 then you need to --</p> <p>23 MR. DOUGLAS: You know what? I'm not going to</p> <p>24 argue, counsel, because it's pointless. Let's get on with</p> <p>25 the deposition, counsel.</p>
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<p>1 "Answer: It references here giving him the</p> <p>2 proposal on the effective dates of the policy showing on the</p> <p>3 renewal offer that's here that these are going to be the</p> <p>4 dates that it's issued, but in order to avoid a lapse,</p> <p>5 payment must be received by this date."</p> <p>6 MR. DOUGLAS: So she gave you an answer to your</p> <p>7 question.</p> <p>8 MR. SAMPSON: No, she didn't.</p> <p>9 MR. DOUGLAS: Yes, she did, counsel.</p> <p>10 MR. SAMPSON: If I say, "Is the sky blue," and</p> <p>11 she says, "The grass is green," that's not an answer to my</p> <p>12 question.</p> <p>13 MR. DOUGLAS: Sure it is. Yes, it is.</p> <p>14 MR. SAMPSON: I'm glad that's on the record</p> <p>15 because we'll take that before Judge Foley. And I think</p> <p>16 we've got a good chance of getting you disqualified as</p> <p>17 counsel if you really think your witnesses are allowed to do</p> <p>18 that. They are not allowed to completely change the</p> <p>19 question.</p> <p>20 MR. DOUGLAS: She didn't change the question.</p> <p>21 I'll tell you, I'll explain it to you right now on the</p> <p>22 record.</p> <p>23 You don't know, this hypothetical, to use yours,</p> <p>24 you don't know if a person has some kind of eye disease or</p> <p>25 myopia where it causes them to see light refracting in a</p>	<p>1 MR. SAMPSON: Let's do this. This is my last</p> <p>2 question.</p> <p>3 MR. DOUGLAS: Okay.</p> <p>4 MR. SAMPSON: I've asked the witness to show me</p> <p>5 any communications where the word "new policy" or "new term"</p> <p>6 or any of the words that we're using now to describe what</p> <p>7 the word "renewal" meant were ever conveyed to Mr. Lewis.</p> <p>8 No one's pointed me to any such language in any of the</p> <p>9 documents in front of us. If you're able to do so, point me</p> <p>10 to the language and say here it is.</p> <p>11 Can you do that or not?</p> <p>12 MR. DOUGLAS: I'll just object. It's asked and</p> <p>13 answered several times. I think it also misstates</p> <p>14 testimony.</p> <p>15 You can go ahead and try, take a, or the 15th</p> <p>16 crack at it, counsel.</p> <p>17 THE WITNESS: You're looking to where it says</p> <p>18 "term" on here?</p> <p>19 Q (By Mr. Sampson) Just put your fingers on the</p> <p>20 words, if they are there anywhere.</p> <p>21 A Specific "new term."</p> <p>22 Q Right.</p> <p>23 A Those two words?</p> <p>24 Q Any of the words you're using now to describe</p> <p>25 what the word "renewal" means.</p>

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<p>1 MR. DOUGLAS: Objection. Again,</p> <p>2 mischaracterizing testimony.</p> <p>3 Q (By Mr. Sampson) Put your finger on the words.</p> <p>4 That's all I need. Can you do that?</p> <p>5 A I've answered to show you how the renewal offer</p> <p>6 is, how the terms are, the new dec page that's generated to</p> <p>7 him that, when the payment is not received. You want me to</p> <p>8 find a word "term" is what you're asking me on this policy.</p> <p>9 There's not a word "term" on this policy.</p> <p>10 I'm explaining to you what this document states.</p> <p>11 And when a policy is issued based on when a payment is</p> <p>12 received, that that term is issued showing the revised</p> <p>13 dates, as far as the payment receipt goes.</p> <p>14 I've showed you that. I'm answering you based on</p> <p>15 how the documents themselves are stated, due by this date,</p> <p>16 if not received, lapse in coverage. Payments received,</p> <p>17 here's a receipt showing that, a new dec page, which isn't</p> <p>18 attached, showing a new dec page with that term and ID card.</p> <p>19 Q Are you done? I was waiting for you to put your</p> <p>20 finger on the words, and I've not -- let the record reflect</p> <p>21 that didn't happen, so if you're done with the answer, I'm</p> <p>22 done with my questions.</p> <p>23 MR. DOUGLAS: Just one quick follow-up, then.</p> <p>24</p> <p>25</p>	<p>1 FURTHER EXAMINATION</p> <p>2 BY MR. SAMPSON:</p> <p>3 Q So when someone says, hey, this document says I</p> <p>4 can pay before the expiration date, the only expiration date</p> <p>5 on the whole page is right here, a month later. Can you see</p> <p>6 where someone --</p> <p>7 A Right under effective date is a future date.</p> <p>8 Q Right, right. Exactly.</p> <p>9 A So renewal offer giving these dates shows that</p> <p>10 this is going to be the next term if the payment is</p> <p>11 received.</p> <p>12 Q Do you think someone would have a problem</p> <p>13 thinking when this document says expiration date here and</p> <p>14 here --</p> <p>15 A So what you're telling --</p> <p>16 Q -- they mean the same thing?</p> <p>17 A So what you're telling me is even though I know I</p> <p>18 paid my current term and it's telling me that \$134 is due by</p> <p>19 this date, I don't have to pay for a whole other month?</p> <p>20 Q Correct. Can you see where it says to avoid a</p> <p>21 lapse, we want it by this date, but to avoid a lapse --</p> <p>22 A You're telling me that's common sense?</p> <p>23 Q We want the payment by this date, but to avoid a</p> <p>24 lapse, you've got to pay before the expiration date. And</p> <p>25 the only expiration date on the whole dang page, is this</p>
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<p>1 FURTHER EXAMINATION</p> <p>2 BY MR. DOUGLAS:</p> <p>3 Q Obviously a new term, in common parlance, with</p> <p>4 showing a new effective date and a new expiration date, is</p> <p>5 that a reasonable conclusion that an insured can make on his</p> <p>6 own --</p> <p>7 A Yes.</p> <p>8 Q -- a policyholder?</p> <p>9 Sure.</p> <p>10 MR. SAMPSON: Well, now that counsel says you can</p> <p>11 make conclusions about what policyholders would think,</p> <p>12 that's wonderful.</p> <p>13 MR. DOUGLAS: You asked her --</p> <p>14 MR. SAMPSON: Yeah. You also said it was</p> <p>15 improper, so I moved away. But now that you've said it is</p> <p>16 proper --</p> <p>17 MR. DOUGLAS: I don't think I --</p> <p>18 MR. SAMPSON: You just asked her to do it.</p> <p>19 MR. DOUGLAS: You asked her to do it, so why</p> <p>20 can't I?</p> <p>21 MR. SAMPSON: You said it was improper. I agree</p> <p>22 with you. I thought it was proper, that's why I asked her.</p> <p>23 You told me it wasn't, then you went and did the exact same</p> <p>24 thing.</p> <p>25</p>	<p>1 one. Don't you think it's fair to --</p> <p>2 A Why would I go with that day when I have a no</p> <p>3 later due date that is starred around saying you must pay no</p> <p>4 later than this date, with a due date here, when this</p> <p>5 clearly states a whole other month in advance?</p> <p>6 Q Well, maybe because in prior policies, they did</p> <p>7 the same dang thing. You say we want the payment here, but</p> <p>8 to avoid a lapse, you've got to pay by the expiration date,</p> <p>9 which you said was back in the end of April.</p> <p>10 MR. DOUGLAS: Are you referring to the revised</p> <p>11 renewal statement?</p> <p>12 MR. SAMPSON: Absolutely.</p> <p>13 MR. DOUGLAS: She's already gone over that.</p> <p>14 Q (By Mr. Sampson) Okay. You just got done telling</p> <p>15 me why would someone think that, and I'm showing you because</p> <p>16 that's exactly what it says. There's a different date.</p> <p>17 MR. DOUGLAS: Are you talking about the revised</p> <p>18 renewal date?</p> <p>19 MR. SAMPSON: Absolutely.</p> <p>20 MR. DOUGLAS: Yeah, but it's still...</p> <p>21 THE WITNESS: I'm referencing the no-later-than</p> <p>22 due date.</p> <p>23 Q (By Mr. Sampson) Sure. No later than 5/6 but pay</p> <p>24 by the expiration date, which you said meant April 29th.</p> <p>25 A I didn't say that.</p>

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<p>1 Q That's what you told me, expiration means the</p> <p>2 expiration of the prior policy.</p> <p>3 A No, I didn't. I said the prior policy, the</p> <p>4 current policy, not this expiration date. This is the</p> <p>5 renewal offer showing the next term, which is in the future.</p> <p>6 Q So if this starts effective April 28th and 29th,</p> <p>7 then the expiration date is April 28th.</p> <p>8 A For the term that is being offered.</p> <p>9 Q No, for the prior term. The expiration date</p> <p>10 would be the day before the new effective date?</p> <p>11 A This is -</p> <p>12 Q You can look at it right in Exhibit 1.</p> <p>13 A Okay.</p> <p>14 Q Okay. April 29th. Okay? The expiration date of</p> <p>15 the prior policy is April 29th. Tell the client, you the</p> <p>16 customer, pay by 5/6. And if you pay before the expiration</p> <p>17 date, you won't have a lapse. Why would they think, if I</p> <p>18 don't have to pay until this date, why would I have to pay</p> <p>19 earlier to avoid a lapse? That makes no sense at all.</p> <p>20 A Once again, it's a revised renewal offer. He was</p> <p>21 sent a prior renewal offer. This one was only sent revised</p> <p>22 because of an endorsement he did on his policy.</p> <p>23 Q I understand that, but the bottom line is that</p> <p>24 when you tell a client something and they read it and they</p> <p>25 go, they want payment by the 6th and if I pay before the</p>	<p>1 MR. SAMPSON: I'm done.</p> <p>2 MR. DOUGLAS: Okay.</p> <p>3 (4:28 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 expiration date, with no indication of what that is, other</p> <p>2 than the letter itself says expiration date is May 29th,</p> <p>3 then I've got until May 29th. And if the letter comes out</p> <p>4 on June 30th and says pay before the expiration date and the</p> <p>5 only expiration date on the whole letter is July 31st, then</p> <p>6 I've got until July 31st.</p> <p>7 Don't you see how a layperson, not familiar with</p> <p>8 the nuances of insurance, would think that?</p> <p>9 MR. DOUGLAS: You know, this has gone on for a</p> <p>10 long time. I'm going to have to object to this one that</p> <p>11 that question is vague. You've referred to three different</p> <p>12 exhibits, three different dates. It's asked and answered.</p> <p>13 It misstates testimony.</p> <p>14 To the extent that you respond to that, go ahead.</p> <p>15 THE WITNESS: We've gone over it. I've answered</p> <p>16 it. You can clearly see that there was a due date on the</p> <p>17 policy.</p> <p>18 Q (By Mr. Sampson) You can clearly see there's an</p> <p>19 expiration date, too, can't you?</p> <p>20 A For the renewal offer.</p> <p>21 MR. SAMPSON: Okay. That's all.</p> <p>22 MR. DOUGLAS: You done?</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 STATE OF ARIZONA)</p> <p>2) ss:</p> <p>3 COUNTY OF MARICOPA)</p> <p>4 BE IT KNOWN that the foregoing deposition was</p> <p>5 taken before me, SANDRA L. MUNTER, a Certified Reporter for</p> <p>6 the State of Arizona; that the witness before testifying was</p> <p>7 duly sworn by me to testify to the whole truth; that the</p> <p>8 questions propounded by counsel and the answers of the</p> <p>9 witness thereto were taken down by me in shorthand and</p> <p>10 thereafter transcribed either by me or under my direction;</p> <p>11 that the foregoing pages are a true and accurate transcript</p> <p>12 of all proceedings had upon the taking of said deposition,</p> <p>13 all to the best of my skill and ability.</p> <p>14 (X) Pursuant to request, notification was provided</p> <p>15 that the deposition is available for review and signature.</p> <p>16 () Review and signature was waived.</p> <p>17 I FURTHER CERTIFY that I am in no way related to</p> <p>18 any of the parties hereto, nor am I in any way interested in</p> <p>19 the outcome hereof.</p> <p>20 DATED at Phoenix, Arizona, this 10th day of</p> <p>21 August, 2010.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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CERTIFICATE OF DANICE DAVIS

PAGE	LINE	CHANGE	REASON
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I, Danice Davis, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

Danice Davis, Deponent

Subscribed and sworn to before me this _____ day of _____,
2010.

Notary Public

1 STATE OF ARIZONA)

2) ss:

3 COUNTY OF MARICOPA)

4 BE IT KNOWN that the foregoing deposition was
5 taken before me, SANDRA L. MUNTER, a Certified Reporter for
6 the State of Arizona; that the witness before testifying was
7 duly sworn by me to testify to the whole truth; that the
8 questions propounded by counsel and the answers of the
9 witness thereto were taken down by me in shorthand and
10 thereafter transcribed either by me or under my direction;
11 that the foregoing pages are a true and accurate transcript
12 of all proceedings had upon the taking of said deposition,
13 all to the best of my skill and ability.


14 (X) Pursuant to request, notification was provided
15 that the deposition is available for review and signature.

16 () Review and signature was waived.

17 I FURTHER CERTIFY that I am in no way related to
18 any of the parties hereto, nor am I in any way interested in
19 the outcome hereof.

20 DATED at Phoenix, Arizona, this 10th day of

21 August, 2010.

22 
23 _____
24 SANDRA L. MUNTER, RPR/CSR
25 Certified Reporter
Certificate No. 50348

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Danice Davis - July 28, 2010
Nalder vs. United Automobile Insurance Company

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		8 8 84:21 90:19 91:19 95:16 111:14 120:15,18 8th 120:23 85016 1:24 85260 4:4 8800 4:3 89 3:18 101:24 89102 4:14	

EXHIBIT G. Nevada Evidence of Motor Vehicle Liability Cards

UAI NEVADA AUTOMOBILE INSURANCE CARD
United Automobile Insurance Company
P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631

INSURED:
GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENCY:
US AUTO INS AGENCY, INC.

Policy Number:	Effective Date	TO	Expiration Date
14 NVA - 020021926	6/30/07	7/31/07	
Year/Make/Model		VIN	
96 CHEV PICKUP1500		1GCEC19M6TE214944	

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

UAI NEVADA AUTOMOBILE INSURANCE CARD
United Automobile Insurance Company
P.O. BOX 15007, LAS VEGAS, NV 89114-5007 (866) 209-4163 Fax (866) 209-9631

INSURED:
GARY S LEWIS
5049 SPENCER ST D
LAS VEGAS, NV 89119

AGENCY:
US AUTO INS AGENCY, INC.

Policy Number:	Effective Date	TO	Expiration Date
14 NVA - 020021926	6/30/07	7/31/07	
Year/Make/Model		VIN	
96 CHEV PICKUP1500		1GCEC19M6TE214944	

THIS CARD MUST BE CARRIED IN THE INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND

The drivers listed below are on this policy:

Driver Name	Driver's License Number
1 GARY S LEWIS	1701866927
2 KRISTEN AMY SCOTT	2102503674

The drivers listed below are on this policy:

Driver Name	Driver's License Number
1 GARY S LEWIS	1701866927
2 KRISTEN AMY SCOTT	2102503674

This card has been approved by the Commissioner of Insurance**This card has been approved by the Commissioner of Insurance****In the event of an accident or loss:**

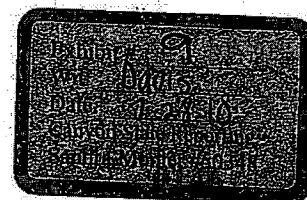
- ✓ Help any injured.
- ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- ✓ Protect your auto and any property from further damage.
- ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- ✓ Notify your claims service center toll free at (866)-209-9417.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185

In the event of an accident or loss:

- ✓ Help any injured.
- ✓ Get names, addresses, auto license plates numbers of persons involved, including all witnesses.
- ✓ Do not admit fault. Do not discuss an accident with anyone except the police or our representative.
- ✓ Protect your auto and any property from further damage.
- ✓ Always call the police. In case of a "Hit-and-Run" you must report the accident to the police within 24 hours.
- ✓ Notify your claims service center toll free at (866)-209-9417.

COVERAGE UNDER THE POLICY NOTED ON THIS CARD MEETS THE REQUIREMENTS SET FORTH IN NRS 485.185



Display Notes Claim 0006000455 Claimant 000 for Coverage

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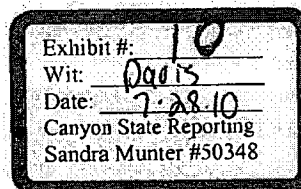
Note Records for -000 Coverage

Note Detail

ADD NOTE

Date/Time User

*****REPORT ONLY*****	10/10/2007 13:52:43	
10/10/07 GSMOLINA DISCUSS FILE WITH MANNY AND WE DECIDED TO OPEN CLAIM	10/10/2007 13:52:43	
DUE TO SEVERITY OF THIS CLAIM AND HAVING TWO LAW FIRMS REPRESENTING	10/10/2007 13:52:43	
CLAIMANT.	10/10/2007 13:52:43	
THIS LOSS HAPPENED ON 7/8/2007	10/10/2007 13:52:43	
*****REPORT ONLY*****	10/10/2007 13:52:43	
*****	10/10/2007 13:52:43	
%*****%	10/10/2007 13:52:43	
Company:14,Pol prefix:NVA ,Pol no.:030021926	10/10/2007 13:52:43	
Pol eff dte:07/10/07 Pol exp dte:08/10/07 Loss of date:07/08/07	10/10/2007 13:52:43	
Unit#:001 96 CHEV PICKUP1500 Active Add date:07/10/07	10/10/2007 13:52:43	
No Lienholder information is available	10/10/2007 13:52:43	
del date: Vin Number :1GCEC19M6TE214944	10/10/2007 13:52:43	
BI : 15/30 PD : 10	10/10/2007 13:52:43	
Unit#:002 94 FORD RANGER Active Add date:07/10/07	10/10/2007 13:52:43	
No Lienholder Information is available	10/10/2007 13:52:43	
del date: Vin Number :1FTCR10UXRPC26207	10/10/2007 13:52:43	
BI : 15/30 PD : 10	10/10/2007 13:52:43	
Drv#:001 GARY S LEWIS Eff date:07/10/07 Del date:	10/10/2007 13:52:43	
Active/*****/Principle D.O.B :04/28/74 Occup:PLUMBER	10/10/2007 13:52:43	
License#:1701866927 Lic date:02/29/04	10/10/2007 13:52:43	
Drv#:002 KRISTEN AMY SCOTT Eff date:07/10/07 Del date:	10/10/2007 13:52:43	
Active/*****/Principle D.O.B :09/16/76 Occup:ACCOUNT RECEIVABLE	10/10/2007 13:52:43	
License#:2102503674 Lic date:02/29/04	10/10/2007 13:52:43	
%*****%	10/10/2007 13:52:43	
10/10/2007 mardova @ 12:38pm Reviewed all facts of this claim and verafied	10/10/2007 15:36:13	MCORDO
with Lisa in underwriting that policy lapsed 06/30/2007 and reinstated	10/10/2007 15:36:13	MCORDO
on 07/10/2007 two days after the loss. receipt of payment submission in	10/10/2007 15:36:13	MCORDO
scan along with a copy of the money oredr the insured used to purchase the	10/10/2007 15:38:38	MCORDO
	10/10/2007	MCORDO



0147

Display Notes Claim 0006000455 Claimant 000 for Coverage

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insurance. Claimant presenting the claim is represented by two attorneys. Seegmiller & Associates and Christensen Law Offices. Sent denials to both claimants with copies of both decision pages. Denials were sent via fax and by mail. Each decision page has the high litigated effective and expiration date. Sent copies of fax confirmations to claimant.

*****DENIAL*****

11/01/2007 mardova @ 11:28am Read letter from Christensen law office wanting us to provide them with our insured information. I replied with letter advising I could only provide info that would be public record such as police report. Sent confirming letter via fax and by mail. Sent letter to claimant. Also mailed another copy of denial. Claimant attorney suing our insured but we will not provide coverage as our insured policy was lapsed.

Add New Note

07/21/2009 JCOOK

15:38:38	
10/10/2007	MCORDO
15:38:38	
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11/01/2007	MCORDO
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11/01/2007	MCORDO
14:29:51	
11/01/2007	MCORDO
14:29:51	

ADD NEW

“EXHIBIT 5”

In the Matter of:

*Nalder v.
United Automobile Insurance Co.*

*Manny Cordova
August 3, 2010*

*Western Reporting Services, Inc.
500 South Rancho Drive, Suite 8A
Las Vegas, Nevada 89106
Telephone: 702-474-6255*

Original File 080310Cordova.txt, Pages 1-119

Word Index included with this Min-U-Script®

Page 1	Page 3
<p>[1] UNITED STATES DISTRICT COURT [2] FOR THE DISTRICT OF NEVADA [3] * * * * *</p> <p>[4] JAMES NALDER, Guardian Ad) [5] Litem for minor Cheyanne) [6] Nalder, real party in) Case No. [7] interest, and GARY LEWIS,) 2:09-cv-1348 [8] Individually,) [9] Plaintiffs,) [10] vs.) [11] UNITED AUTOMOBILE INSURANCE) [12] CO., DOES I through V, and) [13] ROE CORPORATIONS I through) [14] V, inclusive,) [15] Defendants.) [16]</p> <p>[17] DEPOSITION OF MANNY CORDOVA [18] Taken on Tuesday, August 3, 2010 [19] At 2:04 p.m. [20] At 1000 South Valley View Boulevard [21] Las Vegas, Nevada 89107 [22] [23] [24] [25] Reported by: Sarah Safier, CCR No. 808</p>	<p>[1] (NRCF Rule 30(b)(4) or FRCP Rule 30(b)(5), [2] as applicable, was waived by the parties.) [3] Whereupon -- [4] MANNY CORDOVA, having been first duly sworn [5] to tell the truth, the whole truth and nothing but [6] the truth, was examined and testified as follows: [7] * * * * *</p> <p>[8] EXAMINATION [9] BY MR. SAMPSON: [10] Q Sir, would you state your name and spell [11] your last name for our record? [12] A Sure. Manny Cordova or Manuel Cordova. [13] Last name is C-o-r-d -- as in delta -- o-v -- as in [14] Victor -- a. [15] Q Have you ever had your deposition taken [16] before? [17] A Yes. [18] Q Approximately how many times? [19] A Five to seven times. [20] Q When is the last time you were deposed? [21] A About six months ago. [22] Q And what was that case involving? [23] A A lawsuit with Caesars Palace. [24] Q I'm sorry? [25] A A lawsuit with Caesars Palace.</p>

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APPEARANCES:

For the Plaintiff: DAVID F. SAMPSON, ESQ.
Christensen Law Offices, LLC
1000 South Valley View Boulevard
Las Vegas, Nevada 89107

For the Defendant: MATTHEW J. DOUGLAS, ESQ.
Atkin Winner & Sherrod
1117 South Rancho Drive
Las Vegas, Nevada 89102

I N D E X

Page

MANNY CORDOVA

Examination By Mr. Sampson

3

PLAINTIFF'S EXHIBITS MARKED FOR IDENTIFICATION

No.	Description	Page
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1	UAIC's Claim File to be provided by witness after completion of transcript to be attached	
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DEFENDANT'S EXHIBITS MARKED FOR IDENTIFICATION

No.	Description	Page
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A.	UAIC's Claim File provided by Mr. Sampson	65
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Q Can you give me a little bit of the details?

A Yeah, let me correct that. It was a lawsuit
with a firm by the name of IPC, who performed
security at Forum Shops, but they were also named in
the lawsuit.

Q Were you testifying as a witness, like an
eyewitness?

A I was one of the two plaintiffs.

Q All right, okay.

The other times you have testified, give me
just a brief rundown as to what that's been
involving, whether it be plaintiff, defense or --

A Insurance matters, where I was an adjuster
and there were cases that would come up and mandatory
settlement conferences, that sort of thing.

Q Let me go through a couple of things to make
things go a little easier today. You probably are
familiar with a lot of this, but just to cover our
bases.

You understand you have taken an oath to
tell the truth and that oath carries with it the same
requirement that you testify truthfully when you give
your testimony today.

A Yes.

Q You understand your answers must all be

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[1] audible?

[2] **A** Yes.

[3] **Q** If I ask you, if you say yep or uh-huh or

[4] nod or sometimes just with your eyes you can tell me

[5] the answer is affirmative, I may ask you, is that a

[6] yes or is that a no?

[7] Also from time to time, one thing I notice

[8] is I'll ask someone -- well, I'll ask you a question

[9] and your answer may be no, indicating that what I

[10] said is actually correct and so I may clarify, is

[11] what I said correct or not? And I will just have you

[12] clarify.

[13] If you say, went like this, went like that,

[14] move your hand around, I'll ask you to describe what

[15] you're doing so that we have a clear record.

[16] You're doing a very good job of being very

[17] patient when I ramble on with the things I'm saying

[18] in these admonitions. I'll ask you to keep being

[19] patient, and when I'm asking you questions, just wait

[20] until my question is done. I will do my best to wait

[21] until your answer is done before I ask my next

[22] question.

[23] If, for some reason, I slip or if I think

[24] your answer is done, but it really wasn't, I want you

[25] to tell me that and I don't want you to just sit

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[1] there and be quiet if I've interrupted you. Tell me,

[2] Mr. Sampson, you've interrupted me or, hey, you've

[3] interrupted me, whatever, so that I make sure you

[4] have a chance to give a full answer to the questions

[5] I ask. Do you understand all of that?

[6] **A** Yes.

[7] **Q** Do you have any questions about the process

[8] before we begin?

[9] **A** No.

[10] **Q** I noticed you came in today with

[11] Mr. Douglas. Are you currently represented by

[12] counsel in this matter?

[13] **A** No.

[14] **Q** Did you -- then tell me about the

[15] communications you've had with Mr. Douglas, if any,

[16] as it relates to this case. If you talked about your

[17] favorite basketball team or whatever else, I don't

[18] care, but as it relates to the case.

[19] **MR. DOUGLAS:** And I will just object for the

[20] record too. That calls for attorney/client

[21] privilege.

[22] **THE WITNESS:** I haven't spoken about the

[23] facts of the case, no. I was advised that I was

[24] going to be deposed on a claim that I handled or that

[25] I was involved in when I was employed with UAIC.

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[1] **BY MR. SAMPSON:**

[2] **Q** How many times have you met with

[3] Mr. Douglas?

[4] **A** This is the first time we've ever met.

[5] **Q** Where did you meet today?

[6] **A** At his office.

[7] **Q** When was that, approximately?

[8] **A** About 12, 12:15, right in there.

[9] **Q** And so then from 12 until now, what did the

[10] two of you do? Just give me a brief summary. If you

[11] say, we went to lunch, didn't talk about the case, I

[12] mean, just a brief thumbnail sketch of what's going

[13] on.

[14] **A** I waited for him for some time in the lobby

[15] of his office, and then went, had lunch before we

[16] came here.

[17] **Q** And have there been any discussions about

[18] anticipated questions, any advice given on the

[19] deposition process itself or anything along those

[20] lines at all?

[21] **A** He asked me if I was familiar with the case

[22] and if I had had the opportunity to review any notes.

[23] I said I had not. And then we had lunch. He had

[24] asked me some very similar questions, if I had ever

[25] been deposed, I said I had. And that was about it,

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[1] nothing specific.

[2] **Q** Anything else in terms of your conversation

[3] as it relates to the fact of you being deposed or to

[4] the facts of the case?

[5] **A** No.

[6] **Q** Have you reviewed any documents in preparing

[7] to testify in this case?

[8] **A** No, sir.

[9] **Q** How long ago did you first learn you were

[10] going to be asked to testify in this case?

[11] **A** I'm just spitballing here, but I think about

[12] three or four months ago.

[13] **Q** When you first got the deposition -- well, I

[14] don't want to put words in your mouth actually. How

[15] did you first find out that you were going to be

[16] deposed in this case?

[17] **A** I received a phone call from Janet Cook, my

[18] former boss, manager.

[19] **Q** What was said?

[20] **A** She said there's a claim -- I'm

[21] paraphrasing. She said there was a claim, that it's

[22] in litigation and there was a likelihood that I would

[23] be deposed.

[24] **Q** Anything beyond that?

[25] **A** Again, I'm just kind of recreating the

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[1] conversation.

[2] Q Absolutely.

[3] A What's the case about, someone got run over

[4] by a car. I said, well, what's the deal? Well,

[5] there was no coverage at the time of the accident.

[6] You were the adjuster on it. More than likely you're

[7] going to be deposed on it. I said, okay, well, let

[8] me know. If you want, go ahead and send me the claim

[9] notes and I will review them if you want before we go

[10] into deposition, which she did, although I never

[11] reviewed them.

[12] Q You were sent the claim notes?

[13] A That is correct.

[14] Q But you never reviewed them?

[15] A No, I did not.

[16] Q Anything else about the details, anything

[17] else about the conversation you had with Janet Cook

[18] that you identified a moment ago?

[19] A Not that I can recall.

[20] Q At any point in time other than you said it

[21] involves someone -- did you say run over by a truck?

[22] I can't remember what words you said a second ago.

[23] A Run over by a truck or hit by a truck,

[24] something to that effect.

[25] Q Other than those sketchy details involving a

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[1] will just tell you the first thing that ran through

[2] my head was I don't have time for this bullshit, set

[3] it aside, and that was about it and I haven't looked

[4] at them.

[5] Q And you never did pick them up ever since,

[6] am I correct?

[7] A I picked up the envelope, in all fairness,

[8] but I have not looked at them, no. They're back in

[9] the envelope on my dining room table or in my office.

[10] Q Can you provide whatever was given to you to

[11] the court reporter at some subsequent date, in the

[12] next couple of weeks and we can attach that as an

[13] exhibit to your deposition, would that be okay?

[14] A Sure.

[15] Q You have them all still, they're all still

[16] in the envelope, correct?

[17] A Yes.

[18] Q And you have told me you received them,

[19] looked at the first page, put them back in the

[20] envelope and you haven't looked at any of the

[21] documents since then, correct?

[22] A Yes.

[23] Q So the documents, as they sit right now in

[24] your home, are in the -- to the best of your

[25] understanding, are in the same condition and contain

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[1] truck and there was no coverage, Ms. Cook told you

[2] there was no coverage at the time you handled the

[3] claim, correct?

[4] A Uh-huh.

[5] Q Am I correct?

[6] A Yes.

[7] Q Anything else you remember being told by

[8] Janet Cook as it relates to this action?

[9] A No, I do not.

[10] Q Any other communications that you've had

[11] with anyone at UAIC related to this case or the fact

[12] that you may be called to testify?

[13] A No, sir.

[14] Q The claim notes, you said the claim notes

[15] were sent to you. Did you receive them?

[16] A Yes, I did receive them.

[17] Q But you never looked at them, is that

[18] correct?

[19] A I opened up -- they were sent to me either

[20] by way of UPS or FedEx, I don't remember exactly. I

[21] believe it was UPS. I opened up the envelope. The

[22] envelope was about yea thick of claim notes.

[23] Q Now, yea is about what?

[24] A Yea is about two inches, about two inches or

[25] three inches, and I looked at the first page and I

Page 12

[1] the same information that was sent to you initially

[2] from UAIC, is that correct?

[3] A That is correct.

[4] If I can add something, if you wouldn't

[5] mind, that's coming off the tail of our conversation

[6] where you had asked me if I had spoken in-depth about

[7] the claim with anyone, you know, or with Jan, I think

[8] was your question, and I said no, and I think that's

[9] what ended our conversation so quickly. I said, send

[10] me the claim notes, and I never --

[11] Q So she may have made some attempt to fill

[12] you in on more detail and you just said, send me the

[13] claim notes?

[14] A It's my belief, and it's just a belief, that

[15] she probably wanted to discuss it, although there's

[16] eight hours in a day, unfortunately, and I'm always

[17] running about two hours back. So, you know, send it

[18] to me in writing and I will take a look at it.

[19] Unfortunately, I never had an opportunity to take a

[20] look at it.

[21] Q Any other materials that you received

[22] related to this case or the fact that you'd be giving

[23] a deposition other than maybe your deposition notice

[24] or a subpoena or anything like that?

[25] A No, sir.

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[1] Q Any other conversations that you've had with
[2] anyone at UAIC other than what you've identified
[3] already today so far?
[4] A No, sir.
[5] Q To your knowledge, has anyone from UAIC
[6] tried to contact you as it relates to this claim
[7] other than what you have identified today?
[8] A No, sir.
[9] Q Walk me through your background. I would
[10] like to go through education. Why don't you start
[11] with high school, from that point forward. Let's do
[12] education first, please.
[13] A Okay. I went to high school in Pasadena,
[14] California. Before that, I went to middle school, I
[15] guess, in Monterey Park, California. I went to high
[16] school in Pasadena, California. I graduated, it was
[17] '88 or '89, whatever it was, it was a year early.
[18] From there, I went to UCLA for two years,
[19] started up a business in our marketing class there,
[20] and the business turned out to be fairly successful.
[21] I left college two years into the deal, ran
[22] the business for four or five years before I sold it
[23] to a Canadian company. This was back in '93, '94.
[24] So I was a fairly young man with a whole lot of
[25] money, which is a dangerous combination. Ultimately,

[1] resemble very much, by the way, and went out there
[2] and lived in Santa Barbara, California, the hard
[3] life, for about four years before I married a realtor
[4] who lived out here in Vegas.
[5] I was buying investment property out here in
[6] Las Vegas and ended up marrying my realtor. It
[7] lasted a whopping three months, and after that was
[8] all over with, I made my residency here.
[9] Upon making my residency here, I worked for
[10] a company by the name of -- give me a second, the
[11] name escapes me -- Primero Insurance Company for
[12] about a year, maybe just under a year. No more than
[13] a year. Maybe eight months, right in there, I'm not
[14] sure.
[15] Then I went to work for a company by the
[16] name of Custard Insurance Adjusters, again a
[17] third-party administrator, before working for United
[18] Automobile Insurance Company.
[19] And here I am.
[20] Q Are you currently employed with UAIC?
[21] A No, I'm not.
[22] Q Let's -- let me go through -- and I
[23] appreciate, by the way, all the information you
[24] provided. I do want to follow up on some specifics
[25] and I won't go through everything you just told me,

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[1] pardon the expression, I pissed it away.
[2] I went to work in the insurance industry
[3] because I needed a job at that point, started selling
[4] insurance for a company by the name of Survival
[5] Insurance in the early '90s, I think. '91, '92,
[6] something like that. It was a high volume, high risk
[7] insurance agency, you know, substandard kind of
[8] driving records. I sold insurance for the better
[9] part of, again, just off the top of my head, three or
[10] four years before I moved into underwriting,
[11] marketing and eventually claims.
[12] I stayed with that company for quite some
[13] time and then bounced around to some different
[14] insurance brokerages, kind of taking my expertise and
[15] what I had learned there and applying that to other
[16] positions. I eventually started working in claims.
[17] Some time in the year '99 or 2000, I don't
[18] remember to be exact, worked for a company by the
[19] name of David Morris & Associates, a big third-party
[20] TPA, third-party administrator in California, worked
[21] for them for several years before I was contacted by
[22] the vice president of Fidelity National Financial,
[23] who was opening an insurance company and asked me to
[24] come help him open the insurance company, a gentleman
[25] by the name of Mark Davie and Paul Davie, whom you

[1] but my next question was related to your educational
[2] background.
[3] So what was the name of the high school in
[4] Pasadena?
[5] A Marianne Frostig.
[6] Q And you said you graduated '88 or '89,
[7] you're not sure, but it was a year early, I'm
[8] assuming --
[9] A I believe it was '89.
[10] Q And -- well, what's your date of birth?
[11] A August 26, '71.
[12] Q And so you believe your graduation was
[13] likely in '89, but whatever it was, it was a year
[14] prior to when you were scheduled to graduate via your
[15] age, is that a safe way to put it?
[16] A That is correct, yes. I confused the two
[17] because I got a graduation present, which was a
[18] vehicle, and the car was an '89. So I remember the
[19] car was very new, so it may have come out in October
[20] of '88, something to that effect.
[21] Q And then in any event, you went to UCLA?
[22] A Uh-huh.
[23] Q Correct?
[24] A Uh-huh.
[25] Q Is that a yes?

<p style="text-align: right;">Page 17</p> <p>[1] A Yes I'm sorry. [2] Q For our record. [3] What did you study? [4] A Marketing, business administration. [5] Q You said you were there for two years, [6] correct? [7] A Correct. [8] Q And you did not graduate from UCLA? [9] A That is correct. [10] Q Apart from a high school diploma, have you [11] received any diploma, degree, anything at all since [12] high school? [13] A No, sir. [14] Q Any correspondence course, technical [15] training, vocational, any other certifications you [16] have received since your high school diploma? [17] A The insurance licenses. I mean, I don't [18] know if that's necessarily what you're looking for, [19] but insurance licenses and I was licensed in all 50 [20] states, and then an adjuster, insurance adjuster's [21] license in Nevada. [22] Q Any other degrees, certificates, vocational, [23] technical, any educational, along those lines, other [24] than what we have already talked about? [25] A No, sir.</p>	<p style="text-align: right;">Page 19</p> <p>[1] in any event, you said you ran the company for -- I [2] missed how many years, approximately? [3] A About three years, four years. [4] Q And you sold it to an organization out of [5] Canada? [6] A That's correct. [7] Q And cashed out? [8] A Yes. [9] Q And then it was my understanding subsequent [10] to that you entered the insurance industry as an [11] agent, did I hear you correctly? [12] A Yes, sir. [13] Q And, sir, I don't want to accuse you of [14] being untruthful in the least, I want to make sure [15] we're clear. From what you've just told me, that's [16] if you graduated in '88 or '89, spent two years at [17] UNLV -- [18] A UCLA. [19] Q I'm sorry, sorry. I don't know how sorry I [20] need to be, but I apologize, I got the name wrong. [21] Two years at UCLA. So now we're at '90, [22] '91. Then running the company for three to four [23] years takes us to '95 or so. Then was there a point [24] in time -- it sounded like there was a point in time [25] after selling the company before getting a job as an</p>
<p style="text-align: right;">Page 18</p> <p>[1] Q You said you stopped -- you left school [2] after two years from UCLA because you started up a [3] company that became very successful, correct? [4] A That's correct. [5] Q What was the name of the company? [6] A Beverly Hills Natural. [7] Q And what did Beverly Hills Natural do? [8] A It was a cosmetics company. I started a [9] private label company. I bought a bunch of empty [10] bottles, came up with a snazzy label, had them silk [11] screened, I bought a formula. Well, let me rephrase [12] it. I didn't buy a formula, I leased a formula from [13] a cosmetic filling lab. [14] For all intents and purposes, shampoo is [15] shampoo without getting too technical into it, and it [16] was my belief it's all the way it's marketed, and I [17] didn't have enough money or the access to the money [18] to market the product in the United States, so I [19] marketed it in Canada because, at that time, the [20] Canadian dollar was certainly in our favor. The [21] exchange was certainly in our favor. I marketed it [22] in Canada, France and Japan, thinking that the name [23] Beverly Hills would carry it's own weight. [24] Q Sure. And I don't want to get into [25] specifics in terms of how successful, how much, but</p>	<p style="text-align: right;">Page 20</p> <p>[1] insurance broker where you just enjoyed the spoils of [2] your labors, is that correct? [3] A The spoils of my labors did not last long. [4] So, no, there was not a -- it was a very, very short [5] transition period. Again, I'm just spitballing, [6] maybe six months. [7] Q In any event, '94, '95, somewhere in there, [8] maybe a little beyond that, you took a job as an [9] insurance salesman, I understood? [10] A That is correct. [11] Q And when you gave your testimony initially, [12] you had mentioned, and you were spitballing then too, [13] this is what I would like to clarify, that you [14] thought you started your work as an insurance [15] salesman in maybe '91. Did I mishear something or [16] can you clarify? [17] A No, I think in retrospect maybe it wasn't [18] '91. Maybe it was '94. It didn't go much past '95, [19] I can tell you that. I mean, I guess I could [20] probably pull up my resume and take a look at it. [21] But, I mean, it wasn't past '95. Again, I relate it [22] to vehicles and cars I owned, so maybe it was '94, [23] right in there. [24] Q Did you have a '91 Bug or something? [25] A Yeah.</p>

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[1] Q Fair enough.
[2] And you said you started out as an agent,
[3] selling insurance, correct?
[4] A Yes, sir.
[5] Q And what companies did you sell for, if you
[6] recall, or were there just too many?
[7] A There were several, but I do recall. There
[8] was one company by the name of Midland Risk, I
[9] remember in particular. There was another company by
[10] the name of Carnegie. Carnegie was a general agency
[11] as well as Midland Risk. Carnegie, Midland Risk,
[12] Topa, RMIS.
[13] I'm sure there's a few more. If you don't
[14] mind the pause, I'm thinking. Aegis, A-e-g-i-s,
[15] Zurich, Lloyd's, who, at that time, was a
[16] non-admitted carrier in California, by the way. And
[17] I don't remember, I'm sure there's more.
[18] Q Fair enough, fair enough.
[19] In any event, let me ask the critical
[20] question. Was UAIC at all involved in -- you would
[21] sell insurance for, when you started back in '95,
[22] approximately?
[23] A No, sir.
[24] Q And did you have any involvement with UAIC,
[25] prior to going to work for them, I think you said as

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[1] an adjuster, but I want to make sure I understood you
[2] correctly?
[3] A No, not to the best of my knowledge, no.
[4] Q And I asked a horrible question, so I don't
[5] know what you just answered. Let me back up a
[6] second. Did you start as an adjuster at UAIC when
[7] you went to work for UAIC?
[8] A Yes.
[9] Q Approximately what year?
[10] A It was December. You want to ask me why I
[11] know that?
[12] Q Thinking about your car?
[13] A December, I think '06.
[14] Q And prior to December, '06 or whenever it
[15] was when you started to work formally as an employee
[16] of UAIC as an adjuster, you had no involvement with
[17] UAIC prior to that, correct?
[18] A To the best of my recollection, no, sir.
[19] Q So I am correct, to the best of your
[20] recollection?
[21] A That is correct.
[22] Q You went through '95 forward the different
[23] companies you worked with and the different things
[24] you did and the places you lived and the people you
[25] married actually as well. And you went through

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[1] working for UAIC and then you kind of drummed the
[2] table and stopped. You currently don't work for
[3] UAIC, am I correct?
[4] A That's correct.
[5] Q When did you stop working for UAIC?
[6] A February, 2009, I believe.
[7] Q So a little over a year, a year and a half
[8] or so --
[9] A Yes.
[10] Q -- ago?
[11] A Yes.
[12] Q And since February, '09 or whenever it was,
[13] what, if anything, have you done for employment?
[14] A I opened up a property management company.
[15] I own several different pieces of real estate here in
[16] Las Vegas, all single family residences and I manage
[17] those pieces of real estate. And since then, I've
[18] been buying more property and also opened up a
[19] management company where I'm starting to manage
[20] properties for other people as well.
[21] Q Anything else that you have done for
[22] employment since you left UAIC?
[23] A Yes, thank you for reminding me.
[24] Q You're welcome.
[25] A When UAIC told me they were going to move, I

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[1] worked for a company by the name of American Access.
[2] It was a very, very short run, American Access
[3] Insurance Company.
[4] Q What did you do for American Access?
[5] A I was an insurance adjuster. They hired me
[6] to head up, quote, unquote, their Las Vegas claims
[7] office.
[8] Q Any other employment you've had other than
[9] what you've already described since leaving UAIC?
[10] A No, sir.
[11] Q When you worked for UAIC, did you live in
[12] Las Vegas?
[13] A Yes, sir.
[14] Q And that would be the entire time from
[15] approximately '06 until February of '09?
[16] A That's correct.
[17] Q And while you worked for UAIC, did you have
[18] any jobs other than your work as an adjuster for
[19] UAIC?
[20] A No, sir. Can I add something?
[21] Q Absolutely. At any point in time, by the
[22] way.
[23] A When you had asked me about my education and
[24] I had gone from education and my life history,
[25] because the way my brain works, all of that was an

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[1] education. I had learned a lot when I was selling
 [2] insurance, underwriting, marketing, claims. I had
 [3] learned, you know, throughout the years, I've always
 [4] looked at it like an education. And now, you know,
 [5] I'm no longer in the insurance industry, I still
 [6] apply the -- you know, some of the things I've
 [7] learned, you know, I mean.
 [8] Q Okay. Anything else you want to add?
 [9] A No, sir.
 [10] Q And your point is very well taken. I'm glad
 [11] you brought it up. If there's ever any point in time
 [12] where you, first of all, want to take a break -- and,
 [13] in fact, at some point, we'll get some water in here,
 [14] I apologize for not having it. If you want to take a
 [15] break, smoke, use the restrooms, whatever, clear your
 [16] mind, that's perfectly fine. And if, at any point in
 [17] time, something jumps into your brain, either during
 [18] a break or while you're testifying, and you think,
 [19] oh, that thing I said earlier, I have more to add to
 [20] that or I want to change it or whatever, I might have
 [21] misunderstood your question, just let me know and I'm
 [22] happy to jump around whenever. I've got all the
 [23] questions I'm going to ask you written down already,
 [24] so I can leave and come right back to where we left
 [25] off. Is that fair?

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[1] A Will do.
 [2] Q All right. Thank you.
 [3] Okay. Anything else about your work
 [4] background other than what we have already talked
 [5] about?
 [6] A No, sir.
 [7] Q I want to go through a couple of principles
 [8] and I want to know if you agree or disagree or if you
 [9] just don't know. And so, for example, one of them in
 [10] here is that an insurance company ought to treat it's
 [11] policyholders' interests with equal regard as it does
 [12] it's own interests, and I will ask in a moment on
 [13] that, but I would state the principle first and then
 [14] ask you if you agree with that principle, if you
 [15] disagree with that principle or if you just say, you
 [16] know, that's outside of anything I ever dealt with, I
 [17] don't know if that's true or not or if you have any
 [18] other comments, I'd welcome them. Do you understand
 [19] what we're about to get into, first of all?
 [20] A Yes.
 [21] Q All right then. Before I get into that,
 [22] though, I do need to lay a little bit of foundation.
 [23] You've gone through your extensive background in the
 [24] insurance industry as an agent, selling insurance,
 [25] broker, also you mentioned running a company for

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[1] somebody with -- was it Fidelity at one point?
 [2] A I did not run the company. They -- the
 [3] principals of the company had contacted me.
 [4] Q But you've had various positions in the
 [5] insurance industry, including working for several
 [6] years as an insurance adjuster, correct?
 [7] A Yes, sir.
 [8] Q And in that training, education, experience
 [9] and work you have done in the insurance industry, do
 [10] you have an understanding as to an insurance
 [11] company's obligations to it's insureds?
 [12] A In-depth.
 [13] Q And do you have an understanding as to the
 [14] relationship that insurance company has with it's
 [15] customers?
 [16] A Yes, sir.
 [17] Q All right. And as I go through these again,
 [18] if I ask you something, you say, you know, that's
 [19] outside of what I deal with, certainly let me know.
 [20] So the first one, an insurance company must
 [21] treat it's policyholders' interests with equal regard
 [22] as it does it's own interests. Do you agree with
 [23] that?
 [24] MR. DOUGLAS: I'm just going to state for
 [25] all these a running objection. I think I would like

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[1] to object that they're vague and may call for a legal
 [2] conclusion.
 [3] You can answer if you know.
 [4] THE WITNESS: I would disagree.
 [5] BY MR. SAMPSON:
 [6] Q And explain to me why.
 [7] A Well, I -- my mode of thinking is that an
 [8] insurance company's obligation is to it's insured.
 [9] If I'm an insurance company and I'm writing you a
 [10] policy and my policy is for X amount of dollars and
 [11] there's a loss that justifies the payment of X amount
 [12] of dollars, that that is our business relationship,
 [13] that's our contractual relationship to make good on
 [14] that payment.
 [15] Now, an insurance company's interests, it
 [16] could be several other business interests, several
 [17] other investments, but from the point of a contract,
 [18] an insurance policy, a contract between me and you,
 [19] my principal obligation is to you, not to my other
 [20] investments.
 [21] Q So it sounds to me, and correct me if I'm
 [22] wrong, because I don't want to misstate what you've
 [23] said, it sounds to me your concern with the rule or
 [24] the principle that a company must treat it's
 [25] policyholders' interests with equal regard to it's

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[1] own interests, as you perhaps think, the policyholder
[2] should get even more interest, that their interests
[3] should come maybe even ahead of the company's own
[4] interests at times?

[5] A You are correct.

[6] Q That's what I wanted to make sure I
[7] understood.

[8] By the way, I referred to the person as a
[9] policyholder. You called them an insured. Do you
[10] draw any distinction?

[11] A No, sir, I do not.

[12] Q Neither do I. I just wanted to be sure.

[13] What about the principle that in
[14] relationship between an insured and it's
[15] policyholders -

[16] A Can I interrupt you?

[17] Q Absolutely.

[18] A Let me rephrase. I do draw a distinction,
[19] although it's ever so slight. A policyholder I've
[20] always thought of as a named insured, the person on
[21] the actual policy. An insured doesn't necessarily
[22] have to be the named policyholder. If I go out and
[23] borrow your car right now and I crack it up down the
[24] road, I'm an insured driving in your vehicle.

[25] Q But not a policyholder?

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[1] know, we can get in an argument or a discussion,
[2] maybe a heated discussion, you know, that's kind of
[3] par for business, par for life, but certainly the
[4] contract of insurance between, you know, an insured
[5] and an insurance company is not one that's written
[6] under the adversarial guidelines, if you would.

[7] BY MR. SAMPSON:

[8] Q Okay. And that dovetails into this next
[9] principle that a company should assist a policyholder
[10] or insured with any claims.

[11] MR. DOUGLAS: Same objections.

[12] BY MR. SAMPSON:

[13] Q Would you agree or disagree with that?

[14] MR. DOUGLAS: Same objection.

[15] THE WITNESS: Would you mind if I ask you a
[16] question?

[17] BY MR. SAMPSON:

[18] Q You can ask, I can't promise anything.

[19] A When you object, am I not supposed to answer
[20] a question?

[21] MR. DOUGLAS: No, no, not at all. That's
[22] just legal stuff for the record.

[23] THE WITNESS: Okay. Sorry, I didn't know.

[24] Okay. I'm sorry, can I trouble you for the
[25] question again?

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[1] A That is correct.

[2] Q Anything else?

[3] A No, sir.

[4] Q Next principle, that when it comes to
[5] dealings between an insurance company and it's
[6] policyholders or insureds, it's not supposed to be an
[7] adversarial process.

[8] MR. DOUGLAS: You don't mind a standing
[9] objection, vague and may call for a legal conclusion.

[10] THE WITNESS: I'm sorry, rephrase that.

[11] BY MR. SAMPSON:

[12] Q Sure, sure.

[13] When it comes to an Insurance company
[14] dealing with it's insureds or policyholders, the
[15] relationship is not supposed to be adversarial.

[16] A That is correct. I would agree with that.

[17] Q And is there anything about that that you
[18] think is vague? Just because your counsel is raising
[19] an objection, so if there is something you consider
[20] vague, I want to make sure I have a chance to clarify
[21] it.

[22] MR. DOUGLAS: And I'll just object to that,
[23] it may call for a legal conclusion.

[24] You can answer if you know.

[25] THE WITNESS: Adversarial may mean, you

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[1] BY MR. SAMPSON:

[2] Q Certainly, you can.

[3] That an insurance company should assist a
[4] policyholder or insured with the claim?

[5] A I'll answer yes, although it's a vague
[6] answer. I mean, if someone reports a claim, then
[7] certainly an insurance company's duty is to assist
[8] them in getting the correct paperwork filled out and
[9] pointing things in the right direction, as opposed to
[10] being an obstructionist, certainly.

[11] Q Would you agree with me that a company, an
[12] insurance company is obligated to disclose to the
[13] insured all the benefits and coverages and time
[14] limits that may apply to a claim?

[15] A That may apply to a claim, yes, sir.

[16] Q Would you agree with me that an insurance
[17] company has an obligation to fully, fairly and
[18] promptly adjust a claim?

[19] A Yes, sir.

[20] Q Would you agree with me that an insurance
[21] company should not deny a claim or any part of a
[22] claim based on insufficient information?

[23] MR. DOUGLAS: Same objections.

[24] THE WITNESS: One more time.

<p style="text-align: right;">Page 33</p> <p>[1] BY MR. SAMPSON:</p> <p>[2] Q Sure. That an insurance company must not</p> <p>[3] deny a claim or any part of a claim based on</p> <p>[4] insufficient information?</p> <p>[5] A You are correct. I would agree with that.</p> <p>[6] Q And that an insurance company should not</p> <p>[7] deny a claim or any part of a claim based on</p> <p>[8] speculation?</p> <p>[9] A I would certainly agree with that.</p> <p>[10] Q And that an insurance company must not deny</p> <p>[11] a claim or any part of a claim based on biased</p> <p>[12] information, only hearing from one side?</p> <p>[13] MR. DOUGLAS: Same objection.</p> <p>[14] THE WITNESS: I wouldn't agree to that one</p> <p>[15] entirely, because sometimes there is only one side.</p> <p>[16] BY MR. SAMPSON:</p> <p>[17] Q All right. Anything beyond that that would</p> <p>[18] cause you reason to disagree or to not agree</p> <p>[19] entirely, I guess I should say?</p> <p>[20] A Not that I can think of right now, no.</p> <p>[21] Q Would you agree that in denying a claim, an</p> <p>[22] insurance company is obligated to give a written</p> <p>[23] explanation, pointing to facts and policy provisions</p> <p>[24] before the denial?</p> <p>[25] A Yes, sir.</p>	<p style="text-align: right;">Page 35</p> <p>[1] to settle for \$10,000, is that how you understood my</p> <p>[2] last question?</p> <p>[3] A Yes.</p> <p>[4] Q And you're saying that it's your position</p> <p>[5] that an insurance company is not obligated to convey</p> <p>[6] all offers of settlement from a third party to the</p> <p>[7] insured?</p> <p>[8] A That is correct.</p> <p>[9] MR. DOUGLAS: I'll just object, it may call</p> <p>[10] for a legal conclusion.</p> <p>[11] BY MR. SAMPSON:</p> <p>[12] Q In your course of work in the insurance</p> <p>[13] industry, were you ever called upon to interpret</p> <p>[14] policy provisions or policy language?</p> <p>[15] A I'm sorry, would you mind if I interrupt</p> <p>[16] again and go back to that last question?</p> <p>[17] Q Not at all.</p> <p>[18] A The reason I give that answer is because</p> <p>[19] while — again, I'll just use you and I for the sake</p> <p>[20] of conversation. If you're my insured and you cause</p> <p>[21] an accident and you say, no, no, no — you know, we</p> <p>[22] have a third party that wants to settle the claim for</p> <p>[23] \$10,000, you may not agree with the settlement, you</p> <p>[24] may think it's egregious or whatever, you know, your</p> <p>[25] thoughts are about the settlement. As an insurance</p>
<p style="text-align: right;">Page 34</p> <p>[1] Q Would you agree with me that an insurance</p> <p>[2] company must not misrepresent facts or policy</p> <p>[3] provisions?</p> <p>[4] A Yes, I would agree.</p> <p>[5] Q Would you agree with me that an insurance</p> <p>[6] company must inform the insured or policyholder of</p> <p>[7] all settlement offers?</p> <p>[8] A I'm sorry, one more time.</p> <p>[9] Q That an insurance company must inform the</p> <p>[10] insured of all settlement offers?</p> <p>[11] A That an insurance company must --</p> <p>[12] MR. DOUGLAS: I'll object, may call for a</p> <p>[13] legal conclusion.</p> <p>[14] BY MR. SAMPSON:</p> <p>[15] Q Are you still confused? I'm happy to</p> <p>[16] explain.</p> <p>[17] A No, I'm thinking about the question. An</p> <p>[18] insurance company must inform an insured of all</p> <p>[19] settlement offers? No, I wouldn't agree with that.</p> <p>[20] Q And let me give you an example of what I'm</p> <p>[21] talking about. An insured causes an accident, a</p> <p>[22] third party brings a claim and a third party offers</p> <p>[23] to settle the claim for \$10,000, that the insurance</p> <p>[24] company, the principle that the insurance company is</p> <p>[25] obligated to tell the insured, hey, we got an offer</p>	<p style="text-align: right;">Page 36</p> <p>[1] company, we also have that third party's damages and</p> <p>[2] injuries to take into consideration as well.</p> <p>[3] So sometimes we also have to look at the</p> <p>[4] greatest good for the greatest number of people and</p> <p>[5] look at that particular third party's damages as</p> <p>[6] well, whether or not the insured is necessarily in</p> <p>[7] agreement with those damages.</p> <p>[8] Q Okay. And I wasn't -- I didn't mean to ask</p> <p>[9] whether an insurance company is always required to</p> <p>[10] defer to the insured, but just to convey the fact</p> <p>[11] that the offer was made to the insured, is that</p> <p>[12] something you believe the insurance company has an</p> <p>[13] obligation to do or not?</p> <p>[14] MR. DOUGLAS: I'll just object again, it's</p> <p>[15] vague, lacks foundation and may call for a legal</p> <p>[16] conclusion.</p> <p>[17] THE WITNESS: No, sir.</p> <p>[18] BY MR. SAMPSON:</p> <p>[19] Q You disagree with the premise as you</p> <p>[20] understand it?</p> <p>[21] A That is correct.</p> <p>[22] Q All right. Now, getting back to the</p> <p>[23] question then, because I have them written down.</p> <p>[24] A I don't know if I disagree with the premise</p> <p>[25] as long as someone could show me logic as to why.</p>

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[1] You know, I mean, I'm kind of a logical guy. If you
[2] made a legal argument as to why it would and it made
[3] sense and we agree, then I may say, you know what,
[4] the guy's right.

[5] **Q** And I guess all I'm asking, in your
[6] experience -- and I'm only asking for your
[7] understanding. We're not going to publish this where
[8] we have to do what you say, I'm just trying to get
[9] your understanding. Your testimony will be published
[10] as part of the deposition, by the way, but it's not
[11] going to be any ruling that anybody's going to have
[12] to follow per se. If an offer is made by a claimant,
[13] the question is, does the insurance company have an
[14] obligation to tell the insured about the offer? And
[15] it sounds to me like you're saying -- well, let me
[16] ask you, in your history as an adjuster, had you ever
[17] received offers on claims and not told the insured
[18] about the offer?

[19] **MR. DOUGLAS:** I'll just object to that,
[20] assumes facts not in evidence, may call for
[21] speculation and I think it's vague and it calls for a
[22] legal conclusion.

[23] **THE WITNESS:** Yes, I have made offers
[24] without advising the insured.
[25]

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[1] me to. In determining the meaning of an insurance
[2] policy, the language should be examined from the
[3] viewpoint of one not trained in law or in business.
[4] Would you agree or disagree with that premise?

[5] **MR. DOUGLAS:** I'm just going to object, it
[6] obviously calls for a legal conclusion, but you can
[7] answer to the extent you know.

[8] **THE WITNESS:** I would agree.

[9] **BY MR. SAMPSON:**

[10] **Q** Also, that in determining the meaning of an
[11] insurance policy, the policy terms should be
[12] understood in their plain, ordinary and popular
[13] sense?

[14] **MR. DOUGLAS:** Same objection, calls for a
[15] legal conclusion.

[16] **THE WITNESS:** Yes.

[17] **BY MR. SAMPSON:**

[18] **Q** You would agree?

[19] **A** Now that you question it, rephrase the --
[20] restate the question, please.

[21] **Q** In determining the meaning of an insurance
[22] policy, the terms of the policy should be understood
[23] in their plain, ordinary and popular sense?

[24] **MR. DOUGLAS:** Same objection.

[25] **THE WITNESS:** What does the word popular

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[1] **BY MR. SAMPSON:**

[2] **Q** I think -- did you misspeak? You have --
[3] well, I understood you may have made offers on a
[4] claim without talking to the insured. My question
[5] is, have you ever received a demand, an offer of
[6] settlement from the claimant and not contacted the
[7] insured and said, hey, the claimant got ahold of us
[8] and said he'd take \$10,000 or \$80,000 or whatever the
[9] number may be?

[10] **MR. DOUGLAS:** Same objection, assumes facts
[11] not in evidence, lacks foundation, vague, may call
[12] for a legal conclusion.

[13] **THE WITNESS:** Yes.

[14] **BY MR. SAMPSON:**

[15] **Q** All right. Now, back to the question before
[16] we had to take our side trip, which is fine. In your
[17] work in the insurance industry, have you ever been
[18] called upon to interpret policy language?

[19] **A** Yes, sir.

[20] **Q** And in terms of have you ever been called
[21] upon to determine what a particular policy provision
[22] means?

[23] **A** Yes, sir.

[24] **Q** Do you agree with the following premise
[25] then, and I will repeat it as many times as you need

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[1] mean?

[2] **BY MR. SAMPSON:**

[3] **Q** Well, I would submit that it means the
[4] definition as understood by most people in the
[5] community.

[6] **A** Okay. Then, yes, I would agree.

[7] **Q** And so, for example -- and I'm not claiming
[8] this has ever occurred, I'm just going to give you a
[9] hypothetical situation. If an insurance policy says,
[10] your children are covered for whatever, if a company,
[11] let's use UAIC as an example, but if any insurance
[12] company says yes, that's what the policy says, and
[13] most people in the community or a layperson reading,
[14] giving it's plain, ordinary interpretation of that
[15] clause would think my children are all covered, but
[16] if the insurance company said, oh, no, in our company
[17] when we say your children, it only means your oldest
[18] two oldest children. If you have additional
[19] children, they're not covered, that's what this
[20] word -- when it says your children are covered,
[21] that's what that means to us. Something like that
[22] would be unfair. Would you agree?

[23] **MR. DOUGLAS:** I'll just object, that's
[24] vague, it may assume facts not in evidence, I think
[25] that may call for a legal conclusion and improper

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[1] hypothetical.

[2] **THE WITNESS:** I would certainly agree. If
[3] that's how the policy was worded, I would think that
[4] the policy would be vague and my recommendation would
[5] be to define children.

[6] **BY MR. SAMPSON:**

[7] **Q** Well, and in defining then, it would be
[8] we're going to define this phrase, your children are
[9] covered as to how people who aren't trained in the
[10] law or in business or lay people out on the street
[11] would understand it to mean, fair enough?

[12] **MR. DOUGLAS:** Same objections.

[13] **THE WITNESS:** I believe so, yeah. I would
[14] define children as blood relative or adopted, you
[15] know, by the laws governing the particular state that
[16] the policy was written.

[17] **BY MR. SAMPSON:**

[18] **Q** And, again, that would be your understanding
[19] of what most people in the community, regular Joe off
[20] the street would take that phrase to mean, fair
[21] statement?

[22] **A** The word children?

[23] **Q** Right.

[24] **A** Yes, I would. That's why I would define it
[25] a little more. I mean, you have some people out

[1] advertising material. It's not actual policy
[2] language, but if somebody puts out a mailer that
[3] says, insure with us, we'll insure your children,
[4] that language in that offer of a policy would also be
[5] interpreted by the plain language in the community?

[6] **MR. DOUGLAS:** I'll just object, it's vague,
[7] I think it's an improper hypothetical and also may
[8] call for a legal conclusion, and I guess that's it
[9] right now.

[10] You can answer if you know.

[11] **THE WITNESS:** I'm not sure. I hate to ask
[12] you a third time. I'm sorry, one more time.

[13] **BY MR. SAMPSON:**

[14] **Q** Sure. Let me back it up, because I want to
[15] make sure everybody understands. We've already
[16] talked about how you agree with me that the language
[17] of an insurance policy ought to be interpreted by
[18] general understanding of the words and phrases from a
[19] layperson in the community, correct?

[20] **A** Yes, sir.

[21] **Q** And my only question is, would you agree
[22] that not only should policy language be interpreted
[23] that way, but also language related to the policy,
[24] like an offer through an advertisement, a mailer,
[25] saying, hey, insure with us and here's what we'll

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[1] there who, you know, not making a religious
[2] statement, but believe that we're all God's children.
[3] So the guy that just got run over out there, I should
[4] be entitled to some claim because he's my brother.
[5] So I would certainly define it by the legal terms or
[6] at least as best I could.

[7] **Q** I understand. Or that it may exclude a
[8] friend of the family who visits all the time and the
[9] person thinks of them as their child?

[10] **MR. DOUGLAS:** Objection, same objections.

[11] **THE WITNESS:** Yes.

[12] **BY MR. SAMPSON:**

[13] **Q** Is that what we're talking about?

[14] **A** Yes.

[15] **Q** All right. Would you agree with me in terms
[16] of the -- in determining the language of the policy,
[17] that we would use the definition given -- that would
[18] be used by ordinary people in the community, that
[19] that would also apply to the language, the
[20] interpretation of language in an offer of insurance,
[21] to offer a policy?

[22] **MR. DOUGLAS:** Same objections.

[23] **THE WITNESS:** I'm sorry, one more time.

[24] **BY MR. SAMPSON:**

[25] **Q** Sure. That would apply to, for example,

[1] give you, that that language should also be
[2] interpreted the same way as the policy would be?

[3] **MR. DOUGLAS:** Objection again, vague, may
[4] call for a legal conclusion, I think it's an improper
[5] hypothetical.

[6] You can answer if you know.

[7] **THE WITNESS:** That, I would not agree with.

[8] **BY MR. SAMPSON:**

[9] **Q** Explain to me why.

[10] **A** Well, if you're -- you know, the scenario
[11] that you put up, let's say a mailer, the mailer is
[12] buy low cost auto insurance, let's say. We'll insure
[13] you and your family, okay, and so someone brings the
[14] mailer in to an agent because they want to buy low
[15] cost auto insurance and that we know that we'll
[16] insure them and their family, and then all of a
[17] sudden we find out that one of their family members
[18] has eight DUIs or, you know, whatever, a suspended
[19] driver's license and can't legally drive in the
[20] state. Well, then that would certainly throw a
[21] monkey wrench into that mailer and into that theory.

[22] **Q** What about language in documents that are
[23] sent to a current policyholder, for example, of a
[24] renewal notice?

[25] **MR. DOUGLAS:** Same objection, vague,

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[1] improper hypothetical, may call for a legal
[2] conclusion.
[3] You can answer if you know.
[4] **BY MR. SAMPSON:**
[5] **Q** And my question is, as to those types of
[6] communications, would you agree that the proper way
[7] to interpret those communications would be how those
[8] phrases would be interpreted by an ordinary person in
[9] the community without training in law or business?
[10] **MR. DOUGLAS:** Again, objection, vague, I
[11] think it may be an improper hypothetical and may call
[12] for a legal conclusion.
[13] You can answer if you know.
[14] **THE WITNESS:** Not on a renewal notice.
[15] **BY MR. SAMPSON:**
[16] **Q** Why not?
[17] **A** Well, unless there are some specific policy
[18] changes that have affected the new policy, in other
[19] words, the renewal policy, that the same language,
[20] the same policy exists on to the point of the
[21] renewal.
[22] In other words, we insure your California
[23] shirt there and we insure it for whatever, \$1,000.
[24] Now, we're coming up onto year two, we're going to
[25] send you a renewal to renew your shirt, the policy on

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[1] in status to a claims supervisor.
[2] **A** Mind if I use the restroom before I do that?
[3] **Q** All right.
[4] (Thereupon, a recess was taken from
[5] 2:50 p.m. until 2:54 p.m.)
[6] **BY MR. SAMPSON:**
[7] **Q** Let's go back on the record.
[8] Sir, do you need the question read back?
[9] **A** Please.
[10] (Thereupon, from the record above,
[11] the reporter read, to wit:
[12] "Q. So walk me through then, you get
[13] employed, you're hired on as an
[14] adjuster, through your change in
[15] status to a claims supervisor.")
[16] **THE WITNESS:** I believe it was some time in
[17] December, 2006, early December, 2006, if my memory
[18] serves me correctly, I was employed as an insurance
[19] adjuster where I would receive claims, evaluate the
[20] claims, and make a liability determination and
[21] settlement offers, etcetera. I did that for some
[22] time before I apparently made an impression on
[23] someone with my vast claims knowledge and was given a
[24] promotion to claims supervisor.
[25] ///

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[1] your shirt. If there have been no material changes
[2] that affect you, then we shouldn't have to spell out
[3] the policy language all over again.
[4] **Q** And I apologize if I misled you. All I'm
[5] talking about is when you send me a communication, a
[6] letter, that says we're offering to renew the policy
[7] on your shirt, that the language in that renewal
[8] notice saying what I need to do to get a renewal and
[9] all those different things, they would also be read
[10] with the normal -- given the normal understanding of
[11] a layperson not trained in law or business?
[12] **MR. DOUGLAS:** Same objections, vague,
[13] improper hypothetical, may call for a legal
[14] conclusion.
[15] You can answer if you know.
[16] **THE WITNESS:** I would agree.
[17] **BY MR. SAMPSON:**
[18] **Q** Walk me through your employment with UAIC.
[19] You said you started some time you think in '06. I
[20] think you said you worked as an adjuster for UAIC.
[21] Did you work as an adjuster for UAIC the whole time
[22] you were employed with UAIC?
[23] **A** I eventually became the claims supervisor.
[24] **Q** So walk me through then, you get employed,
[25] you're hired on as an adjuster, through your change

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[1] **BY MR. SAMPSON:**
[2] **Q** And then -- well, thank you for that answer.
[3] Now, I want you to answer the question that was
[4] pending before we took a break.
[5] I do have to ask now that we have taken a
[6] break, during our break, did you have any
[7] conversations with defense counsel or anyone from his
[8] office, I guess, related to the deposition?
[9] **A** Related to the deposition, no, sir.
[10] **Q** Any conversation at all related to the case?
[11] **A** No, sir.
[12] **Q** Then from claims adjuster forward, walk me
[13] through time frame and duties and those kinds of
[14] things.
[15] **A** Time frames with respect to years or --
[16] **Q** Whatever you're most comfortable with.
[17] **A** Like I said, early December, 2006 until, I
[18] believe it was, February, 2009.
[19] **Q** Well, I meant as a claims supervisor.
[20] **A** Oh, as a claims supervisor, my
[21] responsibilities increased. I would -- I was
[22] responsible for denials. I was given -- you know,
[23] before I would deny a claim or anyone would deny a
[24] claim, it would have to run through me to ensure if
[25] the denial was just. When I say just, in other

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[1] words, in accordance with Nevada regulation or our
[2] policy, etcetera, etcetera. And I would like to give
[3] you an exciting answer like I changed the world, but
[4] aside from that, it's just kind of the standard.

[5] **Q** In October of 2007, which, according to the
[6] records I've reviewed, is when I think you were
[7] brought in when the claim was first opened, do you
[8] know, in October of 2007, if you were a claims
[9] supervisor or an adjuster?

[10] **A** I do not.

[11] **Q** Anything else in terms of your work as an
[12] adjuster or a claims supervisor with UAIC that you
[13] can tell me you were responsible for in a general
[14] sense other than what you've already talked about?

[15] **A** Making sure people got to the office on
[16] time, you police the water cooler, you know, that
[17] kind of thing.

[18] **Q** You're talking about employees when you say
[19] people get to the office on time?

[20] **A** Yes, sir.

[21] **Q** And where were the offices in Las Vegas?

[22] **A** On Howard Hughes Parkway. I don't remember
[23] the address.

[24] **Q** And how many employees were in that office
[25] in Vegas, approximately?

[1] payment once a month for the next month's policy.

[2] First of all, does the name Gary Lewis ring
[3] any bells with you at all?

[4] **MR. DOUGLAS:** I'll just object to the extent
[5] it misstates the case or lacks foundation, but you
[6] can answer it.

[7] **MR. SAMPSON:** If counsel wants to tell us
[8] what Gary Lewis' position was because he knows better
[9] than me, you can certainly clarify it if you'd like.

[10] **THE WITNESS:** Objection, argumentative.

[11] **MR. SAMPSON:** I'd be happy to clarify the
[12] question if you think I misstated Mr. Lewis'
[13] position. Maybe you can tell me what it really is
[14] then.

[15] **MR. DOUGLAS:** This is your deposition,
[16] Counsel. I'm just stating my objections.

[17] **MR. SAMPSON:** Right, and if you state an
[18] objection, I have the opportunity to clarify the
[19] question. You understand that, right?

[20] **MR. DOUGLAS:** Sure. Go ahead. I mean, but
[21] I don't need to explain. I don't have to give a
[22] reason. You can try to clarify, I mean, or you can
[23] just ask a simple question.

[24] **MR. SAMPSON:** But when I try to clarify, I
[25] need direction from you as to what I've gotten wrong

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[1] **A** 12.

[2] **Q** And then in February of 2009, how is it that
[3] your work with UAIC, your employment with UAIC ended?

[4] **A** They, being UAIC, consolidated their claims
[5] operation. So they closed their Utah claims office,
[6] their Nevada claims office and were centralizing
[7] everything out of Arizona. They made me an offer to
[8] move me to Arizona, which I was very gracious and
[9] happy for the offer and honored for the offer, but it
[10] wasn't in my best interests to pick up and uproot my
[11] family to move to Arizona, so I stayed here.

[12] **Q** Okay. Did your duties and responsibilities
[13] with UAIC ever have anything to do with underwriting?

[14] **A** On a daily basis, no, they would not.

[15] **Q** What about on a non-daily basis?

[16] **A** I would often review underwriting documents
[17] to ensure their -- I don't want to use the word
[18] legitimacy -- their accuracy is the word I'm looking
[19] at with respect to claims handling.

[20] **Q** Are you familiar with the process -- let me
[21] back up. In this particular claim, the gentleman
[22] named Gary Lewis, who he claims was insured with UAIC
[23] from, I think, March of 2007 through 2008, maybe even
[24] into 2009, that he had a policy with UAIC that was
[25] renewed on a monthly basis and that he would make his

[1] and if you can't give me any, well, then.

[2] **MR. DOUGLAS:** I thought you gave a very
[3] narrative view of what your version of the case was
[4] and I just wanted to state for the record that I
[5] believe that you haven't even asked the witness
[6] whether he knows anything. Before you asked him
[7] whether he even knew what his claim was, you
[8] proceeded to tell him what it was. So I stated my
[9] objection. I've now given a reason for it. You can
[10] proceed as you wish.

[11] **MR. SAMPSON:** I've asked for clarification
[12] on how I've misconstrued Mr. Lewis' position and you
[13] have not told me anything, so I will assume I have it
[14] right unless you want to take the opportunity and
[15] tell me --

[16] **MR. DOUGLAS:** Again, I stated my objection.
[17] I don't think I need to do anything more than that.
[18] You can assume anything you like.

[19] **MR. SAMPSON:** I'm just giving you the
[20] opportunity to clarify it if you thought I got it
[21] wrong.

[22] **MR. DOUGLAS:** And I think you did.

[23] **MR. SAMPSON:** How so?

[24] **MR. DOUGLAS:** I think you did get it wrong.
[25] I think you misstated the evidence, but I'm not --

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[1] **MR. SAMPSON:** How so?
[2] **MR. DOUGLAS:** Counsel, I don't have to
[3] answer your questions.
[4] **MR. SAMPSON:** You do if you're going to make
[5] an objection and I want a clarification so I can get
[6] it right. This is your chance. I mean, if you don't
[7] want to take the opportunity to tell me how I
[8] misstated it, that's what the record will reflect,
[9] that's fine.
[10] **MR. DOUGLAS:** I believe the facts are
[11] already in evidence for many other depositions.
[12] There's other things in the case. I don't need to go
[13] through and explain them point by point to you at
[14] this point, and if you need me to, then obviously you
[15] may want to go back and start all over.
[16] **MR. SAMPSON:** If you are going to tell me --
[17] **MR. DOUGLAS:** I disagree with your
[18] recitation of the facts and that's all I need to say,
[19] Counsel.
[20] **MR. SAMPSON:** That's inaccurate, but that's
[21] okay if you take that position.
[22] **MR. DOUGLAS:** That's my position.
[23] **MR. SAMPSON:** That's all you want to say,
[24] I'm just giving you the chance to clarify what it is
[25] I've misstated. If you don't want to do that, we'll

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[1] I've given you to clarify.
[2] **MR. DOUGLAS:** Yeah, okay, for instance, you
[3] failed to state several periods of noncoverage or
[4] Mr. Lewis failed to omit premium for his monthly
[5] policy.
[6] **MR. SAMPSON:** Such as?
[7] **MR. DOUGLAS:** I don't have to state them all
[8] for the record. The records speaks for themselves,
[9] and you have also failed to identify several other
[10] problems with your statement, including calling them
[11] renewals when Mr. Lewis had separate monthly
[12] policies, and anything else in the record that I
[13] failed to mention today, I reserve the right to rely
[14] on any of the other documents previously submitted in
[15] this case by my client.
[16] **BY MR. SAMPSON:**
[17] **Q** The question, sir, was, does the name Gary
[18] Lewis ring a bell?
[19] **A** It does now.
[20] **Q** How so?
[21] **A** You guys have been arguing about it for the
[22] last five minutes. So one would naturally deduce
[23] that he's probably the person in question here.
[24] **Q** And do you know about the person in
[25] question? Are you familiar with the file?

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[1] move on.
[2] **MR. DOUGLAS:** No, I don't have to do
[3] anything.
[4] **MR. SAMPSON:** Good, glad to hear it, that
[5] you haven't done it.
[6] **BY MR. SAMPSON:**
[7] **Q** The question was --
[8] **MR. DOUGLAS:** You're incorrect.
[9] **MR. SAMPSON:** Then what have I said that I
[10] misstated? Well, the record will speak for itself.
[11] **MR. DOUGLAS:** Exactly.
[12] **MR. SAMPSON:** You haven't identified a
[13] thing.
[14] **MR. DOUGLAS:** And I've identified that it
[15] lacks foundation and you misstated -- there was
[16] absolutely no foundation for your statement. It was
[17] just your version of the facts.
[18] **MR. SAMPSON:** There's no foundation to lay,
[19] but that's fine. You say I misstated things. I
[20] asked you to tell me what I misstated, you haven't
[21] identified a single thing.
[22] **MR. DOUGLAS:** I have. I've made legal
[23] objections to your recitation and that will stand on
[24] the record.
[25] **MR. SAMPSON:** As will my opportunity that

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[1] **A** No, sir, I'm not.
[2] **Q** And earlier you testified, and you correct
[3] me if I'm wrong, that you were given the claims file,
[4] but you never looked at it, right?
[5] **A** That's correct, sir.
[6] **Q** Do you have any independent recollection
[7] about the claim at all?
[8] **A** No, sir, I do not.
[9] **Q** Are you aware of anything that you or anyone
[10] else at UAIC did related to this claim other than
[11] what would be reflected in the claims file?
[12] **A** I'm sorry, the question?
[13] **Q** Sure. Are you aware of anything -- as you
[14] sit here right now, are you aware of anything that
[15] you or anyone else at UAIC ever did, vis-a-vis this
[16] claim, other than the things that are reflected in
[17] the claims file that were done?
[18] **MR. DOUGLAS:** And I'll object to the extent
[19] it calls for speculation.
[20] You can answer if you know.
[21] **THE WITNESS:** Not without reviewing the file
[22] itself. In reviewing the file, maybe something would
[23] pop up, but certainly at face value, no. Face value
[24] being Gary Lewis.
[25]

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BY MR. SAMPSON:

Q Right, right. And all I'm looking to avoid is that you come to trial and say, wait a minute, I remember, for example, I spoke with Mr. Lewis on September 3rd. I'm picking a date out of the sky. I spoke with Mr. Lewis on September 3rd of '07, here's what he told me. If you come to trial and say that, I'll tell you for our record there's nothing in the claims file indicating a conversation with anybody from UAIC and Mr. Lewis on September 7th of 2007 or September 3rd either for that matter of 2007, and so you wouldn't come in and testify to something that's not reflected in the claims file as you sit here right now, correct?

A I couldn't. I couldn't tell you that, no, sir.

Q Because you have no recollection of anything that happened in the case as you sit here right now, fair statement?

A Not at face value, that is correct. Now, if I had the opportunity to review the claims file, then, you know, maybe something would pop up in my head, but at this stage of the game, no, sir, I do not.

Q All right. And if there's ever a point in

for speculation, and he may not even be aware of the trial date. It may call for -- the question's kind of vague, but you can answer to the extent you know.

THE WITNESS: I don't necessarily know if I would advise your office, nor do I necessarily know that I would advise defense's office, but if I was certainly asked under oath, I would certainly testify under oath of my recollection.

BY MR. SAMPSON:

Q Right. See, that's the problem that I have. The purpose of discovery, which is what we're doing right now, is to make sure nobody comes to trial and drops a bombshell, surprise testimony, nobody knew they were going to say that.

The whole purpose of discovery is so going in, everybody knows what all the witnesses are going to say, what the testimony is, and we deal with it up front. Do you understand that?

A Yes, sir.

MR. DOUGLAS: Objection, that may call for a legal conclusion.

BY MR. SAMPSON:

Q And all I'm looking for is that the testimony, when you tell me today, I don't remember anything on this file -- which is correct, right?

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time when you review the -- I mean, you had the -- to be fair, you've had the opportunity to review the claims file, it's been sitting some place in your home for several weeks, correct?

A Yes, sir.

Q Several months, I guess, correct?

A No, no, no. I mean, I could tell you by looking at the envelope because I'm sure the date's on there somewhere, but it's probably the better part of two weeks.

And in all fairness, it's not that I didn't necessarily have some opportunity to pick it up or so on and so forth. But, I mean, let's face it, you know, we do eight and ten hour days of work, what do I want to come home and pick up a file certainly I'm not getting paid to do anything on? Maybe a little bit was lazy. A lot of times I want to sit on the couch and watch TV with my son.

Q Let's just do this. If, at some subsequent point in time, you review the claim file and you remember something that happened in the case that's not reflected in the claim file, would you advise my office of that fact prior to going to trial?

A Well, I think that --

MR. DOUGLAS: I'll just object, it may call

A That is correct.

Q That you don't, whenever trial is, come into trial and say, oh, now I do and, in fact, here's a whole bunch of facts that Mr. Sampson and his clients are now learning for the very first time in the middle of trial, that the whole purpose of discovery is to prevent all of that. Do you understand that?

MR. DOUGLAS: Objection, that may call for a legal conclusion and speculation.

BY MR. SAMPSON:

Q If your counsel is trying to arrange to do exactly that, the rules say he's not allowed to. I don't know if he is or not.

MR. DOUGLAS: Objection, Counsel. That's a misstatement. Ask legitimate questions. I can state objections.

MR. SAMPSON: What's the misstatement, you think you are allowed to trial by ambush?

MR. DOUGLAS: I never said that.

MR. SAMPSON: What's the misstatement?

MR. DOUGLAS: You're alleging that I'm trying to do that. You're asking him a question, you're asking him to speculate whether some time in the future he's going to remember something or not. I mean, that's ridiculous.

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[1] **MR. SAMPSON:** That was not my question.
[2] **MR. DOUGLAS:** That was your question.
[3] Counsel, it's an impossibility. You're asking for an
[4] absolute on something he says he doesn't know right
[5] now, but go ahead and keep asking it a thousand
[6] different ways.
[7] **MR. SAMPSON:** When you read the question,
[8] when you read the transcript, when you get a copy --
[9] **MR. DOUGLAS:** Sure.
[10] **MR. SAMPSON:** -- take a real close look at
[11] what went on before this conversation, and you'll see
[12] that I'm not asking him to speculate about anything.
[13] All I'm asking is if something pops up in his memory
[14] down the road, that I be apprised about it so there's
[15] no trial by ambush. That's all I'm doing.
[16] **MR. DOUGLAS:** And he answered you. He said
[17] if he's asked under oath, but he doesn't know.
[18] Counsel, you go ahead, it's your deposition,
[19] keep going.
[20] **BY MR. SAMPSON:**
[21] **Q** All I'm going to say -- advise you that the
[22] defendant, the defendant in this case has a
[23] continuing duty to supplement discovery if new things
[24] become available.
[25] **MR. DOUGLAS:** So does plaintiff, like

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[1] supplying an assignment of rights months after you
[2] file a lawsuit, right?
[3] **MR. SAMPSON:** I'm sorry, is there an
[4] objection? Is there? The assignment was --
[5] **MR. DOUGLAS:** If you're going to make random
[6] statements about legal obligations of the parties on
[7] the record, I'm going to do the same.
[8] **MR. SAMPSON:** Okay. Good. Have a ball.
[9] **MR. DOUGLAS:** Okay.
[10] **MR. SAMPSON:** And I'm trying to make sure
[11] that no one comes to trial with ambush testimony.
[12] **BY MR. SAMPSON:**
[13] **Q** As you sit here right now, sir, are you
[14] planning on offering new ambush testimony at trial?
[15] **MR. DOUGLAS:** Objection, that calls for
[16] speculation, that's also argumentative and misstates
[17] testimony.
[18] But go ahead and answer it.
[19] **THE WITNESS:** My only -- the only thing,
[20] I've never heard the word, ambush testimony, although
[21] it's kind of funny, I just learned it from you guys
[22] just now.
[23] **BY MR. SAMPSON:**
[24] **Q** Sure.
[25] **A** Was I planning on ambush testimony? No,

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[1] sir, I never even knew what ambush testimony was,
[2] although from the brief conversation you guys just
[3] had, I have an idea of what it is.
[4] No, the only thing I was planning was just
[5] to answer your questions, I mean, or whatever
[6] questions are asked of me. What I can tell you
[7] comfortably is the name Gary Lewis, that's all I know
[8] about it. If you give me the file and if you want to
[9] give it to me now and I'll review it now, and if
[10] something pops up in my head, I will be more than
[11] happy to tell you now.
[12] If not, you know, to answer your question,
[13] would I later approach you, you know, and tell you,
[14] hey, by the way, this popped up in my head, and I
[15] think I told you I don't necessarily know if I would
[16] approach you or defense counsel. I certainly think
[17] that at that point, it would probably behoove me to
[18] maybe even seek my own counsel and say, hey, I'm
[19] stuck between these guys and these guys and maybe
[20] something popped into my head or this popped into my
[21] head, what should I do, and just hand one of you guys
[22] the bill.
[23] **Q** All I'm looking for is that -- I'm trying to
[24] prevent that -- if you review the file and something
[25] pops up, I'm trying to prevent you from -- and I'm

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[1] not saying you're planning on doing this at all. I
[2] don't know what you would plan to do with it, but I'm
[3] trying to prevent the scenario where you would keep
[4] that new information to yourself and that I learn
[5] about it for the first time during trial. That's all
[6] I'm trying to do.
[7] Your one point is well taken. Let's take a
[8] quick break. I've just sent my -- what I have been
[9] told is UAIC's file to the printer. It's 49 pages
[10] long, which is significantly less than two to three
[11] inches that you indicated you received previously, so
[12] I don't know what all you received previously. Let
[13] me grab that off the printer and give it to you, you
[14] can take a look at it.
[15] Alternatively, if you would like to suspend
[16] these proceedings and go have a look at whatever it
[17] was you were sent and convene this on another day,
[18] that's fine with me too. But for right now, I'm
[19] printing the materials that UAIC's told me is their
[20] claim file. We'll take a quick break.
[21] (Thereupon, a recess was taken from
[22] 3:13 p.m. until 3:20 p.m.)
[23] **BY MR. SAMPSON:**
[24] **Q** Do you need more time?
[25] **A** No, I think I got it.

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[1] Q Let's go ahead and go back on the record
[2] then.
[3] For the record, we have taken a break and
[4] you've had an opportunity to review what's been
[5] disclosed to my office as UAIC's claim file, correct?
[6] A Yes, sir.
[7] Q And while we were on our break, defense
[8] counsel had asked that that be marked. Mark that as,
[9] I guess, Defendant's A.
[10] (Defendant's Exhibit A was marked for
[11] identification.)
[12] (Discussion off the record.)
[13] BY MR. SAMPSON:
[14] Q Our court reporter has reminded me that you
[15] have agreed to forward a copy of the documents that
[16] were sent to you from UAIC that are currently in your
[17] home, that that would be Plaintiff's 1. And what's
[18] in front of you has now been marked as Defendant's A.
[19] Any questions?
[20] A (Witness shakes head.)
[21] Q Is that a no?
[22] A No.
[23] Q All right. She's got to write it down.
[24] Having gone over the claim file, has that
[25] refreshed your recollection about this particular

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[1] All right. Going back to the original
[2] question that sparked a lot of this, it is Mr. Lewis'
[3] position, as I understand it, that he was insured
[4] with UAIC from March of 2007 through a period of time
[5] in 2008 or 2009 and that each month he had a policy
[6] and he would make -- he had a policy each month, he
[7] would make a payment and get a new -- I guess UAIC is
[8] calling it a term to the policy, and my only question
[9] is, are you familiar with this process UAIC would use
[10] where they would write someone a policy and then as
[11] they made payments, they would renew, issue a new
[12] term to the policy?
[13] A I don't know if I would use the word
[14] familiar, but I am aware of it, yes.
[15] Q Do you know why UAIC did business that way?
[16] MR. DOUGLAS: Objection, it calls for
[17] speculation.
[18] THE WITNESS: No, I'm not aware.
[19] BY MR. SAMPSON:
[20] Q And let me make sure you understand. I've
[21] had this with your counsel in other depositions, but
[22] the objection still gets raised. Just to make sure
[23] you understand, I'm not asking you to speculate. In
[24] fact, my question is, do you know why UAIC did it
[25] this way? And you're actually the only person on the

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[1] claim?
[2] A No. Sorry for all the bullshit.
[3] Q As you sit here right now, is there
[4] anything -- well, let me ask the easier question. As
[5] you went through the claim file, then it did not jog
[6] your memory as to anything that had occurred, is that
[7] correct?
[8] A That is correct.
[9] Q As you sit here right now, you are not aware
[10] of anything that anyone at UAIC did on the
[11] Nalder/Lewis claim outside of what's reflected in the
[12] claim file, correct?
[13] A That is correct, yes.
[14] Q For example, if you testify at trial and you
[15] testify I know this happened, the only way you would
[16] know that is because you have seen the claim file, is
[17] that a fair statement?
[18] MR. DOUGLAS: Objection, that may call for
[19] speculation.
[20] THE WITNESS: That's correct. From what I
[21] have here, yeah.
[22] BY MR. SAMPSON:
[23] Q Okay. Let's slide that over and make sure
[24] we don't lose it. There are some materials from the
[25] claims file we may mark individually.

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[1] planet who wouldn't have to speculate as to whether
[2] or not you know something. Do you understand that?
[3] A Yeah, I think so.
[4] Q And so when I ask you, do you know why UAIC
[5] did business in this monthly renewal way, all I want
[6] to know is if you know why? I don't want you to
[7] guess as to why you think it may have gone on, but if
[8] you know, then I want to know what you know. Do you
[9] understand that?
[10] A Yes.
[11] Q And with that understanding, you're not
[12] aware as to why UAIC did business that way, correct?
[13] A That is correct.
[14] Q Are you familiar with the Nevada Financial
[15] Responsibility Rules?
[16] A Yes, sir.
[17] Q You know the purpose behind them, to make
[18] sure that people aren't driving around, thinking they
[19] have insurance when they really don't?
[20] A Yes, sir.
[21] MR. DOUGLAS: Objection, to the extent it
[22] calls for a legal conclusion.
[23] BY MR. SAMPSON:
[24] Q Are you familiar with the rules Nevada has
[25] about an insurance company having to, if they're

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[1] going to cancel someone for nonpayment, to send them
[2] a notice and the cancellation is not valid for ten
[3] days after the cancellation is sent?
[4] **MR. DOUGLAS:** Same objection, may call for a
[5] legal conclusion.
[6] You can answer if you know.
[7] **THE WITNESS:** I don't know if I would use
[8] the word familiar, I'm aware.
[9] **BY MR. SAMPSON:**
[10] **Q** And are you aware that the purpose behind
[11] that statute again is to give the insured a chance,
[12] if they miss a payment, for whatever reason, to give
[13] them a grace period to get it paid so that their
[14] coverage is still in effect? Do you understand that?
[15] **MR. DOUGLAS:** Same objection, may call for a
[16] legal conclusion, vague.
[17] **THE WITNESS:** That's been my understanding.
[18] **BY MR. SAMPSON:**
[19] **Q** I want to show you, and we can print this
[20] and mark this if someone wants to, I don't
[21] necessarily think we need to, but I do want to show
[22] you --
[23] **A** This was the same file, by the way, that was
[24] mailed to me.
[25] **Q** Okay.

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[1] **A** I'm just kidding. I was just waiting for
[2] you to say, oh, you told me you didn't read it.
[3] **Q** I hope that what you said is absolutely
[4] true.
[5] **A** No, I was just kidding.
[6] **Q** Let me see if I can find the record.
[7] Well, have you seen any documents -- to your
[8] knowledge, have you seen any documents related to the
[9] claim that was brought against Mr. Lewis, other than
[10] those in the claims file you just reviewed?
[11] **A** No.
[12] **Q** For example, have you seen a proof of
[13] insurance card indicating that Mr. Lewis had
[14] insurance with UAIC from, I believe, July 1st through
[15] July 31st of 2007?
[16] **MR. DOUGLAS:** I'm going to object,
[17] foundation, assumes facts not in evidence.
[18] You can answer to the extent you know.
[19] **THE WITNESS:** No, I have not, not unless it
[20] was in here and I don't remember seeing an insurance
[21] card in here.
[22] **BY MR. SAMPSON:**
[23] **Q** Let me just give you -- this is a set of
[24] exhibits that were sent over in some documents that
[25] were sent to UAIC called Request For Admissions, and

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[1] Exhibit 1 to these documents, and it's the Request
[2] For Admissions to UAIC, I think it was the first set
[3] that was sent October of 2009, and Exhibit 1, even
[4] though on the tab it says Exhibit G, but it's
[5] Exhibit 1 to the documents in front of you, I just
[6] want to know, have you seen that document before
[7] today?
[8] **A** No, sir, I have not. Let me rephrase that.
[9] If I have, I certainly don't recall.
[10] **Q** And you have no recollection then of ever
[11] looking at that document in adjusting and working on
[12] the claim that was brought against Gary Lewis,
[13] correct?
[14] **A** I don't know if I would testify to that
[15] because I may have very well looked at it while, you
[16] know, reviewing the claim, but certainly in present
[17] time and for the purpose of answering your question,
[18] this is the first I've seen this document and
[19] comfortably I can tell you since February of 2009.
[20] **Q** And my only question is -- and I understand
[21] you may have looked -- given you don't have a
[22] recollection of the claim, you may have looked at any
[23] number of documents. My only question is, as you sit
[24] here right now, you have no recollection of looking
[25] at that document in the work you did on the Gary

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[1] Lewis claim?
[2] **A** That is correct, sir.
[3] **Q** Let me have you look at Exhibit Number 2.
[4] It's a renewal statement dated the effective date,
[5] April 12th. Have you seen that document before
[6] today, to the best of your recollection?
[7] **MR. DOUGLAS:** And I'm sorry, do you mean
[8] April 29th?
[9] **MR. SAMPSON:** What did I say?
[10] **MR. DOUGLAS:** You said April 12th, just so
[11] we're clear, and you're talking about the revised
[12] renewal statement?
[13] **MR. SAMPSON:** That's what it says, Exhibit 2
[14] to the Request For Admissions sent out last October.
[15] **MR. DOUGLAS:** Okay.
[16] **THE WITNESS:** You know, before I answer that
[17] question, can I back up one second just to go back to
[18] Exhibit G?
[19] **BY MR. SAMPSON:**
[20] **Q** Sure. It's going to be right here.
[21] **A** Just to clarify my answer, since February
[22] of 2009, which is when I stopped working for UAIC, I
[23] have not seen this document since then. If I saw it
[24] before, probably, very probably, because I'd probably
[25] review a document like this when looking at a claim

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[1] or prior to issuing a denial or issuance of a policy
[2] or whatever it may be. Do I recall looking at it?
[3] No.
[4] Q That's the only question, thank you.
[5] Same thing with Exhibit Number 2 to the
[6] Request for Admissions that are in front of you. Do
[7] you recall seeing that document before today?
[8] A No, sir.
[9] Q And do you have any recollection of
[10] addressing that document or using it at all in the
[11] work you did on the Lewis claim?
[12] A My recollection, no. Would it be a document
[13] that I would normally look at in this circumstance?
[14] Yes. But do I recall it? No, sir.
[15] Q Exhibit Number 3, do you recall seeing that
[16] document before today?
[17] A No, I do not.
[18] Q And as you sit here right now, do you have
[19] any recollection of reviewing that document as part
[20] of the work you did on the claim brought against Gary
[21] Lewis?
[22] A Again, kind of the same answer. It would be
[23] a document that I would normally review. I certainly
[24] don't recall this document in particular.
[25] Q Same question with Exhibit Number -- what

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[1] effective at the time of loss.
[2] Q Anything else?
[3] A Not that I can think of, no.
[4] Q Same thing with Exhibit Number -- we're up
[5] to 5. Do you recall receiving that document before
[6] today?
[7] A Certainly, no, sir.
[8] Q And, again, same question, do you have any
[9] recollection of ever looking at that document or
[10] assessing it in any way when you were doing the work
[11] on the claim brought against Gary Lewis?
[12] A It would certainly be a document, again,
[13] that I would review. Sorry for the same answer, I
[14] don't mean to sound like a tape recorder. Do I
[15] remember looking at this particular document? No,
[16] sir, I do not.
[17] Q What would be the purpose of reviewing it?
[18] A Again, to ensure that either a policy was
[19] renewed or wasn't renewed, so whether there was
[20] coverage enforced at the time of the loss.
[21] Q And what's your understanding of -- when you
[22] say whether a policy was renewed or wasn't renewed,
[23] what's your understanding of what the word renewed
[24] means?
[25] A Let me rephrase it. Enforce. I used the

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[1] are we up to, 4? What does it say down there, can
[2] you read it?
[3] A You lost me at hello.
[4] 4, it says 4.
[5] Q Do you recall seeing that document before
[6] today?
[7] A No, sir, I do not. And, again, kind of the
[8] same thing. It's normally a document I would
[9] review.
[10] Q To the best of your recollection, did you
[11] ever look at that document during the work you did on
[12] the Nalder claim?
[13] A Again, it would be -- the who claim?
[14] Q Nalder, it was Mr. Nalder and his daughter
[15] brought a claim against Gary Lewis.
[16] A Oh, again, it would be a document that I
[17] would normally review. I certainly don't recall it
[18] prior to today.
[19] Q What would be your purpose in reviewing a
[20] document like this, ordinarily?
[21] A Well, if I'm reviewing a document that comes
[22] from underwriting or policy services or whatever it
[23] may be, it's typically because there may be a
[24] question with regards to the status of the policy.
[25] You know, whether the policy was effective or not

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[1] word renew because one of these previous documents
[2] had the word renew.
[3] Q So does this one, but let's go through each
[4] one. On a prior document, it should be Exhibit
[5] Number 5, I believe, it says it's a renewal
[6] statement?
[7] A That's correct.
[8] Q What's your understanding --
[9] MR. DOUGLAS: This is Exhibit 4.
[10] BY MR. SAMPSON:
[11] Q Exhibit 4, I apologize. Renewal statement.
[12] What's your understanding of what the word renew
[13] would mean?
[14] A It means a policy that's renewing. An old
[15] policy is either coming to term, in other words,
[16] coming to an end or has ended and it's renewing.
[17] Q And by renewing, what do you mean?
[18] A In other words, it's going to move forward
[19] or an offer to move forward has been extended.
[20] Q Okay. If a policy is renewed, it's moving
[21] forward?
[22] A That is correct.
[23] Q And you put your hands down. I'm assuming
[24] you mean we're going to pick up where we left off
[25] essentially?

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[1] A That is correct.
[2] Q And then again on this Exhibit 5, we've also
[3] got the word renewal. Do you see that?
[4] A Uh-huh.
[5] Q Is that a yes?
[6] A Yes, sir.
[7] Q Same understanding of what the word renewal
[8] means that you just gave me a moment ago?
[9] A Yes, sir.
[10] Q All right. Exhibit 6, and I do actually --
[11] I don't mean to make you sound like a tape recorder,
[12] but that's what's required. Exhibit 6, have you seen
[13] that document before today?
[14] A Again, same answer, no.
[15] Q To the best of your recollection?
[16] A To the best of my recollection, I don't, but
[17] it's normally a document I would have reviewed prior
[18] to.
[19] Q Right. And as you sit here right now, you
[20] don't have a specific recollection of reviewing that
[21] document on the work you did on the claim brought
[22] against Gary Lewis, is that correct?
[23] A That is correct.
[24] Q Same thing with Exhibit 7, which is our last
[25] one, have you seen that document before today, to the

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[1] MR. DOUGLAS: And if I could just make a
[2] standing objection to your whole line of questioning
[3] here, if you don't mind, just to keep it --
[4] BY MR. SAMPSON:
[5] Q My first question is simply, are you
[6] familiar with that statute?
[7] MR. DOUGLAS: Asked and answered, but you
[8] can answer if you know.
[9] THE WITNESS: Familiar, again, no. Am I
[10] aware of the statute? Yes, I am.
[11] BY MR. SAMPSON:
[12] Q The statute states that -- and this is
[13] underlined portion, if -- take a look. Where is it
[14] at? I had it a second ago. "If an insurer fails to
[15] provide a timely notice of nonrenewal, the insurer
[16] shall provide the insured with a policy of insurance
[17] on the identical terms as the expiring policy."
[18] Did I read that correctly, first of all?
[19] A Yes, sir.
[20] Q Do you know whether or not UAIC ever sent a
[21] notice of nonrenewal to Mr. Lewis at any point in
[22] time?
[23] MR. DOUGLAS: I'll just object, it calls for
[24] a legal conclusion and may assume facts not in
[25] evidence.

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[1] best of your recollection?
[2] A Best of my recollection, no, but it's
[3] normally a document I would review.
[4] Q And as you sit here right now, do you have
[5] any recollection of reviewing it as part of the work
[6] you did on the claim brought against Gary Lewis?
[7] A At this time, no, sir. Normally, I'm much
[8] more charismatic, a song and dance man.
[9] Q That's all right. I appreciate that.
[10] Are you familiar with the statutes related
[11] to an insurance company's obligation to send notice
[12] that it's not going to renew a policy if it's plan is
[13] to not renew a policy?
[14] MR. DOUGLAS: Objection, to the extent it
[15] calls for a legal conclusion.
[16] You can answer if you know.
[17] THE WITNESS: I'm aware of one. I'm not
[18] familiar with it.
[19] BY MR. SAMPSON:
[20] Q Let me, for simplicity sake, let me show you
[21] a copy of NRS 687B.340 entitled, Nonrenewals. It's a
[22] paragraph or so long. If you would take a look at
[23] that real quick, I've got a couple of questions for
[24] you on it.
[25] A Okay.

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[1] You can answer if you know.
[2] THE WITNESS: No, I do not know.
[3] BY MR. SAMPSON:
[4] Q You don't recall ever seeing a notice of
[5] nonrenewal, correct?
[6] A Here we go again. It would be something I
[7] would normally look for prior to, in a situation such
[8] as this. It would normally be something I would look
[9] for. Do I recall seeing one? No, sir, I do not.
[10] Q You don't recall anyone ever telling you, we
[11] sent Mr. Lewis a notice of nonrenewal, correct?
[12] A No, I do not recall.
[13] Q Do you know whether or not Mr. -- or UAIC
[14] provided Mr. Lewis with a policy of insurance on the
[15] identical terms as the -- I'm sorry, as in the
[16] expiring policy?
[17] MR. DOUGLAS: Let me just object for the
[18] record. That is a misstatement of the facts of this
[19] case, it lacks foundation, it calls for a legal
[20] conclusion. And, frankly, it is vague and improper
[21] because this witness is not an underwriting witness,
[22] but to the extent you know, you can answer it.
[23] THE WITNESS: I don't know.
[24] BY MR. SAMPSON:
[25] Q If you have one, if you have one, what is

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[1] your understanding of what it means, this requirement
[2] that an insurance company shall provide the insured
[3] with a policy identical to the terms of the expiring
[4] policy?

[5] **MR. DOUGLAS:** I'll just object again, it
[6] clearly calls for a legal conclusion regarding the
[7] interpretation of the statute. It's also vague.

[8] To the extent you know, you can answer.

[9] **THE WITNESS:** To be honest with you, before
[10] I would answer that, I would want to look at the
[11] entire 687B.340 and I would want to look at
[12] Subsection 2 and take my time, which is how I
[13] normally would do it with the statute and a
[14] dictionary and, you know, before I would answer that.

[15] **BY MR. SAMPSON:**

[16] **Q** Well, let me ask you this. You have
[17] mentioned a couple of times a son, you have a son,
[18] correct?

[19] **A** Yes, sir.

[20] **Q** How many children do you have?

[21] **A** One.

[22] **Q** Just one? Let the record reflect he said
[23] one.

[24] **A** That I know. There have been a couple close
[25] calls out there too.

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[1] a full-time nanny. So she's normally the one that
[2] does breakfast, lunch and dinner. But I do pay for
[3] the nanny. So those are perks of that particular
[4] employee. So I'm not typically a patient guy. So,
[5] you know, spoon feeding the kid, I don't know if you
[6] have kids, is, you know, not number one on my
[7] priority list, but I do pay the nanny and that's what
[8] we expect her to do and that's one of her
[9] responsibilities.

[10] **Q** And I appreciate that. My question was,
[11] however, in providing food to your son, do you have
[12] it available for him if he wants to buy it or is it
[13] actually given to him?

[14] **MR. DOUGLAS:** Objection, relevance, I think
[15] it really is some kind of improper characterization
[16] or hypothetical.

[17] To the extent you understand that question,
[18] go ahead and answer.

[19] **THE WITNESS:** I certainly don't charge my
[20] son for it.

[21] **BY MR. SAMPSON:**

[22] **Q** Thank you.

[23] To your knowledge, did UAIC ever send
[24] Mr. Lewis a notice of cancellation of his policy for
[25] nonpayment?

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[1] **Q** To the best of your knowledge, fair enough.
[2] And it sounds as though your son currently lives with
[3] you, is that correct?

[4] **A** Yes, sir.

[5] **Q** I'm not going to get into any specific
[6] details beyond that. I just want to ask you, when is
[7] the last time you provided your son with dinner?

[8] **A** Last night.

[9] **Q** And by providing your son with dinner, did
[10] you tell him, hey, there's food in the fridge and if
[11] you'll pay me money, you can have some or did you
[12] just give it to him so he could eat?

[13] **MR. DOUGLAS:** Objection, that's so vague.
[14] That's calling for some kind of hypothetical
[15] response.

[16] To the extent that it is even coherent, you
[17] can answer it.

[18] **BY MR. SAMPSON:**

[19] **Q** And just so we are coherent, I just want to
[20] know what happened, in providing dinner to your son
[21] last night, you can go into details if you would like
[22] to, I just want to know if, by providing dinner, you
[23] said, there's food in the house, if you pay for it,
[24] you can have it or did you actually give it to him?

[25] **A** Well, if you want an actual answer, we have

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[1] **A** I do not know, sir.

[2] **Q** As we've gone through these various
[3] documents we looked at in the exhibits to the Request
[4] For Admission, you've had a chance to review the file
[5] that was provided previously, are you aware of
[6] anything that you or anyone else at UAIC did
[7] beyond -- in handling the Nalder claim beyond what's
[8] reflected in the file?

[9] **A** No, sir.

[10] **Q** There's a couple of things in the file I
[11] want to go over. Specifically, this is a letter --
[12] two letters that look very similar, one sent to
[13] Seegmiller & Associates, and one sent to Christensen
[14] Law Offices. Just take a moment to look at those.

[15] **MR. DOUGLAS:** These are the October 10, 2007
[16] letters you're referencing?

[17] **BY MR. SAMPSON:**

[18] **Q** Are those the dates on them?

[19] **A** Yes.

[20] **Q** All right. Do you recall seeing either of
[21] those letters before today?

[22] **A** No.

[23] **Q** They've got your name on them, would you
[24] agree?

[25] **A** Yes, sir, they do.

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[1] Q It appears to be letters you prepared and
[2] sent out on October 10th of 2007 regarding the claim
[3] against Gary Lewis, correct?

[4] A Yes, sir.

[5] Q Would you explain to me in this top
[6] paragraph where it says --

[7] A I'm sorry, which letter?

[8] Q Either one, I think they're the same.

[9] A No, they're not.

[10] Q Oh, I apologize. Let's just look at the one
[11] from Christensen Law Offices then.

[12] MR. DOUGLAS: Is that to Christensen Law
[13] Offices?

[14] BY MR. SAMPSON:

[15] Q October 10th, to Christensen Law Offices
[16] from you, and the second paragraph says: "Our
[17] insured maintains a minimum liability policy." Did I
[18] read that correctly?

[19] A Limits liability policy, yes, sir.

[20] Q "Our insured maintains a minimum limits
[21] liability policy." Am I correct?

[22] A That is correct.

[23] Q By that I'm assuming Mr. Lewis maintains --
[24] at the time, maintains a \$15,000 policy, correct?

[25] A 15/30, yeah.

[1] payment, if payment isn't received until August, the
[2] policy is then renewed in August with a lapse between
[3] June 1st and August.

[4] Q Now, a moment ago when I was talking to you
[5] about your understanding of the term renewed, you
[6] said, well, when it's renewed, it's -- and I can't
[7] remember, it picks up where it left off essentially
[8] is what we were talking about. Do you recall that
[9] conversation?

[10] A I don't think I would have said it picks up
[11] where it left off. I'm very cautious with my words
[12] and that would imply that there would have been
[13] coverage during that lapse.

[14] Q Well, that's why I'm trying to -- because,
[15] again, my understanding of the term renewed -- the
[16] term renewed and the term lapsed don't fit together,
[17] that they're mutually exclusive in my little brain
[18] and I'm just trying to get an understanding as to why
[19] UAIC seems to believe they can have a renewal and a
[20] lapse. Is there anything you can tell me other than
[21] what you have already said?

[22] MR. DOUGLAS: I'll just object. I think it
[23] mischaracterizes his testimony, lacks foundation, may
[24] call for a legal conclusion.

[25] To the extent you can answer, go ahead.

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[1] Q And then you have on here: "The policy in
[2] question lapsed (nonrenewed) on June 30th. The
[3] policy was then renewed on July 10, 2007 at
[4] 12:50 p.m. Pacific Standard Time," correct?

[5] A That is correct, sir.

[6] Q Can you explain to me the concept of the
[7] policy lapsed (nonrenewed), but was renewed? I'm
[8] confused.

[9] A Sure. "Our insured maintains a minimum
[10] limits liability policy. The policy in question
[11] lapsed (nonrenewed) on June 30, 2007. The policy was
[12] then renewed on July 10, 2007 at 12:50 p.m. Pacific
[13] Standard Time. There was no policy in force at the
[14] time of the loss." It means that there was no
[15] payment received, so there was a lapse in coverage.

[16] Q And I guess my confusion is you indicate the
[17] policy was nonrenewed, but then was renewed, and I
[18] don't understand how something is nonrenewed, but
[19] renewed. It just doesn't make sense to me. Can you
[20] explain what you meant when you wrote this in here?

[21] A Sure. On -- let's just take numbers 1
[22] through 12 and look at it like a calendar year. So
[23] if payments are received, 1 through 6, payment 1
[24] being January, 6 being June, all of those months,
[25] boom, boom, boom, are covered. Then on the June 1st

[1] THE WITNESS: If the material facts of the
[2] policy have not changed, there's no sense in writing
[3] a whole new application for insurance if there's been
[4] no significant change on the underlying policy, i.e.
[5] you -- you're insured and you have a VW Bug, okay,
[6] and you make your payments January 1st to June 1st,
[7] and then all of a sudden you kind of fall off the
[8] face of the map and you don't show up till
[9] August 1st, okay, but on August 1st, it turns out
[10] that, you know, you still have two arms, two legs and
[11] you're still driving that VW Bug, the policy is then,
[12] you know, renewed.

[13] BY MR. SAMPSON:

[14] Q And then by renewed, you're saying it's in
[15] effect from when forward then, I guess, is what I'm
[16] confused about?

[17] A From the point that payment was received.
[18] But let me make it very clear, not from, you know,
[19] picked up where it left off.

[20] Q Well, that's my confusion, and we talked
[21] earlier about how an insurance policy -- you'd
[22] certainly agree with me, an insurance policy,
[23] including provisions in a renewal notice, ought to be
[24] interpreted by someone who's not trained in law or
[25] business, but has a general lay understanding, you

<p style="text-align: right;">Page 89</p> <p>[1] recall that conversation, don't you?</p> <p>[2] A Yes, sir.</p> <p>[3] Q And maybe I only have a lay understanding,</p> <p>[4] but, again, the understanding of renewal -- is there</p> <p>[5] anything further in terms of renewal with a lapse</p> <p>[6] that you can share with me other than what you have</p> <p>[7] already talked about today?</p> <p>[8] MR. DOUGLAS: I'll just object, it's vague,</p> <p>[9] may call for a legal conclusion.</p> <p>[10] You can answer to the extent you know. And</p> <p>[11] asked and answered. Go on.</p> <p>[12] THE WITNESS: We could probably play tennis</p> <p>[13] with the word for a good 45 minutes. Whether it, you</p> <p>[14] know, bears any fruit or not, I couldn't tell you.</p> <p>[15] BY MR. SAMPSON:</p> <p>[16] Q Well, let me just do this, as a different</p> <p>[17] question, different area. If a layperson, average</p> <p>[18] Joe off the street said, well, hold on, if you say</p> <p>[19] you're renewing me, then renew means there is no</p> <p>[20] lapse, can we at least see where that person would be</p> <p>[21] coming from?</p> <p>[22] MR. DOUGLAS: Objection, vague, calls for</p> <p>[23] speculation.</p> <p>[24] BY MR. SAMPSON:</p> <p>[25] Q Whether you, yourself, agree or not is a</p>	<p style="text-align: right;">Page 91</p> <p>[1] speculation.</p> <p>[2] THE WITNESS: Yeah, I can't speculate on</p> <p>[3] behalf of a leasing company. Well, if you look at</p> <p>[4] the mortgage companies, they've done much sillier,</p> <p>[5] so.</p> <p>[6] BY MR. SAMPSON:</p> <p>[7] Q What do you mean by that?</p> <p>[8] A Well, I mean, oh, boy, you can send me down</p> <p>[9] a whole litany of stuff with the mortgage companies.</p> <p>[10] Mortgage companies renew people's or offer them</p> <p>[11] refinancing terms all the time.</p> <p>[12] Q Sure, on a refinance, a whole new deal, a</p> <p>[13] whole new loan, I understand. Certainly if someone</p> <p>[14] says, look, your policy ran, it's dead, it's done,</p> <p>[15] we're not going to renew it, but we'll write you a</p> <p>[16] new one, then I can see where someone would be crazy</p> <p>[17] to think, well, hold on, I thought I was covered back</p> <p>[18] from the end of my prior policy. That's the whole</p> <p>[19] point of telling them, no, that policy is done.</p> <p>[20] A Right.</p> <p>[21] Q That's not what I'm talking about. I'm</p> <p>[22] talking about a scenario where the insurance company</p> <p>[23] says, we've renewed you, and that person goes, okay,</p> <p>[24] well, if I'm renewed, I've been covered all along,</p> <p>[25] and my question earlier was, you know, do you see</p>
<p style="text-align: right;">Page 90</p> <p>[1] whole other issue, but you at least see where they</p> <p>[2] would get that understanding based on the word renew?</p> <p>[3] MR. DOUGLAS: Objection, calls for</p> <p>[4] speculation and it's vague.</p> <p>[5] THE WITNESS: I'd have to think about that</p> <p>[6] question.</p> <p>[7] BY MR. SAMPSON:</p> <p>[8] Q Well, go ahead.</p> <p>[9] A No, you know, to put it in layman's terms,</p> <p>[10] if you have a lease, let's say, and your lease is a</p> <p>[11] 36-month lease and you make the first 12 payments of</p> <p>[12] your lease and then all of a sudden you disappear off</p> <p>[13] the face of the map and miss five payments and your</p> <p>[14] car is repo'ed, you wouldn't expect to go in and say,</p> <p>[15] well, here's my next payment, let me have my car</p> <p>[16] back. You still have to catch up with all those</p> <p>[17] payments that you missed.</p> <p>[18] Q That, I understand.</p> <p>[19] A So that's kind of the way I looked at the</p> <p>[20] word renew, if you would.</p> <p>[21] Q Well, sure. Well, in that scenario you've</p> <p>[22] given me, the example you've given me, I wouldn't</p> <p>[23] expect a leasing company to say, we're going to renew</p> <p>[24] your lease if they repo'ed your car, right?</p> <p>[25] MR. DOUGLAS: Objection, calls for</p>	<p style="text-align: right;">Page 92</p> <p>[1] where someone might get that understanding based on</p> <p>[2] the word renewal?</p> <p>[3] Do you have anything to add to your response</p> <p>[4] to that question besides what you've already said?</p> <p>[5] MR. DOUGLAS: Objection, compound, may call</p> <p>[6] for a legal conclusion, vague, may call for</p> <p>[7] speculation.</p> <p>[8] To the extent you can answer it, go ahead.</p> <p>[9] THE WITNESS: No, I don't see how someone</p> <p>[10] could think that.</p> <p>[11] BY MR. SAMPSON:</p> <p>[12] Q Let's take a look at -- a closer look at</p> <p>[13] some of the exhibits we looked at previously. For</p> <p>[14] example, Exhibit Number 1, it's got under here, under</p> <p>[15] type of business, new business, do you see where that</p> <p>[16] is?</p> <p>[17] A Yes, sir.</p> <p>[18] Q I think the rest of these all say renewal.</p> <p>[19] Let's take a look at Exhibit Number 2. It's called a</p> <p>[20] Revised Renewal Statement, and you're familiar with</p> <p>[21] this type of document, whether you have seen this</p> <p>[22] specific one before today or not, correct?</p> <p>[23] A That's correct, sir.</p> <p>[24] Q You recognize UAIC, United Auto Insurance -</p> <p>[25] Nevada, is this a standard renewal or Revised Renewal</p>

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[1] Form that they use?
[2] **A** Pretty cookie-cutter, yes.
[3] **Q** And do you see on here, we've got an
[4] effective date, April 29, '07, correct?
[5] **A** Yes, sir.
[6] **Q** And this would be the date the policy would
[7] take effect, is that what effective date means?
[8] **A** Yes, sir.
[9] **Q** And if a layperson off the street said,
[10] well, effective date, that's got to be the date my
[11] policy takes effect, you would understand where
[12] they're coming from, right?
[13] **A** Yes, sir.
[14] **Q** And then we have expiration date, May 29,
[15] '07. Did I read that correctly?
[16] **MR. DOUGLAS:** Counsel, you're talking about
[17] the next policy term, is that right?
[18] **MR. SAMPSON:** I'm reading the words that are
[19] up here in the upper corner. If you want to coach
[20] him, why don't you just take a break and go talk to
[21] him. What's your objection?
[22] **MR. DOUGLAS:** Again, argumentative. The
[23] document speaks for itself, Counsel.
[24] **MR. SAMPSON:** Okay. Any other objections?
[25] **MR. DOUGLAS:** Are you referring to the

[1] Invoice date, April 26, 2007. DB01.
[2] **Q** So let's get back to the question before we
[3] were interrupted. Expiration date, May 29, 2007.
[4] **A** Yes, sir.
[5] **Q** Can you see how if a customer, a layperson
[6] off the street saw this language -- well, let me back
[7] up. We agree that the effective date, April 29, '07,
[8] a layperson off the street would be justified in
[9] thinking that's going to be the effective date of my
[10] policy, correct?
[11] **A** That's correct.
[12] **Q** And by seeing expiration date, May 29, 2007,
[13] a layperson off the street would be justified in
[14] thinking that's going to be the expiration of the
[15] policy, correct?
[16] **MR. DOUGLAS:** Again, we're talking future
[17] policy, Counsel?
[18] **MR. SAMPSON:** Do you have an objection?
[19] **MR. DOUGLAS:** Clarification.
[20] **MR. SAMPSON:** Do you have an objection?
[21] **MR. DOUGLAS:** I want to know what you're
[22] asking.
[23] **MR. SAMPSON:** I'm asking him, would a
[24] person, can you see where a layperson off the street
[25] who reads expiration date, May 29, '07, would read

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[1] policy term --
[2] **MR. SAMPSON:** No, what is your objection?
[3] What is your objection?
[4] **MR. DOUGLAS:** I want to know what you're
[5] referring to in the document. Are you referring to
[6] the next policy term for these dates?
[7] **MR. SAMPSON:** I'm referring to this line
[8] right here, that says, expiration date, May 29, '07.
[9] **MR. DOUGLAS:** Okay. For the next policy
[10] term?
[11] **MR. SAMPSON:** I'm sorry. Can you point me
[12] to the words next policy term where I'm looking at
[13] right here?
[14] **BY MR. SAMPSON:**
[15] **Q** I'm just asking the witness, because your
[16] attorney apparently sees some words here that I don't
[17] see. Do you see the words for the next policy term
[18] up here at all?
[19] **A** I'm sorry, just for the record, he is not my
[20] attorney.
[21] **Q** You're absolutely correct. You're
[22] absolutely correct. UAIC's attorney apparently sees
[23] some words here I don't see.
[24] **A** What I see is effective date, April 29,
[25] 2007. What I see is expiration date, May 29, 2007.

[1] that and think my policy expires May 29, '07?
[2] **MR. DOUGLAS:** Okay, and I think that calls
[3] for speculation, so I will object. I just wanted to
[4] clarify, are you talking about the future policy?
[5] That's all I wanted to know. If you don't want to
[6] say, that's fine, it's vague.
[7] **BY MR. SAMPSON:**
[8] **Q** I'd just like the question answered.
[9] **A** If they were reading only the top right-hand
[10] corner, yes. But here in brackets, underneath all
[11] these stars, it says, no later than 5-6.
[12] **Q** And we'll look at that.
[13] **A** I would agree with you if that was not
[14] there, but I adamantly disagree with you, seeing that
[15] that's highlighted there in brackets.
[16] **Q** Well, if this is highlighted here in
[17] brackets, this 5-6-07, we'll talk about in a minute,
[18] given that that's there, what do you think a
[19] layperson off the street would think when they read,
[20] expiration date, May, 29, '07, as to what the
[21] expiration date of their policy is going to be?
[22] **A** It would be 5-6-07 if the payment wasn't
[23] received.
[24] **Q** Okay.
[25] **A** I often try to back myself out of knowing

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United Automobile Insurance Co.

Manny Cordova
August 3, 2010

<p style="text-align: right;">Page 97</p> <p>[1] what I know and putting myself in that person, the --</p> <p>[2] I don't want to say the uneducated because that's</p> <p>[3] not -- the unfamiliar, you know, with the insurance</p> <p>[4] industry or any kind of business for that matter. So</p> <p>[5] backing myself out to the guy with the paper hat</p> <p>[6] flipping burgers, I would sit there and say, hey, if</p> <p>[7] my payment is not here on 5-6, this is no good.</p> <p>[8] Q Where in this letter does it say that?</p> <p>[9] A No later than.</p> <p>[10] Q That's when the amount is due, correct?</p> <p>[11] A Yes, sir.</p> <p>[12] Q So no later than 5-6-07 you think says your</p> <p>[13] policy will expire on 5-5-07, even though the</p> <p>[14] expiration says May 29th of '07?</p> <p>[15] A Yes, sir.</p> <p>[16] MR. DOUGLAS: I'm just going to object for</p> <p>[17] the record to that being both argumentative, I also</p> <p>[18] object on the basis of lack of knowledge for this</p> <p>[19] witness as a claims person. These are underwriting</p> <p>[20] documents. I'll also object, the document speaks for</p> <p>[21] itself, to the point you want to argue with the</p> <p>[22] witness about what things mean, keep going.</p> <p>[23] BY MR. SAMPSON:</p> <p>[24] Q I don't want to argue at all. Let's go</p> <p>[25] through this. Do you see where the policy is going</p>	<p style="text-align: right;">Page 99</p> <p>[1] MR. DOUGLAS: You don't have to be</p> <p>[2] argumentative and rude.</p> <p>[3] MR. SAMPSON: Do you have an objection? Do</p> <p>[4] you have an objection?</p> <p>[5] MR. DOUGLAS: Yes, I wanted to clarify, are</p> <p>[6] you talking about for this renewal --</p> <p>[7] MR. SAMPSON: That's not an objection. Do</p> <p>[8] you have an objection?</p> <p>[9] MR. DOUGLAS: Yes, it is.</p> <p>[10] MR. SAMPSON: What is it?</p> <p>[11] MR. DOUGLAS: It's a clarification. Are you</p> <p>[12] talking about for this renewal statement?</p> <p>[13] MR. SAMPSON: That's not an objection,</p> <p>[14] Counsel. Do you have an objection? An objection is</p> <p>[15] object, asked and answered; object, form.</p> <p>[16] MR. DOUGLAS: I can ask for a clarification</p> <p>[17] when you're being vague and making random statements.</p> <p>[18] MR. SAMPSON: The law says if the witness</p> <p>[19] needs a clarification, he can ask for one, but you</p> <p>[20] can't tell him to tell me something is unclear.</p> <p>[21] That's not permitted. We'll go ahead and get -- we</p> <p>[22] can get a motion.</p> <p>[23] BY MR. SAMPSON:</p> <p>[24] Q Do you need the question read back or do you</p> <p>[25] need me to restate it? I'll be happy to restate it</p>
<p style="text-align: right;">Page 98</p> <p>[1] to take effect on April 26th?</p> <p>[2] A 29th.</p> <p>[3] Q I'm sorry, I'm looking at it upside down.</p> <p>[4] Do you see where the policy is going to take affect</p> <p>[5] April 29th of '07, yet payment isn't due until</p> <p>[6] May 6th of '07? Do you see that?</p> <p>[7] A Yes, sir.</p> <p>[8] Q Would you agree then that a layperson off</p> <p>[9] the street reading this, a lay customer of UAIC would</p> <p>[10] get the distinct impression that they can make their</p> <p>[11] payment after the effective date and yet still be</p> <p>[12] covered after the effective date?</p> <p>[13] MR. DOUGLAS: Are you just talking about for</p> <p>[14] this particular statement, Counsel?</p> <p>[15] MR. SAMPSON: I'm just asking the question I</p> <p>[16] asked. Do you have an objection?</p> <p>[17] MR. DOUGLAS: Yeah, I want a clarification.</p> <p>[18] MR. SAMPSON: Because if you want to tell</p> <p>[19] your witness what to say, just ask for a break, you</p> <p>[20] can have a break, you can tell him what to say, you</p> <p>[21] can tell him how to say it.</p> <p>[22] MR. DOUGLAS: Don't be rude and</p> <p>[23] argumentative.</p> <p>[24] MR. SAMPSON: You need to make an objection,</p> <p>[25] Counsel. It's extremely inappropriate.</p>	<p style="text-align: right;">Page 100</p> <p>[1] if we can avoid the interruption.</p> <p>[2] A What it says here in the paragraph is: "To</p> <p>[3] avoid lapse in coverage, payment must be received</p> <p>[4] prior to the expiration of your policy. Please</p> <p>[5] select from payment options below. Once payment is</p> <p>[6] received, you will receive a new policy declaration</p> <p>[7] sheet and insurance identification cards. If there</p> <p>[8] are any changes to your existing policy, please</p> <p>[9] contact your agent before executing this renewal.</p> <p>[10] Revised amount due to the recent change in policy."</p> <p>[11] So, now, I'm sorry, what's the question?</p> <p>[12] Q Sure. My question was, can you see how a</p> <p>[13] layperson, a lay customer of UAIC, would read</p> <p>[14] effective date, April 29, '07, payment due no later</p> <p>[15] than May 6, 2007, it's okay for me to make a payment</p> <p>[16] after the effective date and still have this</p> <p>[17] coverage?</p> <p>[18] MR. DOUGLAS: Objection, calls for</p> <p>[19] speculation.</p> <p>[20] BY MR. SAMPSON:</p> <p>[21] Q Isn't that exactly what this says?</p> <p>[22] A I don't know. I'd have to look at it. I'd</p> <p>[23] have to --</p> <p>[24] Q By all means.</p> <p>[25] A -- digress, if you pardon the impression.</p>

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[1] Q Take whatever time you need.
[2] A No.
[3] Q And why not?
[4] A Because it says: "To avoid lapse in
[5] coverage, payment must be received prior to
[6] expiration of your policy." So --
[7] Q Go ahead and finish your answer.
[8] A So your policy means the policy that I have
[9] now in my hand. This is coming on a form that's
[10] titled, Revised Renewal Statement, hence the renewal
[11] of the policy goes from April 29, '07 to April 26,
[12] '07, but in order to avoid a lapse, payment must be
[13] received prior to the expiration of our policy. In
[14] other words, the policy in hand.
[15] Q So what's your understanding of what a lay
[16] customer of UAIC would think would happen if they
[17] paid on 5-5 of '07, after the effective date?
[18] MR. DOUGLAS: Objection, calls for
[19] speculation.
[20] THE WITNESS: I'm not sure.
[21] BY MR. SAMPSON:
[22] Q See how this particular document could be
[23] interpreted either way as indicating I could pay on
[24] 5-5 and still be covered back to April 29th?
[25] MR. DOUGLAS: Objection, calls for

[1] BY MR. SAMPSON:
[2] Q That would be part and parcel with your job
[3] as an adjuster with UAIC, right?
[4] A Right.
[5] Q So I just want to get -- the question's come
[6] to, you know, given that part of your job was to look
[7] at the document as to how might a policyholder read
[8] and understand this, that's my only question, and it
[9] sounds like, and correct me if I'm wrong, I said what
[10] do you think a person, an average customer of UAIC
[11] would think would happen based on this document if
[12] they made their payment on 5-5-07, and I think you
[13] said you just don't know, correct?
[14] A That's correct. That's what I said.
[15] Q Now, a moment ago, when you were reading
[16] this first provision: "To avoid a lapse in
[17] coverage" -- "to avoid lapse in coverage, payment
[18] must be received prior to expiration of your policy."
[19] A That's correct.
[20] Q And you said that that means what?
[21] A The policy that they have in hand.
[22] Q And where does it say that on this document?
[23] A You had asked me to interpret the document
[24] as if I was a layperson and that's what I was doing.
[25] I didn't imply that it said that anywhere.

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[1] speculation and, again, this witness is not an
[2] underwriting witness, he is a claims witness.
[3] THE WITNESS: Yeah, I don't know.
[4] BY MR. SAMPSON:
[5] Q All right. Isn't it part of your job as a
[6] claims handler/adjuster, you said you would
[7] ordinarily assess documents like this to see if there
[8] was coverage in place, correct?
[9] A Yes, sir.
[10] Q And we talked earlier about how it wouldn't
[11] be proper for an insurance company to make a decision
[12] based on biased information, correct?
[13] MR. DOUGLAS: Objection, that's vague and
[14] ambiguous, misstates his testimony, calls for a legal
[15] conclusion.
[16] You can answer.
[17] THE WITNESS: Yes.
[18] BY MR. SAMPSON:
[19] Q And so certainly in assessing this, you
[20] would want to look at it from what are the possible
[21] interpretations of what this document may mean,
[22] right?
[23] MR. DOUGLAS: Objection, vague, calls for
[24] speculation.
[25] THE WITNESS: Right.

[1] Q And I don't mean to imply it says that
[2] either, but where in the document do you think
[3] someone would get that notion from, that this
[4] expiration of your policy means your current policy?
[5] MR. DOUGLAS: Objection.
[6] BY MR. SAMPSON:
[7] Q We agree it doesn't say current policy,
[8] right?
[9] A That's correct.
[10] Q Where then would this notion of they're
[11] referring to my current policy when they talk about
[12] the expiration come from?
[13] MR. DOUGLAS: Objection, asked and answered.
[14] THE WITNESS: Yeah, I would have to agree,
[15] you had asked me that question. And my answer
[16] remains the same, that's what I understand in reading
[17] that sentence.
[18] BY MR. SAMPSON:
[19] Q Given that the -- well, I'm going to proffer
[20] for you that the only other place on this whole
[21] document where the word expiration is used is right
[22] up here where it says, expiration date, May 29th.
[23] You can take a look at that document and tell me if
[24] you disagree, if you see the word expiration any
[25] place else on the document?

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[1] **MR. DOUGLAS:** I'll just object, the document
[2] speaks for itself.
[3] **THE WITNESS:** No, sir, I do not.
[4] **BY MR. SAMPSON:**
[5] **Q** Can you understand how an average customer,
[6] layperson with common knowledge in the community of
[7] the UAIC, a customer of UAIC would read this and say
[8] expiration, expiration, when they say expiration of
[9] your policy, they're talking about this date right
[10] here, could you at least see where they're coming
[11] from?
[12] **MR. DOUGLAS:** Objection, that's vague and I
[13] believe it calls for speculation.
[14] **THE WITNESS:** No, I mean, like I said -- and
[15] I'm not giving you -- I'm not trying to be
[16] argumentative. The way I read this document is the
[17] way that I read this document, and it all boils down
[18] to what I read, to avoid a lapse in coverage, payment
[19] must be received prior to the expiration of your
[20] policy. And to me, your policy, that's what it means
[21] to me.
[22] **BY MR. SAMPSON:**
[23] **Q** And I understand that and I appreciate that.
[24] My only question is, if someone were to testify that
[25] it means something else to them, i.e., expiration

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[1] conclusion. That's not what he said, Counsel.
[2] **THE WITNESS:** I would have to agree, that's
[3] not what I said. What I said was, again, this is the
[4] way that I interpret the document, this is the way I
[5] read the document. If someone else were to read it
[6] differently, well, then that -- you know, I mean,
[7] there's guys out there that will pick this up, you go
[8] down there to the looney farm and you give this to a
[9] guy and he will think you're handing him Psalms 117
[10] or something.
[11] So this is the way I read the document.
[12] Could you interpret it differently? Of course.
[13] Could she interpret it differently? Of course. This
[14] is the way that I interpret it. I cannot tell you
[15] that, you know, my way is right or your way is right,
[16] but that's the way I read the document.
[17] **BY MR. SAMPSON:**
[18] **Q** Thank you.
[19] And you would agree that that's on each --
[20] we can do them one by one, but if we look at each one
[21] of these renewal statements, you'd agree the same
[22] thing applies as to how they could be read?
[23] **MR. DOUGLAS:** Same objection.
[24] **THE WITNESS:** Barring the same language,
[25] yes.

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[1] means expiration, where the only two times it's used
[2] in the document, does that sound just crazy to you or
[3] can you see where it's -- I understand it's different
[4] than your understanding. I'm not asking you to adopt
[5] that as your new understanding. I'm just asking, can
[6] you at least see where they're coming from or do you
[7] just think that's just an insane asinine
[8] interpretation?
[9] **MR. DOUGLAS:** Objection, I think that's
[10] slightly argumentative, it's certainly asked and
[11] answered and I believe it's also vague and assumes
[12] facts not in evidence and calls for speculation.
[13] To the extent you can answer, go ahead.
[14] **THE WITNESS:** I don't understand why people
[15] are killing each other because people call God by a
[16] different name. So having said that, certainly
[17] people can interpret documents differently,
[18] everyone's different. You know, I mean, that's the
[19] way that I read the document. Could someone else
[20] read it differently? Of course, they can.
[21] **BY MR. SAMPSON:**
[22] **Q** Okay. It's subject to multiple
[23] interpretations, fair statement?
[24] **MR. DOUGLAS:** Objection, that
[25] mischaracterizes his testimony, calls for a legal

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[1] **BY MR. SAMPSON:**
[2] **Q** Right, right. Okay.
[3] **A** Or barring any different language, excuse
[4] me.
[5] **Q** Correct, correct.
[6] Do you know if UAIC ever sent Mr. Lewis a
[7] letter saying, whoa, you were late on your payment,
[8] you had a period of time where your coverage was
[9] lapsed, other than one we looked at related to the
[10] July policy? And this is the October 10th letter
[11] where you advised the attorney's office that there
[12] was a lapse, you see what I'm looking at?
[13] **A** Yes, sir.
[14] **Q** Do you know if any letter like this was ever
[15] sent to Mr. Lewis?
[16] **A** I do not.
[17] **Q** And certainly prior to the July, early July
[18] auto accident, which gave rise to the claim, I think
[19] it was July 8th of '07, do you know whether, prior to
[20] July 8th of '07, UAIC ever notified Mr. Lewis that he
[21] had some kind of a lapse?
[22] **A** Not that I'm aware of, no, sir. I wouldn't
[23] typically involve myself in the day-to-day operations
[24] of, you know, underwriting and policy issuance and
[25] all of that stuff, so I couldn't answer that with any

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[1] certainty whatsoever.

[2] **Q** Do you know if UAIC ever reported Mr. Lewis
[3] to the DMV for having a lapse in coverage?

[4] **MR. DOUGLAS:** Objection, calls for
[5] speculation.

[6] **THE WITNESS:** I do not know.

[7] **BY MR. SAMPSON:**

[8] **Q** We can do it again. I'm not asking you to
[9] speculate. My question is, do you know whether UAIC
[10] ever reported Mr. Lewis to the DMV and, again, you're
[11] the only person on the planet that can tell me
[12] whether you know whether UAIC ever reported Mr. Lewis
[13] to the DMV or not, do you understand that?

[14] **A** Yes, sir, I do.

[15] **Q** Do you know whether UAIC ever reported
[16] Mr. Lewis to the DMV?

[17] **A** I do not know.

[18] **Q** Do you know if anyone from UAIC ever got
[19] ahold of Mr. Lewis and asked him why he thought there
[20] might be coverage for the claim that was brought
[21] against him?

[22] **A** I'm sorry?

[23] **Q** Do you know if anyone from UAIC ever got
[24] ahold of Mr. Lewis and asked Mr. Lewis why he thought
[25] or whether he thought there was coverage for the

[11] anybody at UAIC ever discuss that with Mr. Lewis?

[12] **A** No, sir. I do not know.

[13] **Q** Do you know if anyone from UAIC ever looked
[14] at, for example, this document that we're looking at
[15] and tried to go, okay, well, does that interpretation
[16] make sense, is there something to what Mr. Lewis'
[17] notion -- interpretation of the document was?

[18] **MR. DOUGLAS:** I'll just object. I think
[19] it's asked and answered and it also calls for
[20] speculation.

[21] **THE WITNESS:** I'm sorry, what was the
[22] question?

[23] **BY MR. SAMPSON:**

[24] **Q** Do you have any recollection of you or
[25] anyone from UAIC ever going over this renewal
statement for the month of July and looking at it
from Mr. Lewis' perspective in that it says
expiration, expiration, he had until July 31st to pay
to avoid a lapse?

[26] **MR. DOUGLAS:** I'll just object, again calls
[27] for speculation, may call for a legal conclusion and
[28] may assume facts not in evidence.

[29] **THE WITNESS:** Do I recall? No. Is it
[30] something I would typically do? Yes.

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[1] claim that was brought against him or not?

[2] **A** I do not know.

[3] **MR. DOUGLAS:** Objection, assumes facts not
[4] in evidence, foundation.

[5] **BY MR. SAMPSON:**

[6] **Q** I'll proffer to you Mr. Lewis has testified,
[7] and we'll look specifically to Exhibit Number 6, to
[8] the Request For Admissions, Mr. Lewis has indicated
[9] in an interrogatory answer that when he received this
[10] renewal notice, he saw -- actually, each of the
[11] renewal notices, he saw expiration of the policy and
[12] expiration date up here, and so, for example here,
[13] got the impression, okay, they want my payment by
[14] 6-30, but as long as I pay prior to the expiration
[15] date of July 31, '07, I'll avoid a lapse. Did you
[16] know that, that that was Mr. Lewis' understanding?

[17] **A** No, I did not.

[18] **MR. DOUGLAS:** Objection, lack of foundation,
[19] assumes facts not in evidence, may call for
[20] speculation.

[21] **BY MR. SAMPSON:**

[22] **Q** All right. And, again, Mr. Lewis has
[23] indicated that was his understanding, expiration,
[24] expiration, that he had until July 31st to make a
[25] payment and avoid a lapse. To your knowledge, did

[1] **BY MR. SAMPSON:**

[2] **Q** Okay. But if I asked you what was done, you
[3] can't tell me because you just don't recall?

[4] **A** I don't recall, I'm sorry.

[5] **Q** Do you know if anyone at UAIC, in handling
[6] the claim that was brought against Mr. Lewis, ever
[7] took a look at NRS 687B.340 that required UAIC to
[8] provide Mr. Lewis a policy since it didn't send him a
[9] timely notice of nonrenewal?

[10] **MR. DOUGLAS:** I'll just object, may call for
[11] a legal conclusion and it certainly assumes facts not
[12] in evidence, may call for speculation.

[13] You can answer to the extent you know.

[14] **THE WITNESS:** I do not know.

[15] **BY MR. SAMPSON:**

[16] **Q** And do you know whether anyone from UAIC
[17] ever assessed NRS 687B.320 that says if you're going
[18] to cancel someone for nonpayment, you have to give a
[19] ten-day notice we talked about earlier?

[20] **A** Uh-huh.

[21] **Q** Do you know if anyone from UAIC ever looked
[22] into that statute in determining whether there was
[23] coverage for Mr. Lewis?

[24] **MR. DOUGLAS:** Same objection, may call for a
[25] legal conclusion, assumes facts not in evidence, may

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[1] call for speculation.
[2] You can answer to the extent you know.
[3] **THE WITNESS:** I don't know about anyone
[4] else. It's normally a document that I would review.
[5] **BY MR. SAMPSON:**
[6] **Q** Do you know if coverage counsel was ever
[7] procured in relation to this claim?
[8] **A** No, I do not.
[9] **Q** Do you know whether or not Mr. Lewis was
[10] ever provided with independent counsel to assist in
[11] assessing whether there was coverage for Mr. Lewis?
[12] **A** No, I do not.
[13] **Q** Do you know whether or not Mr. Lewis was
[14] provided defense counsel under any kind of
[15] reservation of rights when he was sued under this
[16] claim?
[17] **MR. DOUGLAS:** I'll just object, calls for a
[18] legal conclusion.
[19] **THE WITNESS:** I do not.
[20] **BY MR. SAMPSON:**
[21] **Q** Can you tell me what, if anything, UAIC did
[22] to assist Mr. Lewis with the claim that was brought
[23] against him?
[24] **A** I don't know.
[25] **MR. SAMPSON:** I'm sorry, can you read the

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[1] **BY MR. SAMPSON:**
[2] **Q** Do you understand the question, sir?
[3] **A** Yes. No, I do not know.
[4] **Q** If the documents in front of you, UAIC's
[5] claim file, indicate that letters were sent to you,
[6] do you have any reason to think you didn't actually
[7] receive them?
[8] **A** I beg your pardon? I'm sorry, sir.
[9] **Q** Let me back up. I'll give you an exact
[10] example of what I'm talking about.
[11] There is a letter within these documents,
[12] dated October 23, 2007. Would you take a look at
[13] that, please? Is it addressed to you?
[14] **A** Yes, sir, it is.
[15] **Q** Is your name on that document as the
[16] recipient?
[17] **A** Yes, sir, it is.
[18] **Q** Do you have any reason to think that you
[19] didn't actually receive that document as part of this
[20] claim?
[21] **A** No, I don't.
[22] **Q** And I understand it was sent -- what's the
[23] date on it?
[24] **A** The 23rd of October, 2007.
[25] **Q** So it was sent almost two years ago or

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[1] question back?
[2] (Thereupon, from the record above,
[3] the reporter read, to wit:
[4] "Q Can you tell me what, if
[5] anything, UAIC did to assist
[6] Mr. Lewis with the claim that was
[7] brought against him?
[8] **A** I don't know.")
[9] **BY MR. SAMPSON:**
[10] **Q** And I'm assuming from your answer then you
[11] mean there's nothing that you're aware of?
[12] **A** Nothing that I'm aware of, no, sir.
[13] **Q** When I say, can you tell me, when you say, I
[14] don't know, I don't know if you can tell me or not,
[15] I want to make sure we're clear.
[16] Do you know whether Mr. Lewis was ever sued
[17] under the claim that was brought against him?
[18] **A** I do not, no, sir.
[19] **Q** Do you know if -- well, to your knowledge,
[20] did UAIC ever inform Mr. Lewis about the offer to
[21] settle for the \$15,000 policy limits that was made?
[22] **MR. DOUGLAS:** And I'll just object to the
[23] extent it may call for a legal conclusion and may
[24] call for speculation.
[25]

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[1] almost three years ago. You don't have any specific
[2] recollection of receiving it, correct?
[3] **A** No, sir.
[4] **Q** I'm correct? You don't have any specific
[5] recollection of receiving that document, correct?
[6] **A** No, I do not.
[7] **Q** All right. I've asked you this question a
[8] couple of times, but I just want to do it one last
[9] time, given all the information we've looked at.
[10] Is there anything else as we've looked
[11] through this, memory jogged, recollection refreshed,
[12] anything else you recall related to this claim other
[13] than what you have testified to today?
[14] **A** No.
[15] **Q** And I would just remind you again that you
[16] have agreed to provide our court reporter with the
[17] documents that were provided to you from UAIC. I
[18] would ask that you do that.
[19] I would also advise you my position that if
[20] you do recall additional information that you would
[21] testify to at the time of trial beyond what you have
[22] shared with us today, that there's an obligation on
[23] the part of UAIC to supplement all of that and I
[24] would ask you to advise either UAIC's counsel or
[25] myself that there's additional things you remember.

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[1] We can reconvene your deposition, you can tell us
[2] under oath, we can work something out as to how it
[3] is, but I absolutely -- the claimants in the court
[4] system have a right to proceed to trial without any
[5] surprises. Do you understand that?

[6] A Yes.

[7] MR. SAMPSON: All right then. Those are all
[8] the questions I have.

[9] MR. DOUGLAS: We're done.

[10] THE REPORTER: Would you like a copy of the
[11] transcript?

[12] MR. DOUGLAS: Yes. Can I get an e-tran?

[13] THE REPORTER: Yes. Do you want a hard copy
[14] as well?

[15] MR. DOUGLAS: Just the e-tran. Thank you so
[16] much.

[17] (Thereupon, the taking of the deposition was
[18] concluded at 4:21 p.m.)

[19] *****
[20]
[21]
[22]
[23]
[24]
[25]

[11] CERTIFICATE OF REPORTER

[12] STATE OF NEVADA)

[13]) ss:

[14] COUNTY OF CLARK)

[15] I, Sarah Safier, a Certified Court Reporter
[16] licensed by the State of Nevada, do hereby certify:

[17] That I reported the taking of the deposition
[18] of the witness, MANNY CORDOVA, commencing on Tuesday,
[19] August 3, 2010, at 2:04 p.m. That prior to being
[20] examined the witness was by me duly sworn to testify
[21] to the truth. That I thereafter transcribed my said
[22] shorthand notes into typewriting and that the
[23] typewritten transcript of said deposition is a
[24] complete, true and accurate transcription of said
[25] shorthand notes.

[15] I further certify (1) that I am not a
[16] relative or employee of an attorney or counsel of any
[17] of the parties, nor a relative or employee of any
[18] attorney or counsel involved in said action, nor a
[19] person financially interested in the action, and (2)
[20] that transcript review by the witness pursuant to
[21] Rule 30(e) was not requested.

[22] IN WITNESS WHEREOF, I have hereunto set my
[23] hand in my office in the County of Clark, State of
[24] Nevada, this ____ day of _____, 2010.
[25]

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[11] CERTIFICATE OF DEPONENT

[12] I, MANNY CORDOVA, deponent herein, do hereby
[13] certify and declare the within and foregoing
[14] transcription to be my deposition in said action,
[15] subject to any corrections I have heretofore
[16] submitted; and that I have read, corrected, and do
[17] hereby affix my signature to said deposition.

[18] MANNY CORDOVA, Deponent
[19]

[20] Subscribed and sworn to before me this
[21] day of _____, 2010.

[22] Notary Public
[23]
[24]
[25]

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August 3, 2010

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Zurich 21:15

APR 02 2014

CASE NO. 13-17441

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

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

JAMES NALDER, Guardian Ad Litem on
Behalf of Cheyanne Nalder and GARY
LEWIS, individually,

Appellants,

vs.

UNITED AUTOMOILE INSURANCE
COMPANY,

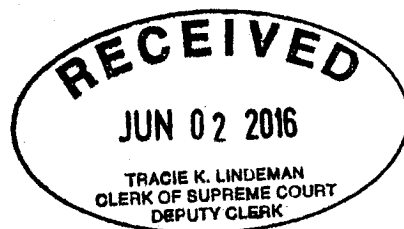
Respondent.

No. 13-17441

D.C. No. 2:09-cv-01348-
RJC-GWF
District of Nevada,
Las Vegas

APPELLANTS' APPENDIX – VOLUME II

THOMAS CHRISTENSEN, ESQ.
Nevada State Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, NV 89107
Telephone: (702) 216-1475
Facsimile: (702) 870-6152
courtnotices@injuryhelpnow.com
Attorneys for Appellants



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Matthew Douglass, Esq.
ATKIN WINNER & SHERROD
1117 S. Rancho Dr.
Las Vegas NV 89102

/s/ Jennifer M. Gooss
An employee of CHRISTENSEN LAW OFFICES, LLC

“EXHIBIT 6”

Deposition of Lisa Watson

08/18/10

Nalder v. United Auto.

1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEVADA
3 * * * * *
4
5 JAMES NALDER, Guardian Ad)
Litem for minor Cheyanne)
6 Nalder, real party in) Case No.
interest, and GARY LEWIS,) 2:09-cv-1348
7 Individually,)
8 Plaintiffs,)
9 vs.)
10 UNITED AUTOMOBILE INSURANCE)
CO., DOES I through V, and)
11 ROE CORPORATIONS I through)
V, inclusive,)
12 Defendants.)
13 _____)
14
15
16

17 DEPOSITION OF LISA WATSON

18 Taken on Wednesday, August 18, 2010

19 At 2:59 p.m.

20 At 1000 South Valley View Boulevard

21 Las Vegas, Nevada 89107
22
23
24

25 Reported by: Sarah Safier, CCR No. 808

2

1 APPEARANCES:

2 For the Plaintiff: DAVID F. SAMPSON, ESQ.
 Christensen Law Offices, LLC
 3 1000 South Valley View Boulevard
 Las Vegas, Nevada 89107

4
 For the Defendant: MATTHEW J. DOUGLAS, ESQ.
 5 Atkin Winner & Sherrod
 1117 South Rancho Drive
 6 Las Vegas, Nevada 89102

7
 8
 9 I N D E X

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Page

11 LISA WATSON

12 Examination By Mr. Sampson

3

13

14

15 EXHIBITS MARKED FOR IDENTIFICATION

16

No.	Description	Page
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17

(None Offered)

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3

1 (NRCF Rule 30(b)(4) or FRCP Rule 30(b)(5),
2 as applicable, was waived by the parties.)

3 Whereupon --

4 LISA WATSON, having been first duly sworn to
5 tell the truth, the whole truth and nothing but the
6 truth, was examined and testified as follows:

7 * * * * *

8 EXAMINATION

9 BY MR. SAMPSON:

10 Q Can you please state your name and spell
11 your last name for our record before we start?

12 A Lisa Watson, W-a-t-s-o-n.

13 Q Thank you, Lisa.

14 My name is David Sampson. I am the attorney
15 for Jim Nalder as well as Gary Lewis.

16 It's my understanding at some point in time
17 Mr. Lewis was an insured of UAIC, which you know what
18 UAIC is?

19 A Yes, I used to be employed with them.

20 Q I understand you used to work with them.

21 First of all, have you ever had your
22 deposition taken before?

23 A Yes.

24 Q Approximately how many times?

25 A Once.

4

1 Q And how long ago was that?

2 A Seven, eight years ago.

3 Q Was it in connection -- well, I don't want
4 to get into the details, but in general, what was the
5 case about?

6 A Insurance coverage.

7 Q So were you being deposed then in your
8 position as an employee of an insurance company?

9 A Yes.

10 Q And what was the insurance company that you
11 gave testimony in that case for?

12 A Sutter Insurance Company.

13 Q Is that S-u-t-t-e-r?

14 A Yes.

15 Q All right. Since it's been several years,
16 let me go through just a couple of things. We call
17 them admonitions.

18 Number one, you just took an oath to tell
19 the truth. You understand it's the same oath you
20 would take in a court of law, it carries with it the
21 same penalties of perjury?

22 A Yes.

23 Q I tell everyone that, so don't take offense.

24 You understand we have a court reporter here
25 and because she's going to try to write down

5

1 everything that's said, it's very important that only
2 one of us speak at a time. So if I go on and on and
3 on and you see where my question is going and in
4 casual conversation you might say, Dave, it's three
5 or whatever the answer would be, and in deposition,
6 please resist that temptation. Wait for me to finish
7 my question. Once I'm done, go ahead and give me
8 your answer, okay?

9 A Okay.

10 Q And I will do my best, I promise, to wait
11 until you finish your answer before I ask my next
12 question. If, for some reason, I thought you were
13 done and I jump in with another question, feel
14 free -- in fact, please say, stop, I wasn't done
15 answering just yet, okay?

16 A Okay.

17 Q All right. And absolutely, I'll wait for
18 you to make a full answer, whatever it is you want to
19 say in terms of explaining or whatever else. You
20 understand that?

21 A Yes, I do.

22 Q Also, I may ask you to describe, for
23 example, you know, if you say, well, it went like
24 this or it went like that, I may ask you to describe
25 what this or that means, ask you to give an oral

6

1 answer, or if you say yep or uh-huh, I might go, is
2 that a yes? Is that a no? It's just so we have a
3 clear record.

4 I'll warn you ahead of time, a lot of times
5 I'll ask a question and I'll say, you know, is that
6 correct? And the answer to the initial question will
7 be no and I will say, is that correct? And you'll
8 say no, and I may say, I'm sorry, am I correct or
9 not? And I will just ask you to bear with me and
10 I'll warn you ahead of time, just do your best to
11 listen to the question so we make sure we have a
12 clear record. Do you understand all that?

13 A Yes.

14 Q All right. Great.

15 Are you currently employed?

16 A Yes.

17 Q Who are you currently employed with?

18 A Target Managers Insurance.

19 Q And what do you do for Target Managers
20 Insurance?

21 A I'm an underwriter.

22 Q What are your responsibilities in
23 underwriting?

24 A Underwriting environmental applications,
25 trucking, environmental applications.

7

1 Q What does an underwriter do?

2 A Reviews the application to see if it fits
3 into the company's guidelines.

4 Q Anything else, in general?

5 A No. Basically, that's what an underwriter
6 does.

7 Q What is your -- well, let me just walk you
8 back, I won't go too far back, but how long have you
9 been with Target?

10 A Just over a year.

11 Q And were you employed before working at
12 Target?

13 A Yes.

14 Q Where were you employed prior to Target?

15 A United Automobile Insurance Company.

16 Q That's UAIC?

17 A Correct.

18 Q You understand they're the defendant in this
19 lawsuit that we're here to depose you on today?

20 A Yes.

21 Q You understand no one's filed a lawsuit
22 against you personally, you understand that?

23 A Yes.

24 Q Do you have counsel that you have retained
25 personally to defend you in this case --

8

1 A No.

2 Q -- or to advise you? There's no reason to
3 defend you, nobody's suing you, but to advise you at
4 all?

5 A No.

6 Q Okay, thank you.

7 All right. And at UAIC, what was your job
8 title?

9 A Underwriting manager.

10 Q And what did you do for UAIC?

11 A I oversaw the underwriters that worked in
12 our department, made sure that the work got
13 processed, handled any issues that came up with
14 insureds, underwrote my policies myself, took
15 payments, applied payments in our system, handled
16 reports.

17 Q Just to do my due diligence, anything else
18 in terms of a general sense of the work you did for
19 UAIC?

20 A I can't recall.

21 Q Nothing you recall as you sit here right
22 now?

23 A Yeah.

24 Q That's a yes, correct?

25 A Correct.

9

1 Q Okay, great.

2 I asked you earlier, what does an
3 underwriter do and you gave me an answer. In terms
4 of what did you do as an underwriter for UAIC,
5 anything beyond what you have told us already and
6 what you told us earlier when you said what an
7 underwriter does in general?

8 A I can't recall. It's all that comes to mind
9 at this point.

10 Q What was your time frame working at UAIC,
11 from when to when, approximately, to the best of your
12 recollection?

13 A I think it was from 2006 to 2009.

14 Q And throughout your course in working for
15 UAIC, were your responsibilities generally as you
16 have described them for me?

17 A Yes.

18 Q You didn't go from some other job, get
19 promoted, demoted or anything like that, correct?

20 A Nothing like that. Correct.

21 Q That was an example, the answer was no and I
22 said, correct? So I appreciate you answering like
23 that.

24 Why did your employment with UAIC end?

25 A I was laid off.

10

1 Q And do you know why that was?

2 A They closed the Las Vegas office.

3 Q So when you were working for UAIC, you were
4 working out of Las Vegas?

5 A Correct.

6 Q And prior to working at UAIC, where were you
7 employed?

8 A Sutter Insurance.

9 Q And how long were you employed with Sutter?

10 A Nine years.

11 Q So '06, it takes you back to approximately
12 1997 or so?

13 A Around there, I think so.

14 Q What did you do for Sutter Insurance?

15 A Underwriting and also operations manager.

16 Q So what, if anything, were your
17 responsibilities at Sutter to the extent they were
18 any different than your responsibilities at UAIC and
19 Target?

20 A Kind of different because not only did we
21 handle agents, we also handled managing general
22 agents, which I had to go out and conduct audits on
23 our general agents.

24 Q Can you walk me through your educational
25 history, starting with high school?

11

1 A That's it. High school and some college --

2 Q Where did you attend --

3 A -- courses.

4 Q I'm sorry, you said college courses?

5 A Yeah, I attended some college courses.

6 Q Where did you attend high school?

7 A Northridge. Do you need the school?

8 Q Northridge, is that the city?

9 A Northridge, California.

10 Q And do you remember the name of your high
11 school?

12 A San Fernando Valley Academy.

13 Q In Northridge, California?

14 A Yes.

15 Q Did you graduate?

16 A Yes.

17 Q What year?

18 A 1980.

19 Q And after graduating high school, what, in
20 general -- I don't need all the specifics, but in
21 general, what kind of college courses have you taken?

22 A Just math in general and I believe English.

23 Q And you have not received any degrees after
24 high school?

25 A No.

12

1 Q I'm correct?

2 A Correct.

3 Q That's an example of my horrible questioning
4 pattern. I'll apologize again.

5 Any technical training or any other courses
6 that you have taken since high school?

7 A No.

8 Q Have you received any certificates or
9 accreditations or anything like that since high
10 school?

11 A Just my California insurance license and
12 then I also obtained the Nevada insurance license
13 when I moved here. It's just been continuing
14 education for insurance.

15 Q You said it's continuing education in
16 insurance?

17 A Yeah.

18 Q That's a yes?

19 A Sorry.

20 Q Is that a yes?

21 A Yes.

22 Q And can you walk me through in general what
23 these continuing education classes in insurance
24 consist of? Like has it been classroom?

25 A Some has been classroom, some has been

13

1 online, some has been by books.

2 Q And in general, other than insurance, can
3 you give me any more specificity on the kinds of
4 things you're learning about in these classes you
5 attend?

6 A I usually take courses in the personal lines
7 field regarding homeowners, personal auto, also the
8 commercial lines for commercial auto, general
9 liability, and we're also required now to take agents
10 ethics, I believe.

11 Q And how often do you attend these classes?

12 A Nevada requires every three years.

13 Q All right. Prior to working with Sutter --
14 I'm not going to go all the way back to 1980. Prior
15 to working with Sutter, were you still working in the
16 insurance industry?

17 A Yes, I was.

18 Q And for approximately then how long have you
19 been working in the insurance industry?

20 A Past 20 years.

21 Q Well, when did you get these licenses, the
22 California and Nevada insurance license, if you
23 recall, best estimate?

24 A The California was back in the '80s and the
25 Nevada probably by maybe four years ago.

14

1 Q So you have been working -- well, you've
2 been licensed in California for then well over 20,
3 maybe even in excess of 30 years?

4 A Yeah. When I moved here, I let the
5 California go and I transferred it over to the Nevada
6 license.

7 Q So you have been licensed, you've had an
8 insurance license for certainly well over 20, maybe
9 even upwards of 30 years?

10 A Yes.

11 Q And in that time, I would assume, although
12 you correct me if I'm wrong, that in addition to the
13 legal or the continuing insurance classes you have
14 taken, your experience in 20, 30 some years in the
15 insurance industry has given you quite an education
16 on insurance in general and underwriting in specific?

17 A Yes.

18 Q I want to go over -- so you're familiar with
19 the obligations of an insurance company, at least as
20 it relates to underwriting?

21 A Yes.

22 Q Are you familiar with the obligations of an
23 insurance company as it relates to claims handling?

24 A No. I was never in claims, so I'm not
25 familiar with that.

15

1 Q Are you familiar with the obligations of an
2 insurance company as it relates to coverage disputes?

3 A Yes.

4 Q I want to go through a couple different
5 ideas. You can -- some people call them rules of the
6 road. They're notions that I have written here.
7 I'll give you an example of the first one, which is:
8 An insurance company must treat it's policyholders'
9 interests with equal regard as it does it's own
10 interests.

11 And my questions on these statements are
12 going to be, do you agree, disagree or you can tell
13 me, I don't know whether I agree or disagree, I just
14 don't know, I don't have any information.

15 Do you understand in general what the
16 questions are going to be?

17 A Yes.

18 Q Let me go over the first one then. I'll
19 proffer that an insurance company has an obligation
20 to treat it's insureds and policyholders' interests
21 with equal regard as it does it's own interests.

22 Do you agree, disagree or is it outside your
23 area of training?

24 A Outside.

25 Q The claims handling process is not supposed

16

1 to be adversarial. Would you agree or disagree or is
2 it outside of your area?

3 A I don't understand the question.

4 Q And let me -- the question -- the statement
5 is, when someone brings a claim, in working with
6 their insurance company on a claim, the insured and
7 the insurance company should be working together and
8 they're not adversaries, they shouldn't be on
9 opposite sides of each other. Does that better
10 clarify the question?

11 A Yes.

12 Q And do you agree, disagree or is that
13 outside your area?

14 A I'd say it's outside my area.

15 Q Fair enough, fair enough.

16 An insurance company should assist it's
17 policyholders with claims that are brought. Agree,
18 disagree or outside your area?

19 A Agree.

20 Q You would agree?

21 A Yes.

22 Q An insurance company has an obligation to
23 disclose to it's insureds all benefits and coverages
24 and time limits that apply to a claim or to a policy.

25 A I agree.

17

1 Q An insurance company must conduct a full,
2 fair and prompt investigation of all claims.

3 A I agree.

4 Q An insurance company must fully, fairly and
5 promptly adjust all claims.

6 A I agree.

7 Q An insurance company must not deny a claim
8 or any part of a claim based on insufficient
9 information.

10 MR. DOUGLAS: Object just to the extent it
11 calls for speculation.

12 THE WITNESS: Out --

13 BY MR. SAMPSON:

14 Q Outside of your area?

15 A Yes.

16 Q An insurance company must not misrepresent
17 facts or policy provisions.

18 A I agree.

19 Q An insurance company has an obligation to
20 inform it's insureds of all settlement offers.

21 MR. DOUGLAS: Object to the extent it calls
22 for a legal conclusion.

23 BY MR. SAMPSON:

24 Q I just want to know if you agree, disagree
25 or it's outside of your area?

18

1 A Outside.

2 Q Okay. In your -- particularly with your
3 assessment of coverage, I think you said you do
4 coverage issues, correct?

5 A Yes.

6 Q Would that include determining whether or
7 not there's coverage for a particular claim?

8 A I would assist the claims adjuster and read
9 the policy and try to explain it to them.

10 Q Okay. Well, anything else in terms of --
11 well, were you involved in interpreting policy
12 language to decide whether or not there was coverage
13 or not?

14 A I would give my opinion of what the
15 coverage -- how the coverage applies.

16 Q Or if it applies?

17 A If it applies, correct, and, you know,
18 explain it to the claims adjuster at that point and
19 they would take it from there.

20 Q Okay. Do you agree with me or disagree or
21 is it outside your area of training with the
22 following: In determining the meaning of an
23 insurance policy, the policy language should be
24 examined from the viewpoint of someone not trained in
25 law or in business?

19

1 A Say that again.

2 Q Sure, absolutely. And by all means, if you
3 need me to repeat, restate, rephrase, start all over
4 again from scratch, you just let me know. That's no
5 problem at all.

6 In determining the meaning of language in an
7 insurance policy, the language should be viewed from
8 the standpoint of someone who is not trained in law
9 or trained in business or even in insurance, it
10 should be looked at as to how would a layperson
11 interpret this language.

12 MR. DOUGLAS: Object to the extent it calls
13 for a legal conclusion.

14 You can answer.

15 THE WITNESS: Outside.

16 BY MR. SAMPSON:

17 Q Fair enough.

18 Would you agree with me that in interpreting
19 an insurance policy, language in an insurance policy,
20 the words in the policy should be given their plain,
21 ordinary meaning?

22 Do you need an example of what I'm talking
23 about?

24 A Yes.

25 Q Let me give you a crazy example. I'm not

20

1 saying this has ever happened, but I'll use a crazy
2 example just to illustrate the point and then I will
3 ask the question again.

4 So a crazy example would be if an insurance
5 policy said, we cover your family, and someone, just
6 a layperson off the street, if you look at the
7 ordinary popular definition of the phrase, I think
8 most people would agree that their children, their
9 wife, their grandmother, you know, family would be
10 covered. Do you understand me so far?

11 A Yes.

12 Q And the notion is that that's how, if we
13 say, we cover your family, that language should be
14 interpreted as an average person would understand it.
15 For example, if UAIC, when we use the word family, we
16 just mean your wife and nobody else, that would be
17 improper, you understand what I'm saying?

18 A Yes.

19 Q And so, again, the idea that the language in
20 a policy should be interpreted by it's plain,
21 ordinary understanding, would you agree, disagree or
22 is it outside your area of training?

23 MR. DOUGLAS: I'll just object to the extent
24 it calls for a legal conclusion.

25 THE WITNESS: Yeah, it's outside.

21

1 BY MR. SAMPSON:

2 Q All right. The language in insurance
3 policies should be broadly interpreted in order to
4 afford the greatest possible coverage to the insured.

5 MR. DOUGLAS: Same objection.

6 THE WITNESS: Outside.

7 BY MR. SAMPSON:

8 Q Do you know whether or not an insurance
9 company has an obligation to provide notice to an
10 insured before terminating a policy for failure to
11 pay a premium?

12 MR. DOUGLAS: Objection to the extent it
13 calls for a legal conclusion.

14 THE WITNESS: Outside.

15 BY MR. SAMPSON:

16 Q You just don't know, correct?

17 A Correct.

18 Q Do you know whether or not insureds have the
19 right in Nevada to have their policies renewed, an
20 expiring policy obviously?

21 MR. DOUGLAS: Object to the extent it calls
22 for a legal conclusion.

23 THE WITNESS: It's outside.

24 BY MR. SAMPSON:

25 Q Do you know whether or not an insurance

22

1 company -- well, let me back up.

2 Would you agree with me that an insurance
3 company has an obligation, if a policy is cancelled
4 midterm, to send a ten-day notice of cancellation or
5 do you even know?

6 MR. DOUGLAS: Object to the extent it calls
7 for a legal conclusion.

8 THE WITNESS: I know about cancellations,
9 but I don't think it's the ten days. I mean, it
10 depends on the type of cancellation.

11 BY MR. SAMPSON:

12 Q What do you mean?

13 A Underwriting cancellations can vary compared
14 to nonpayment of premium.

15 Q What's an underwriting cancellation?

16 A For personal auto?

17 Q Just -- I'm not familiar with the phrase,
18 underwriting cancellation, so just tell me what you
19 mean.

20 A I'm going to say it's outside, because
21 there's too many variables for each company,
22 depending on the type of insurance.

23 Q Okay.

24 A I do know one thing that's for certain. In
25 all policies, if it's nonpayment, it's ten-day

23

1 notice.

2 Q What is an underwriting cancellation?

3 A When the company decides to cancel the
4 policy.

5 Q That's it?

6 A For reasons as indicated in the Revised
7 Statutes of Nevada.

8 Q All right.

9 And then you said a moment ago -- can you
10 read her answer about ten days ago?

11 (Thereupon, from the record above,
12 the reporter read, to wit:

13 "A I do know one thing that's for
14 certain. In all policies, if it's
15 nonpayment, it's ten-day notice.")

16 BY MR. SAMPSON:

17 Q And I'm assuming if it's nonpayment of the
18 premium, that a ten-day notice has to be given before
19 it's cancelled, is that what you mean?

20 A Correct.

21 Q I just want to make sure I understand.

22 Do you know anything about the public policy
23 behind that rule of ten-day notice?

24 A No.

25 Q So, for example -- it sounds like your

24

1 answer is still going to be no, I just want to
2 clarify, and I apologize, I have to make sure I cover
3 all my bases. If someone were to say, for example,
4 that one of the reasons they have a ten-day notice is
5 if someone bounces a check or if the check gets lost
6 in the mail, the policyholder shouldn't be cancelled
7 without being told ahead of time, wait, your check
8 bounced or didn't show up in the mail or something
9 like that, if I ask you if you're aware of whether
10 that is a concern as to why we have the ten-day
11 notice requirement in Nevada, would you even know?

12 A No.

13 Q All right. That's what I thought you'd say.

14 Do you have an understanding as to UAIC's
15 process in providing renewal notices, providing
16 copies of policies to insureds or providing insureds
17 with insurance identification cards or anything along
18 those lines?

19 A I don't recall any of that since it's been a
20 while since I worked for them.

21 Q As you sit here right now, you just don't
22 recall anything about UAIC's process?

23 A Correct.

24 Q Were you involved in that process, do you
25 know?

25

1 A Yes.

2 Q But in terms of how it works, as you sit
3 here right now, you just don't remember?

4 A Yes.

5 Q I want to show you a statute and I've got a
6 factual question for you actually. I'm going to ask
7 you a particular factual question, but before I just
8 want to lay a little background so you understand
9 where I'm coming from. It's Nevada Revised Statute
10 687B.340. Go ahead and take a minute to look at it.

11 My first question is very simple, if you've
12 seen that statute before today or if you were
13 familiar with it before today?

14 A I've seen the statute.

15 Q You were aware of the existence of that
16 statute before today, correct?

17 A Correct.

18 Q And so you were aware that a policyholder
19 has the right to have his policy renewed, correct?

20 A Correct.

21 MR. DOUGLAS: Object to the extent it calls
22 for a legal conclusion.

23 BY MR. SAMPSON:

24 Q Let me just read and I will ask a simpler
25 question. The subject is Subsection 2. "A.

26

1 policyholder, has a right to have his policy
2 renewed." Did I read that much correctly?

3 A Yes.

4 Q And were you aware of that, that an insured,
5 a policyholder has the right to have their policy
6 renewed? Were you aware of that before today?

7 A Yes.

8 Q And then there's a question down here that
9 says -- and I'm sorry, there's not a question,
10 there's a sentence. I'm going to try to read it
11 upside down.

12 "If an insurer fails to provide a timely
13 notice of nonrenewal, the insurer shall provide the
14 insured with a policy of insurance on the identical
15 terms as in the expiring policy."

16 First question, did I read that correctly?

17 A Yes.

18 Q Second question, were you aware of this
19 obligation of an insurance company if it didn't send
20 a timely notice of nonrenewal, were you aware of that
21 provision before today?

22 A Yes.

23 MR. DOUGLAS: Objection to the extent it
24 calls for a legal conclusion and foundation.

25

27

1 BY MR. SAMPSON:

2 Q And then my only factual question on this,
3 to your knowledge, did UAIC ever send a notice of
4 nonrenewal to Gary Lewis?

5 MR. DOUGLAS: Objection, foundation.

6 BY MR. SAMPSON:

7 Q If you know?

8 A I don't recall.

9 Q And to make sure you understand my
10 question -- well, actually, let me change the
11 question a little bit since you say you don't recall.

12 You would agree with me then that as you sit
13 here right now, you don't remember, you have no
14 recollection of UAIC ever sending a notice of
15 nonrenewal to Gary Lewis, correct?

16 MR. DOUGLAS: Asked and answered.

17 THE WITNESS: Correct.

18 BY MR. SAMPSON:

19 Q Do you know whether or not Gary Lewis was
20 ever provided with a policy of insurance on the same
21 terms as any of his expiring policies?

22 MR. DOUGLAS: Objection, foundation, calls
23 for a legal conclusion.

24 THE WITNESS: I don't recall.

25

28

1 BY MR. SAMPSON:

2 Q I've got just a couple of follow-up
3 questions and I just want your understanding. I'm
4 not asking you to write a book, I'm not asking you --
5 I mean, if you don't have an understanding, please
6 tell me, I just don't know how that would work in
7 that scenario, and it goes back to your statement a
8 little bit ago where you said, you know, in all
9 circumstances they give a ten-day notice if there's a
10 cancellation because of nonpayment, we talked about
11 that.

12 Let me give you a hypothetical situation, an
13 example. If I have an insurance policy with -- who
14 do you currently work with, Target?

15 A Target.

16 Q Target, okay. Any insurance company, but
17 Target we can use as an example. If I have an
18 insurance policy with any insurance company, we can
19 use Target. Let's say I have a one-year policy where
20 I sign up in January, my policy is good from January
21 through December and every month I make a payment to
22 Target for the policy. Do you understand me so far?

23 A Yes.

24 Q And I understand you may say, well, Target
25 doesn't write auto policies, they wouldn't write you,

29

1 I understand, it's all hypothetical, you understand
2 that, correct?

3 A Yes.

4 Q If I make my payment obviously in January
5 when we start things up, I make my payment in
6 February, I'm -- let's say in March, the mailman
7 loses my check, and the payment, for whatever reason,
8 doesn't show up at Target, then you would agree with
9 me in that scenario, Target would be obligated to
10 send me a notice, saying, hey, you missed your
11 payment in March, we're going to cancel you, and it's
12 the ten-day notice of midterm cancellation, is that
13 your understanding?

14 MR. DOUGLAS: I'll just object to the
15 hypothetical and to the extent it calls for a legal
16 conclusion.

17 You can answer.

18 THE WITNESS: Yes.

19 BY MR. SAMPSON:

20 Q All right. And, again, you would agree,
21 same thing, June, September, October, if, for
22 whatever reason, my payment doesn't show or if I
23 thought there was money in my account but there
24 wasn't so my check bounces, for whatever reason
25 Target doesn't get their money, they're going to

30

1 cancel me now, they have an obligation to send me a
2 ten-day notice of that under the law as I've
3 described it, is that your understanding is all I
4 want to know?

5 A Yes.

6 MR. DOUGLAS: Same objections, obviously.

7 BY MR. SAMPSON:

8 Q Then let's -- in the hypothetical, end of
9 December rolls around, I send my check out in the
10 mail, let's say I made the payments religiously all
11 through the year, now December rolls around, first of
12 all, we just read that I have a right as a
13 policyholder to have my policy renewed come January,
14 right?

15 MR. DOUGLAS: Objection to the extent it
16 calls for a legal conclusion.

17 BY MR. SAMPSON:

18 Q That's your understanding, correct?

19 A Yes.

20 Q So I want to -- the policy is renewed now
21 because I have the right to the renewal, they never
22 sent me the notice of nonrenewal, so I have this
23 right to have it renewed, but when I mail my check at
24 the end of December, the mailman loses it, it doesn't
25 show up. Is it your understanding that the insurance

31

1 company would have an obligation to send me another
2 ten-day notice saying, hey, you had the right to
3 renewal, but your payment never showed up, so we're
4 going to cancel you?

5 MR. DOUGLAS: I'll object to the
6 hypothetical and to the extent it calls for a legal
7 conclusion.

8 BY MR. SAMPSON:

9 Q And, again, I just want your understanding.

10 A Yes.

11 Q Okay. Would you agree with me then that an
12 insurance company, given this duty as you understand
13 it to always send the ten-day notice, can't just
14 automatically terminate the policy without notifying
15 the insured, would you agree?

16 MR. DOUGLAS: I'll object to the extent that
17 there is a lack of foundation and may call for a
18 legal conclusion and speculation.

19 BY MR. SAMPSON:

20 Q I just want to know if you agree or not?

21 A I can't answer that one.

22 Q All right. Were you involved, if you know,
23 with the decision as to whether or not Mr. Lewis had
24 coverage with UAIC for the claim brought against him
25 by -- regarding injuries suffered by Cheyanne Nalder?

32

1 A I don't recall.

2 Q Do you have any recollection of the claim
3 that forms the basis of this current lawsuit?

4 A No.

5 Q Have you looked at any documents at all, I
6 guess? I mean, you got a notice of deposition and a
7 subpoena?

8 A Yes.

9 Q Were there any other documents you looked at
10 in preparing to testify in this case?

11 A No.

12 Q Did you have any conversations with anyone,
13 whether it's an attorney from my office or anyone
14 from my office, anyone from Mr. Douglas' office or
15 anyone at UAIC regarding your deposition?

16 A Yes.

17 Q Who did you speak with?

18 A Denise Davis.

19 Q What did you and Ms. Davis speak about?

20 A She just forewarned me that I would be
21 subpoenaed for this deposition in regards to a claim.

22 Q Anything else that you and Denise spoke
23 about that would relate to the case? I mean, if she
24 asked you, how's the family or anything else like
25 that, I don't want to pry. Anything else of a

33

1 substantive nature that you and Denise spoke about?

2 A That was it.

3 Q Did Denise tell you anything about the claim
4 you were going to be asked to give testimony on?

5 A No.

6 I did speak with Matt.

7 Q And that's Mr. Douglas?

8 A Yes, after I got served the papers.

9 Q And tell me all about that conversation.

10 A He just let me know that he couldn't get
11 into detail, but it was in regards to an insured who
12 had a monthly policy and the payment was received in
13 our office late and my name had come up in one of the
14 depositions.

15 Q Anything else that you and Mr. Douglas spoke
16 about?

17 A Yes, that I was supposed to be served with
18 the papers at least giving me 14 days and I wasn't.
19 I was given only seven and that was about it.

20 Q And I will just do my due diligence.
21 Anything else that you and Mr. Douglas spoke about?

22 A No, that was it.

23 Q Anyone else that you have spoken to about
24 this case?

25 A No.

34

1 Q And was it just one conversation with Denise
2 that you recall?

3 A Two conversations. One to let me know I may
4 get subpoenaed. Another conversation I had with her
5 again saying I will be subpoenaed. She needed my
6 home address at the time.

7 Q And anything other than what you have --
8 first of all, let me back up.

9 So you recall simply two conversations with
10 Denise about this case, correct?

11 A Correct.

12 Q And the substance of those conversations,
13 anything beyond what you have already told us?

14 A No.

15 Q And how many conversations did you have with
16 Mr. Douglas?

17 A One.

18 Q And the substance of that one conversation
19 is what you have told us about today?

20 A Correct.

21 Q Is there anyone else you have spoken to
22 about either this case, the claim against Gary Lewis
23 or the fact that you were being deposed?

24 A I just notified my employer that I was going
25 to a deposition.

35

1 Q That's Target?

2 A Target Managers, yes.

3 Q And any other individual you have spoken
4 with about the fact that you're giving testimony?

5 A My husband.

6 Q Apart -- anything of a substantive nature?

7 A No, those were the only people.

8 Q Okay. And I think I already asked this, but
9 let me just clarify it again because perhaps it's
10 refreshed your recollection. In any of the
11 conversations or anything you have done in
12 anticipation of giving testimony, have you looked at
13 any documents at all?

14 A No.

15 Q And you do not have any specific
16 recollection of the claim that we're even here to --
17 that involves this case, correct?

18 A Correct.

19 Q So if you were at trial and someone asked
20 you, what did you do to determine whether there was
21 coverage for Mr. Lewis, you would say, I don't
22 remember doing anything specifically, correct?

23 MR. DOUGLAS: Object to the extent it calls
24 for speculation.

25 THE WITNESS: Right.

36

1 BY MR. SAMPSON:

2 Q Well, as you sit here right now, let me ask
3 you that question. What did you do, if anything, to
4 determine whether or not Mr. Lewis had coverage?

5 A I don't recall.

6 Q Do you remember speaking with -- do you know
7 who Manuel -- is it Manuel Cordova? What's his first
8 name?

9 A Manny.

10 Q Manny Cordova?

11 A Yes.

12 Q Do you remember him?

13 A Yes. He was an employee with United
14 Automobile.

15 Q At the same time that you were?

16 A Yes.

17 Q There's a note here from Mr. Cordova. It
18 says: "Reviewed all facts of this claim and verified
19 with Lisa in underwriting that policy lapsed 6-30-07
20 and reinstated 7-10-07, two days after the loss."

21 Do you recall any conversation like that as
22 you sit here right now?

23 MR. DOUGLAS: Objection, foundation.

24 THE WITNESS: I don't recall.

25

37

1 BY MR. SAMPSON:

2 Q Does it refresh your recollection at all
3 about the claim that was brought against Mr. Lewis?

4 A Don't recall.

5 Q And then my question is, does it refresh
6 your recollection at all?

7 A No.

8 Q It sounds like the answer is no.

9 A No.

10 Q Okay. When is the last time you have spoken
11 with Mr. Cordova, if you recall?

12 A Might be over a year.

13 Q Do you know who Elyse Cabrera is?

14 A Elyse Cabrera -- Monica?

15 Q Who do you know as Monica? Who's Monica?

16 A Cabrera, that's who I know.

17 Q Do you know a Monica Cabrera?

18 A Elyse, I think that was her first name.

19 Q Let me show you, this is the renewal policy
20 declarations dated, it says, from May 31st to
21 June 31st. I'm sorry, to June 30th. And at the
22 bottom, there's a signature. It says Elyse M.
23 Cabrera. Can you see that?

24 A Yeah.

25 Q Is that a yes?

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1 A Yes, that's Monica Cabrera, as I know her.

2 Q When is the last time you spoke with Monica
3 Cabrera, if you remember?

4 A It's years, it's been years.

5 Q Did Monica work with you at UAIC?

6 A Yes.

7 Q Was that in the Las Vegas office?

8 A Yes.

9 Q Do you have any way of contacting Monica
10 today?

11 A No.

12 Q Did you know Monica by any names other than
13 Monica Cabrera?

14 A Yes.

15 Q What other names did you know her by?

16 A Monica Maldonado.

17 Q Any other names?

18 A No.

19 Q Do you know why Monica Cabrera or Elyse
20 Cabrera also went by the name Maldonado?

21 A She got married.

22 Q Do you know when that was?

23 A No.

24 Q Do you know Kristin Amy Scott, does that
25 name ring a bell at all?

39

1 A No.

2 Q Do you know Giselle Molina?

3 A Yes.

4 Q Who's Giselle Molina?

5 A She worked in the claims department in the

6 Las Vegas office.

7 Q Did she work with you?

8 A No.

9 Q Did she work in the same office you were
10 working in?

11 A She worked in the same office.

12 Q When is the last time you spoke with
13 Giselle, if you recall?

14 A Over a year ago, before the office closed.

15 Q I'm going to show you a document that's been
16 disclosed in this case. It appears to be a MoneyGram
17 Order from a Circle K and highlighted, is that -- do
18 you know if that's you or not? It says, Lisa with
19 something, UAIC. That's the only reason I ask.

20 A Are you referring to just the name?

21 Q Right. Do you know if this is a reference
22 to you, do you know if that's your handwriting, can
23 you tell me anything?

24 A That's not my handwriting, but I was the
25 only Lisa in the office.

40

1 Q So you would think then this would
2 somehow -- well, let me ask you, do you recognize the
3 document at all?

4 A No, I do not.

5 Q Do you have any idea why the name Lisa is on
6 there at all?

7 A No.

8 Q Do you recognize the phone number?

9 A No, I don't.

10 Q 369-0386, it's not familiar to you at all,
11 correct?

12 A I don't recall that number, no.

13 Q And to the best of your recollection, have
14 you ever seen this document before today?

15 A Not that I recall.

16 Q I'll show you another document. This is
17 a -- it's labeled, Receipt of Payment from US Auto
18 Insurance Agency. It's dated Tuesday, July 10, '07,
19 and down here it says, Lisa, correct date, or at
20 least that appears to be what it says.

21 Again, you are the only Lisa that was at the
22 UAIC office, to your recollection, correct?

23 A Correct.

24 Q To your recollection, have you seen that
25 document before today?

41

1 A Not that I recall.

2 Q And as sit here right now, do you have any
3 idea why your name is on it and it says, correct
4 date?

5 A I can't recall.

6 Q Have you ever seen this type of document
7 before, this Receipt of Payment? Does this look
8 familiar to you? I mean, I know you don't recognize
9 this particular one, but does the form look familiar
10 at all?

11 A I believe US Auto always used those type of
12 receipts, that I recall. But as far as the names on
13 the receipts, I wouldn't recall.

14 Q So it looks to you -- what is US Auto, is
15 that UAIC?

16 A No, that's an agent here in Las Vegas.

17 Q And did they sell UAIC policies, to your
18 understanding or recollection?

19 A Yes.

20 Q And this appears to you to be then a copy of
21 one of their Receipts of Payment?

22 A Yes.

23 Q And in what capacity would you ordinarily
24 come across these types of documents, how is it that
25 you would see them when you worked for UAIC?

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1 A When payments came -- was mailed into our
2 office, they usually came with either receipts that
3 they took the payments within their office, just to
4 show proof.

5 Q Do you know whether or not UAIC ever sent
6 any of it's insureds a notice of nonrenewal?

7 A Not that I recall.

8 Q Do you even know if sending out notices of
9 nonrenewal would be something that you would have
10 been involved in doing at all?

11 A Not that I recall.

12 Q And this document, this Receipt of Payment
13 from US Auto Insurance Agency, does it refresh your
14 recollection about the case at all?

15 A No.

16 Q And this, where it says -- I'll underline it
17 here, because I forgot to highlight it -- policy
18 period, it looks like 9-26-07 to 9-26-08, does that
19 look correct? Does it look like I read that
20 correctly?

21 A I can't see that.

22 Q I apologize.

23 A I can't tell the dates.

24 Q Let me ask you, did UAIC have year-long
25 policies that it would sell?

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1 A They had different terms, policy terms.

2 Q What do you mean by that?

3 A They had year policies, monthly policies. I
4 can't recall if there were others, but I do know
5 there was a year and monthly policies.

6 Q When you say year policy, is that along the
7 lines of what I was talking about earlier in my
8 hypothetical where I've got a policy and it's for a
9 year, but I make monthly payments?

10 A Correct.

11 Q And then the monthly policy, how would that
12 be different than a year that I described earlier in
13 my hypothetical, that you understand?

14 A The monthly policies were just issued for
15 one month.

16 Q Okay. Just a moment, I'm sorry.

17 Is it your understanding that these Receipt
18 of Payments would come from US Auto Insurance
19 Agency -- how often is it your understanding that
20 these Receipt of Payments would come from US Auto
21 Insurance Agency?

22 A I don't recall.

23 Q Do you know if they sent one every time a
24 payment was made?

25 A I couldn't answer that.

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1 Q You just don't know as you sit here right
2 now?

3 A I don't know.

4 Q Okay. And I'm just going to ask you if you
5 know, you may or may not know, and I appreciate that,
6 but do you have any idea why a Receipt of Payment
7 that up here is dated Tuesday, July 10, '07
8 references a policy period in September of '07,
9 September of '08?

10 A No.

11 Q I didn't think you would, I just had to
12 confirm.

13 I think a lot of these are duplicates, so
14 bear with me for just a moment.

15 I'll show you a couple of other documents
16 and, for our record, these are documents that are
17 attached to Plaintiff's Request For Admissions To
18 UAIC. They're dated being sent out the 5th of
19 October, 2009. The first one is Exhibit 1. I'll ask
20 you the easy question first. Do you recall seeing
21 that document before today?

22 A No.

23 Q The type of document, it said it's a Receipt
24 of Payment, are you familiar with --

25 A I'm familiar with the Receipt of Payment,

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1 this form itself, but as far as the information on
2 it, no.

3 Q All right. Now, the Receipt of Payment
4 says, semiannual/monthly program. Do you see where
5 that is written?

6 A Yes.

7 Q Does that refresh your recollection as to
8 whether or not -- I mean, you testified earlier you
9 recall UAIC issued yearly policies and monthly
10 policies?

11 A Correct.

12 Q Does this refresh your recollection as to
13 whether or not UAIC issued semiannual policies?

14 A According to the receipt, they may have, but
15 I don't recall.

16 Q It doesn't -- in your mind, it doesn't
17 refresh your recollection of that ever happening,
18 correct?

19 A Correct.

20 Q In what capacity would you be viewing a
21 document like this when you were working for UAIC, as
22 you recall?

23 A You know what, I'm trying to remember the
24 procedures, but I don't remember how this comes up.

25 Q All right. You look at it and it looks

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1 familiar to you?

2 A Exactly.

3 Q Fond, maybe not so fond memories of the job
4 you once had, correct?

5 A Correct.

6 Q Beyond that, there's nothing you can tell me
7 about why you saw it or what went on with the
8 document or anything like that, correct?

9 A I don't remember the procedures.

10 Q Okay. This next one is Page 2 of Exhibit 1.
11 Does that document look familiar to you at all?

12 A Yeah, it's an insurance ID card.

13 Q Okay. And do you know how these -- did you
14 have any involvement with these cards?

15 A Involvement how?

16 Q Any way. I mean, did you look at them, did
17 you mail them to insureds, did you ask to view them,
18 did you review them when you were involved in a
19 coverage dispute?

20 A I looked at them, you know, if they were in
21 the policy or the policy was being issued and I
22 needed to review it for any reason, but I recall, I
23 know every single policy had to have an ID card, so
24 each policy had one of these.

25 Q Were you involved in sending policies to

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1 insureds?

2 A I managed the people that did that.

3 Q And so the people who were under you, for
4 lack of a better word, under your management, would
5 mail out policies to insureds, correct?

6 A Correct.

7 Q And those documents would include what
8 you're looking at right now?

9 A Yes.

10 Q And that's how you're familiar with this
11 kind of document, correct?

12 A Correct.

13 Q I want to show you Exhibit 2. Easy question
14 first, do you recall that specific document?

15 A I remember this type of form, yes.

16 Q And so you don't recall this specific
17 document?

18 A No.

19 Q I'm correct?

20 A Correct.

21 Q But you do recall the type of form?

22 A Yes.

23 Q What is it that you recall about this type
24 of form, how was it used in your work with UAIC, how
25 did you come across it? I'd just like that kind of a

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1 description from you, please.

2 A Just one of the forms that United Auto used
3 and generated. It says, Revised Renewal Statement.
4 There were other types that looked like this also,
5 the way it printed. It's almost like a dot matrix,
6 so there was quite a few forms that printed in this
7 type.

8 Q And what's your understanding as to why this
9 type of form was generated, what was done with it?

10 A This particular one, I couldn't tell you. I
11 am not familiar.

12 Q What about in a general sense?

13 A Again, it comes down to their procedures on
14 what gets mailed out, what generates from the system,
15 and I don't recall any of that.

16 Q Okay. Let me go through -- well, were the
17 people who were under you responsible for mailing
18 these types of forms to insureds?

19 A Yes.

20 Q And -- well, let's go through it. This
21 says, effective date, April 29, '07, correct?

22 A Yes.

23 Q And I will just -- I think if you look at
24 the insurance card --

25 A I can't see that date. I'm sorry, the air

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1 conditioner is drying my contacts out.

2 Q Oh, I'm sorry. Well, I'll proffer to you
3 that it says, effective date, 3-29-07, to expiration
4 date, 4-29-07.

5 MR. DOUGLAS: And you're referencing Page 2
6 of Exhibit 1 of your Request For Admissions?

7 MR. SAMPSON: Right, that she earlier
8 identified as an insurance card for UAIC.

9 BY MR. SAMPSON:

10 Q I'll just tell you, since you can't see it,
11 it says, effective date, 3-29-07, to expiration date,
12 4-29-07. Do you understand?

13 A Yes.

14 Q And if we look at Exhibit 2, we've got the
15 effective date is 4-29-07, correct?

16 A Yes.

17 Q And the expiration date is 5-29-07, correct?

18 MR. DOUGLAS: I'll just state the document
19 speaks for itself.

20 THE WITNESS: Yes.

21 BY MR. SAMPSON:

22 Q So in your work with UAIC then, would it be
23 your understanding this would be the -- it looks like
24 if the prior expiration date was 4-29 and this
25 effective date is 4-29, it's looking like this is the

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1 next policy that's being offered, correct?

2 A Yes.

3 Q And then we've got renewal amount, is this
4 the amount of money that needs to be paid, as you
5 understand it?

6 A Yes.

7 Q And then it's got no later than and there's
8 a date here. That's the date by which the payment is
9 being requested?

10 A Yes.

11 Q Then we have a sentence here that says, "To
12 avoid a lapse in coverage, payment must be received
13 prior to expiration of your policy." Did I read that
14 correctly?

15 A Yes.

16 Q Do you have an understanding as to what that
17 sentence means or is it outside of what you were
18 involved in?

19 A I want to say it's outside.

20 Q Okay, fair enough.

21 And so what they're referring to in terms of
22 expiration, as you sit here right now, you don't have
23 any knowledge or recollection, correct?

24 A Correct.

25 Q And I'm sorry, how long did you work at

51

1 UAIC? I think you said approximately --

2 A Three years.

3 Q Three years?

4 A Yes.

5 Q I was going to say nine, but that must have
6 been Sutter?

7 A Sutter Insurance.

8 Q Right. By the way, there's more of these.
9 Exhibit Number 4 is a renewal statement from May to
10 June with, again, the same language on the
11 expiration. If I asked you all the same questions,
12 you don't have any understanding as to what that
13 means, correct?

14 A Correct.

15 Q Same thing, there's one here for June to
16 July, you wouldn't -- same answer, you don't know
17 what the sentence means, correct?

18 MR. DOUGLAS: Objection, I think that
19 misstates her testimony, it may call for a legal
20 conclusion.

21 You can answer.

22 BY MR. SAMPSON:

23 Q Did I misstate something? Let me reask the
24 question, you tell me if I misstate anything.

25 I'm just showing you a new renewal notice

52

1 for June 30th to July 31st, '07, right?

2 A Yes.

3 Q And if I asked you the question again with
4 this sentence, we have the same sentence, "To avoid a
5 lapse in coverage, payment must be received prior to
6 expiration of your policy," again, same answer as
7 before, you don't know what that means, correct?

8 A Correct.

9 Q And if I asked you the same question -- you
10 know what, I don't have any more, never mind. I'll
11 withdraw that.

12 As you sit here right now, do you have any
13 animosity towards UAIC?

14 A No.

15 Q You have no reason to lie for them or lie
16 against them or anything like that, correct?

17 A No.

18 Q I'm correct?

19 A You're correct.

20 Q I thought so.

21 I'm only going to do this once, but I want
22 to be just crystal clear on one particular area. And
23 it's along the lines of the question I've already
24 asked you, but it's a little bit different, okay.
25 I've already asked you -- in fact, I asked you with

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1 this specific renewal notice, the one that's from
2 June 30th to July 31st, and the question I asked you
3 earlier was this sentence: To avoid a lapse in
4 coverage, you have to pay prior to expiration of your
5 policy, you already told me you don't have an
6 understanding of what that means, I'm not going to
7 reask that question.

8 I do want to tell you, though, Mr. Lewis,
9 who is the -- he's the named insured in this renewal
10 notice, right? You see Gary Lewis?

11 A Yes.

12 Q He has indicated that he thought expiration
13 meant expiration as it's also up here. Do you see
14 what I'm talking about, the word -- do you see the
15 word expiration in the body of the paragraph?

16 A Yes.

17 Q Do you see the word expiration at the top
18 where it says, expiration date, July 31, 2007?

19 A Yes.

20 Q So Mr. Lewis has indicated it was his
21 understanding that when it said expiration date in
22 the paragraph, it meant the expiration date that's up
23 here at the top where it also says expiration date.

24 And my question for you is, again, you
25 wouldn't comment on whether that's a correct

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1 understanding or incorrect, you just don't know

2 either way, correct?

3 MR. DOUGLAS: Objection, foundation.

4 THE WITNESS: Correct.

5 BY MR. SAMPSON:

6 Q Okay. I apologize for not clarifying that
7 the first time around.

8 I do have to visit Exhibit Number 2 just
9 briefly. You see where the payment date in this
10 particular renewal notice is May 6th of 2007?

11 A Yes.

12 Q And do you see up here where the effective
13 date of the policy is April 29, 2007?

14 A Yes.

15 Q And so you would agree with me, wouldn't
16 you, that April -- well, that May 6, 2007 is after
17 April 29, '07?

18 A Yes.

19 Q So you would agree with me then that this
20 renewal statement is asking Mr. Lewis or telling
21 Mr. Lewis his payment is due after the effective
22 date, do you see that?

23 A Yes.

24 Q Do you know if that was common at UAIC or
25 not? Do you recall that happening at UAIC where

55

1 someone could make a payment after the effective
2 date?

3 A It says revised.

4 Q It does say Revised Renewal Statement.

5 A The others don't say that.

6 Q Let me just -- the others don't say Revised
7 Renewal Statement. My only question is, do you
8 recall it being a common practice for UAIC to tell
9 insureds their payment was due after the effective
10 date?

11 A I don't recall.

12 Q All right. Whether it went on or not, you
13 just don't recall either way?

14 A Yes.

15 Q I'm going to ask you some specific
16 questions. I just want to make a record. If you
17 don't recall, and if you do recall, by all means let
18 me know, but -- and let me give you a little bit of
19 background.

20 Part of why we do this process is because I
21 have the right as Mr. Lewis' and Mr. Nalder's
22 attorney to know what you're going to say if you go
23 to trial and take the witness stand, and we don't do
24 this where we see on TV a lot of times where someone
25 gives testimony and everyone goes, oh, I didn't know

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1 she was going to say that. That's not how it works
2 in civil cases. Criminal can actually work like that
3 sometimes, but in civil we do this discovery process,
4 and so I'm going to ask you several questions, and
5 the idea is that if you tell me today, I don't
6 remember or I don't know of anything that was done or
7 that wasn't done, that you won't come to trial with
8 some bombshell testimony and surprise everybody. Do
9 you understand what I've said so far?

10 A Yes.

11 Q Okay. So with that in mind, do you recall
12 anything that was done in terms of investigating
13 whether there was coverage for Mr. Lewis at any point
14 in time at UAIC?

15 A I don't recall.

16 Q Do you know what, if any, documents anyone
17 at UAIC reviewed in investigating coverage?

18 A I don't recall.

19 Q Do you know if anyone investigating coverage
20 ever spoke with Mr. Lewis himself?

21 A I don't recall.

22 Q Other than the documents we have looked at
23 today, do you recall any documents or are you aware
24 of the existence of any documents related to the
25 Lewis policy or claim that was brought against him?

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1 A I don't recall.

2 Q I apologize, I don't recall if I asked this
3 specifically or not. We talked earlier, we looked at
4 the statute, and you can have another look at it if
5 you would like, about how an insured has the right to
6 have their policy renewed. Do you recall that
7 conversation previously?

8 A Yes.

9 Q Do you know whether or not UAIC ever renewed
10 Mr. Lewis' policy as a matter of right?

11 A I don't recall.

12 MR. DOUGLAS: Objection to the extent it
13 calls for a legal conclusion.

14 BY MR. SAMPSON:

15 Q Nothing you recall, correct?

16 A I don't recall.

17 Q I'm just going to ask you if you know, you
18 may or may not know. Do you know -- well, let me
19 back up.

20 If -- if UAIC ever did not or failed to
21 renew Mr. Lewis' policy as a matter of right, would
22 you have any understanding as to why that would be?

23 MR. DOUGLAS: Objection, calls for
24 speculation.

25 THE WITNESS: No.

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1 BY MR. SAMPSON:

2 Q Nothing that you're aware of as you sit
3 here, correct?

4 A I don't recall.

5 Q Do you know if a lawsuit was ever filed
6 against Mr. Lewis?

7 A I don't recall.

8 Q Do you know if defense counsel was ever
9 procured for Mr. Lewis?

10 A I don't recall.

11 Q Do you know what cumis counsel is?

12 A No, I don't.

13 Q It's a California phrase.

14 Do you know whether or not Mr. Lewis was
15 ever provided with an attorney to advise him as to
16 his rights in terms of whether there was coverage
17 with UAIC?

18 A I don't recall.

19 Q Do you know if Mr. Lewis was ever informed
20 of any settlement offers related to the claim that
21 was brought against him?

22 A I don't recall.

23 Q Do you know if UAIC ever reported Mr. Lewis
24 to the DMV for not having insurance?

25 A I don't recall.

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1 Q Let me show you, just to keep a clear
2 record, this is Exhibit 3 to the Request For
3 Admissions we looked at earlier. Under the type of
4 business, you see where it says renewal?

5 A Yes.

6 Q Do you know what that means?

7 A Renewal policy.

8 Q Do you have any other understanding as to
9 what that means?

10 A This receipt, no.

11 Q Okay. So your understanding is that that
12 would reflect that the policy was renewed?

13 A Yes.

14 Q There was one other document I wanted to
15 talk to you about, but I'm not seeing it right now.
16 Give me just a moment.

17 Do you know who Eric Cook is?

18 A Yes. He worked in the claims department for
19 United Auto.

20 Q Did he work in the same office as you in Las
21 Vegas?

22 A Yes.

23 Q And did Jan Cook work in that office as
24 well?

25 A Yes.

60

1 Q There are some notes -- let me just -- I'll
2 show you this. It says, note detail, and I will ask
3 you if those documents look familiar to you or the
4 type of document looks familiar to you?

5 A I don't recall ever seeing this.

6 Q And I think they are notes related to a
7 claim and you said you never worked in claims,
8 correct?

9 A Yeah, no, I have not.

10 Q There's a note that was provided in this
11 case where Mr. Eric Cook claimed he got a phone call
12 from Mr. Lewis, the insured, and that they had a
13 conversation about the claim. Do you have any
14 recollection of learning about that phone call before
15 today?

16 A No.

17 Q And if there was a note generated in
18 connection with that phone call, do you have any idea
19 where that note would be stored in the UAIC file, if
20 anywhere?

21 A I don't recall.

22 Q When the file in this case from UAIC was
23 first turned over to us, it didn't have this note
24 from Mr. Cook, that months later it was given to us.
25 If that's the case, and I know you weren't involved

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1 in the process, but if it was true that when the file
2 was first given to us, the note wasn't there and
3 months later we were given the note, with your work
4 with UAIC, would you have any explanation as to why
5 that would be?

6 A No.

7 Q Is there anything else you are aware of that
8 went on with Gary Lewis' policy or the claim that was
9 brought against him?

10 A No.

11 Q Have these documents refreshed your
12 recollection to any extent as you have gone through
13 them?

14 A No.

15 MR. SAMPSON: Those are all the questions I
16 have. Thank you.

17 MR. DOUGLAS: We're done.

18 MR. SAMPSON: Thank you so much.

19 THE REPORTER: Mr. Douglas, would you like a
20 copy of the transcript?

21 MR. DOUGLAS: Just an e-transcript is fine.
22 Thank you.

23 (Thereupon, the taking of the deposition was
24 concluded at 4:09 p.m.)

25 * * * * *

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CERTIFICATE OF DEPONENT

I, LISA WATSON, deponent herein, do hereby
certify and declare the within and foregoing
transcription to be my deposition in said action,
subject to any corrections I have heretofore
submitted; and that I have read, corrected, and do
hereby affix my signature to said deposition.

LISA WATSON, Deponent

Subscribed and sworn to before me this

____ day of _____, 2010.

Notary Public

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

SS:

3 COUNTY OF CLARK)

4 I, Sarah Safier, a Certified Court Reporter
5 licensed by the State of Nevada, do hereby certify:

6 That I reported the taking of the deposition
7 of the witness, LISA WATSON, commencing on Wednesday,
8 August 18, 2010, at 2:59 p.m. That prior to being
9 examined the witness was by me duly sworn to testify
10 to the truth. That I thereafter transcribed my said
11 shorthand notes into typewriting and that the
12 typewritten transcript of said deposition is a
13 complete, true and accurate transcription of said
14 shorthand notes.

15 I further certify (1) that I am not a
16 relative or employee of an attorney or counsel of any
17 of the parties, nor a relative or employee of any
18 attorney or counsel involved in said action, nor a
19 person financially interested in the action, and (2)
20 that transcript review by the witness pursuant to
21 Rule 30(e) was not requested.

22 IN WITNESS WHEREOF, I have hereunto set my
23 hand in my office in the County of Clark, State of
24 Nevada, this ____ day of _____, 2010.

25

SARAH SAFIER, CCR No. 808

“EXHIBIT 7”

FILED

DEC 17 2012

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

JAMES NALDER, Guardian Ad Litem on
behalf of Cheyanne Nalder and GARY
LEWIS, individually,

Plaintiffs - Appellants,

v.

UNITED AUTOMOBILE INSURANCE
COMPANY,

Defendant - Appellee.

No. 11-15010

D.C. No. 2:09-cv-01348-ECR-
GWF

MEMORANDUM*

JAMES NALDER, Guardian Ad Litem on
behalf of Cheyanne Nalder and GARY
LEWIS, individually,

Plaintiffs - Appellees,

v.

UNITED AUTOMOBILE INSURANCE
COMPANY,

Defendant - Appellant.

No. 11-15462

D.C. No. 2:09-cv-01348-ECR-
GWF

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

-2-

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Senior District Judge, Presiding

Argued and Submitted December 7, 2012
San Francisco, California

Before: SILVERMAN, GOULD, and CHRISTEN, Circuit Judges.

Plaintiffs James Nalder, guardian *ad litem* of his daughter Cheyanne Nalder, and Gary Lewis appeal from the district court's grant of Defendant United Automobile Insurance Company's motion for summary judgment on all of Plaintiffs' claims. United Automobile Insurance Company cross-appeals from the district court's denial of United Automobile Insurance Company's motion for attorney's fees. We have jurisdiction under 28 U.S.C. § 1291, and we reverse in part and affirm in part.

We reverse the district court's grant of United Automobile Insurance Company's motion for summary judgment with respect to whether there was coverage by virtue of the way the renewal statement was worded. Plaintiffs came forward with facts supporting their tenable legal position that a reasonable person could have interpreted the renewal statement to mean that Lewis's premium was *due* by June 30, 2007, but that the policy would not *lapse* if his premium were "received prior to expiration of [his] policy," with the "expiration date" specifically

-3-

stated to be July 31, 2007. We remand to the district court for trial or other proceedings consistent with this memorandum. The portion of the order granting summary judgment with respect to the statutory arguments is affirmed.

United Automobile Insurance Company's cross-appeal regarding attorney's fees is moot in light of our disposition. We therefore affirm the district court's denial of attorney's fees. *Electro Source, LLC v. Brandess-Kalt-Aetna Grp., Inc.*, 458 F.3d 931, 941 (9th Cir. 2006).

Each party shall bear its own costs.

REVERSED AND REMANDED IN PART, AFFIRMED IN PART.

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.
- An answer, 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.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at 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 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 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

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter in **writing within 10 days** to:
 - ▶ West Publishing Company; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Kathy Blesener, Senior Editor);
 - ▶ 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

BILL OF COSTS

Note: If you wish to file a bill of costs, it **MUST** be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

_____ v. _____ 9th Cir. No. _____

The Clerk is requested to tax the following costs against: _____

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED Each Column Must Be Completed				ALLOWED To Be Completed by the Clerk				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
Excerpt of Record			\$	\$			\$	\$	
Opening Brief			\$	\$			\$	\$	
Answering Brief			\$	\$			\$	\$	
Reply Brief			\$	\$			\$	\$	
Other**			\$	\$			\$	\$	
TOTAL:				\$	TOTAL:				\$

* Costs per page may not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By:

, Deputy Clerk

MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

*Attorneys for Defendant,
United Automobile Insurance Company*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES NALDER, Guardian Ad Litem for
minor Cheyanne Nalder, real party in
interest, and GARY LEWIS, Individually;

Plaintiffs,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, DOES I through V, and ROE
CORPORATIONS I through V, inclusive

Defendants.

CASE NO.: 2:09-cv-1348
DEPT. NO.:

**DEFENDANT UNITED AUTOMOBILE
INSURANCE COMPANY'S COUNTER-
MOTION FOR SUMMARY JUDGMENT
ON ALL EXTRA-CONTRACTUAL
CLAIMS OR REMEDIES; OR, IN THE
ALTERNATIVE, MOTION TO
BIFURCATE CLAIMS FOR EXTRA-
CONTRACTUAL CLAIMS OR
REMEDIES; FURTHER, IN THE
ALTERNATIVE, MOTION FOR LEAVE
TO AMEND ANSWER TO FILE
COUNTER-CLAIM**

ORAL ARGUMENT REQUESTED

Defendant UNITED AUTOMOBILE INSURANCE COMPANY brings this Counter-
Motion for Summary Judgment on all Extra-contractual Claims or Remedies, or, in the
alternative, Motion for Bifurcation of Certain Claims; finally, Motion for Leave to Amend.

DATED this 26th day of March, 2013.

ATKIN WINNER & SHERROD

/s/ Matthew J. Douglas
Matthew J. Douglas
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Defendant

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

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POINTS AND AUTHORITIES

I.

INTRODUCTORY STATEMENT

Defendants initially brought these Motions as part of a Motion for Summary Judgment on all claims. These Motions were heard on December 7, 2010 and, at that time, the Court ruled that no policy existed for Gary Lewis and, as such, granted summary judgment in favor of Defendant, dismissed the remaining Counts and, denied the Motions to bifurcate and Motion to amend as moot. *The Court's Order is contained in Document No. 42 of the record from this case* Thereafter, Plaintiff appealed and, after hearing before the Ninth Circuit, the Appellate Court found that a material issue of fact existed as to an ambiguity in the renewal statement sent to Lewis and, as such, remanded this matter. The Appellate Court did, however, affirm the Court's grant of summary judgment in regards to Plaintiff's 'statutory grounds' for coverage¹. *A copy of the Appellate Court Order is attached to Plaintiff's Motion for Summary Judgment as Exhibit '7.'* Accordingly, only Plaintiff's claim of an 'ambiguity' in the renewal statement sent to Lewis remains as a grounds for coverage on the breach of contract claim.

Plaintiff has now filed a Motion for Summary Judgment on coverage for the loss (regarding the ambiguity in the renewal) as well as on the extra-contractual claims². *See Document No. 88, herein.* Defendant has filed an Opposition to that Motion. Defendant brings this Counter-Motion on the basis that regardless of how this Court rules in regards to coverage (i.e. on the ambiguity issue in the renewal), the Defendant believes this Court can find in favor of Defendant on all of Plaintiff's extra-contractual claims or remedies. In short, Defendant argues

¹ Plaintiff had argued that the Nevada Mid-term cancellation statute, Nev. Rev. Stat. § 687B.320, and the Nevada Non-renewal statute, Nev. Rev. Stat. § 687B.340, served as alternative bases for coverage. The Trial Court found these statutes did not apply as a matter of law and, the 9th Circuit Court of Appeals, affirmed. As such, these alternative bases for coverage have been denied.

² Plaintiff claims Defendant has breached the implied covenant of good faith and fair dealing and sections of the Nevada Unfair Claims Practices Act, Nev. Rev. Stat. § 686A.310. *See copy of Complaint, attached as Exh. 'H' to Defendant's Opposition to the Plaintiff's Motion for Summary Judgment.*

1 that Plaintiffs' remaining claim *for coverage* is, at best, a claim for this Court to create an
 2 implied or, constructive, insurance contract based on the alleged ambiguities *in the renewal*
 3 *statement*. Such an implied or, constructive insurance policy would not allow claims pursuant to
 4 N.R.S. 686A.310 *as no policy existed at the time*. Furthermore, Defendant also argues that where
 5 the parties agree no policy was in force (per its terms), a Federal District Court judge has already
 6 found there was no coverage (and by extension UAIC's interpretation of the renewal statement
 7 was a reasonable one) and, at hearing on the Motion Plaintiff's Counsel also agreed Defendant's
 8 interpretation of renewal statements was "reasonable" – there was obviously a 'genuine dispute'
 9 as to coverage. Accordingly, as UAIC's interpretation of the renewal *was reasonable*, a genuine
 10 dispute as to coverage existed. Therefore, even should this Court now find, almost 6 years after
 11 the loss, that the renewal was ambiguous and create an implied insurance contract, Defendant
 12 argues this Court should rule in its favor and against Plaintiff's on the extra-contractual remedies
 13 under prevailing case law as Defendants actions were nevertheless reasonable based on the facts
 14 at the time. Further, in the alternative, should this Court not grant summary judgment on the
 15 extra-contractual claims, Defendants asks they be bifurcated from the contract claim and,
 16 additionally, Defendant seeks leave to amend to file a counter-claim against Plaintiffs'.

17 II.

18 STATEMENT OF FACTS

19 Defendant UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to
 20 as "UAIC") will not re-state all pertinent facts as the essential facts for are set forth in its original
 21 Motion for Summary Judgment (*Document No.17, herein*), its Reply in support of the original
 22 Summary Judgment Motion (*Document No.21*) and its current Opposition to Plaintiff's Motion
 23 for Summary Judgment (*Document No. 89*). Moreover, most of the facts are basically
 24 undisputed. Accordingly, rather than re-submit facts and, exhibits, Defendant submits its
 25 statement of facts and Exhibits, from its original Motion for Summary Judgment, Reply thereto,
 26
 27
 28

1 and its current Opposition to Plaintiff's Motion for Summary Judgment (including the
2 declarations of Jan Cook and Danice Davis) as if fully set forth herein.

3 That said, in short, this is an insurance claim which was denied due to termination of a
4 policy after the plaintiff, Gary Lewis, failed to pay his premium. Defendant has very little
5 information regarding the subject accident which the Plaintiff underlies this suit but, it appears
6 that Gary Lewis was operating his vehicle in Pioche, Nevada on July 8, 2007 wherein he struck
7 minor pedestrian, Cheyenne Nalder. *See copy of Plaintiff Lewis' deposition, attached as Exhibit*
8 *'A', to Defendant's Opposition to Plaintiff's Motion for Summary Judgment, p. 14, lines 1-15, p.*
9 *15, lines 12-15.* Thereafter, Nalder and her father commenced a personal injury action against
10 Lewis.

11 However, Mr. Lewis' policy of insurance had expired, and had not been renewed, due to
12 nonpayment of renewal premium at the time of this accident. Presumably sensing this might be
13 a problem, Mr. Lewis hastily made arrangements to pay a premium and acquire a new policy
14 after he caused the accident. ³ After Attorneys for the Nalder Plaintiff's obtained a \$3.5 million
15 dollar default judgment against Lewis, Attorneys for the Nalders and Lewis commenced this
16 lawsuit for 'bad faith,' claiming UAIC should have covered Lewis, even though his policy had
17 expired.

18 When the case opened, Gary Lewis *first* insisted that he had, in fact, paid for his premium
19 prior to the expiration of his policy on June 30th, 2007 and *that Defendant had denied receiving*
20 *it. See copy of Plaintiff's initial responses to requests for admissions, attached as Exhibit 'C' to*
21 *Defendant's Opposition to Plaintiff's Motion for Summary judgment, numbers 4 & 7.* However,
22 Lewis also refused to answer any discovery or produce any documents evidencing this alleged
23 payment. Moreover, Lewis objected and refused to produce the assignment of rights under
24 which the Nalder Plaintiffs brought the instant suit. These responses necessitated a Motion to
25

26
27 ³ Attached as *Exhibit '5'* the deposition of Giselle Molina, *which is attached to Defendant's*
28 *Opposition to Summary Judgment as Exhibit 'B'*, is a copy of the receipt of payment, on July 10th, 2007 (2
days after the accident), for the premium payment made by Lewis at the U.S. Auto Insurance Agency

1 Compel discovery responses and a motion for sanctions. In response to this motion, at the
 2 eleventh hour (on the doorstep to the courtroom on the day of the hearing on the Motion), the
 3 plaintiff simply *changed his story* and **admitted that he had not, in fact, ever paid his**
 4 **premium for a renewal policy before the previous policy was terminated.** *See copies of*
 5 *Plaintiff's supplemental Responses to Requests for admission, which are attached as Exhibit 'D'*
 6 *to Defendant's Opposition to the Motion for Summary Judgment.* Further, at that time, the
 7 plaintiff also produced an 'Assignment' - which purports to assign Plaintiff Lewis' chose in
 8 action to the Nalder Plaintiffs' - but, which was entered into on February 28, 2010⁴. *See Exhibit*
 9 *'E' to Defendant's Opposition to the Motion for summary judgment.* Plaintiffs - by virtue of the
 10 amended responses to requests for admissions - admitted there are no material issues of fact
 11 concerning the fact that Lewis did not timely pay his premium. Instead, at that point Plaintiffs'
 12 shifted their argument to argue that Lewis was due coverage because of an *ambiguity* in the
 13 renewal statement - *not that he paid his premium timely.*

14 Lewis' insurance policy, number NVA 020021926, with Defendant United Automobile
 15 Insurance Company had expired, per its terms, on June 30, 2007. The policy, as such, was not in
 16 effect on July 7, the date of loss. *See Declaration of Western Regional Marketing and*
 17 *Underwriting Manager for United Automobile Insurance Company, Danice Davis, with copy of*
 18 *policy number NVA 020021926 declarations page and policy, attached thereto as Exhibit 'A.'*
 19 Although United Automobile had mailed a renewal notice to Gary Lewis advising that his policy
 20 would terminate on June 30 if payment were not received by that date, Mr. Lewis did not pay his
 21 premium. *See Declaration of Western Regional Marketing and Underwriting Manager for*
 22 *United Automobile Insurance Company, Danice Davis, with copy of Exhibit renewal notice,*
 23 *attached as Exhibit 'B' thereto.* The renewal notice clearly put Lewis on Notice that his premium

24 _____ (Cont.)
 25 located at 3909 W. Sahara Ave., Las Vegas, Nevada. *See also the corresponding receipt of said payment*
 26 *by UAIC, Exhibit 'C' to the Declaration of Danice Davis.*

27 ⁴ The court will note that this purported 'assignment' was apparently executed long after the
 28 lawsuit was filed. It begs the obvious question how, or why, the plaintiffs were able to commence this
 lawsuit without any legal basis or authority for bringing it. Again, the 'assignment' was only produced
 after a motion to compel and motion for sanctions was pending before the court.

1 for his renewal policy was due "no later than 6/30/07." *See Exhibit 'B' attached to Declaration*
 2 *of Danice Davis.*

3 It was only after the loss occurred, on July 8, 2007, that Lewis presented a money order
 4 for payment of his premium for a new policy, on July 10th, 2007. *See Declaration of Western*
 5 *Regional Marketing and Underwriting Manager for United Automobile Insurance Company,*
 6 *Danice Davis, with copy of cashier's check receipt of premium for said new policy number NVA*
 7 *030021926 on July 8, 2007 attached as Exhibit 'C', thereto.* At that time a new policy, number
 8 *NVA 030021926,* was initiated with a term of July 10, 2007 to August 10th, 2007. *See*
 9 *Declaration of Western Regional Marketing and Underwriting Manager for United Automobile*
 10 *Insurance Company, Danice Davis, with copy of declarations page for number NVA 030021926,*
 11 *attached as Exhibit 'D,' thereto.*

12 As stated, the plaintiff initially insisted that he paid his policy premium on time, and that
 13 UAIC must have lost or misplaced it. Then, in the wake of discovery and a motion to compel,
 14 Gary Lewis has admitted that he did not remit any amount for renewal of UAIC Policy number
 15 NVA 020021926 after June 12, 2007 and before June 30, 2007 nor between June 30, 2007 and
 16 July 10, 2007. *A copy of Plaintiff Gary Lewis' supplemental Answers to requests to admit are*
 17 *attached as Exhibit 'D' to Defendant's Opposition to the Motion for Summary judgment.*

18 As such, Defendant has maintained that this loss occurred during the period of non-
 19 coverage that existed from June 30, 2007 to July 10th, 2007. *See Declaration of Western*
 20 *Regional Marketing and Underwriting Manager for United Automobile Insurance Company,*
 21 *Danice Davis.* UAIC became aware of the loss when Lewis called the Company to check
 22 coverage on July 13, 2007 whereupon customer service representative Eric Cook informed him
 23 the loss occurred in a period of no coverage after confirming this with the Underwriting
 24 Department. *See Deposition of Eric Cook attached as Exhibit 'F' to Defendant's Opposition to*
 25 *the motion for summary judgment, p. 36, Lines 17-23, p. 53, lines 4- 10, and copy of*
 26 *Underwriting notes confirming call with Lewis, attached hereto as Exhibit '1' to deposition of*
 27 *Giselle Molina, attached as Exhibit 'B', to Defendant's Opposition to the Motion for summary*
 28

1 judgment⁵. Thereafter, when Counsel for the Nalders' made a formal claim upon UAIC, the
 2 Company double-checked coverage with underwriting and, contacted the insurance agency, U.S.
 3 Auto, who confirmed Lewis had not paid his premium until July 10, 2007 and provided a copy of
 4 the receipt. Additionally, UAIC attempted to contact Lewis, but was unsuccessful. *See copy of*
 5 *deposition testimony of Jan Cook, attached as Exhibit 'G' to Defendant's Opposition to the*
 6 *Motion for summary judgment, p. 34, lines 8-19, p. 35, lines 7-18, p. 50, lines 11-14, p. 56, lines*
 7 *2-15, p. 68, lines 13-16, p. 72, lines 14-20; See Copy of Deposition testimony of Giselle Molina,*
 8 *attached as Exhibit 'B' to the Opposition to the Motion for summary judgment, p. 30, lines 4-5,*
 9 *and see copy of UAIC's claims notes, attached as Exhibit '4' to the deposition of Giselle Molina,*
 10 *Exhibit 'B', to the Opposition to the Motion for summary judgment.*

11 After verifying with the agency that no payment had been made prior to expiration of the
 12 June policy until July 10, 2007, Plaintiffs were informed of the fact that no coverage was in force
 13 for the loss. *See Declaration of Western Regional Claims Manger for United Automobile*
 14 *Insurance Company, Jan Cook, and attached copy of correspondence to Counsel for Plaintiff,*
 15 *attached thereto as Exhibit 'A.'* Plaintiff James Nalder, as guardian of Cheyenne Nalder, then
 16 filed suit in the Clark County District Court on October 9, 2007 under suit number A549111. On
 17 October 10, 2007, and again November 1, 2007, the Company informed both claimant attorneys
 18 via correspondence of the fact there was no coverage due to non-renewal for failure to pay
 19 premium. *See Declaration of Western Regional Claims Manger for United Automobile Insurance*
 20 *Company, Jan Cook, and attached copy of correspondence to Counsel for Plaintiff, attached*
 21 *thereto as Exhibits 'A' and 'B.'*

22 Lewis' current attorneys commenced suit **against him** in 2007, after they were advised
 23 that Lewis had no insurance for this loss. Lewis' current attorneys then took a default against
 24 their now client. On May 15, 2008 Plaintiff's petitioned the Court for a default Judgment in the
 25 amount of \$3.5 million. On May 16, 2008 the plaintiff attempted to amend that petition to seek
 26

27 ⁵ This same note was used at Eric Cook's deposition, but Plaintiff never supplied the Exhibit to
 28 the court reporter.

1 \$5 million. On June 2, 2008 the court entered a default judgment against Lewis for \$3.5 million.
2 There is no evidence in the record that Plaintiffs ever notified Defendant of service of the suit
3 against him or, of the default judgment, prior to commencing this suit over a year later.

4 On May 22, 2009 Nalder and Lewis filed the present suit against the UAIC seeking
5 payment of the default judgment against Lewis. *See Plaintiff's Complaint, attached as Exhibit*
6 *'H' to the Opposition to the Motion for summary judgment.* Plaintiffs have also made several
7 'extra-contractual' or 'bad faith' claims against Defendant UNITED AUTOMOBILE
8 INSURANCE COMPANY. *See Plaintiff's Complaint.* Namely, Plaintiff alleges UNITED
9 AUTOMOBILE INSURANCE COMPANY has breached its duty of good faith and fair dealing
10 towards Plaintiffs, and failed to abide by Nevada's Fair Claims and Practices Act, N.R.S.
11 686A.310. Plaintiffs' bad faith claims are set forth in his Complaint. *See Plaintiff's Complaint*
12 Defendants have denied Plaintiff's claims. *See Copy of United Auto's Answer and Affirmative*
13 *Defenses, attached as Exhibit 'T' to the Opposition to the Motion for summary judgment.*

14 Defendant has, from the outset, disputed coverage for Plaintiff's claims. It is clear that
15 there was no policy was in effect the date of loss and, therefore, no coverage would be owed to
16 Lewis for plaintiff's claims. However, Defendant argues that regardless of this Court's ultimate
17 determination regarding any ambiguity in the renewal statement, Defendant had a reasonable
18 belief no coverage existed based on the failure to timely remit premium and, as such, cannot be
19 liable for any extra-contractual damages, in hindsight, several years later based on a *ad hoc* legal
20 argument for coverage. Under Nevada law and the law followed by the Ninth U.S. Circuit Court
21 of Appeals an insured must first establish that he has a claim before making bad faith claims
22 against the insurer. In the case at bar, it is far from clear that all even Plaintiffs have standing to
23 sue for bad faith.

24 ///

26 ///

1 III.

2 LEGAL DISCUSSION

3 A. Legal standard for summary judgment

4 Pursuant to F.R.C.P. 56(a), the Court must enter summary judgment when "...there is no
5 genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter
6 of law." Under this Rule, the moving party has the initial burden of showing the absence of a
7 genuine issue of material fact. Once the movant's burden is met by presenting evidence which,
8 if uncontroverted, will entitle the moving party to a judgment as a matter of law. The burden then
9 shifts to the respondent to set forth specific facts demonstrating that there is a genuine issue for
10 trial. Pioneer Chlor Alkali Company, Inc. v. National Union Fire Insurance Company of
11 Pittsburgh, Pennsylvania, 863 F. Supp. 1237, 1238 (D. Nev. 1994), citing Adickes v. S.H. Kres
12 and Company, 398 U.S. 144, 26 L.Ed. 2d 142, 90 S. Ct. 1598 (1970); Anderson v. Liberty
13 Lobby, Inc., 477 U.S. 242, 250, 91 L.Ed. 2d 202, 106 S. Ct. 2548 (1986).

14 The party opposing summary judgment cannot rest on the allegations of the pleadings,
15 but must show that admissible evidence exists that demonstrates a genuine issue of fact for trial.
16 Brinson v. Linda Rose Joint Venture, 53 F.3d 1044, 1049 (9th Cir. 1995). Though the pleadings
17 and exhibits must be construed in a light most favorable to the nonmoving party, the nonmoving
18 party must do more than simply show some undefined doubt as to the operative facts in order to
19 avoid summary judgment. Wood v. Safeway, Inc., 121 P.3d 1026, 1031 (Nev. 2005). Where a
20 plaintiff fails to make out the elements of his claim, summary judgment is proper. Davis v.
21 Liberty Mutual Ins. Co., 525 F.2d 1204 (5th Cir. 1979).

22 B. It is clear that, at the very least, a genuine dispute existed as to coverage for the
23 loss and Defendant had a reasonable belief no coverage existed for the loss in
24 question

25 In the case at bar Gary Lewis had a policy of insurance with United Auto that expired –
26 per the terms of the document – on June 30th, 2006 if Plaintiff did not renew the policy. Plaintiff
27 admits he did not tender premium payment for a new policy – beginning July 1, 2007 – prior to
28

June 30, 2007 as directed by the renewal notice. Thereafter, Plaintiff admits that he failed to pay any premium for new coverage until July 10, 2007. As such, UAIC maintains Lewis simply had no coverage the day of the loss, July 8, 2006 and, based on this reasonable belief, denied coverage. Moreover, Federal District Judge Reed originally agreed with UAIC's position and granted summary judgment in favor of Defendant. Moreover, at the hearing on the Motion for Summary Judgment, Counsel for Plaintiffs' had to admit that UAIC's interpretation of the renewal was reasonable. Accordingly, for all these reasons, UAIC argues that, regardless of this Court ultimate determination regarding Plaintiff's argument that the renewal was ambiguous, UAIC's actions were reasonable and a genuine dispute exists as to coverage, foreclosing any extra-contractual remedies.

1. It is uncontroverted that the only evidence of record shows that Plaintiff's policy term expired and, was not renewed prior to the loss.

It is axiomatic that unambiguous language in a contract's terms must be upheld. Farmer Ins Co. v. Young, 108 Nev. 328 (Nev. 1992). Furthermore, the Nevada courts have found that clear language stating a policy's liability limits will be upheld. Farmers Ins. Co. v. Stanik, 110 Nev. 64 (Nev. 1994). Finally, the courts in Nevada have also clearly held that a claim must arise in the policy's term for coverage. Intercoast Mut. Ins. Co. v. Anderson, 75 Nev. 457 (1959) (In that case the Court found insured's injury to have occurred before the policy lapsed and, as such, found coverage). This rule has been upheld by the Ninth Circuit Court of Appeals where they have found there was no coverage for a loss when a policy expired per its own terms prior to a loss. State Farm Mut. Auto. Ins. Co. v White, 563 F.2d 971 (U.S.C.A. 9th Cir. 1977).

Here, it is patently evident from the face of Lewis Declaration page for his policy with United Auto, number NVA 020021926, that said policy expired – per its own terms on June 30, 2007. *See copy of Declaration of Western Regional Underwriting and Marketing Manager for*

1 *United Auto, Danice Davis, with copy of Declarations page and policy for policy number NVA*
 2 *020021926 attached as Exhibit 'A', thereto, at page 11, 'policy period, territory.'* The Plaintiff
 3 only paid for a new policy term after his policy had expired. Prior to expiration of the June 2007
 4 monthly policy, United Auto sent Lewis a 'Renewal Statement' that clearly provided he needed
 5 to remit premium for his July 2007 Policy by June 30, 2007. *See Declaration of Danice Davis*
 6 *and Exhibit 'B', thereto.* This Renewal statement is clear and unambiguous. It states quite
 7 prominently that Lewis premium was due "no later than 6/30/07." *See Declaration of Danice*
 8 *Davis and Exhibit 'B', thereto.*

10 The only evidence of record, however, is that Lewis failed to pay any premium for a new
 11 policy for July 2007 prior to July 10, 2007 until after he wanted to make a claim. *See*
 12 *Declaration of United Auto Western Regional Underwriting and Marketing Manager, Danice*
 13 *Davis, along with copy of Declaration page for policy number NVA 030021926, attached as*
 14 *Exhibit 'D' as well as copy of receipt of premium for said policy, attached as Exhibit 'C'; See*
 15 *also Supplemental Answers to Requests for admissions by Gary Lewis, Exhibit 'D' to*
 16 *Defendant's Opposition to the Motion for summary judgment.* It is also equally clear that this
 17 policy only affords coverage for losses that occur within the policy term and, here, the loss
 18 occurred July 8, 2007, during a period where Lewis had no coverage. *See Declaration of Western*
 19 *Regional Claims Manager, Jan Cook.*

22 Therefore, it is undisputed that this loss occurred after Lewis policy number NVA
 23 020021926 expired but, prior to Lewis' paying the premium for a new policy, number NVA
 24 030021926. In fact, Lewis only attempted to re-instate insurance coverage *after* the subject loss
 25 and, evidences his knowledge that he was without coverage at the time of the loss. The
 26 unfortunate case here is that Lewis was operating his vehicle at the time of this loss when he
 27 caused injury to Cheyanne Nalder, without insurance coverage. Although this situation is
 28

1 regrettable, it is not the responsibility of United Auto for whom no premium was received for the
 2 period covering the loss. The fact is it is the fault of Plaintiff Lewis for failing to maintain auto
 3 insurance coverage in accordance with the laws of the State of Nevada.

4 ***2. Defendant's actions post loss were reasonable based upon all information available***
 5 ***at the time and based upon sound precedent.***

6 Under Nevada law it is long been the case that where there is no potential for coverage,
 7 no duty to defend or indemnify exists. Bidart v. Amer. Title Ins. Co., 103 Nev. 175, 734 P. 2d
 8 732 (NV. 1987). In United National Ins. Co. v Frontier Ins. Co., 120 Nev. 678, 99 P.3d 1153
 9 (2004), the Nevada Supreme Court ruled – in a case remarkably similar to the one at bar – that
 10 where a loss occurred after a policy term expired, there was no coverage and, as such, no duty to
 11 defend. That case arose from an instance where the Hilton marguee sign had blown over in a
 12 windstorm causing loss. When damages were sought from the contractor who erected the sign,
 13 that entity sought additional coverage from its prior insurers whom, in turn, denied coverage as
 14 the loss occurred after expiration of their policies. The Supreme Court upheld summary
 15 judgment in favor of the prior insurers and, in so holding, the Court found again ruled without a
 16 potential for coverage, there is no duty to defend. Id. at 686. Moreover, the Nevada Supreme
 17 Court stated that the duty to defend is not absolute and only exists when there is arguable or
 18 possible coverage. {citing Morton by Morton v Safeco Ins. Co., 905 F.2d 1208 (U.
 19 S.C.A. 9th Cir. 1990) (applying California law the Court found there was no duty to defend for
 20 claim with no potential for coverage for intentional act under insurance policy} Id. at 687.

21 In this case, UAIC investigated coverage when notified of the loss by both confirming the
 22 lapse through their underwriting department. This was done when Lewis initially called the
 23 Company to check coverage on July 13, 2007 whereupon customer service representative Eric
 24 Cook informed him the loss occurred in a period of no coverage after confirming this with the
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Underwriting Department. *See Deposition of Eric Cook attached as Exhibit 'F' to Defendant's Opposition to the Motion for summary judgment, p. 36, Lines 17-23, p. 53, lines 4- 10, and copy of Underwriting notes confirming call with Lewis, attached as Exhibit '1' to deposition of Giselle Molina, Exhibit 'B' to Opposition to the Motion for summary judgment*⁶. Thereafter, when Counsel for the Nalders' made a formal claim upon UAIC, the Company double-checked coverage with underwriting and, contacted the insurance agency, U.S. Auto, who confirmed Lewis had not paid his premium until July 10, 2007 and provided a copy of the receipt. Additionally, UAIC attempted to contact Lewis, but was unsuccessful. *See copy of deposition testimony of Jan Cook, attached as Exhibit 'G' Opposition to the Motion for summary judgment, p. 34, lines 8-19, p. 35, lines 7-18, p. 50, lines 11-14, p. 56, lines 2-15, p. 68, lines 13-16, p. 72, lines 14-20; See Copy of Deposition testimony of Giselle Molina, attached as Exhibit 'B' Opposition to the Motion for summary judgment, p. 30, lines 4-5, and see copy of UAIC's claims notes, attached as Exhibit '4' to the deposition of Giselle Molina, Exhibit 'B' to the Opposition to the Motion for summary judgment.* As discussed above, UAIC was never informed of Plaintiff's claim of an 'ambiguity' in the renewal notice until well into discovery of *this case - in about March 2010*. In fact, at hearing on the original Motion for summary Judgment, the District Judge agreed with Defendant and granted Summary judgment as to coverage. *See Document No. 42.* Moreover, at that same hearing on the summary judgment, Counsel for Plaintiff **admitted that the Defendant's position regarding the renewal statements was a reasonable one.** *Attach See Exhibit 'J' to Defendant's Opposition to the Motion for summary judgment, p. 35, lines 20-24.* As such, while the Appellate Court did overturn the summary judgment – it is clear that at least one Federal District Court Judge and, Plaintiff's Counsel,

⁶ This same note was used at Eric Cook's deposition, but Plaintiff never supplied the Exhibit to the court reporter.

1 agreed that Defendant's interpretation of the renewals was reasonable. Therefore, UAIC's
 2 decision that there was no coverage for the loss must be found to have been a reasonable one at
 3 the time. Accordingly, if Defendant was reasonable in its belief there was no coverage – how can
 4 it be liable for bad faith five years later because the Court might eventually agree with an *ad hoc*
 5 legal argument concerning an ambiguity in a renewal? Defendant argues that UAIC should not
 6 be held so liable.

7
 8 Undoubtedly, Plaintiff will cite case law in Opposition to this Motion suggesting that
 9 Defendant committed some bad faith for failing to fully investigate the claim, failing to send
 10 notice of settlement offers and/or, for failing to defend. Defendant will reply to any such
 11 arguments, however, what Plaintiff misses is that for any such argument to succeed *there would*
 12 *at least have to been a policy in place.* That is, if a policy was in place and, the coverage
 13 question surrounded *whether the allegations in the Complaint were covered* – more investigation
 14 may have been needed. Here, regardless of the claims made in the Complaint, **it is unquestioned**
 15 **there was no policy as Lewis failed to remit premium.** The record reveals Defendant twice
 16 confirmed this situation with Lewis' agent who confirmed Lewis had not tendered premium
 17 timely for his renewal. *See above-noted testimony and records.* In fact, Defendant was informed
 18 that Lewis raced back from Pioche, Nevada to remit his late premium on July 10th, 2007 - 2 days
 19 post loss and 10 days since the expiration of his policy. Lewis never informed his agent or,
 20 UAIC that he misunderstood his renewal statement at that time nor, after he was informed there
 21 was no coverage. *See copy of Lewis deposition, attached as Exhibit 'A' to Defendant's*
 22 *Opposition to the Motion for summary judgment, p.49, lines 2-16, p.78, lines 23-25 .* Moreover,
 23 Lewis continued to renew his policy with UAIC – often late – for nearly another year, **never**
 24 **having claimed any ambiguity.** *See records of Lewis' policy, attached as Exhibit '2' to*
 25 *Plaintiff's Opposition to Defendant's original Motion for summary judgment.*
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 27
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Here, Defendant was never informed of the claimed 'ambiguity' until about March 2010 - well after this Complaint was filed. Accordingly, at the time coverage was denied and the underlying suit was filed Defendant could not have known such a claim was being made. Therefore, absent hindsight, Defendant had no reason to know there was any argument for coverage such as to justify Plaintiffs' claim that Defendant should have further investigated a claim and, defended a case, *for which no policy was in force*.

As referenced by the Nevada Supreme Court in Allstate v Miller, 125 Nev. 300, 212 P.3d 318 (NV. 2009), **when there is a genuine dispute regarding an insurer's legal obligations, the district court can determine if the insurer's actions were reasonable...** and the Court "evaluates the insurer's actions at the time it made the decision." citing Cal Farm Ins. Co., 31 Cal. Rptr. 3d at 629

evidence suggest UAIC's actions were reasonable and this Court can so find. Moreover, even today, it seems clear that UAIC's coverage decision was based on a reasonable position – as admitted by Plaintiffs' Counsel at an earlier hearing and, agreed with by the former Judge hearing this matter.

C. Accordingly, Defendant seeks summary judgment on all of Plaintiff's claims for extra-contractual remedies, and/or 'bad faith' claims, as a 'Genuine Dispute' as to coverage exists and, UAIC's actions were reasonable.

As this Court can see, the main issue in this case is not merely coverage - for Mr. Lewis' \$15,000 liability limits - but Plaintiffs' causes of action for breach of the covenant of good faith and fair dealing, insurance bad faith, violations of Nevada Fair Claims Practices Act – from which they hope to receive a windfall and collect on a default judgment of \$3.5 million plus additional fees and costs. The Nevada Supreme Court and the Ninth Circuit Court of Appeals have provided guidelines as to when "bad faith actions" become ripe and, whether they can be dismissed as a matter of law when the insurers actions are reasonable. Because of the holdings

1 in those cases, it is respectfully requested that this Court dismiss all extra-contractual causes of
 2 action, regardless of the Court's ultimate findings regarding the ambiguity for the breach of
 3 contract claim.

4 Nevada law relative to the tort of "bad faith" was succinctly explained in the case of
 5 Schumacher v. State Farm Fire & Cas. Co., 467 F. Supp. 2d 1090, 1096 (D. Nev. 2006) wherein
 6 the court confirmed the following:
 7

8 The Supreme Court of Nevada adopted the cause of action called
 9 "bad faith" in United States Fidelity & Guar. Co. v. Peterson, 91
 10 Nev. 617, 540 P.2d 1070 (1975). Nevada's definition of bad faith
 11 is: (1) an insurer's denial of (or refusal to pay) an insured's claim;
 12 (2) without any reasonable basis; and (3) the insurer's knowledge
 13 or awareness of the lack of any reasonable basis to deny coverage,
 14 or the insurer's reckless disregard as to the unreasonableness of the
 15 denial. Pioneer, 863 F.Supp. at 1247, citing American, 102 Nev. At
 16 605; Falline v. GNLV Corp., 107 Nev. 1004, 1009, 823 P.2d 888
 17 (1991); [*1096] see also, Pemberton v. Farmers Insurance
 18 Exchange, 109 Nev. 789, 858 P.2d 380 (1993) ("a]n insurer fails to
 19 act in good faith when it refuses [**14] 'without proper cause' to
 20 compensate the insured for a loss covered by the policy.").

21 The foregoing indicates that if a dispute exists as to whether coverage even exists for a claim
 22 under the policy and insured may certainly seek recovery from the insurer under the contractual
 23 provisions of the policy. However, if the insurer has a reasonable basis to deny coverage there
 24 cannot be 'bad faith.'

25 Moreover, the Ninth Circuit has recognized the "genuine dispute" doctrine. This doctrine
 26 stems from the recognition that insurance companies have to investigate claims and should be
 27 allowed to do so without fear of accusations of bad faith. Courts hold that the implied duty to
 28 investigate claims allows the insurer to give its own interests consideration equal to that it gives
 its insureds. The "genuine dispute" doctrine protects insurers from bad faith claims where the
 insurer can show that there was a genuine dispute about coverage. See Beltran v. Allstate, 2001
 U.S. Dist. LEXIS 9614 (2001). The existence of a genuine dispute as to Defendant's legal

liability to pay benefits precludes, as a matter of law, extra-contractual recovery against the insurer for breach of the implied covenant of good faith and fair dealing. Opsal v. United Services Auto Association, 10 Cal. Rptr. 2d 353 (1991). The key to a bad faith claim is whether or not the insurer's denial of coverage was reasonable. Under the "genuine dispute" doctrine a bad faith claim can be dismissed on summary judgment if the defendant can show that there was a genuine dispute as to coverage. See Guebara v. Allstate Insurance Company, 237 F.3d 987, 992 (9th Cir. 2001) (citations omitted).

Moreover, the Nevada Supreme Court *has followed the genuine dispute doctrine* as set forth in Allstate Ins. Co. v Miller, 125 Nev. 300, 212 P.3d 318 (NV. 2009) where the Court, stated:

"When there is a genuine dispute regarding an insurer's legal obligations, the district court can determine if the insurer's actions were reasonable. See Lunsford v. American Guarantee & Liability Ins. Co., 18 F.3d 653, 656 (9th Cir. 1994) (interpreting California law); CalFarm Ins. Co. v. Krusiewicz, 131 Cal. App. 4th 273, 31 Cal. Rptr. 3d 619, 629 (Ct. App. 2005) (holding that if an insurer's reasonableness depends on legal precedent, then the issue is reviewed de novo). This court reviews de novo the district court's decision in such cases and evaluates the insurer's actions at the time it made the decision. Cal Farm Ins. Co., 31 Cal. Rptr. 3d at 629.

In Homeowners Ass'n v. Associated Internat. Ins. Co., 90 Cal. App. 4th 335, 108 Cal. Rptr. 2d 776, 783 (Ct. App. 2001), the California Court of Appeals held that a bad-faith claim requires a showing that the insurer acted in deliberate refusal to discharge its contractual duties. **Thus, if the insurer's actions resulted from "an honest mistake, bad judgment or negligence," then the insurer is not liable under a bad-faith theory.** *Id.* (quoting Careau & Co. v. Security Pacific Business Credit, Inc., 222 Cal. App. 3d 1371, 272 Cal. Rptr. 387 (Ct. App. 1990)) Pemberton v. Farmers Ins. Exchange, 109 Nev. 789, 793, 858 P.2d 380, 382 (1993) (holding that bad faith exists when an insurer acts without proper cause); Feldman v. Allstate Ins. Co., 322 F.3d 660, 669 (9th Cir. 2003) bad faith, plaintiff must show insurer unreasonably or without cause withheld benefits due under the policy).

Id. at 317, 329. (emphasis added)

Further, other Nevada decisions have held that "[b]ad faith is established where the insurer acts unreasonably and with knowledge that there was no reasonable basis for its

conduct.” Guarantee National Insurance Company v. Potter, 112 Nev. 199, 206, 912 P.2d 267, 272 (1996). In American Excess Insurance Company v. MGM, 102 Nev. 601, 729 P.2d 1352 (1986), the Nevada Supreme Court held that an insurer cannot be found liable for bad faith, as a matter of law, if it had a reasonable basis to contest coverage. The Court in American Excess, supra, defined bad faith as “an actual or implied awareness of the absence of a reasonable basis for denying benefits of the policy.” Id. at 605. The Court stated that “because we conclude that AEI’s interpretation of the contract was reasonable, there was no basis for concluding that AEI acted in bad faith.” Id. In applying Nevada law, the United States District Court in Pioneer Chlor Alcholi Company, Inc. v. National Union Fire Insurance Company, 863 F. Supp. 1237 (D. Nev. 1994) also stated that where a legitimate contractual dispute exists, the insurer “is entitled to its day in court on such an issue without facing a claim for bad faith simply because it disagrees with [the insured].” Id. at 1250.

Accordingly, from the Allstate holding and, other decisions cited herein, it is clear that the key to a bad faith claim is **whether or not the insurer’s decision regarding coverage is reasonable** and, that when the insurer’s actions are reasonable, the Court can decide so as a matter of law and dismiss extra-contractual claims. Here, Plaintiffs claims that they are entitled to \$3.5 million dollar default judgment, far in excess of Mr. Lewis’ \$15,000 policy limits, apparently because of Defendant’s ‘bad faith’ for their failure to defend under Lewis’ policy. However it seems clear from the discussion above, regarding Defendant’s actions on the policy - which was not in force at the time by plaintiff’s admission **no payment was made between June 12, 2007 and July 10, 2007** - that Plaintiffs’ must admit a *genuine dispute* exists as to coverage for the loss. In fact, Plaintiffs’ Counsel admitted just this fact at hearing on the initial Motion for summary judgment when he admitted Defendant’s reading of the renewal was reasonable. *See Exhibit ‘J’ to Defendant’s Counter-Motion for summary judgment, p. 35, lines 20-24.* Indeed a Federal District Court Judge has also already found UAIC’s interpretation of the

1 renewals (and, therefore their actions thereafter) was a reasonable one in granting summary
2 judgment.

3 Therefore, again, this lawsuit arises from a contested claim for liability insurance on the
4 date of the loss underlying the Nalders' claims. Defendants – with good reason – argue Plaintiff
5 Lewis simply had no coverage in effect on the date of loss. More importantly, at the very least
6 and, regardless of this Court's ultimate determination regarding coverage the Defendant, United
7 Auto, had a reasonable basis to deny coverage for the loss and lawsuit underlying Plaintiff's
8 Complaint as the records clearly indicate a failure to make timely payment and expiration of the
9 policy before the loss. Under prevailing case law the Defendant need not be correct in denial –
10 merely that it has a reasonable basis for doing so. Defendant maintains that Plaintiff Lewis'
11 admission that he failed to pay his renewal premium for his July 2007 policy until after the loss
12 occurring July 8, 2007 clearly created a reasonable basis for United Auto to disclaim coverage
13 for the loss. This set of facts (outlined in several places herein) undoubtedly meets the criteria for
14 a 'genuine dispute' as to coverage under the holdings of the Nevada Supreme Court and the
15 Ninth Circuit and necessitates a grant of summary judgment for Defendant on the extra-
16 contractual claims. See Allstate and Guebara, *supra*.

17
18
19 Besides this genuine dispute, as explained above, UAIC also investigated this coverage
20 issue several times before declining coverage and defense of the underlying suit. In this case,
21 UAIC investigated coverage when notified of the loss by both confirming the lapse through their
22 underwriting department. This was done when Lewis initially called the Company to check
23 coverage on July 13, 2007 whereupon customer service representative Eric Cook informed him
24 the loss occurred in a period of no coverage after confirming this with the Underwriting
25 Department. See *Deposition of Eric Cook attached as Exhibit 'F' to Defendant's Opposition to*
26 *the Motion for summary judgment, p. 36, Lines 17-23, p. 53, lines 4- 10, and copy of*
27
28

1 *Underwriting notes confirming call with Lewis, attached as Exhibit 'I' to deposition of Giselle*
 2 *Molina, Exhibit 'B' to Opposition to the Motion for summary judgment* ⁷. Thereafter, when
 3 Counsel for the Nalders' made a formal claim upon UAIC, the Company double-checked
 4 coverage with underwriting and, contacted the insurance agency, U.S. Auto, who confirmed
 5 Lewis had not paid his premium until July 10, 2007 and provided a copy of the receipt.
 6 Additionally, UAIC attempted to contact Lewis, but was unsuccessful. *See copy of deposition*
 7 *testimony of Jan Cook, attached as Exhibit 'G' Opposition to the Motion for summary judgment,*
 8 *p. 34, lines 8-19, p. 35, lines 7-18, p. 50, lines 11-14, p. 56, lines 2-15, p. 68, lines 13-16, p. 72,*
 9 *lines 14-20; See Copy of Deposition testimony of Giselle Molina, attached as Exhibit 'B'*
 10 *Opposition to the Motion for summary judgment, p. 30, lines 4-5, and see copy of UAIC's claims*
 11 *notes, attached as Exhibit '4' to the deposition of Giselle Molina, Exhibit 'B' to the Opposition*
 12 *to the Motion for summary judgment..*

13
 14
 15 Two cases from the Ninth Circuit Court of Appeals are instructive here and, although
 16 based on California law, one has been cited and, relied upon by the Nevada Supreme Court in the
 17 Allstate v Miller, 125 Nev. 300, 212 P.3d 318 (NV. 2009), holding, cited above. In Lunsford v.
 18 American Guarantee Liab. Ins. Co., 18 F.3d 653 (9th Cir. 1994), the Court held that an insurer
 19 who investigated coverage and based its decision not to defend on reasonable construction of
 20 policy was not liable for bad faith breach of the duty to defend *even after* the Court resolved the
 21 ambiguity in the contract in favor of the insured. Similarly, in a prior case, Franceschi v Amer.
 22 Motor. Ins. Co., 852 F.2d 1217 (9th Cir. 1988) the Court again resolved an ambiguity in favor of
 23 insured, but held the insurer's position had been reasonable and granted summary judgment as to
 24 bad faith claims.
 25

26
 27 ⁷ This same note was used at Eric Cook's deposition, but Plaintiff never supplied the Exhibit to
 28 the court reporter.

Accordingly, based on all the evidence available at the time and, after investigating coverage, UAIC denied coverage for the loss based upon a reasonable basis that there was no policy in force and, therefore, no coverage for the loss. Under the case law cited herein, this cannot be a basis for bad faith remedies against UAIC. This is a simple disagreement about the coverage for a loss where the putative insured, Lewis, *admitted he made no timely payment under the terms of the policy* and only in this litigation claimed an ambiguity in the renewal that he did not understand. At the time of the claim UAIC reviewed coverages, confirmed the payment was late with the insurance agent and, tried to contact Lewis. Based on the information available to it at the time, UAIC made a reasonable decision that there was *no policy in effect*. The former Judge hearing this case and, Plaintiff's counsel, have agreed UAIC's position regarding the renewal statement and, therefore, coverage, was a reasonable one. Under these circumstances, even if this Court ultimately implies a contract due to the ambiguity, there can be no basis for a claim for "bad faith," other extra-contractual claims, or punitive damages. Plaintiff cannot, as a matter of law, establish that Defendant's determination that no policy was in force for the loss is unreasonable or without proper cause. Under the "genuine dispute" doctrine, Defendant is entitled to summary judgment *as to all* of Plaintiffs' extra-contractual claims (for breach of the covenant of good faith and fair dealing and for violations of the Nevada Unfair Claims Practices Act and Nevada Administrative Code) and claim for punitive damages.

D. In the alternative, Defendant asks that this Court find Plaintiffs claims under N.R.S. 686A.310 be dismissed as same are not available under an implied or, constructive, insurance contract.

As has been stated above, it is clear that Plaintiffs' only remaining argument for coverage lies with the theory that the renewal statement to Lewis (for the July 2007 policy term) was ambiguous and, Plaintiff has conceded that Lewis failed to remit his premium before June 30, 2007 and before July 10, 2007. As such, as explained above, there was simply no policy of

1 insurance (contract) between the parties in place on July 8, 2007 – the date of loss. Plaintiff,
 2 therefore, is asking this Court to *imply* a constructive contract by finding the renewal was
 3 ambiguous. Accordingly, even if the trier of fact agrees with Plaintiff regarding the ambiguity –
 4 Plaintiff *would have only an implied insurance contract for the date of loss*. Defendant argues
 5 that, under such a construct, Plaintiff has no cause of action under N.R.S. 686A.310, as these
 6 causes of action were not anticipated for ‘implied contracts.’

8 Another District Court Judge for the District of Nevada reached this very conclusion
 9 in interpreting Nevada law. In Nevada Assoc. Servs., Inc. v First Amer. Title Ins. Co., 2012 U.S.
 10 Dist. LEXIS 105466 (U.S. Dist. NV 2012), the Court there found Plaintiffs were seeking an
 11 implied insurance contract and, as such, N.R.S. 686A.310 was simply inapplicable to such a
 12 constructed contract and dismissed the claims. In so ruling the Court stated that:

14 “Plaintiff’s claims are based on a purported implied contract and Plaintiff has cited no
 15 authority suggesting that N.R.S. § 686A applies to implied agreements. Plaintiff’s claim
 16 under this statute are bare assertions or mere recitations of the law void of factual
 17 allegation and cannot survive the motion to dismiss. Accordingly, the Court dismisses the
 18 claims for violations of N.R.S. § 686A.”

17 Id. at 9-10.

18 It should be apparent the soundness of the Court’s rationale in Nevada Assoc. Sers.
 19 Because the statute only applies, by its own terms, to an *insurance policy*. Here as is undisputed
 20 there was no insurance policy in effect on the date of loss, N.R.S. 686A.310 should not be
 21 applied retroactively where no written contract was in place. Moreover, Defendant argues it
 22 would be inherently unfair for a Court to imply a contract where one existed, only then to apply,
 23 retroactively, duties from a statute to the parties of this new, implied contract. It is undisputed
 24 that, while UAIC handled the claim and, denied coverage, it operated under the reasonable
 25 assumption there was no policy in place. Accordingly, if their belief was reasonable, it would not
 26 be just nor, meet the requirements of the statute (assuming the Court now implies an insurance
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1 contract) to hold UAIC to have been governed by this statute 5 years ago on a contract that
 2 would only be formed, by law, in the future.

3 Therefore, for all of the above, Defendant asks, in the alternative, that regardless of
 4 the Court's findings in regard to the ambiguity on the renewal statement, or in regard to the
 5 genuine dispute doctrine, that this Court dismiss all of Plaintiff's causes of action pursuant to
 6 N.R.S. 686A.310 because no such right of action exists for an implied contract.
 7

8 **E. In the alternative, This Court should bifurcate Plaintiffs extra-contractual**
 9 **remedies from the contract claims.**

10 The decision to bifurcate is committed to the sound discretion of the trial court. Cook v.
 11 United Servs. Auto. Ass'n, 169 F.R.D. 359 (1996), citing Hirst v. Gertzen, 676 F.2d 1252, 1261
 12 (9th Cir. 1982). The Federal Rules of Civil Procedure Rule 42(b) governs bifurcation (Separate
 13 trials) and authorizes the relief sought by Defendants.

14 (b) *Separate trials*. For convenience, to avoid prejudice, or to
 15 expedite and economize, the Court may order a separate trial of
 16 one or more separate issues, claims, cross-claims, counterclaims,
 third-party claims. When ordering a spate trial, the Court must
 preserve any federal right to a jury trial.

17 Applying this rationale here, it is clear that the actions for Plaintiffs' 'bad faith' causes of action,
 18 namely for breach of the duty of good faith and fair dealing, insurance bad faith and violations of
 19 N.R.S. 686A.310 and the Nevada Administrative Code, should be severed from Plaintiffs'
 20 simple breach of contract action contained in Plaintiff's Complaint. Trying these claims together
 21 is both prejudicial to Defendants and, moreover, is not contemplated by Nevada law. The
 22 Nevada Supreme Court has provided guidelines as to when "bad faith actions" become ripe.
 23 Because of the holdings in those cases and the Genuine Dispute doctrine, it is respectfully
 24 requested that this Court sever all causes of action save and except for the breach of contract
 25 claim.

26 The "genuine dispute" doctrine protects insurers from bad faith claims where the insurer
 27 can show that there was a genuine dispute about coverage. See Beltran v. Allstate, 2001 U.S.
 28

1 Dist. LEXIS 9614 (2001).

2 In Pulley v. Preferred Risk Mut. Ins. Co., 111 Nev. 856, 897 P.2d 1101 (1995), the
3 parties were not able to agree on the value of the insured's uninsured motorist claim so the
4 insured filed a breach of contract action against the insurer to recover policy benefits. The
5 parties thereafter agreed to arbitrate the policy claim and the arbitrator returned an award in favor
6 of the insured. The insurer failed to pay the arbitration award and the insured then commenced a
7 bad faith action against the insurer. The next day the insurer paid the award and then moved to
8 dismiss the insured's bad faith suit on the grounds that the bad faith claim could have been raised
9 in the insured's first action and was therefore barred by the doctrine of res judicata. The district
10 court agreed and dismissed the bad faith suit. The Supreme Court reversed and stated as follows:

11 "We conclude that the doctrine of res judicata does not bar appellants'
12 case against Preferred Risk for breach of the covenant of good faith and
13 fair dealing because the issue decided on the merits in the prior litigation
14 is not the same issue that is presented in the second case. The duty to act
15 in good faith does not arise from the terms of the insurance contract.
16 United States Fidelity and Guaranty Co. v. Peterson, 91 Nev. 617, 620,
17 540 P.2d 1070, 1071 (1975). Rather, the duty of good faith and fair
18 dealing is imposed by law and the violation of this duty is a tort." Id.

19 Id. at 858-59.

20 Pulley provides a clear statement that a claim for insurance bad faith is a *separate and*
21 *independent tort action* that arises out of the related, but independent, contractual claim for
22 insurance policy benefits. In Pulley, the bad faith claim was based on the insurer's refusal or
23 delay in paying the arbitration award. Until the contractual obligation to pay the award was
24 resolved by either payment, as occurred, or by a judgment in the contract claim, the insured's
25 claim for bad faith against the insurer would have been premature.

26 Therefore, severing the bad faith causes of action while the insured pursues his
27 contractual claims satisfies the rules set forth in the above-referenced cases. This is obviously
28 important since it is clear from the Nevada Supreme Court's decision in Pemberton v. Farmers
Ins. Exch., 109 Nev. 789, 858 P.2d 380 (1993), that a claim for insurance bad faith does not
accrue until the underlying contractual action is resolved. Therefore an insurance bad faith

1 action should not be allowed, at the very least, to proceed in the same action as the traditional
 2 contractual claims until there is a final judgment or resolution of the contractual claim for
 3 benefits.

4 Additionally, the most recent decision from the District of Nevada concerning this issue
 5 is Drennan v. Md. Casualty Co., 366 F. Supp. 2d 1002 (2005 Nev.), which squarely supports
 6 such a bifurcation. In that case, the district court again noted that an insured must establish legal
 7 entitlement to benefits prior to instituting an action for bad faith. Id. at 1005. The court in that
 8 matter bifurcated the contractual and bad faith claims. The Court in Drennan succinctly summed
 9 up the reason for bifurcation as follows:
 10

11 “Bifurcating the breach of insurance contract claim from the bad faith claim is
 12 appropriate in this case. If Plaintiffs do not prevail on their breach of insurance
 13 contract claim, there can be no basis for concluding that Maryland Casualty acted
 14 in bad faith. Consequently, a favorable finding for Maryland Casualty on this
 15 issue would eliminate the need for a second trial. Bifurcation thus would further
 16 the interest of expedient resolution of litigation. Further, bifurcation would
 17 simplify the issues for trial and reduce the possibility of undue prejudice by
 18 allowing the jury to hear evidence of bad faith only upon establishing that
 19 Maryland Casualty breached the insurance contract. The Court therefore finds that
 20 any trial regarding the breach of contract claim shall be bifurcated from the bad
 21 faith claim”. Id. at 1008-9.

22 The foregoing review of Nevada law and the language used by the Nevada Supreme
 23 Court in the Pulley case is inescapable. The “bad faith tort action does not occur until after the
 24 first case for benefits under the contract had been settled.” Pulley at 1103. That decision, along
 25 with the reasoning set forth from Drennan offer clear law supporting the bifurcation of Plaintiffs’
 26 extra-contractual causes of action. For the foregoing reasons, Defendants ask that the Plaintiffs’
 27 claims for ‘bad faith’, breach of the covenant of Good Faith and Fair Dealing, as well as claims
 28 for violations of the Nevada Unfair Claims Practices Act and/or Nevada Administrative Code, be
 bifurcated from Plaintiffs’ breach of contract claims. Defendant submits that any claim of bad
 faith is premature but, at the very least, should not proceed in instant action for breach of
 contract. Since Plaintiffs have yet to prove any entitlement to benefits under the policy and a

1 genuine dispute as to coverage exists, based on Nevada law, and the well reasoned opinion of the
 2 federal district court, it is requested that this court severe these causes of action pending
 3 resolution of the breach of contract claim.

4 Accordingly, the Court should bifurcate the bad faith or, extra-contractual, causes of
 5 action pending resolution of the contract causes of action.

6 **F. Finally, in the alternative, Defendant seeks leave to Amend its pleadings to add a**
 7 **counter-claim against Plaintiff for collusion and/or breach of the cooperation**
 8 **clause as well as champerty.**

9 In the case at bar, it is clear that the only two parties to the alleged contract were Plaintiff
 10 Gary Lewis and Defendant United Auto. The Nalder Plaintiffs' have no contractual relationship
 11 with United Auto and, apparently until February 2010, had no assignment of rights or Covenant
 12 not to execute with Plaintiff Gary Lewis to 'step into his shoes' and sue United Auto. Given the
 13 amount of the judgment, the previously friendly relationship between Lewis and the Nalders',
 14 the lack of any assignment before February 2010 *and* contact by Plaintiffs Counsel with Lewis
 15 shortly after the loss – Defendants seek leave to amend their Answer to file a Counter-claim for
 16 collusion and/or breach of the cooperation clause by plaintiffs.

17 F.R.C.P. 13 allows for compulsory Counter-claims to be filed. Additionally, F.R.C.P. 15
 18 allows for amendments to be filed, after the time allowed for filing same, by leave of court
 19 "when justice so requires." Such leave is left to the sound discretion of trial court. Forsyth v.
 20 Humana Inc., 114 F.3d 1467, 1482 (9th Cir. 1997). The "underlying purpose of Rule 15 [is] to
 21 facilitate decision on the merits, rather than on the pleadings or technicalities." Lopez v. Smith,
 22 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (citation and quotation marks omitted). Leave to
 23 amend "shall be freely given when justice so requires" and this rule should be applied with
 24 "extreme liberality." Forsyth, 114 F.3d at 1482 (citing Fed. R. Civ. P. 15(a)).

25 In the case at bar, it is now plain that the Nalders' lacked standing to bring suit against
 26

27 ⁸ Lewis has testified in interrogatory responses and deposition that he and James Nalder are
 28 friends.

1 United Auto when originally filed. The majority rule, and rule followed by this Court, is that
 2 third party is stranger to the contract, like the Nalders' here, have no standing to sue for breach of
 3 contract and bad faith against an alleged tortfeasor's insurance company. Gunny v. Allstate Ins.
 4 Co., 108 Nev. 344 (Nev. 1992). From the face of Plaintiffs' Complaint it is obvious that the
 5 Nalder Plaintiffs, like those in Gunny, had no standing to bring any causes of action against
 6 Defendant. The Nalders' have not pled any contractual relationship with Defendant. *See*
 7 *Plaintiff's Complaint, Exhibit 'H' to Defendant's Opposition to Plaintiff's Motion for summary*
 8 *judgment*. It is quite clear that the Nalders' only relationship is as a judgment creditor of Lewis.
 9 Plaintiff has not pled any contract between the Nalders' and United Auto nor any other basis for
 10 standing, such as an assignment. *See Exhibit 'H' to Defendant's Opposition to Plaintiff's Motion*
 11 *for summary judgment*. The Plaintiff has pled no assignment of any causes of action by Lewis
 12 against Defendant may even implicate certain conflicts of interest. Rather, it is clear that the only
 13 parties to contracts at issue are the Plaintiff Gary Lewis, Kristin
 14 Scott, and United Auto. *See attached Declaration of Western Regional Underwriting and*
 15 *Marketing Manager, Danice Davis*. Moreover, in response to a Motion to Compel, Defendants
 16 were provided an alleged "assignment", *attached as Exhibit 'E' to Defendant's Opposition to*
 17 *Plaintiffs' Motion for summary judgment*, between the Nalders' and Lewis that – by its own
 18 terms – was only signed February 28, 2010.

19 The fact that this assignment claims Lewis 'assigned' his claims against United Auto for
 20 "value received", however, this 'value' is not apparent from the face of the document. *See*
 21 *Exhibit 'E' to Defendant's Opposition to Plaintiffs' Motion for summary judgment*. If it was for a
 22 covenant not to execute the excess judgment or a release of claims – it certainly is not apparent.
 23 Clearly, a material issue exists over 'consideration for this assignment and whether it is at valid
 24 on its face. This is especially troubling for Defendant when considered in conjunction with
 25 Plaintiff, Gary Lewis', Answers to Interrogatories. *See Exhibit '3' to Plaintiff's Motion for*
 26 *summary judgment*. In Plaintiff's Response No. seven (7), Lewis admits that he and James
 27
 28

1 Nalder are "friends." Next, at Response to number nineteen (19), states that "shortly after the
2 accident" he called Plaintiffs' Counsel, David Sampson" at the request of his friend James
3 Nalder. *See Exhibit '3' to Plaintiffs' Motion for summary judgment.*

4 As such, it is clear from the face of the Plaintiffs' complaint that the Nalder Plaintiffs'
5 have not, pleaded a prima facie case for breach of contract or bad faith against Defendant as they
6 lack standing to do so. The eleventh-hour attempt to rectify this defect via the February 28, 2010
7 assignment has only raised more questions. Specifically, what consideration was given to Lewis,
8 if any, for this assignment and, more importantly, what is the relationship between all Plaintiffs
9 and Plaintiffs Counsel. In short, the Nalder plaintiffs are strangers to the contract. Yet, they
10 obtained a multi-million dollar judgment against their friend, who has been in contact with their
11 attorney since shortly after the accident.

12 As such, issues of collusion, breach of the cooperation clause of the insurance policy or,
13 possibly champerty, have arisen from Plaintiffs' interrogatory responses and purported
14 assignment. As this Motion was originally mooted by the Court's summary judgment ruling,
15 Defendant has never had time to investigate these issues. Therefore, Defendant can easily show
16 excusable neglect for not having filed its counter-claim sooner as these facts were unknown until
17 after discovery revealed them. Thereafter, Defendant timely moved to amend, though the Motion
18 was not heard until after discovery had closed. Once summary judgment was given, the Motion
19 was mooted. Now that the matter has been remanded, Defendant has a right to amend its Answer
20 to add this Counter-claim and, additionally, seek discovery on these issues. Moreover, this Court
21 may grant same leave to file said amendment to do substantial justice between the parties.

22 ///

23 ///

IV.

CONCLUSION

Based upon the foregoing, Defendants UNITED AUTOMOBILE INSURANCE COMPANY respectfully requests that this Court grant their Motion for Summary Judgment as to all of Plaintiff's allegations of breach of the duty of good faith and fair dealing, insurer bad faith and/or violation of the Nevada Fair Claims Practices Act, with prejudice; or alternatively, grant Defendant's Motion to Bifurcate all extra-contractual claims on Plaintiff's alleged aforementioned bad faith claims pending the resolution of Plaintiff's contractual claims. Finally, and in the alternative, Defendant asks this Court for Leave to file a Counterclaim against Plaintiffs.

DATED this 26th day of March, 2013.

ATKIN WINNER & SHERROD

/s/ Matthew J. Douglas

Matthew J. Douglas
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Defendant

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

CERTIFICATE OF ELECTRONIC SERVICE

I DO HEREBY CERTIFY that I am an employee of ATKIN WINNER & SHERROD and on the 26th day of March, 2013, I did serve, via electric service, the foregoing **DEFENDANT UNITED AUTOMOBILE INSURANCE COMPANY'S COUNTER-MOTION FOR SUMMARY JUDGMENT ON ALL EXTRA-CONTRACTUAL CLAIMS OR REMEDIES; OR, IN THE ALTERNATIVE, MOTION TO BIFURCATE CLAIMS FOR EXTRA-CONTRACTUAL CLAIMS OR REMEDIES; FURTHER, IN THE ALTERNATIVE, MOTION FOR LEAVE TO AMEND ANSWER TO FILE COUNTER-CLAIM ORAL ARGUMENT REQUESTED**

/s/ Victoria Hall

An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

*Attorneys for Defendant,
United Automobile Insurance Company*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES NALDER, Guardian Ad Litem for
minor Cheyanne Nalder, real party in
interest, and GARY LEWIS, Individually;

Plaintiffs,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, DOES I through V, and ROE
CORPORATIONS I through V, inclusive

Defendants.

CASE NO.: 2:09-cv-1348
DEPT. NO.:

**DEFENDANT UNITED AUTOMOBILE
INSURANCE COMPANY'S
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

ORAL ARGUMENT REQUESTED

UNITED AUTOMOBILE INSURANCE COMPANY, by and through its Counsel of
record, Matthew J. Douglas, of ATKIN WINNER & SHERROD, hereby submits this Opposition
to Plaintiffs' Motion for Summary Judgment and states and alleges, as follows:

This Opposition is made and based upon the pleadings and papers on file with this Court,
the Points and Authorities contained below, and any oral argument which the Court may
entertain at the time of hearing.

///

///

1 DATED this 26th day of March, 2013.

2
3 ATKIN WINNER & SHERROD

4
5 /s/Matthew J. Douglas
6 Matthew J. Douglas
7 Nevada Bar No. 11371
8 1117 S. Rancho Drive
9 Las Vegas, Nevada 89102
10 *Attorneys for Defendant*

11 **POINTS AND AUTHORITIES**

12 **I.**

13 **STATEMENT OF FACTS AND RESPONSE TO**
14 **PLAINTIFF'S STATEMENT OF FACTS**

15 **A. Facts relating to this lawsuit.**

16 This is an insurance claim which was denied due to termination of a policy after the
17 plaintiff, Gary Lewis, failed to pay his premium.

18 Defendant has very little information regarding the subject accident which the Plaintiff
19 underlies this suit but, it appears that Gary Lewis was operating his vehicle in Pioche, Nevada on
20 July 8, 2007 wherein he struck minor pedestrian, Cheyenne Nalder. *See copy of Plaintiff Lewis'*
21 *deposition, attached as Exhibit 'A', hereto, p. 14, lines 1-15, p. 15, lines 12-15.* Thereafter,
22 Nalder and her father commenced a personal injury action against Lewis.

23 However, Mr. Lewis' policy of insurance had expired, and had not been renewed, due to
24 nonpayment of renewal premium at the time of this accident. Presumably sensing this might be
25 a problem, Mr. Lewis hastily made arrangements to pay a premium and acquire a new policy
26 after he caused the accident. ¹ After Attorneys for the Nalder Plaintiffs' obtained a \$3.5 million

27 ¹ Attached as *Exhibit '5'* the deposition of Giselle Molina, *which is attached hereto as Exhibit*
28 *'B'*, is a copy of the receipt of payment, on July 10th, 2007 (2 days after the accident), for the premium
payment made by Lewis at the U.S. Auto Insurance Agency located at 3909 W. Sahara Ave., Las Vegas,
Nevada. *See also the corresponding receipt of said payment by UAIC, Exhibit 'C' to the Declaration of*
Danice Davis, herein.

1 dollar default judgment against Lewis, Attorneys for the Nalders' and Lewis commenced this
 2 lawsuit for 'bad faith,' claiming UAIC should have covered Lewis, even though his policy had
 3 expired.

4 When this case opened, Gary Lewis *first* insisted that he had, in fact, paid for his
 5 premium prior to the expiration of his policy on June 30th, 2007 and *that Defendant had denied*
 6 *receiving it. See attached copy of Plaintiff's original responses to requests for admissions,*
 7 *attached hereto as Exhibit 'C', numbers 4 & 7.* However, Lewis also refused to answer any
 8 discovery or produce any documents evidencing this alleged payment. Moreover, Lewis
 9 objected and refused to produce the assignment of rights under which the Nalder Plaintiffs'
 10 brought the instant suit. These responses necessitated a Motion to Compel discovery responses
 11 and a motion for sanctions. In response to this motion, at the eleventh hour and, on the doorstep
 12 to the courtroom on the day of the hearing, the plaintiff simply *changed his story* and *admitted*
 13 *that he had not, in fact, ever paid his premium for a renewal policy before the previous policy*
 14 *was terminated. See copies of Plaintiff's 'Supplement' to his Responses to Requests for*
 15 *admission, which are attached hereto as Exhibit 'D, numbers 4 and 8'.* Further, at that time, the
 16 plaintiff also produced an 'Assignment' - which purports to assign Plaintiff Lewis' chose in
 17 action to the Nalder Plaintiffs' - but, which was entered into on February 28, 2010². *See Exhibit*
 18 *'E', attached hereto.* Plaintiffs - by virtue of the amended responses to requests for admissions -
 19 have admitted there exists no material issue of fact concerning that Lewis did not timely pay his
 20 premium for the July 2007 policy. Instead, at that point, Plaintiffs' shifted their argument to
 21 maintain that Lewis was due coverage because of an *ambiguity* in the renewal statement - *not*
 22 *because he paid his premium timely and UAIC 'lost it'.*

23 ///

24 ///

25 _____
 26 ² The court will note that this purported 'assignment' was apparently executed long after the
 27 lawsuit was filed. It begs the obvious question how, or why, the Nalder Plaintiffs' were able to
 28 commence this lawsuit without any legal basis or authority for bringing it. Again, the 'assignment' was
 only produced after a motion to compel and motion for sanctions was pending before the court.

1 **B. Facts relating to the claims at bar.**

2 Lewis' insurance policy, number NVA 020021926, with Defendant United Automobile
3 Insurance Company had expired, per its terms, on June 30, 2007. The policy, as such, was not in
4 effect on July 7, the date of loss. *See Declaration of Western Regional Marketing and*
5 *Underwriting Manager for United Automobile Insurance Company, Danice Davis, with copy of*
6 *policy number NVA 020021926 declarations page and policy, attached thereto as Exhibit 'A.'*
7 Although United Automobile had mailed a renewal notice to Gary Lewis advising that his policy
8 would terminate on June 30 if payment were not received by that date, Mr. Lewis did not pay his
9 premium. *See Declaration of Western Regional Marketing and Underwriting Manager for*
10 *United Automobile Insurance Company, Danice Davis, with copy of Exhibit renewal notice,*
11 *attached as Exhibit 'B' thereto.* The renewal notice clearly put Lewis on Notice that his premium
12 for his renewal policy was due "no later than 6/30/07." *See Exhibit 'B' attached to Declaration*
13 *of Danice Davis.*

14 It was only after the loss occurred, on July 8, 2007, that Lewis presented a money order
15 for payment of his premium for a new policy, on July 10th, 2007. *See Declaration of Western*
16 *Regional Marketing and Underwriting Manager for United Automobile Insurance Company,*
17 *Danice Davis, with copy of cashier's check receipt of premium for said new policy number NVA*
18 *030021926 on July 8, 2007 attached as Exhibit 'C', thereto.* At that time a new policy, number
19 *NVA 030021926*, was initiated with a term of July 10, 2007 to August 10th, 2007. *See*
20 *Declaration of Western Regional Marketing and Underwriting Manager for United Automobile*
21 *Insurance Company, Danice Davis, with copy of declarations page for number NVA 030021926,*
22 *attached as Exhibit 'D,' thereto.*

23 As stated, the plaintiff initially insisted that he paid his policy premium on time, and that
24 UAIC must have lost or misplaced it. Then, in the wake of discovery and a motion to compel,
25 Gary Lewis has admitted that he did not remit any amount for renewal of UAIC Policy number
26 NVA 020021926 after June 12, 2007 and before June 30, 2007 nor between June 30, 2007 and
27 July 10, 2007. *A copy of Plaintiff Gary Lewis' Answers to requests to admit are attached hereto*
28

1 as Exhibit 'D.'

2 As such, Defendant has maintained that this loss occurred during the period of non-
 3 coverage that existed from June 30, 2007 to July 10th, 2007. *See Declaration of Western*
 4 *Regional Marketing and Underwriting Manager for United Automobile Insurance Company,*
 5 *Danice Davis.* UAIC became aware of the loss when Lewis called the Company to check
 6 coverage on July 13, 2007 whereupon customer service representative Eric Cook informed him
 7 the loss occurred in a period of no coverage after confirming this with the Underwriting
 8 Department. *See Deposition of Eric Cook attached hereto as Exhibit 'F', p. 36, Lines 17-23,p.*
 9 *53, lines 4- 10, and copy of Underwriting notes confirming call with Lewis, attached hereto as*
 10 *Exhibit '1' to deposition of Giselle Molina, Exhibit 'B', hereto*³. Thereafter, when Counsel for
 11 the Nalders' made a formal claim upon UAIC, the Company double-checked coverage with
 12 underwriting and, contacted the insurance agency, U.S. Auto, who confirmed Lewis had not paid
 13 his premium until July 10, 2007 and, provided a copy of the receipt. Additionally, UAIC
 14 attempted to contact Lewis, but was unsuccessful. *See copy of deposition testimony of Jan Cook,*
 15 *attached hereto as Exhibit 'G', p. 34, lines 8-19, p. 35, lines 7-18, p. 50, lines 11-14, p. 56, lines*
 16 *2-15, p. 68, lines 13-16, p. 72, lines 14-20; See Copy of Deposition testimony of Giselle Molina,*
 17 *attached hereto as Exhibit 'B', p. 30, lines 4-5, and see copy of UAIC's claims notes, attached*
 18 *as Exhibit '4' to the deposition of Giselle Molina, Exhibit 'B', hereto.*

19 After verifying with the agency that no payment had been made prior to expiration of the
 20 June policy until July 10, 2007, and attempting to contact Lewis, Plaintiffs' were informed of the
 21 fact that no coverage was in force for the loss. *See Declaration of Western Regional Claims*
 22 *Manger for United Automobile Insurance Company, Jan Cook, and attached copy of*
 23 *correspondence to Counsel for Plaintiff, attached thereto as Exhibit 'A.'* Plaintiff James Nalder,
 24 as guardian of Cheyenne Nalder, then filed suit in the Clark County District Court on October 9,
 25 2007 under suit number A549111 against Lewis. On October 10, 2007, and again November 1,
 26

27 ³ This same note was used at Eric Cook's deposition, but Plaintiff never supplied the Exhibit to
 28 the court reporter.

1 2007, the Company informed both claimant attorneys via correspondence of the fact there was
 2 no coverage due to non-renewal for failure to pay premium. *See Declaration of Western*
 3 *Regional Claims Manger for United Automobile Insurance Company, Jan Cook, and attached*
 4 *copy of correspondence to Counsel for Plaintiff, attached thereto as Exhibits 'A' and 'B.'*

5 Lewis' current attorneys commenced suit **against him** after they were advised that Lewis
 6 had no insurance for this loss. Lewis' current attorneys then took a default against their now
 7 client. On May 15, 2008 Plaintiff's petitioned the Court for a default Judgment in the amount of
 8 \$3.5 million. *See copy of default judgment, attached to Plaintiff's Motion for Summary Judgment*
 9 *as Exhibit '2.'* On May 16, 2008 the plaintiff attempted to amend that petition to seek \$5 million.
 10 On June 2, 2008 the court entered a default judgment against Lewis for \$3.5 million.

11 On May 22, 2009 Nalder and Lewis filed the present suit against the UAIC seeking
 12 payment of the default judgment against Lewis⁴. *See Plaintiff's Complaint, attached hereto as*
 13 *Exhibit 'H.'* Plaintiffs have also made several 'extra-contractual' or 'bad faith' claims against
 14 Defendant UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter "UAIC or United
 15 Auto"). *See Plaintiff's Complaint, attached hereto as Exhibit 'H.'* Namely, Plaintiff alleges
 16 UAIC has breached its duty of good faith and fair dealing towards Plaintiffs, and failed to abide
 17 by Nevada's Fair Claims and Practices Act, N.R.S. 686A.310. Plaintiffs' bad faith claims are set
 18 forth in their Complaint. *See Exhibit 'H.'* Defendant has denied Plaintiffs' claims. *See Copy of*
 19 *United Auto's Answer and Affirmative Defenses, attached hereto as Exhibit 'I.'*

20 Defendant has, from the outset, disputed coverage for Plaintiff's claims. It is clear that
 21 there was no policy was in effect the date of loss and, therefore, UAIC argues no coverage would
 22 be owed to Lewis for Plaintiffs' claims. However, Defendant argues that regardless of this
 23 Court's ultimate determination regarding any ambiguity in the renewal statement, Defendant had
 24 a reasonable belief no coverage existed based on the failure to timely remit premium and, as
 25 such, cannot be liable for any extra-contractual damages, in hindsight, several years later based
 26

27 ⁴ The current suit was UAIC's first notice that Lewis had been served and, that a default judgment
 28 had been taken against him.

on an *ad hoc* legal argument for coverage. The reasonableness of Defendant's position is confirmed by the fact that the prior Judge hearing this case found no coverage and, Plaintiffs' Counsel admitted UAIC's reading of the renewal was reasonable at the hearing on the first Motion for summary judgment. *See Exhibit 'J', hereto, p.35, lines 20-24.*

C. Responses to Plaintiff's Statement of Facts

In order to clear up any misstatements concerning the record in this case, Defendant responds to some of Plaintiff's Statement of facts. First, the "Renewal Notice" discussed by Plaintiff (*at pages 3-4 of Plaintiff's Motion for Summary Judgment regarding payment beyond a policy expiration*) was clearly titled "**Revised** Renewal Notice" by UAIC. This was done because Lewis – who had purchased his first month-long policy beginning March 29, 2007⁵ – **added a new driver** (*attached as page 13 of Exhibit "1" to Plaintiff's Motion for summary judgment*) as well as **a new vehicle** (*attached as page 14 of Exhibit "1" to Plaintiff's Motion for Summary Judgment*) to his policy on April 25, 2007.⁶ Previous to these endorsements, on April 9, 2007, UAIC had sent Lewis a "Renewal Statement" for his May 2007 Policy which specifically informed him that premium needed to be paid prior to expiration of his current policy – or by April 29, 2007. *A copy of the initial Renewal statement is attached as page 20 of Exhibit "1" to Plaintiff's Motion for Summary judgment.* However, as Lewis' two additions to the policy, on April 25, 2007, increased his premium – a new "Revised Renewal Statement" was issued which did allow him to remit his May 2007 premium by May 6, 2007. *See page 16 of Exhibit '1' to Plaintiff's Motion for summary judgment.* This revised renewal statement only provided additional time, beyond expiration of his current policy – because of the late additions to the

⁵ *A copy of the receipt of the first policy premium, on March 29, 2007, is attached as page 7 of Exhibit "1" to Plaintiff's Motion for Summary Judgment*

⁶ *These endorsements led to an amended policy declarations page to be issued to Lewis on April 25, 2007 for the remaining four days of his policy (April 25, 2007 – April 29, 2007). (A copy of the Amended Declaration is attached as page 10 of Exhibit "1" to Plaintiff's Motion for Summary Judgment)*

1 policy and increased premium required a Revised Renewal Statement to be sent out. In no way
 2 did same Revised Renewal Statement create a “course of conduct” allowing for payment of
 3 premium beyond expiration of the current policy term. This conclusion is supported by the fact
 4 that Lewis actually paid for his May 2007 policy on April 28, 2007 and the new policy term
 5 incepted, on schedule, April 29, 2007. *See Receipt of Payment dated April 28, 2007, page 26 of*
 6 *Exhibit ‘1’ to Plaintiff’s Motion for Summary Judgment.*

8 Similarly, Plaintiff notes that Lewis’ June 2007 Policy required the premium to be
 9 received by May 29, 2007 (the last day of Lewis’ May 2007 policy). *See Renewal Notice at page*
 10 *28 of Exhibit ‘1’ to Plaintiff’s Motion for Summary judgment.* Thereafter, as Plaintiff points out,
 11 Lewis failed to remit any premium until May 31, 2007. *See Receipt of Payment, page 34 of*
 12 *Exhibit ‘1’ to Plaintiff’s Motion for summary judgment*⁷. As such, Lewis’ June 2007 policy did
 13 not incept until May 31, 2007 – *when payment was received. See Declarations page for June*
 14 *2007 Policy at page 30 of Exhibit ‘1’ to Plaintiff’s Motion for Summary judgment.* As such, like
 15 for the loss in the case at bar, Lewis had a lapse in coverage from 12:01 a.m. May 29, 2007 until
 16 9:12 a.m. on May 31, 2007, when the new policy was paid for and incepted.

18 This was the same situation that occurred for the July 2007 policy, where the renewal
 19 notice clearly stated that the “Renewal Amount” must be paid “**No Later than 6/30/07.**” *See*
 20 *July 2007 Renewal Notice page 34 of Exhibit ‘1’ to Plaintiff’s Motion for summary judgment.*
 21 Lewis, as happened with the June policy 2007 policy, was again late with his payment. Now it is
 22 agreed by all parties that Lewis did not remit premium for his July 2007 policy term until July
 23 10, 2007. *See Receipt of Payment at page 39 of Exhibit ‘1’ to Plaintiff’s Motion for summary*
 24

25
 26 ⁷ It is important to note that, every subsequent policy term Lewis had with UAIC , after March
 27 2007, would be titled “renewal” and not “new business” on the receipt of payment because Lewis was not
 28 a “new customer” any longer. As such, this designation of “renewal” on a receipt of payment (to
 determine whether a producer has brought in a new customer) has absolutely no bearing on how UAIC
 characterized his policy.

1 judgment. Therefore, as occurred with the June 2007 policy, UAIC incepted Lewis' July 2007
 2 policy term late on July 10, 2007. *See copy of Declarations for July 2007 policy at page 36 of*
 3 *Exhibit '1' to Plaintiff's Motion for summary judgment.* In this way, it is undisputed that Lewis,
 4 again, had a lapse in coverage from 12:01 a.m. June 30, 2007 to 12:50 p.m. July 10, 2007.

5
 6 Plaintiff also notes that, in September and December 2007, Lewis again failed to timely
 7 remit his premium. UAIC does not dispute this. UAIC argues, in fact, this is further proof of
 8 Lewis' "course of conduct" - of **failing to pay for his new policy timely**. In fact, Lewis even
 9 failed to remit premium for his August 2007 policy timely as well. As can be seen from the
 10 records, Lewis was issued a renewal notice to remit his premium for his August 2007 policy by
 11 August 10, 2007 (this was because, of course, his July 2007 policy began July 10, 2007 due to
 12 late payment). *See copy of Renewal Statement for August 2007 Policy at page 40 of Exhibit '1' to*
 13 *Plaintiff's Motion for summary judgment.* Lewis, however, did not pay his August 2007 premium
 14 until August 13, 2007. *See Receipt of Payment at page 45 of Exhibit '1' to Plaintiff's Motion for*
 15 *summary judgment.* Thereafter, UAIC incepted his August 2007 policy on the date of payment,
 16 August 13, 2007. *See Declarations Page for August 2007 Policy at page 42 of Exhibit '1' to*
 17 *Plaintiff's Motion for summary judgment.* Again, his September 2007 Policy then required
 18 remittance of renewal premium by September 13, 2007. *See Renewal Statements at pages 6 and*
 19 *8 of Exhibit '2' to Plaintiff's Opposition to Defendant's original Motion for summary judgment,*
 20 *Document 20, herein.* Lewis, again, failed to remit premium until September 14, 2007 (*See*
 21 *Receipt of Payment at page 13 of Exhibit '2' to Plaintiff's Opposition to Defendant's original*
 22 *Motion for summary judgment, Document 20, herein.*) and corresponding new Policy Declaration
 23 page for the September 2007 policy, issued September 14, 2007 at the time of payment. *See*
 24 *Declaration Page at page 10 of Exhibit '2' to Plaintiff's Opposition to Defendant's original*
 25 *Motion for summary judgment, Document 20, herein.* Lewis went on to make his October and
 26
 27
 28

1 November 2007 policy term premium payments timely (*See Receipts of Payments at pages 22*
 2 *and 34 of Exhibit '2' to Plaintiff's Opposition to Defendant's original Motion for summary*
 3 *judgment, Document 20, herein.*) before failing to remit his December 2007 premium on time.

4 As such, once again, UAIC did not issue a new policy term until said payment was received on
 5 December 15, 2007. See Receipt of Payment and Declarations Page at *pages 40 and 37,*
 6 *respectively, of Exhibit '2' to Plaintiff's Opposition to Defendant's original Motion for summary*
 7 *judgment, Document 20, herein.*

8
 9 As such, when one actually reviews the UAIC records, it is clear, UAIC did not issue any
 10 new policy term for Lewis *until payment was received.* During any period between expiration of
 11 a previous monthly policy – and remittance of policy premium for the new monthly term – Lewis
 12 would have a lapse in coverage. From a review of the records this happened on several occasions
 13 – *both before and after* July 2007 policy. Therefore, the evidence this case actually proves a
 14 course of dealing where Lewis, contrary to his self-serving interrogatory answers, had a prior
 15 course of dealing with UAIC wherein he knew his new policy term did not incept until he paid
 16 his premium.
 17

18 Also, Defendant would like to note that Plaintiff also mischaracterizes or, does not
 19 completely cite the testimony of several witnesses. For instance, Plaintiff claims that Danice
 20 Davis, the Person Most Knowledgeable (PMK) for UAIC in regards to underwriting issues, is
 21 unable to indicate “expiration of your policy”, on the renewal notice, referred to expiration of
 22 your *current* policy (rather than the expiration date on the top right hand corner for the future
 23 policy as Lewis claims he believed). However, Plaintiff is twisting Danice Davis’ testimony.
 24 This is because though Davis told Plaintiff, *time and time again,* what the Defendant believes is
 25 reasonable and unambiguous interpretation of the renewal. Specifically, when you review Davis’
 26 testimony, she clearly told Appellant: **“So it's a renewal offer to go another term. So when**
 27
 28

1 I'm referencing your policy, it would be your policy that you have in force at the time you
 2 get this offer in order to extend to another term. " See Exhibit '4' to Plaintiff's Motion for
 3 summary judgment, Davis Deposition, p. 62, Lines 11-25 and page 63, Lines 1-8.

4 Accordingly, when one examines a full testimony of Ms. Davis' testimony it is clear she
 5 does explain her interpretation of the renewal. That is, since it is an offer for the next term, the
 6 only reasonable interpretation would be for an insured to pay his premium, by the **due date** to
 7 extend to the new term. As such, Davis would not agree with Plaintiff's attempt to force his
 8 interpretation on her and she explained the words "your policy" clearly reference the "current
 9 policy term" and the offer would be to extend to another term.⁸

11 Next, Plaintiff again misquotes or mischaracterizes the testimony of the former
 12 employees of UAIC, Manny Cordova and Lisa Watson for their argument that these individuals
 13 state the renewal is ambiguous. First, Plaintiffs' allege Mr. Cordova stated "certainly people can
 14 interpret a document differently" for 'proof' that the document here is ambiguous. Plaintiffs',
 15 however, fails to fully cite Mr. Cordova because, when one does, it is apparent he *never* said the
 16 document was ambiguous. In fact, Mr. Cordova agreed with UAIC's interpretation of the
 17 renewal notice and, where he did state one could view a document 'differently' he did so in a
 18 purely *philosophical* manner. That is, in response to Plaintiffs' Counsel again attempting to get a
 19 witness to agree with his interpretation of the document, Mr. Cordova testified:

21 BY MR. SAMPSON:

22 Q: Okay. It's subject to multiple interpretations, fair statement?

23 MR. DOUGLAS: Objection, that mischaracterizes his testimony, calls for a legal
 24 conclusion. That's not what he said, Counsel.

25 **THE WITNESS: I would have to agree, that's not what I said. What I said was, again, this**
 26 **is the way that I interpret the document, this is the way I read the document. If someone**
 27 **else were to read it differently, well, then that -- you know, I mean, there's guys out there**

28 ⁸ The Court can read on in the Davis deposition to notice Plaintiffs' Counsel continued attempt to
 force the witness to adopt his interpretation of the document (*Exhibit '4' to Plaintiff's Motion. 358-362*).

1 that will pick this up, you go down there to the looney farm and you give this to a guy and
 2 he will think you're handing him Psalms 117 or something. So this is the way I read the
 3 document. Could you interpret it differently? Of course. Could she interpret it differently?
 Of course. This is the way that I interpret it. I cannot tell you that, you know, my way is
 right or your way is right, but that's the way I read the document.

4 (*See Cordova Deposition, attached as Exhibit '5' to Plaintiff's Motion for summary Judgment, p.*
 5 *105, Lines 5-25, p. 106, and p. 107, Lines 1-16.*)

6 In this way, Mr. Cordova *never* stated the document was "ambiguous" or subject to two
 7 different reasonable meanings as espoused by Plaintiffs'. In fact, clearly, Mr. Cordova disagreed
 8 directly with this interpretation of his testimony – when asked by Plaintiff- as shown above.
 9 Accordingly, like with Danice Davis, for Plaintiffs' to use Mr. Cordova's testimony in support of
 10 their arguments is simply baseless.

11 Finally, Plaintiffs' quote testimony of Lisa Watson, another former UAIC employee as
 12 further "support" for their arguments. However, the fact is it is quite clear from her testimony as
 13 a whole that Ms. Watson was scared *and simply was denying knowledge about anything to avoid*
 14 *being involved in this lawsuit.* This Court can review the transcript, but it is clear from the outset
 15 of Ms. Watson's deposition that she answered "she did not know" or that a subject was "outside
 16 the scope of her knowledge" *scores of times.* When viewed in this light, it is clear Appellant is,
 17 once again attempting to mischaracterize a witnesses' testimony as support for their theory that
 18 the renewal notice is ambiguous. Ms. Watson actually testified in her deposition to the plain
 19 meaning of the renewal (as put forth by UAIC) but, then, she stated she had *no knowledge*
 20 concerning the renewal notices. Specifically, Ms. Watson's full testimony stated, as follows:

23 Q: Then we have a sentence here that says, "To avoid a lapse in coverage, payment must be
 24 received prior to expiration of your policy." Did I read that correctly?

25 A: Yes.

26 Q: Do you have an understanding as to what that sentence means or is it outside of what you
 were involved in?

27 A: I want to say it's outside (her knowledge).
 28

1 Q: Okay, fair enough. And so what they're referring to in terms of expiration, as you sit here
2 right now, you don't have any knowledge or recollection, correct?

3 A: Correct.

4 (See Watson deposition attached as Exhibit '6' to Plaintiff Motion for summary judgment, page
5 50, Lines 1-24).

6 As such, when one views the *full* testimony of Ms. Watson, like the others, one sees that
7 her testimony just does not support the arguments made by Plaintiff. Here, Watson clearly stated
8 the due date on the renewal was clear and, when pressed by Plaintiff about the meaning of the
9 sentence at issue, Watson agreed that she *had no recollection* of what it referred too. Therefore,
10 clearly, this is not the clear cut endorsement of Plaintiffs' viewpoint they claim it to be.
11 Moreover, it is equally clear that Watson testified the issue *was outside the scope of her*
12 *knowledge*. Therefore, if anything, Watson testified that she is not the person to decide the issue
13 of ambiguity.

14 Accordingly, when a full review of the above-referenced witnesses' testimony is
15 conducted, it is apparent none of them espoused the views argued by Plaintiff. In fact, Cordova
16 and Davis specifically *disagreed with Plaintiffs' argument regarding the ambiguity*. As such,
17 this Court should not countenance Plaintiffs' blatant attempt to 'cherry pick' and/or
18 mischaracterize testimony.
19

20 Quite simply, as set forth in Defendant's Counter-Motion for summary judgment, herein,
21 Mr. Lewis' policy of insurance had expired, and had not been renewed, due to nonpayment of
22 renewal premium at the time of this accident. Presumably sensing this might be a problem, Mr.
23 Lewis hastily made arrangements to pay a premium and acquire a new policy after he caused the
24 accident. This should not be a basis for coverage and, cannot be a basis for any 'bad faith' or
25 extra-contractual remedies.'

26 ///

27 ///

28

II.

LEGAL DISCUSSION

Pursuant to F.R.C.P. 56(a), the Court must enter summary judgment when "...there is no genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter of law." Under this Rule, the moving party has the initial burden of showing the absence of a genuine issue of material fact. Once the movant's burden is met by presenting evidence which, if uncontroverted, will entitle the moving party to a judgment as a matter of law. The burden then shifts to the respondent to set forth specific facts demonstrating that there is a genuine issue for trial. Pioneer Chlor Alkali Company, Inc. v. National Union Fire Insurance Company of Pittsburgh, Pennsylvania, 863 F. Supp. 1237, 1238 (D. Nev. 1994), citing Adickes v. S.H. Kres and Company, 398 U.S. 144, 26 L.Ed. 2d 142, 90 S. Ct. 1598 (1970); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 91 L.Ed. 2d 202, 106 S. Ct. 2548 (1986). However, when viewing a case on summary judgment, the pleadings and exhibits must be construed in a light most favorable to the nonmoving party. Wood v. Safeway, Inc., 121 P.3d 1026, 1031 (Nev. 2005); *See* United States v. Diebold, 369 U.S. 654 (1962).⁹

It is clear from the facts presented and law cited that Gary Lewis had a policy of insurance with United Auto that expired – per the terms of the policy – on June 30th, 2007 if Plaintiff did not renew the policy. Plaintiff **admits** he did not tender premium payment for his July policy –*until July 10, 2007* – after the loss occurred and beyond the time for renewal. As such, Lewis simply had no coverage the day of the loss, July 8, 2006. Plaintiff's Motion does not dare suggest that Lewis' policy with UAIC, number NVA 020021926, did not expire – per its own terms - on June 30, 2007. Nor does Plaintiff dare argue (after altering his responses to requests to admit, previously) that Lewis remitted policy premium for his new policy term, number NVA 020021926, before the loss involved here occurred. Rather, Plaintiff seeks to have

1 this Court form an 'implied' or, constructive, insurance contract covering the loss in question
2 (July 8, 2007) based on alleged ambiguity in the renewal notice.

3 Plaintiff's Summary Judgment amounts to three arguments. First, Plaintiff argues that the
4 "Renewal Statements" sent by UAIC were ambiguous and, therefore, should be construed
5 against UAIC and this court should imply a constructive policy of insurance (contract) for the
6 date of loss. Next, that, if the Court finds coverage based on the ambiguity, that Defendant
7 should be found to have breached the implied covenant of the duty of good faith and fair dealing.
8 Finally, if Defendant is guilty of such 'bad faith', this Court should find the default judgment
9 was proximately caused by the alleged breaches and award Plaintiff the amount of the default
10 judgment plus interest and fees, etc.

11 Defendant, will address each argument, in turn, but, in short believes all of these
12 arguments to be incorrect in fact and in law. However, and in the alternative, *even should this*
13 *Court find as a matter of law that an ambiguity existed in the renewal*, and the Court implies an
14 insurance contract, the Court should deny Plaintiff's Motions for summary Judgment on the
15 extra-contractual claims and/or that any breaches caused Plaintiff's damages as Defendant's
16 actions were reasonable.

17
18
19 **A. The Renewal Statement Issued to Lewis was not Ambiguous and Clearly**
20 **Demanded Remittance of Policy Premium, for the Subsequent Term, by**
21 **Expiration of the Present Policy Period and, at the very least, a material issue of**
22 **fact remains over whether the renewals were 'ambiguous.'**

23 In support of their argument for this Court to form an implied insurance contract,
24 Plaintiff claims that the "Renewal Statement", issued by UAIC to Lewis were ambiguous
25 because an insured could somehow confuse the expiration date of his *next policy* with expiration

26 _____ (Cont.)

27 ⁹ Defendant must point out that Plaintiffs' incorrectly state in their moving papers that this Court
28 must view the evidence in a 'light most favorable to Plaintiffs' (*See Plaintiffs' Motion at page 9, lines 26-*
27). Obviously, this is the *opposite of the standard that should be applied here*.

1 of his *current one*. Moreover, that an insured could somehow fail to notice the clearly labeled
 2 “renewal amount” with the words “**Not later than**” followed by a date surrounded by stars. Not
 3 only does Defendant believe that Plaintiff’s argument defies commons sense but, also that the
 4 case law cited by Plaintiff is dissimilar to the case at bar. As such, Defendant asks this Court to
 5 conclusively find these renewals to be unambiguous.

6
 7 It is axiomatic that unambiguous language in a contract’s terms must be upheld. Farmer
 8 Ins Co. v. Young, 108 Nev. 328 (Nev. 1992). The Supreme Court of Nevada has also stated that
 9 the language of an insurance policy will be given its plain and ordinary meaning from the
 10 viewpoint of one not trained in law. United Insurance Co. v. Frontier Insurance Company, Inc.,
 11 120 Nev. 678 (Nev. 2004)¹⁰. Additionally, the Ninth Circuit Court of Appeals has stated that
 12 where the language of an insurance policy admits of only one meaning, there is no basis for
 13 interpretation of the policy coverage under the guise of ambiguity. Further, that ambiguity does
 14 not exist just because a claimant says so. It can only exist where the wording or phraseology of a
 15 contract is reasonably subject to two different interpretations. State Farm Mut. Auto. Ins. Co. v.
 16 White, 563 F.2d 971 (9th Cir. 1977).

17
 18 As attested to by Danice Davis, in her Declaration herein, Lewis June 2007 policy term
 19 **expired** per its term on June 30th, 2007. *See Declaration of Danice Davis and copy of June 2007*
 20 *policy attached thereto as Exhibit ‘A’, p. 11 ‘Policy Period, Territory.’* Here, it is uncontroverted
 21 that the June 2007 policy expired, per its term, on July 30th, 2007. *See Danice Davis Declaration.*
 22 Further, it is uncontroverted that Lewis did not remit premium until *after* the loss when he paid
 23 for his subsequent policy term on July 10th, 2007. *See Exhibit ‘D’, hereto.* Accordingly, there
 24 was no policy in place for the loss.
 25

26 Plaintiffs’, of course, have altered their theory for coverage (first claiming Lewis made a
 27
 28

1 timely payment and UAIC lost it) to claim that this court should imply a policy of insurance due
 2 to an alleged ambiguity in the renewal statement issued to Lewis. For purposes of this
 3 discussion, Defendant will focus only on the renewal important to the case at bar – for the July
 4 2007 policy. *See Renewal Statement at page 34 of Exhibit '1' of Plaintiff's Motion for summary*
 5 *judgment.* As such, prior to expiration of the June 2007 monthly policy, United Auto sent Lewis
 6 a 'Renewal Statement' that clearly provided he needed to remit premium for his July 2007 Policy
 7 by June 30, 2007. *See Declaration of Danice Davis and Exhibit 'B', thereto.* This Renewal
 8 statement is clear and unambiguous. It states quite prominently that Lewis premium was due "no
 9 later than 6/30/07." *See Declaration of Danice Davis and Exhibit 'B', thereto.* This Date was
 10 specifically surrounded by stars on the Renewal Notice. Plaintiff argues that because the
 11 paragraph in the body of the notice mentioned that Lewis needed to remit the premium before
 12 "expiration of the policy" and the expiration date for *the new policy* is located in the upper right
 13 hand corner – an insured might think he/she had until expiration of the subsequent policy term to
 14 remit premium *for* that term. This interpretation defies logic and reason as a straightforward
 15 review of the renewal reveals there is only one meaning for the due date for remittance of the
 16 new premium. Not only does the due date coincide with the *expiration of the current policy term*
 17 (there June 30, 2007) but, that same date is surrounded by stars on the top of the notice and
 18 listed, again, at the bottom left hand corner of the Renewal as "**Due Date.**"

21 Moreover, common sense would dictate the expiration date refers to expiration of the
 22 current policy of insurance and not the new subsequent policy. Car insurance is mandated by law
 23 and all drivers have purchased policies of insurance and paid renewal premiums. As such, unlike
 24 *interpretation of policy provisions* – where a layman may not be exposed to contract language or
 25 construction – understanding of a renewal notice *is a common experience.* As such, the Court

26 _____ (Cont.)
 27
 28

1 should review this renewal notice under the same familiarity that most people would – and
2 understand the clearly marked “**Due Date**” for their renewal premium *was the date required for*
3 *renewal premium*. This conclusion is the straightforward interpretation of the notice.

4 Moreover, this conclusion is supported by the history of dealings between Lewis and
5 UAIC (set forth above) where Lewis’ new policy term was *never* issued prior to receipt of his
6 new premium payment. Despite Plaintiff’s arguments to contrive a ‘prior course of dealing’
7 where ‘Lewis could pay his premium late’, the record actually shows that 1) UAIC *never issued*
8 a new term without receiving payment and, 2) Lewis was late and had lapses in coverage more
9 often than he paid timely. These facts belies Plaintiff’s self-serving remarks that he “understood”
10 the renewal notice to allow him to pay his renewal premium late. Rather, it is clear this argument
11 was manufactured, *post hoc*, by Plaintiff. This is further supported by the fact that, even after the
12 loss in question, and UAIC’s disclaimer of coverage, *Lewis continued to pay for new policy*
13 *terms with UAIC*. If he had really “believed” he would be covered for the loss at bar after paying
14 his premium late – common sense dictates a rational consumer would have, thereafter, sought
15 coverage from one of the multitude of other insurers available to him. The fact that he did not
16 seek coverage from another company reveals that Lewis must not have actually believed UAIC
17 should have covered him herein.

18 This conclusion is supported by the testimony of Lewis himself which betrays the *ad-hoc*
19 explanation of what he believed the “due date” was. Specifically, Lewis, at his deposition
20 testified to the following in discussing one of the renewal notices from UAIC:

21 Q: So can you tell me why? You said you didn't ignore it (in reference to the due date).

22 A. I can't tell you why.

23 Q. Okay. Can you look down at the bottom left-hand corner. Does it say due date with a date
24 there?

25 A. Yes, it does.

1 ***

2 Q. Okay. And that matches the date that's starred that says "no later than." Is that fair?

3 A. That's correct.

4 Q. Okay. And, in fact, it looks like in the middle of the page, it says, "Please detach and return
5 this bottom portion with your payment." Do you see that?

6 A. Yes.

7 Q. So it appears that this bottom part was the stub that you return your payment with. Is that fair?

8 A. That's correct.

9 Q. Okay. And you have other bills you pay; is that correct?

10 A. Yes.

11 ---

12 Q. Okay. Have you had bills in your name and accounts in your name before?

13 A. Of course I have, yeah.

14 Q. Okay, sure. Everybody knows; right? You have an account in your name, and you get a
15 payment stub that you return with your payment. Is that fair?

16 A. That is correct.

17 Q. And all of them have due dates on them; is that right?

18 THE WITNESS: Dave, can I answer something right now other than yes and no?

19 BY MR. DOUGLAS:

20 Q. I would direct the witness not to ask his counsel for an answer. I have a pending question I
21 want to know –

22 A. Yes.

23 Q. Okay. And so just like this stub has –

24 A. I would like to take a break, please. Can I take a break?

25 (See deposition of Lewis, attached as Exhibit 'A', hereto, p. 55, Lines 17-25, p. 56, Lines 1-20, p.
26 57, Lines 20-25, p. 58 Lines 1-14).

27 As one can see, when asked directly about the clear "due date" on the renewal – which
28 was also contained on the payment stub – Lewis had to admit that he understood that was the *due*
date on the notice. He also had to admit that he could not explain why he chose to focus on the

1 'expiration date' rather than the clearly marked 'due date' as the date for payment. Later, after a
 2 break where he met with his counsel, Lewis tried to claim he thought he had a 'grace period'
 3 after the due date, but the fact is such an interpretation is not reasonable when one examines the
 4 document and history of the parties' transactions.

5
 6 Moreover, Defendant would like this Court to take note that, if the Court considers
 7 Lewis' subjective beliefs¹¹ about what he thought the renewal notice stated, this Court must also
 8 consider that individual's credibility. Here, Lewis changed his 'testimony' regarding why he
 9 failed to pay the premium, for July 2007, late. First, in answers to Requests to Admit he stated it
 10 was because UAIC lost his timely premium payment. (*See Exhibit 'C', hereto*). However, after a
 11 Motion to Compel was filed, demanding the form or method of this 'lost payment', Appellant
 12 Lewis miraculously *changed his argument* and began advancing this ambiguity argument (*See*
 13 *Lewis' Supplemental Responses to Requests to Admit, no. 8, Exhibit 'D', hereto*). Besides this
 14 change in testimony *in this case, regarding the main issue in this case*, Lewis also has a
 15 credibility issues because he is a convicted forger. (*See Lewis Answers to Interrogatories no. 3,*
 16 *attached as Exhibit '3' to Plaintiffs' Motion for summary judgment*) As this Court knows, F.R.E.
 17 609(a)(2) allows for criminal convictions to be admitted, *without consideration of prejudicial*
 18 *effect* {unlike F.R.E. 609(a)(1) which is subject to F.R.E 403} when the crime involved has an
 19 element that includes an "act of dishonesty or false statement by the witness." F.R.E. 609. In
 20 this case, it is clear forgery contains just such an element. As such, a forgery conviction is
 21 automatically admitted for impeachment under F.R.E. 609 (a)(2). *United States v. Hayes*, 553
 22 F.2d at 827 (1977).

23
 24
 25 The fact is, to adopt the interpretation Plaintiff seeks is to stretch both the facts and
 26

27 ¹¹ The subjective statements of witnesses are really not relevant to the Court's inquiry regarding
 28 the ambiguity issue. *Farmers Ins. Exch. v. Neal*, 119 Nev. 62, 64 P.3d 472, 473 (Nev. 2003).

1 common sense to manufacture an ambiguity where none exists. This court should not tolerate
 2 Plaintiff's *ad hoc* argument for coverage. The clear, plain, and unambiguous reading of the
 3 Renewal Statement shows Plaintiff Lewis was notified his premium, for his July 2007 policy
 4 term, needed to be received on or before the "Due Date" of June 30, 2007 to avoid a lapse in
 5 coverage. That due date is noted twice on the Renewal Statement. Lewis failed to remit same
 6 premium prior to July 10, 2007. As such, this Court can conclude no policy insurance existed for
 7 Lewis on July 8, 2007 and deny Plaintiff's Motion for summary judgment. At the very least
 8 Defendant argues that certainly a material issue of fact remains as to the ambiguity prohibiting
 9 summary judgment.

11 **B. Alternatively, regardless of the finding concerning the ambiguity issue,**
 12 **Defendant opposes summary judgment on Plaintiff's claims for extra-**
 13 **contractual remedies, and 'bad faith', in favor of Plaintiff as a Genuine Dispute**
 14 **as to coverage exists.**

15 Plaintiff has also filed this Motion for summary judgment on their causes of action for
 16 breach of the implied covenant of good faith and fair dealing, specifically for a breach of the
 17 duty to defend¹². Defendant has asked, that regardless of the ultimate finding on the ambiguity
 18 issue, that should this Court deny Plaintiff's summary judgment in regards to the extra-
 19 contractual claims as, at the very least, a "Genuine Dispute" existed as to coverage. Here, the
 20 *prior District Judge and, Plaintiff's own counsel at hearing, previously agreed that Defendant's*
 21 *interpretation of the renewals was reasonable.* Further, Plaintiff cites case law that is completely
 22 inapplicable to the case at bar or not binding precedent. **Every case** cited by Plaintiff involved a
 23 situation where there *existed a policy in force at the time of loss* making such cases
 24

25 _____ (Cont.)

26 ¹² It does not appear to Defendant that Plaintiff has brought the Motion for summary judgment as
 27 to any claimed breaches of the Nevada Unfair Claims Practices Act, NRS 686A.310 and, as such, same is
 28 not discussed herein. To the extent Plaintiff is seeking judgment on these claims, Defendant refers this

distinguishable from the one at bar where there the parties admit there *was no policy* and, instead, *Plaintiffs' have asked this Court to find an implied policy from an ambiguity in the renewal*. In this way, these cases simply do not correctly reflect a situation where the insurer's records revealed **no policy to be in force for the loss**. Rather, based upon Nevada law and, case from the Ninth Circuit, it seems clear, as a matter of law, that Defendant cannot be held liable for extra-contractual remedies when, at the very least, a "genuine dispute" existed as to whether there *even was a policy in effect*.

1. The case law cited by Plaintiff is non-binding or inapplicable to the case at bar and simply does not state the correct standard to be applied here.

First, it must be noted that Plaintiff cites to a West Virginia opinion, Shamblin v. Nationwide Mut. Ins. Co., 396 S.E. 2d 766 (W.Va. 1990) suggesting an insurer strictly liable for insurer bad faith. However, as this Court plainly knows this precedent is not binding on this Court and, moreover, does not accurately set forth the standard for insurer bad faith liability in Nevada. Accordingly, this case and, argument, is of little use in the case at bar. Moreover, the Shamblin case and, several California decisions relied upon by Plaintiff, are distinguishable for the simple reason that *all* of those cases involved instances where *there was no dispute as to a policy even being in force* (and, therefore, the loss occurring during a policy term) and the insurers had failed to settle the claim within limits, thus exposing the insureds to excess judgments. Accordingly, the standards applied in those cases are distinguishable from the case at bar where there was a genuine dispute as to the *existence of a policy at the time of loss*.

Indeed the California precedents all state merely that an insurer who failed to settle within an insured's policy limits, may later be responsible for the detriment caused by the insurer's breach of the covenant of good faith and fair dealing. See Comunale v Traders &

(Cont.)
Court to it discussion of these claims in Defendants Counter-Motion for summary judgment on these very

1 General Ins. Co., 50, Cal.2d 654, 328 P.2d 198; Crisci v. Sec. Ins. Co., 66 Cal.2d 425 (1967);
 2 Johansen v Calif. State Auto. Assn. Inter-Ins. Bureau, 538 P.2d 744 (1975). Again, while this
 3 may be a correct recitation of the law *in California* – as it applies to traditional “third-party”
 4 defense claims made against an insured when a policy is *in force* – it has absolutely no
 5 application to the case at bar where *no policy was in effect*. This is evident from a review of the
 6 Crisci, Comunale, and Johansen decisions wherein there was *no question as to a policy being in*
 7 *force*¹³ and, moreover, there existed evidence that the insurer had no reasonable defense for the
 8 insured to refuse a settlement offer within the policy.
 9

10 The same problem arises with the other cases cited by Plaintiff. For instance, Plaintiff
 11 cites to Powers v.U.S.A.A., 114 Nev. 690 (1998), for the proposition that a quasi-fiduciary
 12 relationship exists between an insurer and insured. Once again, however, this is a correct
 13 interpretation *when a policy in force* but, does not apply to the situation at bar. Further, Plaintiff
 14 places much reliance upon Landow v. Medical Ins. Exch. of Cal., 892 F. Supp. 239 (1995) for
 15 the proposition that an insurer could be held liable for harm caused to an insured by a failure to
 16 settle a claim prior to litigation. However, in that case there **was no issue as to coverage or of a**
 17 **policy being in force**. In fact, in Landow the parties *acknowledged coverage was in effect* and
 18 merely disagreed over whether the insurer should subject an insured to the stress of litigating the
 19 claim. Id. Accordingly, that case in no way stands for the proposition that UAIC would have
 20 owed such a duty to Lewis, here, when there was no evidence at the time that a policy was even
 21 in effect.
 22

24 Additionally, Plaintiff cites to in Pemberton v. Farmers Ins. Exch., 109 Nev. 789, 858

25 _____ (Cont.)
 26 issues.

27 ¹³ The Comunale and Johansen cases did involve an issue of coverage under the policy, which
 28 was resolved against the insurer, but they are dissimilar to this case where UAIC had a reasonable belief
 there was no policy in force and, not merely an argument against coverage for the loss.

1 P.2d 380 (1993), broadly, for the proposition that Nevada established standards for insurers in
 2 Uninsured or Underinsured motorist coverage claims and, also, for the proposition that 'insurers
 3 have a duty to investigate.' Whether or not that case stands for those propositions, it is clear that
 4 in that case the Nevada Supreme Court held that a claim for insurance bad faith *does not accrue*
 5 *until the underlying contractual action is resolved.* Id. As such, the Court there felt the insurer's
 6 duties did not accrue to the insured until *legal entitlement to benefits was established.* Here, the
 7 Plaintiff's **have yet to prove a policy in force on the date of loss** (and, therefore, legal
 8 entitlement) and, in fact, one Judge has already found that there was not. As such, this case also
 9 does not lend Plaintiff support for the proposition that UAIC committed any actionable bad faith
 10 in this case.

11
 12 Finally, the Plaintiff also relies on Allstate v. Miller, 212 P.3d 318 (2009), for the
 13 proposition that the implied covenant of good faith and fair dealing included a duty to notify of
 14 settlement offers. Again, however, Plaintiff fails to address the fact that, in Miller, there *was*
 15 *simply no question as to whether a policy was in effect.* This is an important factor that
 16 distinguishes this case from the one at bar as the implied covenant of good faith and fair dealing
 17 necessarily *flows from the existence of a valid policy.* Besides being distinguishable on that point,
 18 it cannot be understated that Allstate v Miller also stands for the proposition that Nevada has
 19 *followed the genuine dispute doctrine*, as set forth in Guebara v. Allstate Insurance Company,
 20 237 F.3d 987, 992 (9th Cir. 2001), as the Court in Allstate v Miller, stated:

21
 22
 23 **"When there is a genuine dispute regarding an insurer's legal obligations, the**
 24 **district court can determine if the insurer's actions were reasonable. See Lunsford v.**
 25 **American Guarantee & Liability Ins. Co., 18 F.3d 653, 656 (9th Cir. 1994) (interpreting**
 26 **California law); CalFarm Ins. Co. v. Krusiewicz, 131 Cal. App. 4th 273, 31 Cal. Rptr. 3d**
 27 **619, 629 (Ct. App. 2005)**
 28 **precedent, then the issue is reviewed de novo). This court reviews de novo the district**
court's decision in such cases and evaluates the insurer's actions at the time it made
the decision. Cal Farm Ins. Co., 31 Cal. Rptr. 3d at 629.

1 In Homeowners Ass'n v. Associated Internat. Ins. Co., 90 Cal. App. 4th 335, 108 Cal.
 2 Rptr. 2d 776, 783 (Ct. App. 2001), the California Court of Appeals held that a bad-faith
 3 claim requires a showing that the insurer acted in deliberate refusal to discharge its
 4 contractual duties. **Thus, if the insurer's actions resulted from "an honest mistake,
 5 bad judgment or negligence," then the insurer is not liable under a bad-faith
 6 theory.** *Id.* (quoting Careau & Co. v. Security Pacific Business Credit, Inc., 222 Cal. App.
 7 3d 1371, 272 Cal. Rptr. 387 (Ct. App. 1990)) Pemberton v. Farmers Ins.
 8 Exchange, 109 Nev. 789, 793, 858 P.2d 380, 382 (1993) (holding that bad faith exists
 9 when an insurer acts without proper cause); Feldman v. Allstate Ins. Co., 322 F.3d 660,
 10 669 (9th Cir. 2003)
 11 bad faith, plaintiff must show insurer unreasonably or without cause withheld benefits
 12 due under the policy).

13 *Id.* at 317, 329. (emphasis added) As can be seen from a full reading of the Miller decision, the
 14 case actually supports Defendant's position. Namely, that a court can review an insurer's actions
 15 – at the time they were made – to determine if they were reasonable as a matter of law.
 16 Moreover, that 'bad faith' cannot be premised upon an 'honest mistake, bad judgment or
 17 negligence.' Here, Defendant argues, UAIC actions at the time must be found to have been
 18 reasonable and, certainly were not in 'bad faith' based on a reasonable review of the record.

19 Further, it is clear that other Nevada decisions have followed this reasoning and held that
 20 "[b]ad faith is established where the insurer acts unreasonably and with knowledge that there was
 21 no reasonable basis for its conduct." Guarantee National Insurance Company v. Potter, 112 Nev.
 22 199, 206, 912 P.2d 267, 272 (1996). In American Excess Insurance Company v. MGM, 102
 23 Nev. 601, 729 P.2d 1352 (1986), the Nevada Supreme Court held that an insurer cannot be found
 24 liable for bad faith, as a matter of law, if it had a reasonable basis to contest coverage. The Court
 25 in American Excess, *supra*, defined bad faith as "an actual or implied awareness of the absence
 26 of a reasonable basis for denying benefits of the policy." *Id.* at 605. The Court stated that
 27 "because we conclude that AEI's interpretation of the contract was reasonable, there was no
 28 basis for concluding that AEI acted in bad faith." *Id.* In applying Nevada law, the United States
 District Court in Pioneer Chlor Alcholi Company, Inc. v. National Union Fire Insurance

1 Company, 863 F. Supp. 1237 (D. Nev. 1994) also stated that where a legitimate contractual
 2 dispute exists, the insurer "is entitled to its day in court on such an issue without facing a claim
 3 for bad faith simply because it disagrees with [the insured]." *Id.* at 1250.

4 Accordingly, from the Allstate holding and, other decisions cited herein, it is clear that
 5 the key to a bad faith claim is **whether or not the insurer's decision regarding coverage is**
 6 **reasonable** and, that when the insureds actions are reasonable, the Court *can decide so as a*
 7 *matter of law and dismiss the extra-contractual claims*. Moreover, that the insurer's decisions
 8 must be reviewed from the facts *at the time it made the decision* – not in hindsight. Here,
 9 Plaintiffs claims that they are entitled to \$3.5 million dollar default judgment, far in excess of
 10 Mr. Lewis' \$15,000 policy limits, apparently because of Defendant's 'bad faith' for their failure
 11 to defend under Lewis' policy. However it seems clear from the discussion above, regarding
 12 Defendant's actions on related to a policy which all evidence shows was not in force at the time -
 13 by plaintiff's admission **no payment was made between June 12, 2007 and July 10, 2007** –
 14 that Defendant's actions were reasonable. Now, years later, after an ambiguity is claimed in a
 15 renewal, while Defendant may be found to owe coverage on an implied contract, the Plaintiffs'
 16 must admit that a *genuine dispute* existed as to coverage for the loss at the time. In fact,
 17 Plaintiffs' Counsel admitted just this fact at hearing on the initial Motion for summary judgment
 18 when he admitted Defendant's *reading of the renewal was reasonable*. See transcript of 12/7/10
 19 hearing, attached hereto as Exhibit 'J', p. 35, Lines 20-24. Indeed a Federal District Court Judge
 20 has also already found UAIC's interpretation of the renewals (and, therefore their actions
 21 thereafter) was a reasonable one in granting summary judgment. See Document No. 42, herein.

22 Additionally, Defendant notes that Lewis cannot, in good faith, complain he did not know
 23 of settlement offers. As he admits in his answers to interrogatories¹⁴, he was in communication
 24 with Counsel for Plaintiff within days after the loss. As such, Counsel for Plaintiff would
 25 certainly have told him he offered settlement for policy and that he planned to seek a multi-
 26

27 ¹⁴ See Exhibit '3' to Plaintiffs' Motion for summary judgment
 28

1 million dollar default judgment against Lewis, should his insurer fail to tender same policy
2 limits.

3 Moreover, contrary to Plaintiff's arguments that UAIC did 'no investigation' is also
4 misstating the record. The fact is, UAIC also investigated this coverage issue several times
5 before declining coverage and defense of the underlying suit. In this case, UAIC investigated
6 coverage when notified of the loss by both confirming the lapse through their underwriting
7 department. This was done when Lewis initially called to check coverage (on July 13, 2007) as
8 documented by the underwriting note, whereupon customer service representative Eric Cook
9 informed him the loss occurred in a period of no coverage after confirming this with the
10 Underwriting Department. *See Deposition of Eric Cook attached hereto as Exhibit 'F', p. 36,*
11 *Lines 17-23, p. 53, lines 4- 10, and copy of Underwriting notes confirming call with Lewis,*
12 *attached hereto as Exhibit '1' to deposition of Giselle Molina, Exhibit 'B', hereto*¹⁵. Thereafter,
13 when Counsel for the Nalders' made a formal claim upon UAIC, the Company double-checked
14 coverage with underwriting and, contacted the insurance agency, U.S. Auto, who confirmed
15 Lewis had not paid his premium until July 10, 2007 and provided a copy of the receipt.
16 Additionally, UAIC attempted to contact Lewis, but was unsuccessful. *See copy of deposition*
17 *testimony of Jan Cook, attached hereto as Exhibit 'G', p. 34, lines 8-19, p. 35, lines 7-18, p. 50,*
18 *lines 11-14, p. 56, lines 2-15, p. 68, lines 13-16, p. 72, lines 14-20; See Copy of Deposition*
19 *testimony of Giselle Molina, attached hereto as Exhibit 'B', p. 30, lines 4-5, and see copy of*
20 *UAIC's claims notes, attached as Exhibit '4' to the deposition of Giselle Molina, Exhibit 'B',*
21 *hereto.*

22 As such, based on all the evidence available at the time¹⁶ and, after investigating
23 coverage, UAIC denied coverage for the loss based upon a reasonable basis that there was no
24

25 ¹⁵ This same note was used at Eric Cook's deposition, but Plaintiff never supplied the Exhibit to
26 the court reporter.

27 ¹⁶ The Nevada Supreme Court in Allstate v Miller, cited above, specifically followed the
28 California case that held that a Court "evaluates the insurer's actions at the time it made the decision."
Citing Cal Farm Ins. Co., 31 Cal. Rptr. 3d at 629

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

policy in force and, therefore, no coverage for the loss. Under the case law cited herein, this cannot be a basis for bad faith remedies against UAIC. This is a simple disagreement about the coverage for a loss where the putative insured, Lewis, *admitted he made no timely payment under the terms of the policy* and only in this case claimed an ambiguity in the renewal that he did not understand. At the time of the claim UAIC reviewed coverages, confirmed the payment was late with the insurance agent and, tried to contact Lewis. Based on the information available to it at the time, UAIC made a reasonable decision that there was *no policy in effect*. The former Judge hearing this case and, Plaintiff's counsel, have agreed UAIC's position regarding the renewal statement and, therefore, coverage, was a reasonable one. Under these circumstances, even if this Court ultimately implies a contract due to the ambiguity, there can be no basis for a claim for "bad faith," other extra-contractual claims, or punitive damages. Plaintiff cannot, as a matter of law, establish that Defendant's determination that no policy was in force for the loss is unreasonable or without proper cause. Rather, under the "genuine dispute" doctrine, it is the Defendant whom is entitled to summary judgment as to Plaintiffs' extra-contractual claims (for breach of the covenant of good faith and fair dealing and for violations of the Nevada Unfair Claims Practices Act and Nevada Administrative Code) and claim for punitive damages.

2. The standard for insurer bad faith in this case is whether UAIC acted reasonably and/or, whether its denial was based upon a "genuine dispute" as to coverage.

Cases which are more analogous to the case at bar hold that the duty to defend is not absolute. Further, that a potential for coverage only exists when there is arguable or possible coverage. United Insurance Co. v. Frontier Insurance Company, Inc., 120 Nev. 678 (2004.); Turk v. TIG Ins. Co., 616 F. Supp. 2d 1044 (2009). Determining whether an insurer owes a duty to defend is achieved by comparing the allegations of the complaint with the terms of the policy. Id. In Turk v. TIG Ins. Co., 616 F. Supp. 2d 1044 (2009), the policy did not list the company the

1 insured was president of as an additional insured and, as such, there was no possibility for
 2 potential coverage for that company and, therefore, no duty to defend. Defendant believes the
 3 situation in that case, where an insured was clearly not listed on the policy, is more similar to the
 4 case at bar where no policy was in existence. Clearly, an insurer who looks at a policy's
 5 declarations and determines and insured is not listed must be comparable to a situation where the
 6 insurer finds no policy to even be in effect for the loss. In this way, like the insurer in Turk, it
 7 was reasonable for UAIC to believe there was no *potential for coverage*.
 8

9 In short, in Nevada, the key to a bad faith claim is whether or not the insurer's decision
 10 regarding coverage is reasonable. "Bad faith is established where the insurer acts unreasonably
 11 and with knowledge that there was no reasonable basis for its conduct." Guarantee National
 12 Insurance Company v. Potter, 112 Nev. 199, 206, 912 P.2d 267, 272 (1996). In American
 13 Excess Insurance Company v. MGM, 102 Nev. 601, 729 P.2d 1352 (1986), the Nevada Supreme
 14 Court held that an insurer cannot be found liable for bad faith, as a matter of law, if it had a
 15 reasonable basis to contest coverage. The Court in American Excess, supra, defined bad faith as
 16 "an actual or implied awareness of the absence of a reasonable basis for denying benefits of the
 17 policy." Id. at 605. The Court stated that "because we conclude that AEI's interpretation of the
 18 contract was reasonable, there was no basis for concluding that AEI acted in bad faith." Id. The
 19 Ninth Circuit has thus recognized the "genuine dispute" doctrine. The "genuine dispute" doctrine
 20 protects insurers from bad faith claims where the insurer can show that there was a genuine
 21 dispute about coverage. See Beltran v. Allstate, 2001 U.S. Dist. LEXIS 9614 (2001).

22 Similarly, the Ninth Circuit has recognized the "genuine dispute" doctrine. This doctrine
 23 stems from the recognition that insurance companies have to investigate claims and should be
 24 allowed to do so without fear of accusations of bad faith. Courts hold that the implied duty to
 25 investigate claims allows the insurer to give its own interests consideration equal to that it gives
 26 its insureds. The "genuine dispute" doctrine protects insurers from bad faith claims where the
 27
 28

insurer can show that there was a genuine dispute about coverage. See Beltran v. Allstate, 2001 U.S. Dist. LEXIS 9614 (2001). The existence of a genuine dispute as to Defendant's legal liability to pay benefits precludes, as a matter of law, extra-contractual recovery against the insurer for breach of the implied covenant of good faith and fair dealing. Opsal v. United Services Auto Association, 10 Cal. Rptr. 2d 353 (1991). The key to a bad faith claim is whether or not the insurer's denial of coverage was reasonable. Under the "genuine dispute" doctrine a bad faith claim can be dismissed on summary judgment if the defendant can show that there was a genuine dispute as to coverage. See Guebara v. Allstate Insurance Company, 237 F.3d 987, 992 (9th Cir. 2001) (citations omitted). As discussed in more detail in section '1' above, the Nevada Supreme Court has recognized the 'genuine dispute' doctrine in its holding in Allstate v Miller, 125 Nev. 300, 212 P.3d 318 (NV. 2009).

Nevada law states that a potential for coverage only exists when there is arguable or possible coverage. United Insurance Co. v. Frontier Insurance Company, Inc., 120 Nev. 678 (2004). In United Insurance Co. v. Frontier Insurance Co., the Nevada Supreme court found that the insurer was not liable for breach of the duty to defend when it failed to defend a loss that did not occur within the policy term. Also, two cases from the Ninth Circuit Court of Appeals are instructive here and, although based on California law, one has been cited and, relied upon by the Nevada Supreme Court in the Allstate v Miller, 125 Nev. 300, 212 P.3d 318 (NV. 2009), holding, cited above. In Lunsford v. American Guarantee Liab. Ins. Co., 18 F.3d 653 (9th Cir. 1994), the Court held that an insurer who investigated coverage and based its decision not to defend on reasonable construction of policy was not liable for bad faith breach of the duty to defend *even after* the Court resolved the ambiguity in the contract in favor of the insured. Similarly, in a prior case, Franceschi v Amer. Motor. Ins. Co., 852 F.2d 1217 (9th Cir. 1988) the Court again resolved an ambiguity in favor of insured, but held the insurer's position had been reasonable and granted summary judgment as to bad faith claims.

Accordingly, from the Allstate and Guebara holdings and, other decisions cited herein, it is clear that the key to a bad faith claim is **whether or not the insurer's decision regarding coverage is reasonable** and, that when the insurer's actions are reasonable, the Court can decide so as a matter of law and dismiss extra-contractual claims. Moreover, under the United Ins. v Frontier decision Nevada courts have held an insurer is not liable for bad faith breach of the duty to defend for a loss occurring outside a policy term – even when the insured argued the Complaint alleged actions within the term. Finally, the holdings of the Lunsford and Franceschi cases hold that an insurer will not be found liable for bad faith even if an ambiguity is later resolved in favor of the insured.

Here, Plaintiffs claims that they are entitled to \$3.5 million dollar default judgment, far in excess of Mr. Lewis' \$15,000 policy limits, apparently because of Defendant's 'bad faith' for their failure to defend under Lewis' policy. However it seems clear from the discussion above, regarding Defendant's actions on the policy - which was not in force at the time by plaintiff's admission **no payment was made between June 12, 2007 and July 10, 2007** - that Plaintiffs' must admit a *genuine dispute* exists as to coverage for the loss. In fact, Plaintiffs' Counsel admitted just this fact at hearing on the initial Motion for summary judgment when he admitted Defendant's reading of the renewal was reasonable. *See Exh. 'J', hereto, p. 35, lines 20-24.* Indeed a Federal District Court Judge has also already found UAIC's interpretation of the renewals (and, therefore their actions thereafter) was a reasonable one in granting summary judgment. Therefore, again, this lawsuit arises from a contested claim for liability insurance on the date of the loss underlying the Nalders' claims. Defendants – with good reason – argue Plaintiff Lewis simply had no coverage in effect on the date of loss. At the very least, regardless of this Court's ultimate determination regarding coverage the Defendant, United Auto, had a **reasonable basis** to deny coverage for the loss and lawsuit underlying Plaintiff's Complaint as the records clearly indicate a failure to make timely payment and expiration of the policy before the loss. Under Nevada law the Defendant need not be correct in denial – merely that it has a reasonable basis for doing so. Defendants maintain that Plaintiff's admission that he failed to pay

1 his renewal premium for his July 2007 policy until after the loss occurring July 8, 2007 clearly
2 created a reasonable basis for United Auto to disclaim coverage for the loss.

3 As such, in the alternative to the Motion for Summary Judgment, even if this Court
4 ultimately determines that Defendant was wrong with respect to its determination of Plaintiff's
5 coverage for this loss, there still is no basis for Plaintiff's extra-contractual claims or claim for
6 punitive damages. Under the "genuine dispute" doctrine, therefore, Defendant argues it is
7 entitled to summary judgment as to Plaintiffs' extra-contractual claims (for breach of the
8 covenant of good faith and fair dealing and for violations of the Nevada Unfair Claims Practices
9 Act and Nevada Administrative Code) and claim for punitive damages. *See Defendant's Counter*
10 *Motion for summary judgment, herein.*

11
12 **C. That in the alternative, even should this Court grant summary judgment on any**
13 **extra-contractual remedies, certainly a material issue of fact remains as to**
14 **whether Plaintiff's damages were proximately caused by any breach.**

15 Finally, Plaintiffs' neatly try to 'tie up' their Motion for summary judgment that arguing
16 that, if Defendant is found guilty of breach of the implied covenant of good faith and fair
17 dealing, this Court should also find all damages (included the \$3.5 million dollar default
18 judgment and costs and fees, etc.) were proximately caused by Defendant as a matter of law.
19 Defendant of course vehemently disputes it committed any 'bad faith.' However, even should
20 this Court so find summary judgment on these issues, Defendant argues that, in the alternative,
21 these damages not be found against Defendant as a matter of law. Neither the cases nor facts of
22 this case support such a finding.

23
24 In support of their argument, Plaintiff essentially relies on two cases. Plaintiff cites
25 United Insurance Co. v. Frontier Insurance Company, Inc., 120 Nev. 678 (2004) for the
26 proposition that where there is arguable or possible coverage, Defendant should have resolved
27 the issue in favor of the insured in providing coverage and a defense. Next, Plaintiff relies on
28

1 Pershing Park Villas v. United Pac. Ins. Co., 219 F.3d 895 (9th Cir. 2000) for the proposition that
 2 by not providing a defense, the ensuing default judgment is proximately caused by the
 3 Defendant's breach. However, when one reviews these cases it is clear that Plaintiff's argument
 4 falls apart.

5 In United Insurance Co. v. Frontier Insurance Co., the Nevada Supreme court actually
 6 found that the insurer was *not liable* for breach of the duty to defend when it failed to defend a
 7 loss that did not occur within the policy term. Accordingly, United Insurance actually supports
 8 the Defendant's position as here Defendant argues the policy expired *prior to the loss*. Similarly,
 9 two cases cited above, also support Defendant's position. In Lunsford v. American Guarantee
 10 Liab. Ins. Co., 18 F.3d 653 (9th Cir. 1994), the Court held that an insurer who investigated
 11 coverage and based its decision not to defend on reasonable construction of policy was not liable
 12 for bad faith breach of the duty to defend *even after* the Court resolved the ambiguity in the
 13 contract in favor of the insured. Also, in a prior case, Franceschi v Amer. Motor. Ins. Co., 852
 14 F.2d 1217 (9th Cir. 1988) the Court again resolved an ambiguity in favor of insured, but held the
 15 insurer's position had been reasonable and granted summary judgment as to bad faith claims.
 16

17 Finally, the Pershing Park Villas decision is also distinguishable from the case at bar. In
 18 that case, decided on California law, the insurer had withdrew its defense shortly before trial,
 19 disclaiming coverage, however there was never any question as to whether there was a policy *in*
 20 *force*. Thereafter, the policy was found to provide coverage and, while the court found the
 21 insurer responsible for its breach of the duty to defend, it did so based in part on evidence
 22 presented that the insurer revealed documents *showing it knew there was a potential for*
 23 *coverage*. Obviously, then, this case is completely distinguishable from the present case as
 24 Defendant has maintained there was never a policy even in force covering the loss (i.e. not just a
 25 question as to coverage) and, more importantly, there has never been a showing that UAIC had
 26
 27
 28

any reason to believe there was a potential for coverage at that time. In fact, the case history shows Plaintiff changed his argument (to claim ambiguity) **during this litigation.**

Therefore, as the cases cited by Plaintiffs' are clearly distinguishable, Plaintiffs' cannot meet their burden regarding their assertion that Defendant proximately caused their damages (including the default judgment). In this way, even should this Court grant summary judgment on the bad faith claims, Defendant argues that, in the alternative, the court deny Plaintiffs' Motion that this Court find Plaintiffs' damages as a matter of law as, at the very least, questions of fact remain.

IV.

CONCLUSION

Based upon the foregoing, Defendants UNITED AUTOMOBILE INSURANCE COMPANY respectfully requests that this Court deny Plaintiffs' Motion for Summary Judgment in its entirety.

In the alternative, should this Court find an ambiguity in the renewal statement and, create an implied contract, that this Court find that Defendant did not breach the implied covenant of good faith and fair dealing. Finally, and in the alternative, that should this Court grant summary judgment on the breach of the covenant of good faith and fair dealing that this Court find a material issue remains as to whether any such breach proximately caused Plaintiffs' claimed damages.

DATED this 26th day of March 2013.

ATKIN WINNER & SHERROD

/s/Matthew J. Douglas
Matthew J. Douglas
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Defendant

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

CERTIFICATE OF ELECTRONIC SERVICE

I DO HEREBY CERTIFY that I am an employee of ATKIN WINNER & SHERROD and on the 26th day of March, 2013, I did serve, via electric service, the foregoing **DEFENDANT UNITED AUTOMOBILE INSURANCE COMPANY'S OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

ORAL ARGUMENT REQUESTED

/s/ Victoria Hall

An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

Exhibit “A”

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEVADA

3 * * * * *

4 JAMES NALDER, Guardian Ad)
5 Litem for minor Cheyanne)
6 Nalder, real party in) Case No.:
7 interest, and GARY LEWIS,) 2:09-cv-1348
8 individually,)

9 Plaintiffs,)

10 vs.)

11 UNITED AUTOMOBILE INSURANCE)
12 COMPANY; DOES I through V;)
13 and ROE CORPORATIONS I)
14 through V, inclusive,)

15 Defendants.)
16 -----)

17 VIDEOTAPED DEPOSITION OF GARY LEWIS

18 Taken on Wednesday, August 25, 2010
19 At 2:05 P.M.

20 At Atkin Winner & Sherrod
21 1117 South Rancho Drive
22 Las Vegas, Nevada

23
24
25 Reported by: CAMEO KAYSER, RPR, CCR No. 569

1 APPEARANCES:

2

3 For the Plaintiffs:

4 **DAVID F. SAMPSON, ESQ.**
 Christensen Law Offices, Chtd.
 1000 South Valley View Boulevard
 5 Las Vegas, Nevada 89107

6

7 For the Defendant:

8 **MATTHEW J. DOUGLAS, ESQ.**
 Atkin Winner & Sherrod
 1117 South Rancho Drive
 Las Vegas, Nevada 89102

9

10 Also Present:

11 Dawn Beck
 Beck Video Productions

12

I N D E X

13

14 WITNESS

PAGE

15

GARY LEWIS

16

EXAMINATION BY MR. DOUGLAS

6

17

EXAMINATION BY MR. SAMPSON

120

18

FURTHER EXAMINATION BY MR. DOUGLAS

136

19

FURTHER EXAMINATION BY MR. SAMPSON

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1		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>	
2	<u>EXHIBITS</u>		<u>PAGE</u>
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15	Exhibit 13	Renewal Statement	122
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INSTRUCTION NOT TO ANSWER

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1 THE VIDEOGRAPHER: Good afternoon. This
2 is Videotape No. 1 in the deposition of Gary Lewis.
3 Today's date is Wednesday, August 25th, 2010. The
4 time is 2:05 p.m.

5 This deposition is being held at
6 1117 South Rancho Drive in Las Vegas, Nevada. The
7 case is entitled James Nalder, et al. versus
8 United Automobile Insurance Company. The case
9 number is 2:09-cv-1348 in the United States District
10 Court, District of Nevada.

11 My name is Dawn Beck, Legal Video
12 Specialist, representing Beck Video Productions.
13 The court reporter is Cameo Kayser with Cameo Kayser
14 & Associates.

15 Will counsel please state your appearance
16 for the record and whom you represent.

17 MR. DOUGLAS: My name is Matthew Douglas,
18 and I represent the defendant in this matter,
19 United Automobile Insurance Company.

20 MR. SAMPSON: I'm David Sampson. I'm
21 counsel for the plaintiffs.

22 THE VIDEOGRAPHER: The court reporter
23 will please administer the oath.

24 / / /

25 / / /

1 Thereupon --

2 **GARY LEWIS**

3 was called as a witness by the Defendant, and having
4 been first duly sworn, testified as follows:

5 **EXAMINATION**

6 MR. DOUGLAS: Okay. Let the record
7 reflect this is the discovery deposition of Mr. Gary
8 Lewis. Mr. Lewis has been sworn, is appearing with
9 counsel.

10 BY MR. DOUGLAS:

11 Q. Mr. Lewis, could you state and spell just
12 your last name for the record.

13 A. Lewis, L-e-w-i-s.

14 Q. And your first name?

15 A. Gary, G-a-r-y.

16 Q. Do you have any middle name or initial?

17 A. Scott.

18 Q. Usual spelling?

19 A. S-c-o-t-t.

20 Q. Have you ever given a deposition before,
21 sir?

22 A. Never.

23 Q. I'd like to just go over some quick
24 ground rules for you so that we're all on the same
25 page. First and most importantly here, we're

1 here -- I will ask you questions, and I need you to
2 give me answers. It's important that all of your
3 responses are verbal so that the court reporter can
4 take them down. I know we have a video here today,
5 but still for the court reporter and for a clean
6 record, just make sure your answers are verbal.

7 Oftentimes, in regular conversation,
8 we'll say things like "uh-huh" or "huh-uh" or nod
9 our heads. You and I might know what we mean while
10 we're talking, but it won't show up on the record.
11 So just make sure you say "yes," "no," "maybe,"
12 stuff like that. Fair?

13 A. I understand.

14 Q. Okay. Next and most important thing,
15 from time to time, I -- I may ask you a question
16 that you feel you don't understand. If you don't
17 understand it, I want you to tell me that because if
18 you answer it, I'm going to assume you understood
19 the question.

20 Is that fair?

21 A. I understand.

22 Q. And you understand here that you've been
23 sworn, so your testimony carries the same weight as
24 it would in a court of law?

25 A. Yes, I do.

1 Q. Okay. So that if for some reason you
2 change your testimony at a later point, I could
3 infer that perhaps you weren't being truthful today.

4 Do you understand that?

5 A. I understand.

6 Q. Okay. Finally, today I may ask you for
7 an estimate on something. And I'm sure your
8 counsel's told you this. No one wants you to guess,
9 but we're entitled to your best estimate.

10 Do you understand the difference between
11 an estimate and a guess?

12 A. No.

13 Q. Okay. Well, if I were to ask you how big
14 my driveway is at my house, that would be asking you
15 for a guess if you've never been there; right?

16 A. Correct.

17 Q. Okay. But if I ask you to estimate the
18 length of this conference table, since we're all
19 sitting here, you could look at it and from your
20 everyday experience, you could give me an estimate.

21 Is that fair?

22 A. Only with a measuring tape.

23 Q. Well, no, but I meant that's what --

24 A. That part would be a guess too.

25 Q. Well, and that's why -- I understand

1 that. We're not trying to be precise here. But you
2 could look at it --

3 A. I understand.

4 Q. -- from your experience.

5 Do you understand that?

6 A. Yes.

7 Q. Okay. Mr. Lewis, what's your current
8 address?

9 A. 4908 North Brightview Drive.

10 Q. And where is that located?

11 A. Covina, in California.

12 Q. What's the Zip?

13 A. 91722.

14 Q. How long have you lived there?

15 A. I've been back there for about a year and
16 a half, two years.

17 Q. Okay. Who do you live there with?

18 A. My mother and father.

19 Q. Who are they?

20 A. Suzanne Lewis and Garry Keep.

21 Q. What was his last name?

22 A. Keep, K-e-e-p.

23 Q. Okay. And --

24 A. Garry with two Rs.

25 Q. Okay. And have they lived with you the

1 whole time in California?

2 A. Yes.

3 Q. Is it their residence that you're staying
4 at?

5 A. Yes.

6 Q. And prior to that, where did you live?

7 A. Here in Nevada.

8 Q. What was the last address you had in
9 Nevada?

10 A. 5049 Spencer Street, Unit D as in David.

11 Q. And was that in Las Vegas?

12 A. Yes.

13 Q. Do you remember approximately the last
14 time you lived there?

15 A. Two years ago.

16 Q. Okay.

17 A. Two years ago.

18 Q. So that would have been about 2008?

19 A. Correct.

20 Q. Did you move to California in 2008?

21 A. Correct.

22 Q. Do you remember what time of year it was?

23 A. No, not off the top of my head, no.

24 Q. Okay. So you couldn't tell me if it was
25 summer or winter?

1 A. It was around -- to tell you the truth, I
2 really can't remember.

3 Q. Okay.

4 A. I really don't know. Just drawing a
5 blank right now.

6 Q. Okay. All right. Let me ask you this.
7 Did you live at the Spencer Street address back in
8 the summer of 2007?

9 A. Yes.

10 Q. And who did you live there with?

11 A. Myself and my girlfriend.

12 Q. And who's your girlfriend?

13 A. Kristen Scott.

14 Q. Does she still live in Las Vegas?

15 A. No, she does not.

16 Q. Where does she live?

17 A. In San Diego.

18 Q. Do you guys still talk?

19 A. Yes.

20 Q. Now, who is James Nalder?

21 A. A very close friend of mine.

22 Q. And when you say "close," how long of a
23 relationship -- how far do you guys go back?

24 MR. SAMPSON: I'm going to object to the
25 form.

1 But you can answer.

2 THE WITNESS: Oh, '95.

3 BY MR. DOUGLAS:

4 Q. Okay. When did you first meet?

5 A. It was in about '95.

6 Q. Where did you meet?

7 A. Where did you meet -- where did I meet?

8 We rode in a motorcycle club together.

9 Q. Okay. What's the name of the club?

10 A. The Vagos.

11 Q. Could you spell that.

12 A. V-a-g-o-s.

13 Q. Okay. So you both were members of that
14 club?

15 A. Correct.

16 Q. Okay. And that's when you first met him?

17 A. Yes.

18 Q. And so you guys had known each other for
19 about 12 years, give or take, in 2007?

20 A. No. What do you mean? 12 years prior to
21 2007?

22 Q. Right.

23 A. No.

24 Q. Okay. Well, if you met him in 1995 --

25 A. I meant '05, my bad, '05.

1 Q. Okay, so 2005.

2 A. 2005.

3 Q. Okay. So you knew him for about two
4 years?

5 A. Correct, correct.

6 Q. And you understand one of the reasons
7 we're here today is that you were involved in an
8 accident in July of 2007?

9 A. Yes.

10 Q. Do you remember that accident?

11 A. Unfortunately, yes.

12 Q. Okay. Do you remember the date of that
13 accident?

14 A. I know it was the weekend of 4th of July.

15 Q. But you don't know the exact date as you
16 sit here?

17 A. I try not to think about that date.

18 Q. Okay.

19 A. No, I don't remember the exact date, no.

20 Q. If I told you it was July 8th, 2007,
21 would that --

22 A. That should be right.

23 Q. -- would that sound about right?

24 A. (Witness nods head.)

25 Q. Yeah. Can you tell me where that

1 accident happened?

2 MR. SAMPSON: I'm sorry, what was the
3 question? Can you tell me?

4 BY MR. DOUGLAS:

5 Q. Where the accident happened.

6 A. God, the name of the city was Pioche.

7 Q. And that's north of Las Vegas, I guess?

8 A. It's way out there, yes.

9 Q. What were you doing up in Pioche?

10 A. We were having a -- the motorcycle club
11 that I rode for -- rode with -- was having a
12 barbecue weekend, family, kids, friends, everybody.

13 Q. So you had gone up there for the barbecue
14 club (sic) with the club?

15 A. Correct.

16 Q. Was this in a campground or at someone's
17 house or --

18 A. It was at someone's house, which was --
19 it was at a house.

20 Q. Do you know whose house it was at?

21 A. I can't remember his name.

22 Q. And how did you get up to this area for
23 the barbecue?

24 A. I drove my truck.

25 Q. And what kind of truck was that?

1 A. A Chevy pickup truck.

2 Q. So you didn't ride -- you didn't ride
3 your bike up there?

4 A. No, I did not.

5 Q. But you do own a bike?

6 A. Correct.

7 Q. What kind of bike?

8 A. A '98 Road King.

9 Q. '98. And do you know how many days you'd
10 been up there prior to the accident occurring?

11 A. Two days.

12 Q. And it's my understanding that somehow
13 the truck hit Cheyanne Nalder. Is that -- is that
14 an accurate description of the accident?

15 A. Hit, more or less ran her over.

16 Q. Okay. And now, were you there with
17 anyone else?

18 MR. SAMPSON: I'm going to object to the
19 form of the question.

20 THE WITNESS: Yes, I was.

21 BY MR. DOUGLAS:

22 Q. Who were you there with?

23 A. A lot of people were there.

24 Q. Right.

25 A. All the brothers that I rode with --

1 Q. Okay.

2 A. -- along with my girlfriend.

3 Q. Okay. So did you travel there with your
4 girlfriend?

5 A. Yes, I did.

6 Q. Okay. Do you know if anyone witnessed
7 this accident?

8 A. A lot of people witnessed this accident.

9 Q. Okay. Is there anyone you can remember
10 by name?

11 MR. SAMPSON: I will object to the form.

12 THE WITNESS: My girlfriend,
13 Kristen Scott, was in the vehicle with me. A lot of
14 the brothers that were up there saw it happen --

15 BY MR. DOUGLAS:

16 Q. Okay.

17 A. -- that weren't in my truck. Names
18 specifically, I can give you -- give you first names
19 or their handles, but I've been away from the club
20 for a while, so I -- do you want more names?

21 Q. You know what, I mean, if you can
22 remember any names, that's fine, whatever you can
23 remember.

24 A. Paul. I don't know Paul's last name. He
25 is the one who went and grabbed Cheyanne after I ran

1 her over.

2 Q. Okay.

3 A. That's all the names I can think of right
4 now.

5 Q. Okay. And I guess from your testimony,
6 you told me you don't really -- you don't really
7 have any contact with this club anymore?

8 A. No. I -- I quit the club and moved back
9 to California.

10 Q. Okay. And I can see you're obviously
11 upset by what happened to Cheyanne.

12 Is that a fair statement?

13 A. Very fair.

14 Q. Do you still keep in contact with
15 Mr. Nalder or Cheyanne?

16 MR. SAMPSON: I'm going to object to the
17 form of the question and instruct him not to answer
18 to the extent it would reveal any attorney/client
19 communications that have gone on between any of us.
20 But certainly outside of anything involving this
21 case, I think the question is fair.

22 Is that okay, Counsel?

23 MR. DOUGLAS: I'm just asking if he
24 keeps --

25 BY MR. DOUGLAS:

1 Q. Do you keep in contact with James Nalder
2 or Cheyanne?

3 THE WITNESS: Dave?

4 MR. SAMPSON: If you've had any contact
5 outside of like contact through me, then certainly
6 you can talk about that. But if your contact has
7 been just in -- relates to this case, then I ask you
8 not to answer the question.

9 MR. DOUGLAS: I'm -- I'm asking simply if
10 he's -- if he's not talked to --

11 BY MR. DOUGLAS:

12 Q. I don't want to know about if you talked
13 to your attorney. I want to know if you talked to
14 James Nalder or Cheyanne.

15 A. No, I have not talked to them, no.

16 Q. Do you know when the last time you spoke
17 to them was?

18 A. Six months ago.

19 Q. Okay.

20 A. Thereabouts.

21 Q. Okay. And what was the nature of that
22 conversation?

23 MR. SAMPSON: I'm going to object to the
24 form of the question, instruct him not to answer if
25 there was anything that occurred as a result of the

1 case or as a result of instructions through my
2 office.

3 MR. DOUGLAS: So you're instructing him
4 not to -- not to answer what he spoke about with the
5 other -- the other plaintiffs?

6 MR. SAMPSON: Yes. If my two clients
7 spoke with each other about the case, per my
8 instructions, I don't want them talking about it.
9 That's attorney/client privilege.

10 THE WITNESS: Personal, yes, I did. I
11 talked to him on a personal level.

12 BY MR. DOUGLAS:

13 Q. On a personal level --

14 A. I called him to see how Cheyanne was
15 doing.

16 Q. And how is she doing?

17 MR. SAMPSON: I'll object to the form.

18 THE WITNESS: What he told me, she's
19 doing okay.

20 BY MR. DOUGLAS:

21 Q. She's doing okay?

22 A. She's doing okay.

23 Q. Okay. Are you -- is there animosity
24 between you and James Nalder?

25 MR. SAMPSON: I'll object to the form of

1 the question to the extent it calls for speculation
2 as to what Mr. Nalder may feel. Certainly he can
3 testify as to how he feels.

4 THE WITNESS: I feel horrible for what
5 happened. How he feels about it, I don't know. It
6 was an accident, but she got hurt really bad.

7 BY MR. DOUGLAS:

8 Q. Sure.

9 A. It's her father. I can only imagine how
10 I would feel. I don't know what else you want me to
11 answer.

12 Q. Well, has he expressed any animosity
13 towards you over this incident?

14 A. Verbally, no. I don't know.

15 Q. Do you want to take a break? Are you all
16 right?

17 A. No, keep going.

18 Q. Are you sure?

19 A. I've been -- that's what I go through
20 every time I think about this.

21 Q. I understand. And obviously, we can all
22 tell you're emotional over this and it's obviously
23 upsetting.

24 Is it fair to say you would like to make
25 right the situation?

1 MR. SAMPSON: I will object to the form.

2 THE WITNESS: Yes.

3 BY MR. DOUGLAS:

4 Q. So you'd do what you need to do to help
5 James and Cheyanne at this point?

6 MR. SAMPSON: I'll object to the form of
7 the question. I'll object to the form of the
8 question. It's far too vague.

9 BY MR. DOUGLAS:

10 Q. Okay. You can go ahead and answer.

11 MR. SAMPSON: If you're able to answer,
12 you can answer it.

13 THE WITNESS: I don't understand what
14 you're asking me.

15 BY MR. DOUGLAS:

16 Q. Sure. I mean --

17 MR. SAMPSON: He wants to know if you'll
18 lie for them.

19 MR. DOUGLAS: Objection. Counsel, no
20 more speaking objections.

21 MR. SAMPSON: That's what you want. You
22 want to know if he'll lie for them.

23 MR. DOUGLAS: Counsel, Counsel, no more
24 speaking objections.

25 THE WITNESS: I felt that's where you

1 were getting at. I felt that's where you were
2 getting at.

3 BY MR. DOUGLAS:

4 Q. I merely asked you if you were willing --
5 what you're willing to do to help make it right at
6 this point?

7 MR. SAMPSON: That wasn't your question.

8 THE WITNESS: What I'm willing to do is
9 get what's right right. I mean, I want -- I want to
10 get what's right is right. That's all I want to do.

11 BY MR. DOUGLAS:

12 Q. Well, you understand that -- that
13 James Nalder has a \$3.5 million judgment against
14 you?

15 A. Yes, I do.

16 Q. And you understand that there's a
17 possibility if this suit isn't successful, that he
18 could still collect that from you?

19 A. I fully understand that.

20 Q. Okay. So is it fair to say you have a
21 vested interest in seeing that that judgment is
22 satisfied by someone else?

23 MR. SAMPSON: I'll object to the form.

24 THE WITNESS: By who I feel it should be
25 covered, my insurance company that I was covered

1 during the time of the accident, my insurance
2 company is denying my claim.

3 BY MR. DOUGLAS:

4 Q. Okay. So you would agree, then, that you
5 would prefer to have -- you have an interest in
6 having the insurance company pay the 3.5 million or
7 somebody pay -- somebody pay the 3.5 million rather
8 than it be owed by you? I mean, do you?

9 MR. SAMPSON: I'll object to the form of
10 question. It's compound.

11 THE WITNESS: I don't care about the
12 amount of the money. The amount of the -- the
13 responsibility of the insurance company that I had
14 when I was insured during the accident.

15 BY MR. DOUGLAS:

16 Q. Okay. And back in 2007, who were you
17 insured with?

18 A. UAIC.

19 Q. And when did you first come to be insured
20 with UAIC?

21 A. A specific date I don't know, months
22 prior to this accident happening.

23 Q. Okay. And so you think about a couple
24 months prior?

25 A. Yes, quite a few months prior, yes.

1 Q. And how did you come to get your policy
2 with United Auto?

3 A. I went through a broker firm, U.S. Auto
4 Insurance.

5 Q. And they sold you the policy?

6 A. Yes, that's right.

7 Q. Do you remember who you spoke with at
8 U.S. Auto Insurance?

9 A. No, I do not.

10 Q. Do you remember anyone at U.S. Auto
11 Insurance?

12 A. I dealt with a female usually most of the
13 time I went in there.

14 Q. But you don't remember her name?

15 A. No, I don't.

16 Q. Did you ever speak with anyone at
17 United Auto?

18 A. Yes, I did.

19 Q. Who did you speak with?

20 A. I do not remember his name.

21 Q. Okay. Was there only one person that you
22 recall?

23 A. I don't know if the person I ever
24 received a phone call back from was the same person.
25 I do not know that, but I've spoke two

1 occasions to -- two occasions I've spoke to somebody
2 at U.S. Auto or UAIC.

3 Q. Okay. Do you remember when those
4 conversations took place?

5 A. I don't know the exact dates, no, I
6 don't.

7 Q. Do you remember if it was soon after the
8 accident?

9 A. It was right after the accident, yes.

10 Q. Okay. Did you ever talk to anyone at
11 United Auto before the accident?

12 MR. SAMPSON: I'll object to the form.

13 THE WITNESS: No.

14 MR. SAMPSON: You answered.

15 THE WITNESS: Okay.

16 BY MR. DOUGLAS:

17 Q. Okay. And do you know when you spoke to
18 someone at United Auto, how soon after the accident
19 it was?

20 A. I don't remember the exact date. It
21 was -- it was right after the accident. I don't
22 know if it was the next day or the day after that.

23 Q. Okay. If I told you that United Auto has
24 a record of you calling on about July 13, 2007,
25 would that sound about right?

1 A. I would say it was sooner than that.

2 Q. Okay. After the accident occurred, did
3 you stay up in Pioche?

4 A. No. I was actually leaving, coming home
5 when the accident occurred.

6 Q. So you left and you came home after the
7 accident?

8 A. Yes.

9 Q. And that didn't change your plans? You
10 still continued to go home that day?

11 A. Yes.

12 Q. Now let me show you --

13 We can mark these as Exhibit 1, a
14 group -- it's just answers to interrogatories.

15 (Whereupon, Exhibit No. 1 was
16 marked for identification?)

17 MR. SAMPSON: Is this the unsigned copy
18 that was amended subsequently?

19 MR. DOUGLAS: These are his -- it's my
20 understanding --

21 MR. SAMPSON: Is this the unsigned copy
22 that was amended subsequently, or is this the
23 amended copy?

24 MR. DOUGLAS: Counsel, these are your
25 clients' answers to interrogatories. I'm just --

1 MR. SAMPSON: They're multiple sets of
2 answers to interrogatories sent, and one of them was
3 unsigned and one of them was signed.

4 MR. DOUGLAS: Well, this has the
5 verification page, so I guess these are signed.

6 MR. SAMPSON: Just a moment.

7 BY MR. DOUGLAS:

8 Q. Okay. I'm showing you what's been marked
9 as Exhibit 1 for identification. I want you to take
10 your time, take a look at that document and tell me
11 if you've ever seen that before.

12 MR. SAMPSON: And the question at this
13 point is do you recall seeing that document before
14 today?

15 THE WITNESS: To tell you the truth, I've
16 been shown so many papers and been through so many
17 things going in my mail, reading and going through,
18 I don't know. I'd have to -- I'll read this whole
19 thing and tell you if I remember reading it.

20 BY MR. DOUGLAS:

21 Q. Sure. Go ahead, take your time.

22 A. Yes. I remember seeing this document.

23 Q. Okay.

24 A. Can we take a break?

25 Q. If you need a break, sure.

1 A. Please.

2 THE VIDEOGRAPHER: We are going off the
3 record at 2:31 p.m.

4 (Off the record.)

5 THE VIDEOGRAPHER: This is the beginning
6 of Videotape No. 2 in the continuing deposition of
7 Gary Lewis. We are back on the record at 2:37 p.m.
8 BY MR. DOUGLAS:

9 Q. Okay. We just took a break of about six
10 minutes. I see you've -- you had a chance to meet
11 with your attorney outside?

12 A. Yes.

13 Q. Can I ask you, on this last page of
14 Exhibit No. 1 that I've given you, is that your
15 signature there?

16 A. Yes.

17 Q. Okay. And you signed that, it says, on
18 the -- February the 28th of 2010?

19 A. Correct.

20 Q. Did you -- did you ever answer any
21 interrogatories prior to that date?

22 A. Any what?

23 Q. Any interrogatories, written questions
24 like these prior to that date?

25 MR. SAMPSON: I'm going to object to the

1 form of the question and instruct him not to answer
2 to the extent it will reveal attorney/client
3 privileged information. I have no problem with you
4 asking him if he ever signed any interrogatory
5 answers prior to this date, but --

6 MR. DOUGLAS: Are you instructing him not
7 to answer or is he answering?

8 MR. SAMPSON: Yeah.

9 MR. DOUGLAS: You're instructing him not
10 to answer --

11 MR. SAMPSON: Not to answer in that it
12 will reveal attorney/client privileged information.
13 I will permit him to answer whether he ever --
14 recalls ever signing any interrogatories.

15 MR. DOUGLAS: Counsel, that is not my
16 question. You're either going to let him answer or
17 you're going to instruct him not to and we'll take
18 it up. It's your choice.

19 MR. SAMPSON: What's your question, then?

20 BY MR. DOUGLAS:

21 Q. My question is have you ever -- prior to
22 these interrogatories, have you ever answered
23 interrogatories prior to that date?

24 MR. SAMPSON: I'm going to object to the
25 form of the question. I am going to instruct him

1 not to answer to the extent it will reveal
2 attorney/client privileged information. I will
3 instruct him that he is permitted to answer whether
4 or not he ever signed any interrogatories that would
5 have been submitted to Counsel would not be
6 privileged.

7 BY MR. DOUGLAS:

8 Q. Okay. Do you remember answering any
9 interrogatories, written questions, prior to signing
10 those on February 28th, 2010?

11 MR. SAMPSON: Same objection, same
12 instruction.

13 Gary, I only want you to reveal whether
14 you signed any documents answering interrogatories
15 on that date.

16 MR. DOUGLAS: Counsel, Counsel --

17 MR. SAMPSON: I can instruct my client
18 not to answer the question.

19 MR. DOUGLAS: And that's what I'm just
20 asking, if that's what you're doing, then we can --

21 MR. SAMPSON: That's what I've done.

22 MR. DOUGLAS: Okay. Let the record
23 reflect Counsel has instructed his client not to
24 answer that question.

25 MR. SAMPSON: That's actually inaccurate.

1 I have instructed him he can answer as to whether he
2 signed anything that's been provided that would not
3 be privileged.

4 MR. DOUGLAS: That wasn't my question,
5 though.

6 MR. SAMPSON: Okay. Well, that's -- I
7 think your -- I think your question calls for that.

8 MR. DOUGLAS: Is he answering my question
9 or are you instructing him not to? That's all I
10 need to know right now.

11 MR. SAMPSON: I'm instructing him not to.

12 Well -- and again, we'll do it for the
13 fifth time now -- your question asked him if he's
14 ever answered interrogatories, which would include
15 having conversations with me, and that's privileged,
16 and he's not going to answer that. Your question
17 also calls for whether he's ever provided a set of
18 signed interrogatory answers, which he is permitted
19 to answer, and he is allowed to answer that question
20 if he recalls ever signing another set.

21 Now, if you don't like the answer, that's
22 your problem, but that's -- he's allowed to say -- I
23 will allow him to answer the question of have you
24 ever provided signed interrogatories other than
25 these.

1 MR. DOUGLAS: Counsel, are you done with
2 the speaking objection?

3 MR. SAMPSON: That's not a speaking
4 objection, Counsel.

5 MR. DOUGLAS: Are you done?

6 BY MR. DOUGLAS:

7 Q. I want to know, have you ever answered
8 interrogatories before these on February 28th, 2010?

9 MR. DOUGLAS: Either he answers or you
10 instruct him not to.

11 MR. SAMPSON: I'm going to instruct him
12 not to answer to the extent it would reveal
13 attorney/client privilege, but that he may answer to
14 the extent it would not, i.e., whether he recalls
15 ever giving any signed answers previously.

16 MR. DOUGLAS: That's not my question.

17 BY MR. DOUGLAS:

18 Q. Can you answer --

19 MR. SAMPSON: That is your question.

20 BY MR. DOUGLAS:

21 Q. Can you answer my question, have you ever
22 answered interrogatories before this?

23 MR. SAMPSON: Tell him whether you have
24 ever signed anything before this.

25 THE WITNESS: I'm totally confused, you

1 guys going back and forth with this. I don't know
2 what's being asked of me. I've -- listen, man, I
3 don't know. I don't know what you're asking me,
4 man. This is --

5 BY MR. DOUGLAS:

6 Q. We -- in this case, the parties are
7 entitled to send what are called written
8 interrogatories. That's what these answers are.
9 You've already told me you signed these.

10 Previously in this case, your counsel
11 submitted other answers to interrogatories. I want
12 to know, did you take part in answering those
13 interrogatories?

14 MR. SAMPSON: I object to the form of the
15 question.

16 Do not answer that. That's
17 attorney/client privilege. Don't answer that
18 question, period. Don't answer that question,
19 period.

20 MR. DOUGLAS: So let the record reflect
21 counsel has instructed the witness not to answer
22 that question.

23 MR. SAMPSON: That question, yes. Or any
24 other question about what he and I did together will
25 also receive the same instruction.

1 BY MR. DOUGLAS:

2 Q. Did you answer -- did you receive any
3 copies of written questions like these prior to
4 signing these answers?

5 A. Not that I recall.

6 Q. Okay. And are these your answers to
7 these questions?

8 A. I believe they are. I signed this paper.

9 Q. Okay. Did you ever answer any requests
10 to admit prior to signing these answers to
11 interrogatories?

12 A. I'm not -- I'm not sure the question
13 you're asking me.

14 Q. Do you know what requests to admit are?

15 A. No.

16 Q. They're similar type of written questions
17 that are submitted in a lawsuit.

18 Did you ever receive any other written
19 questions to answer in this case?

20 A. I don't recall.

21 Q. Okay. Now, one of the questions in this
22 case that -- in the answers to interrogatories -- I
23 will direct your attention to interrogatory No. 9.

24 A. Okay.

25 Q. It says -- can you read the question?

1 A. "If you maintain you are insured under a
2 policy of automobile insurance issued by United
3 Automobile Insurance Company, please state the dates
4 of coverage for said policy and policy number."

5 Q. Okay. And your answer to that question,
6 which continues on page 9, I want you to review it
7 and tell me if that -- that is your -- if that is
8 your answer to that question?

9 MR. SAMPSON: The answer starts here at
10 the bottom of that page.

11 THE WITNESS: Yes.

12 BY MR. DOUGLAS:

13 Q. Okay. And it's my understanding from
14 this answer -- and you can tell me if I'm wrong --
15 that you believed from your renewal notice you had
16 until July 31st, 2007 to pay for your July 2007,
17 policy --

18 MR. SAMPSON: Wait for the question.

19 BY MR. DOUGLAS:

20 Q. -- is that correct?

21 A. All I know is that I made the payment by
22 the expiration date that was on my renewal notice.

23 Q. What payment are you talking about?

24 A. My July payment.

25 Q. Okay. Was that about July 10th?

1 A. Yes, I believe so.

2 Q. Was that after the accident that was --
3 we're talking about here?

4 A. Yes.

5 Q. So you made the payment after the
6 accident, and -- but it's your understanding that
7 you had until July 31st to make that payment?

8 MR. SAMPSON: I'll object. Asked and
9 answered.

10 You can answer it again.

11 THE WITNESS: Yes.

12 BY MR. DOUGLAS:

13 Q. And why did you -- why did you believe
14 you had until July 31st?

15 A. Because my expiration date goes on my
16 renewal form --

17 Q. Okay.

18 A. -- saying until July 31st.

19 Q. Okay. Now, after you made the July 10th
20 payment, did you call United Auto to check your
21 coverage?

22 A. No. I called to make a claim that I was
23 in an accident. You're supposed to notify your
24 insurance company that you've been in an accident.

25 Q. Okay. So you didn't call to check and

1 see if you had coverage?

2 A. No, I did not. I had coverage.

3 Q. Okay. So you never called to check
4 coverage?

5 MR. SAMPSON: I'll object. That's been
6 asked and answered twice.

7 Now, don't answer it again.

8 BY MR. DOUGLAS:

9 Q. Is that correct? Is that what you're
10 stating?

11 MR. SAMPSON: He's not going to answer it
12 again. He's answered it twice. He's not going to
13 answer it again.

14 BY MR. DOUGLAS:

15 Q. You can answer.

16 MR. SAMPSON: No, he can't.

17 I'm instructing you not to.

18 MR. DOUGLAS: Okay. Let the record
19 reflect --

20 MR. SAMPSON: He's not doing it again.

21 MR. DOUGLAS: Counsel has again
22 instructed the witness not to answer.

23 MR. SAMPSON: For the third time, I'm not
24 going to have him answer the same question over and
25 over again.

1 MR. DOUGLAS: Counsel, are you done with
2 your speaking objections --

3 MR. SAMPSON: No. I'm happy to state
4 quite a lot more if you'd like to invite me to.

5 MR. DOUGLAS: You know what, Counsel, I
6 think this is my deposition.

7 MR. SAMPSON: I would be happy to say
8 quite a lot more if you would like to invite me to;
9 otherwise, ask your questions.

10 MR. DOUGLAS: Counsel, are you done?

11 MR. SAMPSON: You want to invite me to
12 say more, because no, I'm not. But I'd be happy to
13 say more if you'd like to invite me to. Or would
14 you like to ask the question?

15 MR. DOUGLAS: Counsel, we've had enough.
16 Let's move on.

17 MR. SAMPSON: Would you like to ask the
18 questions?

19 MR. DOUGLAS: As soon as you're done
20 talking.

21 MR. SAMPSON: Well, I have quite a bit to
22 say, actually, if you'd like to invite me.

23 MR. DOUGLAS: No.

24 MR. SAMPSON: Okay then, ask your
25 question or stop the deposition.

1 MR. DOUGLAS: Counsel, there's no
2 reason --

3 MR. SAMPSON: Ask your question or stop
4 the deposition.

5 MR. DOUGLAS: I don't like your tone,
6 Counsel.

7 MR. SAMPSON: Ask your question or stop
8 the deposition.

9 MR. DOUGLAS: I'm not going to be
10 verbally abused --

11 MR. SAMPSON: I'm going to ask you one
12 last time to ask a question. If you don't ask a
13 question, we're getting up and leaving.

14 MR. DOUGLAS: I'm not going to tolerate
15 your continued --

16 MR. SAMPSON: Please, Counsel, ask a
17 question.

18 MR. DOUGLAS: Again, we're not going to
19 tolerate your --

20 MR. SAMPSON: We're done, thank you. You
21 don't have any questions, apparently.

22 MR. DOUGLAS: Are you walking out --

23 MR. SAMPSON: If you're not going to ask
24 any questions, we're going to leave. Are you going
25 to ask a question or are we going to leave?

1 MR. DOUGLAS: I'm trying to, but you
2 won't stop --

3 MR. SAMPSON: Are you going to ask a
4 question?

5 MR. DOUGLAS: I would as soon as you stop
6 talking.

7 MR. SAMPSON: Okay. I'm going to stop
8 talking here in a second, and when I stop, I'm going
9 to say -- or ask a question.

10 MR. DOUGLAS: That is not how it works.

11 MR. SAMPSON: You can ask a question.
12 This is how it does work. Depositions you ask
13 questions and the witness answers. So ask a
14 question and the witness will answer, or don't and
15 we'll leave. Now, please, ask a question.

16 MR. DOUGLAS: Let the record reflect
17 Counsel is --

18 MR. SAMPSON: You will not ask a
19 question, we'll leave.

20 MR. DOUGLAS: -- is making mocking
21 gestures --

22 MR. SAMPSON: Let's leave.

23 MR. DOUGLAS: -- and holding his ears.

24 MR. SAMPSON: I'm not making any mocking
25 gestures. Yeah, I'm holding my ear waiting for a

1 question. Do you have a question for the witness?

2 MR. DOUGLAS: Can we mark this as
3 Exhibit 2.

4 (Whereupon, Exhibit No. 2 was
5 marked for identification.)

6 BY MR. DOUGLAS:

7 Q. I'm showing your counsel what we're
8 marking as Exhibit 2 for identification.

9 MR. SAMPSON: For the record, this
10 appears to be a document that has not yet been
11 disclosed in this case.

12 BY MR. DOUGLAS:

13 Q. I'll submit that this document was
14 disclosed in the defendant's initial production.

15 But that said, sir, my question for you
16 is looking at what we've marked as Exhibit 2 for
17 identification, can you tell me if you have ever
18 seen that before?

19 A. No, I don't recall ever seeing this.

20 Q. Okay. Do you know if that's your
21 application for your initial insurance policy with
22 UAIC?

23 A. I can tell you that I don't know. I
24 never -- I don't remember seeing this.

25 Q. So you don't know?

1 A. No.

2 Q. Okay.

3 MR. SAMPSON: Is it correct you don't
4 know? I wasn't clear. He's correct, you don't
5 know?

6 THE WITNESS: I don't know, no.

7 BY MR. DOUGLAS:

8 Q. Do you remember, you said it was a couple
9 months before the accident that you first got
10 insurance with UAIC; is that correct?

11 A. I told you I wasn't -- it was quite a few
12 months. There was a few months before -- I know I
13 maintained insurance with this company before the
14 accident.

15 MR. SAMPSON: Can I see -- I want to take
16 a look at it for a second, hold on.

17 MR. DOUGLAS: I know, but I need to ask
18 him a question about it.

19 MR. SAMPSON: Give me just a moment,
20 please.

21 MR. DOUGLAS: Counsel, I've already given
22 it to you to look at.

23 MR. SAMPSON: Thank you. And I'm looking
24 at it.

25 MR. DOUGLAS: Okay.

1 BY MR. DOUGLAS:

2 Q. Well, what we've marked as Exhibit 2
3 notes that it appears that you signed up for
4 insurance with UAIC on March 29th of 2007.

5 Do you have any reason, as you sit here
6 today, to disagree that that's the date when you
7 started your policy with UAIC?

8 A. I will not disagree. Like I told you,
9 dates, times that you're so concerned about, I'm not
10 a hundred percent specific, or -- there're a lot of
11 things that happened with my life. Dates I don't
12 remember. I don't want to remember.

13 All I know is I signed up for some
14 automobile insurance. They denied me a claim when I
15 was under the impression that I was covered, and
16 because of the results of that, you and I sit here
17 like we are today.

18 Q. And I understand that. And I --

19 A. Do you -- I mean, this is -- this is not
20 right.

21 Q. I mean, you know people can differ on
22 that, I think, sir. But I'm just asking you if you
23 remember, and if you don't, I understand, and we can
24 move on. I'm not -- if you don't remember a date,
25 I'm not going to sit here and yell at you. I mean,

1 I don't do that sort of thing.

2 But -- so I'm just asking you, do you
3 have any reason to disagree that March 29th, 2007 is
4 when you started your insurance with UAIC?

5 A. No.

6 Q. Okay. And do you know what kind of
7 policy you got with UAIC?

8 MR. SAMPSON: I will object to the form.

9 THE WITNESS: I don't understand the
10 question. What kind of a policy?

11 BY MR. DOUGLAS:

12 Q. Well, sure. Do you know how long of a
13 term it was for?

14 MR. SAMPSON: I will object to the form.

15 THE WITNESS: I went in there and
16 acquired insurance for a year.

17 BY MR. DOUGLAS:

18 Q. Okay. And this was from U.S. Auto?

19 A. U.S. Auto Insurance was the one who wrote
20 up my policy, yes.

21 Q. Okay. And you got a monthly term.
22 Do you understand that?

23 A. They told me that I had a one-year
24 policy, that I was to have monthly payments.

25 Q. So U.S. Auto told you this?

1 A. Correct.

2 Q. Okay. And do you remember who at
3 U.S. Auto told you this?

4 A. No, I do not.

5 Q. Okay. But you --

6 A. The lady I spoke to the first time.

7 Q. So some female?

8 A. Correct.

9 Q. Do you remember on that first time when
10 you went into U.S. Auto did you make a premium
11 payment?

12 A. Yes, I did.

13 Q. Did she give you insurance at that time?

14 A. Yes, she did.

15 MR. DOUGLAS: Can we mark this as
16 Exhibit 3.

17 (Whereupon, Exhibit No. 3 was
18 marked for identification.)

19 BY MR. DOUGLAS:

20 Q. Showing your counsel what we're marking
21 as Exhibit 3 for identification, I want you to take
22 a look at what we've marked as Exhibit 3 and ask you
23 if you have ever seen that before?

24 A. I don't remember. I mean, I don't recall
25 seeing this exact page.

1 Q. Okay. Do you know what that is?

2 A. No. She didn't tell me.

3 Q. Well, I'm asking you first if you do?

4 A. No, I do not.

5 Q. Do you remember being sent -- this is
6 what's called -- we -- I'll proffer this is what's
7 called a declaration page.

8 Do you remember being sent these by UAIC?

9 A. I don't remember being sent these, no. I
10 remember being sent proof of insurance form with the
11 thing on the bottom to make my payment.

12 Q. Okay.

13 A. A renewal statement. It said renewal
14 statement on the top.

15 Q. So you remember getting renewal
16 statements?

17 A. Yes.

18 Q. But you don't remember getting policy
19 declarations pages?

20 A. I don't remember this, no.

21 Q. Okay. Did you ever get one of these
22 policy declaration pages?

23 MR. SAMPSON: I'll object to the form of
24 the question to the extent it calls for speculation.

25 THE WITNESS: I do not recall getting

1 these, no.

2 BY MR. DOUGLAS:

3 Q. Okay. Can you see up in the top
4 right-hand corner of that document?

5 A. Yes.

6 Q. It lists -- it says, "Coverage provided"?

7 A. Yes.

8 Q. Can you see where it says from
9 March 29th, 2007 to April 29th, 2007?

10 A. I see that.

11 Q. Okay. Did you know that that was the
12 policy period for your first monthly term policy?

13 MR. SAMPSON: I'll object to the form.

14 THE WITNESS: Like I said, I don't
15 remember seeing this form.

16 BY MR. DOUGLAS:

17 Q. Okay. Okay. I understand that. But
18 were you aware that your first policy was a
19 month-long term from March 29th to --

20 A. No. I was aware that -- I was told that
21 my policy was one year with monthly payments.

22 Q. Okay. And let me finish my question, and
23 then I'll give you all the time you want to answer.

24 I just want to know, so were you aware
25 that your first policy term from UAIC was from

1 March 29th, 2007 to April 29th, 2007?

2 MR. SAMPSON: I will object to the form
3 of the question.

4 Go ahead and answer.

5 THE WITNESS: No. I never saw this form
6 before, and when I first went in to get insurance, I
7 was told I had a one-year policy and I was to pay
8 month to month.

9 BY MR. DOUGLAS:

10 Q. Okay.

11 A. And I was under the impression that if I
12 was to ever cancel, they would send me -- or if I
13 was ever late, they would send me a notice, so on
14 and so forth. I never received any of these in the
15 mail that I know of. I never saw no dates like
16 that. I was sent a renewal form that said pay by
17 this date, pay by the expiration date, and these
18 were my renewal forms.

19 Q. Okay. So no one at U.S. Auto ever told
20 you you we're only buying a month -- month-long
21 policy?

22 A. No, no.

23 Q. No one at U.S. Auto ever explained to you
24 that the renewals you were receiving were to renew
25 another one-month term policy?

1 A. No.

2 Q. And did you ever talk to anyone at
3 United Auto about your policy?

4 A. No. The only person I ever spoke to at
5 United Auto about my policy is when I called to make
6 a claim.

7 Q. Okay. So you never called them with
8 questions about the term of your policy?

9 A. No. I was under the impression that they
10 were allowing U.S. Auto to provide me with all the
11 information that I needed. Why should I have to
12 call them?

13 Q. Well, but, I just want to make clear. So
14 you never did call United Auto about the term of
15 your policy?

16 A. No.

17 Q. And is it fair that shortly after you got
18 your policy with United Auto, you went in and added,
19 I guess, a driver and a vehicle?

20 Do you remember that?

21 A. Yes. Yes.

22 Q. Okay. And that was you added, I believe,
23 Kristen Scott?

24 A. That's correct.

25 Q. And you also added a vehicle, 1994 Ford

1 Ranger?

2 A. Correct.

3 Q. Okay. Do you remember when that was?

4 A. No. I don't remember the exact date.

5 Q. Okay. And again, I understand that. I
6 know it's been some time, but unfortunately, this is
7 the way we have to do things.

8 And so if I told you that the records
9 reveal it was on or about April 25th, 2007 that you
10 added those people and that car, do you have any
11 reason to disagree with that?

12 A. No.

13 MR. DOUGLAS: Let's mark this, I guess,
14 4.

15 (Whereupon, Exhibit No. 4 was
16 marked for identification.)

17 BY MR. DOUGLAS:

18 Q. So your counsel is showing you what we've
19 marked as Exhibit 4 for identification.

20 And I first want to ask you if you've
21 ever seen this document before.

22 A. Yes, I have.

23 Q. And what is that?

24 A. It's a renewal statement.

25 Q. Okay. And --

1 A. It says right there, "Renewal statement."

2 Q. That's right. And was this -- was this
3 the type of renewal statement that you were just
4 talking about?

5 A. Yes. This is what I've seen.

6 Q. Okay. And was that what -- is that what
7 United Auto sent to you?

8 A. Yes.

9 Q. And the renewal amount is how much from
10 that statement?

11 A. Are you asking me?

12 Q. Yeah.

13 A. \$94.

14 Q. Okay. And it says -- what's the due
15 date?

16 A. My expiration date, well, it says here in
17 writing, "To avoid a lapse in coverage payment --

18 Q. I understand that.

19 A. -- "must be prior" -- "prior" --

20 MR. SAMPSON: Don't interrupt until he is
21 done answering --

22 THE WITNESS: -- "to the expiration" --

23 MR. DOUGLAS: But I don't think he's
24 answering my question.

25 MR. SAMPSON: He is.

1 THE WITNESS: I am.

2 MR. SAMPSON: Go ahead and finish your
3 answer uninterrupted. Go ahead.

4 MR. DOUGLAS: I'm asking --

5 MR. SAMPSON: Hold on. I know where
6 you're going. Let him finish his answer --

7 THE WITNESS: This is how I read this
8 document: "To avoid lapse in coverage, payment must
9 be received prior to the expiration of your policy."
10 Payment must be received by the expiration of my
11 policy. And it says right here in the top hand
12 right -- right-hand corner, expiration date is
13 May 29th of 2007. So to avoid lapse in that
14 coverage, payment must be made by that date, which I
15 always did, and there was never a problem.

16 BY MR. DOUGLAS:

17 Q. Now, and I appreciate your answer and
18 that's your understanding, but is there a due date
19 listed on this notice?

20 MR. SAMPSON: I will object. Asked and
21 answered.

22 But you can tell him again.

23 THE WITNESS: My due date to avoid lapse
24 in coverage was to be made by the expiration date,
25 which in the top right-hand corner was May 29th.

1 BY MR. DOUGLAS:

2 Q. Well, you answered before for me you knew
3 the renewal amount was \$94, and that's -- that's
4 that box that's surrounded by stars.

5 Do you see that?

6 A. I see that.

7 Q. Can you read to me what it says next to
8 that.

9 A. It says no later than 04/29/07.

10 Q. And is that also surrounded by stars?

11 A. Yes, it is.

12 Q. So are you saying you didn't take that to
13 mean that that was the date for that \$94 payment you
14 just told me about?

15 A. Yes. Because every other time that I'd
16 ever made payments, as long as they were made by the
17 expiration date of my policy that says clearly to
18 avoid a lapse in coverage to be made by the
19 expiration date, which I always made. I was always
20 on time, and I never received a notice stating that
21 I was ever -- had a lapse or a drop in coverage.
22 Because my payments were always made by the
23 expiration date.

24 Q. So what did you think "no later than"
25 meant?

1 A. I really never paid it much thought. I
2 always -- I followed the directions that everything
3 read.

4 Q. So even though you knew the renewal
5 amount in the starred box was the amount you were
6 supposed to pay, you ignored the next box that says
7 "no later than"?

8 MR. SAMPSON: I'll object to the form.
9 Argumentative. I don't appreciate the tone either.

10 But you can go ahead and answer.

11 THE WITNESS: Ignored it? I didn't
12 ignore it. I paid by what underneath said for me to
13 pay by.

14 BY MR. DOUGLAS:

15 Q. Okay. So --

16 A. Sometimes money was tight. Sometimes I
17 had money. I was able to pay before the dates that
18 are on here. Sometimes I was able to pay by the
19 expiration -- I always made sure that the payments
20 were made by the expiration date, which always kept
21 me from avoiding a lapse in coverage.

22 Q. I guess what I'm trying to ask you is why
23 did you come up with that sort of reading the
24 paragraph and then using the expiration date in the
25 corner instead of just looking at where it says "no

1 later than" with a date surrounded by stars? How
2 come -- why did you choose this expiration date
3 instead of the one that's starred and it says "no
4 later than"?

5 MR. SAMPSON: I'll object to the form.
6 There is nothing -- there's nothing about expiration
7 date under "no later than" --

8 MR. DOUGLAS: That's not what I asked
9 him, Counsel.

10 MR. SAMPSON: Yeah, it is. We're making
11 a record. We're videotaping it, so you don't have
12 to comment.

13 MR. DOUGLAS: Exactly. Keep up with your
14 speaking objections.

15 MR. SAMPSON: Thank you. I will.

16 BY MR. DOUGLAS:

17 Q. So can you tell me why? You said you
18 didn't ignore it.

19 A. I can't tell you why.

20 Q. Okay. Can you look down at the bottom
21 left-hand corner. Does it say due date with a date
22 there?

23 A. Yes, it does.

24 Q. Okay. What date is that on this form?

25 A. It's 04/09.

1 Q. The due date?

2 A. Yeah.

3 Q. It says --

4 A. It says due date 04/09.

5 Q. Okay. And that matches the date that's
6 starred that says "no later than."

7 Is that fair?

8 A. That's correct.

9 Q. Okay. And, in fact, it looks like in the
10 middle of the page, it says, "Please detach and
11 return this bottom portion with your payment."

12 Do you see that?

13 A. Yes.

14 Q. So it appears that this bottom part was
15 the stub that you return your payment with.

16 Is that fair?

17 A. That's correct.

18 Q. Okay. And you have other bills you pay;
19 is that correct?

20 A. Yes.

21 Q. You have -- do you have a cell phone?

22 A. Yes.

23 Q. What's your cell phone number, by the
24 way?

25 A. 626-232-0600.

1 Q. And who's your provider?

2 A. Sprint.

3 Q. How long have you had that phone?

4 A. I don't remember. It's been a while.

5 Q. Did you have that phone in 2007?

6 A. No, I did not.

7 Q. What phone did you have then?

8 A. I don't recall.

9 Q. Do you know the name of the provider?

10 A. No, I don't remember.

11 Q. So you have a cell phone bill that you
12 pay now; is that right?

13 A. I don't pay it, no.

14 Q. You don't?

15 A. Nope.

16 Q. Do you have any bills that you pay right
17 now? A utility bill?

18 A. No, I don't. Remember, I live with my
19 parents.

20 Q. Okay. Have you had bills in your name
21 and accounts in your name before?

22 A. Of course I have, yeah.

23 Q. Okay, sure. Everybody knows; right? You
24 have an account in your name, and you get a payment
25 stub that you return with your payment.

1 Is that fair?

2 A. That is correct.

3 Q. And all of them have due dates on them;
4 is that right?

5 THE WITNESS: Dave, can I answer
6 something right now other than yes and no?

7 BY MR. DOUGLAS:

8 Q. I would direct the witness not to ask his
9 counsel for an answer. I have a pending question I
10 want to know --

11 A. Yes.

12 Q. Okay. And so just like this stub has --

13 A. I would like to take a break, please.
14 Can I take a break?

15 Q. I have another question pending.

16 MR. SAMPSON: Okay. You don't have a
17 question pending. You haven't asked anything. All
18 right?

19 MR. DOUGLAS: I have --

20 MR. SAMPSON: Just like this said --

21 MR. DOUGLAS: You can't just take a
22 break --

23 MR. SAMPSON: Yes, he can.

24 MR. DOUGLAS: -- because he --

25 MR. SAMPSON: He'd like a break, Counsel.

1 THE WITNESS: And I would like to ask him
2 a question because I want to make something -- I
3 want to make a statement, so I want to --

4 MR. DOUGLAS: We don't have time for
5 statements right now --

6 MR. SAMPSON: No, we have all the time in
7 the world.

8 MR. DOUGLAS: I have a pending question
9 before he takes a break --

10 MR. SAMPSON: No, you don't. No, you
11 don't --

12 MR. DOUGLAS: I asked him --

13 MR. SAMPSON: -- all you said -- well,
14 why don't we have her read the question back then.

15 MR. DOUGLAS: Well, because --

16 MR. SAMPSON: Let's have the question
17 read back. Let's have the question read back.

18 MR. DOUGLAS: If you won't take a
19 break --

20 MR. SAMPSON: I just want the question
21 read back. That's all right now.

22 (The court reporter read the requested
23 portion of the record pursuant to
24 Counsel's request.)

25 MR. SAMPSON: That was not a question.

1 MR. DOUGLAS: Well, because I couldn't --
2 I wasn't able to finish it.

3 MR. SAMPSON: Right. Because he asked
4 for a break before the question was asked. So it's
5 not pending. He'd like a break. Let's take a quick
6 break.

7 THE VIDEOGRAPHER: We are going off the
8 record at 3:06 p.m.

9 (Off the record.)

10 THE VIDEOGRAPHER: Beginning of
11 Videotape No. 3 in the continuing deposition of
12 Gary Lewis. We are back on record at 3:10 p.m.

13 MR. DOUGLAS: Okay. I'd like the record
14 to reflect we took another couple minute break, and
15 the witness had a chance to talk to his attorney
16 again.

17 BY MR. DOUGLAS:

18 Q. Can I pick up where we left off. I think
19 you told me -- you admitted this had a stub portion
20 here on the bottom of this renewal notice that had a
21 due date; is that right?

22 A. Yes.

23 Q. And you're familiar with other bills that
24 you've paid oftentimes on the stub with the amount
25 you owed. They also have a due date; is that right?

1 A. That's correct.

2 Q. So can you explain for me with that
3 understanding why you think this due date doesn't
4 apply to this renewal notice?

5 A. I was under the impression that the due
6 date is the date that they want their money, but to
7 avoid a lapse in coverage, that I had to pay by the
8 expiration date. There was a grace period between
9 those two dates.

10 Just like a power bill. If a power bill
11 sends you a date that they need to receive their
12 payment, if I don't receive -- if they don't receive
13 my payment by then, they don't come out and turn my
14 electricity off right away. They get ahold of me,
15 set up another date, the payment arrangement, so on
16 and so forth, before they come out and turn off my
17 electricity.

18 That's what I was under the impression of
19 this. To avoid the lapse of coverage, I had to pay
20 by the expiration date, which is different than the
21 due date.

22 Q. Okay. And --

23 A. That is what I wanted to state before.

24 Q. Okay. And who told you that?

25 MR. SAMPSON: I'll object to the form,

1 assumes facts.

2 THE WITNESS: This right here.

3 BY MR. DOUGLAS:

4 Q. Okay. Did anyone at U.S. Auto ever tell
5 you that?

6 MR. SAMPSON: I'll object to the form,
7 asked and answered.

8 THE WITNESS: The form is what told me,
9 the renewal notice from UAIC.

10 MR. DOUGLAS:

11 Q. So no person ever told you that?

12 MR. SAMPSON: I will object to the form.
13 You can tell him again where you heard
14 about it.

15 THE WITNESS: I don't remember everything
16 that's ever said to me by anybody in the world, nor
17 do you.

18 BY MR. DOUGLAS:

19 Q. I understand.

20 A. I do know by the paperwork that is
21 sitting right in front of me that I got every month,
22 that is what it told me.

23 Q. Okay. And all I'm trying to ask you is
24 did you ask anyone at U.S. Auto about that?

25 A. No.

1 Q. Okay. Did anyone at U.S. Auto ever tell
2 you that's what it meant?

3 MR. SAMPSON: I'll object to the form.
4 He's already answered that three times now.

5 But you can tell him for a fourth time.

6 THE WITNESS: No.

7 BY MR. DOUGLAS:

8 Q. Okay. Did anyone at United Auto ever
9 tell you that was the format?

10 A. No.

11 MR. SAMPSON: I'll object to the form.

12 BY MR. DOUGLAS:

13 Q. Is that a "no"?

14 A. No.

15 Q. Okay.

16 MR. SAMPSON: Are you done with 4?

17 MR. DOUGLAS: Sure, yeah.

18 Why don't we mark this as 5.

19 (Whereupon, Exhibit No. 5 was
20 marked for identification.)

21 BY MR. DOUGLAS:

22 Q. And I'm just showing your counsel what
23 we've marked as Exhibit 5 for identification.

24 I can ask you if you've ever seen that
25 before.

1 A. I don't recall seeing this before.

2 (Interruption.)

3 THE WITNESS: No.

4 BY MR. DOUGLAS:

5 Q. Okay. So you haven't. And you're not
6 aware what that is?

7 A. I am now because you explained to me
8 earlier what it is --

9 Q. Okay.

10 A. -- but no, I do not recall seeing this.

11 Q. Did you ever get a declarations page of
12 any -- at any time from United Auto?

13 A. Declaration page, is that what this is?

14 Q. Yes, that's what that is.

15 A. Not that I remember.

16 Q. Okay. And I just want to ask you, you
17 can see again in the top right-hand corner, it says,
18 Coverage provided from and to.

19 Can you see that?

20 A. Yes, I do.

21 Q. And can you see the "to" date, what date
22 that is? Can you read that?

23 A. April 29th, 2007 to May 29th, 2007.

24 Q. Okay. That's fine, thank you.

25 MR. DOUGLAS: Let's mark this as

1 Exhibit 6.

2 (Whereupon, Exhibit No. 6 was
3 marked for identification.)

4 BY MR. DOUGLAS:

5 Q. I will show your counsel what we've
6 marked as Exhibit 6 for identification. And once he
7 shows it to you, I'm going to ask you if you've ever
8 seen that document before.

9 A. Yes, I have.

10 Q. Okay. And can you tell me what that is?

11 A. It's another renewal statement.

12 Q. Okay. And is it again the renewal
13 statements that you said you received from
14 United Auto?

15 A. Yes.

16 Q. Okay. And again, this one, it has the
17 renewal amount starred in the middle there in the
18 center.

19 Is that fair?

20 A. Yes.

21 Q. How much is that?

22 A. 134.

23 Q. And then next to it it says "no later
24 than."

25 What date does it give there?

1 A. 05/29.

2 Q. Okay. Of '07?

3 A. Correct.

4 Q. And, in fact, that's the same date next
5 to the due date down on that -- on the stub that we
6 talked about before.

7 Is that fair?

8 A. Correct.

9 Q. So when -- it's my understanding, then,
10 that you would agree with me that the due date for
11 this renewal was May 29th, 2007?

12 A. Yes.

13 Q. Okay. And -- thank you.

14 A. Also to avoid lapse in coverage, the
15 payment be paid by the expiration date again.

16 MR. SAMPSON: Just answer his questions.
17 It's all right. You just answer his questions. He
18 doesn't want -- just answer his questions.

19 MR. DOUGLAS: Let's mark this as
20 Exhibit 7.

21 (Whereupon, Exhibit No. 7 was
22 marked for identification.)

23 BY MR. DOUGLAS:

24 Q. Showing your counsel what we've marked as
25 Exhibit 7, and I'm going to ask you if you've ever

1 seen this before.

2 A. Yes.

3 Q. Can you tell me what that is?

4 A. It's a receipt of payment.

5 Q. Were these receipts of payment that you
6 would get when you would pay your premium?

7 A. Yes.

8 Q. Do you know who gave you these?

9 A. U.S. Auto insurance.

10 Q. And how did you normally pay your
11 premium?

12 A. By -- in person at U.S. Auto Insurance.

13 Q. Did you pay by check, cash --

14 A. Money order --

15 Q. Okay.

16 A. -- cash, money order, or whatever.

17 Q. And they would give you one of these
18 receipts?

19 A. Correct.

20 Q. Can you see for me the date of payment
21 that's listed on this receipt?

22 A. 05/31/07.

23 Q. I'm sorry, what was that date?

24 A. 05/31/07.

25 Q. Okay. And so is that -- would you have

1 any reason to disagree that that was the date you
2 made that payment?

3 A. No.

4 Q. And we just talked about, I think, that
5 the -- your premium had been due on May 29th, 2007,
6 for this period.

7 Do you remember that?

8 A. The renewal date was 05/29, exactly. My
9 expiration date was 06/29, and I went in and made
10 the payment of the 134 on 5/31, which is two days
11 after the due date on the previous thing --

12 Q. Sure.

13 A. -- which gave me a renewal on the same
14 policy even after I paid after the renewal date.

15 Q. Okay. Well, I'd like to strike that
16 answer. That's not what I asked you, and I think
17 that calls for legal conclusion.

18 But I just want to make -- ask you
19 again -- maybe the simplest way to ask it is you
20 would agree that this payment on 5/31/2007 was after
21 the due date of 5/29/2007; is that correct?

22 A. That's correct.

23 Q. Thank you.

24 MR. DOUGLAS: And I guess we're up to
25 Exhibit 8.

1 (Whereupon, Exhibit No. 8 was
2 marked for identification.)

3 BY MR. DOUGLAS:

4 Q. Okay. And I'd like you to take a look at
5 what we're marking as Exhibit 8 for identification.

6 And have you ever seen this document
7 before?

8 A. Once again, I don't remember seeing this
9 one, no.

10 Q. So you just -- you don't remember?

11 A. I don't remember seeing any of these
12 pages.

13 Q. Okay. Can you see there -- again,
14 talking about the coverage provided section that we
15 discussed earlier in regard to these?

16 A. Yes.

17 Q. Can you see that it shows the date
18 starting as May 31st, 2007?

19 A. Yes.

20 Q. So were you aware that your June policy
21 did not -- did not start until May 31st, 2007?

22 A. Like I said, I don't remember seeing this
23 policy -- this paper before. I don't remember
24 seeing this page. So was I aware of it? No. I
25 don't remember seeing this paper.

1 Q. Okay. So when you went in and paid your
2 premium May 31st, 2007, did U.S. Auto say anything
3 to you?

4 A. No.

5 Q. Did they tell you you were late?

6 A. No.

7 Q. Did they tell you your new monthly term
8 was starting up?

9 A. No.

10 Q. Did you ask them whether you had any
11 lapse in coverage?

12 A. No. Why would I? I paid by the
13 expiration date.

14 MR. SAMPSON: Just answer his questions.
15 It will go a lot easier. Just answer his questions.

16 THE WITNESS: Okay.

17 MR. SAMPSON: Are you done with 8?

18 MR. DOUGLAS: Yeah, sure. All right.

19 BY MR. DOUGLAS:

20 Q. And I'd like to show you what we're
21 marking as Exhibit 9, once your attorney takes a
22 look at it.

23 (Whereupon, Exhibit No. 9 was
24 marked for identification.)

25 BY MR. DOUGLAS:

1 Q. And I'm going to ask you if you've ever
2 seen that before?

3 A. Yes, I have.

4 Q. Can you tell me what that is?

5 A. Another renewal statement.

6 Q. And that was the renewal that, I guess,
7 was sent to you in June of 2007 for your July
8 policy?

9 A. Correct.

10 Q. And again, would you agree with me it
11 shows the renewal amount as \$134 and that's
12 surrounded by stars in the middle there?

13 A. Yes.

14 Q. Okay. Would you agree with me that also
15 the next sentence says, "No later than 6/30/07?"

16 A. Correct.

17 Q. And again, down at the bottom of the page
18 on that stub, the payment stub, again, the due date
19 says 06/30/07?

20 A. Correct.

21 Q. Okay. Do you know if you made that --
22 that payment by 6/30/07?

23 A. I can't tell you. I don't remember the
24 day I made the payment.

25 Q. Okay. And I think you said you thought

1 the accident happened over July 4th weekend or
2 something to that --

3 A. July 4th weekend, I know because that was
4 the function.

5 Q. Were you there -- were you there for
6 longer than just the weekend?

7 A. I couldn't tell you the exact dates I was
8 there. I told you I was there for the 4th of July
9 weekend, and we left the day that the accident
10 happened. I was on my way home when the accident
11 happened.

12 Q. If I told you that our records -- and
13 everybody I think in the case would agree -- that
14 that show the accident happened on July 8th, 2007,
15 would you have any reason to disagree with that?

16 A. No.

17 Q. Okay. So does that refresh your
18 recollection at all as to how long you were up there
19 before the accident occurred?

20 A. July 6th? Was that the July 6th?

21 Q. Okay. So you went up after the 4th? Is
22 that what you are saying?

23 A. Obviously, yes, yes.

24 Q. Because you were up -- were you up there,
25 I guess, two days, you're saying, before the

1 accident?

2 A. Yes.

3 Q. Okay. By the way, did you ever try to
4 make a payment on July 4th weekend or something like
5 that on your policy?

6 A. Not that I recall.

7 Q. Okay. All right. Thank you.

8 MR. DOUGLAS: All right. I guess we'll
9 go to 10.

10 (Whereupon, Exhibit No. 10 was
11 marked for identification.)

12 BY MR. DOUGLAS:

13 Q. Okay. After I show that to your
14 attorney, I'd like you to take a look at what we've
15 marked as Exhibit 10 for identification, and I'll
16 ask you if if you've ever seen that before.

17 A. Yes.

18 Q. What is that?

19 A. A receipt of payment.

20 Q. And when is that from?

21 A. July 10th.

22 Q. Okay. Do you have any reason to disagree
23 that that's the date that you made your July 2007
24 payment?

25 A. No.

1 Q. And July 10th is after July 8th; is that
2 correct?

3 A. Correct.

4 Q. Okay. So does that refresh your
5 recollection at all as to when you made your July
6 payment in regard -- in relation to the accident?

7 A. I made this payment on July 10th, 2007.

8 Q. And that was after the accident?

9 A. That's correct.

10 Q. And you said you drove back July 8th?

11 A. That's correct.

12 Q. And then within two days you went in and
13 made your payment?

14 A. That's correct.

15 Q. Had you spoken to James Nalder after you
16 returned to Las Vegas but before you made this
17 payment?

18 A. Actually, no.

19 Q. Did you speak to Mr. Nalder's counsel
20 prior to making this payment?

21 A. No.

22 Q. Did you speak to anyone?

23 A. No.

24 Q. Okay.

25 A. I only spoke to my old lady when I went

1 to bed. What do you mean? As far as this case, no.

2 Q. No. In regard to this payment?

3 A. No, never.

4 Q. Okay. So you didn't realize that you
5 hadn't made your payment, and after this accident
6 you got back to town and made this payment?

7 MR. SAMPSON: I'm going to object to the
8 form of the question. I think it's vague.

9 THE WITNESS: Can you explain the
10 question you're asking me again?

11 BY MR. DOUGLAS:

12 Q. Yeah, sure. I mean, we -- you agreed
13 that your -- the accident occurred probably
14 July 8th, 2007?

15 A. Correct.

16 Q. And we agreed that you made your payment
17 on July 10th, 2007?

18 A. That's correct.

19 Q. Okay. And I'm asking you is it the case
20 that after this accident, which you obviously feel
21 horrible about, you knew you didn't have insurance
22 and you went in and you made this payment when you
23 got back to town?

24 A. No. I knew I had insurance. I had
25 insurance. I did not pay late. I paid before the

1 expiration date.

2 Q. Okay. Okay. And when you called the
3 insurance company, you said, to report the claim --

4 A. Correct.

5 Q. -- they didn't tell you that you were --
6 you didn't have coverage during that time?

7 A. No, they did not. They took my claim.

8 Q. No one -- no one told you there was a
9 problem with the coverage?

10 A. No.

11 Q. Did you discover at some point that there
12 was a problem with your coverage?

13 A. I received a phone call two days later
14 from UAIC stating that they were not going to cover
15 me on the claim that I had made earlier. They said
16 that I -- it was not covered.

17 Q. Okay. So you knew that UAIC was
18 maintaining you didn't have coverage when the
19 accident happened?

20 A. They said that I did not have coverage
21 the date that the accident happened, yes.

22 Q. And how long after the accident was that?

23 MR. SAMPSON: I'll object to the form.

24 THE WITNESS: Let me see, the 8th -- a
25 week, five -- five to seven days.

1 BY MR. DOUGLAS:

2 Q. Okay. How did you feel about that?

3 A. I didn't understand why.

4 Q. Okay. What --

5 A. No one ever explained to me exactly why
6 neither. They said that I was not covered, and
7 after that they just -- I could not understand why.

8 Q. Okay.

9 A. I never was able to get in touch with
10 anybody ever after that to explain to me why.

11 Q. Okay. Did you try?

12 A. Yes, I did.

13 Q. Okay.

14 A. I tried to call, but I could never get
15 anybody on the phone that would -- that would give
16 me any explanation why. No one would talk to me at
17 UAIC.

18 Q. Okay. Earlier I asked you if you spoke
19 to anyone at UAIC --

20 A. No.

21 Q. -- and you said you had, you had called,
22 and you had called and spoken to someone twice?

23 A. Yes.

24 Q. Okay. But you never mentioned to me that
25 you called and didn't get a response?

1 A. No.

2 MR. SAMPSON: Object to the form of
3 the -- hold on. I'm going to object to the form of
4 the question. You can ask a question, please.
5 That's not a question. Do you have a question?

6 BY MR. DOUGLAS:

7 Q. Is that true?

8 A. Is what true?

9 Q. Well, earlier you told me you did speak
10 to people at UAIC twice; is that correct?

11 A. Twice, yes, I did.

12 Q. Okay. And you never mentioned to me that
13 there were other attempts, when I asked you, when
14 you tried to call UAIC; is that right?

15 MR. SAMPSON: I'm going to object to the
16 form of the question. It misstates the testimony in
17 the case. You didn't ask him if he ever tried to
18 call. You asked him who he spoke with and he
19 answered.

20 BY MR. DOUGLAS:

21 Q. You can still answer.

22 A. I never spoke to anybody else.

23 Q. Okay. Did you try to call U.S. Auto to
24 get this straightened out?

25 A. No.

1 Q. Why not?

2 A. They were just a broker.

3 Q. So you never thought, you know, "Hey,
4 maybe I could call them and they could help me
5 figure this out"?

6 A. No, I never thought that. They were a
7 broker.

8 Q. Well, how did it make you feel, then,
9 that your insurance company was saying they weren't
10 going to cover you?

11 MR. SAMPSON: I'll object. Ask and
12 answered.

13 But you can answer again.

14 THE WITNESS: How did I feel? I felt
15 horrible after all of this shit had happened.

16 BY MR. DOUGLAS:

17 Q. Right. I mean, because your friend's --
18 your friend's daughter was hurt; right?

19 A. Yes.

20 Q. Okay. And so you were concerned about
21 her welfare; right?

22 A. (Witness nods head.)

23 Q. Is that a "yes"?

24 A. Yes.

25 Q. Okay. And so you wanted -- you wanted to

1 make sure you had coverage to help her.

2 Is that fair?

3 MR. SAMPSON: I'll object to the form of
4 question.

5 THE WITNESS: Yes and yes.

6 BY MR. DOUGLAS:

7 Q. Okay. But yet you never called anyone at
8 your agency to try and find out why there was a
9 problem with your coverage?

10 A. They called and told me that I was not
11 covered.

12 Q. Okay. Did you think that was fair?

13 A. No.

14 Q. Okay. Did you continue to be insured
15 with them afterwards?

16 A. Yes, I did.

17 Q. Okay. Why?

18 A. I felt that everything would come out all
19 right, that everything would be worked out. I fully
20 felt that I was fully covered when I had the
21 accident, that everything would get worked out.

22 That even after the lawsuit against me, UAIC would
23 see where I was coming from and I would be covered.

24 Q. Okay. So you agree with me you continued
25 to renew policies with them through 2008.

1 Is that -- is that fair?

2 A. Yes.

3 Q. And this was even though you didn't
4 understand why they weren't covering you for your
5 accident with Cheyanne; is that right?

6 A. Yes.

7 Q. When was the first time you spoke with
8 counsel for the Nalders?

9 A. I don't recall -- I don't recall the
10 date. I don't recall the date.

11 Q. How soon after the accident?

12 MR. SAMPSON: I'll object to form.

13 THE WITNESS: Weeks after.

14 BY MR. DOUGLAS:

15 Q. And what did Counsel tell you at that
16 point?

17 A. I don't think he told me anything. I
18 went in there and showed him that I was covered.

19 Q. Okay. Anything else?

20 A. I was not in the right state of mind
21 during the conversation, I'll tell you that right
22 now.

23 Q. Okay.

24 A. I don't remember the exact discussion.

25 Q. Okay.

1 A. I knew that there was just -- yeah, I
2 don't remember.

3 Q. You don't remember?

4 A. I don't remember the exact depth of our
5 conversation. I know that I went in there and
6 expressed to him that I was covered.

7 Q. Did he tell you to do anything?

8 A. No, not that I recall.

9 Q. Did he -- do you recall anything that he
10 told you?

11 MR. SAMPSON: I'll object to the form.
12 It's been asked and answered.

13 THE WITNESS: No.

14 BY MR. DOUGLAS:

15 Q. Okay. Who told you to contact and --
16 strike that.

17 Did you talk to Mr. Sampson?

18 A. Yes.

19 Q. And who told you to contact Mr. Sampson?

20 A. Mr. Nalder.

21 Q. Okay. Did Mr. Sampson explain that he
22 was representing the Nalders and that they had a
23 claim against you?

24 A. Mr. Nalder is the one who expressed that.

25 Q. Okay. And he asked you to call his

1 attorney?

2 A. Yes.

3 Q. And you did that?

4 A. Yes.

5 Q. And you went in and met him?

6 A. I went in and met him, yes.

7 Q. Okay.

8 MR. DOUGLAS: Let's go and mark this as
9 Exhibit 11.

10 (Whereupon, Exhibit No. 11 was
11 marked for identification.)

12 BY MR. DOUGLAS:

13 Q. And after your counsel has had a chance
14 to look at them, I'm showing you what we've marked
15 as Exhibit 11, and I'm going to ask you if you've
16 ever seen that before.

17 A. Is this -- what is this?

18 Q. That's what I'm asking you. Have you
19 ever seen it before?

20 A. I don't recall seeing this, no. My
21 signature is on it. I mean, what is this?

22 Q. Well, I'll proffer to you that that's the
23 complaint that was filed by the Nalders against you
24 in the underlying case.

25 A. I was aware of that. I was aware of

1 that.

2 Q. You were aware of the case?

3 A. I was aware of the case, yes.

4 Q. Were you ever aware of that complaint?

5 A. That I was being sued; right?

6 Q. Did you ever get served with a copy of
7 that?

8 A. Yes, I believe I did, but I don't
9 remember this document exactly.

10 Q. Okay. And that's -- that's fine. I'm
11 just asking you if you remember being served in that
12 case by a processor --

13 A. Yes, I was.

14 Q. You were?

15 A. Yes.

16 Q. Okay. And what did you do after you were
17 served with that paper?

18 MR. SAMPSON: I'll object to the form.

19 THE WITNESS: I didn't do nothing.

20 BY MR. DOUGLAS:

21 Q. No? Did you send it to UAIC?

22 A. No.

23 Q. Did you notify UAIC at all that you had
24 been served in that action?

25 A. No.

1 Q. Were you continuing to speak with
2 Mr. Sampson during this time?

3 A. I don't recall. I -- at the time of
4 this, I don't recall speaking with him again. I
5 don't recall, no.

6 Q. When was the next time you spoke to him
7 after that first conversation?

8 MR. SAMPSON: And I'll just object to the
9 form.

10 Well, I guess, if you're -- if you're
11 only going to talk about time frames, then go ahead
12 and answer the question. But if the next time you
13 spoke was when I was your counsel, I don't want you
14 to say anything other than this was the time I spoke
15 with him, not give any content.

16 Do you understand?

17 THE WITNESS: No. I'm confused right
18 now.

19 BY MR. DOUGLAS:

20 Q. I want to know if you remember the next
21 time you spoke with Mr. Sampson after that first
22 conversation we just talked about. That's all I
23 want to know right now is if you remember when.

24 A. The next time I spoke to him was when I
25 spoke to him about being my attorney.

1 Q. Okay. So you had no contact with him
2 between that first conversation and when he --
3 you -- he was going to be your attorney?

4 A. No.

5 Q. Can I ask you, did he contact you about
6 being your attorney or did you contact him?

7 A. I contacted him.

8 Q. Okay. Do you remember when that was?

9 MR. SAMPSON: You can go ahead and answer
10 as to when, if you recall.

11 THE WITNESS: I do not recall the date,
12 no.

13 BY MR. DOUGLAS:

14 Q. Okay.

15 A. It was after all this paperwork, though.

16 Q. Okay. Can I ask you, was it last year?

17 A. It could have been before then.

18 Q. Okay. But you just don't know?

19 A. No, I don't. I don't remember the date.

20 Q. Okay. Was it after the judgment was
21 entered against you?

22 A. Yes.

23 Q. How did you -- did you find out about
24 that judgment, by the way?

25 A. Yeah. I got it in the mail.

1 Q. Okay. Who sent it to you?

2 A. I don't know who sent it. I got it in
3 the mail. I would assume the courts.

4 Q. Okay. And did you contact Mr. Sampson
5 sometime after that?

6 A. That's when I contacted him. I -- first
7 I contacted Mr. Nalder.

8 Q. Okay. What did you -- what did you tell
9 Mr. Nalder?

10 A. "What's up with this?"

11 Q. Okay.

12 A. Then I got in contact with Mr. Sampson.

13 Q. Okay. And did Mr. Sampson offer to be
14 your attorney?

15 MR. SAMPSON: I'm going to object to the
16 form of the question, and I'm instructing him not to
17 answer to the extent it would reveal attorney/client
18 privilege, which I don't see how it couldn't.

19 So I'm instructing you not to answer the
20 question, any communication between you and I.

21 MR. DOUGLAS: Okay. Let the record
22 reflect the counsel has instructed his witness not
23 to answer.

24 BY MR. DOUGLAS:

25 Q. Did Mr. Sampson offer you any personal

1 stake in this lawsuit to represent you?

2 A. No.

3 MR. SAMPSON: Object to the form of the
4 question.

5 Don't answer the question.
6 Attorney/client privilege.

7 MR. DOUGLAS: Again, let the record
8 reflect that the counsel has instructed his client
9 not to answer.

10 MR. SAMPSON: What did you and UAIC talk
11 about yesterday?

12 MR. DOUGLAS: I'm sorry, did you say
13 something?

14 MR. SAMPSON: I did.

15 MR. DOUGLAS: Oh, okay. I'm sorry, I
16 guess I missed it.

17 MR. SAMPSON: Do you want me to say it
18 again?

19 MR. DOUGLAS: Sure.

20 MR. SAMPSON: What did you and UAIC talk
21 about yesterday?

22 MR. DOUGLAS: Okay.

23 MR. SAMPSON: Would you like to talk to
24 us about what you and your clients talk about?

25 MR. DOUGLAS: Okay.

1 MR. SAMPSON: I'm just trying to explain
2 the privilege to you because apparently you don't
3 seem to understand it.

4 MR. DOUGLAS: Are you done, Counsel?
5 Again --

6 MR. SAMPSON: Not in the least. Not in
7 the least. If you would like to ask your
8 question --

9 MR. DOUGLAS: I've given you some leeway
10 with your speaking objections and your comments --

11 MR. SAMPSON: There's a pause, and I want
12 to explain the attorney/client privilege to you --

13 MR. DOUGLAS: You're just delaying the
14 deposition.

15 MR. SAMPSON: No, I'm not.

16 MR. DOUGLAS: You are.

17 MR. SAMPSON: I'm trying to expedite it.
18 You could have stated three questions just now if
19 you educated yourself on the attorney/client
20 privilege. You are not going to ask any
21 questions about what was talked about --

22 MR. DOUGLAS: I can ask him. If you want
23 to instruct him not to answer, that's fine.

24 MR. SAMPSON: It's inappropriate. It's
25 completely inappropriate.

1 MR. DOUGLAS: Okay. Well, we can
2 disagree.

3 Why don't we go ahead and mark this. I
4 guess we are on Exhibit 12.

5 (Whereupon, Exhibit No. 12 was
6 marked for identification.)

7 BY MR. DOUGLAS:

8 Q. I'm showing your counsel what we're
9 marking as Exhibit 12 for identification. I'll ask
10 you if you've ever seen this before.

11 A. Yes, I have.

12 Q. And can you tell me what that is?

13 A. It's an assignment of monies that was
14 against me, a judgment against me for -- a judgment
15 against me, and it's me.

16 Q. Okay. Did you sign that?

17 A. Yes, I did.

18 Q. Can you tell me the date you signed it?

19 A. On the 28th of February.

20 Q. Of this year?

21 A. 2010.

22 Q. Okay. And when you signed that, was that
23 the first time you spoke to Mr. Sampson since the
24 time of the judgment that was entered against you?

25 A. No. I believe -- I believe this was

1 around the time when I started to speak to Dave.

2 I --

3 MR. SAMPSON: I'm not going to answer the
4 question. He just wants to know if when you signed
5 this, was it around the time you and I first spoke.

6 Do you recall?

7 THE WITNESS: Yes, it is. Yes, yes.

8 BY MR. DOUGLAS:

9 Q. Okay. Okay. Do you -- did you have an
10 attorney represent you to sign that assignment?

11 A. I believe it was Dave.

12 Q. No other attorney?

13 A. No.

14 Q. Can you see the first line that says "for
15 value received"?

16 A. Yes.

17 Q. Do you have any understanding as to what
18 that "value you received" was?

19 A. I don't understand the question.

20 Q. Okay. Did Mr. Sampson give you anything
21 in return for giving him that assign -- that you
22 giving him that assignment?

23 MR. SAMPSON: He wants to know if I
24 personally gave you anything.

25 THE WITNESS: No. Dave never gave me

1 anything.

2 BY MR. DOUGLAS:

3 Q. Now, that wasn't my question. I didn't
4 ask if he personally gave you anything, which --

5 A. Dave has not given me anything.

6 MR. SAMPSON: The question was did
7 Mr. Sampson give you anything?

8 BY MR. DOUGLAS:

9 Q. Right. Did he give you a covenant not to
10 execute on that judgment against you?

11 A. I don't know what you mean by that.
12 What's covenant to execute? What does that mean?

13 Q. Well, normally -- and I'll just tell you
14 this -- normally when plaintiffs' attorneys have a
15 defendant sign an assignment like that, they
16 normally release them from the judgment so that they
17 can't still go after you later if they are
18 unsuccessful.

19 And I'm asking if Mr. Sampson did that
20 for you here?

21 A. No. I'm under the impression that
22 Cheyanne Nalder and her father are still in pursuit
23 of me personally. Personally, I mean if --

24 Q. That's your understanding?

25 A. If the insurance company does not support

1 me in my claim, then they're still going to go after
2 me.

3 Q. And you understand Mr. Sampson represents
4 the Nalders; right?

5 A. Which I asked him to represent me as
6 well.

7 Q. Okay. Okay. So -- and I just want to
8 make clear. So you don't know for what "for value
9 received" means in that assignment.

10 Is that fair?

11 MR. SAMPSON: I'm going to object to the
12 form of the question. He hasn't said that in the
13 least. That completely misstates his testimony.

14 THE WITNESS: Value received means -- no,
15 I understand it. It means that the three and a half
16 million dollars judgment.

17 BY MR. DOUGLAS:

18 Q. That's what you think it means?

19 A. That if I win this money, it goes to
20 Cheyanne.

21 Q. If you win this money, is that what you
22 think?

23 A. No. This is against me, the three and a
24 half million is against me.

25 Q. Right. But you --

1 A. But if I -- if I don't -- I owe it, no
2 matter what.

3 Q. Okay. Well, so I just want to know
4 what -- to you, what does "for value received" mean
5 on that document?

6 MR. SAMPSON: I'll object to the extent
7 that he's already responded to it.

8 You can go ahead.

9 THE WITNESS: It means that I owe
10 Cheyanne Nalder three and a half million dollars for
11 a judgment that was against me.

12 BY MR. DOUGLAS:

13 Q. Okay. So -- and just to be clear -- and
14 I'm sorry if I asked this already -- did Mr. Sampson
15 or his office offer you anything in return for
16 signing that assignment?

17 MR. SAMPSON: I'll object to form.

18 THE WITNESS: No.

19 BY MR. DOUGLAS:

20 Q. No? Is that your answer?

21 A. No.

22 Q. Okay. All right. And --

23 A. You asked me did Mr. Sampson --

24 MR. SAMPSON: Right.

25 THE WITNESS: -- ever promise me anything

1 or offer me anything; correct?

2 BY MR. DOUGLAS:

3 Q. Mr. Sampson, his firm, or the Nalders.

4 MR. SAMPSON: Now, that's a whole
5 different question.

6 THE WITNESS: Now, the Nalders -- no.
7 Mr. Sampson and his office never promised me
8 anything.

9 BY MR. DOUGLAS:

10 Q. Okay. Have the Nalders ever promised you
11 anything?

12 A. Yes.

13 Q. What have they promised you?

14 A. That's between me and them, isn't it?

15 Q. No. I'm sorry, sir, you're going to --
16 if you could, we'd like you to answer.

17 MR. SAMPSON: If it's something they
18 promised you in exchange for signing the assignment
19 and what it is they said they would do, that's
20 perfectly discoverable.

21 BY MR. DOUGLAS:

22 Q. Have the Nalders promised you anything,
23 sir?

24 A. I'm not understanding the question
25 exactly.

1 Q. You just told me -- I asked you before if
2 anyone, the Nalders or Mr. Sampson or his office
3 promised you anything, and originally you said no.
4 But when I included the Nalders you said, Oh, that's
5 a different question. They did promise me
6 something.

7 Well, now I'm asking you what that is.
8 What did the Nalders promise you?

9 A. The Nalders had promised to help me in
10 the case against my insurance company --

11 Q. Okay.

12 A. -- but they will continue to go after me
13 for the three and a half million dollars.

14 Q. Okay. And just to be clear, I think you
15 already answered this, but around this time in
16 February 2010 is when you first spoke to Mr. Sampson
17 again about representing you?

18 MR. SAMPSON: I'll object to the form.

19 THE WITNESS: Somewhere around that time,
20 yes.

21 BY MR. DOUGLAS:

22 Q. Is that correct?

23 A. Yes.

24 Q. Okay.

25 MR. SAMPSON: Object to the form again.

1 BY MR. DOUGLAS:

2 Q. And you hadn't spoken to him since right
3 after the accident, that other conversation we
4 talked about; is that true?

5 A. Correct.

6 Q. Thank you.

7 A. Can I take a bathroom break again?

8 Q. Sure.

9 THE VIDEOGRAPHER: We are going off the
10 record at 3:47 p.m.

11 (Off the record.)

12 THE VIDEOGRAPHER: This is the beginning
13 of Videotape No. 4 in the continuing deposition of
14 Gary Lewis. We are back on the record at 3:55 p.m.

15 BY MR. DOUGLAS:

16 Q. And now let the record reflect that we
17 took another eight minute or so break, and you had a
18 chance to talk with your attorney again; is that
19 correct?

20 A. Yes.

21 Q. Do you remember -- just to get back to, I
22 think, that July 10th payment we were talking about.

23 Do you remember if you paid with a money
24 order?

25 A. Yes.

1 Q. Would that have been from the Circle K?

2 A. Yes.

3 Q. Sir -- and to hopefully move things along
4 quicker -- before, you know, we were going through
5 the declarations pages that I know you said you
6 hadn't seen and the renewal statements that you had
7 gotten; is that correct?

8 A. Yes.

9 Q. And also, you said these -- you were
10 familiar with the receipts of payment.

11 You agree with me that after -- after
12 this accident and what happened in July, you
13 continued to be insured with United Auto?

14 Is that fair?

15 A. Yes.

16 Q. And then you continued, I think, through
17 the spring of 2008 -- actually, the summer of 2008.

18 Does that sound about right?

19 A. Yes.

20 Q. Okay. Would you agree with me so we
21 don't have to go through each and every one of them,
22 would you agree with me that, let's say, out of the
23 next, you know, ten renewal notices through the
24 summer of 2008, would you agree with me that perhaps
25 on more than half of them you didn't pay prior to

1 the due date that was listed?

2 MR. SAMPSON: I'll object to the form.

3 THE WITNESS: Repeat that to me again.

4 BY MR. DOUGLAS:

5 Q. Sure. Sure. So we've already talked
6 about July 2007; right?

7 A. Yes.

8 Q. From August 2007, to say, August 2008 --
9 that's, say, 12 renewal notices you would have
10 gotten.

11 Is that fair?

12 A. Okay.

13 Q. Okay. And would it be fair, would you
14 agree with me that on perhaps more than half of
15 those, so more than six, over those next 12 months,
16 you paid that premium after the due date that was
17 listed?

18 Would you agree with that?

19 MR. SAMPSON: I'll object to the form.

20 THE WITNESS: Yes.

21 BY MR. DOUGLAS:

22 Q. And -- and I understand what you said
23 before about what you thought it meant and -- but
24 I'm just talking about the due date that was listed.

25 A. Yes.

1 Q. Okay. So that saves us some time, so
2 thank you.

3 Can I ask you, just to get back to what
4 you thought the renewal notice meant, you told me
5 that you believed your policy was a year-long
6 policy; is that right?

7 A. Yes.

8 Q. Did you -- do you have any concern over
9 why the statements were called renewal statements
10 that you got each month?

11 A. Did I ever give it any -- say that again.

12 Q. Yeah. Did it ever give you any concern?

13 A. A renewal? No.

14 Q. Well, I mean, what would you be renewing
15 if you had a year-long policy?

16 MR. SAMPSON: I'll object to the form.
17 Calls for a legal conclusion.

18 THE WITNESS: I was under the impression
19 I was making my monthly payment.

20 BY MR. DOUGLAS:

21 Q. Okay. So the fact that it said renewal
22 statement, you didn't give that any thought?

23 A. No. It was a new statement. It was my
24 new -- my new monthly statement that I was aware
25 that I would get every month.

1 Q. Okay. And the fact even that you talked
2 about the expiration date, the expiration dates
3 weren't for a year out, were they?

4 A. They were on the first page I got, the
5 first paper I got. I believe that when I went down
6 there to the U.S. Auto, they gave me my paperwork
7 and told me I had a year coverage.

8 Q. Okay. Do you still have that paperwork?

9 A. I believe I've seen it.

10 Yeah, I believe it's all my paperwork
11 that we have together, Dave, is it not?

12 Q. I'm asking you.

13 A. I -- yes.

14 MR. SAMPSON: It is your testimony.

15 BY MR. DOUGLAS:

16 Q. Do you still have it?

17 A. Yes, yes, I do.

18 Q. Okay. Is that something you provided
19 your attorney, or is that something that --

20 A. Yes.

21 Q. -- he showed you?

22 A. No. Yes.

23 Q. You provided it?

24 A. (Witness nods head.)

25 Q. Do you still have a copy of that -- those

1 papers?

2 A. Yes.

3 Q. Okay.

4 A. I believe I do, yes.

5 Q. Where are they --

6 A. I believe I do.

7 Q. Where are they?

8 A. In a pile of all of my paperwork at home.

9 Q. Okay. Could you provide those to the
10 court reporter after -- after we're done today?
11 Copies of them?

12 A. I can go home and find them, yeah.

13 Q. Okay. Great. And you believe that those
14 papers, they told you had a year-long policy?

15 A. Yes. I had a one year -- from one --
16 yeah, it was one year, '07 to '08.

17 Q. And so it didn't bother you at all that
18 the renewal statements said "renewal" on them?

19 MR. SAMPSON: Object to the form.

20 And tell him for the fifth and hopefully
21 final time.

22 THE WITNESS: No.

23 BY MR. DOUGLAS:

24 Q. Okay. And I'll show you just what we'll
25 mark -- that we've marked as Exhibit 9 again. And

1 just take -- have you take a look at that for a
2 second.

3 And you've told me before that you
4 believed you had until the expiration date that is
5 listed in the top right corner to pay your premium;
6 is that right?

7 A. Correct.

8 Q. Okay. And what expiration date is listed
9 there?

10 A. July 31st.

11 Q. Of what year?

12 A. '07.

13 Q. When did you take out this policy?

14 A. In '07.

15 Q. I think we talked about the end of March
16 2007. Is that fair?

17 A. Okay.

18 Q. Yes?

19 A. Yes.

20 Q. Okay. So the policy should have been --
21 as you've said -- stated, a year term would have
22 been to March 2008; is that right?

23 A. That's correct.

24 Q. So why -- why did you believe the
25 expiration date listed there --

1 A. Expiration --

2 MR. SAMPSON: Hold on. Wait for him to
3 ask a question.

4 BY MR. DOUGLAS:

5 Q. Why did you believe the expiration date
6 listed there was your due date?

7 MR. SAMPSON: I'll object to the form.
8 You can answer.

9 THE WITNESS: I felt that the expiration
10 date was the date that I had to make the payment to
11 avoid a lapse in coverage. That was the -- that was
12 like my grace period end. The expiration date would
13 have been my expiration of my -- of my grace period
14 to provide or to avoid the lapse in coverage.

15 BY MR. DOUGLAS:

16 Q. Okay. You've had insurance -- car
17 insurance before this policy; is that right?

18 A. Yes, sir.

19 Q. Okay. And normally, when you use
20 expiration date, we're talking about the end of your
21 policy period; is that right?

22 MR. SAMPSON: I'll object to the form.
23 Calls for legal conclusion.

24 BY MR. DOUGLAS:

25 Q. Is that fair?

1 A. No.

2 Q. No? What does "expiration" mean to you?

3 MR. SAMPSON: I'll object to the form.

4 THE WITNESS: Answer?

5 MR. SAMPSON: Yeah, go ahead.

6 THE WITNESS: Expiration date means to me
7 that if I don't pay by this date, then my policy
8 will be canceled.

9 BY MR. DOUGLAS:

10 Q. Okay. So you didn't -- you didn't think
11 that, even though it says "effective date" above
12 that, you didn't --

13 A. I never really thought about my effective
14 date.

15 Q. No?

16 A. I knew my effective date was the day I
17 walked in there and got insurance.

18 Q. Okay. Well, is that the effective date
19 that's listed on the top of Exhibit 9?

20 A. Can I explain something?

21 MR. SAMPSON: Just first answer that
22 question.

23 THE WITNESS: What was the question
24 again?

25 BY MR. DOUGLAS:

1 Q. Yeah. Well, what is the expiration date
2 that's listed on the top of Exhibit 9?

3 A. Effective date is June 30th.

4 Q. Okay. Was that the day you walked in to
5 get your policy?

6 A. No, it is not.

7 Q. Okay. So -- but you thought it should
8 have been; right? Is that what you're telling me
9 now?

10 MR. SAMPSON: I'll object to the form.
11 Misstates testimony.

12 Go ahead and answer the question.

13 THE WITNESS: Ask me that again.

14 BY MR. DOUGLAS:

15 Q. Yeah, sure. You've just told me that you
16 thought that the effective date was the date that
17 you walked in and got your policy; is that right?

18 MR. SAMPSON: Same objection.

19 THE WITNESS: No.

20 BY MR. DOUGLAS:

21 Q. Okay. So what did that effective date
22 mean to you, then, on that -- on that renewal?

23 A. I never -- I never paid attention to the
24 effective date when I got these renewal statements.

25 Q. Okay. But you took the expiration date

1 to mean that was your payment due date?

2 A. That the expiration was the date that I
3 needed to make my payment to avoid a lapse in
4 coverage.

5 Q. So you didn't -- you didn't link that
6 expiration date with the effective date right above
7 it?

8 A. No. Whenever I got my bills, I needed to
9 know when I needed to make my payments by. That's
10 what to avoid the lapse in coverage, and that's how
11 I read it.

12 Q. So you just ignored the effective date?

13 MR. SAMPSON: I'll object to the form of
14 the question.

15 Tell him for the fifth time and last
16 time.

17 THE WITNESS: Yes. I did not pay
18 attention to the effective date.

19 BY MR. DOUGLAS:

20 Q. Okay. So you didn't realize that that
21 was telling you you were actually renewing your next
22 monthly policy term?

23 MR. SAMPSON: I'll object to form.
24 Misstates --

25 THE WITNESS: I did not pay attention to

1 the effective date.

2 BY MR. DOUGLAS:

3 Q. Okay. So we've talked about for all of
4 the months that you were -- these insurance renewal
5 notices with UAIC that we've talked about from March
6 of '07 to April of 2008, for all that time, even
7 after they told you weren't covered for the accident
8 with Cheyenne, you never noticed that it was a
9 monthly effective date and expiration date right
10 there on the renewal notice?

11 MR. SAMPSON: I'll object to the form.

12 Go ahead and answer again.

13 THE WITNESS: Umm.

14 MR. SAMPSON: Just humor him and answer
15 again.

16 THE WITNESS: I never paid attention to
17 the effective date.

18 BY MR. DOUGLAS:

19 Q. All right. Have you ever been convicted
20 of any felonies, sir?

21 A. Yes, sir, I have.

22 Q. How many?

23 A. I don't recall the exact number. I think
24 it was five -- five or seven.

25 Q. Five or seven?

1 A. Five or seven. It was all in one case,
2 one case.

3 Q. And what was that in relation to?

4 A. It's felony forgery.

5 Q. Anything else?

6 A. A felony forgery carried a couple
7 convictions as well as grand theft, you know, \$500.

8 Q. How many counts of -- for forgery were
9 there?

10 A. I believe it was three. I cannot recall
11 the exact number.

12 Q. What was the -- what was the charge?

13 A. Felony forgery was the -- was the initial
14 charge, felony forgery.

15 Q. Were you --

16 A. Grand theft.

17 Q. -- convicted of that?

18 A. Yes, I was.

19 Q. And what were you convicted of forging?

20 A. Forgery of checks.

21 Q. For what, do you know? Do you remember?

22 A. For what, what do you mean?

23 Q. What kind of checks?

24 A. Fraudulent checks.

25 Q. Okay.

1 A. I wrote bad checks.

2 Q. Anything else?

3 MR. SAMPSON: I'll object to the form.

4 THE WITNESS: Those are the only felonies
5 on my record.

6 BY MR. DOUGLAS:

7 Q. Okay. Are there other felonies you've
8 been charged with?

9 MR. SAMPSON: I'll object to the form and
10 instruct the witness not to answer. It's not
11 discoverable.

12 MR. DOUGLAS: So you're instructing the
13 witness not to answer that question?

14 MR. SAMPSON: Would you read my -- what I
15 just said back, please.

16 (The court reporter read the requested
17 portion of the record pursuant to
18 Counsel's request.)

19 MR. DOUGLAS: Okay. Let the record
20 reflect that the counsel has instructed his client
21 not to answer that question.

22 BY MR. DOUGLAS:

23 Q. Sir, have you ever been convicted of any
24 other crimes involving fraud or dishonesty?

25 MR. SAMPSON: I'll object to the form.

1 You can answer that.

2 THE WITNESS: No.

3 BY MR. DOUGLAS:

4 Q. When did that occur, that felony
5 conviction?

6 A. God, here you go with your dates again.

7 Q. I understand, but, you know --

8 A. It was so many years ago.

9 Q. Okay.

10 A. '98; '97, '98, somewhere around there.

11 Q. Okay. And again, I know dates sometimes
12 everybody -- memories fade. We're just looking
13 for --

14 A. Which dates I'll tell you --

15 Q. -- what you remember --

16 A. -- when I -- when I -- when I was charged
17 with the dates and then when my conviction was, I
18 believe it was like four years later because I had
19 probation to go ahead and complete before the
20 conviction actually went through. So technically
21 speaking, I don't know the exact dates.

22 Q. Okay.

23 A. But I do not hide the fact that I made
24 mistakes when I was younger, and I did -- did some
25 stupid stuff.

1 Q. Okay. And I appreciate that, and I'm
2 not -- I wasn't -- I wasn't trying to say anything.
3 I was just -- to the best to your knowledge, what
4 you remembered.

5 A. Yep.

6 Q. Fair enough?

7 A. Long time, yeah.

8 Q. Okay. All right. Now, I don't think I
9 asked you, what's your highest level of education,
10 sir?

11 A. High school grad, 12, 12th.

12 Q. Okay. And do you work?

13 A. Yes.

14 Q. What do you do?

15 A. Plumber.

16 Q. How long have you been doing that?

17 A. Nine years.

18 Q. All right. Are you currently in a union
19 or --

20 A. Several.

21 Q. Are you currently working?

22 A. Very minimal, yes.

23 Q. Were you working back in July of '07?

24 A. July of '07. No. I can't believe --
25 wait. No, I don't think I was.

1 Q. Okay. How were you making money then,
2 back then?

3 A. Because my girlfriend was supporting me.

4 Q. Girlfriend was?

5 A. Yeah.

6 Q. Okay. Are you in debt?

7 A. Oh, yeah.

8 Q. Were you in debt back then?

9 MR. SAMPSON: Object to the form.

10 BY MR. DOUGLAS:

11 Q. In July --

12 A. No less than I am now.

13 Q. Okay. Fair enough. Have you ever
14 declared bankruptcy?

15 A. Yes, I have.

16 Q. How many times?

17 A. Well, that I don't know how -- I don't
18 know how to answer this question. I filed a
19 Chapter 7 years ago.

20 Q. Okay.

21 A. That one was completed. I started a
22 Chapter 13 in Nevada --

23 Q. Okay.

24 A. -- to save my home. That fell through.
25 I didn't complete it because I was upsidedown on my

1 house. It wasn't worth trying to save. I couldn't
2 afford it. So that Chapter 13 I did file for never
3 went through.

4 Q. Okay. Okay. So you filed twice but only
5 one bankruptcy was completed?

6 A. Was completed, yes.

7 Q. Okay. Fair enough. When was the
8 Chapter 13 here in Nevada?

9 A. You could probably tell me better than I
10 could. Can I ask my counselor for that answer?

11 MR. SAMPSON: If you don't know, just
12 tell him.

13 THE WITNESS: I don't know the exact
14 date.

15 BY MR. DOUGLAS:

16 Q. Okay.

17 A. It was before I moved home -- back home
18 to Nevada -- California.

19 MR. SAMPSON: We've had nothing but
20 trouble with dates.

21 MR. DOUGLAS: Fair enough.

22 BY MR. DOUGLAS:

23 Q. So you haven't made any large purchases
24 or anything lately?

25 A. Oh, no.

1 Q. So were you aware that your policy had
2 expired with UAIC on June 30th, 2007 when no payment
3 was received?

4 MR. SAMPSON: Object to the form of the
5 question.

6 THE WITNESS: No, I was not aware.

7 BY MR. DOUGLAS:

8 Q. Okay. So you didn't find that out until
9 you said UAIC called you a couple weeks after the
10 accident?

11 MR. SAMPSON: Object to the form of the
12 question.

13 BY MR. DOUGLAS:

14 Q. Is that right?

15 A. Yes.

16 Q. Do you ever -- when you called UAIC the
17 first time, you said, to make a claim, do you recall
18 telling the person you spoke to that the girl was
19 all right or something, words to that effect?

20 A. Nothing. But see -- repeat that to me
21 again.

22 Q. Sure. Do you remember -- do you remember
23 saying that to the person at UAIC?

24 A. That she was all right?

25 Q. Yeah.

1 A. Never. Never, because she was not.

2 Q. Well, we know that. But -- but that's
3 why I'm asking you if you ever said that?

4 A. I never, never said that, never.

5 Q. Okay. When you met with plaintiffs'
6 counsel shortly after the accident, did they ask you
7 if you had coverage?

8 A. Yes.

9 Q. Did they tell you to check your coverage
10 at all?

11 A. I brought in all the paperwork showing
12 that I was covered. When I did speak with them, I
13 brought in all my paperwork.

14 Q. Okay. Did they tell you that -- did they
15 discuss with you that UAIC was saying that you
16 didn't have coverage for the loss?

17 A. Yes.

18 Q. And did they tell you to do anything in
19 regards to that?

20 A. No.

21 Q. Do you know if James Nalder still resides
22 here in Nevada?

23 A. As far as I know, yes, he does.

24 Q. He does?

25 A. (Witness nods head.)

1 Q. At the time did he reside in Las Vegas
2 too?

3 A. Yes.

4 MR. SAMPSON: I'll object to the form.

5 BY MR. DOUGLAS:

6 Q. How far --

7 MR. SAMPSON: What was your answer?

8 Sorry.

9 BY MR. DOUGLAS:

10 Q. How far --

11 THE WITNESS: Yes.

12 MR. SAMPSON: Okay.

13 BY MR. DOUGLAS:

14 Q. How far did you guys live from each other
15 back -- back in 2007 when you were both here?

16 MR. SAMPSON: I'll object to the form.

17 THE WITNESS: Miles wise?

18 BY MR. DOUGLAS:

19 Q. Sure.

20 A. Approximately 15, 20 miles.

21 Q. Oh, okay. So you guys weren't neighbors
22 or anything?

23 A. No, no, no.

24 Q. Oh, okay. When you got a copy of the
25 default judgment that we spoke about before, did you

1 call United Auto at that point and let them know?

2 A. No.

3 Q. Have you received any money at all from
4 this lawsuit?

5 A. No.

6 Q. Have you ever been married?

7 A. Yes.

8 Q. When were you married? Roughly. Give us
9 a rough date.

10 A. Yeah, yeah, yeah, I can remember that.
11 1992 is when I got married.

12 Q. 1992, okay.

13 A. Actually, wait -- strike that. '93 is
14 when I got married. Divorced in '97, I believe it
15 was.

16 Q. Okay. All right. Are you still -- are
17 you still dating Kristen Scott?

18 A. Yes.

19 Q. Where -- and you said she resides in
20 San Diego?

21 A. That's correct.

22 Q. Do you know her address?

23 A. No.

24 Q. Could you provide it if asked?

25 MR. SAMPSON: It's in the disclosures.

1 MR. DOUGLAS: Okay.

2 MR. SAMPSON: So yes, we can provide it
3 again if you need us to.

4 MR. DOUGLAS: Okay. Just give me a
5 second here to go over my notes.

6 MR. SAMPSON: I have some follow-up if
7 that will help.

8 MR. DOUGLAS: I -- just give me one
9 second. Certainly.

10 BY MR. DOUGLAS:

11 Q. Is there any particular reason that you
12 went in to pay the July premium right after the
13 accident?

14 A. Yeah, because I had money.

15 Q. Okay. Did anyone tell you to go make the
16 payment?

17 A. No.

18 Q. You weren't concerned that you didn't
19 have coverage?

20 A. No.

21 Q. Okay. In terms of your statement
22 regarding your understanding of the renewal notices,
23 it that something you came to on your own, or did
24 somebody else tell you that?

25 A. It's what I read. That's how I read it.

1 Q. Okay. I just -- I don't know if I asked
2 this: Did you ever report this claim to your agent
3 U.S. Auto?

4 A. No.

5 MR. DOUGLAS: I'm sorry, Counsel, I think
6 you said you had some.

7 MR. SAMPSON: I do have some, I do. Do
8 you pass the witness at this point?

9 MR. DOUGLAS: I do.

10 MR. SAMPSON: Great, thank you.

11 **EXAMINATION**

12 BY MR. SAMPSON:

13 Q. I want to go over something we covered
14 here just at the very end. Counsel had asked you
15 something along the lines of when did you first
16 learn you weren't covered, and you said that was
17 when UAIC advised you sometime in July when you made
18 the claim. They called you a few days after that.

19 A. And told me that I wasn't covered, yes.

20 Q. Right. At this point in time, is it your
21 position that you were covered for the accident
22 involving Cheyanne Nalder?

23 MR. DOUGLAS: Objection; leading.

24 THE WITNESS: I don't understand --

25 MR. DOUGLAS: Objection; leading.

1 MR. SAMPSON: Can I see a copy of the
2 deposition notice, please.

3 Thank you.

4 BY MR. SAMPSON:

5 Q. Is it -- at this point in time, is it
6 your position that you were covered with insurance
7 when Cheyanne was injured?

8 A. Well, yeah -- yes -- no. No.

9 MR. DOUGLAS: Same objection; leading.

10 THE WITNESS: I --

11 BY MR. SAMPSON:

12 Q. And the point is earlier when you were
13 asked questions about when did you first find out
14 you weren't covered and you say, "Well, it was in
15 June," I mean, someone might later say, "Aha, you
16 admit you weren't covered." But that's when you
17 first learned it was UAIC's position you weren't
18 covered?

19 A. Correct.

20 MR. DOUGLAS: Objection; leading.

21 BY MR. SAMPSON

22 Q. And at no point -- well, at any point in
23 time have you ever taken the position that you did
24 not have coverage?

25 A. No. I was always covered.

1 Q. All right. And that remains your
2 position even now; correct?

3 A. Yes.

4 MR. DOUGLAS: Objection; leading.

5 BY MR. SAMPSON:

6 Q. All right. You had talked about --
7 Well, let's just go ahead and take --
8 what are we up to on exhibits?

9 THE REPORTER: 13, now.

10 MR. SAMPSON: Mark this as lucky No. 13,
11 then.

12 MR. DOUGLAS: Well, I think we can mark
13 it as Plaintiffs' -- Plaintiffs' A.

14 MR. SAMPSON: No. Plaintiffs are
15 supposed to be numbers. So we can mark it as
16 Plaintiffs' 1 or 13, whichever the court order
17 prefers.

18 THE REPORTER: 13, is that okay?

19 MR. DOUGLAS: 13 is fine.

20 MR. SAMPSON: Yeah.

21 (Whereupon, Exhibit No. 13 was
22 marked for identification.)

23 BY MR. SAMPSON:

24 Q. This is a renewal statement -- and let
25 me -- can I take a look at the exhibits, please?

1 MR. DOUGLAS: Sure.

2 BY MR. SAMPSON:

3 Q. I need to see which one I'm going to
4 need. This is a renewal statement that counsel from
5 UAIC did not show you.

6 MR. DOUGLAS: Yeah. I will just object
7 to the extent this is outside the scope of direct.

8 BY MR. SAMPSON:

9 Q. Do you see the effective date April 29th?
10 Do you see that up here in the corner?

11 A. I do see that.

12 Q. Exhibit No. -- it looks like
13 Exhibit No. 3, and I understand this is a
14 declarations page you've not -- you don't recall
15 seeing before today; correct?

16 A. Correct.

17 Q. Apparently, according to UAIC's records,
18 your policy in March would have expired on
19 April 29th.

20 Do you see that?

21 A. Correct.

22 Q. And so -- let me look at these
23 together -- the effective date of your new policy --

24 MR. DOUGLAS: I'm sorry, can I see that
25 exhibit?

1 MR. SAMPSON: Exhibit 3?

2 MR. DOUGLAS: No. The one you just
3 marked. I don't think I got a chance to see that
4 first.

5 MR. SAMPSON: You've seen it quite a lot,
6 actually.

7 MR. DOUGLAS: I just wanted to make
8 this -- I just wanted to see what you're showing
9 him.

10 MR. SAMPSON: By all means. It's the one
11 you intentionally kept from him. I got another copy
12 if you'd like to see it.

13 MR. DOUGLAS: Counsel, I would appreciate
14 if you could stop making these statements on the
15 record.

16 MR. SAMPSON: I went through every one of
17 them. Let me do this way. You went through every
18 renewal statement from March to July except this
19 one, oddly enough.

20 MR. DOUGLAS: Counsel, this is, again,
21 this is not appropriate during the deposition.

22 MR. SAMPSON: I would like to ask a
23 question if you're done looking at it.

24 MR. DOUGLAS: I'm not.

25 MR. SAMPSON: Get done and let's move on.

1 MR. DOUGLAS: Okay. Just give me a
2 second and stop talking.

3 MR. SAMPSON: You can't read it while I
4 talk? I have another copy if you'd like it. I can
5 make one for you.

6 BY MR. SAMPSON:

7 Q. All right. So let's go again. If we
8 look at Exhibit 13 and Exhibit 4, it appears,
9 according to UAIC, the expiration date on the prior
10 term was -- I'm sorry, I have the wrong --

11 A. There's 3.

12 Q. Right. The expiration date on the prior
13 term was April 29th of '07.

14 Do you see that?

15 A. Right here, coverage provided from --

16 Q. Right.

17 A. -- April to -- March 29th to April 29th.

18 Q. Right. So the effective date is
19 April 29th; correct?

20 A. Okay.

21 MR. DOUGLAS: Which exhibit are you
22 referring to, Counsel?

23 MR. SAMPSON: 13, Exhibit 13.

24 MR. DOUGLAS: Okay.

25 BY MR. SAMPSON:

1 Q. The effective date of Exhibit 13 is
2 April 29th; correct?

3 A. Yes.

4 Q. It says expiration date May 29th, '07;
5 correct?

6 A. Yes.

7 Q. And the box with all the stars around it
8 that Counsel has directed you to so many times,
9 what's that date?

10 A. 05/06/07.

11 Q. So that's after the effective date;
12 correct?

13 A. Correct.

14 Q. And it's after what UAIC considered to be
15 the expiration date of April 29th, '07; correct?

16 A. Yes.

17 Q. So in this document UAIC is telling you
18 you can make a payment after the expiration date of
19 what UAIC considered to be your prior policy and
20 after the effective date on this renewal statement
21 because you have up until, according to the starred
22 box, 05/06 of '07; is that correct?

23 A. Correct.

24 Q. And now, if we move into the paragraph,
25 and I think you testified previously, you got --

1 there's a date in the starred box they want their
2 money by. If you don't make the payment, then
3 you've got a certain amount of time before they
4 lapse you?

5 A. Correct.

6 MR. DOUGLAS: Objection; leading.

7 BY MR. SAMPSON:

8 Q. And I think you likened that previously
9 to, I think you said the power company. If the
10 power company says they want their money by the 5th,
11 they're not going to cut your power off on the 6th.

12 Is that -- do you recall giving that
13 testimony?

14 MR. DOUGLAS: Objection; leading.

15 THE WITNESS: I recall.

16 BY MR. SAMPSON:

17 Q. All right. So we look here this next
18 paragraph, "To avoid a lapse in coverage, payment
19 must be made prior to expiration of your policy."

20 Did I read that much correctly?

21 A. That's -- yeah. That's what I read every
22 time I read these things.

23 Q. I think you said it was your
24 understanding when you receive these from UAIC, that
25 meant pay before the expiration date listed right on

1 the same page --

2 A. Top right-hand corner.

3 Q. -- which in this case would be May 29th,
4 '07; correct?

5 MR. DOUGLAS: Objection; leading.

6 BY MR. SAMPSON:

7 Q. Do you see the word "expiration" anywhere
8 in this document other than up in the corner where
9 it references May 29th, '07, and in the body where
10 it mentions expiration of your policy?

11 A. No.

12 Q. Now, if UAIC were to claim that
13 expiration in the body of the paragraph meant
14 expiration of your prior policy, first of all, would
15 that be different than your understanding?

16 A. Say that again.

17 Q. Sure. Let me give you UAIC's position on
18 it. And I know it's difficult sometimes to track.
19 UAIC -- and I'll just proffer the person from UAIC
20 that testified on their behalf said expiration meant
21 April 29th, '07, the expiration of the policy --
22 what they claim was the policy for the month before.

23 Do you understand what I'm saying so far
24 in terms of what UAIC's position was?

25 A. Yes, yes.

1 Q. All right. Given that, this document
2 says expiration of your policy, which would,
3 according to apparently UAIC, was April 29th, '07.

4 Does it make any sense to you that the
5 box says -- the starred box on Exhibit 13 says
6 05/06/07?

7 A. No.

8 Q. And, of course, down here where it says,
9 "Pay my policy in full," do you see that?

10 A. Uh-huh.

11 Q. Is that a "yes"?

12 A. Yeah, I do see that, I'm sorry. Yes.

13 Q. It's all right. It's for the court
14 reporter.

15 When it says, "Pay my policy," you take
16 that to mean this upcoming renewal statement from
17 April to May?

18 A. Yes.

19 Q. And you would have already paid when
20 you -- this is -- this is dated -- when did this go
21 out? Invoice date April 26th, do you see that?

22 A. Yes.

23 Q. So on April 26th you would have already
24 paid for the month before; right?

25 A. Yes.

1 MR. DOUGLAS: Objection; leading.

2 BY MR. SAMPSON:

3 Q. So when they're talking about "my
4 policy," they're -- they wouldn't be asking you to
5 pay for the month before because you already paid
6 for it?

7 A. Yes.

8 MR. DOUGLAS: Objection; leading, and
9 it's vague, Counsel.

10 MR. SAMPSON: Fair enough. No, it's not
11 fair enough. It's an improper objection, but it's
12 noted.

13 BY MR. SAMPSON:

14 Q. So when they refer to "my policy" down
15 here, meaning this one that they say is up and
16 coming, April to May, and when they say expiration
17 date May 29, '07, was your understanding that
18 expiration date in the body of the text meant
19 May 29th, '07; is that correct?

20 A. That's correct.

21 MR. DOUGLAS: I think you've asked and
22 answered that several times, Counsel.

23 MR. SAMPSON: Is there an objection?

24 MR. DOUGLAS: Yeah, asked and answered --

25 MR. SAMPSON: Noted for the record, then.

1 BY MR. SAMPSON:

2 Q. You were asked did anyone -- well, let me
3 ask you this: When you went and made your
4 payments -- and I think Counsel showed you one time
5 there, the starred box said, Pay by the 29th and you
6 didn't pay until the 31st.

7 Do you recall seeing that?

8 A. Yes.

9 Q. When you went into U.S. Auto and made
10 that payment, did anyone there tell you, Hey, you're
11 late?

12 A. No. I never was ever told I was late,
13 never, ever.

14 Q. Did anyone -- did anyone from U.S. Auto
15 or from UAIC ever send you a letter saying, You were
16 late with a payment and so we lapsed you?

17 A. Never.

18 Q. Did anyone from UAIC or U.S. Auto in
19 these renewal statements or any other documents that
20 were sent ever tell you, If you don't pay it by the
21 date in the stars, you're going to lapse?

22 A. No.

23 Q. When you went in and made your payment at
24 U.S. Auto, if you paid after the effective date --
25 you already said no one had told you, Hey, you're

1 lapsed -- did they ever tell you anything other than
2 We've renewed you?

3 MR. DOUGLAS: Objection; leading.

4 THE WITNESS: No.

5 BY MR. SAMPSON:

6 Q. I want to take a quick look at
7 Exhibit No. 12, the assignment.

8 First of all, do you know when this
9 current lawsuit was filed? And if you don't, you
10 can say. Do you know when the current lawsuit that
11 we're in right now was filed? It's you and the
12 Nalders against UAIC. Do you know --

13 A. No, I don't know the exact date, Dave,
14 no.

15 Q. In that complaint it indicates that
16 you're represented -- you are represented by
17 Christensen Law Offices, specifically myself.

18 MR. DOUGLAS: Objection; foundation.

19 THE WITNESS: Yes.

20 BY MR. SAMPSON:

21 Q. Was I your attorney when that lawsuit was
22 filed?

23 MR. DOUGLAS: Objection; legal
24 conclusion, lack of foundation.

25 THE WITNESS: Yes.

1 BY MR. SAMPSON:

2 Q. All right. And I don't know why
3 Mr. Douglas had asked you multiple times when I was
4 your attorney, left and right, and didn't seem to
5 think it was a problem, but apparently now it is.

6 MR. DOUGLAS: Do you have a question,
7 Counsel?

8 MR. SAMPSON: Several, yeah. A lot for
9 you, actually, if you'd like to know what they are.

10 BY MR. SAMPSON:

11 Q. If this lawsuit was -- and -- well, let
12 me back up a second.

13 Is it safe to say you are not good with
14 dates? Is that safe to say?

15 A. I'm not. I apologize for that.

16 Q. That's fine. This assignment is dated
17 February of 2010 --

18 A. Yes.

19 Q. -- if the lawsuit was filed in the fall
20 of 2009, then would you agree that this assignment
21 would have been filed months after I became your
22 counsel?

23 A. Yes.

24 MR. DOUGLAS: Objection; leading and
25 foundation.

1 BY MR. SAMPSON:

2 Q. Has anyone -- has Cheyanne or Mr. Nalder
3 ever executed the judgment and ever garnished any of
4 your wages?

5 A. No.

6 Q. Do you anticipate Mr. Nalder or Cheyanne
7 ever garnishing your wages prior to this lawsuit
8 being resolved?

9 MR. DOUGLAS: Objection; calls for
10 speculation.

11 THE WITNESS: I don't -- I don't
12 understand the question. Say that again.

13 BY MR. SAMPSON:

14 Q. Let's -- and let me -- to make it a
15 little clearer and make it a little simpler, let's
16 say this lawsuit continues until this December.
17 Okay?

18 A. Okay.

19 Q. Would you anticipate the Nalders
20 garnishing your wages before this December when the
21 lawsuit --

22 A. No, no, no, no --

23 MR. DOUGLAS: Objection; calls for
24 speculation.

25 THE WITNESS: -- no. They said --

1 MR. SAMPSON: It actually doesn't, but
2 maybe he'll explain it --

3 THE WITNESS: My conversation with
4 Mr. Nalder was that as long as this is tied up, he
5 won't go after me for anything until there's resolve
6 on this.

7 BY MR. SAMPSON:

8 Q. So Mr. Nalder has agreed not to execute
9 on you until this current lawsuit is resolved?

10 A. Yes.

11 MR. DOUGLAS: Objection; leading,
12 Counsel.

13 MR. SAMPSON: I'm clarifying what he
14 said.

15 BY MR. SAMPSON:

16 Q. Is that your understanding as to part of
17 the value you received in this assignment when it
18 said "for value received"?

19 A. That is why --

20 MR. DOUGLAS: Objection; Counsel, leading
21 again.

22 THE WITNESS: Because of the
23 conversation, that's why this was given, yes.

24 BY MR. SAMPSON:

25 Q. Right. And I think previously when you

1 were asked what was the value you received, you said
2 something about the \$3.5 million judgment?

3 A. Right.

4 Q. Is that what --

5 A. Right, yes.

6 Q. -- that -- that no one is going to
7 execute on that until --

8 A. Until the lawsuit --

9 Q. -- the lawsuit is resolved?

10 A. Yes.

11 Q. And I think you said the other value you
12 received for this assignment is that the Nalders
13 would assist you in this lawsuit as well?

14 A. I did state that, yes.

15 MR. SAMPSON: Those are all the questions
16 I have.

17

18 **FURTHER EXAMINATION**

19 BY MR. DOUGLAS:

20 Q. Just a brief follow-up. Mr. -- you said
21 Mr. Nalder has agreed not to execute the judgment
22 against you?

23 MR. SAMPSON: I object to the form. It
24 misstates.

25 BY MR. DOUGLAS:

1 Q. Is that what -- is that what Counsel
2 asked you, and you said yes?

3 MR. SAMPSON: No, I'll object. That
4 completely misstates.

5 BY MR. DOUGLAS:

6 Q. You can answer.

7 MR. SAMPSON: That completely misstates
8 the testimony.

9 BY MR. DOUGLAS:

10 Q. You can answer. Yes or no? It's an easy
11 question. Did he -- did Mr. Nalder -- did
12 Mr. Nalder tell you he agreed not to execute the
13 judgment against you?

14 MR. SAMPSON: Ever at any point in time?
15 Object to the form --

16 THE WITNESS: Mr. Nalder --

17 MR. SAMPSON: -- misstates testimony.

18 MR. DOUGLAS: You can let -- he can
19 answer. You can stop.

20 MR. SAMPSON: No, I'm not going to stop
21 as long as you are going to try to mislead the
22 witness.

23 THE WITNESS: Mr. Nalder and I spoke, and
24 he said he will not go after me for any money until
25 this case is resolved.

1 BY MR. DOUGLAS:

2 Q. Okay. And before --

3 A. I'm under the impression that if this is
4 not resolved, he's going to come after me.

5 Q. Oh, okay. And did Mr. Nalder offer you
6 any kind of formal written agreement to this effect?

7 A. Formal written agreement, I -- I assume
8 that's what that was.

9 Q. Anything else other than the assignment?
10 Did he offer you any written agreement that said, "I
11 agree not to execute against Gary Lewis until this
12 case is over"?

13 A. He did not give me anything like that,
14 no.

15 Q. Okay. You didn't sign anything like
16 that?

17 A. (Shakes head.)

18 Q. Is that "no," you didn't?

19 A. No.

20 Q. Okay. Thank you. And I think we were
21 talking about some dates with the -- with the --
22 with the lawsuit and whatever, but -- but I asked
23 you -- I think several times you told me you talked
24 to Mr. Sampson right after the accident; is that
25 right?

1 A. That is correct.

2 Q. And then you told me you didn't speak to
3 him again until about the time of that assignment in
4 February of 2010?

5 MR. SAMPSON: I'll object. Misstates.

6 Is there a question?

7 BY MR. DOUGLAS:

8 Q. Is that your testimony?

9 MR. SAMPSON: I'll object. Misstates
10 testimony.

11 BY MR. DOUGLAS:

12 Q. You can answer.

13 A. I spoke to Dave a couple of times. And I
14 don't know the dates I spoke to him. I do know that
15 I did ask him to be my lawyer --

16 Q. Okay.

17 A. -- because I did not know what was going
18 on.

19 Q. Right. And I --

20 A. And I'm getting sent all these forms in
21 the mail, the judgments and all of this crap that I
22 just want to get rid of.

23 Q. And I understand that. All I want to
24 know is when I asked you -- no, and I do understand
25 that. All I want to know is when I asked you

1 before, I said when was the time that you -- you
2 asked him to be your attorney, and you told me it
3 was around the time of that assignment; is that
4 right?

5 MR. SAMPSON: I'll object. It misstates
6 testimony.

7 BY MR. DOUGLAS:

8 Q. Was that your answer that you gave me
9 before?

10 A. Yes. Yes. Yes, that was my answer.
11 Once again --

12 Q. Okay. So now --

13 A. Hold on. Wait. Let me answer that. I
14 will state I'm not good with dates. I can't tell
15 you what the hell happened in the middle of 2007 --

16 BY MR. DOUGLAS:

17 Q. Okay.

18 A. -- what happened at the end of 2007.

19 Q. I understand --

20 A. I have paper here in front of me --

21 Q. I understand that, but --

22 A. -- with that date.

23 Q. And I understand that. And your
24 testimony was -- and you've admitted now your
25 testimony was that's when you -- about the time you

1 talked to him?

2 A. Yes, yes.

3 Q. And you also, I think, previously
4 testified you hadn't talked to him since that time
5 you talked to him after the accident until the time
6 you asked him to represent you.

7 Is that your testimony today?

8 MR. SAMPSON: Object to the form,
9 misstates.

10 THE WITNESS: I don't understand your
11 question.

12 MR. SAMPSON: He is --

13 MR. DOUGLAS: Hey, Counsel, stop coaching
14 your witness.

15 MR. SAMPSON: Don't yell at me.

16 MR. DOUGLAS: No, no, I've let -- I've
17 let this go on long enough today. I have a
18 question.

19 MR. SAMPSON: This is ridiculous --

20 MR. DOUGLAS: Let me finish my question.
21 Let me finish my question and stop coaching him.

22 MR. SAMPSON: You finished your question.

23 BY MR. DOUGLAS:

24 Q. I want to know before --

25 A. I'm not taking coaching from anyone --

1 Q. Listen --

2 MR. SAMPSON: You can't explain anything
3 to him. He doesn't want anything explained to him.
4 He wants it the way he wants it.

5 THE WITNESS: I'm not good with dates.

6 BY MR. DOUGLAS:

7 Q. I understand that, I understand that.

8 MR. SAMPSON: Okay. If you understand
9 that, why are you trying to marry him to a date?
10 He's told you that he's not good with dates.

11 THE WITNESS: I'm not --

12 MR. SAMPSON: Stop trying to confuse him.

13 BY MR. DOUGLAS:

14 Q. Okay. But I asked you earlier, and I
15 want to ask you if it's still your testimony. I
16 asked you earlier, we admit you talked to him after
17 the accident; is that right?

18 A. Yes.

19 Q. Okay. And we admit you talked to him
20 around the time of the assignment when you asked him
21 to be your attorney; is that right?

22 MR. SAMPSON: I object to the form. That
23 misstates testimony. He testified he talked to me
24 when we filed the lawsuit.

25 MR. DOUGLAS: Stop with the speaking

1 objections.

2 MR. SAMPSON: No. You're not going to
3 misstate his testimony.

4 BY MR. DOUGLAS:

5 Q. Is that correct, sir?

6 A. The answer is go back and look what the
7 answers were.

8 MR. SAMPSON: -- no, exactly --

9 THE WITNESS: -- the answers were --

10 MR. SAMPSON: The answers are what he
11 gave you. That's why she wrote them down. That is
12 why she is videotaping.

13 BY MR. DOUGLAS:

14 Q. What I want to know is -- my question is
15 did -- you told me before you didn't speak to him
16 from the time after the accident until the time you
17 asked him to become your attorney.

18 Is that your testimony today?

19 A. I don't understand. You're asking me a
20 question that I've answered before. Is that what
21 you're doing --

22 Q. Yes. And I'm asking you if that's still
23 your testimony.

24 A. Excuse me?

25 Q. Is that your testimony that you didn't

1 speak to Mr. Sampson from the time after the
2 accident until the time you asked him to become your
3 attorney; is that right?

4 A. Yes.

5 Q. Okay. Now --

6 A. There's a time that I didn't talk to him
7 for a long time even after I asked him to be my
8 attorney.

9 Q. Okay.

10 A. I moved back to California. Geez.

11 Q. All right. Okay. I guess we're going to
12 have to go ahead and mark some more exhibits.

13 MR. DOUGLAS: Let's go ahead and mark
14 this as -- what are we up to? 14.

15 (Whereupon, Exhibit No. 14
16 was marked for identification.)

17 MR. SAMPSON: I'm going to object to the
18 extent this is beyond the scope of cross.

19 MR. DOUGLAS: No, I'm sorry. But this is
20 within the scope of your redirect, so you brought on
21 your exhibit, and we will have to talk about it.

22 MR. SAMPSON: I will need to read it.

23 BY MR. DOUGLAS:

24 Q. Okay. Sir, I'm going to show you what we
25 marked as Exhibit 14, and I'm going to ask you to

1 take a look at it and ask you if you know what that
2 is.

3 A. No, I don't know what this is.

4 Q. Okay. If I -- do you remember going in
5 and we talked about earlier going into U.S. Auto and
6 adding Kristen and a vehicle to your policy?

7 A. Yes.

8 Q. And that document reflects that; is that
9 correct?

10 A. This one does here, yes.

11 Q. Okay. And can you tell me the date
12 that's -- that's listed on that, on the bottom
13 there?

14 A. I don't know what date -- where -- where
15 at?

16 Q. On the bottom.

17 A. On the 25th of April.

18 Q. Okay. And that was of 2007?

19 A. Yes.

20 Q. Okay. All right. And I think we talked
21 about before, Counsel, when he was just questioning
22 you, he asked you about -- about your policy for
23 April; is that right?

24 A. Yes.

25 Q. And he talked about the expiration date

1 being April 29th, I think, of 2007.

2 Do you remember that?

3 A. Yes.

4 Q. Okay. From Exhibit 5? Now, when you
5 added Kristen and that vehicle to the policy, did
6 you pay additional premium?

7 A. I don't know, man, did I? I don't know.

8 Q. Okay.

9 MR. DOUGLAS: Can we mark this as
10 Exhibit -- what are we up to now -- 15?

11 (Whereupon, Exhibit No. 15 was
12 marked for identification.)

13 BY MR. DOUGLAS:

14 Q. I'm showing your counsel what we've
15 marked as Exhibit 15 for identification. When you
16 get a chance and take a look at that and tell me if
17 you've ever seen that before.

18 A. Yes.

19 Q. What is that?

20 A. A receipt of \$6.00.

21 Q. Okay. And when was that payment made?

22 A. On the 25th of April, 2007.

23 Q. Okay. Would that be consistent with the
24 day you added that vehicle and Kristen?

25 A. Yes.

1 Q. Yes, okay. So is that additional
2 premium, I guess, you paid for the rest of April?
3 Would that seem reasonable?

4 MR. SAMPSON: I'll object to the form.

5 THE WITNESS: I suppose so.

6 BY MR. DOUGLAS:

7 Q. Okay. Okay. So turning back to
8 Exhibit 13 that your counsel brought up, take a look
9 at that again.

10 MR. SAMPSON: Just wait for the question.

11 BY MR. DOUGLAS:

12 Q. Can you tell me, does that say, "Revised
13 renewal statement" on top there?

14 A. Yes.

15 Q. Okay. Is that different from your other
16 renewal statements that we looked at?

17 A. Yes, it is.

18 Q. Okay. And can you tell me the invoice
19 date that's listed?

20 A. 26th of April.

21 Q. Okay. So about a day after you added --
22 you added a vehicle and a driver to the policy?

23 A. But I got this in the mail.

24 Q. Right. So --

25 A. The day after I went in and made the

1 payment --

2 Q. Yes.

3 A. -- sent to me in the mail, the day after.
4 Okay.

5 Q. Okay. So -- so basically, do you think
6 the fact that it's a revised renewal statement and
7 since it was so close to when your payment was due,
8 that's why they gave you extra time?

9 MR. SAMPSON: I will object to the form.
10 Calls for speculation.

11 BY MR. DOUGLAS:

12 Q. Or you don't know?

13 A. I don't know. My expiration date, that's
14 when I pay my bills by.

15 Q. Right. And, in fact, do you remember
16 when you made that payment in April?

17 A. I assume the 25th is what that payment
18 says.

19 MR. DOUGLAS: Can we mark this as, I
20 guess, Exhibit 16.

21 (Whereupon, Exhibit No. 16
22 was marked for identification.)

23 THE WITNESS: Is that the form you just
24 showed me?

25 BY MR. DOUGLAS:

1 Q. No. This is another one.

2 Can you tell me if you've ever seen that
3 before?

4 A. On the 28th of April I made another
5 payment of 134.

6 Q. Okay. That's your May policy?

7 MR. SAMPSON: I'll object to the form.

8 THE WITNESS: For May?

9 BY MR. DOUGLAS:

10 Q. Your May premium, is that fair?

11 A. Premium was paid in April for -- yeah.

12 Q. Okay. So even though your counsel said,
13 something to the effect of you were given more time,
14 you still made your payment on April 28th, 2007
15 anyway?

16 A. Because I had money.

17 Q. Okay. I'm just asking if you did.

18 MR. SAMPSON: I'll object. I didn't say
19 anything. The document with the stars spoke for
20 itself. That is what we looked at.

21 THE WITNESS: Like I said earlier, I
22 wasn't working a lot around this time, so my
23 girlfriend had money to make the payments. So she
24 made them.

25 BY MR. DOUGLAS:

1 Q. Okay. Fair enough. And you have no
2 objection that you did, in fact, make that payment
3 on April 28th, 2007?

4 A. No.

5 Q. Okay. All right. I think that's all I
6 have.

7

8

FURTHER EXAMINATION

9 BY MR. SAMPSON:

10 Q. One final question. Do you need a
11 written agreement from Jim Nalder when he gives you
12 his word?

13 MR. DOUGLAS: Objection; that calls for a
14 legal conclusion and may be leading.

15 THE WITNESS: I trust him.

16 MR. SAMPSON: That's all I have.

17 MR. DOUGLAS: You're done. Mr. Lewis, I
18 know this is not great. I hope you understand we're
19 all just doing our jobs.

20 MR. SAMPSON: That's no excuse. Come on.

21 MR. DOUGLAS: You guys have a good day.

22 MR. SAMPSON: That's ridiculous.

23 THE VIDEOGRAPHER: This concludes the
24 videotaped deposition of Gary Lewis taken on
25 August 25th, 2010. This consists of four digital

1 tapes. We are going off the record and the time is
2 4:44 p.m.

3 (Thereupon the taking of the videotaped
4 deposition concluded at 4:44 p.m.)

5 * * * * *

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This image shows a blank sheet of white paper with horizontal blue or grey ruling lines. A single vertical line runs down the right side of the page, creating a margin. The paper appears to be from a notebook or a standard writing template. There are some very faint, small dark specks scattered across the surface, likely due to scanning artifacts or dust on the original paper.

* * * * *

17 I, GARY LEWIS, deponent herein, do hereby
18 certify and declare the within and foregoing
19 transcription to be my deposition in said action;
that I have read, corrected, and do hereby affix my
signature to said deposition this _____ day of
_____, 2010.

CAMEO KAYSER & ASSOCIATES (702) 655-5092

0481

1
2 **REPORTER'S DECLARATION**

3 STATE OF NEVADA)
4) ss.
5 COUNTY OF CLARK)

6 I, CAMEO L. KAYSER, CCR No. 569,
7 declare as follows:

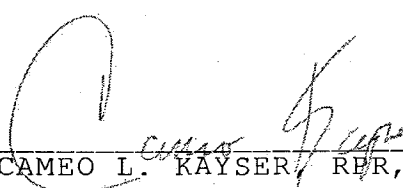
8 That I reported the taking of the
9 deposition of the witness, GARY LEWIS, commencing on
10 Wednesday August 25, 2010, at 2:05 p.m.

11 That prior to being examined, the
12 witness was by me duly sworn to testify to the
13 truth, the whole truth, and nothing but the truth;
14 that, before the proceedings' completion, the
15 reading and signing of the videotaped deposition has
16 been requested by the deponent or a party.

17 That I thereafter transcribed my said
18 shorthand notes into typewriting and that the
19 typewritten transcript of said deposition is a
20 complete, true, and accurate transcription of said
21 shorthand notes taken down at said time.

22 I further declare that I am not a
23 relative or employee of any party involved in said
24 action, nor a person financially interested in the
25 action.

Dated at Las Vegas, Nevada this 4th
day of September, 2010.

21
22
23
24
25

CAMEO L. KAYSER, RPR, CCR No. 569

FILED

APR 02 2014

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

CASE NO. 13-17441

FILED
DOCKETED

APR 02 2014

DATE

INITIAL

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

JAMES NALDER, Guardian Ad Litem on
Behalf of Cheyanne Nalder and GARY
LEWIS, individually,

Appellants,

vs.

UNITED AUTOMOILE INSURANCE
COMPANY,

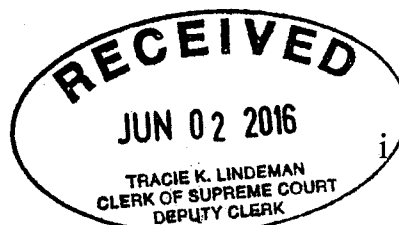
Respondent.

No. 13-17441

D.C. No. 2:09-cv-01348-
RJC-GWF
District of Nevada,
Las Vegas

APPELLANTS' APPENDIX – VOLUME III

THOMAS CHRISTENSEN, ESQ.
Nevada State Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, NV 89107
Telephone: (702) 216-1475
Facsimile: (702) 870-6152
courtnotices@injuryhelpnow.com
Attorneys for Appellants



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3
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Matthew Douglass, Esq.
ATKIN WINNER & SHERROD
1117 S. Rancho Dr.
Las Vegas NV 89102

/s/ Jennifer M. Gooss
An employee of CHRISTENSEN LAW OFFICES, LLC

Exhibit “C”

my

1 **RSPN**
 2 THOMAS CHRISTENSEN, ESQ.
 3 Nevada Bar No. 2326
 4 DAVID F. SAMPSON, ESQ.
 5 Nevada Bar No. 6811
 6 CHRISTENSEN LAW OFFICES, LLC
 1000 S. Valley View Blvd.
 Las Vegas, Nevada 89107
 Attorneys for Plaintiffs

7 **UNITED STATES DISTRICT COURT**
 8 **FOR THE DISTRICT OF NEVADA**

9 JAMES NALDER, Guardian Ad Litem for minor)
 Cheyanne Nalder, real party in interest, and)
 10 GARY LEWIS, Individually;)
 11 Plaintiffs,) Case No.: 2:09-cv-1348
 12 vs.)
 13 UNITED AUTOMOBILE INSURANCE CO,)
 14 DOES I through V, and ROE CORPORATIONS)
 15 I through V, inclusive)
 16 Defendants.)
 17)

18 **PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUEST FOR ADMISSIONS**

19 COMES NOW the Plaintiff, GARY LEWIS, and for his Responses to Defendant's
 20 Request For Admissions propounded to him states, under oath, and in accordance with Rule 36
 21 of the Nevada Rules of Civil Procedure, as follows:

23 **REQUEST TO ADMIT NO. 1:** Admit that you had a policy of auto liability insurance with
 24 United Automobile Insurance Company (hereinafter referred to as "UAIC") under policy
 25 number NVA 020021926.

26 **RESPONSE NO. 1:** Plaintiff GARY LEWIS admits that he renewed his policy with UAIC on
 27 multiple occasions, including the renewed policy NVA 020021926, and that GARY LEWIS had
 28

1 said policy of auto liability insurance with UAIC. To the extent this request asks Plaintiff
2 GARY LEWIS to admit anything further it is hereby denied.

3 **REQUEST TO ADMIT NO. 2:** Admit that UAIC policy number NVA 0200219626 had a
4 policy term which expired on June 30, 2007.

5
6 **RESPONSE NO. 2:** Plaintiff GARY LEWIS admits that he renewed his policy with UAIC on
7 multiple occasions, including the renewed policy NVA 020021926, and that renewed policy
8 NVA 020021926 indicated that the policy would expire on June 30, 2007. To the extent this
9 request asks Plaintiff GARY LEWIS to admit anything further it is hereby denied.

10
11 **REQUEST TO ADMIT NO. 3:** Admit that UAIC sent you a renewal notice for UAIC policy
12 number NVA 020021926 which required you to remit payment to renew said policy on or
13 before June 30, 2007.

14 **RESPONSE NO. 3:** Plaintiff GARY LEWIS admits that he renewed his policy with UAIC on
15 multiple occasions, and that UAIC sent GARY LEWIS another statement indicating its intent to
16 renew his policy yet again, and that the renewal requested that payment be received on or before
17 June 30, 2007. To the extent this request asks Plaintiff GARY LEWIS to admit anything further
18 it is hereby denied.

19
20 **REQUEST TO ADMIT NO. 4:** Admit that you did not remit any amount for renewal of UAIC
21 policy number NVA 020021926 after June 12, 2007 and before June 30, 2007.

22
23 **RESPONSE NO. 4:** Deny.

24 **REQUEST TO ADMIT NO. 5:** Admit that you did not remit any amount for renewal of UAIC
25 policy number NVA 020021926 after June 30, 2007 and before July 10, 2007.

26
27 **RESPONSE NO. 5:** Admit.

28

1 **REQUEST TO ADMIT NO. 6:** Admit that on July 8, 2007 you were involved in an accident
2 with Cheyanne Nalder, a minor.

3 **RESPONSE NO. 6:** Admit.

4
5 **REQUEST TO ADMIT NO. 7:** Admit that on July 10, 2007 you paid a premium for UAIC
6 Policy number NVA 030021926.

7 **RESPONSE NO. 7:** Plaintiff GARY LEWIS admits that when UAIC denied having received
8 the payment which GARY LEWIS had already made to renew his policy, GARY LEWIS made
9 another payment to UAIC, and that UAIC renewed his policy. To the extent this request asks
10 Plaintiff GARY LEWIS to admit anything further it is hereby denied.
11

12 **REQUEST TO ADMIT NO. 8:** Admit that on July 10, 2007 UAIC Policy number NVA
13 030021926 inceptioned for a policy term from that date until August 10, 2007.

14 **RESPONSE NO. 8:** Plaintiff GARY LEWIS admits that when he made his subsequent
15 payment UAIC again renewed his policy. Plaintiff GARY LEWIS denies that any policy was
16 "inceptioned" in July 2007 as his policy was "renewed". To the extent this request asks Plaintiff
17 GARY LEWIS to admit anything further it is hereby denied.
18

19 **REQUEST TO ADMIT NO. 9:** Admit that on July 8, 2007 you had no automobile liability
20 insurance with UAIC.

21
22 **RESPONSE NO. 9:** Plaintiff GARY LEWIS denies this request in its entirety and states that
23 UAIC renewed GARY LEWIS' policy with UAIC on multiple occasions before July 8, 2007,
24 that UAIC had indicated its intent to renew GARY LEWIS' policy with UAIC again from June
25 30, 2007 through July 31, 2007, that UAIC never sent GARY LEWIS any notice of an intent to
26 not renew GARY LEWIS' policy, and that UAIC never sent GARY LEWIS any notice of an
27 intent to cancel GARY LEWIS' renewed policy for and alleged non-payment. GARY LEWIS
28

1 made the requisite payment in a timely manner to renew his policy and when UAIC denied
2 receiving said payment GARY LEWIS made a subsequent payment and UAIC again renewed
3 his policy. As a result of any one of the foregoing, and certainly as a result of all of them
4 collectively, GARY LEWIS was in fact covered by an insurance policy with UAIC on July 8,
5 2007.
6

7
8 DATED THIS 27th day of October 2009.
9

10 CHRISTENSEN LAW OFFICES, LLC

11
12 BY: 

13 THOMAS CHRISTENSEN, ESQ.

14 Nevada Bar No. 2326

15 DAVID F. SAMPSON, ESQ.

16 Nevada Bar No. 6811

17 1000 S. Valley View Blvd.

18 Las Vegas, Nevada 89107

19 Attorney for Plaintiffs
20
21
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC., and that on this 27 day of Oct, 20 , I served a copy of the foregoing ANSWERS TO REQUEST FOR ADMISSIONS as follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Thomas E. Winner, Esq.,
Matthew J. Douglas, Esq.,
1117 S. Rancho Dr.
Las Vegas, NV 89102
Attorneys for Defendants

Amelia D. ...
An employee of CHRISTENSEN LAW OFFICES, LLC

Exhibit “D”

RSPN
THOMAS CHRISTENSEN, ESQ.
 Nevada Bar No. 2326
DAVID F. SAMPSON, ESQ.
 Nevada Bar No. 6811
CHRISTENSEN LAW OFFICES, LLC
 1000 S. Valley View Blvd.
 Las Vegas, Nevada 89107
 Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEVADA**

JAMES NALDER, Guardian Ad Litem for minor)
 Cheyanne Nalder, real party in interest, and)
 GARY LEWIS, Individually;)
 Plaintiffs,)

Case No.: 2:09-cv-1348

vs.)

UNITED AUTOMOBILE INSURANCE CO,)
 DOES I through V, and ROE CORPORATIONS)
 I through V, inclusive)

Defendants.)

**SUPPLEMENT TO PLAINTIFF'S RESPONSES TO DEFENDANT'S REQUEST
 FOR ADMISSIONS**

COMES NOW the Plaintiff, GARY LEWIS, and for his Responses to Defendant's
 Request For Admissions propounded to him states, under oath, and in accordance with Rule 36
 of the Nevada Rules of Civil Procedure, as follows:

REQUEST TO ADMIT NO. 1: Admit that you had a policy of auto liability insurance with
 United Automobile Insurance Company (hereinafter referred to as "UAIC") under policy
 number NVA 020021926

RESPONSE NO. 1: Plaintiff GARY LEWIS admits that he renewed his policy with UAIC on
 multiple occasions, including the renewed policy NVA 020021926, and that GARY LEWIS had



1 said policy of auto liability insurance with UAIC. To the extent this request asks Plaintiff
2 GARY LEWIS to admit anything further it is hereby denied.

3 **REQUEST TO ADMIT NO. 2:** Admit that UAIC policy number NVA 0200219626 had a
4 policy term which expired on June 30, 2007.

5 **RESPONSE NO. 2:** Deny. Plaintiff GARY LEWIS admits that he renewed his policy with
6 UAIC on multiple occasions, including the renewed policy NVA 020021926, and that renewed
7 policy NVA 020021926 indicated that the policy would expire on July 31, 2007. To the extent
8 this request asks Plaintiff GARY LEWIS to admit anything further it is hereby denied.

9 **REQUEST TO ADMIT NO. 3:** Admit that UAIC sent you a renewal notice for UAIC policy
10 number NVA 020021926 which required you to remit payment to renew said policy on or
11 before June 30, 2007.

12 **RESPONSE NO. 3:** Deny. Plaintiff GARY LEWIS admits that he renewed his policy with
13 UAIC on multiple occasions, and that UAIC sent GARY LEWIS another statement indicating
14 its intent to renew his policy yet again, and that the renewal requested that payment be received
15 "prior to the expiration of your policy" which the renewal notice stated was July 31, 2007. To
16 the extent this request asks Plaintiff GARY LEWIS to admit anything further it is hereby
17 denied.

18 **REQUEST TO ADMIT NO. 4:** Admit that you did not remit any amount for renewal of UAIC
19 policy number NVA 020021926 after June 12, 2007 and before June 30, 2007.

20 **RESPONSE NO. 4:** Admit

21 **REQUEST TO ADMIT NO. 5:** Admit that you did not remit any amount for renewal of UAIC
22 policy number NVA 020021926 after June 30, 2007 and before July 10, 2007.

23 **RESPONSE NO. 5:** Admit.

1 **REQUEST TO ADMIT NO. 6:** Admit that on July 8, 2007 you were involved in an accident
2 with Cheyanne Nalder, a minor.

3 **RESPONSE NO. 6:** Admit.

4
5 **REQUEST TO ADMIT NO. 7:** Admit that on July 10, 2007 you paid a premium for UAIC
6 Policy number NVA 030021926.

7 **RESPONSE NO. 7:** Admit

8 **REQUEST TO ADMIT NO. 8:** Admit that on July 10, 2007 UAIC Policy number NVA
9 030021926 incepted for a policy term from that date until August 10, 2007.

10
11 **RESPONSE NO. 8:** Plaintiff GARY LEWIS admits that when he made his payment UAIC
12 again renewed his policy. Plaintiff GARY LEWIS denies that any policy was "incepted" in July
13 2007 as his policy was "renewed". the "Renewal Notice" of policy No. 020021926 stated there
14 would be no lapse in coverage if payment was received before the expiration of the policy,
15 which the "Renewal Notice" stated was July 31, 2007. Payment was made well in advance of
16 July 31, 2007 and there was no lapse in coverage according to the "Renewal Notice". To the
17 extent this request asks Plaintiff GARY LEWIS to admit anything further it is hereby denied.

18
19 **REQUEST TO ADMIT NO. 9:** Admit that on July 8, 2007 you had no automobile liability
20 insurance with UAIC.

21
22 **RESPONSE NO. 9:** Deny. Plaintiff GARY LEWIS denies this request in its entirety and
23 states that UAIC renewed GARY LEWIS' policy with UAIC on multiple occasions before July
24 8, 2007, that UAIC had indicated its intent to renew GARY LEWIS' policy with UAIC again
25 from June 30, 2007 through July 31, 2007 under policy No. 020021926, if payment was
26 received prior to the expiration date of the policy, which the "Renewal Notice" said was July 31,
27 2007. That UAIC never sent GARY LEWIS any notice of an intent to not renew GARY
28

1 LEWIS' policy, and that UAIC never sent GARY LEWIS any notice of an intent to cancel
2 GARY LEWIS' renewed policy for and alleged non-payment. According to the communication
3 from UAIC, Gary Lewis had until July 31, 2007 to make the payment and avoid a lapse in
4 coverage. GARY LEWIS made the requisite payment in a timely manner to renew his policy.
5 As a result of any one of the foregoing, and certainly as a result of all of them collectively,
6 GARY LEWIS was in fact covered by an insurance policy with UAIC on July 8, 2007.
7

8
9 DATED THIS 7th day of March, 2010.

10
11 CHRISTENSEN LAW OFFICES, LLC

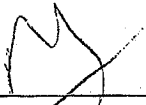
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14 BY: 
15 THOMAS CHRISTENSEN, ESQ.
16 Nevada Bar No. 2326
17 DAVID F. SAMPSON, ESQ.
18 Nevada Bar No. 6811
19 1000 S. Valley View Blvd.
20 Las Vegas, Nevada 89107
21 Attorney for Plaintiffs
22
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Exhibit “E”

ASSIGNMENT

FOR VALUE RECEIVED, GARY LEWIS ("LEWIS"), assigns to JAMES NALDER, As Guardian ad Litem for Cheyenne Nalder ("NALDER"), LEWIS' rights that LEWIS has for damages against UNITED AUTOMOBILE INSURANCE CO. ("UAIC"), based upon its failure to negotiate in good faith the claim brought against LEWIS by NALDER. Specifically, that portion of said right or cause of action being hereby assigned pertains to the judgment entered against the undersigned in favor of NALDER in the amount of \$3,500,000.00 the total judgment earning interest at the statutory rate from the date of its entry until the said judgment is paid in full) ("the NALDER Judgment"). As the total amount of the said judgment will not be known until the time it is finally paid given interest continues to accrue, the amount being assigned to NALDER is whatever amount is ultimately recovered that is necessary to satisfy the total NALDER Judgment. The NALDER judgment is at least \$3,495,000.00 in excess of the \$15,000.00 liability limit of the insurance policy with UAIC. LEWIS hereby represents that he was not insolvent at the time of the entry of said judgment and has been damaged thereby, as well as otherwise.

The rights so assigned hereby include all funds necessary to satisfy the Judgment NALDER has against LEWIS including attorney fees, costs, interest, and the like to NALDER in their entirety (hereinafter referred to as "the NALDER Judgment damages"). All rights, interests, and claims to any funds in addition to those necessary to pay the NALDER Judgment damages in full are hereby retained by LEWIS. In the event that this assignment is an improper splitting of LEWIS' causes of actions against UAIC then this assignment shall constitute a full assignment to NALDER of all rights interests and claims LEWIS has against UAIC in their entirety.

If at any point in time, whether prior to or after the date of this assignment, JAMES NALDER, As Special Administrator For the Estate of Cheyenne Nalder is dismissed from the action against UNITED AUTOMOBILE INSURANCE CO., Case No.: 2:09-cv-1348, then this assignment is rendered null and void from its inception.

Dated this 28 day of February, 2010

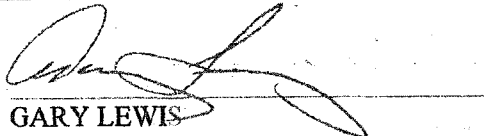

GARY LEWIS

Exhibit “J”

2:09-cv-1348-ECR-GWF - December 7, 2010

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3
4
5 JAMES NALDER, et al.,)

6 Plaintiffs,)

7 vs.)

8 UNITED AUTOMOBILE INSURANCE)
9 COMPANY,)

10 Defendant.)

Case No. 2:09-cv-1348-ECR-GWF

CERTIFIED COPY

11
12 **REPORTER'S TRANSCRIPT OF MOTION HEARING**
13 **(MOTION FOR SUMMARY JUDGMENT (#17))**

14 Tuesday, December 7, 2010

15
16 **THE HON. EDWARD C. REED, JR.,**
17 **SENIOR U.S. DISTRICT JUDGE, PRESIDING**

18
19
20 APPEARANCE: (See page 2)

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25 Court Reporter: Felicia Rene Zabin, FCRR, RPR, CCR 478

2:09-cv-1348-ECR-GWF - December 7, 2010

1 APPEARANCES:

2 For Plaintiffs Gary Lewis and James Nalder:

3 **DAVID F. SAMPSON, ESQ.**
4 Christensen Law Offices, LLC
5 1000 South Valley View Boulevard
6 Las Vegas, Nevada 89107
7 (702) 870-1000

8 For Defendant United Automobile Insurance Company:

9 **MATTHEW JOHN DOUGLAS, ESQ.**
10 **THOMAS E. WINNER, ESQ.**
11 Atkin Winner & Sherrod
12 1117 South Rancho Drive, Suite 360
13 Las Vegas, Nevada 89102
14 (702) 243-7000
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2:09-cv-1348-ECR-GWF - December 7, 2010

1 LAS VEGAS, NEVADA; TUESDAY, DECEMBER 7, 2010; 2:18 P.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE CLERK: Everyone please rise.

5 THE COURT: Please be seated.

6 (Discussion between the Court and the clerk.)

7 THE COURT: Ms. Clerk, please call the matter set for
8 hearing at this time.

9 THE CLERK: Yes, your Honor.

10 This is the date and time set for a hearing motion for
11 summary judgment in CV-09-1348-ECR, James Nalder, et al., versus
12 United Automobile Insurance Company.

13 Present in the courtroom for the plaintiffs, Mr. David
14 Sampson, Las Vegas, Nevada; and, for the defendant, Mr. Matthew
15 Douglas and Mr. Thomas Winner, Las Vegas, Nevada.

16 (Discussion between the Court and the clerk.)

17 THE COURT: I'm sorry we got a late start, but we have
18 been pressed with our calendar today more than usual.

19 We've allowed each side one hour. You don't have to
20 use that but use it if you need to. The movant should keep --
21 save time against the hour to respond. And, nonetheless, I do
22 anticipate that the movant will cover all issues and not wait
23 for any reply argument to counter the arguments of the
24 defendant. I -- I want you to touch all the bases.

25 We'll hear from the defendant, please.

2:09-cv-1348-ECR-GWF - December 7, 2010

1 MR. DOUGLAS: Your Honor, would you like me to take the
2 podium or just from the --

3 THE COURT: The podium, please, yes.

4 MR. DOUGLAS: Sure.

5 Good afternoon, your Honor. May it please the Court
6 and counsel.

7 My name is Matthew Douglas. I'm here on behalf of the
8 defendant, United Auto.

9 Your Honor, I have to say that my clients have -- have
10 waited a long time for this day to get this -- this case heard.
11 What I feel --

12 THE COURT: Would you move just a little closer to the
13 mic.

14 MR. DOUGLAS: Sure. Is that better?

15 THE COURT: That's better. Thank you.

16 MR. DOUGLAS: I -- I -- I was just saying, your Honor,
17 my clients have waited a long time for today. They filed this
18 motion, as you -- as you know, some time ago. I assume your
19 Honor has read all the briefs. I know there's a lot there. But
20 I think -- I think this case is really a simple one at its
21 heart. This is --

22 THE COURT: Do you think that the --

23 MR. DOUGLAS: -- an action --

24 THE COURT: -- renewal statement is ambiguous? Just a
25 minute here.

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1 (Pause in the proceedings.)

2 THE COURT: It says if -- my clerk and I looked at this
3 and we each read it differently -- "to avoid lapse in coverage,
4 payment must be received prior to expiration of your policy."
5 Then, if you look up at the top, it says expiration date,
6 July 31, 2007; then in the middle it says renewal amount, \$134
7 no later than June 30, '07.

8 Can you tackle that? Does that sound --

9 MR. DOUGLAS: Certainly --

10 THE COURT: -- ambiguous --

11 MR. DOUGLAS: -- your Honor.

12 THE COURT: -- to you?

13 MR. DOUGLAS: You know, this is something that's
14 been -- gone back and forth in this case a few times. As you
15 know, initially the -- or you may not know -- initially the
16 plaintiff claimed he actually tried to make a payment on time.
17 That was the initial pleading response we got.

18 On answer to a Motion to Compel -- on the day of the
19 hearing, we were supplied with Amended Answers -- where the
20 plaintiff then said, actually, I didn't make a timely payment,
21 but the renewal notice was ambiguous. And, hence, the sort of
22 defense du jour that the plaintiffs have tried to mount to
23 coverage -- to show coverage.

24 And, in regard to the ambiguity, your Honor, I don't
25 know that anyone -- I think -- this came up in the plaintiff

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1 Mr. Lewis's deposition -- I think anyone reading this notice --
2 I think a fair and reasonable person is gonna say -- just like
3 every other bill, you have a stub that says pay my policy in
4 full with a due date. The amount is surrounded by stars. There
5 is a clearly worded "no later than" surrounded by stars with the
6 due date. Again, down at the bottom with the payment stub,
7 which we all are familiar with paying bills, it says "detach
8 this portion with my payment" and, again, there's a due date and
9 the amount due.

10 I think only a person -- after reading plaintiffs'
11 arguments, I think it's a stretch to try and convert the word
12 before -- "prior to expiration of your policy" and then link it
13 to the expiration date, which is clearly for the next policy on
14 the top right-hand corner, I think to draw that conclusion that
15 that's the expiration date the body of the renewal is talking
16 about I think is a stretch. I think it's trying to find an
17 ambiguity when none exists. I think it's trying to explain away
18 someone who failed to make a timely payment for his renewal
19 policy and, unfortunately, did not have insurance for this
20 terrible accident.

21 I -- that's -- I mean, I -- I -- that's the way --

22 THE COURT: Do you think --

23 MR. DOUGLAS: -- I clearly see it.

24 THE COURT: -- a reasonable person could read it the
25 other way?

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1 MR. DOUGLAS: I -- I -- I don't believe so, your Honor,
2 not with our current -- you know, for two reasons and I'll
3 explain why.

4 Obviously, the first and most obvious reason is that
5 it's obviously a renewal for your next term of coverage. And
6 the effective date right above the expiration date that
7 plaintiff hangs his hat on is -- shows a date in the future. So
8 to divorce that date right above it that says the future
9 effective date from that expiration date I think is to -- again,
10 that's why it's a stretch of this renewal notice.

11 And the -- the -- so that's the -- that's the main
12 reason. I think anyone reading this is gonna say I have a
13 policy. When they are talking about expiration of your policy,
14 they are talking about your current policy. I think the fact
15 that if the effective date, the future effective date, wasn't
16 right on top of the future expiration date maybe -- maybe you'd
17 have more of, you know, a linkage there to be confused.

18 But I think an ordinary individual -- we all deal with
19 car insurance. We all pay bills. I asked Mr. Lewis this. It
20 says "due date" twice; it's starred. If he had confusion --
21 that brings up another point -- if he was confused, why not --
22 why not call the -- the agency or the company. He never did
23 that.

24 But -- but -- I mean, I think just from the face of the
25 document -- we all have experience paying bills. And to avoid

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1 two -- in two places where it's clearly marked "due date" with a
2 date and an amount, I think is to -- again, it's -- it's trying
3 to find coverage; it's trying to find an ambiguity when none
4 exists. And I don't think that's the law.

5 I think the law in regard to ambiguity is -- is clear
6 and I think it means reasonably subject to two different
7 interpretations by reasonable people. And I -- I don't think
8 that's the case here. I think anyone getting this would know
9 the due date for the renewal and be able to pay it.

10 What's interesting further on that point is that the
11 plaintiff himself -- this was not the first time he was late.
12 He was late the month right before. You know, his due date for
13 his June policy was May 29, '07. He didn't make that payment.
14 He made his payment on May 31st, '07, and his new policy started
15 up May 31st '07. And, when he got that new renewal notice,
16 that's why his next policy for July his premium was due
17 June 30th, which would have been the final day of June 2007, you
18 know.

19 And then plaintiffs' argument is further weakened by
20 the fact that even after this lapse when he called the insurance
21 company and found out that he had no coverage, after he raced
22 down after the accident and paid his premium -- you have to
23 wonder why -- if he thought he had till the end of that month
24 why he felt he needed to race back to Las Vegas and pay his
25 premium. No one's explained that to us. If he had till the end

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1 of July, why -- why race back after the accident and get the
2 payment in on the 10th of July and he's up in Pioche?

3 So --

4 THE COURT: The accident, according to the best we
5 could get out of this, occurred in Clark County, Nevada. Let's
6 see. Our address there is -- and this is not an important --
7 Bartolo Road, Clark County. But somewhere I got the impression
8 it may have been -- occurred in Lincoln County.

9 MR. DOUGLAS: That's --

10 THE COURT: Is that --

11 MR. DOUGLAS: -- that's correct, your Honor.

12 Perhaps plaintiff -- plaintiff might speak to this
13 better. But, for -- for my understanding and for Mr. Lewis's
14 testimony, this happened at a campground not in Clark County
15 and, in fact, it was near Pioche. In fact, that explains why
16 originally the little girl was airlifted to Caliente and then
17 later transported to UMC where they had --

18 THE COURT: So you --

19 MR. DOUGLAS: -- a better Trauma Center.

20 THE COURT: -- you believe it occurred in --

21 MR. DOUGLAS: It was --

22 THE COURT: -- Panaca or Pioche?

23 MR. DOUGLAS: We think so, your Honor. It was a -- it
24 was a state campground from my understanding. There was a --
25 there was a biker's club convention or something going on that

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1 the plaintiff was attending.

2 THE COURT: All right. Thank you.

3 Spell "Cheyanne." Not the city, but -- I picked up a
4 couple of different spellings in there about that.

5 MR. DOUGLAS: My under- -- you're talking about the --
6 the little girl?

7 THE COURT: Yes.

8 MR. DOUGLAS: My understanding is it's C-h-e-y-a-n-n-e.

9 THE COURT: I saw some different spellings and
10 particularly in papers presented by the plaintiff.

11 Mr. Sampson.

12 MR. SAMPSON: It would appear I may have misspelled her
13 name on there. And it may have been that when I spelled her
14 name the way it's spelled --

15 THE COURT: What is right?

16 MR. SAMPSON: I believe in the caption the
17 C-h-e-y-a-n-n-e --

18 THE COURT: All right.

19 MR. SAMPSON: -- is correct.

20 THE COURT: Thank you.

21 MR. SAMPSON: And I believe when I spelled it in the
22 body it underlined it as misspelled because it doesn't match the
23 city --

24 THE COURT: All right. That --

25 MR. SAMPSON: -- and I may have corrected it

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1 inadvertently.

2 THE COURT: Thank you.

3 Go ahead, please.

4 MR. DOUGLAS: Sure.

5 So essentially, your Honor, as I was just -- I was just
6 saying, the -- the other -- the other noticeable point, just in
7 regard to the ambiguity, is that we know Mr. Lewis races back to
8 town from -- from his campground up state to make a policy
9 premium that he thought he had till the end of the month to
10 make. Then he calls the insurance company to check and see if
11 he had coverage. Again, this underscores the point of why would
12 he do that if he thought he was timely.

13 Anyway, he calls. He checks coverages. And, at this
14 point, they, of course, inform him he doesn't have coverage. A
15 month later plaintiffs' counsel directed a demand at my client
16 asking for the policy limits. And at that time he, too, was
17 told about the lapse.

18 We know from Mr. Lewis's deposition testimony and his
19 Answers to Interrogatories that he was in contact with a
20 Mr. Sampson at this time. Besides the obvious issues that that
21 may raise, we do know that certainly, then, between his
22 conversation with UAIC and his conversations with Mr. Sampson he
23 must surely have been told that he now had -- he -- if he didn't
24 pay his monthly premium on time he would have a lapse.

25 However, Mr. Lewis goes on to not pay his August

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1 premium on time; I believe his September premium was late. In
2 fact, we go on down the line, he stayed insured with UAIC
3 through the spring of 2008 and I think seven of those times over
4 the next eight or nine months, I think seven of the times he was
5 late and had lapses.

6 THE COURT: Is there one time at least where he paid
7 late but the insurance began at the start of the month?

8 MR. DOUGLAS: Never. Never. And that is clear from
9 the documentation.

10 And if you look at my initial reply brief -- because
11 plaintiff sort of eludes to a course of dealing that -- where
12 the insurer accepted late premium for -- for the -- for the
13 term, that never occurred. Never occurred.

14 And we go through and there's -- I went through very
15 painstakingly because of all the documentation. And, if you
16 look in my original reply to the motion, I went through each and
17 every instance. And you'll see what we have here is a person
18 who is really playing a little bit of Russian roulette; he was
19 gambling with his insurance coverage.

20 Maybe he didn't have money; maybe he didn't have a job.
21 You know, I -- I'm not trying to be -- I'm not trying to have a
22 heart or be understanding for people's situations. But, when
23 you take that kind of gamble with insurance coverage, it can
24 leave you open to a situation like occurred here.

25 THE COURT: Now my note here says, plaintiffs point to

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1 April 2007 when Lewis received a revised renewal statement
2 notifying him that payment for a policy effective April 29th,
3 2007, and expiring May 29th, 2007, was due May 6, 2007, a week
4 after the policy would be effective.

5 MR. DOUGLAS: That's correct.

6 If your Honor notices, that is a revised renewal
7 statement. That is not a normal renewal. It's what -- it's
8 termed a "revised renewal statement." And the reason for
9 that -- I also pointed this out because plaintiffs brought that
10 up.

11 At that particular time, the plaintiff, he went in and
12 got the policy, I believe, in April of '07. Towards the end of
13 the month, he went in and added his girlfriend, Kris- --
14 Ms. Kristin Scott, and her vehicle. He did that, I want to say,
15 on about the 24th of April. So at that -- and he paid an
16 additional premium, then, to add a vehicle and a driver for
17 those last few days of the month of April.

18 And what happened at that point is the company
19 generated the revised renewal statement because his premium
20 obviously for that May term was gonna go up because -- by --
21 by -- by -- by virtue of adding that driver and the -- and the
22 girlfriend.

23 THE COURT: Is that really a new policy do you think?
24 If I had a policy and I wanted to add my wife to it, would it be
25 a new policy then?

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1 I assume -- it makes sense that maybe the premium would
2 be higher. But it didn't -- it seemed to me you ought to be
3 able to tack on a vehicle or a person and would not really be a
4 new policy; it would simply be coverage -- additional coverage.

5 Is that right?

6 MR. DOUGLAS: Well, it -- it depends. Different
7 companies do it differently.

8 In fact, in this case what they did is they added an
9 endorsement which -- and -- and so, when he came in and did that
10 in April, they added an endorsement for an additional driver and
11 an additional vehicle. So, in fact, in April, it was not a new
12 policy.

13 However, what happened is his May policy, his policy
14 for May, the premium was increased by virtue of five days before
15 it was set to incept he added these -- these -- these -- this
16 driver and this vehicle. Therefore, the company sent out the
17 revised renewal notice. And they said: You know what.
18 Mr. Lewis, you came in. You -- you have your May policy coming
19 up. This one time it's a revised renewal statement. We're
20 gonna give you until the 6th of May to pay for that May premium
21 because of the fact that in terms of notice how could they have
22 gotten the notice to him sooner; he only went in to add the
23 vehicle and driver on the 24th of April. So they send it out.

24 The funny thing about that is it's really a red herring
25 because Mr. Lewis paid that one on time. He made that policy

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1 payment for May on about April 28 --

2 THE COURT: It does --

3 MR. DOUGLAS: -- 2007.

4 THE COURT: -- sound like, however, a custom or
5 practice on one occasion, if you can -- can denominate it a
6 customer practice, where he paid and then the policy was
7 effective prior -- for a date prior to the date of the payment.

8 Is that right?

9 MR. DOUGLAS: I'm sorry. I didn't follow that, Judge.
10 I'm sorry.

11 THE COURT: Reporter read my statement, please.

12 (Record read.)

13 MR. DOUGLAS: Well -- well, I guess, first off, I don't
14 think one instance can be a custom and practice. I -- I
15 think -- but second- -- secondly and most importantly, as I just
16 mentioned, the -- the carrier never once accepted a payment for
17 a policy term after the date of that term. That did not happen
18 once in this case.

19 So I agree with you, though, had it had maybe -- maybe
20 that would be different. But that just never happened in this
21 case. As I just mentioned in regard to that, again, the revised
22 renewal statement. So it's really a different thing.

23 I mean, you know, it's kinda like the plaintiffs'
24 arguments here. You know, okay, maybe it was I thought -- you
25 know, he said at deposition, oh, I thought I had a year policy.

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1 You know, at first it was I ran down to make a payment and --
2 you know --

3 THE COURT: You know, the word --

4 MR. DOUGLAS: -- timely.

5 THE COURT: -- "revised" doesn't move me very much. As
6 far as -- it was a renewal statement. The -- the fact that it
7 was revised -- it still took -- the policy took effect prior to
8 the date of the payment.

9 MR. DOUGLAS: No, it did not, though. That's -- that's
10 the point. He paid --

11 THE COURT: Well, now --

12 MR. DOUGLAS: -- he paid --

13 THE COURT: -- what I said --

14 MR. DOUGLAS: -- for that --

15 THE COURT: -- isn't right then here, received a
16 revised renewal statement notifying him that payment for a
17 policy effective April 29th and expiring May 29th was due on
18 May 6th.

19 MR. DOUGLAS: Right. But he paid for it April 28th.
20 So he didn't even wait the extra time, which actually goes to
21 the point that he knew from the original renewal statement that
22 was sent out that his pol- -- his premium for May was due at the
23 end of April. That -- that's my point, your Honor, is that it's
24 really a moot point because the guy still went in and paid --
25 paid the darn thing timely.

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1 And, you know --

2 THE COURT: All right. That's a pretty good argument.
3 Go on, please.

4 MR. DOUGLAS: I'm sorry?

5 THE COURT: That's a pretty good argument. Go ahead,
6 please.

7 MR. DOUGLAS: Okay.

8 And -- and -- and so basically that -- that's the
9 pattern and practice that -- that really exists here is that if
10 there is any course of dealing it's that Mr. Lewis paid late; he
11 gambled a little bit with his coverage.

12 And that's, I think, what happened in this situation.
13 I think it's pretty clear. And -- and I think that -- that, you
14 know, it's -- Ms. Danice Davis, the underwriter for UAIC, I
15 believe her Declaration is really undisputed here.

16 She -- she -- looking at the policy, we have a term for
17 June of 2007, Policy 20021926, with a term from May 31st, '07,
18 to June 30th, '07. I don't think -- there's been facts and I
19 don't think there'll be any argument made that that -- that
20 policy did not -- it's pretty clear that that policy expired per
21 its own terms on June 30th of 2007.

22 THE COURT: Now, let me try out a related question.

23 If we were to reach a conclusion based on what we see
24 here that the renewal statement in question was ambiguous, at
25 least to the extent of denying a motion for summary judgment on

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1 that issue, where do you go from there?

2 I was toying with two possibilities. And I'm not
3 asking you to concede this issue, but I wanted to hear your view
4 of it.

5 Is that a matter of interpretation of the policy which
6 would be an issue of law -- and there's a lot law out there that
7 says ambiguous policies are interpreted in favor of the
8 insured -- or is it a question for the jury, and that is, what
9 is a reasonable reading of this? Does the jury enter into it?
10 How do you sort that problem out?

11 MR. DOUGLAS: Your Honor, I -- I noted this in my -- my
12 last brief which was in response and I noticed it -- noted it
13 previously.

14 I -- I really truly believe, you know, when you break
15 down plaintiffs' arguments at -- at their core, they're -- I
16 think they're all matters of the law. I think this whole --
17 this whole issue is a matter of law. I think whether -- first
18 of all, whether there was a policy in force for the --

19 THE COURT: Well, are you a dead duck then if it is --
20 if we decide it's ambiguous?

21 MR. DOUGLAS: Well, I'll -- I'll tell ya what, your
22 Honor. I --

23 THE COURT: Can I decide that now?

24 MR. DOUGLAS: You -- you -- you certainly can, your
25 Honor.

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1 I mean, that -- that -- if that -- I think you can
2 decide the ambiguity and -- as well as the two statutes that
3 that -- that plaintiff is claiming my client didn't comply with.
4 I think, you know, that -- that would be statutory
5 interpretation. I see no reason why this Court can't decide all
6 three of those issues --

7 THE COURT: All right then.

8 MR. DOUGLAS: -- of matters --

9 THE COURT: If --

10 MR. DOUGLAS: -- of law.

11 THE COURT: -- if we decided that -- if it is an issue
12 of law, what happens in the case next?

13 MR. DOUGLAS: Well, I'll tell ya, your Honor, what I
14 think happens. You notice in our motion we moved a couple of
15 the things in the alternative. And what I really feel strongly
16 about is that -- you know, the first issue obviously here is
17 coverage and -- and whether or not there was a policy in force.
18 And -- and that would go -- go into the statutory interpretation
19 as well as the ambiguity issue.

20 Were your Honor to decide that the renewal notice was
21 ambiguous, I still think it leaves us with the second -- our
22 second big motion which is that we move for summary judgment on
23 the extra-contractual claims.

24 THE COURT: All right.

25 Then the -- if it is ambiguous, then do you concede the

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1 contactual obligation?

2 MR. DOUGLAS: If it -- if you found it ambiguous, I
3 believe my client would concede to contactual obligation. But
4 the understanding being that my client also wants a finding that
5 there was a genuine dispute as to this coverage. And I think
6 that given all the debate over this I think it would be -- I
7 think this Court can find as a matter of law that there was a
8 genuine dispute over this contract.

9 THE COURT: Now, the genuine dispute, does that enter
10 into the extra-contractual allegations that you've made?

11 MR. DOUGLAS: Yes, yes, it --

12 THE COURT: But --

13 MR. DOUGLAS: -- does, your Honor.

14 THE COURT: -- as far as here it would go -- the
15 defendant then would be -- would concede the contractual
16 obligation if that -- and, of course, you can appeal this and a
17 higher court may see it differently than we do -- but you then
18 would pass over to the bad faith covenant of good faith and fair
19 dealing issue.

20 Is that right?

21 MR. DOUGLAS: That -- that's correct, your Honor,
22 because we really -- that's what we feel most strongly about. I
23 mean, at the end of the day, there's a lot of -- there's a lot
24 of issues here would go to both that -- that, you know --

25 THE COURT: All right. If you want to go to the

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1 genuine dispute doctrine.

2 MR. DOUGLAS: Sure, your Honor.

3 Basically our point here is that even were this Court
4 to deny the Motion For Summary Judgment on the coverage issue,
5 which it sounds like your Honor is leaning towards --

6 THE COURT: Well, don't --

7 MR. DOUGLAS: Oh, I'm sorry.

8 THE COURT: -- I'm not like the Supreme Court. You
9 usually can tell how the Justices are going to go by the remarks
10 they make and they're reported and you usually do follow what
11 they have said there, kind of expressing their views, testing
12 the waters.

13 That's not my practice. I'm gonna test things. And I
14 haven't made up my mind this way. I think this is a
15 possibility, but by no means assume that I've decided that
16 issue.

17 MR. DOUGLAS: I -- I apologize then, your Honor. And
18 I -- I, of course --

19 THE COURT: No apology --

20 MR. DOUGLAS: -- understand that.

21 THE COURT: -- is needed.

22 MR. DOUGLAS: With the bad faith --

23 THE COURT: It's also true in the Court of Appeals, to
24 a lesser extent, many times you can tell how the judges of the
25 Court of Appeals maybe are gonna go.

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1 The Nevada Supreme Court, I've lost track of them for
2 30 years or more. But -- so I don't know what their view is --
3 but I'm gonna test some propositions here on both sides and
4 don't assume that that means I've adopted that view.

5 MR. DOUGLAS: And -- and I appreciate that, your Honor.
6 I actually -- I -- I do. And so I didn't mean to --

7 THE COURT: Go ahead with the genuine dispute doctrine
8 then.

9 MR. DOUGLAS: Okay.

10 Basically, as we cited in our brief, your Honor, it's
11 pretty clear that the Ninth Circuit and the Nevada -- the Nevada
12 courts have adopted the general -- the genuine dispute doctrine.

13 THE COURT: Now, the -- are there -- I believe that I
14 saw a Nevada Federal Court case interpreting Nevada law.

15 Is there a Nevada Supreme Court decision on genuine
16 dispute doctrine?

17 MR. DOUGLAS: Yes, your Honor. And I will...

18 I think the -- the genuine dispute doctrine was
19 recognized -- I cited the *Schumacher* decision which actually is
20 a Federal Court case as well -- but there is the *American*
21 *Excess Inc.* case.

22 I think that's succinctly defined, Nevada's policy on
23 bad faith. And -- and *American Excess* is cited at 102 Nev. 601.
24 It's from 1986. In that case, "The Nevada Supreme Court ...
25 defined bad faith as 'an actual or implied awareness of the

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1 absence of a reasonable basis for denying benefits.'" "

2 So it's not enough that we be wrong --

3 THE COURT: It doesn't necessarily cross over into
4 genuine dispute.

5 Has the Nevada Supreme Court ever said we adopt the
6 genuine dispute doctrine?

7 MR. DOUGLAS: I -- I -- I think that's -- I think
8 that's a reasonable interpretation of the law, your Honor. I
9 think that the genuine dispute doctrine, however, gives us a
10 good framework to frame the argument because I believe the --
11 the law is essentially the same. They may not have term -- have
12 adopted it per se. But I think it's a good framework and that's
13 why I used it in my brief.

14 THE COURT: All right.

15 MR. DOUGLAS: Since the Ninth Circuit does adopt it,
16 I -- I -- I feel it's a good -- good starting point for our
17 discussion.

18 Because as the *American Excess* case states, the -- the
19 issue here really -- you can frame it as it's not enough for my
20 client to be wrong; they have to be unreasonably wrong. I -- I
21 think that -- that's -- I think that's a fair summation of the
22 state of the law of bad faith in Nevada and extra-contractual
23 remedies.

24 And, you know, when you take it from that perspective,
25 what do you have here? We have an expired term from June 2007;

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1 we have a loss that occurs on June 8th, 2007; and then we have
2 an insured who runs down, makes a payment, and starts a new
3 policy July 10, 2007.

4 On its face, there is no existing policy for my client
5 to find -- to find coverage for this loss. And to expect my
6 client to know that there would be an argument as to the
7 ambiguity, let's say, of the renewal notice, I think, as we
8 mentioned, it's a legal question.

9 And I don't think that -- and so I think that if my
10 client does turn out to be wrong, let's say, on their -- on
11 their -- on their reading of the renewal notice and the
12 ambiguity, I don't think it was unreasonably so. I think it was
13 reasonable.

14 This was a -- you know, it kind of touches on the
15 statutory arguments that plaintiff makes. This was a product --
16 it's a monthly policy. Look, this is for high-risk drivers;
17 drivers that can't get insured with State Farm, Allstate. This
18 is a month-to-month policy for people that are high-risk
19 drivers. It's a product that was specifically approved by the
20 Nevada Department of Insurance which begs the question why would
21 the Nevada Department of Insurance approve a product that didn't
22 comply with, let's say, the midterm cancellation or the
23 nonrenewal statute.

24 But, also, I think this is a product, then, therefor
25 that my company could reasonably rely on their contract that

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1 there was no coverage in force. And, to look down the road and
2 foresee an ambiguity argument, I don't think that's -- I
3 don't -- I think a reasonable mind can say that they had -- they
4 had a reasonable basis to deny coverage here. They could be
5 wrong, but was it unreasonable. We're not talking about, you
6 know, a factual question or something like that. This is a
7 matter of law.

8 And we have an expired term. We have an insured who
9 didn't pay his renewal on time then rushes down after a loss to
10 make a payment.

11 THE COURT: Is it a -- can I decide that fact here now
12 on summary judgment or is that something that should go to the
13 jury?

14 MR. DOUGLAS: See, I think you can, your Honor. By
15 nature of the ruling, just like we talked about, I think it goes
16 to tandem. I think oftentimes that might be a factual question.

17 But in this case, given that it's all legal arguments
18 that your Honor would decide on summary judgment and given the
19 clear, the clear, I think, fact that my client had a policy that
20 they want -- they reasonably relied on that showed no coverage,
21 I think your Honor can go that next step and find that as a
22 matter of law there was -- there was no reasonable -- there was
23 no unreasonable act by my client.

24 And this is -- it's -- besides the *American Excess*
25 case, it's interesting. The other case I note is the *Turk v.*

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1 TIG case. And this is a -- this is a federal case.

2 THE COURT: Let's see. Spell that first.

3 MR. DOUGLAS: It's -- it's *Turk*, T-u-r-c-k [sic], v.
4 TIG. And -- and this is another federal -- federal case, your
5 Honor. But I -- think it's -- it's really instructive for --

6 THE COURT: Is that in the Federal District Court in
7 Nevada?

8 MR. DOUGLAS: Yeah. It's F- -- F.Supp.2d 1044.

9 THE COURT: Okay.

10 MR. DOUGLAS: And -- and I think that case is
11 instructive, your Honor, because in that case --

12 THE COURT: Give me the volume.

13 MR. DOUGLAS: Excuse me? Oh. It's the F. --
14 F.Supp.2d.

15 THE COURT: Yeah. There's got to be a volume number.

16 MR. DOUGLAS: Oh. 616.

17 THE COURT: That's what I need. Thank you.

18 MR. DOUGLAS: Sorry, your Honor.

19 THE COURT: Go ahead.

20 MR. DOUGLAS: I -- I think that case is instructive,
21 your Honor. In that case, kinda similar issue. In that case,
22 the insurer had -- had -- a duty to defend was raised by a party
23 that believed they should have been an additional insured on a
24 policy. And the insurance company looked at their policy, and
25 this -- this -- this party had never been added as an additional

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1 insured -- additional named insured. And, on that basis, the --
2 the insured declined to defend and denied coverage. And later
3 the issue came up. Maybe there was a mistake. In that case,
4 there were some other facts that maybe this party should have
5 been an additional insured.

6 And the court there said the fact that this party was
7 not named on the policy as an additional insured it was not
8 unreasonable for the company to have relied on that in their --
9 in their declination of coverage. And I think we have a similar
10 situation here.

11 Just like the Declaration pages in the *Turk* case did
12 not have an additional insured name; in this case the
13 Declaration pages for both the June '07 policy and the July '07
14 policy on their face did not cover the date of loss.

15 I think it's a very comparable situation. It's
16 substantially similar. And I think my client made the same
17 reasonable reliance that the client -- the insurer in *Turk* did
18 in assuming that if I don't have a policy declaration page that
19 shows a term in force when this accident occurred -- I mean,
20 we're not talking about an issue over whether an insured had
21 permission, you know, or whether or not an add- -- you know, a
22 driver was -- was operating an insured vehicle. We're not
23 talking about that kind of issue here where there could be a lot
24 of factual interplay.

25 This is -- if this comes down -- if plaintiff is proved

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1 right on the coverage issue, it's a legal issue. And I don't
2 think there was anything my client did to foresee the defenses
3 raised here. And I think they reasonably relied on their
4 policy. I don't think any of us -- I don't think a reasonable
5 mind could disagree that when my client looked -- when this loss
6 came in and they had a policy that had expired and they had a
7 rush -- a payment rushed two days after the loss to start a new
8 policy, I don't know how a reasonable mind could find that to be
9 unreasonable for them to not -- to not have found coverage.

10 And, for that reason, I think, your Honor can -- even
11 if you found coverage on one of the issues plaintiff raises, I
12 think you could still decide as a matter of law there was no bad
13 faith here. And, in fact, my client -- this case screams out
14 for it because it's a slippery slope.

15 If a -- if an insurer can't look at their policy
16 declaration pages and based on the policy term not being in
17 force deny a claim, you know -- you know, it really -- at that
18 point we might as well just tell insurers: Forget about it.
19 You -- you -- you know, whether they pay, whether they don't
20 pay, you know, you're stuck. I mean, there's no sense in even
21 having a policy term then. This is really -- this gets down to
22 a real basic area of contract law.

23 And I know there are presumptions and public policy for
24 insurance coverage. And certainly this little girl was injured
25 and -- and nobody wants that and certainly nobody wants to leave

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1 someone in the lurch. But, at the same time, my client has to
2 be able to rely on their contract and on their insureds
3 making -- making payments and complying with basic, basic terms.
4 And for -- should this Court not think that -- find that as a
5 matter of law they couldn't rely on -- on their -- on their
6 Declaration pages I think would be inherently unfair and set up
7 a situation where an insurer really would never know, really
8 never have any security in their contract or its language.

9 You know, were this a situation where the -- the
10 plaintiff had somehow claimed that there was a mistake in the
11 Declaration pages or an ambiguity there that might be a
12 different story. But we're not talking about that. And we all
13 agree, according to United Auto, the policy expired; the other
14 policy incepted after the loss. The question is over the
15 meaning legally of a renewal notice that -- that -- that
16 plaintiff argues is ambiguous. And I don't think that's
17 something -- I think reasonable minds looking at it I don't
18 think you could say that my client could foresee that.

19 Based upon that, I -- I think this Court can find that
20 there's no extra-contractual liability as a matter of law. And
21 I think that's really what gets to the heart of this case, your
22 Honor. You know, we know -- we've asked our -- our -- our third
23 and fourth portions of our case were to bifurcate this and
24 finally to allow us leave to amend. You know, we know now from
25 interrogatory answers and depositions that Mr. Lewis was in

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1 contact with the plaintiffs' attorney days after this accident.
2 He also were -- were friends with the plaintiffs.

3 THE COURT: I thought that Mr. Nalder got a judgment
4 against Mr. Lewis for three-and-a-half million dollars; is that
5 right?

6 MR. DOUGLAS: Oh, yes.

7 THE COURT: And who represented Mr. Nalder?

8 MR. DOUGLAS: Plaintiffs' counsel.

9 THE COURT: Okay.

10 What you're telling me that -- that Mr. Lewis got in
11 touch with plaintiffs' counsel days after this --

12 MR. DOUGLAS: Yes. It's --

13 THE COURT: -- even --

14 MR. DOUGLAS: -- it's both in his interrogatory
15 responses, which we've -- we've attached, as well as his
16 deposition testimony. Plaintiff counsel will freely admit it.

17 THE COURT: And, in spite of that relationship, got a
18 judgment against Mr. Lewis?

19 MR. DOUGLAS: Oh, yes.

20 And then they filed this suit, your Honor, without an
21 assignment. The assignment was presented to us at the Motion to
22 Compel hearing in February of this year.

23 THE COURT: I -- I observed that.

24 MR. DOUGLAS: So, your Honor, this really gets to the
25 heart of this case. And, you know, what this is about is not

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1 just the -- you know, the -- the -- plaintiff can argue about
2 the coverage issue. But even -- but I think reasonable -- I
3 think there was a reasonable dispute, at least, over the
4 coverage. And what plaintiffs' really after here is bad faith
5 so he -- so they can try and execute on this potentially
6 collusive \$3.5 million judgment.

7 And that's why our final portion of our motion would be
8 that should all of our other relief be denied we ask this Court
9 to allow us leave to amend, to add common law jeopardy against
10 plaintiffs' firm, to add collusion as a defense to my client, to
11 add lack of notice, to add noncooperation because I think that's
12 what's going on here. My client didn't know about any of this
13 until this case.

14 THE COURT: Tell me: What is the status of discovery?

15 MR. DOUGLAS: Discovery is closed, your Honor. That's
16 why we --

17 THE COURT: And did it --

18 MR. DOUGLAS: -- filed this --

19 THE COURT: -- we -- maybe we didn't act quickly enough
20 on it -- but did it cover issue -- from what you're telling me
21 it covered issues of bad faith as well as the contractual
22 obligation; is that right?

23 MR. DOUGLAS: Yes. Our discovery covered -- plaintiff
24 took -- as -- as you can see from the briefs, plaintiff took a
25 tremendous amount of depositions and -- and basically focused on

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1 the bad faith but also the coverage issue. We did not --

2 THE COURT: So that it's -- the -- a bifurcation of
3 discovery is moot.

4 MR. DOUGLAS: Bifurcation of discovery is moot. We
5 would still ask this Court to bifurcate any -- if this were to
6 go to trial, to bifurcate the coverage issue from the bad faith
7 because I think there's no need to hear about Ms. -- the young
8 girl's injuries or the judgment against Mr. Nalder or any of
9 those types of things should we try the coverage issue because I
10 think that would just be inherently prejudicial to my client
11 given that you have a minor that was injured and -- and I really
12 don't think it has anything to do with the coverage issue. I
13 mean, this -- this could have been anything from a scrape to a
14 terrible injury, you know, and it really doesn't change the
15 coverage issues.

16 But, in terms of the issues we are asking -- we sought
17 leave to amend, we did not get into discovery on that because I
18 was hoping this Court would grant the motion. I did not want --
19 I was -- I did not want to seek discovery on issues that we had
20 not yet pled.

21 THE COURT: The -- if discovery were reopened on the
22 Amended Complaint, it would be limited to the issues raised in
23 the Amended -- new issues in the Amended Complaint?

24 MR. DOUGLAS: That -- that -- that would be correct,
25 your Honor.

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1 THE COURT: All right. We'll hear from you again
2 before we finish but be sure you've touched all the bases you
3 want.

4 MR. DOUGLAS: Okay. I -- I -- I think I have, your
5 Honor. If there's any questions, other questions, that your
6 Honor would like me to answer, I can either do that now or we
7 can save that for any reply time.

8 THE COURT: There'll be nothing more beyond today.
9 We'll take this under advisement and we intend to issue a
10 written order on this case. But we'll hear from you again
11 before we --

12 MR. DOUGLAS: Yes. Thank --

13 THE COURT: -- stop.

14 MR. DOUGLAS: -- thank you, your Honor.

15 THE COURT: Come forward, Mr. Sampson, please.

16 MR. SAMPSON: Thank you very much, your Honor. And
17 good afternoon. If I can have just a moment.

18 I want to go through the points and particularly the
19 questions that your Honor raised.

20 THE COURT: Let's see now. Looking at the renewal
21 statement --

22 MR. SAMPSON: Yes, your Honor.

23 THE COURT: -- it says in there, at least twice:
24 Renewal amount, \$134; no later than June 30th, '07.

25 MR. SAMPSON: Yes, your Honor, that is the due date.

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1 THE COURT: Down at the bottom it says: Due date,
2 6-30-07; amount due, \$134.

3 MR. SAMPSON: Yes, your Honor.

4 THE COURT: Would you say that a reasonable person
5 could read the renewal statement to indicate that the payment
6 was due June 30th?

7 MR. SAMPSON: Well, they could certainly read it that
8 the payment was due June 1st, but they certainly would not be
9 obligated in reading it and saying if you don't pay by the due
10 date we're going to lapse your coverage. Those are two very
11 separate things.

12 You know, rent may be due by the 5th. But you're not
13 gonna be evicted from your home if you miss your payment on the
14 5th. A heating bill or an air -- an electric bill or water bill
15 could be due on the 1st. They are not going to cut your power
16 or cut your water if your payment's missed on the 1st.

17 And so the due date, the date by which your creditor
18 wants his money, is one thing; the date by which your creditor
19 is going to take steps if it's not due is something entirely
20 different in almost any circumstance involving a bill.

21 So when Mr. Lewis looked at this and said they want the
22 money by this date but they've told me that if I pay by this
23 other date I won't have a lapse in my coverage is absolutely
24 reasonable. And the only question -- and certainly -- and
25 I'm -- I'm intrigued by your Honor's statement that -- that your

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1 Honor and your clerk had had different views on this -- on this
2 exact same statement.

3 The question is: Can reasonable minds differ on what
4 that means? Could someone read it and say: They are going to
5 lapse me if I don't pay it by the due date? Potentially. But
6 could someone also read it reasonably and say they're not going
7 to lapse me as long as I pay by the expiration date that's right
8 on the face of the document, which is the end of the month.

9 THE COURT: You know, you think, though, that -- I just
10 want to test this thought -- to avoid lapse in coverage, on the
11 one hand, it says payment must be received prior to expiration.
12 But it says renewal amount, due date, June 30, no later than.

13 Due date, June 30. To me it indicates you're not gonna
14 get whatever you're buying unless you pay it on that date.

15 Is -- is that a fair argument?

16 MR. SAMPSON: I don't -- I don't believe so, your
17 Honor. Again, because when you say "expiration" and the only
18 other place on the entire face of the document where it says
19 "expiration" says "July 31st" --

20 THE COURT: You don't think a reasonable person might
21 read it as I've stated? It would have to be somebody out of
22 their mind?

23 MR. SAMPSON: I think it would -- it's a potential
24 reasonable interpretation of the language, your Honor. However,
25 again, the point is could reasonable minds differ on what that

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1 language means? And I disagree with the notion that -- that if
2 you read it as to say they want their money by this date but
3 they are not going to lapse me unless I miss this subsequent
4 expiration date is also a perfectly reasonable interpretation of
5 that -- of that document.

6 And the point is -- and it's raised in the -- I believe
7 it's the -- I had written done the *Winckler* case -- that the
8 language of the policy is construed most strongly against the
9 insurance company and liberally in favor of the insured and
10 broadly interpreted to afford the greatest amount of coverage.
11 And so, when you read it with that understanding and you say,
12 yes, are there two potential understandings of this document --

13 THE COURT: Stop for just a minute. (Pause.)

14 Go ahead, please.

15 MR. SAMPSON: Okay.

16 THE COURT: Pardon the interpretation.

17 MR. SAMPSON: It's the -- it's the *Winkler* -- I can
18 pull the exact cite, but I don't know what the... *Hartford Ins.*
19 *Group v. Winkler*, 89 Nev. 131.

20 The Nevada Supreme Court's speaking and saying:
21 "[c]ontracts of insurance are always construed most strongly
22 against the insurance company. Stated another way, a policy of
23 insurance is to be construed liberally in favor the insured."

24 I don't even think you need to construe this liberally
25 as in perhaps it was your clerk that was the one that read it

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1 differently and said this appears to be --

2 THE COURT: I'm not gonna tell ya which of us --

3 MR. SAMPSON: And that's --

4 THE COURT: -- interpreted --

5 MR. SAMPSON: -- fair, your Honor.

6 THE COURT: -- which way.

7 MR. SAMPSON: I understand.

8 But the -- and I think -- if there was ever a situation
9 where reasonable minds differed, I think a federal judge and his
10 clerk could be deemed as two individuals with reasonable minds
11 that differed on a point which makes it ambiguous. And, as we
12 all know, any ambiguity is construed strictly against --

13 THE COURT: Now -- now take that over to this theory of
14 genuine dispute over coverage.

15 MR. SAMPSON: Okay. I -- I'd be happy to address that,
16 your Honor.

17 And that comes, I think, not from any case from more
18 than 15 or 20 years ago but from the *Miller v. Allstate* case
19 just a few years ago -- I believe in 2009 -- where the Court
20 specifically held in that case that what is and is not bad faith
21 "has not yet proven susceptible to definitive legal definition.
22 [And that] An insured's 'good faith' is essentially a matter of
23 fact."

24 And so the question of did they have a genuine
25 dispute -- even at present, your Honor, UAIC has never offered

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1 the \$15,000. Even as of right now, UAIC has never sent a
2 reservation of rights to Mr. Lewis; never procured independent
3 counsel for him; never procured any counsel to look into this
4 from -- from outside with independent eyes to make an assessment
5 of is this --

6 THE COURT: Well, don't you --

7 MR. SAMPSON: -- language truly --

8 THE COURT: -- think that -- again, for argument here
9 to probe this a little bit deeper -- that the insurance company
10 had a leg to stand on just by reference to what the renewal
11 statement said, that is, that -- that it was not unreasonable
12 for them to conclude that there was no coverage?

13 MR. SAMPSON: Well, and -- and that's -- that's not the
14 distinction in -- in the case. It's a question of did they
15 consider their insured's rights equally with their own rights.
16 And case law from *Landlow* [sic] to -- to *Miller v. Allstate* --

17 THE COURT: Well, I realize there's a lot of law on
18 that, volumes and volumes.

19 But one of my problems here is looking at the renewal
20 statement. Again, for the sake of argument, it looked like it
21 wasn't unreasonable to read it the way the insured's company
22 read it. And the -- it would be based on what -- the wording of
23 the renewal statement or the policy, that would be the
24 reference, which is undisputed. The -- the renewal statement,
25 nobody disputes what it says.

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1 Tackle that argument now.

2 MR. SAMPSON: Sure, your Honor.

3 And, again, the point is not is that a reasonable
4 understanding -- is that a reasonable interpretation of the
5 language. The point is, is in interpreting, in interpreting
6 that language did UAIC consider its insured's interests equally
7 with its own interests.

8 And all of the discovery that's been done and all of
9 the testimony and evidence in this case is they never once --
10 and I asked the person most knowledgeable from UAIC and I asked
11 the individual in charge of underwriting and the individual in
12 charge of handling, all of them -- were any steps taken to
13 consider this other interpretation, to consider whether this was
14 ambiguous, and consider whether in fact there was coverage. And
15 the answer was no, we did nothing; no steps were taken anywhere.
16 And that comes from our expert report from Mr. Miller that talks
17 about an insurance company's obligation to consider --

18 THE COURT: Is that transcript offered as evidence?

19 MR. SAMPSON: The -- yes. We had -- and I'll -- I can
20 find -- it was in our supplement, the transcripts of -- of
21 Danice -- Janet Cook; Danice Davis; and the PMK, which was also
22 Danice Davis.

23 THE COURT: And you gave lines and -- and you gave us
24 the actual testimony, did you?

25 MR. SAMPSON: I don't know that I -- let me take a

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1 look.

2 On that particular point in terms of -- of what was
3 done, I don't know --

4 THE COURT: Just --

5 MR. SAMPSON: -- that that was --

6 THE COURT: -- I'm looking --

7 MR. SAMPSON: -- specifically addressed.

8 THE COURT: -- at the evidence that we would consider
9 in considering the summary judgment motion --

10 MR. SAMPSON: Yes. And the --

11 THE COURT: -- which would have to be something you
12 present to us --

13 MR. SAMPSON: Right. The -- the --

14 THE COURT: -- in some admissible form.

15 MR. SAMPSON: -- the transcripts were produced. The
16 Watson deposition was Exhibit No. 3. The --

17 THE COURT: Now, does the summary judgment motion say
18 so-and-so said so-and-so; see attached deposition; and so on?
19 Is that the way it's presented?

20 MR. SAMPSON: We -- we attached the transcripts. I
21 don't know that this particular -- because I didn't anticipate
22 the -- the Court's question on this -- on this issue -- I don't
23 know that we specifically in the motion, in the supplement --
24 because, first of all, it's not referenced in the opposition at
25 all because the motion was filed before those depositions were

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1 taken. We do reference those depositions in the supplements
2 where we mention, again, the testimony that was given and
3 specifically that there was no denial at any point in time that
4 they never sent any type of cancellation and that -- and in fact
5 even the testimony of the --

6 THE COURT: Well, I don't know that sending a
7 cancellation would move me on that.

8 But what -- what is the evidence, one way or another,
9 about whether they -- they waived this from the insurance --
10 from the insured's interest viewpoint if -- if they did have an
11 obligation to do that? Is there evidence of that?

12 MR. SAMPSON: There's absolutely no evidence that they
13 ever weighed it from the insured's perspective.

14 THE COURT: Or vice-versa?

15 MR. SAMPSON: Well, there is testimony in the
16 depositions -- and, again, the Davis deposition is Exhibit
17 No. 1 -- and there is absolutely testimony in her deposition
18 transcript that in fact they never considered -- they never did
19 anything to -- to review these other potential interpretations
20 of the contract.

21 THE COURT: Stop for a minute, please.

22 (Pause in the proceedings.)

23 (Discussion between the Court and the law
24 clerk.)

25 THE COURT: Go on, please.

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1 MR. SAMPSON: Sure.

2 And the reference is on page -- it's -- we mention that
3 the policy was simply cancelled with no notice given to
4 Mr. Lewis. There's no grace periods. There were no steps
5 taken. And that's in the Davis deposition, page 37, line 16 to
6 23, and also on page 77, line 22, where I did reference a
7 portion of the testimony.

8 THE COURT: Let's see now. I'm looking at this on my
9 screen.

10 There was no notice given to Mr. Lewis.

11 MR. SAMPSON: Correct.

12 THE COURT: I don't see that as indicating that they did
13 not -- had not considered his interest.

14 MR. SAMPSON: Well, and, again, I don't know that that
15 particular point was addressed in the -- well, this is -- this
16 is in our supplement. So I don't know that it was specifically
17 addressed in their motion. And, again, I did not anticipate
18 the -- the question from the Court on this particular point.

19 THE COURT: That's -- I understand that.

20 MR. SAMPSON: But -- but there has certainly been -- it
21 would be, as the *Miller v. Allstate* case holds unequivocally, it
22 is a question of fact and there's never been -- whether or not
23 there would a genuine dispute, whether or not you --

24 THE COURT: Well, let's see. It's a question of fact.
25 But if there -- if a certain thing is factual and it's not

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1 disputed, then there's no genuine issue of material fact. And
2 so am I -- can I just look at policy or the renewal statement
3 which are not disputed? What they say is what they say. Can
4 you get around that if I looked at it and said this is
5 ambiguous? Furthermore, it's not unreasonable to read this
6 renewal statement to indicate you had to make the payment if you
7 wanted to get the policy and there -- there's no coverage. Is
8 that a right -- a correct approach or is that off base?

9 MR. SAMPSON: I believe it is off base respectfully,
10 your Honor.

11 And, again, first of all, I think any general --
12 genuine dispute doctrine arises in first-party bad faith claims
13 where the actual customer of the insurance company is saying I
14 need payment for this loss or that loss and the insurance
15 company says no or we're only gonna pay a portion or we're gonna
16 discount this part of your claim and it turns out subsequently
17 that they are wrong but they had some legitimate reason for
18 disputing or not paying that portion of the claim in the
19 first-party situation. And that's just from general contract
20 law.

21 In this third-party circumstance, it's extremely
22 different. And this is why we -- and this is when we quoted the
23 *Crisci* case, which I believe is from California, but also
24 *Landlow* [sic] and some of these other cases that talk about a
25 claim brought against the insured by a third party.

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1 And, in that scenario, we had a situation where
2 Mr. Lewis had a claim brought against him and his insurance
3 company was told we will settle that claim against Mr. Lewis,
4 resolve it completely, if you'll pay the policy limits and get
5 the claim resolved. At that point, UAIC took the position there
6 is no coverage. That's a decision that UAIC made.

7 As a result of that decision, judgment was subsequently
8 entered in court without Mr. Lewis's involvement. There's been
9 absolutely no evidence presented of any collusion whatsoever. I
10 spoke to the man when -- when he was first -- when we first
11 realized he was the defendant in the case to try to find out
12 whatever insurance is there. There's been no evidence of any
13 deals or -- or anything at all that's gone on in the case.
14 There were discussions, as there would be with any defendant,
15 before we find out what insurance is available. And certainly
16 if we find out that the insurance company is claiming that there
17 is no coverage whatsoever I would certainly call the defendant
18 and let him know that. There's nothing wrong with -- there's no
19 collusion or any -- any improper dealings going on with just
20 telling the defendant, telling the insured, your insurance
21 company says there is no coverage.

22 A lawsuit was filed. Mr. Lewis was served. There was
23 no answer on his behalf. UAIC was told about the fact of the
24 suit, took no steps to try to answer on behalf or try to defend
25 him under some kind of reservation of rights, which is further

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1 evidence of them not considering his interest in the case and
2 making this snap decision and not weighing both sides equally.
3 And, as a result of UAI's decision, a \$3.5 million judgment was
4 subsequently entered against Mr. Lewis.

5 Now, who should take responsibility for UAIC's decision
6 to not resolve that claim? Certainly --

7 THE COURT: Well --

8 MR. SAMPSON: -- not Mr. Lewis.

9 THE COURT: -- if you've got anything else to offer on
10 this genuine dispute doctrine, I --

11 MR. SAMPSON: Well, that is the point of the -- of the
12 genuine dispute, it would apply in a first-party situation.
13 But, when you have a situation where an insurance company is
14 told we will resolve the case and the insurance company makes up
15 its mind that it won't resolve the case and as a result its
16 insured is now exposed to an excess verdict --

17 THE COURT: Well, does that really mean that there's no
18 genuine dispute over coverage?

19 MR. SAMPSON: Well, it wouldn't -- it wouldn't matter
20 if -- if the insurance company -- and I think the -- was it the
21 *Crisci* court that talked about the -- the insurance company can
22 make whatever gambles it wants with its own money but it's not
23 gonna gamble one dime of its insured's money. If it's gonna
24 make that choice and say we look at this -- and I'm assuming --
25 and, again, there's been absolutely no evidence presented that

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1 they ever did look at it from the insured's perspective. Not
2 one shred of testimony presented that they ever even considered
3 it from the other side and said, look, we're supposed to --

4 THE COURT: Or --

5 MR. SAMPSON: -- look at this --

6 THE COURT: -- either way; is that right?

7 MR. SAMPSON: No. They certainly looked at it their
8 own way.

9 THE COURT: No, no.

10 MR. SAMPSON: They --

11 THE COURT: What's the evidence of that?

12 MR. SAMPSON: Well, the -- the simp- --

13 THE COURT: Just because of --

14 MR. SAMPSON: -- well, and you're --

15 THE COURT: -- what eventually --

16 MR. SAMPSON: -- right.

17 THE COURT: Stop.

18 Just because of what eventually happened? Or what is
19 there to show that they did not consider the insured's interest
20 assuming that they had an obligation to do so?

21 MR. SAMPSON: Well, and that is the -- the point.
22 There is absolutely no evidence that they considered his
23 interests whatsoever.

24 I -- I can't prove a negative. I can't prove Bigfoot
25 doesn't exist. I can't prove that they -- what I can -- what I

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1 can prove is there has been no evidence presented -- and it is
2 the movant's responsibility to put that into evidence and show
3 some genuine issue of material fact -- or to show that there is
4 no genuine issue of material fact, to come in and say: Here is
5 the proof that we considered this point. Here is the proof that
6 we knew our obligation and our responsibility to look at this
7 language in the light most favorable to coverage and to draw
8 every intendment in favor of the insured and strongly against
9 ourselves and to find any ambiguities in favor of the --

10 THE COURT: Where is the --

11 MR. SAMPSON: -- insured.

12 THE COURT: -- burden of proof?

13 MR. SAMPSON: I'm sorry?

14 THE COURT: That is, if the burden of proof of bad
15 faith is on the plaintiff -- start with there -- does the
16 plaintiff have the burden to prove that the insured's interest
17 wasn't considered? Or, if you're trying to prove bad faith, how
18 does the burden of proof weigh into that?

19 MR. SAMPSON: And, your Honor, it would be the
20 plaintiffs' burden of proof. And we believe we've met that with
21 the expert report from Mr. Miller, who's indicated --

22 THE COURT: Now he doesn't --

23 MR. SAMPSON: -- I've gone through all --

24 THE COURT: -- know whether they considered it or not,
25 Mr. Miller, does he?

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1 MR. SAMPSON: Well, he reviewed the entire file and
2 found no evidence that they ever did. That's the best an
3 expert -- an outside expert can do. He certainly can't divine
4 from -- from the file anything that isn't there --

5 THE COURT: What --

6 MR. SAMPSON: -- he says I've looked --

7 THE COURT: -- what in the file there convinced him?

8 MR. SAMPSON: I'm sorry?

9 THE COURT: What in the file convinced him that -- did
10 he -- his testimony is the insurance company did not consider
11 the -- the insured's interest?

12 MR. SAMPSON: Correct, that there's no --

13 THE COURT: And --

14 MR. SAMPSON: -- steps --

15 THE COURT: -- then what does he base that on?

16 MR. SAMPSON: Well, again, there's no reservation of
17 rights letter. There's no memoranda indicating a discussion
18 with coverage counsel or with independent counsel in an attempt
19 to try to sort this out from both sides. There's nothing other
20 than a flat denial. They received our claim. They sent a
21 letter back saying there's no coverage. It's over, it's done,
22 and that's all there is.

23 And Mr. Miller's report indicates that's dreadfully
24 insufficient. You have taken absolutely no steps to try to --
25 and that is -- one of the points is, that Mr. Miller raises, the

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1 obligation on the part of the insurance company is to take all
2 steps -- or to take all steps to defend the insured until the
3 question of coverage is fully resolved.

4 And now to stand here two years later and have it
5 potentially -- as it seems to be quite clearly ambiguous --
6 potentially, depending on the Court's ruling, decided as a -- as
7 a matter of law -- as they said, if -- if it is ambiguous, they
8 have to concede the coverage question. Well, if it's clearly
9 ambiguous, if there's no question that it can read two different
10 ways and then they have to now concede of their own volition now
11 the coverage issue, they can't say yes, but two years ago it was
12 obvious. Now we're conceding it, that we're wrong, but two
13 years ago it was clear to us that --

14 THE COURT: Well, I don't --

15 MR. SAMPSON: -- that it went this other way.

16 THE COURT: -- they conceded that we're wrong; they
17 conceded that there was a dispute that, and that -- that is,
18 that the wording was ambiguous.

19 MR. SAMPSON: Sure.

20 THE COURT: I don't think they are even saying that --
21 agreeing to that. But I gave that to them as kind of a
22 hypothetical that -- that if we found it was ambiguous where
23 would the case go and they said we'd have to concede the
24 coverage then according to the contract.

25 But dig a little bit more into this for me on this

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1 genuine dispute over coverage, the idea of the company --
2 insurance company having to consider it from the insured's
3 viewpoint and where the burden of proof of that is. You say
4 Mr. Miller reviewed the file and said that they had not
5 considered --

6 MR. SAMPSON: Correct. There's absolutely no evidence
7 of them ever taking any of the steps necessary to -- again, you
8 want to do -- you want to send your insured a reservation of
9 rights --

10 THE COURT: And he's basing on that on finding nothing.
11 Does he -- is there anybody -- an insurance company,
12 I'm sure, is never gonna say we're not going to consider your
13 interest -- but is there anything beyond just a negative to
14 reach that conclusion.

15 MR. SAMPSON: As I addressed previously, yes, the
16 testimony of -- of Danice Davis, the PMK, that very likely is
17 not specifically referred to in the briefs but the transcript is
18 attached as an exhibit.

19 THE COURT: You have to make reference or we can't
20 consider it. You -- you'd have to say I'm relying on this here.
21 And I'm taking it from your statement that that's not presented
22 that way.

23 Well, go on. Give me some more -- give me some more
24 shot at where that burden of proof lies or whether Mr. Miller's
25 opinion is a sufficient showing that they didn't consider the

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1 insured's interest.

2 MR. SAMPSON: Certainly, your Honor.

3 When Mr. Miller takes the witness stand and says the
4 obligation, and -- and via his report has -- has in a sense done
5 so, and says the obligation on an insurance company facing this
6 particular situation would be to send out a reservation of
7 rights letter; provide cumis counsel potentially; get coverage
8 counsel involved; and take a long, hard look at this document
9 and consider both sides -- and he's now established the standard
10 for the insurance company -- then when we says they did none of
11 that, there is absolutely no evidence that any of that was done,
12 that is a breach of the standard. And that is not some genuine
13 dispute.

14 THE COURT: That's a little bit different from saying
15 that they never considered the interest. They -- they took
16 certain steps which were negative to the insured. But did they
17 say -- is there anything in there to show that they never
18 considered the interest?

19 They took steps against the insured. They failed to do
20 things that were expected. But --

21 MR. SAMPSON: Correct.

22 THE COURT: -- that doesn't necessarily infer in my
23 mind, at this point, that they'd never considered the insured's
24 interest.

25 MR. SAMPSON: Well, your Honor, I -- I'm certainty not

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1 ever going to find a smoking-gun memoranda where they say we are
2 not going to consider Mr. Lewis's stance on this. And, if I
3 have to present that, then there's no sense in even having a
4 cause of action for bad faith because no insurance company would
5 be foolish enough to generate such a memoranda. All I'm left
6 with is looking at the file, talking to witnesses, was anything
7 done -- looking for anything that was done to consider
8 Mr. Lewis's position on this, and to see the answer is no.

9 Additionally, your Honor, it's worth noting -- because
10 one of the claims made by UAIC was this didn't come up until
11 recently. Well, it's been a part of this litigation for quite
12 some time and yet still they've never offered the \$15,000; still
13 they've never come in and said we concede this is ambiguous;
14 we've looked at it now from both sides.

15 There's still been no coverage counsel; there's still
16 been no cumis counsel. Nothing's gone on at all that we can
17 see -- and there's been no evidence presented -- that a single
18 step's ever been taken to consider the interests of the other
19 side.

20 And, again, if -- if plaintiff is left with, you know,
21 you're gonna face summary judgment unless you can show me a
22 memoranda where they say we admit we're not gonna look at this
23 from -- from our insured's perspective, then we're only gonna
24 have summary judgment on any -- on any bad faith case that's
25 ever brought up because, again, an insurance company would never

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1 be foolish enough to do that.

2 What we can say is: We've looked at the file. There's
3 no evidence they ever did anything. And I think at this point
4 the burden would shift to UAIC to show what, if anything, was
5 done. And there's been absolutely no evidence that any steps
6 were considered. And, again, the -- the deposition of the
7 witness testimony was that's -- there were no --

8 THE COURT: Let's see now. Just -- I want to give you
9 a full chance to explore it. I think it's a very critical part
10 of this case.

11 The fact that they took certain steps negative to the
12 insurance -- insured you infer from that that they never
13 considered the insured's interest or read it from the insured's
14 viewpoint?

15 MR. SAMPSON: The fact that --

16 THE COURT: Is that the inference you have to make?

17 MR. SAMPSON: The fact that they never took the steps
18 plus the absence of any evidence that they in fact did consider
19 it from Mr. Lewis's viewpoint.

20 There -- there's no other conclusion to reach when
21 there's no such evidence to say, you know, that -- there's no
22 evidence they ever considered it from Mr. Lewis's standpoint.
23 They took steps adverse to him indicating they -- and quickly.
24 Right outta the gate -- there's certainly no time to -- to
25 procure counsel and get an assessment and try to -- to

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1 reasonably consider it from both sides.

2 There's simply -- the -- right outta the gate in
3 response to the first letter from myself and from
4 Mr. Seegmiller, who also brought a claim on behalf of Cheyenne's
5 mother, were told point blank: There's no coverage. It's over.
6 It's finished. And there's no evidence that equal consideration
7 was given.

8 And, again, there -- there -- there seems to be no
9 questions that this language is at best ambiguous. But it would
10 seem to me, with all due respect to your Honor, if it says pay
11 before the expiration date and you're not gonna have a lapse and
12 there's only one other place on the face of the document where
13 "expiration date" appears, there is no genuine dispute about
14 that. When you tell someone you've got to pay by the expiration
15 date and here is the expiration date, there's no genuine dispute
16 as to whether there's some other date by which you're going to
17 lapse them.

18 Now, is there a date by which payment is due and by
19 which point in time turn them over to creditors or start taking
20 steps? Absolutely. But not to lapse them. There's only one
21 deadline and the stars and the all capital letters and the top
22 and the bottom, none of that ever is tied to lapse; it's only
23 tied to this is the date we want the payment. Lapse is only
24 tied to expiration date and the only expiration date is the end
25 of the month.

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1 Now that coupled with the fact that they specifically
2 advised Mr. Lewis in May you can pay after the policy incepts
3 and we will still cover you from the date of your policy
4 indicates a clear understanding on behalf of Mr. Lewis. I think
5 there's -- there really -- how could you read that any other way
6 then they are not going to lapse me if I don't pay by the due
7 date?

8 They had told him in May specifically: You don't have
9 to pay by the due date. You don't have to pay it by the time
10 the policy starts. You can pay up to, I think, a week and a
11 half later if you -- if you'd like to.

12 Now, the fact that he went --

13 THE COURT: They never did renew any policy except the
14 one that I explored with Mr. Douglas. They always renewed the
15 policy on the date the payment came in, didn't they?

16 MR. SAMPSON: That's what the documents seem to
17 indicate. However, Mr. Lewis advised in his -- that that was
18 not his understanding and -- and Mr. Douglas is aware of this --
19 that his understanding was they would just -- I -- I'm not
20 seeing the cuffs and --

21 THE COURT: I don't see how --

22 MR. SAMPSON: -- collars match --

23 THE COURT: -- he could have an understanding like that
24 when the renewals were as of the date the payments were made.
25 And tell me what his understanding was.

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1 MR. SAMPSON: Well, because again -- his understanding
2 was that he was making his payments and they were renewing him,
3 just like the documents from UAIC all say. They're not writing
4 him new policies; they are not stopping an old policy and
5 starting a new one.

6 And I did refer specifically to the PMK's transcript
7 where she said -- where she said point blank: This is the same
8 policy. We're just issuing new terms.

9 Now, that is by definition, your Honor, a midterm
10 cancellation then if they want to stop him and lapse him
11 sometime in the early part of July. And we have the statute
12 directly on point, Section .320 of NRS 686 -- 7B says if it's a
13 midterm cancellation that cancellation is not valid --

14 THE COURT: They don't --

15 MR. SAMPSON: -- for the 10 days.

16 THE COURT: -- feel like midterm cancellations since
17 they were always on a monthly basis. Isn't that right?

18 MR. SAMPSON: Well, the payments were due on a monthly
19 basis. But, as we noted in our supplement -- Danice Davis
20 herself testified -- it's all one policy. These are new terms
21 of the same policy --

22 THE COURT: That's in the one occasion.

23 But, through the course of conduct between the parties,
24 it looks like they were just monthly policies issued. Is that
25 wrong?

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1 MR. SAMPSON: That's what it looks like. But the PMK
2 has testified that's not the case. She testified -- and I can
3 take you directly -- we cited in the brief page 36, line 15, of
4 her deposition -- it's "A new term of the same policy, it's just
5 the next term." She there mentions it multiple times.

6 And, in our supplement, we actually referenced it --

7 THE COURT: Well, now, if I have a policy with State
8 Farm and it's, say, six months and the -- and I don't -- I don't
9 make my payment for the second -- I make a payment from
10 January 1st to June 30 but I don't pay for the next term, July 1
11 to December 31, am I covered unless there's some kind of a
12 notice given?

13 MR. SAMPSON: Absolutely, your Honor. Absolutely.

14 THE COURT: On what --

15 MR. SAMPSON: And --

16 THE COURT: -- basis would that be?

17 MR. SAMPSON: And that is on the basis of NRS -- let
18 me... (pause.) That'd be 686B.340, your Honor.

19 And that is the gaping -- you have to keep in mind:
20 All of the financial responsibility rules are written in such a
21 way that they are all shored up. There's always: You have to
22 give notice. You can't cancel without notice. All of the case
23 law says it's all to be read expansively in a way to broadly
24 interpret, to always try to find coverage to the greatest extent
25 possible. And yet UAIC would come in and say, in all of this,

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1 they left a huge loophole and the loophole is, if the mailman
2 loses your check in connection with the renewal, you get no
3 notice and you get no coverage.

4 THE COURT: Now here, the argument, as I understand it,
5 the other side of this .340 proposition, is that they wanted to
6 renew; he just didn't make the payment to renew it.

7 MR. SAMPSON: Right, your Honor.

8 And the problem with that assessment is if you read --
9 and it's the plain language -- it's -- it's not even -- again,
10 this statute per the case law is to be read expansively, broadly
11 to the greatest extent possible to afford coverage. But you
12 don't even have to do that; you just need to look directly at
13 the language.

14 A policyholder has a right to have their policy
15 renewed. Not a right to have an offer to renew, not a right to
16 be given a chance to pay a premium and get a renewal, they have
17 the right to have their policy renewed.

18 And then it says in the closing section: Insurance
19 company, you need to send a notice of intent to not renew.

20 And if -- and I'm reading -- quoting directly from the
21 statute now -- "If an insurer fails to provide a timely notice
22 of nonrenewal, [then] the insurer shall provide the insured with
23 a policy of insurance on the identical terms [of] the expiring
24 policy."

25 They don't provide an offer for a policy. They don't

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1 provide -- provide -- they are not required to provide a renewal
2 opportunity. They are required to provide a policy of insurance
3 for the next term equal to the terms of the expiring policy.

4 And it's interesting that this exact same verbiage is
5 used in NRS 687B.320 that talks about "Midterm cancellation" and
6 says no insurance policy that has been renewed can be cancelled.
7 Again, they are talking about you have to provide the policy and
8 that policy cannot be cancelled for nonpayment without a 10-day
9 notice if it's been renewed.

10 And so, yes, in your circumstance, your Honor, on
11 July 1st if your payment doesn't come there is an obligation
12 from me on the part of the insurance company to send -- to,
13 first of all, issue you a renewed policy under the law and then,
14 of course, naturally, cancel that policy with a 10-day notice of
15 intent to not renew.

16 And the point behind it is -- and it's extremely
17 important to understand -- there's a reason that all of this is
18 shored up so be perfectly among the statutes and why it is read
19 so expansively and broadly in all of the case law and it is
20 this, your Honor: We can't have people for any reason driving
21 around town believing they are insured when in fact they are
22 not.

23 And the example we used in the briefing was the mailman
24 losing the check. But, for any number of reasons, an insured
25 could truly believe the payment was made. And whether it's lost

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1 in the mail or a check bounces or whether within State Farm's
2 offices the payment goes awry, for whatever reason, if in fact
3 the payment is not made but the insured --

4 THE COURT: When do you have to make the payment?

5 MR. SAMPSON: Sorry?

6 THE COURT: When do you have to make the payment? That
7 is, on my hypothetical case, I don't make the payment on
8 July 1st, am I covered till the end of the year unless they send
9 me this notice?

10 MR. SAMPSON: Absolutely. That's what the statutes
11 say. They are obliging under .340 to renew your policy. They
12 are obliged to -- and I'll quote again -- "provide [you] with a
13 policy of insurance" for that next section.

14 Now, if you don't make a payment -- as in any other
15 time -- if the payment's got made, the carrier can cancel, your
16 Honor. But they've not to follow the steps, then, for that
17 cancellation following the renewal. And it's right in the
18 statute. If it's been renewed, you've got to send 10-day notice
19 in order to get the cancellation. Otherwise, as -- as found in
20 Subsection 2., no cancellation is effective until 10 days after
21 the notice is given.

22 And so yes, your Honor. Absolutely. Like as in -- and
23 it's the same thing if you have the -- if your payment goes
24 awry -- if you don't make the payment in March -- you have a
25 January to June policy -- if you don't make the payment in

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1 March, you're still covered. You're absolutely covered. And
2 they cannot cancel you or lapse you until after they've sent the
3 10-day notice so that the person is driving around going -- not
4 knowing the mailman lost their check or that it wasn't processed
5 or that it bounced or whatever else. And they are -- they are
6 given, then, a letter saying --

7 THE COURT: That's a pretty good --

8 MR. SAMPSON: -- guess what --

9 THE COURT: -- argument. I don't want to use all your
10 time up on this.

11 MR. SAMPSON: Well, again, that -- that -- that is the
12 point. It's no different than if it was done midterm. There is
13 no loophole and caveat to all these shored up rules --

14 THE COURT: Now let me try the -- let me try out a
15 couple of ideas on the midterm cancellation.

16 MR. SAMPSON: Yes, your Honor.

17 THE COURT: It didn't feel like a midterm cancellation
18 since the policies were always monthly. What's your response to
19 that?

20 MR. SAMPSON: Well, there -- there are a couple of
21 points on that, your Honor.

22 First of all, there is evidence and it is in the form
23 of -- and I believe we provided -- I'll have to look and see.
24 It's my recollection we did cite to the testimony of Mr. Lewis
25 where he indicated it was his understanding it was a annual

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1 policy and I know we provided the statements from the brokerage
2 firm when they submitted the documents over to us. And it lays
3 out the details of the policy. It's an annual policy.

4 THE COURT: It's kinda hard for me. Looking at 'em,
5 they look like monthly policies. And, when somebody else tells
6 me it's not monthly --

7 MR. SAMPSON: Well, let me --

8 THE COURT: -- it's kinda hard --

9 MR. SAMPSON: -- I'll tell --

10 THE COURT: -- to swallow.

11 MR. SAMPSON: -- you exactly --

12 THE COURT: They look like monthly policies.

13 MR. SAMPSON: Well, let me go through and I'll read to
14 you directly --

15 THE COURT: In each case it says the -- you make the
16 payment, the insurance is renewed from May 10th whenever the
17 payment was made, a little late, to May 31. And that seems to
18 be it as far as this midterm cancellation.

19 MR. SAMPSON: Right.

20 THE COURT: Give me your argument on that --

21 MR. SAMPSON: Absolutely --

22 THE COURT: -- please.

23 MR. SAMPSON: -- your Honor.

24 And you say someone should tell you. The person to
25 tell you is Danice Davis, the PMK from UAIC. This is -- and

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1 this is under subsection C in our brief. It's from page 35,
2 line 16, forward to the following page, line 15, in her
3 deposition:

4 "Q. ... Mr. Lewis was given an opportunity ...,
5 it's UAIC's position, to have a brand new policy?

6 "A. No. He would open another term.

7 ... "What do you mean by that?

8 "A. Policy number would just go [to] another term.

9 "Q. What do you mean by 'term'?

10 "A. Being a monthly policy, being ... 30 days.

11 "Q. So it's not a new policy, then?

12 "A. No. A new policy would require an
13 application.

14 "Q. All right. Let me back up because you said
15 no. It's not a new policy, I'm correct, ...?

16 "A. Correct.

17 "Q. All right. ... in order to get a new policy,
18 [it'd] have to be a whole new application?

19 "A. Correct.

20 "... And what would that involve, if you know?

21 "A. A new application with the agent, going in
22 [to] fill out a new application" --

23 THE COURT: Well, we talk about midterm. And your
24 reference is -- that she's making is that's a new term.

25 MR. SAMPSON: Correct.

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1 THE COURT: If the new term is monthly, then how could
2 there claim to be a cancellation within the month?

3 MR. SAMPSON: Well, there never was a cancellation
4 within the month. They are trying to cancel in between terms.
5 They're trying to cancel in the middle of these terms. And --
6 and in the next few --

7 THE COURT: Well, now, but the testimony just read to
8 me said that the terms were monthly.

9 MR. SAMPSON: Right.

10 THE COURT: Go from there. If the terms are monthly --

11 MR. SAMPSON: Right.

12 THE COURT: -- there's no effort to cancel within a
13 particular month.

14 MR. SAMPSON: Right. No. It's -- it's -- the terms
15 are monthly and they try to cancel them in between terms --

16 THE COURT: So it's --

17 MR. SAMPSON: -- in between --

18 THE COURT: -- so it's not a midterm cancellation.

19 MR. SAMPSON: That is a midterm cancellation, your
20 Honor.

21 THE COURT: That's in between terms.

22 MR. SAMPSON: In the middle of the terms. Exactly.

23 THE COURT: That's in between. To me "midterm" would
24 mean "within a term." Is that say wrong analysis?

25 MR. SAMPSON: It -- it would be, your Honor. It -- it

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1 would be. It'd be in between two terms of the same policy.

2 You have one term for June; one term from July. If
3 you're gonna cancel in between those two, then you're cancelling
4 between the two terms. That's a midterm cancellation.

5 You don't have to necessarily be in the middle of one
6 term. If you're in between two terms, then you're in --
7 you're -- and it's -- it's the same thing, your Honor, if you
8 have a policy that is from January to June. Your terms of
9 payments come every single month and, if miss one of those, it's
10 a midterm cancellation at that point.

11 THE COURT: So if my term is January 1 to June 30, if
12 you try to cancel me within that period of time, you've got to
13 give me notice and so on.

14 But here, if the term is monthly, then it seemed to me,
15 the reading that I would make, means it's monthly. It's each
16 month taken by itself. To say "in between terms" is different
17 from "midterm."

18 Is that any -- analysis any good?

19 MR. SAMPSON: No. I believe -- and I can look for --
20 to see if there's a specific instruction given, your Honor. And
21 there's -- there's -- you may have a term from January to June,
22 but you also have payment terms that are due each month. And so
23 then you've got your term coming each month. And, as those come
24 due if you miss one of those terms, they are going to try to
25 cancel you. And, again, it is -- it is midterm in that

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1 circumstance.

2 THE COURT: Stop for just one minute.

3 MR. SAMPSON: Sure, your Honor.

4 (Pause in the proceedings.)

5 THE COURT: Looking -- just looking at the statute
6 itself, paragraph 1, 687B.320 --

7 MR. SAMPSON: Yes, your Honor.

8 THE COURT: -- "no insurance policy that has been in
9 effect for at least 70 days or that has been renewed may be
10 cancelled by the insurer before the expiration of the agreed
11 term or 1 year ..., whichever [first occurs], except ...:

12 "Failure to pay [the] premium when due."

13 Now, to me the agreed term is monthly. Is that any
14 good?

15 MR. SAMPSON: Well, that's what -- again, the -- the
16 policy, according to the testimony from the PMK, is for much
17 longer than one month. And then they've come up with this --
18 and, again, their initial notice was these were all separate
19 policies. That was the initial, I think, in their Answer and
20 also in the Motion for Summary Judgment. These are all separate
21 individual policies. They are completely distinct. They have
22 nothing to do with each other. The person most knowledgeable
23 testified and said, no, it's all one policy, but there are these
24 terms that are going on.

25 And, again, if it is a continuing policy, then the term

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1 would have had to begin in July at that point. And they say,
2 yes, but we didn't write that because you didn't pay. Well,
3 that's a cancellation, then, of that July term because of
4 nonpayment. And you cannot do that under the financial
5 responsibilities rules without sending a 10-day notice of the
6 intent to send that cancellation.

7 So the cans- -- they never -- they never cancelled the
8 June term. They wanted to cancel the July term for nonpayment,
9 and you can't do that without sending a 10-day notice. And
10 that's directly from the -- and I think it's the case that hits
11 it most squarely on the head.

12 THE COURT: Well, give me any other argument -- I --
13 I -- I think this is a matter I'm gonna have to give careful
14 thought to -- so give me any further pitch you've got on this
15 that you think --

16 MR. SAMPSON: Absolutely --

17 THE COURT: -- would help.

18 MR. SAMPSON: -- your Honor.

19 Let me -- let me quote you from the Davis [sic] case,
20 Davis [sic] v. Nat'l Home Life Assurance -- this is in our
21 brief -- 103 Nev. 674, "an insurance pol- [sic]" -- "an
22 insurance contract which does not provide for notice prior to
23 termination for failure to pay a premium when due, unless
24 expressly excluded by statute from the application of .320, is
25 against the public policy of Nevada and is thus unenforceable."

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1 The language we took from -- from Lisa Watson, a former
2 employee with UAIC, herself said -- said if it's -- if it's
3 nonpayment -- if you're cancelling for nonpayment, it's a 10-day
4 notice. If it's nonpayment of the premium, a 10-day notice has
5 to be given before the policy is cancelled, quote close. And
6 that's her -- that's her own deposition from Exhibit No. 3.

7 And they're recognizing it -- again, from this *Daniels*
8 case -- and they say this is the overriding concern for
9 protecting the citizens. You can't cancel a policy for failure
10 to pay unless you give the notice.

11 Now, UAIC believes it's found some way around that
12 regulation first by claiming they are all the separate policies;
13 now saying it's all one policy -- and that's fine -- but you
14 cannot cancel that policy, midterm or otherwise under *Daniels*,
15 for failure to pay unless you've given notice to the insured
16 that their payment was missed so that they are not operating a
17 vehicle under the belief the mailman delivered their check when
18 in fact he didn't and they are cancelled with no notice.

19 And, again, there's no question he had this continuing
20 policy. Because, again, the person most knowledgeable
21 specifically says -- he says, the new -- it's a new term on the
22 same policy; it's just the next term.

23 And this ties right in perfectly to -- and that is one
24 thing UAIC addressed which was, well, we have our product
25 scrutinized by the Insurance Commissioner or whatever authority

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1 we have that scrutinizes our product, of course. But that
2 tribunal, your Honor, would assume that these products are being
3 operated consistent with the financial responsibility rules.
4 And the product they offer is perfectly appropriate if they
5 follow the financial responsibility rules, specifically
6 Section .340, that says your insureds have a right to have their
7 policy renewed. You have to by right by statute renew them.
8 Not offer renewal, not give them the opportunity to buy a
9 policy, you have to renew them and provide them a policy.

10 And, if they do that, then that'd be -- then that'd be
11 just fine. They would have provided Mr. Lewis a policy for
12 July, per his right under the statute, provided him with that
13 policy, and then when the payment didn't show up cancelled him
14 then midterm, because it would have been sometime after the
15 policy incepted that they provided by right under the statute,
16 and would have been obligated to send the three -- or the 10-day
17 notice of intent to file that default.

18 They never did any of that. Their position is we have
19 found a way -- and it's even -- this is the audacity of the
20 whole thing, your Honor -- on the -- on the face of their own
21 policy it specifically says: If your check bounces, you don't
22 have a policy. So you get no notice because you never had a
23 policy in the first place.

24 And that is exactly the kind of conduct that the
25 financial responsibility rules are designed to prevent because

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1 the drafters know people are gonna bounce checks; checks are
2 gonna get lost in the mail; processing within the insurance
3 organization itself is going to have problems, especially when
4 you deal --

5 THE COURT: Is the -- looking at the wording of the
6 renewal statement, along that line, "To avoid lapse in coverage
7 payment must be received prior to the expiration of your
8 policy."

9 Is that a sufficient notice of nonrenewal?

10 MR. SAMPSON: No. A notice of nonrenewal has got to
11 come 30 days, your Honor. It says right in here it says. It
12 says --

13 THE COURT: Well --

14 MR. SAMPSON: -- unless --

15 THE COURT: -- in other words, you're challenging this
16 on the basis of the -- this notice. I'm trying to see the date
17 on it, the renewal statement.

18 MR. SAMPSON: It came, I think, out approximately two
19 weeks before the end of June.

20 THE COURT: The response to my proposal is that this
21 still wasn't 30 days' notice.

22 MR. SAMPSON: Absolutely. That's correct, your Honor.

23 THE COURT: And when did the renewal statement -- when
24 was it received?

25 MR. SAMPSON: Let me take a look. I believe I have

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1 that in here.

2 In mid June -- invoice date, June 11th, 2007 -- UAIC
3 sent this renewal statement saying we're gonna renew you from
4 June 30th to June -- to July 31st. So it was certainly sent
5 sometime -- well, it was sent on or after June 11th --

6 THE COURT: So let's --

7 MR. SAMPSON: -- of '07.

8 THE COURT: -- take it from June 11th. Is the period
9 required by the statute 30 days?

10 MR. SAMPSON: Yes, your Honor. That Section .340 says,
11 unless -- "At least 30 days ...,

12 "before the ... expiration provided in the policy the
13 insured mails or delivers to [him] a notice of intention not to
14 renew the policy beyond the agreed expiration date."

15 And so if their plan was we're not going to renew
16 you --

17 THE COURT: Okay. That answers that.

18 Go ahead with anything --

19 MR. SAMPSON: All right.

20 THE COURT: -- else you want to add here.

21 MR. SAMPSON: On that particular point, let me take a
22 look here really quickly, your Honor.

23 Again, there is absolutely no dispute Mr. Lewis had a
24 policy in June. There's -- no one's questioning that at all.

25 In June of 2007 -- from May 29th to June 29th, Mr. Lewis had a

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1 policy with UAIC. The statutes require that that be renewed
2 upon its expiration, that a new term, that a new policy with the
3 identical terms of the expiring policy be provided and renewed
4 for Mr. Lewis.

5 Once that was renewed, if they wanted to cancel him
6 subsequently so he would have that policy from -- it'd be from
7 June 30th until July, I think, 30th or 31st -- he then by right
8 by statute has that policy. If they want to cancel him because
9 he doesn't pay, they can certainly do that in the middle of that
10 July term, but they've gotta send him a notice and the
11 cancellation isn't good until 10 days later.

12 Well, 10 days -- even if he'd never made -- even if
13 they'd sent the notice the day the payment didn't arrive, the
14 effect -- it would not be effective until June 9th or 10th -- or
15 I'm sorry -- July 9th or 10th, which is after the subject
16 automobile -- the subject -- yeah, it was his truck versus --
17 versus motor -- or I'm sorry -- a truck versus a little girl
18 playing in a -- in a sandbox in her home.

19 And I thought the incident was on July 7th, although
20 Mr. Douglas has indicated perhaps it was on July 8th. I was
21 looking to see if I indicated that, and I don't know that I have
22 it here. But July 7th or July 8th is still within the 10-day.
23 And the bottom line is they never sent the notice at all. So he
24 was absolutely covered for that period, throughout the entire
25 occasion.

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1 And this comes, again, directly from the statutes as
2 you read them. And you say, well, it says provide a policy.
3 Does that mean provide the opportunity or actually provide the
4 coverage?

5 According to the Daniels decision, this language is to
6 be -- is to be -- "The provisions of the Insurance Code must be
7 reasonably and liberally construed [again] in order to [try to]
8 fulfill [coverage]." And a policy that does not provide for
9 notice prior to termination for failure to pay a premium is
10 against public policy and is absolutely voided.

11 What they are looking for, your Honor, is a form of
12 automatic termination; that the policy stops all by itself and,
13 without us sending any kind of notification, there is no more
14 coverage. And that's not permitted. It's simply not permitted.
15 You cannot cancel someone without providing --

16 THE COURT: Stop.

17 MR. SAMPSON: -- notice of the --

18 THE COURT: Stop --

19 MR. SAMPSON: -- cancellation.

20 THE COURT: -- one minute.

21 (Discussion between the Court and the
22 law clerk.)

23 THE COURT: Go ahead, please.

24 MR. SAMPSON: Sure, your Honor.

25 THE COURT: Pardon --

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1 MR. SAMPSON: Thank you.

2 THE COURT: -- the interruption.

3 MR. SAMPSON: And the most telling point of all of
4 this, your Honor, is that they renewed him. There is a receipt
5 from July, July 10th of 2007, that says Gary's policy is
6 renewed. It's not new business; it's a renewal. And --

7 THE COURT: It's a renewal as of that date.

8 MR. SAMPSON: Well, I don't think you can have a
9 renewal as of that date, your Honor. If you have one policy,
10 you're either gonna issue a new policy or you're gonna renew the
11 old one. You can't bring back what is dead, renew, and say
12 there's a lapse. They are completely mutually exclusive. You
13 can't renew someone and say but you were lapsed for this period
14 of time. No, that -- that would be a new policy. It would
15 require the things that Danice Davis talked about saying you'd
16 have to fill out a new application and make a new deal with the
17 broker and start --

18 THE COURT: It seems like --

19 MR. SAMPSON: -- all over again.

20 THE COURT: -- the one thing that's a problem with that
21 argument is the difference between a policy and the term of a
22 policy. Is that right?

23 MR. SAMPSON: Your Honor -- and the *Davis* [sic] case
24 doesn't differentiate, which I think is extremely important.
25 The *Davis* case doesn't say anything about --

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1 THE COURT: You read me some material a while ago that
2 said that -- on the cancellation -- midterm cancellation --

3 MR. SAMPSON: Yes, your Honor.

4 THE COURT: -- that seemed to me to differentiate
5 between policy and the term of a policy.

6 MR. SAMPSON: The statute talks about the term of the
7 policy. And, again, whether it is midterm because you're in
8 between two terms or if it's midterm it's got to be in between
9 one term and you say, all right, well, then, they are obligated
10 under Section .340 to issue a policy for July and then they want
11 to cancel him in the middle of July, in the middle of that term,
12 either way it's the same -- it's the same result, your Honor.

13 And, again, the *Davis* [sic] case specifically talks
14 about you cannot have a policy that expires and that you can
15 cancel because the premium's not paid without giving notice to
16 the insured. Whether it's a term deal, whether it's midterm
17 policy, whatever else -- you cannot have an insurance --

18 THE COURT: And the --

19 MR. SAMPSON: -- policy --

20 THE COURT: -- and the case that says that is what
21 case?

22 MR. SAMPSON: That's on -- on the *Davis* decision. It's
23 page --

24 THE COURT: Give me the cite of the case.

25 MR. SAMPSON: It's 103 Nev. 674.

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1 THE COURT: All right.

2 MR. SAMPSON: And I believe the quote is actually on
3 page 678 --

4 THE COURT: All right.

5 MR. SAMPSON: -- "this state's overriding concerns of
6 protecting its citizens and insuring they are afforded" --

7 THE COURT: The name of that case is?

8 MR. SAMPSON: *Davis [sic] v. National Home Life*
9 *Assurance Company.*

10 THE COURT: All right.

11 MR. SAMPSON: *Daniels*. I'm sorry. *Daniels*.

12 Thank you.

13 THE COURT: It's *Daniels*?

14 MR. SAMPSON: *Daniels v.* --

15 THE COURT: All right.

16 MR. SAMPSON: -- and I'm looking right at it, but I'm
17 mispronouncing it.

18 THE COURT: All right. That's fine.

19 MR. SAMPSON: Any --

20 THE COURT: Anything else now you want to add --

21 MR. SAMPSON: Well, it --

22 THE COURT: -- be sure you --

23 MR. SAMPSON: -- just says an insurance --

24 THE COURT: -- touch all the bases.

25 MR. SAMPSON: All right. It just says an insurance

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1 contract, policy term whatever.

2 An insurance contract that does not provide for notice
3 prior to termination for failure to pay a premium is against
4 Nevada public policy and is thus unenforceable.

5 Again, they -- they did renew him. We've talked
6 already about the renewal statement and the ambiguity of it.
7 Those ambiguities are to be construed against the drafter.

8 But, again, when you have the only place the word
9 "expiration date" appears, a date is given and it's July 31st,
10 and it's the only lapse -- lapse isn't tied to failure to pay by
11 the due date. Lapse is only tied to failure to pay by the
12 expiration date.

13 And, again, your Honor, any bill you may have -- cell
14 phone, electricity, rent, water, cable -- if you don't make the
15 payment by the day your bill is due, they don't stop your cell
16 phone service or your cable or your -- or kick you outta your
17 house or foreclose on your property if you don't make the
18 mortgage payment the day the due dated expires. There's always
19 some consequent period of time where you can get that taken care
20 of.

21 And by statute we have in Nevada that there's this
22 10-day notice, they've got to give you some initial notice
23 before you're cancelled, and the services under any
24 circumstances don't ever cease on the due date. And
25 particularly this is the case when in May -- again, they sent

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1 him a letter just a month or two before that said we're gonna
2 start your policy on April 29th, but you don't have to pay until
3 May 6th.

4 So this notion that, well, certainly you'd have to pay
5 before -- before they'd give you coverage is absurd. They've
6 told you specifically that's not the case; it doesn't have to be
7 the case.

8 Now, to Mr. Lewis's credit, when he got the money he
9 paid it. So he made the payment in the end of April. But it
10 doesn't change the fact that he was told by UAIC you can pay;
11 we'll cover you in the interim even if your payment comes after
12 coverage is supposed to begin. And, with that in mind, coupled
13 with the expiration language, I think there is only one fair
14 interpretation in terms of the lapse. Now, of course, due date,
15 whole different situation. But, in terms of when they are going
16 to commence a lapse, it's only tied to the expiration date.

17 Additionally, I think if you -- if you take a look at
18 the *Schmidt* decision from the Ninth Circuit, the argument that
19 we provided -- we gave -- we provided the opportunity to procure
20 a policy and that's sufficient, that's the argument that was
21 made and rejected by the dissent in that very case. And so I
22 don't -- I don't think it holds here as well.

23 We've talked about how it's the same policy.

24 In terms of the bad faith, I -- I would remind -- and,
25 again, we made the cite from -- from *Insurance Claims and*

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1 *Disputes* (5th edition): a "company" -- and this goes to the
2 genuine dispute issue -- a "company always acts in bad faith
3 whenever it breaches its duty to settle by failing to adequately
4 consider the interest of the insured."

5 And so even if they say: We looked at it. We thought
6 it was this way. Genuine dispute. Okay. Well, but do you have
7 evidence? And it would be their burden if we said there isn't
8 any evidence they ever considered -- it's simply: If you don't
9 adequately consider the interest of the insured, then you have,
10 it says, always acted in bad faith.

11 So we can come in and say: There's no evidence they
12 considered their interest. They can't produce any evidence they
13 considered Mr. Lewis's interest. And -- and, under the case law
14 if you don't give that equal consideration -- again, whether
15 it's a *Landlow [sic]*, *Miller*, whatever case you look at -- it's
16 always that's bad faith.

17 And, more specifically, even if your Honor was to say
18 there's this genuine dispute issue here, all right, well, that
19 is a -- whether or not their dispute was reasonable is a
20 question of fact that the Nevada Supreme Court in *Allstate v.*
21 *Miller* has said has never proved susceptible to legal definition
22 and must be a question of fact for the jury to -- to consider.

23 And the most important thing is UAIC, according to the
24 file, never did anything. They never did anything other than
25 deem the policy lapsed and tell everyone, essentially, pound

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1 sand. There isn't going to be any coverage issue. It's gone.
2 We're -- they didn't even bother looking at it.

3 I didn't know if your Honor wanted to look into the
4 bifurcation issue. They talked about bifurcating --

5 THE COURT: You should --

6 MR. SAMPSON: -- the coverage question.

7 THE COURT: -- cover everything here --

8 MR. SAMPSON: Well, it --

9 THE COURT: -- in the argument.

10 MR. SAMPSON: -- seemed to me that if in fact the
11 language of the -- of the renewal statement is ambiguous then
12 they've conceded coverage is not an issue. So there's no point
13 in bifurcating coverage versus the bad faith because if -- if it
14 is in fact ambiguous, which I think at the very least it is,
15 then there is no point in having a trial on coverage; it can be
16 decided as a matter of law. So there'd be no reason to
17 bifurcate that issue out.

18 In terms of the leave to amend, there's been absolutely
19 no evidence of -- of noncooperation by Mr. Lewis. They've not
20 pointed to a single thing that Mr. Lewis has been asked to do by
21 UAIC that he failed to do. They never asked him to do anything.
22 They just deemed him -- his contract null and void and that
23 there wasn't anything at all to be considered in the least.

24 The statement was made to leave him in the lurch, and
25 that's exactly what they did here is -- you know, they never

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1 hired independent counsel. They never had any -- any contact
2 with him at all to get his position on this. And, again,
3 Mr. Miller's indicated it's their obligation to do so.

4 And, in terms of Mr. Lewis speaking with underlying
5 plaintiffs' counsel or being friends with Mr. Nalder, that
6 doesn't mean there's any type of collusion whatsoever. No
7 attorney-client relationship was -- was commenced with Mr. Lewis
8 until after the judgment was entered and -- and we were in a
9 position, then, to execute on his -- the insured's right against
10 UAIC at that point.

11 There's no indication that there's any type of
12 agreement related to the entry of a judgment. And certainly
13 with a little girl who's run over -- her head was run over,
14 almost killed, has significant facial scarring at this point in
15 time -- I was actually disappointed by the \$3.5 million judgment
16 that the judge awarded. I think it's -- it's far from
17 sufficient for this young girl and what she's gone through and
18 for -- and for the family. We'd actually asked for
19 significantly more than that, but the judge declined.

20 And it was in a default scenario with Judge Cadish. We
21 presented the evidence. No one appeared. Mr. Lewis didn't show
22 up and say I agree. No one appeared at all on his behalf. UAIC
23 was given notice of the suit and chose not to involve itself.
24 And the judgment -- to have defense counsel come in and -- and
25 cast aspersions at Judge Cadish's decision and say that there's

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1 something fishy about it or that it's somehow suspect or not
2 legitimate with no evidence whatsoever, I think it wholly
3 improper. Judge Cadish entered the order she believed was
4 appropriate. So there's no evidence of any kind of collusion.

5 And for UAIC to, for a year or more, say there is no
6 contract; we owe you no duty; we have no obligation to you
7 whatsoever and now later say, oh, there actually was a contract;
8 well, in that a case, you breached it first is completely
9 improper and should not be permitted in terms of -- of the leave
10 to amend.

11 I just want to briefly make sure I've covered some of
12 the notes that I've made... (Pause.)

13 THE COURT: Ms. Clerk.

14 (Discussion between the Court and the clerk.)

15 MR. SAMPSON: I believe -- I had written down the
16 questions your Honor had asked previously.

17 The only other thing I would add -- and it gets back
18 again to the genuine dispute -- if it is a question of
19 interpretation of the agreement and if UAIC and the -- the --
20 it's the language -- I know your Honor and I have already
21 discussed this previously -- but the language brought up by
22 defense counsel was if our interpretation was wrong. Well, if
23 their interpretation is inaccurate and doesn't consider the
24 ambiguity of what's going on, who's the one that pays for that?
25 It should be the ones who --

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1 THE COURT: Let me ask you a question.

2 MR. SAMPSON: Yes, your Honor.

3 THE COURT: Did Mr. Lewis receive notice of his policy
4 terms separate from the renewal statement that showed that his
5 coverage started from the date his payments were received?

6 MR. SAMPSON: Not that I'm aware of. Not that I'm
7 aware of, your Honor.

8 And, indeed, the fact that the coverage commenced on
9 the date of the due date still doesn't say anything about we're
10 going to lapse you or --

11 THE COURT: Well, let's see now. The -- so you have
12 the policy terms -- received notice of the policy terms, which
13 you'd be looking at the policy. Did the policy say that -- that
14 it was only good if the late payments -- when the late payments
15 were received?

16 MR. SAMPSON: I -- I've missed the question, your
17 Honor. I apologize.

18 THE COURT: Try that, Ms. Clerk -- Ms. Reporter.

19 (Record read.)

20 MR. SAMPSON: Not that I'm aware of, your Honor. The
21 only statement I know that was -- that was cited to in the
22 briefs from the policy was this notion that if your first
23 payment -- if your first check bounces, then you have no policy.
24 And that was what we had quoted.

25 And, again, that is specifically designed to circumvent

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1 the financial responsibility rules. There was nothing
2 indicating that as your future payments -- that I'm aware of --
3 that as your future payments --

4 THE COURT: All right.

5 MR. SAMPSON: -- come due --

6 THE COURT: You have two minutes left. So --

7 MR. SAMPSON: All right.

8 THE COURT: -- give me your --

9 MR. SAMPSON: And, your Honor --

10 THE COURT: -- best shot.

11 MR. SAMPSON: -- the only other point, again, that I --
12 that I would -- that I would conclude with is: If it is in fact
13 an inaccurate interpretation or if the interpretation of the
14 contract and the renewal statement's saying, you know, if it's
15 this expiration date and the only date tied to a lapse is the
16 expiration date and if that is some kind of error on the part
17 of -- of UAIC, then UAIC should bear the burden in any -- any
18 consequential and incidental damages that arise to its insured
19 because of its error and it shouldn't be borne by the insured
20 himself.

21 So with that, your Honor, unless there's additional
22 questions.

23 THE COURT: Thank you.

24 Ms. Clerk, how much time do defendants -- does
25 defendant have?

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1 THE CLERK: Your Honor, they have 22 minutes.

2 THE COURT: All right.

3 MR. SAMPSON: Thank you, your Honor.

4 THE COURT: I want to go through a list of issues that
5 were raised by plaintiff.

6 First of all, it -- it seemed like a -- not a bad
7 argument that the due date, referring to the renewal statement,
8 is different from the lapse of the policy and therefore the -- I
9 don't know where that leads us -- but that seems significant.

10 MR. DOUGLAS: Your Honor, you know, we talked about
11 this a little before. I understand that's plaintiffs' argument.

12 THE COURT: Does that mean that the -- that it's
13 ambiguous or that it's not -- simply not ambiguous, that it
14 favors the plaintiff?

15 MR. DOUGLAS: You know, your Honor, it's kind of
16 interesting. And I -- I think I have to go back here and I do
17 have to commend my opposing counsel. He is a very good orator
18 and I think he's also a very skilled counsel in arguing his
19 position.

20 And -- and I think what -- why I bring this up is, you
21 know, there was a time there you were asking about the statutes,
22 the nonrenewal statute and the cancellation statute. And I'll
23 tell ya that, you know, counsel, he could almost argue away
24 simple statutory --

25 THE COURT: Now --

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1 MR. DOUGLAS: -- instruction --

2 THE COURT: -- now, if you'll stick to my little
3 scenario --

4 MR. DOUGLAS: And --

5 THE COURT: -- here --

6 MR. DOUGLAS: -- and --

7 THE COURT: -- it'll help me the most.

8 Is it significant in determining ambiguity --

9 MR. DOUGLAS: Sure.

10 THE COURT: -- the due date is different from the lapse
11 of the policy so that it's not --

12 MR. DOUGLAS: Sure.

13 THE COURT: -- ambiguous --

14 MR. DOUGLAS: Yeah. And --

15 THE COURT: -- or is it ambiguous?

16 MR. DOUGLAS: -- and, your Honor, I -- I apologize. I
17 only -- I only went off -- off board there to come back to the
18 fact that you really have to -- plaintiffs' argument requires
19 you in the -- in the -- the issue with the lapse of the policy
20 language it really requires you to evade common sense.

21 Because, as Ms. Danice Davis testified -- and I -- I
22 quoted that portion of her testimony in my most recent
23 supplemental response -- what she says is -- it's very clear if
24 you read the body of the paragraph -- to avoid a lapse in
25 coverage, you have to pay your policy premium, which obviously

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1 relates to the due date and the starred date and -- and amount
2 on the renewal, and it says you have to pay it --

3 THE COURT: Well, I --

4 MR. DOUGLAS: -- before expiration --

5 THE COURT: -- realize -- that's the --

6 MR. DOUGLAS: -- of your policy.

7 THE COURT: -- midterm cancellation issue. But stick
8 to my --

9 MR. DOUGLAS: Sure.

10 THE COURT: -- sequence and then I will --

11 MR. DOUGLAS: And I --

12 THE COURT: -- give you a --

13 MR. DOUGLAS: -- I apologize --

14 THE COURT: -- chance to say --

15 MR. DOUGLAS: -- your Honor, if I was --

16 THE COURT: -- whatever you want.

17 MR. DOUGLAS: What was --

18 THE COURT: Now, the -- it seemed to me on the -- one
19 of the stronger arguments on the issue of whether there's a
20 genuine dispute over coverage that good faith is a matter of
21 fact.

22 Does that defeat the genuine dispute doctrine?

23 MR. DOUGLAS: I -- I -- I think there's a couple of
24 things going on, your Honor. I -- I don't think that counsel's
25 arguments do defeat the genuine dispute doctrine at all because

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1 I don't think there are issues of fact.

2 Counsel misquotes the issues here because what he's
3 dealing with -- and I'll just speak briefly -- the *Landow* case
4 and the *Miller* case he cites to simply were not these issues
5 that we're dealing with here. Those cases, there was no
6 question that was a policy in force.

7 In fact, in the *Landow* case, the parties explicitly
8 acknowledged that coverage was in force. Similarly, in the
9 *Miller* case, the issue was also not one where there was no
10 policy -- there was an issue of whether there was a policy even
11 in effect.

12 This is a key distinction. In our case, we have an
13 issue -- clearly, as we've heard the arguments today, I don't
14 think anyone who's been sitting here can disagree --

15 THE COURT: Now, the --

16 MR. DOUGLAS: -- that there was -- I'm sorry.

17 THE COURT: -- the issue which I pursued at great
18 length with -- with Mr. Sampson and that is this idea that
19 there's no evidence that the insurance company considered the
20 situation from the insured's viewpoint or read the policy and
21 renewal statement from the insured's viewpoint --

22 MR. DOUGLAS: Sure.

23 THE COURT: -- and that therefore you have a issue of
24 bad faith.

25 Is that a good argument?

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1 MR. DOUGLAS: Your Honor, I don't believe it is and
2 I'll tell you why. I think it's a stretch again. There's two
3 reasons for that and they are really quite simple.

4 Again, the first issue is this issue of the ambiguity
5 was never raised, never raised until this lawsuit. It was not
6 raised. Plaintiff -- Mr. Lewis did not call up UAIC and say,
7 United Auto --

8 THE COURT: I don't think that helps me. Tackle the
9 argument head on regard --

10 MR. DOUGLAS: Oh, well -- well, certainly. I mean,
11 because the fact of the matter is it's quite simple -- and I
12 cited to Steve Plitt -- our expert's testimony, his deposition
13 testimony, is attached to our supplemental -- he stated quite
14 explicitly in there that the insurance company when there's no
15 policy in effect they have no duty to do these lengthy
16 investigations that counsel is talking about.

17 Counsel wants to place upon them the burdens of getting
18 coverage counsel, the burdens of having a coverage memorandum.
19 And that's simply not their duty. As this Court knows, the law
20 is that the insurance company may choose -- choose to defend or
21 choose to deny coverage; they do not have to employ coverage
22 counsel. And, frankly, the fact is of course the insurance
23 company always considers their insured and they did so here.

24 THE COURT: Well, I don't know. I hope that's so.
25 But --

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1 MR. DOUGLAS: Yeah.

2 THE COURT: -- I don't take that as a given here.

3 MR. DOUGLAS: Well -- well, I'll tell you why -- I'll
4 tell you why it is, your Honor.

5 What can the insurance company do when they have a
6 situation like this? You have a policy that -- that is not in
7 effect. We sat here and we've argued about it for, you know, an
8 hour and a half about whether there was a policy in effect.

9 And you're -- you -- by plaintiffs' proposal, every
10 time there was a clearcut, a clearcut case where policy had
11 expired and a new policy hasn't incepted, the -- every time that
12 happens and there's a loss the insurance company has to step
13 back and do a full claim investigation and -- and -- and --
14 and -- and find out if the insured's --

15 THE COURT: Well, in the --

16 MR. DOUGLAS: -- gonna claim an ambiguity in the
17 renewal notice. I mean --

18 THE COURT: Stop for a --

19 MR. DOUGLAS: -- it requires --

20 THE COURT: -- second now.

21 If the burden of proof of bad faith is on the
22 plaintiff, does the plaintiff have to prove a negative, that is,
23 that the insurance company never considered the position of the
24 insured or took into consideration its insured's interest?

25 MR. DOUGLAS: I -- I think to survive summary judgment

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1 he ought to be able to present something. I mean, you know, and
2 he -- and he can't. You know, and in fact --

3 THE COURT: Well, is it your duty to present that or
4 does insured -- does the insured have to present evidence of bad
5 faith in that sense?

6 MR. DOUGLAS: I -- I think the insured -- or, in this
7 case, you know, part of the problem is he -- the argument is he
8 wasn't even insured; there was no policy in effect.

9 THE COURT: Well, let's assume he was just for the
10 argument --

11 MR. DOUGLAS: So let's --

12 THE COURT: -- here.

13 MR. DOUGLAS: -- assume he was an insured. The point
14 is, it's still different from a case where you have a policy in
15 effect and then there's some issue over whether that particular
16 loss is covered, let's say, for instance, you know, whether
17 someone's driving a motorcycle and whether there's a motorcycle
18 exclusion under the policy. That's not the case here. In that
19 case, different duties may arise that the insurance company may
20 need to do more of an investigation. This is a case where
21 there's no -- there's no policy. There's no coverage. There's
22 no term.

23 And so to put on the insurance company now the burden
24 and -- and -- and -- and -- and answer to bad faith allegations,
25 you know, two years down the line to come forth and say, you

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1 know, that we -- we undertook -- you know, somehow prove that
2 we -- we -- even though plaintiff can't point to any evidence
3 that we didn't consider our insured, we have to now prove that
4 we did.

5 And I'll tell ya there is clearcut proof that they did
6 and I'll tell you what it is, your Honor. From the moment this
7 case came in, from the day one that they got the notice of this
8 lawsuit, when Mr. Lewis called and later when plaintiffs'
9 counsel made a demand shortly after the accident, coverage was
10 checked. They went to underwriting -- Ms. Danice Davis
11 testified to this. This is in her transcript, contrary to what
12 plaintiff says -- they went to underwriting; they checked their
13 documentation; and they found that this man had a lapse in
14 coverage; that one policy had flat expired and the new policy
15 hasn't started.

16 And, I mean, at what point -- how far does the company
17 need to put the insured's interests ahead of their own? They
18 are to treat them equally.

19 And in this case are they supposed to go: Well, you
20 know, he didn't make a payment. The policy was expired. He
21 then rushed down and made a payment after the loss. But you
22 know what? We're gonna put his interests ahead of our own and
23 say we forget that; we're gonna cover this loss.

24 I mean, that's what plaintiff really -- that's what
25 plaintiff wants here. And that is why it's not our burden, it's

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1 his burden to show somehow we were in bad faith by not honoring
2 a policy that was wasn't in effect? I -- I -- I just don't see
3 it. And --

4 THE COURT: Now --

5 MR. DOUGLAS: -- that's why we moved for summary
6 judgment --

7 THE COURT: -- before you use all the time --

8 MR. DOUGLAS: -- on the bad faith --

9 THE COURT: -- on this one --

10 MR. DOUGLAS: -- issue.

11 THE COURT: -- the right to have your policy renewed.

12 You heard the colloquy I had with Mr. Sampson on that --

13 MR. DOUGLAS: Yeah.

14 THE COURT: -- that you have this right whether you
15 make payment or not unless you get notice. Now, tackle that
16 argument.

17 MR. DOUGLAS: Yeah, sure. Your Honor, you know, I -- I
18 cited this in my supplemental reply. Our -- our expert tried to
19 explain this to Mr. Sampson. I don't know if he just holds a
20 different view of statutory construction than -- than -- than --
21 than -- than I do or -- or -- or -- or what have you.

22 But, you know, I've read the statute. And, as
23 Mr. Plitt, our expert, explained, the statute -- you can't
24 divorce the part that says an insured has a right to a renewal
25 from the second part which deals with the fact of the notice of

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1 nonrenewal. The statute is clearly a very defined statute that
2 deals with a specific certain circumstance.

3 That circumstance is when the insurer wishes to
4 nonrenew an insured. That may be because the insured has too
5 many DUI's or somehow otherwise become an unacceptable risk. At
6 that time, the insurer must within -- by -- with 30 days' notice
7 give the insured notice that, hey, listen guy, you are a
8 terrible driver; you're a danger; and we don't want to renew
9 you.

10 That -- if they do not -- if they do not send a
11 compliant notice -- and -- and it's very clear. It's very clear
12 in the statute: "mails or delivers to the policyholder a notice
13 of intention not to renew the policy beyond the agreed
14 expiration date. If an insurer fails to provide [the] timely
15 notice of nonrenewal, the insurer [then] shall provide the
16 insured with a policy of insurance on identical terms to the
17 expiring policy."

18 Plaintiffs' counsel, for some reason, is insistent upon
19 divorcing the two parts of the statute. And I just don't see
20 it. Under the last antecedent rule --

21 THE COURT: Well, now his argument was --

22 MR. DOUGLAS: -- you clearly --

23 THE COURT: -- that it's not a matter of whether it was
24 offered, which it appears it was; he says it had to be renewed.
25 There had to be a renewal unless you have this notice. Is that

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1 right?

2 MR. DOUGLAS: No. I -- I -- I -- well -- well, they
3 have -- they have -- they did offer him a renewal. That's just
4 the point, your Honor, is that he's confusing two --

5 THE COURT: Well, but the --

6 MR. DOUGLAS: -- issues.

7 THE COURT: -- he said that's not enough.

8 MR. DOUGLAS: Yeah. I -- I -- I disagree with that.

9 I -- I -- they offered this man a renewal.

10 And -- and interestingly -- and I don't know if this
11 was where your question went -- I heard your Honor ask counsel a
12 question about the time and I didn't know if you were -- the
13 time that it took for the renewal notice.

14 And I think what's interesting is with counsel's
15 arguments -- even in the alternative I argue that even if his
16 arguments about the midterm cancellation were true, the midterm
17 cancellation only requires 10 days' notice. And we sent the
18 renewal notice, UAIC did, on June 11th, 2007, which clearly
19 would have put them in -- in the category of giving him more
20 than 10 days notice of the expiration for failure to pay for his
21 renewal premium.

22 So I think that even if this -- even if you believed
23 counsel's convoluted argument about the midterm cancellation
24 statute, which I think goes against the sheer, clear face of the
25 statute which says "midterm" means "within the term" -- and, in

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1 this case, it's pretty clear it was a month term -- I think even
2 taking his argument as true the renewal notice satisfy [sic] --
3 satisfies the 10-day notice of cancellation period.

4 Along with that, your Honor, I -- I noticed -- I just
5 wanted to correct something. And I don't know if you were done
6 on the nonrenewal statute. I really don't think it applies in
7 this case because a renewal was offered. But, if you need any
8 more argument on that, I'd be happy to give it.

9 THE COURT: You better tell me.

10 MR. DOUGLAS: Okay. Yeah.

11 And -- and basically, your Honor, I mean, like I said,
12 the clear reading of it, to my -- my interpretation -- and
13 certainly it's your Honor's interpretation that matters -- but
14 clearly this deals with the discrete circumstance where an
15 insurer fails to -- or delivers a noncompliant notice of
16 nonrenewal. And, in that case, they would have the duty to
17 offer that renewal. In this case, a renewal -- offer for
18 renewal was offered.

19 I -- I don't buy plaintiffs' interpretation because
20 that would create a system where insureds would know, hey, I
21 don't need to pay for my new policy because I got this great
22 state statute and if I got a year policy I don't have to pay for
23 that next term because, guess what, I'm gonna get a new --

24 THE COURT: What about --

25 MR. DOUGLAS: -- a new policy renewed.

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1 THE COURT: -- what about the argument that "midterm"
2 means "in between terms" rather than within a term.

3 MR. DOUGLAS: Sure.

4 Your Honor, first off, I think that's a complete --
5 that's -- that's really -- you're taking pains to explain the
6 statute there. And I'll tell you why for two reasons.

7 This is out of plaintiff response. Plaintiff cited the
8 statute 687B.320 in his response. And it's pretty clear. It
9 says, you know, "No [insurance policy] that has been in effect
10 for at least 70 days or that has been renewed may be cancelled
11 by the insurer before ... expiration of the agreed term," except
12 for one of the following grounds. So clearly the exception is
13 there, expiration of the policy term.

14 Plaintiff admitted when he read Danice Davis's
15 testimony that this was a monthly term. And, you know, we have
16 never, never changed our position. The -- if you read the
17 Declaration of Danice Davis filed probably a year ago, she says
18 in her Declaration, your Honor, that this man had a monthly --
19 consecutive monthly policy terms -- well, not always
20 consecutive -- but monthly policy terms. This is not some kind
21 of term that was made up or -- or language that was made up by
22 United Auto. This is cited -- the Legislature used -- used this
23 exact word in the statute, "the agreed" term. Here he had
24 monthly terms. Plaintiffs' insistence on trying to say somehow
25 this was one policy, I really think, is stretching again both

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1 the testimony and the reality.

2 I -- I cited our expert also on this issue on page 20
3 of my supplement where he said, you know, this -- when you --
4 when you want to talk about a renewal or a new policy or a
5 continuing policy on a renewal, he goes this is really just
6 academic language. He goes, when we're talking about a new --
7 when we're talking about a new policy term, it is a new policy.

8 And, you know, of course, insurers when you have the
9 same insured who is renewing over for a new term they are not
10 gonna make the insured fill out a new application every time.
11 If information changes, they would get it from the insured.

12 So the midterm cancellation statute, again, your Honor,
13 I think -- I -- I leave it to your Honor --

14 THE COURT: Let me have --

15 MR. DOUGLAS: -- but I think --

16 THE COURT: -- one more shot at you on --

17 MR. DOUGLAS: -- it's clear.

18 THE COURT: -- on this considering the matter from the
19 insured's viewpoint.

20 List off for me any affirmative evidence that -- that
21 it was considered --

22 MR. DOUGLAS: Sure.

23 THE COURT: -- that the insured's interest was
24 considered.

25 MR. DOUGLAS: Sure.

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1 Plaintiff -- we have the deposition testimony of Jan
2 Cook, which I don't think plaintiff included. But certainly
3 there's the deposition testimony --

4 THE COURT: I need it as things that have been
5 presented --

6 MR. DOUGLAS: Sure.

7 THE COURT: -- as evidence for me.

8 MR. DOUGLAS: Sure.

9 Deposition testimony of Danice Davis, the deposition
10 testimony --

11 THE COURT: What --

12 MR. DOUGLAS: -- of --

13 THE COURT: -- did it say?

14 MR. DOUGLAS: -- the claim- --

15 THE COURT: What did it say?

16 MR. DOUGLAS: Danice -- Danice -- Danice Davis. She
17 was the underwriting manager.

18 And both her and Manny Cordova, who was also cited, who
19 was a former claims manager, and Jan -- Jan Cook, the current
20 claims manager, they all said from day one every time this claim
21 was presented they went back to underwriting; they double
22 checked; they triple checked; they looked at this man's payment
23 history; they called up the -- an independent agency and they
24 got a copy, they got a copy of his late payment that he rushed
25 down to make on July 10th and they saw it right there.

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1 They had -- they had given him the renewal notice. He
2 knew he had till the end of June to pay; he didn't. The policy
3 in June 2007 expired. They -- they called up the ind- -- they
4 did do an investigation. They got a copy of the payment notice.

5 And what did that show? He ran in with a money order
6 on July 10th after he got back down from Pioche to pay for this
7 policy. Then he calls up a few days later, oh, I'm just
8 checking coverage. Well, the company --

9 THE COURT: Now I'm looking here just when you finished
10 with the things that the company did affirmatively that are in
11 the record --

12 MR. DOUGLAS: Sure.

13 THE COURT: -- which would indicate consideration of
14 the insured's viewpoint.

15 MR. DOUGLAS: Again -- and I really do feel that is
16 consideration of the insured's viewpoint. Because what else can
17 a company do? We don't know down the road that plaintiff is
18 gonna raise this renewal notice argument. So how --

19 THE COURT: But I --

20 MR. DOUGLAS: -- could the company --

21 THE COURT: -- the -- did they do anything else beside
22 check with underwriting about the late payment?

23 MR. DOUGLAS: And they checked with the agency. They
24 checked with the agency and that's when --

25 THE COURT: And what --

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1 MR. DOUGLAS: -- they got proof of the late --

2 THE COURT: -- did they seek there and what did they
3 find out?

4 MR. DOUGLAS: The agency said no, this guy came and
5 paid late. And they -- and we -- and that's part of the records
6 that you have is, is we ver- -- it's attached to our Motion For
7 Summary Judgment. It's -- it's the stamped copy of his money
8 order that he paid with two days after the accident. And they
9 talked to the agent and they said, yeah, he came in. And, you
10 know, by the way the agent said -- told them, listen, this guy
11 was explained he was on a month-to-month policy. He knew the
12 rules. He knew how to pay. And --

13 THE COURT: All right.

14 Are there anything else that the company did along that
15 line?

16 MR. DOUGLAS: Well, again, I -- I think that -- that is
17 what they did, as I said. They -- they -- they double/triple
18 checked coverage, including calling the agency and,
19 additionally, they talked to Mr. Lewis who called in himself.
20 They talked to the insured himself and he was -- and we have
21 that note. He was explained -- he was explained that his
22 coverage had lapsed. Did he contest it at that point? No.

23 And so, you know --

24 THE COURT: Well, let's see. I have --

25 MR. DOUGLAS: -- that's --

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1 THE COURT: -- one --

2 MR. DOUGLAS: -- what we --

3 THE COURT: -- one other question.

4 Did Mr. Lewis receive notice of his policy terms
5 separate from the renewal statement showing that his coverage
6 started from the date his late payments were received?

7 MR. DOUGLAS: Sure.

8 And -- and -- and -- and, Judge, I -- I heard that
9 question before and I -- I -- I thank you for bringing that up
10 again.

11 As you can see from the exhibits attached to
12 plaintiffs' response, these are the claim -- the underwriting --
13 underwriting documents that UAIC provided. All the testimony in
14 this case has been consistent with the fact -- and you can see
15 from the documents -- with every renewal notice he not only got
16 temporary cards that went out with the date of his payment but
17 he also got a Dec. page that went out with his real insurance
18 cards every time showing his monthly --

19 THE COURT: Okay. Let's see now.

20 MR. DOUGLAS: -- policy terms.

21 THE COURT: Let me tick those off.

22 MR. DOUGLAS: And -- and the --

23 THE COURT: Wait.

24 MR. DOUGLAS: -- the documents --

25 THE COURT: Were those in the renewal statements, that

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1 information, or --

2 MR. DOUGLAS: Yes. Renewal statements and the
3 Declaration pages came.

4 So this was every month with his renewal statement.
5 And all the documents they're -- they're attached as part of
6 plaintiffs' exhibit. For him to stand up here and pretend like
7 these didn't go out together, I think, is to -- is to -- is to
8 really stretch --

9 THE COURT: So the renewal statements gave him notice
10 like that?

11 MR. DOUGLAS: Yeah. And -- and each --

12 THE COURT: And were there any other source of notice?

13 MR. DOUGLAS: No. I mean, they mailed him the copies
14 of his renewal notice and a Declaration page. I -- I -- to me,
15 that's sufficient.

16 THE COURT: What was on the Declaration page that would
17 disclose this?

18 MR. DOUGLAS: Excuse me? Yes, the Declaration page.

19 And you can see, your Honor, the documents are
20 consecutive for each monthly term. And it says in the top
21 right-hand corner of the Declaration page, which was mailed as
22 well, it says "coverage provided" and it has a "from" date, the
23 "inception" date, and a "to" date and each time it's showing
24 this monthly term.

25 And this goes on for the complete 15- -- 15-some-odd

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1 months that this man continued to be insured with United Auto.

2 THE COURT: All right. Now, I've asked my questions.

3 How much time does defense have, Ms. Clerk?

4 THE CLERK: One minute.

5 THE COURT: All right. We'll give you two minutes. So

6 add --

7 MR. DOUGLAS: Your Honor, and quick --

8 THE COURT: -- pick --

9 MR. DOUGLAS: -- summation --

10 THE COURT: -- whatever you want.

11 MR. DOUGLAS: Thank you, your Honor.

12 And -- and I appreciate all the questions. I -- I just
13 want to -- I want to say two -- two quick things.

14 The first thing is: When you were asking plaintiff
15 about a genuine dispute -- or excuse me -- about the ambiguity,
16 plaintiff -- I -- I think I heard him admit that UAIC's
17 interpretation of the renewal notice was reasonable. I heard
18 him say that. And, if he agrees with you that our
19 interpretation of the renewal notice was reasonable, well, how
20 can there be bad faith because that meant we were reasonable.
21 And I think that's what gets to the heart of this case.

22 And -- and I -- you know, and plaintiff, you know, he
23 does a very fine job and I understand he's -- he's litigating
24 very strongly for his client. But the facts are the facts in
25 this case.

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1 It may be unfortunate, but this man played -- played --
2 he gambled with his insurance coverage. And, unfortunately, at
3 this time he was up there for a 4th of July party and he didn't
4 have coverage. And he -- he -- he hit this little girl and he
5 ran down and he made his money order payment because he knew he
6 didn't have coverage and he was -- and then he -- and then he
7 speaks with plaintiffs' attorney right away.

8 The final thing I'll add is --

9 THE COURT: Let me -- I've got one more question --

10 MR. DOUGLAS: Sure.

11 THE COURT: -- I'd like to ask you.

12 (Pause in the proceedings.)

13 THE COURT: What evidence can we consider in deciding
14 whether there was ambiguity as a matter of law? Is it just the
15 renewal statement? Do the parties' intentions make a
16 difference? What --

17 MR. DOUGLAS: The parties' intentions do not make a
18 difference. I think it's --

19 THE COURT: What --

20 MR. DOUGLAS: -- pretty clear --

21 THE COURT: -- evidence can we consider that -- that's
22 in the record here now to help us with that?

23 MR. DOUGLAS: I think it's the face of the renewal. I
24 mean, I think any document -- it's a renewal notice. I think
25 it -- it has to -- it's -- it's a --

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1 THE COURT: Is there --

2 MR. DOUGLAS: -- it's a offer --

3 THE COURT: -- are there any other --

4 MR. DOUGLAS: -- for a contract.

5 THE COURT: -- documents or testimony that we're
6 entitled to consider?

7 MR. DOUGLAS: I think you can consider testimony. But,
8 as I mentioned, you know, plaintiff pointed out some lay -- lay
9 testimony and not only do I think he misquotes it but, beside
10 that point, I really don't think it's necessary for this Court's
11 conclusion. And this Court --

12 THE COURT: Well, let's assume. I want to know
13 everything I could consider, that I'm permitted to consider.

14 MR. DOUGLAS: I -- I really -- I really believe you
15 have to consider the four corners of the document. But, if your
16 Honor takes other things into consideration, that is fine. If
17 you read the full testimony --

18 THE COURT: Well, what am I entitled, in my position,
19 to consider beside the renewal statement?

20 MR. DOUGLAS: I -- I -- I don't think so, your Honor.
21 I think when you're looking at a contract I think you have to
22 look at four corners. And, in this case, it would be an offer
23 for a contract. I think you're looking at the four --

24 THE COURT: So we look at the policy then?

25 MR. DOUGLAS: You could look at the policy. But I --

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1 THE COURT: What else?

2 MR. DOUGLAS: -- but I --

3 THE COURT: What else?

4 MR. DOUGLAS: -- I -- I -- I think you can look at the
5 policy, the December (miswritten by reporter) page, and the
6 renewal statement --

7 THE COURT: The --

8 MR. DOUGLAS: -- because I think you're looking at the
9 offer for the contract and the contract itself. I think you can
10 take it all together.

11 THE COURT: Stop for a minute.

12 MR. DOUGLAS: Sure.

13 THE CLERK: Time's up, your Honor.

14 THE COURT: The "Dec. page," that's the Declaration
15 page?

16 MR. DOUGLAS: The Declarations page. I apologize, your
17 Honor. Yes.

18 THE COURT: It came up on my realtime as "December."
19 So...

20 MR. DOUGLAS: I -- I -- that's okay.

21 THE COURT: I thought --

22 MR. DOUGLAS: Your Honor, I -- I know my time's up.
23 I -- I really just wanted to say one final thing. You know,
24 um --

25 THE COURT: So the -- I can look at the renewal

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1 statements, the policy, the Declarations page. Anything else?

2 MR. DOUGLAS: I -- I believe that's it, your Honor. I
3 really think you have to look --

4 THE COURT: All right. Now --

5 MR. DOUGLAS: -- at the offer --

6 THE COURT: -- we'll give you two more minutes for
7 whatever you want to add.

8 MR. DOUGLAS: Sure.

9 Your Honor, I think we've discussed the issues here and
10 I think just based by the -- the extent of the argument I -- I
11 think that we can agree at the -- my -- my -- my client remains
12 convinced there was no coverage for this accident. And I think
13 plaintiff has just tried to throw everything at the wall to see
14 what sticks to try and find coverage here.

15 I think that even if this Court were to find coverage,
16 let's say, for an ambiguity or something like that, though, I
17 think the real key to this case, though, is there wasn't bad
18 faith here. And that's shown by the fact that -- that plaintiff
19 admitted -- his best argument with the ambiguity, he admitted
20 that our interpretation was reasonable. If our interpretation
21 was reasonable, that means we didn't act unreasonably in denying
22 on the basis of our interpretation. Hence, there's no with bad
23 faith.

24 And I think that's really the key to this case.
25 Because my final thought is if we are unsuccessful on our first

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1 three motions in terms of summary judgment on coverage, summary
2 judgment on bad faith, or -- or the bifurcation our final motion
3 is intend that motion to amend. And, if this case goes on,
4 there is evidence of collusion; there is evidence of jeopardy.

5 Plaintiffs' counsel -- I'm not trying to besmirch. But
6 let's face it, this man talked with him the days after. You
7 heard him up here say that I only talked to him that one time
8 and I never talked to him again. Well, but then how did he get
9 the right to file this lawsuit? He -- you know.

10 And then we get an assignment six, eight months after
11 the lawsuit's filed on -- and in the -- in the -- on the
12 doorstep of the courtroom on the motion to compel. And when
13 I -- and when I -- and I put it in my supplemental response. I
14 asked Mr. Lewis:

15 When's the first time you spoke to him? A few days
16 after the accident.

17 When did you speak to him next? Not until I signed the
18 assignment.

19 So either there was collusion or this case was filed
20 without standing. The reason we don't have more evidence of it
21 is we haven't done discovery on it. So I would ask that in --
22 should your Honor find against us you grant us that leave.

23 Thank you, your Honor.

24 THE COURT: Thank you.

25 MR. SAMPSON: Your Honor, I just want to make a quick

2:09-cv-1348-ECR-GWF - December 7, 2010

1 record to request to respond to something that wasn't brought up
2 until this final rebuttal. I've not an opportunity --

3 THE COURT: I'll give --

4 MR. SAMPSON: -- to respond.

5 THE COURT: -- you two minutes to do that.

6 MR. SAMPSON: And -- and I can do it in less --

7 THE COURT: I've given you --

8 MR. SAMPSON: -- than that, your Honor.

9 THE COURT: -- I think a fair shot at everything here.

10 But you can add --

11 MR. SAMPSON: The notion --

12 THE COURT: -- whatever --

13 MR. SAMPSON: -- was brought up --

14 THE COURT: -- you want.

15 MR. SAMPSON: -- that UAIC had sent the notice of
16 cancellation on June 11th, that -- that their renewal statement
17 basically qualifies as notice of cancellation for midterm
18 cancellation, that flies to the face of NRS 687B.310 that
19 specifically says any notice of cancellation "must state the
20 effective date of the cancellation and nonrenewal [to] be
21 accompanied by a written explanation of the specific" --

22 THE COURT: This is --

23 MR. SAMPSON: -- "reasons for the" --

24 THE COURT: -- whether of the renewal statement is a
25 notice of cancellation?

2:09-cv-1348-ECR-GWF - December 7, 2010

1 MR. SAMPSON: That was the notion that was just brought
2 up here. Again, I haven't had a chance to respond to it. And
3 that -- that renewal -- you can't have a notice of renewal
4 qualify as a -- as a notice of -- of cancellation because
5 Section .310 says, the cancellation notice has to explain the
6 specific reasons for the cancellation or the nonrenewal.

7 There are no reasons. There's not even an indication
8 they're going to cancel him. You don't provide notice that we
9 will cancel you if you don't pay --

10 THE COURT: Well, is it -- isn't it if you don't pay,
11 you don't have insurance?

12 MR. SAMPSON: No, no, no, because the rule says if you
13 don't pay you do have insurance. They have to continue to
14 insure you and then they have to cancel you with the notice of
15 nonpayment.

16 The notice is not notice that we will cancel you if you
17 don't pay. The requirement under Section .320 of the Midterm
18 cancellation is you have not paid and so we are cancelling you.
19 And that's the distinction.

20 THE COURT: All right. Thank you.

21 MR. SAMPSON: Thank you, your Honor.

22 THE COURT: Good point.

23 (Pause in the proceedings.)

24 THE COURT: And that was a new thing that came up in
25 the colloquy I most recently had with counsel.

2:09-cv-1348-ECR-GWF - December 7, 2010

1 MR. SAMPSON: Yes, your Honor.

2 THE COURT: We thank you. Very exciting, challenging
3 argument. And we do intend to issue a written order.

4 The matter stands submitted. And we are adjourned.

5 MR. SAMPSON: Thank you, your Honor.

6 THE CLERK: Everyone --

7 MR. SAMPSON: Thank you, Judge.

8 LAW CLERK: -- please --

9 MR. DOUGLAS: Thank you --

10 LAW CLERK: -- rise.

11 MR. DOUGLAS: -- Judge.

12 MR. WINNER: Thank you, Judge.

13 (Pause in the proceedings.)

14 THE CLERK: Court's in recess.

15 (Proceedings concluded at 4:33 p.m.)

16 --oOo--

17 I hereby certify that pursuant to Section 753, Title 28, United
18 States Code, the foregoing is a true and correct transcript of
19 the stenographically reported proceedings held in the
20 above-entitled matter.

21

22

23 DATED: March 17, 2011  FELICIA RENE ZABIN, RPR, CCR NO. 478

24

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

APR 02 2014

CASE NO. 13-17441

FILED
DOCKETED

DATE

INITIAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES NALDER, Guardian Ad Litem on
Behalf of Cheyanne Nalder and GARY
LEWIS, individually,

Appellants,

vs.

UNITED AUTOMOILE INSURANCE
COMPANY,

Respondent.

No. 13-17441

D.C. No. 2:09-cv-01348-
RJC-GWF
District of Nevada,
Las Vegas

FILED

APR 02 2014

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

APPELLANTS' APPENDIX – VOLUME IV

THOMAS CHRISTENSEN, ESQ.
Nevada State Bar No. 2326
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, NV 89107
Telephone: (702) 216-1475
Facsimile: (702) 870-6152
courtnotices@injuryhelpnow.com
Attorneys for Appellants

RECEIVED

JUN 02 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

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3
4 **VOLUME IV**

5 Declaration of Jan Cook (03/26/2013).....0609

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/s/ Jennifer M. Gooss
An employee of CHRISTENSEN LAW OFFICES, LLC

MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059

Attorneys for United Automobile Insurance Company

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES NALDER, Guardian Ad Litem for
minor Cheyanne Nalder, real party in
interest, and GARY LEWIS, Individually;

Plaintiffs,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, DOES I through V, and ROE
CORPORATIONS I through V, inclusive

Defendants.

CASE NO.: 2:09-cv-1348
DEPT. NO.:

**DECLARATION OF WESTERN
REGIONAL CLAIMS MANAGER JAN
COOK IN SUPPORT OF DEFENDANT
UNITED AUTOMOBILE INSURANCE
COMPANY'S MOTION FOR SUMMARY
JUDGMENT AND MOTIONS IN THE
ALTERNATIVE**

I, Jan Cook, declare:

1. That I am the Western Regional Claims Manager employed at United Automobile Insurance Company ("UAIC"). I make this declaration in support of UAIC's Motion for Summary Judgment and, alternatively Motion to Dismiss Nalder and, further, in the alternative to Bifurcate and Stay extra-contractual claims. I have personal knowledge of the facts set forth below and, if called as a witness, could and would competently testify to them under oath.

1 2. I have familiarized myself with the claims file for the claim made by James
2 Nalder, as Guardian for Minor, Cheyanne Nalder against Gary Lewis' policies of insurance with
3 UAIC. I have familiarized myself with the Nalder's claim file since its opening. As part of that
4 process, I reviewed claims notes made and correspondence sent and received in connection with
5 the handling of the claim. The claims adjuster makes notes at or near the time of the activities in
6 question occur. The creation and maintenance of the claims notes is a regularly conducted
7 business activity of UAIC and said notes are true and accurate. Similarly, all correspondence sent
8 by an adjuster is kept in the Claims file in the usual and ordinary course of business and those
9 documents are true and accurate.

11 3. The claims file reveals that the Nalder's made a claim under Gary Lewis' policies
12 with UAIC for the loss, on July 8, 2007, occurring to minor Cheyanne Nalder.

14 4. The claim file further reveals that the Nalders' and their Counsel were informed
15 in writing on October 10, 2007 that no coverage existed for Lewis on the date of the accident,
16 July 8, 2007, as his policy had expired June 30, 2007 and no new policy term was incepted until
17 July 10, 2007.

18 5. That a true and accurate copy of the October 10, 2007 correspondence from UAIC
19 to Plaintiff's Counsel, kept in usual and ordinary course of business, is attached hereto as Exhibit
20 'A.'

22 6. That, thereafter, the claims file reveals that the Nalder's Counsel sent a copy of
23 the underlying suit to UAIC on October 23, 2007.

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
117 S. RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

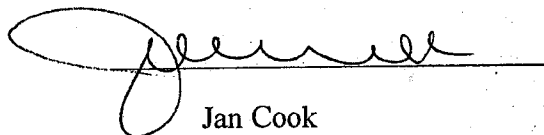
1 7. The claim file further reveals that the Nalders' and their Counsel were informed
2 in writing again, on November 1, 2007, that no coverage existed for Lewis on the date of the
3 accident, July 8, 2007, as his policy had expired June 30, 2007 and no new policy term was
4 incepted until July 10, 2007.

5
6 8. That a true and accurate copy of the November 1, 2007 correspondence from
7 UAIC to Plaintiff's Counsel, kept in usual and ordinary course of business, is attached hereto as
8 Exhibit 'B.'

9 9. That the UAIC policies only cover losses which occur within the policies term
10 periods.

11
12 10. That no coverage existed for Gary Lewis through UAIC on the date of the loss,
13 July 8, 2007.

14 Executed this 4 day of December, 2009, in Scottsdale, Arizona.

15
16
17 
18 Jan Cook

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 S. RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

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CERTIFICATE OF ELECTRONIC SERVICE

I DO HEREBY CERTIFY that I am an employee of ATKIN WINNER & SHERROD and on the 26th day of March, 2013, I did serve, via electric service, the foregoing
**DECLARATION OF WESTERN REGIONAL CLAIMS MANAGER JAN COOK IN
SUPPORT OF DEFENDANT UNITED AUTOMOBILE INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT AND MOTIONS IN THE ALTERNATIVE**

/s/ Victoria Hall

An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 S. RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

EXHIBIT A



UNITED AUTOMOBILE INSURANCE GROUP

P.O. Box 14950, Las Vegas, NV 89114-4950
Office: 702-369-0312 - Toll Free: 866-209-4163

October 10, 2007

Seegmiller & Associates
851 South Rampart Blvd # 200
Las Vegas, NV 89145

DN ymm

Re: Insured: Gary Lewis
Claim Number: 0006000455 - 002- V03
Date of Loss: 07/08/2007
Policy Number: NVA 020021926
Claimant: CheyAnne Nalder & Tammy Nalder

Dear Mr. Clark Seegmiller,

I am in receipt of your letter dated October 2, 2007. Our insured maintains a minimum limits liability policy. The policy in question lapsed (non-renewed) on June 30, 2007. The policy was then renewed on July 10, 2007 at 12:50pm PST. There was no policy in force at the time of the reported loss.

We denied this claim based on the fact there was no coverage in force at the time of the loss.

We have enclosed a copy of our insured's declaration of coverage page as you have requested. Should you have any additional questions feel free to contact me to discuss.

Sincerely,

Manny Cordova
Claim Adjuster
Extension 6509

EXHIBIT B



UNITED AUTOMOBILE INSURANCE GROUP

P.O. Box 14950, Las Vegas, NV 89114-4950
Office: 702-369-0312 - Toll Free: 866-209-4163

November 1, 2007

Christensen Law Offices
1000 South Valley view Blvd.
Las Vegas, NV 89107

ANS

Re: Insured: Gary Lewis
Claim Number: 0006000455
Date of Loss: 07/08/2007
Policy Number: NVA 030021926
Claimant: CheyAnne Nalder

-003- V03

Dear Mr. Sampson and Mr. Christensen,

We are in receipt of your letter dated October 23, 2007. Unfortunately our insured did not have coverage at the time of the loss. A denial letter was forwarded to you denying this claim in its entirety as there was no coverage at the time of the loss.

The only information we can legally provide your office would be information that is public record. We searched our file and could not find a police report for this incident, therefore we will not be able to provide you with the information requested.

I called Mr. Gary Lewis with the number we had on file in an attempt to advise him that your firm is looking to contact him. The number we had on file is no longer in service. If there is anything else we can do that would assist you please feel free to contact Manny Cordova at 702 369 0312 ext 6509 to discuss.

Sincerely,

Manny Cordova
Claim Adjuster
Extension 6509

MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

*Attorneys for Defendant,
United Automobile Insurance Company*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES NALDER, Guardian Ad Litem for
minor Cheyanne Nalder, real party in
interest, and GARY LEWIS, Individually;

Plaintiffs,

vs.

UNITED AUTOMOBILE INSURANCE
COMPANY, DOES I through V, and ROE
CORPORATIONS I through V, inclusive

Defendants.

CASE NO.: 2:09-cv-1348

**ERRATA TO DEFENDANT UNITED
AUTOMOBILE INSURANCE
COMPANY'S COUNTER-MOTION FOR
SUMMARY JUDGMENT ON EXTRA-
CONTRACTUAL CLAIMS OR
REMEDIES; IN THE ALTERNATIVE,
MOTION TO BIFURCATE CLAIMS
FOR EXTRA-CONTRACTUAL CLAIMS
OR REMEDIES; FURTHER, IN THE
ALTERNATIVE, MOTION FOR LEAVE
TO AMEND**

COMES NOW Defendant, UNITED AUTOMOBILE INSURANCE COMPANY, by and
through its attorneys, ATKIN WINNER & SHERROD, hereby submit this Errata to its Counter-
Motion for Summary Judgment; or in the alternative, Motion for Bifurcation of Certain Claims
and, further in the alternative Motion for Leave to Amend, which was previously filed with the
Court, document #89, in the above-referenced matter. That brief contained a typographical error
on page three (3) of that brief. Specifically, on page three (3), Line twenty-five (25), the
Document referenced should be "Document No. 90", herein and not Document No. 89.

///

///

///

///

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 S. RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 DATED this 26th day of March, 2013.

2 ATKIN WINNER & SHERROD

3 */s/ Matthew J. Douglas*

4 Matthew J. Douglas
5 Nevada Bar No. 11371
6 1117 South Rancho Drive
7 Las Vegas, Nevada 89102
8 *Attorneys for Defendant*

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ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 S. RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 THOMAS CHRISTENSEN, ESQ.
2 Nevada Bar #2326
3 CHRISTENSEN LAW OFFICES, LLC
4 1000 S. Valley View Blvd.
5 Las Vegas, Nevada 89107
6 (702) 216-1471 Phone
7 (702) 870-6152 Fax
8 courtnotices@injuryhelpnow.com
9 Attorneys for Plaintiff,
10 JAMES NALDER

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

10 JAMES NALDER, Guardian Ad Litem for minor)
11 Cheyanne Nalder, real party in interest, and)
12 GARY LEWIS, Individually;)

13 Plaintiffs,)

Case No.: 2:09-cv-1348

14 vs.)

15 UNITED AUTOMOBILE INSURANCE CO,)
16 DOES I through V, and ROE CORPORATIONS)
17 I through V, inclusive)

18 Defendants.)

19
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REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

21 COMES NOW, Plaintiff, JAMES NALDER, by and through his attorney of record,
22 Thomas Christensen, Esq., of the law firm of CHRISTENSEN LAW OFFICES, LLC, and
23 hereby submits this Reply in Support of Motion for Summary Judgment.

24
25 This Reply is made and based on the papers and pleadings herein, the attached
26 memorandum of Points and Authorities, and any oral argument at the hearing hereof.

27 //

28 //

1 DATED this 12th day of April, 2013.

2 CHRISTENSEN LAW OFFICES, LLC

3
4 By: 

5 Thomas Christensen, Esq.
6 Nevada Bar No. 2326
7 1000 S. Valley View Blvd.
8 Las Vegas, NV 89107
9 (702) 216-1471 Phone
10 (702) 870-6152 Fax
11 courtnotices@injuryhelpnow.com
12 Attorneys for Plaintiff,
13 JAMES NALDER

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I**

16 **INTRODUCTION**

17 Ambiguous insurance contracts, such as the one in question presently, **must** be
18 construed liberally in favor of the insured and strictly against the insurer. As such, because
19 the Renewal Statements were ambiguous, they must be construed in favor of GARY
20 LEWIS, resulting in the policy being effective the date of the accident. Furthermore,
21 UAIC breached the contract in failing to investigate for coverage, failing to provide
22 coverage, failing to defend, and other duties of an insurer. Additionally, it should be
23 established as a matter of law that the default judgment, including pre- and post-judgment
24 interest, was proximately caused by the failure to provide coverage.

25 //

26 //

27 //

28 //

II

FACTUAL AND PROCEDURAL BACKGROUND

This action arose when GARY LEWIS ran over CHEYENNE NALDER, a nine year old girl at the time, with GARY LEWIS's truck. CHEYENNE was nearly killed as a result of the truck running over her head.

At the time of the incident Mr. Lewis was insured with Defendant UAIC. Mr. Lewis first purchased insurance through UAIC on March 29, 2007. The period of the policy was March 29, 2007 through April 29, 2007. *See* Exhibit 1 P. 1. The records from UAIC specifically list the policy as "New Business". *See* Exhibit 1 P. 6. In mid-April 2007 (Invoice Date April 26, 2007) UAIC sent Gary Lewis a "Renewal Statement" offering to "Renew" Gary's policy with UAIC for from April 29, 2007 through May 29, 2007. *See* Exhibit 1 at P. 15. The "Renewal Statement" indicates that payment to "Renew" the policy had to be made by May 6, 2007, which was seven days after the policy's "Effective Date" of April 29, 2007". The "Renewal Statement" also stated "To avoid lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only expiration date listed on the "Renewal Statement" is "May 29, 2007". Gary Lewis made the payment and renewed the policy. The records from UAIC specifically list the policy as "RENEWAL". *See* Exhibit 1 at P. 25.

In mid-May 2007 (Invoice Date May 9, 2007) UAIC sent Gary Lewis a "Renewal Statement" offering to "Renew" Gary's policy with UAIC for from May 29, 2007 through June 29, 2007. *See* Exhibit 1 at P. 27. The "Renewal Statement" indicates that payment to "Renew" the policy had to be made by May 29, 2007. The "Renewal Statement" also stated "To avoid lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only expiration date listed on the "Renewal Statement" is "June 29, 2007". Gary Lewis made the

1 payment on May 31, 2007, two days after the "Due Date" of "May 29, 2007", and renewed the
2 policy. The records from UAIC specifically list the policy as "RENEWAL". See Exhibit 1 at P.
3 32.
4

5 In mid-June 2007 (Invoice Date June 11, 2007) UAIC sent Gary Lewis a "Renewal
6 Statement" offering to "Renew" Gary's policy with UAIC for from June 30, 2007 through July
7 31, 2007. See Exhibit 1 at P. 33. The "Renewal Statement" indicates that payment to "Renew"
8 the policy had to be made by June 30, 2007. The "Renewal Statement" also stated "To avoid
9 lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only
10 expiration date listed on the "Renewal Statement" is "July 31, 2007". Gary Lewis made the
11 payment on July 10, 2007, and renewed the policy. The records from UAIC specifically list the
12 policy as "RENEWAL". See Exhibit 1 at P. 38.
13

14 UAIC continued to "Renew" Gary's policy in August 2007, See Exhibit 1 at P. 44,
15 September 2007, See Exhibit 1 at P. 60¹, October 2007, See Exhibit 1 at P. 69, November 2007,
16 See Exhibit 1 at P. 81, December 2007, See Exhibit 1 at P. 87², and through September 2008.
17 See Exhibit 1.
18

19 Gary Lewis, having been insured with UAIC for several months and UAIC having
20 renewed Mr. Lewis insurance through UAIC on multiple occasions as noted above. It was
21 Gary's understanding that he had insurance covering the damages done to Cheyenne Nalder.
22 After the incident however UAIC claimed Mr. Lewis was not its insured, and that there was no
23
24

25
26 ¹ Payment for the September Renewal was made on September 14, 2007 even though the
27 "Due Date" for the Renewal was September 13, 2007. Even though the payment was late,
28 UAIC, as it had multiple times previously, renewed the policy nonetheless.

² Payment for the December Renewal was made on December 15, 2007 even though the
"Due Date" for the Renewal was December 14, 2007. Even though the payment was late,
UAIC, as it had multiple times previously, renewed the policy nonetheless.

1 coverage for the incident. UAIC nevertheless continued to renew Mr. Lewis' policy for another
2 year, but claimed that the policy had lapsed from July 1, 2007 through July 10, 2007.

3
4 Plaintiff JAMES NALDER, on behalf of his daughter Cheyenne, brought a claim for the
5 proceeds of the UAIC policy. UAIC claimed there was no policy in effect. Suit was then
6 brought against Mr. Lewis with notice being provided to UAIC. UAIC took no steps to defend
7 the lawsuit and did nothing to investigate coverage or to determine whether Gary's payment on
8 July 10, 2007, long before the expiration of the policy, warranted Gary being covered under the
9 policy UAIC renewed with Gary. Because UAIC took no steps to protect Gary, judgment was
10 entered against Gary in the amount of \$3,500,000.00. *See* Exhibit 2. After Judgment Mr.
11 Lewis, along with NALDER on behalf of Cheyenne, the real party in interest, pursued this
12 action against UAIC.
13

14 Mr. Lewis testified:

15
16 I was covered by a policy of insurance through UAIC, which UAIC renewed on
17 multiple occasions with me. It is my understanding I was covered by policy No.
18 NVA020021926, which UAIC advised me it was renewing and that I would have
19 no lapse in coverage as long as payment was made prior to the expiration of my
20 policy, which the "Renewal Notice" said was July 31, 2007. I made the payment
21 long before July 31, 2007 and understood the policy had been renewed again and
22 there was no lapse in coverage.

23 *See* Exhibit 3.

24 The policy's "Renewal Statement" UAIC sent Gary clearly stated that so long as
25 payment was received "prior to (sic) expiration of your policy" there would be no lapse in
26 coverage. Again, the only "Expiration Date" listed on the policy's "Renewal Statement" was
27 "July 31, 2007". *See* Exhibit 1. Gary understood this language to indicate that even though the
28 "Due Date" was June 30, 2007, Gary had a grace period through the "Expiration Date" of July
31, 2007 to make the requisite payment, renew the policy, and "avoid lapse in coverage" as the

1 policy's "Renewal Statement" indicated. *See* Exhibit 3. Gary's understanding was more than
2 reasonable and was further supported by the fact that Gary had previously, in May 2007, been
3 given the policy's "Renewal Statement" that specifically indicated Gary could renew his policy
4 with an effective date of April 29, 2007 if he made the payment on or before May 6, 2007,
5 seven days after the "Effective Date" of the policy UAIC sought to renew.³ *See* Exhibit 1. The
6 policy's May "Renewal Statement" thus commenced a course of dealing between Gary and
7 UAIC wherein UAIC advised Gary it was permissible for Gary to pay the policy premium after
8 the "Effective Date" of the policy and yet still renew the policy as of the "Effective Date" and
9 avoid any lapse in coverage. This course of dealing was repeated in September and December
10 2007 when Gary's policy payment was made after the "Due Date" yet the policy was renewed
11 nonetheless with no lapse. *See* Exhibit 1.

12
13
14 As discovery proceeded, the PMK of UAIC was asked regarding Gary's understanding
15 that the requirement that he pay prior to the "expiration date" when the only "expiration date"
16 listed on the renewal notice was July 31, 2007, was a fair interpretation by the insured. The
17 PMK acknowledged that the "Renewal Statements" do not contain the words "expiration of
18 your current policy", and simply state "expiration of your policy" without any explanation of
19 what the words "your policy" reference. *See* Exhibit "4" (the Deposition of Denise Davis, P. 61
20 L. 23 - P. 62 L. 1). The UAIC PMK was unable to point to any language in the "Renewal
21 Statements" that would indicate to a lay person, like Mr. Lewis", that the words "expiration of
22 your policy" meant expiration of your *current* policy rather than the "Expiration Date" stated
23 right on the face of the "Renewal Statements" themselves as Mr. Lewis understood it. *See*
24
25
26

27
28 ³ Despite the fact that UAIC had informed GARY LEWIS that he had until May 6, 2007 to
make his payment under the policy that would commence April 29, 2007, Gary took it
upon himself to make the payment on April 29, 2007.

1 Exhibit 4 (the Deposition of Denise Davis, P. 61 L. 8-15; P. 61 L. 23 - P. 62 L. 1; P. 133 L. 4 -
2 P. 134 L. 22).

3
4 Manny Cordova and Lisa Watson, who worked for UAIC at the time the claim was
5 brought against Gary Lewis, but who are no longer employed with UAIC, admitted that the
6 language in the "Renewal Statements" is ambiguous, difficult to understand, and certainly
7 consistent with Gary Lewis' interpretation that "expiration of your policy" meant the "Expiration
8 Date" listed at the top of the "Renewal Statements". Mr. Cordova, when shown the "Renewal
9 Statements", stated that, to him, the "Renewal Statements" indicated that payment had to be
10 made before the expiration of the *prior* policy as UAIC interprets it. When asked about whether
11 Mr. Lewis' interpretation that expiration of "your policy" meant the "Expiration Date" on the
12 very face of the "Renewal Statement" itself, Mr. Cordova testified as follows: "certainly people
13 can interpret documents differently. You know, I mean, that's the way I read the document.
14 Could someone else read it differently? Of course, they can." *See Exhibit "5"* (Cordova
15 Deposition at P. 106 L. 16-20). Mr. Cordova went on to testify, "So this is the way I read the
16 document. Could you interpret it differently? Of course. Could she interpret it differently? Of
17 course. This is the way that I interpret it. I cannot tell you that, you know, my way is right or
18 your way is right, but that's the way I read the document." *See Exhibit 5* (Cordova Deposition
19 P. 107 L. 11-16).

20
21
22
23 Lisa Watson, who testified she has worked in insurance for over 20 years, when shown
24 the "Renewal Statements" and asked what the term "expiration of your policy" meant, testified
25 that she does not know what the phrase means. *See Exhibit 6* (Watson Deposition P. 52 L. 4-8).

26
27 In the testimony, Mr. Cordova and Ms. Watson not contest that Gary Lewis'
28 interpretation was valid. When she was told that Mr. Lewis interpreted the language as

1 indicating that payment had to be made before the "Expiration Date" listed right on the
2 "Renewal Statements", Ms. Watson testified that she could not comment on whether Mr. Lewis'
3 interpretation was correct or not. *See* Exhibit 6 (Watson Deposition P. 53 L. 20 - P. 4 L. 4).
4

5 UAIC was granted Summary Judgment on all of Plaintiff's claims. However, on
6 Appeal, the Ninth Circuit Court of Appeals reversed the District Court's grant of summary
7 judgment with respect to whether there was coverage by virtue of the way the renewal
8 statement was worded. The Court found that
9

10 Plaintiffs came forward with facts supporting their tenable legal position that a
11 reasonable person could have interpreted the renewal statement to mean that
12 Lewis's premium was *due* by June 30, 2007, but that the policy would not *lapse* if
13 his premium were 'received prior to the expiration of [his] policy,' with the
14 'expiration date' specifically stated to be July 31, 2007.

15 *See* Exhibit 7 Memorandum.

16 III

17 RESPONSES TO DEFENDANT'S STATEMENT OF FACTS

18 In order to clarify some of the facts, Plaintiff briefly responds to some inaccuracies
19 in Defendant's facts. First, Plaintiffs' counsel never admitted that UAIC's reading of the
20 renewal was reasonable. His actual statement was that it was a "potential reasonable
21 interpretation of the language...however...the language is to be construed most strongly
22 against the insurance company and liberally in favor of the insured." *See* Exhibit J 35:20-
23 24 to Defendant's Opposition. Further, this is irrelevant to the determination of the motion
24 for summary judgment and is simply a red herring asserted by Defendant in order to detract
25 from the actual issue.

26 Second, while it is true that Ms. Davis testified as to what "your policy" **meant to**
27 **her**, she did not, and could not, state that explanation was on the Renewal Statement to
28

1 explain to a lay person, that the word "expiration of your policy" meant expiration of your
2 *current* policy rather than the "Expiration Date" stated right on the face of the "Renewal
3 Statements" themselves. See Exhibit 4, 61-62.

4
5 Finally, Defendant offers that there were other gaps in Lewis' policy, however,
6 again this is a red herring. Without any cancellation/termination notices, Lewis had no way
7 to know that there were lapses in his policy, which further shows the unreasonableness of
8 UAIC's position.

9 10 IV

11 STANDARD FOR GRANTING

12 Summary judgment under Fed. R. Civ. P. 56 may be granted only if the evidence
13 presented shows that there is no genuine issue as to any material fact and that the moving
14 party is entitled to a judgment as a matter of law. The party moving for summary judgment
15 has "the burden of showing the absence of a genuine issue as to any material fact . . ."
16 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970).

17
18 "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is,
19 if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."
20 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "[A]t the
21 summary judgment stage the judge's function is not himself to weigh the evidence and
22 determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Id.*
23 at 249.

24
25 The law is well established that in reviewing a motion for summary judgment, the
26 evidence "must be viewed in the light most favorable to the opposing party." *Adickes v. S.H.*
27 *Kress & Co.*, 398 U.S. 144, 159-160 (1970). "[T]he inferences to be drawn from the underlying
28

1 facts contained in [the moving party's materials] must be viewed in the light most favorable to
2 the party opposing the motion." *Id.*, quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655
3 (1962). Therefore, this Court must view the evidence presented by both parties and the
4 inferences to be drawn there from in the light most favorable to the Plaintiffs.
5

6 The standard for summary judgment is essentially the same as the standard for
7 granting a directed verdict or judgment notwithstanding the verdict under Fed. R. Civ. P.
8 50. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). The inquiry under
9 each is "[W]hether the evidence presents a sufficient disagreement to require submission to
10 a jury." *Id.* Summary judgment is only appropriate if "the evidence . . . is so one-sided that
11 one party must prevail as a matter of law." *Id.* If there are facts sufficient to support a jury
12 verdict for the Plaintiff, the Court is not to interfere with the jury's role as the finder of fact.
13 To do so would deny the Plaintiff's right to a jury trial.
14
15

16 V

17 ARGUMENT

18 A. The Ambiguous Renewal Statements MUST be Strictly Construed Against the 19 Insurance Company According to the Nevada Law, therefore, Providing 20 Coverage was in Place at the Time of the Incident.

21 There is no dispute that UAIC sent Gary the policy's "Renewal Statement" (invoice date
22 June 11, 2007). *See Exhibit 1 P. 33.* There is no dispute the policy's "Renewal Statement,"
23 offered again to renew Gary's policy with UAIC, as Gary had repeatedly done since March
24 2007. There is no dispute that the policy's "Renewal Statement" says Gary would not have a
25 lapse in coverage if he made the required payment prior to the expiration date. There is no
26 dispute that the only expiration date mentioned on the policy's "Renewal Statement" is "July 31,
27 2007." *See Exhibit 1 P. 33.* There is no dispute Gary made the requisite payment on July 10,
28

1 2007, which was twenty-one days before the "Expiration Date" listed on the policy's "Renewal
2 Statement". See Exhibit 1 P. 38. There is also no dispute that UAIC had previously advised
3 Gary that he could pay his policy premium after the date the policy became effective, and still
4 be covered from the effective date. See Exhibit 1 P. 15.
5

6 An insurance policy, which would include the renewal statements of the policy, is a
7 contract and is governed by contract law. *United Insurance Co., v. Frontier Insurance*
8 *Company, Inc.*, 120 Nev. 678 684, 99 P.3d 1152, 1156 (2004). Under general contract law, the
9 Nevada Supreme Court has noted, "When a contract is ambiguous, it **will** be construed against
10 the drafter." *Glenbrook Homeowners Ass'n v. Glenbrook Co.* 111 Nev. 909, 917, 901 P.2d 132,
11 138 (1995) (emphasis added). The Court has gone even further in its discussion of insurance
12 contracts, holding, "Contracts of insurance are **always** construed most strongly against the
13 insurance company. Stated another way, a policy of insurance is to be construed liberally in
14 favor of the insured and **strictly against the insurer.**" *Hartford Ins. Group v. Winkler*, 89 Nev.
15 131, 135, 508 P.2d 8, 11 (1973) (Citations omitted) (emphasis added).
16
17

18 In addition, the Nevada Supreme Court has held, "An insurance policy is a contract of
19 adhesion." *Id.* As a result "the language of an insurance policy is broadly interpreted in order
20 to afford 'the greatest possible coverage to the insured.'" *Id.* citing *Farmers Insurance Group v.*
21 *Stonik*, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994). The pivotal language from the UAIC
22 contract comes from the policy's "Renewal Statements" which UAIC drafted, and which UAIC
23 sent to Gary Lewis on multiple occasions advising Gary how the contract of insurance could be
24 renewed and continue to be in effect with UAIC. The statements provide a due date for
25 payment, but also specifically state that if payment is "received prior the expiration of your
26 policy" there will be no lapse in coverage. The only "Expiration Date" listed in the policy's
27
28

1 "Renewal Statements" is the expiration date for the offered policy that UAIC invited Gary
2 Lewis to renew.

3
4 UAIC argues that *Farmers Ins. Exch. V. Neal*, 119 Nev. 62, 64 P.3d 472, 473 (Nev.
5 2003) provides that "the subjective statements of witnesses are really not relevant to the Court's
6 inquiry regarding the ambiguity issue." See Defendant's Opposition, 20, n. 11. This language,
7 or any language remotely close to this holding, is not found in the case. *Farmers Ins. Exch. V.*
8 *Neal*, 119 Nev. 62, 64 P.3d 472, 473 (Nev. 2003). However, "Whether or not a document is
9 ambiguous is a question of law for the court." *Margrave v. Dermody Properties, Inc.*, 878 P.2d
10 291, 110 Nev. 824 (Nev. 1994) (citing *Wooden v. First Security Bank of Idaho*, 121 Idaho 98,
11 100, 822 P.2d 995, 997 (1991)). Therefore, while Lewis' subjective understanding is relevant
12 to show a lay person's interpretation, it is not definitive. As such, UAIC's attack on his
13 credibility is yet another attempt to mislead or detract from the actual issue.
14

15
16 The policy's "Renewal Statements" which give a due date but then state that the
17 policyholder can avoid a lapse in coverage by paying before the expiration of the policy, and
18 providing an "Expiration Date" for the policy that is different than the "Due Date" are
19 ambiguous. As noted above, **ambiguous language in a contract, or in a writing seeking to**
20 **renew a contract, is construed against the drafter of the contract, or the writing seeking to**
21 **renew the contract.** See, *Glenbrook Homeowners Ass'n v. Glenbrook Co.* 111 Nev. 909, 917,
22 901 P.2d 132, 138 (1995). The Nevada Supreme Court has noted that an insurance company
23 does business as a quasi-public institution, and cannot avoid liability under ambiguous
24 provisions of policy. *Hartford Ins. Group v. Winkler*, 89 Nev. 131, 136, 508 P.2d 8, 12 (1973).
25 Although this Court previously found the contract to be unambiguous, the Ninth Circuit
26
27
28

1 reversed that decision; therefore, the language of the "Renewal Statements" from UAIC is
 2 ambiguous, and therefore, **must be construed against UAIC.**

3
 4 **B. UAIC Breached the Contract by Failing to Investigate Coverage and Refusing
 to Cover its Insured**

5 Insurers have a duty to investigate. *Pemberton v. Farmers Ins. Exchange*, 109 Nev. 789,
 6 858 P.2d 380, 382 (Nev., 1993). "Insurers have the duty to investigate claims and coverage in a
 7 prompt fashion." *Troutt v. CO W. Ins. Co.*, 246 F.3d 1150, 1162. See also *Tynes v. Bankers*
 8 *Life Co.*, 730 P.2d 1115, 1124 (Mont. 1986) (9th Cir., 2001). The duty to investigate is an
 9 extension of the duty of good faith and fair dealing that the insurer owes its insured and, in a
 10 claims-made-and-reported policy, extends to the handling of reported claims. *KPFF, Inc. v.*
 11 *California Union Ins. Co.*, 56 Cal.App.4th 963, 66 Cal.Rptr.2d 36, 44 (1997) UAIC utterly
 12 failed to investigate whether coverage existed for Gary on the claim, made no attempt to
 13 investigate the claim made against Gary Lewis, and failed to abide by established insurance
 14 claims handling practices in its handling of this claim. In it's opposition, UAIC claims that they
 15 investigated the claim. However, "confirming the lapse through their underwriting department"
 16 is not an investigation. Furthermore, as discussed in detail above, there was coverage under this
 17 claim. Therefore, their failure to provide such coverage was a breach of contract.

18
 19
 20
 21 UAIC also made absolutely no efforts to inform Gary Lewis of the demand for the
 22 policy limits and the offer to settle Cheyenne's significant claim for a mere \$15,000.00. UAIC
 23 completely ignored Cheyenne's claim and did absolutely nothing other than send Cheyenne's
 24 counsel a letter stating that there was no coverage. As noted above, the Court has continually
 25 held "at a minimum, an insured must equally consider the insured's interest and its own."
 26 *Allstate v. Miller*, 212 P.3d 318, 326 (Nev. 2009). If the insurer fails to equally consider its
 27 insured's interests and its own it violates the implied covenant of good faith and fair dealing and
 28

1 can be held responsible for any resulting damages suffered by its insured. *Id.* UAIC tries to get
2 around this breach of their duty to inform by claiming that Counsel for Plaintiff surely informed
3 Lewis because he was in communication with them. *See* Defendant's Opposition 26-27.
4 However, the duty to inform is non-delegable. Therefore, whether or not Plaintiffs' Counsel
5 informed Lewis of any settlement offers is irrelevant to the determination of UAIC's bad faith.
6 The undisputed fact is that UAIC made absolutely no efforts to inform Gary Lewis of the
7 demand for the policy limits and the offer to settle Cheyanne's significant claim for a mere
8 \$15,000.00. Therefore, they breached their duty to inform. This failure to inform, on its own, is
9 sufficient to present the facts to the jury to determine whether the carrier violated the duty of
10 good faith and fair dealing and is thus liable for a judgment entered against its insured in excess
11 of the applicable policy limits. *Id.*

12
13
14 Plaintiffs have noted in the preceding sections the facts indicating: Gary Lewis properly
15 renewed his policy pursuant to the policy's "Renewal Statements"; that UAIC renewed Gary's
16 policy and nevertheless claimed there was a lapse in coverage; and other such facts, all of which
17 clearly indicate Gary had coverage for the claim Cheyanne brought against him. UAIC never
18 investigated any of the above to determine whether Gary was covered, and instead made the
19 snap decision that there was no coverage, and left Gary completely bereft of protection against
20 Cheyanne's lawsuit. These facts constitute bad faith, provide that there was coverage for
21 Cheyanne's claim and therefore constitute a breach of contract, and warrant UAIC
22 compensating Gary, paying for the judgment currently entered against him, as well as paying
23 other compensatory and even punitive damages.

24
25
26 UAIC cites to completely inapplicable case law and non-binding precedent. First, UAIC
27 cites to *American Express Insurance Company v. MGM* to support its position that if there was
28

1 a reasonable basis to contest coverage, the insurer cannot be liable for bad faith as a matter of
2 law. This case is readily distinguishable. First, American Express Insurance Company was not
3 denying coverage, rather they were disputing the amount of coverage. *American Express*
4 *Insurance Company v. MGM*, 102 Nev. 601, 729 P.2d 1352 (1986). Further, the facts of this
5 case are not available in the decision, so there is nothing to indicate whether American Express
6 Insurance Company investigated before limiting coverage. Therefore, this offers no guidance
7 on the current case.
8

9
10 Next, UAIC claims that even if coverage existed, they are not liable for breach of the
11 duty to defend. They base this proposition on two 9th Circuit cases, based on California law,
12 that are non-binding and are distinguishable from the current case. UAIC cites to *Lunsford v.*
13 *American Guarantee Liab. Ins. Co.* claiming that it supports their position that an insurer is not
14 liable for bad faith even after the Court resolved the ambiguity in the contract in favor of the
15 insured. See Defendant's Opposition, 30. However, the question presented in this case was
16 "whether, under California law, a general liability insurance policy which promises to defend an
17 insured against 'malicious prosecution' includes a duty to defend against an 'abuse of process'
18 claim." *Lunsford v. American Guarantee Liab. Ins. Co.*, 18 F. 3d 653, 654. This case has no
19 relevance on the current case. Further the Court made their decision on bad faith "because they
20 investigated the claim." *Id.* at 656. UAIC did not investigate the claim in this case.
21

22
23 UAIC also cites to *Franceschi v. Amer. Motor Ins. Co.*, another case based on California
24 law. This case involved a medical insurance policy which provided an exclusion for preexisting
25 conditions within a certain time period. *Franceschi v. Amer. Motor Ins. Co.*, 852 F.2d 1217,
26 1218 (9th Cir. 1988). The insurance company found that the Plaintiff received medical
27 treatment within the time frame of the preexisting conditions limitation in the policy, and
28

1 therefore denied coverage for certain medical treatment. *Id.* Further, they investigated the
 2 claim, including medical records. *Id.* at 1220. The current case does not involve medical
 3 insurance or policy exclusions so this case is not relevant. Additionally, the insurer investigated
 4 the claim in *Franceschi*, however UAIC did not investigate the current case.
 5

6 As explained in detail above, Lewis had coverage under the policy, UAIC failed to
 7 investigate, failed to inform him of settlement opportunities, put their interests above that of
 8 their insured, and violated the duty of good faith and fair dealing. Therefore, summary
 9 judgment is proper against UAIC for bad faith.
 10

11 **C. It Should be Established as a Matter of Law that the Default Judgment,**
 12 **Including Pre- and Post-Judgment Interest, was Proximately Caused by the**
 13 **Failure to Provide Coverage.**

14 Primary liability insurance policies create a duty to defend and the duty to indemnify.
 15 *Allstate Ins. Co. v. Miller*, 125 N.A.O. 28, 212 P.3d 318 (Nev., 2009) citing *Crawford v.*
 16 *Weather Shield Mfg. Inc.*, 44 Cal.4th 541, 79 Cal.Rptr.3d 721, 187 P.3d 424, 427 (2008). The
 17 duty to defend is a “legal duty that arises under the law, as opposed to a contractual duty arising
 18 from the policy.” *Allstate Ins. Co. v. Miller*, 125 N.A.O. 28, 212 P.3d 318 (Nev., 2009).
 19

20 “If there is any doubt about whether the duty to defend arises, this doubt must be
 21 resolved in favor of the insured.” *United Nat'l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 120
 22 Nev. 678 (Nev., 2004) (emphasis added) citing *Aetna Cas. & Sur. Co. v. Centennial Ins. Co.*,
 23 838 F.2d 346, 350 (9th Cir. 1988). “The purpose behind construing the duty to defend so
 24 broadly is to prevent an insurer from evading its obligation to provide a defense for an insured
 25 without at least investigating the facts behind a complaint.” *United Nat'l Ins. Co. v. Frontier*
 26 *Ins. Co.*, 99 P.3d 1153, 120 Nev. 678 (Nev., 2004) See also *Helca Min. Co. v. New Hampshire*
 27 *Ins. Co.*, 811 P.2d 1083, 1090 (Colo. 1991). A potential for coverage only exists when there is
 28

1 **arguable or possible coverage.** *United Nat'l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 120
2 Nev. 678 (Nev., 2004) (emphasis added); see also *Morton v. Safeco Ins. Co.*, 905 F.2d 1208,
3 1212 (9th Cir. 1990). "The duty to defend arises when there is a potential for coverage based on
4 the allegations in a complaint and the duty to indemnify arises when there is actual coverage
5 under an insurance policy. *Id.* at 1155.

7 Here, UAIC evaded "its obligation to provide a defense for an insured without at least
8 investigating the facts behind a complaint." *United Nat'l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d
9 1153, 120 Nev. 678 (Nev., 2004). UAIC received a copy of the complaint in October, 2007.
10 See October 23, 2007 Letter and Complaint, Exhibit 8. UAIC did not investigate the facts of the
11 complaint. Further, UAIC's failure to provide coverage and their breach of their duty to defend
12 was the proximate cause of the Default Judgment being entered against GARY LEWIS. "When
13 the insurer refused to defend and the insured does not employ counsel and presents no defense,
14 it can be said the ensuing default judgment is proximately caused by the insurer's breach of the
15 duty to defend." *Pershing Park Villas v. United Pac. Ins. Co.*, 219 F.3d 895 (9th Cir. 2000).
16 Further the California Court of Appeals held that a carrier who breached the duty to defend may
17 be liable for consequential damages above policy limits. *Carlson v. Century Surety Co.*, 2012
18 U.S. Dist. LEXIS 23119 (N.D. Cal. Feb 23, 2012). In *Carlson*, the Court held that because "a
19 judgment in excess of the policy limits is a foreseeable outcome of the breach of the duty to
20 defend," even if the insurance company did not violate the implied covenant of good faith and
21 fair dealing, if the violated its duty to defend, it may be liable for the default judgment, even if
22 in excess of the policy limit. *Id.*

24 Because of there was "arguable or possible coverage" under the policy, UAIC had a
25 duty to defend GARY LEWIS. Further, as explained in detail above, there was actual coverage
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27
28

1 under the policy. As such, UAIC has a duty to indemnify GARY LEWIS. *See United Nat'l Ins.*
2 *Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 120 Nev. 678 (Nev., 2004). As, such, this should be
3 established as a matter of law.
4

5 **CONCLUSION**

6 Plaintiff respectfully requests that this court grant this Motion for the reasons set
7 forth in the points and authorities noted above.

8 DATED this 12th day of April, 2013.
9

10
11 CHRISTENSEN LAW OFFICES, LLC

12
13 By:  #12565

14 Thomas Christensen, Esq.
15 Nevada Bar No. 2326
16 1000 S. Valley View Blvd.
17 Las Vegas, NV 89107
18 (702) 216-1471 Phone
19 (702) 870-6152 Fax
20 courtnotices@injuryhelpnow.com
21 Attorneys for Plaintiff,
22 JAMES NALDER
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 and LR 5-1, I certify that I am an employee of
CHRISTENSEN LAW OFFICES, LLC, and that on this 12th day of April, 2013, I served a
copy of the foregoing REPLY IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT as follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class
postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
number(s) shown below and in the confirmation sheet filed herewith. Consent to
service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by
facsimile transmission is made in writing and sent to the sender via facsimile
within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Thomas E. Winner, Esq.
Matthew J. Douglas, Esq.
ATKIN, WINNER, & SHERROD
1117 S. Rancho Dr.
Las Vegas, NV 89102



An employee of CHRISTENSEN LAW OFFICES, LLC

1 THOMAS CHRISTENSEN, ESQ.
2 Nevada Bar #2326
3 CHRISTENSEN LAW OFFICES, LLC
4 1000 S. Valley View Blvd.
5 Las Vegas, Nevada 89107
6 (702) 216-1471 Phone
7 (702) 870-6152 Fax
8 courtnotices@injuryhelpnow.com
9 Attorneys for Plaintiff,
10 JAMES NALDER

11 UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF NEVADA

13 JAMES NALDER, Guardian Ad Litem for minor)
14 Cheyanne Nalder, real party in interest, and)
15 GARY LEWIS, Individually;)

16 Plaintiffs,)

Case No.: 2:09-cv-1348

17 vs.)

18 UNITED AUTOMOBILE INSURANCE CO,)
19 DOES I through V, and ROE CORPORATIONS)
20 I through V, inclusive)

21 Defendants.)
22)
23)

24 **OPPOSITION TO DEFENDANT UNITED AUTOMOBILE INSURANCE**
25 **COMPANY'S COUNTER-MOTION FOR SUMMARY JUDGMENT ON ALL**
26 **EXTRA-CONTRACTUAL CLAIMS OR REMEDIES; OR IN THE**
27 **ALTERNATIVE, MOTION TO BIFURCATE CLAIMS FOR EXTRA-**
28 **CONTRACTUAL CLAIMS OR REMEDIES; FURTHER, IN THE ALTERNATIVE,**
MOTION FOR LEAVE TO AMEND ANSWER TO FILE COUNTER-CLAIM

29 COMES NOW, Plaintiff, JAMES NALDER, by and through his attorney of record,
30 Thomas Christensen, Esq., of the law firm of CHRISTENSEN LAW OFFICES, LLC, and
31 hereby submits this Opposition to Defendant United Automobile Insurance Company's
32 Counter-Motion for Summary Judgment on all Extra-Contractual Claims or Remedies; or

1 in the Alternative, Motion to Bifurcate Claims for Extra-Contractual Claims or Remedies;
2 Further, in the Alternative, Motion for Leave to Amend Answer to File Counter-Claim.
3

4 This Opposition is made and based on the papers and pleadings herein, the attached
5 memorandum of Points and Authorities, and any oral argument at the hearing hereof.
6

7 DATED this 18th day of April, 2013.
8

9 CHRISTENSEN LAW OFFICES, LLC

10 By:  #12568

11 Thomas Christensen, Esq.
12 Nevada Bar No. 2326
13 1000 S. Valley View Blvd.
14 Las Vegas, NV 89107
15 (702) 216-1471 Phone
16 (702) 870-6152 Fax
17 courtnotices@injuryhelpnow.com
18 Attorneys for Plaintiffs

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 I

21 INTRODUCTION

22 Ambiguous insurance contracts, such as the one in question presently, **must** be construed
23 liberally in favor of the insured and strictly against the insurer. As such, because the
24 Renewal Statements were ambiguous, they must be construed in favor of GARY LEWIS,
25 resulting in the policy being effective the date of the accident. Furthermore, UAIC
26 breached the contract in failing to investigate for coverage, failing to provide coverage,
27 failing to defend, and other duties of an insurer. UAIC's alternative requests for Dismissal
28 of the N.R.S. § 686A.310 claims, bifurcation, and leave to amend its answer to include a
counterclaim, should all be dismissed because there is no grounds for any of them.

II

FACTUAL AND PROCEDURAL BACKGROUND

This action arose when GARY LEWIS ran over CHEYANNE NALDER, a nine year old girl at the time, with GARY LEWIS's truck. CHEYANNE was nearly killed as a result of the truck running over her head.

At the time of the incident Mr. Lewis was insured with Defendant UAIC. Mr. Lewis first purchased insurance through UAIC on March 29, 2007. The period of the policy was March 29, 2007 through April 29, 2007. *See* Exhibit 1 P. 1. The records from UAIC specifically list the policy as "New Business". *See* Exhibit 1 P. 6. In mid-April 2007 (Invoice Date April 26, 2007) UAIC sent Gary Lewis a "Renewal Statement" offering to "Renew" Gary's policy with UAIC for from April 29, 2007 through May 29, 2007. *See* Exhibit 1 at P. 15. The "Renewal Statement" indicates that payment to "Renew" the policy had to be made by May 6, 2007, which was seven days after the policy's "Effective Date" of April 29, 2007". The "Renewal Statement" also stated "To avoid lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only expiration date listed on the "Renewal Statement" is "May 29, 2007". Gary Lewis made the payment and renewed the policy. The records from UAIC specifically list the policy as "RENEWAL". *See* Exhibit 1 at P. 25.

In mid-May 2007 (Invoice Date May 9, 2007) UAIC sent Gary Lewis a "Renewal Statement" offering to "Renew" Gary's policy with UAIC for from May 29, 2007 through June 29, 2007. *See* Exhibit 1 at P. 27. The "Renewal Statement" indicates that payment to "Renew" the policy had to be made by May 29, 2007. The "Renewal Statement" also stated "To avoid lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only expiration date listed on the "Renewal Statement" is "June 29, 2007". Gary Lewis made the

1 payment on May 31, 2007, two days after the "Due Date" of "May 29, 2007", and renewed the
2 policy. The records from UAIC specifically list the policy as "RENEWAL". See Exhibit 1 at P.
3 32.
4

5 In mid-June 2007 (Invoice Date June 11, 2007) UAIC sent Gary Lewis a "Renewal
6 Statement" offering to "Renew" Gary's policy with UAIC for from June 30, 2007 through July
7 31, 2007. See Exhibit 1 at P. 33. The "Renewal Statement" indicates that payment to "Renew"
8 the policy had to be made by June 30, 2007. The "Renewal Statement" also stated "To avoid
9 lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only
10 expiration date listed on the "Renewal Statement" is "July 31, 2007". Gary Lewis made the
11 payment on July 10, 2007, and renewed the policy. The records from UAIC specifically list the
12 policy as "RENEWAL". See Exhibit 1 at P. 38.
13

14 UAIC continued to "Renew" Gary's policy in August 2007, See Exhibit 1 at P. 44,
15 September 2007, See Exhibit 1 at P. 60¹, October 2007, See Exhibit 1 at P. 69, November 2007,
16 See Exhibit 1 at P. 81, December 2007, See Exhibit 1 at P. 87², and through September 2008.
17 See Exhibit 1.
18

19 Gary Lewis, having been insured with UAIC for several months and UAIC having
20 renewed Mr. Lewis insurance through UAIC on multiple occasions as noted above. It was
21 Gary's understanding that he had insurance covering the damages done to Cheyanne Nalder.
22 After the incident however UAIC claimed Mr. Lewis was not its insured, and that there was no
23
24

25
26 ¹ Payment for the September Renewal was made on September 14, 2007 even though the
27 "Due Date" for the Renewal was September 13, 2007. Even though the payment was late,
28 UAIC, as it had multiple times previously, renewed the policy nonetheless.

² Payment for the December Renewal was made on December 15, 2007 even though the
"Due Date" for the Renewal was December 14, 2007. Even though the payment was late,
UAIC, as it had multiple times previously, renewed the policy nonetheless.

1 coverage for the incident. UAIC nevertheless continued to renew Mr. Lewis' policy for another
2 year, but claimed that the policy had lapsed from July 1, 2007 through July 10, 2007.

3
4 Plaintiff JAMES NALDER, on behalf of his daughter Cheyanne, brought a claim for the
5 proceeds of the UAIC policy. UAIC claimed there was no policy in effect. Suit was then
6 brought against Mr. Lewis with notice being provided to UAIC. UAIC took no steps to defend
7 the lawsuit and did nothing to investigate coverage or to determine whether Gary's payment on
8 July 10, 2007, long before the expiration of the policy, warranted Gary being covered under the
9 policy UAIC renewed with Gary. Because UAIC took no steps to protect Gary, judgment was
10 entered against Gary in the amount of \$3,500,000.00. *See* Exhibit 2. After Judgment Mr.
11 Lewis, along with NALDER on behalf of Cheyanne, the real party in interest, pursued this
12 action against UAIC.
13

14 Mr. Lewis testified:

15
16 I was covered by a policy of insurance through UAIC, which UAIC renewed on
17 multiple occasions with me. It is my understanding I was covered by policy No.
18 NVA020021926, which UAIC advised me it was renewing and that I would have
19 no lapse in coverage as long as payment was made prior to the expiration of my
20 policy, which the "Renewal Notice" said was July 31, 2007. I made the payment
21 long before July 31, 2007 and understood the policy had been renewed again and
22 there was no lapse in coverage.

23 *See* Exhibit 3.

24 The policy's "Renewal Statement" UAIC sent Gary clearly stated that so long as
25 payment was received "prior to (sic) expiration of your policy" there would be no lapse in
26 coverage. Again, the only "Expiration Date" listed on the policy's "Renewal Statement" was
27 "July 31, 2007". *See* Exhibit 1. Gary understood this language to indicate that even though the
28 "Due Date" was June 30, 2007, Gary had a grace period through the "Expiration Date" of July
31, 2007 to make the requisite payment, renew the policy, and "avoid lapse in coverage" as the

1 policy's "Renewal Statement" indicated. *See* Exhibit 3. Gary's understanding was more than
2 reasonable and was further supported by the fact that Gary had previously, in May 2007, been
3 given the policy's "Renewal Statement" that specifically indicated Gary could renew his policy
4 with an effective date of April 29, 2007 if he made the payment on or before May 6, 2007,
5 seven days after the "Effective Date" of the policy UAIC sought to renew.³ *See* Exhibit 1. The
6 policy's May "Renewal Statement" thus commenced a course of dealing between Gary and
7 UAIC wherein UAIC advised Gary it was permissible for Gary to pay the policy premium after
8 the "Effective Date" of the policy and yet still renew the policy as of the "Effective Date" and
9 avoid any lapse in coverage. This course of dealing was repeated in September and December
10 2007 when Gary's policy payment was made after the "Due Date" yet the policy was renewed
11 nonetheless with no lapse. *See* Exhibit 1.

12
13
14 As discovery proceeded, the PMK of UAIC was asked regarding Gary's understanding
15 that the requirement that he pay prior to the "expiration date" when the only "expiration date"
16 listed on the renewal notice was July 31, 2007, was a fair interpretation by the insured. The
17 PMK acknowledged that the "Renewal Statements" do not contain the words "expiration of
18 your current policy", and simply state "expiration of your policy" without any explanation of
19 what the words "your policy" reference. *See* Exhibit "4" (the Deposition of Denise Davis, P. 61
20 L. 23 - P. 62 L. 1). The UAIC PMK was unable to point to any language in the "Renewal
21 Statements" that would indicate to a lay person, like Mr. Lewis", that the words "expiration of
22 your policy" meant expiration of your *current* policy rather than the "Expiration Date" stated
23 right on the face of the "Renewal Statements" themselves as Mr. Lewis understood it. *See*
24
25
26

27
28 ³ Despite the fact that UAIC had informed GARY LEWIS that he had until May 6, 2007 to
make his payment under the policy that would commence April 29, 2007, Gary took it
upon himself to make the payment on April 29, 2007.

1 Exhibit 4 (the Deposition of Denise Davis, P. 61 L. 8-15; P. 61 L. 23 - P. 62 L. 1; P. 133 L. 4 -
2 P. 134 L. 22).

3
4 Manny Cordova and Lisa Watson, who worked for UAIC at the time the claim was
5 brought against Gary Lewis, but who are no longer employed with UAIC, admitted that the
6 language in the "Renewal Statements" is ambiguous, difficult to understand, and certainly
7 consistent with Gary Lewis' interpretation that "expiration of your policy" meant the "Expiration
8 Date" listed at the top of the "Renewal Statements". Mr. Cordova, when shown the "Renewal
9 Statements", stated that, to him, the "Renewal Statements" indicated that payment had to be
10 made before the expiration of the *prior* policy as UAIC interprets it. When asked about whether
11 Mr. Lewis' interpretation that expiration of "your policy" meant the "Expiration Date" on the
12 very face of the "Renewal Statement" itself, Mr. Cordova testified as follows: "certainly people
13 can interpret documents differently. You know, I mean, that's the way I read the document.
14 Could someone else read it differently? Of course, they can." *See Exhibit "5"* (Cordova
15 Deposition at P. 106 L. 16-20). Mr. Cordova went on to testify, "So this is the way I read the
16 document. Could you interpret it differently? Of course. Could she interpret it differently? Of
17 course. This is the way that I interpret it. I cannot tell you that, you know, my way is right or
18 your way is right, but that's the way I read the document." *See Exhibit 5* (Cordova Deposition
19 P. 107 L. 11-16).

20
21
22
23 Lisa Watson, who testified she has worked in insurance for over 20 years, when shown
24 the "Renewal Statements" and asked what the term "expiration of your policy" meant, testified
25 that she does not know what the phrase means. *See Exhibit 6* (Watson Deposition P. 52 L. 4-8).

26
27 In the testimony, Mr. Cordova and Ms. Watson not contest that Gary Lewis'
28 interpretation was valid. When she was told that Mr. Lewis interpreted the language as

1 indicating that payment had to be made before the "Expiration Date" listed right on the
2 "Renewal Statements", Ms. Watson testified that she could not comment on whether Mr. Lewis'
3 interpretation was correct or not. *See* Exhibit 6 (Watson Deposition P. 53 L. 20 - P. 4 L. 4).
4

5 UAIC was granted Summary Judgment on all of Plaintiff's claims. However, on
6 Appeal, the Ninth Circuit Court of Appeals reversed the District Court's grant of summary
7 judgment with respect to whether there was coverage by virtue of the way the renewal
8 statement was worded. The Court found that

9
10 Plaintiffs came forward with facts supporting their tenable legal position that a
11 reasonable person could have interpreted the renewal statement to mean that
12 Lewis's premium was *due* by June 30, 2007, but that the policy would not *lapse* if
13 his premium were 'received prior to the expiration of [his] policy,' with the
14 'expiration date' specifically stated to be July 31, 2007.

15 *See* Exhibit 7 Memorandum.

16 III

17 RESPONSES TO DEFENDANT'S STATEMENT OF FACTS

18 In order to clarify some of the facts, Plaintiff briefly responds to some inaccuracies
19 in Defendant's facts. First, Plaintiffs' counsel never admitted that UAIC's reading of the
20 renewal was reasonable. His actual statement was that it was a "potential reasonable
21 interpretation of the language...however...the language is to be construed most strongly
22 against the insurance company and liberally in favor of the insured." *See* Exhibit J 35:20-
23 24 to Defendant's Opposition. Further, this is irrelevant to the determination of the motion
24 for summary judgment and is simply a red herring asserted by Defendant in order to detract
25 from the actual issue.

26 Additionally, Defendant offers that there were other gaps in Lewis' policy,
27 however, again this is a red herring. Without any cancellation/termination notices, Lewis
28

1 had no way to know that there were lapses in his policy, which further shows the
2 unreasonableness of UAIC's position.

3 IV

4 STANDARD FOR GRANTING

5
6 Summary judgment under Fed. R. Civ. P. 56 may be granted only if the evidence
7 presented shows that there is no genuine issue as to any material fact and that the moving
8 party is entitled to a judgment as a matter of law. The party moving for summary judgment
9 has "the burden of showing the absence of a genuine issue as to any material fact . . ."

10 *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158 (1970).

11
12 "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is,
13 if the evidence is such that a reasonable jury could return a verdict for the nonmoving party."
14 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "[A]t the
15 summary judgment stage the judge's function is not himself to weigh the evidence and
16 determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Id.*
17 at 249.

18
19 The law is well established that in reviewing a motion for summary judgment, the
20 evidence "must be viewed in the light most favorable to the opposing party." *Adickes v. S.H.*
21 *Kress & Co.*, 398 U.S. 144, 159-160 (1970). "[T]he inferences to be drawn from the underlying
22 facts contained in [the moving party's materials] must be viewed in the light most favorable to
23 the party opposing the motion." *Id.*, quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655
24 (1962). Therefore, this Court must view the evidence presented by both parties and the
25 inferences to be drawn there from in the light most favorable to the Plaintiffs.
26
27
28

1 The standard for summary judgment is essentially the same as the standard for
2 granting a directed verdict or judgment notwithstanding the verdict under Fed. R. Civ. P.
3 50. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986). The inquiry under
4 each is "[W]hether the evidence presents a sufficient disagreement to require submission to
5 a jury." *Id.* Summary judgment is only appropriate if "the evidence . . . is so one-sided that
6 one party must prevail as a matter of law." *Id.* If there are facts sufficient to support a jury
7 verdict for the Plaintiff, the Court is not to interfere with the jury's role as the finder of fact.
8 To do so would deny the Plaintiff's right to a jury trial.
9

10
11 V

12 ARGUMENT

13 **A. The Ambiguous Renewal Statements MUST be Strictly Construed Against the**
14 **Insurance Company According to the Nevada Law, therefore, Providing**
15 **Coverage was in Place at the Time of the Incident.**

16 There is no dispute that UAIC sent Gary the policy's "Renewal Statement" (invoice date
17 June 11, 2007). *See Exhibit 1 P. 33.* There is no dispute the policy's "Renewal Statement,"
18 offered again to renew Gary's policy with UAIC, as Gary had repeatedly done since March
19 2007. There is no dispute that the policy's "Renewal Statement" says Gary would not have a
20 lapse in coverage if he made the required payment prior to the expiration date. There is no
21 dispute that the only expiration date mentioned on the policy's "Renewal Statement" is "July 31,
22 2007." *See Exhibit 1 P. 33.* There is no dispute Gary made the requisite payment on July 10,
23 2007, which was twenty-one days before the "Expiration Date" listed on the policy's "Renewal
24 Statement". *See Exhibit 1 P. 38.* There is also no dispute that UAIC had previously advised
25 Gary that he could pay his policy premium after the date the policy became effective, and still
26 be covered from the effective date. *See Exhibit 1 P. 15.*
27
28

1 An insurance policy, which would include the renewal statements of the policy, is a
2 contract and is governed by contract law. *United Insurance Co., v. Frontier Insurance*
3 *Company, Inc.*, 120 Nev. 678 684, 99 P.3d 1152, 1156 (2004). Under general contract law, the
4 Nevada Supreme Court has noted, "When a contract is ambiguous, it **will** be construed against
5 the drafter." *Glenbrook Homeowners Ass'n v. Glenbrook Co.* 111 Nev. 909, 917, 901 P.2d 132,
6 138 (1995) (emphasis added). The Court has gone even further in its discussion of insurance
7 contracts, holding, "Contracts of insurance are **always** construed most strongly against the
8 insurance company. Stated another way, a policy of insurance is to be construed liberally in
9 favor of the insured and **strictly against the insurer.**" *Hartford Ins. Group v. Winkler*, 89 Nev.
10 131, 135, 508 P.2d 8, 11 (1973) (Citations omitted) (emphasis added).

11 In addition, the Nevada Supreme Court has held, "An insurance policy is a contract of
12 adhesion." *Id.* As a result "the language of an insurance policy is broadly interpreted in order
13 to afford 'the greatest possible coverage to the insured.'" *Id.*, citing *Farmers Insurance Group v.*
14 *Stonik*, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994). The pivotal language from the UAIC
15 contract comes from the policy's "Renewal Statements" which UAIC drafted, and which UAIC
16 sent to Gary Lewis on multiple occasions advising Gary how the contract of insurance could be
17 renewed and continue to be in effect with UAIC. The statements provide a due date for
18 payment, but also specifically state that if payment is "received prior the expiration of your
19 policy" there will be no lapse in coverage. The only "Expiration Date" listed in the policy's
20 "Renewal Statements" is the expiration date for the offered policy that UAIC invited Gary
21 Lewis to renew.

22 The policy's "Renewal Statements" which give a due date but then state that the
23 policyholder can avoid a lapse in coverage by paying before the expiration of the policy, and
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1 providing an "Expiration Date" for the policy that is different than the "Due Date" are
 2 ambiguous. As noted above, **ambiguous language in a contract, or in a writing seeking to**
 3 **renew a contract, is construed against the drafter of the contract, or the writing seeking to**
 4 **renew the contract.** See, *Glenbrook Homeowners Ass'n v. Glenbrook Co.* 111 Nev. 909, 917,
 5 901 P.2d 132, 138 (1995). The Nevada Supreme Court has noted that an insurance company
 6 does business as a quasi-public institution, and cannot avoid liability under ambiguous
 7 provisions of policy. *Hartford Ins. Group v. Winkler*, 89 Nev. 131, 136, 508 P.2d 8, 12 (1973).
 8 Although this Court previously found the contract to be unambiguous, the Ninth Circuit
 9 reversed that decision; therefore, the language of the "Renewal Statements" from UAIC is
 10 ambiguous, and therefore, **must be construed against UAIC.**

13 **B. UAIC Breached the Contract by Failing to Investigate Coverage and Refusing**
 14 **to Cover its Insured**

15 In general, there are a few different areas of litigation that involve "bad faith" by an
 16 insurance company. All of these actions, regardless of the parties involved, however, are
 17 founded in the general principle of contract law that in every contract, including policies of
 18 insurance, there is an implied covenant of good faith and fair dealing that neither party will do
 19 anything which will injure the right of the other to receive the benefits of the agreement.
 20 *Comunale v. Traders & General Insurance Company*, 50 Cal.2d 654, 328 P.2d 198, 68
 21 A.L.R.2d 883. Most courts, including Nevada, have held that an insurance company always
 22 acts in bad faith whenever it breaches its duty to settle by failing to adequately consider the
 23 interest of the insured. Windt, Allan D., *1 Insurance Claims & Disputes 5th*, Section 5:13
 24 (Updated March, 2009). This is true whether there is a "genuine dispute" as to whether
 25 payment of the third-party policy limits is warranted or not. The Nevada Supreme Court
 26 recently defined bad faith by holding that "an insurer must give equal consideration to the
 27
 28

1 insured's interests" and "the nature of the relationship [between insured and insurer] requires
2 that the insurer adequately protect the insured's interests." *Miller v. Allstate*, 125 N.A.O. 28,
3 212 P.3d 318 (2009).

4
5 Within the area of first-party bad faith, there are essentially three standards which courts
6 have imposed on liability insurers in determining whether the insurer has met its duty to the
7 insured. Those standards involve strict liability, negligence, and bad faith. *Shamblin v.*
8 *Nationwide Mutual Insurance Company*, 396 S.E.2d 766 (W.Va. 1990), citing, *Schwartz,*
9 *Statutory Strict Liability for an Insurer's Failure to settle: A Balanced Plan for an Unresolved*
10 *Problem*, 1975 Duke L.J. 901; Annotation, *Liability Insurer's Negligence for Bad Faith in*
11 *Conducting Defense as Ground of Liability to Insured*, 34 A.L.R.3d 533 (1970 & Supp. 1989).

13 The courts which have applied the strict liability standard have held that an insurer who
14 fails to settle within policy limits does so at its own risk, and even if its position is not entirely
15 groundless, if the failure to settle later exposes the insured, the carrier is liable for the full
16 amount which will compensate the insured for all the detriment caused by the insurer's breach
17 of the express and implied obligations of the contract. *Id.*, citing, *Crisci v. Security Ins. Co.*, 66
18 Cal2d 425, 58 Cal.Rptr. 13, 426 P.2d 173 (1967); *Rova Farms Resort, Inc. v. Investors*
19 *Insurance Co.*, 65 N.J. 474, 323 A.2d 495 (1974).

21
22 The *Crisci* Court recognized that the insured's expectation of protection provides a basis
23 for imposing strict liability in failure to settle cases because it will always be in the insured's
24 best interest to settle within the policy limits when there is any danger, no matter how slight, of
25 a judgment in excess of those limits. *Crisci v. Security Insurance Company of New Haven,*
26 *Conn.*, 426 P.2d 173, 66 Cal.2d 425, 58 Cal. Rptr. 13, (1967). *Cirsci* recognized there is more
27 than a small amount of elementary justice in a rule that would require that, in this situation,
28

1 where the insurer's and insured's interests necessarily conflict, the insurer, which may reap the
2 benefits of its determination not to settle, should also suffer the detriments of its decision. *Id.*

3
4 This standard makes sense, as Chief Justice Neely concurred with the *Shamblin* Court:

5 Can you honestly imagine a situation where an insurance
6 company fails to settle within the policy limits, the
7 policyholder gets stuck with an excess judgment, and this
8 court *does not* require the insurance company to indemnify
9 the policy holder? That will happen the same day the sun
10 rises in the West! As far as I am concerned, even if the
11 insurance company is run by angels, archangels, cherubim
12 and seraphim, and the entire heavenly host sing of due
13 diligence and reasonable care, I will *never*, under any
14 circumstances, vote that a policyholder instead of an
15 insurer pays the excess judgment when it was possible to
16 settle a case within the coverage limits.

17 When I buy insurance, I buy protection from untoward
18 events. I do not object to an insurance company's vigorous
19 defense of a claim, including going to jury trial and
20 exhausting every appeal. Furthermore, as a policyholder, I
21 will diligently assist my insurer to vindicate its rights and
22 protect its reserves. However, I draw the line when the
23 insurer decides that in the process of protecting its reserves,
24 it will play "you bet *my* house." The insurance company
25 can bet as much of its own money as it wants, and it can bet
26 its own money at any odds that it wants, but it cannot bet
27 one single penny of my money even when the odds are ten
28 million to one in its favor!

Id. at 780.

29 The California Court has implemented a reasonableness or negligence aspect to its
30 standard when it expanded on this rule, giving the following analysis:

31 The only permissible consideration in evaluating the
32 reasonableness of the settlement offer becomes whether, in
33 light of the victim's injuries and the probable liability of the
34 insured, the ultimate judgment is likely to exceed the
35 amount of the settlement offer. Such factors as the limits
36 imposed by the policy, a desire to reduce the amount of
37 future settlements, or a belief that the policy does not

1 provide coverage, should **not** affect a decision as to
2 whether the settlement offer is a reasonable one.

3 *Johansen v. California State Automobile Association Inter-Insurance Bureau*, 15 Cal.3d 9, 123
4 Cal.Rptr. 288, 538 P.2d 744, (1975) (emphasis added). Moreover, in deciding whether or not to
5 compromise the claim, the insurer must conduct itself as though it alone were liable for the
6 entire amount of the judgment. *Id.*, citing *Crisci*.

7
8 Nevada has long recognized that there is a fiduciary relationship between the insurer and
9 the insured. *Powers v. USAA*, 114 Nev. 690, 962 P.2d 596 (1998), citing, *Ainsworth v.*
10 *Combined Ins. Co.*, 104 Nev. 587, 763 P.2d 673 (1988). Nevada has also established standards
11 for applying in other types of bad faith situations. In *Pemberton v. Farmers Insurance*
12 *Exchange*, 109 Nev. 789, 858 P.2d 380 (1993), the Nevada Supreme Court established
13 standards to apply when an action is brought related to bad faith denial of first-party benefits
14 under uninsured or underinsured coverage. There, the court noted numerous that appellate court
15 decisions affirm that an insurer's failure to deal fairly and in good faith with an insured's UM
16 claim is actionable. *Id.* at 794 (citations omitted).

17
18 The Nevada Supreme Court and Federal District Court of Nevada articulated a
19 negligence or reasonableness standard in bad faith cases. "To establish a prima facie case of
20 bad-faith refusal to pay an insurance claim, the plaintiff must establish that there was no
21 reasonable basis for disputing coverage." *Powers v. United Services Auto. Ass'n*, 962 P.2d 596,
22 604 (Nev. 1998), citing *Falline v. GNLV Corp.*, 823 P.2d 888 (Nev. 1991). See also *Pemberton*
23 *v. Farmers Ins. Exch.*, 858 P.2d 380, 384 (Nev. 1990).

24
25 One of the more instructional cases in Nevada, however, on the standard to be applied
26 when dealing with negative effects resulting from an insurer's failure to settle a claim prior to
27 litigation is *Landow v. Medical Ins. Exchange*, 892 F.Supp. 239 (D.Nev. 1995). The *Landow*
28

1 Court, following the rationale of California courts in excess verdict situations accepted that, "the
2 litmus test for bad faith is whether the insurer, in determining whether to settle a claim, gave as
3 much consideration to the welfare of its insured as it gave to its own interests," citing, *Egan v.*
4 *Mutual of Omaha Ins. Co.*, 24 Cal.3d. 809, 818, 169 Cal.Rptr. 691, 620 P.2d 141 (1979).
5

6 The above-noted principles were most recently codified and adopted by the Nevada
7 Supreme Court in *Allstate Ins. Co. v. Miller*, 212 P.3d 318 (2009). In *Miller*, the court held that
8 "an insurer must give equal consideration to the insured's interest". The court further stated that
9 the insurer's duty to its insured is "similar to a fiduciary relationship" and noted "the nature of
10 the relationship requires that the insurer adequately protect the insured's interest." The court's
11 conclusion mirrored that in *Landlow* as the *Miller* court recognized "at a minimum, an insurer
12 must equally consider the insured's interests and its own." The court also recognized the
13 wisdom from decisions from California holding that "the insurer must give the interests of the
14 insured at least as much consideration as it gives its own interests, and the insurer must act as a
15 prudent insurer without policy limits." *Id.* (citation omitted).
16
17

18
19 Additionally, insurers have a duty to investigate. *Pemberton v. Farmers Ins. Exchange*,
20 109 Nev. 789, 858 P.2d 380, 382 (Nev., 1993). "Insurers have the duty to investigate claims
21 and coverage in a prompt fashion." *Troutt v. CO W. Ins. Co.*, 246 F.3d 1150, 1162. See also
22 *Tynes v. Bankers Life Co.*, 730 P.2d 1115, 1124 (Mont. 1986) (9th Cir., 2001). The duty to
23 investigate is an extension of the duty of good faith and fair dealing that the insurer owes its
24 insured and, in a claims-made-and-reported policy, extends to the handling of reported claims.
25 *KPFF, Inc. v. California Union Ins. Co.*, 56 Cal.App.4th 963, 66 Cal.Rptr.2d 36, 44 (1997)
26 UAIC utterly failed to investigate whether coverage existed for Gary on the claim, made no
27 attempt to investigate the claim made against Gary Lewis, and failed to abide by established
28

1 insurance claims handling practices in its handling of this claim. In its opposition, UAIC claims
2 that they investigated the claim. However, "confirming the lapse through their underwriting
3 department" is not an investigation. Furthermore, as discussed in detail above, there was
4 coverage under this claim. Therefore, their failure to provide such coverage was a breach of
5 contract.
6

7 UAIC also made absolutely no efforts to inform Gary Lewis of the demand for the
8 policy limits and the offer to settle Cheyanne's significant claim for a mere \$15,000.00. UAIC
9 completely ignored Cheyanne's claim and did absolutely nothing other than send Cheyanne's
10 counsel a letter stating that there was no coverage. As noted above, the Court has continually
11 held "at a minimum, an insured must equally consider the insured's interest and its own."
12 *Allstate v. Miller*, 212 P.3d 318, 326 (Nev. 2009). If the insurer fails to equally consider its
13 insured's interests and its own it violates the implied covenant of good faith and fair dealing and
14 can be held responsible for any resulting damages suffered by its insured. *Id.* The undisputed
15 fact is that UAIC made absolutely no efforts to inform Gary Lewis of the demand for the policy
16 limits and the offer to settle Cheyanne's significant claim for a mere \$15,000.00. Therefore,
17 they breached their duty to inform. This failure to inform, on its own, is sufficient to present the
18 facts to the jury to determine whether the carrier violated the duty of good faith and fair dealing
19 and is thus liable for a judgment entered against its insured in excess of the applicable policy
20 limits. *Id.*
21
22
23

24 Plaintiffs have noted in the preceding sections the facts indicating: Gary Lewis properly
25 renewed his policy pursuant to the policy's "Renewal Statements"; that UAIC renewed Gary's
26 policy and nevertheless claimed there was a lapse in coverage; and other such facts, all of which
27 clearly indicate Gary had coverage for the claim Cheyanne brought against him. UAIC never
28

1 investigated any of the above to determine whether Gary was covered, and instead made the
2 snap decision that there was no coverage, and left Gary completely bereft of protection against
3 Cheyanne's lawsuit. These facts constitute bad faith, provide that there was coverage for
4 Cheyanne's claim and therefore constitute a breach of contract, and warrant UAIC
5 compensating Gary, paying for the judgment currently entered against him, as well as paying
6 other compensatory and even punitive damages.
7

8 UAIC cites to completely inapplicable case law and non-binding precedent. UAIC
9 claims that even if coverage existed, they are not liable for breach of the duty to defend. They
10 base this proposition on two 9th Circuit cases, based on California law, that are non-binding and
11 are distinguishable from the current case. UAIC cites to *Lunsford v. American Guarantee Liab.*
12 *Ins. Co.* claiming that it supports their position that an insurer is not liable for bad faith even
13 after the Court resolved the ambiguity in the contract in favor of the insured. However, the
14 question presented in this case was "whether, under California law, a general liability insurance
15 policy which promises to defend an insured against 'malicious prosecution' includes a duty to
16 defend against an 'abuse of process' claim." *Lunsford v. American Guarantee Liab. Ins. Co.*,
17 18 F. 3d 653, 654. This case has no relevance on the current case. Further the Court made their
18 decision on bad faith "because they investigated the claim." *Id.* at 656. UAIC did not
19 investigate the claim in this case.
20
21
22

23 UAIC also cites to *Franceschi v. Amer. Motor Ins. Co.*, another case based on California
24 law. This case involved a medical insurance policy which provided an exclusion for preexisting
25 conditions within a certain time period. *Franceschi v. Amer. Motor Ins. Co.*, 852 F.2d 1217,
26 1218 (9th Cir. 1988). The insurance company found that the Plaintiff received medical
27 treatment within the time frame of the preexisting conditions limitation in the policy, and
28

1 therefore denied coverage for certain medical treatment. *Id.* Further, they investigated the
2 claim, including medical records. *Id.* at 1220. The current case does not involve medical
3 insurance or policy exclusions so this case is not relevant. Additionally, the insurer investigated
4 the claim in *Franceschi*, however UAIC did not investigate the current case.
5

6 As explained in detail above, Lewis had coverage under the policy, UAIC failed to
7 investigate, failed to inform him of settlement opportunities, put their interests above that of
8 their insured, and violated the duty of good faith and fair dealing. Therefore, summary
9 judgment is not proper in finding that UAIC did not commit bad faith.
10

11 **C. The Court Should Not Dismiss Plaintiffs' Claims Under N.R.S. 686A.310.**

12 Plaintiffs respectfully move this court to deny Defendant's Motion to Dismiss, which is
13 actually a Motion for Summary Judgment because the district court will be considering matters
14 outside the pleadings. *Paso Bldrs., Inc. v. Hebard*, 83 Nev. 165 (1967).
15

16 Defendant improperly cites to *Nev. Assn. Serv., Inc. v. First Am. Title Ins., Co.* in an
17 effort to support its position that Plaintiffs have no causes of action under N.R.S. 686A.310.
18 However, this case is readily distinguishable. In *Nev. Assn. Serv., Inc. v. First Am. Title Ins.,*
19 *Co.* the Plaintiff's were alleging that an implied contract was created between the parties
20 through a course of conduct. *Nev. Assn. Serv., Inc. v. First Am. Title Ins., Co.*, 2:11-cv-02015-
21 KD-VCF (D. Nev. 2012). The Court found that "N.R.S. § 686A.030 cannot apply because the
22 **allegations of the Complaint are not based on an insurance policy.**" *Id.* at 4 (emphasis
23 added). That is obviously not the case here. Here, the allegations of the Complaint are based
24 on an insurance policy. Further, this is not an action about an implied contract, but rather a
25 contract under which Mr. Lewis was insured with Defendant UAIC. When ambiguous
26 language in a contract is construed in the insureds favor, it does not establish an "implied"
27
28

1 contract, but rather provides coverage under an actual insurance contract. As explained above,
2 there was a valid contract of insurance between Lewis and UAIC, there was actual coverage
3 under the policy for the loss in question, and UAIC violated N.R.S. § 686A.030. UAIC
4 wrongfully refused to cover the value of the claim of Cheyanne Nalder, wrongfully failed to
5 settle within the Policy Limits when they had the opportunity to do so, wrongfully denied
6 coverage, failed to adopt and implement reasonable standards for the prompt investigation and
7 processing of claims arising under its insurance policies, and failed to effectuate the prompt, fair
8 and/or equitable settlement of the claims in which liability of the insurer was very clear, and
9 which clarity was conveyed to UAIC. As such, these claims should not be dismissed.
10
11

12 **D. The Court Should Not Bifurcate Plaintiffs' Extra-Contractual Remedies from**
13 **the Contract Claims.**

14 UAIC's request for bifurcation is not well taken. UAIC's motion admits that its only
15 defense to its refusal to investigate or otherwise handle Cheyanne's claim against Gary was
16 UAIC's position that there was no coverage. This is not a case where there is a coverage
17 dispute, and after the coverage dispute is determined there is a dispute as to whether the claim
18 was handled properly, which would include the introduction of additional evidence concerning
19 how the claim was handled. The claim was not handled. If there was coverage for Gary then
20 there will be no dispute that UAIC never took any steps to investigate or otherwise resolve the
21 claim. The evidence that the claim was denied, that no investigation was performed, and that
22 coverage was not extended makes up the entirety of this action. That evidence makes up both
23 the breach of contract and the bad faith claims.
24
25

26 FRCP 42(b) states that separate trials can be held "For convenience, to avoid prejudice,
27 or to expedite and economize [cases]". None of those purposes would be served by bifurcating
28 this case. As the same evidence and behavior by UAIC will be used to establish the breach and

1 the bad faith, there is nothing convenient about having the parties present the same evidence
2 twice and argue in the first instance it is or is not a breach of the contract, and then argue in the
3 second instance that it does or does not constitute bad faith. There is no prejudice to the
4 Defendant as the jury will already hear all of the evidence of bad faith in the breach of contract
5 portion as they are the same. Defendant's motion points to no evidence that would be
6 admissible in the bad faith claim, that would not be admissible in the breach of contract claim.
7 For these same reasons judicial economy is likewise not served by bifurcation.
8

9
10 Bifurcation presents a significant risk of prejudice to the Plaintiffs in this case. UAIC is
11 hoping to use human nature in the hopes that the jurors' longing to return home from jury
12 service will impede their judgment in determining the facts of this case. If this matter is
13 bifurcated UAIC will be able to imply to the jury, if not outright inform the jury, that if they
14 find UAIC breached the insurance contract they will have to continue their jury service to hear
15 the bad faith portion of the case, and that if they find that UAIC did not breach the insurance
16 contract they can go home then and there. Tempting the jury in such a manner serves no
17 purpose and poses a significant risk of prejudice to the Plaintiffs. Bifurcation should therefore
18 not be granted.
19

20
21 **E. Defendant Should Not be Granted Leave to Amend its Pleadings to Add a
Counter-Claim Against Plaintiff at this Late Date.**

22 UAIC, after claiming for years there was no insurance contract, and defending this suit
23 to the point of requesting this Court hold as a matter of law that there was no insurance contract,
24 now asks this Court to allow UAIC to argue that there was a contract, and that Gary Lewis
25 violated it. Setting aside for a moment the ridiculous of UAIC crying foul against Gary Lewis
26 and claiming he did not abide by a contract UAIC claim never existed, there is simply no good
27 cause to permit such a defense.
28

1 There is no evidence of collusion between Gary Lewis and Cheyenne Nalder. UAIC's
2 file amply proved UAIC was told about the accident, was told about Cheyenne's injuries, was
3 provided a medical authorization from Cheyenne together with a list of Cheyenne's medical care
4 providers, was provided with a copy of the Complaint and was put on notice that the lawsuit
5 was proceeding, and was notified in the Complaint that Cheyenne's medical expenses, as of the
6 filing of the Complaint, exceeded \$41,000.00. Having the full knowledge of all of this
7 information, UAIC chose to take no action to defend Gary Lewis.
8

9 UAIC's decision to not defend Gary Lewis resulted in the case proceeding to a judgment
10 against Gary in the amount of \$3,500,000.00. Being faced with such a judgment being entered
11 against him, and with the understanding that his insurance company was not going to take any
12 steps to protect him against the judgment, Gary was left with very little options. Gary elected to
13 reach an agreement with Cheyenne whereby Gary and Cheyenne would pursue Gary's claims
14 against UAIC for not protecting him, and Cheyenne would not immediately execute on Gary's
15 personal assets. As a result of this agreement the instant lawsuit was filed and a formal
16 assignment was ultimately executed.
17

18 UAIC cannot prove anything that Gary Lewis ever did that was in violation of the
19 policy. Gary reported the claim to UAIC. UAIC was advised that Cheyenne was willing to
20 accept the applicable policy limits to resolve her claim against Gary. UAIC was informed that
21 suit was filed against Gary. UAIC's failure to involve itself in the proceedings resulted from
22 UAIC's decision alone, and cannot be laid at Gary Lewis' feet.
23

24 UAIC never offered to provide Gary with any defense. UAIC did not even defend Gary
25 subject to a reservation of rights and then investigate whether coverage was available. As a
26 result, the judgment was entered. After judgment was entered, Gary took the only reasonable
27
28

1 action available him, which was to work with his judgment creditor to bring an action against
2 Gary's carrier for not protecting him. This does not constitute collusion, fraud, or a breach of
3 Gary's insurance contract with UAIC.
4

5 UAIC's position begs the question of what UAIC would have had Gary Lewis do when
6 Gary was faced with a significant judgment and was receiving absolutely no protection under
7 his insurance agreement with UAIC. Even assuming Gary took action contrary to the policy,
8 which is not substantiated by any evidence, it is wholly improper for UAIC to expect Gary
9 Lewis to honor a policy of insurance with UAIC which UAIC refuses to honor, and which
10 UAIC claims does not exist. UAIC's position that it can ignore the policy, can fail to honor any
11 part of the policy, even claim the policy does not exist, yet hold Gary Lewis to each and every
12 provision of the policy should be honored nor recognized by this Court.
13

14 **CONCLUSION**

15 Plaintiff respectfully requests that this court deny Defendants Counter-Motion in its
16 entirety for the reasons set forth in the points and authorities noted above.
17

18 DATED this 18th day of April, 2013.

19 CHRISTENSEN LAW OFFICES, LLC

20
21 By:  #11568

22 Thomas Christensen, Esq.
23 Nevada Bar No. 2326
24 1000 S. Valley View Blvd.
25 Las Vegas, NV 89107
26 (702) 216-1471 Phone
27 (702) 870-6152 Fax
28 courtnotices@injuryhelpnow.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5 and LR 5-1, I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC, and that on this 12th day of April, 2013, I served a copy of the foregoing **OPPOSITION TO DEFENDANT UNITED AUTOMOBILE INSURANCE COMPANY'S COUNTER-MOTION FOR SUMMARY JUDGMENT ON ALL EXTRA-CONTRACTUAL CLAIMS OR REMEDIES; OR IN THE ALTERNATIVE, MOTION TO BIFURCATE CLAIMS FOR EXTRA-CONTRACTUAL CLAIMS OR REMEDIES; FURTHER, IN THE ALTERNATIVE, MOTION FOR LEAVE TO AMEND ANSWER TO FILE COUNTER-CLAIM** as follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Thomas E. Winner, Esq.
Matthew J. Douglas, Esq.
ATKIN, WINNER, & SHERROD
1117 S. Rancho Dr.
Las Vegas, NV 89102



An employee of CHRISTENSEN LAW OFFICES, LLC

1 MATTHEW J. DOUGLAS
Nevada Bar No. 11371
2 ATKIN WINNER & SHERROD
1117 South Rancho Drive
3 Las Vegas, Nevada 89102
Phone (702) 243-7000
4 Facsimile (702) 243-7059
mdouglas@awslawyers.com

5 *Attorneys for Defendant,*
6 *United Automobile Insurance Company*

7 UNITED STATES DISTRICT COURT

8 DISTRICT OF NEVADA

9 JAMES NALDER, Guardian Ad Litem for
10 minor Cheyanne Nalder, real party in
interest, and GARY LEWIS, Individually;

11 Plaintiffs,

12 vs.

13 UNITED AUTOMOBILE INSURANCE
14 COMPANY, DOES I through V, and ROE
CORPORATIONS I through V, inclusive

15 Defendants.

CASE NO.: 2:09-cv-1348
DEPT. NO.:

**DEFENDANT UNITED AUTOMOBILE
INSURANCE COMPANY'S REPLY
BRIEF IN SUPPORT OF ITS COUNTER-
MOTION FOR SUMMARY JUDGMENT
ON ALL EXTRA-CONTRACTUAL
CLAIMS OR REMEDIES; OR, IN THE
ALTERNATIVE, MOTION TO
BIFURCATE CLAIMS FOR EXTRA-
CONTRACTUAL CLAIMS OR
REMEDIES; FURTHER, IN THE
ALTERNATIVE, MOTION FOR LEAVE
TO AMEND ANSWER**

ORAL ARGUMENT REQUESTED

18 Defendant UNITED AUTOMOBILE INSURANCE COMPANY by and through its
19 Counsel of record, Matthew J. Douglas, of ATKIN WINNER & SHERROD, hereby submits its
20 Reply Brief in support of its Counter-Motion for Summary Judgment on all Extra-contractual
21 Claims or Remedies, or, in the alternative, Motion for Bifurcation of Certain Claims; finally,
22 Motion for Leave to Amend.

23 This Reply is made and based upon the pleadings and papers on file with this Court, the
24 Points and Authorities contained below, and any oral argument which the Court may entertain at
25 the time of hearing.
26

27 ///

1 DATED this 26th day of March, 2013.

2 ATKIN WINNER & SHERROD

3
4 /s/ Matthew J. Douglas
5 Matthew J. Douglas
6 Nevada Bar No. 11371
7 1117 S. Rancho Drive
8 Las Vegas, Nevada 89102
9 *Attorneys for Defendant*

10 **POINTS AND AUTHORITIES**

11 **I.**

12 **RESPONSE TO PLAINTIFFS' STATEMENT OF FACTS**

13 Defendant UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to
14 as "UAIC") will not re-state all pertinent facts as the essential facts are set forth in its original
15 Motion for Summary Judgment (*Document No.17, herein*), its Reply in support of the original
16 Summary Judgment Motion (*Document No.21*) and its instant Counter Motion for Summary
17 Judgment and, Opposition to Plaintiff's Motion for Summary Judgment (*Documents No. 89 &*
18 *90, respectively*). Moreover, most of the facts are basically undisputed. Accordingly, rather than
19 re-submit facts and, exhibits, Defendant submits its statement of facts and Exhibits, from the
20 aforementioned documents (including the declarations of Jan Cook and Danice Davis), as if fully set
21 forth herein.

22 That said, Defendant does need to Reply to Section III of Plaintiffs' Opposition, entitled
23 "Responses to Defendant's Statement of Facts." First, Plaintiffs' take umbrage with Defendant's
24 assertion that Plaintiff's Counsel stated Defendant's reading of the Renewal notices was
25 "potentially reasonable", instead of merely "reasonable" as Defendant asserted. In reply,
26 Defendants argue that whether Plaintiff's Counsel stated the Defendant's reading of the renewals
27 was 'reasonable' or, 'potentially reasonable', really does not alter the fact that Counsel for
28 Plaintiff tacitly *admitted* in that exchange that Defendant's understanding of the renewals was

1 *reasonable*. This is important because, this would serve as an admission by Plaintiff that
 2 Defendant's reading of the renewal was reasonable and, by extension, that there is clearly a
 3 *genuine dispute* as to coverage herein. Accordingly, and even if Plaintiff's believe there is an
 4 ambiguity, Defendant asks *whether the Plaintiffs are implying that they do not believe*
 5 *Defendant's interpretation of the Renewal notices was reasonable?* If that is the case then
 6 Defendant does not believe Plaintiffs' position is sound given that this was a 'renewal' with a
 7 "due date" clearly noted on the statement.

8 Next, the Plaintiffs maintain that Defendant's noting the other gaps in coverage, between
 9 Lewis' other policy terms, is also a "red herring" because Lewis could not have known of these
 10 gaps without "cancelation/termination notices." This argument, however, is simply incorrect in
 11 both *fact and law* and, to some extent has already been dismissed by this Court and affirmed on
 12 appeal. The fact is, Lewis *was informed of these gaps* by dint of the new insurance cards and
 13 declarations pages sent to him at the inception of each new term. *Please see complete copies of*
 14 *all policy declarations pages and insurance cards for Lewis attached as Exhibit '1' to Plaintiff's*
 15 *own Motion for Summary Judgment, Document No. 88 herein.* For instance, at pages 28-33 of
 16 *Exh. 1 to Document No. 88*, this Court can clearly see that – for the term immediately preceding
 17 the one at issue – Plaintiff was 2 days late with his payment and, accordingly, his new insurance
 18 cards were issued with an inception date of May 31, 2007 *which was two days beyond the*
 19 *expiration of his prior policy*. Accordingly, Lewis **did receive** notice of the periods of non-
 20 coverage via his insurance cards *at least*. Therefore, if Plaintiff's are claiming Lewis never
 21 reviewed his insurance cards or, never realized there was a lapse, this is hard to believe given
 22 that all drivers must have such insurance cards in their vehicle. In fact, Defendant posits that
 23 every driver knows he/she must have valid insurance cards with him/her in order to legally
 24 operate their vehicle. Accordingly, if Lewis is somehow claiming he never had the subject
 25 insurance cards (cited above) one wonders why he kept renewing his monthly policies. The fact
 26 is, he would not, and this fact shows the unreasonableness of Plaintiffs' claim that Lewis did not
 27 know his policy would lapse in instance of late payment *as it had happened in the month*
 28

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 *immediately preceding the term at issue.*

2 Moreover, this Court, in the December 7, 2010 Order, has already dismissed Plaintiff's
3 causes of action under Nev. Rev. Stat. § 687B.320 and Nev. Rev. Stat. § 687B.340 and, these
4 dismissals were affirmed on Appeal. *See Document No. 42, herein as well as Exhibit 7 to*
5 *Plaintiff's Motion for summary judgment, Document No. 88, herein.* Per those causes of actions,
6 Plaintiff's essentially had argued that Defendant's month-long policy terms were void because
7 they failed to comply with the aforementioned statutes by failing to provide a notice of cancellation
8 pursuant to Nev. Rev. Stat. § 687B.320 or, alternatively, not providing a renewal in compliance
9 with Nev. Rev. Stat. § 687B.340. However, this Court disagreed with Plaintiffs and dismissed
10 these Counts and, this was subsequently affirmed on Appeal. Accordingly, Plaintiff's cannot
11 now assert that Lewis would have "no notice of the lapses" without a "cancellation notice" as
12 this Court has already found these statutes to be inapplicable here. As such, Plaintiff's arguments
13 in this regard are further without merit.

14 II.

15 ARGUMENT

16 In reviewing Plaintiff's Opposition to the present Motion it seems quite clear that
17 Plaintiffs' have basically recycled their previous arguments from their Motion for Summary
18 Judgment and have, for the most part, simply ignored or, failed to address, the case law and
19 arguments raised by Defendant's concerning whether there was a 'genuine dispute' or,
20 reasonable basis for the denial of coverage. Defendants ask this Court to note this as it seems to
21 be a tacit admission by Plaintiffs that they have no articulated response to these arguments by
22 Defendant. Defendant will respond to Plaintiffs' arguments, but, in short, it seems that Plaintiff's
23 ignore the basic argument by Defendant that, *regardless of this Court's ultimate determination*
24 *regarding the any ambiguity in the renewal*, the Defendant's position, at the time, was a
25 reasonable one (even if ultimately found incorrect) and, therefore, summary judgment should be
26 granted in favor of Defendant on any 'bad faith' claims. In short, were Defendants actions
27 reasonable, based on the facts known at the time, when Lewis admits he did not pay for his July
28

1 2007 timely *and* no information regarding an alleged ambiguity (to explain this late payment)
 2 were ever made known to Defendant prior to the instant lawsuit. Defendant argues its actions
 3 were reasonable at the time because it could not have possibly known about the ambiguity
 4 argument, which was not made until March 2010 and, only after a first argument for coverage
 5 was discarded. As such, even if the Court know finds an ambiguity existed, UAIC should not be
 6 liable, in hindsight, for bad faith when no facts were ever brought forth at the time.

7 Alternatively, as clearly no policy was in effect for the loss, *even* should this Court find
 8 the renewal ambiguous, the result would be for the Court to *imply* an insurance policy at law –
 9 and, therefore, no cause of action pursuant N.R.S. 686A.310 should lie either.

10 Additionally, and further in the alternative, Defendant believes Plaintiffs' have not
 11 brought forth arguments sufficient to overcome the obvious prejudice to Defendant should this
 12 matter not be bifurcated (as to the contractual and, extra-contractual, causes of action) and,
 13 therefore this matter should be so bifurcated.

14 Finally, that Plaintiffs have also failed to show good cause why Defendant's request to
 15 amend its pleading to file a counter-claim and/or a Third Party Claim against Plaintiffs' Counsel
 16 should not be liberally granted.

17 **A. Response to Plaintiff's Arguments concerning ambiguity in the renewal**
 18 **statements.**

19 The first section (Section V., part A.) of Plaintiffs' Opposition deals with the ambiguity
 20 issue in the renewal statements. Defendant notes that its Counter-Motion *does not seek a ruling*
 21 *on the ambiguity issue* - as same has been ruled on by the 9th Circuit Court of Appeals. In fact,
 22 Defendant notes that its Counter-Motion for summary judgment is premised on the argument
 23 that, *regardless of this Court's ultimate determination on the ambiguity issue*, this Court can still
 24 rule on Plaintiff's allegations of bad faith and, other contractual remedies under the genuine
 25 dispute/reasonable basis doctrine. Defendant believes this portion of Plaintiff's Opposition is
 26 really superfluous and of no bearing on the instant Counter-Motion. To the extent these issues
 27
 28

1 are relevant for the discussion, herein, Defendant notes they are more fully addressed in
 2 Defendant's Opposition to Plaintiffs' pending Motion for summary judgment (*Document No. 90*,
 3 *herein*) and, as such, Defendant will not re-state all of its arguments and merely refers this Court
 4 to its arguments on these issues as contained in *Document No. 90, herein*, as if same were fully
 5 set forth herein.
 6

7 That said, Defendant would like to note several incorrect, or incomplete, statements of
 8 law and fact by Plaintiffs' in this section. First, Plaintiffs' claim that there is "no dispute" that
 9 UAIC had advised Lewis he could pay his premium late and still be covered and cite to "Exhibit
 10 1, p. 15." *See Plaintiffs' Opposition, p. 10, lines 26-28*. Initially, it is not at all clear what Exhibit
 11 Plaintiffs' are relying on, but assuming its Exhibit '1' to Plaintiff's Motion¹, Defendant further
 12 assume Plaintiffs' are referencing the April 26, 2007 *Revised* Renewal Statement. As discussed
 13 in greater detail in Defendant's Opposition to Plaintiff's Motion for summary Judgment
 14 (*Document No. 90, p. 7, lines 7-24 & p. 8, lines 1-7*) Defendants do, in fact, dispute that Lewis
 15 was ever told he could "pay late." Rather, as explained by Defendant several times in this
 16 litigation, the course of dealings here is that Lewis never was allowed to pay late and, instead, if
 17 he paid after his previous policy expired, his new policy did not incept until the next month's
 18 premium was paid.
 19

20 The revised renewal statement issued April 26, 2007, referenced by Plaintiff, was issued
 21 because Lewis – who had purchased his first month-long policy beginning March 29, 2007² –
 22 **added a new driver** (*attached as page 13 of Exhibit "1" to Plaintiff's Motion for summary*
 23 *judgment*) as well as **a new vehicle** (*attached as page 14 of Exhibit "1" to Plaintiff's Motion for*
 24
 25

26 ¹ It appears Plaintiff's are actually referring to page 16 of that exhibit

27 ² A copy of the receipt of the first policy premium, on March 29, 2007, is attached as page 7 of
 28 Exhibit "1" to Plaintiff's Motion for Summary Judgment

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7099

1 *Summary Judgment*) to his policy on April 25, 2007.³ As the two additions to the policy
2 increased his premium a new, "Revised Renewal Statement", was issued which did allow him to
3 remit his May 2007 premium by May 6, 2007. However, this revised renewal statement only
4 provided additional time - beyond expiration of his current policy - because of the late additions
5 to the policy and increased premium required a Revised Renewal Statement to be sent out. As
6 such, in no way did same Revised Renewal Statement create a "course of conduct" allowing for
7 payment of premium beyond expiration of the current policy term. This conclusion is supported
8 by the fact that Lewis actually paid for his May 2007 policy on April 28, 2007 and the new
9 policy term incepted, on schedule, April 29, 2007. *See Receipt of Payment dated April 28, 2007,*
10 *page 26 of Exhibit '1' to Plaintiff's Motion for Summary Judgment.* Accordingly, this is really a
11 red herring by Plaintiffs and, is really of no consequence to the issues at bar.

12
13 Further, Plaintiffs' continue to supply the wrong standard for interpreting the renewal
14 statements at issue. Defendant agrees with Plaintiffs' citation to the general principle of contract
15 law that an ambiguity in a writing is ambiguous it will be construed against the drafter. *See*
16 *Glenbrook Homeowners Association v Glenbrook Co.*, 111 Nev. 909, 901 P.2d 132 (1995)
17 (holding ambiguities in a residential development plan would be construed against the drafter).
18 However, Defendant disagrees with Plaintiffs' premise that a *renewal offer* for an insurance
19 policy must be interpreted under the rules for interpreting *insurance policies*. Those rules, as this
20 Court knows, require a Court to construe insurance policies 'liberally in favor of the insured and
21 strictly against the insurer.' *See Hartford Insurance Group v Winkler*, 89 Nev. 131, 508 P.2d 8
22 (1973) (finding ambiguity in an insurance policy regarding whether wife, who had filed for
23 divorce from husband, needed to reside in the same household as her husband to claim coverage
24
25
26

27 ³ These endorsements led to an amended policy declarations page to be issued to Lewis on April
28 25, 2007 for the remaining four days of his policy (April 25, 2007 - April 29, 2007). (*A copy of the*

1 at time of loss). Despite the assertions that these rules apply, Plaintiffs' **does not offer a single**
 2 **case in support of their position** that an ambiguity in an insurance *renewal* offer should be
 3 interpreted under the rules of insurance *policy* interpretation.

4 Specifically, besides the *Hartford Ins. Gr.* and *Glenbrook Assoc.* cases, noted above,
 5 which were cited by Plaintiffs', but which do not lend any support to Plaintiffs' contention,
 6 Plaintiff also directs this Court to *United Ins. Co. v Frontier Ins. Co.*, 120 Nev. 678, 99 P.3d
 7 1152 (2004) and *Farmer's Ins. Gr. v Stonik*, 110 Nev. 64, 867 P.2d 389 (1994). These cases,
 8 however, also do not help Plaintiffs' position. In *United Ins. Co. v Frontier Ins. Co.*, 120 Nev.
 9 678, 99 P.3d 1152 (2004), the Court found that the policy terms regarding an 'occurrence' under
 10 the *insurance policy* were unambiguous. Similarly, the court in *Farmer's Ins. Gr. v Stonik*, 110
 11 Nev. 64, 867 P.2d 389 (1994) found no ambiguity in the 'other insurance clause' in an *insurance*
 12 *policy* and prevented the insured from claiming her higher coverage limits from another policy
 13 with the insurer. As such, despite Plaintiffs' repeated argument that this Court should interpret
 14 the renewal offered by UAIC under the rules typically used for insurance policies, Plaintiffs'
 15 **fails to cite a single case to this Court in support of this argument.**

16
 17
 18 As such, with that background in the existing case law, this Court may review the
 19 claimed 'ambiguity' in UAIC renewal notice to Lewis as a matter of law under general rules of
 20 contract interpretation. *Glenbrook Homeowners Association v Glenbrook Co.*, 111 Nev. 909, 901
 21 P.2d 132 (1995); *Farmers Ins. Exch. v Neal*, 119 Nev. 62, 64 P.3d 472, 473 (Nev. 2003). Quite
 22 simply, the rule for ambiguities is whether the document "is subject to two or more reasonable
 23 interpretations." *Gary G. Day Constr. Co., Inc. v Clarendon Am. Ins. Co.*, 459 F. Supp. 2d 1039,
 24 1045 (D. Nev. 2006) (citing *Grand Hotel Gift Shop v. Granite State Ins. Co.*, 108 Nev. 811, 839
 25 P.2d 599, 604 (Nev. 1992)).

26
 27 (Cont.)

28 *Amended Declaration is attached as page 10 of Exhibit "1" to Plaintiff's Motion for Summary Judgment)*

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 1117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 As mentioned, though the above is not particularly relevant to Defendant's arguments
 2 regarding whether there existed a reasonable basis to deny coverage which would serve as basis
 3 for summary judgment on the extra-contractual claims, Defendant felt it necessary to address
 4 these mischaracterizations by Plaintiff as they have bearing on other issues, herein and, show a
 5 pattern by Plaintiffs'.

6 **B. Response to Plaintiff's Arguments that UAIC "breached the contract" by failing**
 7 **to investigate coverage and refusing to cover the insured.'**

8 It is clear that Plaintiffs' go to great lengths to avoid ever discussing the central issue of
 9 Defendant's Counter Motion for summary judgment. That is, *regardless of the ultimate*
 10 *determination on the ambiguity*, were UAIC's actions reasonable, under the facts at the time, to
 11 sustain a finding that at least a Genuine Dispute existed as to coverage and, therefore, finding
 12 UAIC cannot be liable for any alleged 'bad faith' or, extra-contractual damages. Defendant
 13 argues that the fact that Plaintiffs' only mention this issue, in passing, *once*⁴ in their entire brief
 14 suggests the lengths to which Plaintiffs' will go to avoid discussing this issue because they have
 15 no response to same.
 16

17 Defendant acknowledges that Plaintiffs insist Defendant failed to investigate, failed to
 18 inform (of settlement offers) and, failed to defend and - Defendant will respond to these
 19 arguments. However, Defendant again asks this Court to note that Plaintiffs' obvious failure to
 20 address most of the points and law raised by Defendant in its Counter-Motion, regarding the
 21 existence of a 'genuine dispute'/reasonable basis, and consider same a tacit admission that
 22 Plaintiffs' have no response to these arguments. Moreover, Defendant must also ask this Court to
 23 note the glaring absence, in Plaintiffs' Opposition, of any discussion of **how Defendant was**
 24
 25

26 ⁴ From Defendant's review, Plaintiffs' only mention this issue when they acknowledge the
 27 standard from *Powers v. United Services Auto Ass'n*, 962 P.2d 596 (1998) that, to establish a bad faith
 28 claim, the Plaintiff must establish that there was no reasonable basis for denying coverage. *See Plaintiff's*
Opposition p. 15, lines 19-24.

1 **unreasonable in its coverage position.** Again, this omission too must also serve as further proof
 2 that Plaintiffs' have no response to this basic argument of Defendant's summary judgment and
 3 highlights the weakness of their arguments opposing the instant Motion.

- 4 1. *Plaintiff cites to standards for bad faith that are either non-binding or, inapplicable*
 5 *to the case at bar as the correct standard is merely whether UAIC acted reasonably*
 6 *and/or whether its denial was based upon a reasonable dispute as to coverage, from*
 7 *the facts known at the time.*

8 As stated in Opposition to Plaintiffs' Motion for Summary Judgment (*Document No. 90,*
 9 *herein*), Plaintiffs' attempt to utilize non-binding or, inapplicable case law to the instant matter.
 10 Defendant asserts, again, that much of the case law cited by Plaintiffs' is simply inapplicable
 11 here and fails to cite the correct standard. Rather, Defendant maintains that the correct standard,
 12 from the Allstate v Miller and Guebara holdings is that the key to a bad faith claim is **whether or**
 13 **not the insurer's decision regarding coverage is reasonable** and, that when the insurer's
 14 actions are reasonable, the Court can decide so as a matter of law and dismiss extra-
 15 contractual claims.

16 For their Opposition, Plaintiffs' cite to a West Virginia opinion, Shamblin v. Nationwide
 17 Mut. Ins. Co., 396 S.E. 2d 766 (W.Va. 1990) suggesting an insurer is strictly liable for insurer
 18 bad faith. However, as this Court plainly knows this precedent is not binding on this Court and,
 19 moreover, does not accurately set forth the standard for insurer bad faith liability in Nevada.
 20 Accordingly, that case and, argument, is of little use in the case at bar. Moreover, the Shamblin
 21 case and, several California decisions relied upon by Plaintiff⁵, are distinguishable for the simple
 22
 23

24 ⁵ Defendant must note that Plaintiffs' rely on California and, other out-of-state, precedent, but
 25 seem to object when Defendant does so. However, it must be noted that Defendants have only noted
 26 California decisions, not for applicable law, but only for application of similar law to factual situations
 27 more in line with the case at bar to deepen the discussion and, understanding of the issues. This is
 28 obviously useful because some out of state law is better developed than Nevada's and, as such, more
 situations have been confronted. Plaintiffs' on the other hand, have relied on out of state precedent for
 applicable law which, of course is simply non-binding.

1 reason that *all* of those cases involved instances where *there was no dispute as to a policy even*
 2 *being in force* (and, therefore, the loss occurring during a policy term) and the insurers had failed
 3 to settle the claim within limits, thus exposing the insureds to excess judgments. Accordingly,
 4 the standards applied in those cases are immediately distinguishable from the case at bar where
 5 there was a genuine dispute as to the *existence of a policy itself at the time of loss*.
 6

7 Indeed the California precedents cited by Plaintiffs' all state merely that an insurer who
 8 failed to settle within an insured's policy limits, may later be responsible for the detriment
 9 caused by the insurer's breach of the covenant of good faith and fair dealing. See Comunale v
 10 Traders & General Ins. Co., 50, Cal.2d 654, 328 P.2d 198; Crisci v. Sec. Ins. Co., 66 Cal.2d 425
 11 (1967); Johansen v Calif. State Auto. Assn. Inter-Ins. Bureau, 538 P.2d 744 (1975). Again, while
 12 this may be a correct recitation of the law— as it applies to traditional “third-party” defense
 13 claims made against an insured when a policy is *in force* – it does not have application to the
 14 case at bar where *no policy was in effect*. This is evident from a review of the Crisci, Comunale,
 15 and Johansen decisions wherein there was *no question as to a policy being in force*⁶ and,
 16 moreover, there existed evidence that the insurer had no reasonable defense for the insured to
 17 refuse a settlement offer within the policy.
 18

19 The same problem arises with the other cases cited by Plaintiff. For instance, Plaintiff
 20 cites to Powers v.U.S.A.A., 114 Nev. 690 (1998), for the proposition that a quasi-fiduciary
 21 relationship exists between an insurer and insured. Once again, however, this is a correct
 22 interpretation *when a policy in force*, but simply does not apply to the situation at bar. Further,
 23 Plaintiff places much reliance upon Landow v. Medical Ins. Exch. of Cal., 892 F. Supp. 239
 24 (1995) for the proposition that an insurer could be held liable for harm caused to an insured by a
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1 failure to settle a claim prior to litigation. However, in that case there was no issue as to
 2 coverage or of a policy being in force. In fact, in Landow the parties *acknowledged coverage*
 3 *was in effect* and merely disagreed over whether the insurer should subject an insured to the
 4 stress of litigating the claim. Id. Accordingly, that case in no way stands for the proposition that
 5 UAIC would have owed such a duty to Lewis, here, when there was *no evidence at the time that*
 6 *a policy was even in effect.*
 7

8 Additionally, Plaintiff cites to in Pemberton v. Farmers Ins. Exch., 109 Nev. 789, 858
 9 P.2d 380 (1993), broadly, for the proposition that Nevada established standards for insurers in
 10 Uninsured or Underinsured motorist coverage claims and, also, for the proposition that ‘insurers
 11 have a duty to investigate.’ Whether or not that case stands for those propositions, it is clear that
 12 in that case the Nevada Supreme Court held that a claim for insurance bad faith *does not accrue*
 13 *until the underlying contractual action is resolved.* Id. As such, the Court there felt the insurer’s
 14 duties did not accrue to the insured until *legal entitlement to benefits was established.* Here, the
 15 Plaintiff’s have yet to prove a policy in force on the date of loss (and, therefore, legal
 16 entitlement) and, in fact, one Judge has already found that there was not. As such, this case also
 17 does not lend Plaintiff support for the proposition that UAIC committed any actionable bad faith
 18 in this case.
 19

20 Finally, the Plaintiff also cites to and, relies on, Allstate v. Miller, 212 P.3d 318 (2009),
 21 for the proposition that the implied covenant of good faith and fair dealing included a duty to
 22 notify of settlement offers. Further, Plaintiff relies on Miller for the proposition that an “insurer
 23 must give equal consideration to the insured’s interest” and act as a prudent insurer “without
 24 policy limits.” However, Plaintiffs’ again fails to address the fact that, in Miller, there was *simply*
 25
 26

27 (Cont.)

28 ⁶ The Comunale and Johansen cases did involve an issue of coverage under the policy, which was resolved against the insurer, but they are dissimilar to this case where UAIC had a reasonable belief there

1 *no question as to whether a policy was in effect.* This is an important factor that distinguishes this
 2 case from the one at bar as the implied covenant of good faith and fair dealing necessarily *flows*
 3 *from the existence of a valid policy.*

4 Accordingly, the question becomes, when, as here, the Defendant maintains it reasonably
 5 believed no policy was in force, based on the facts known at the time, how could it have
 6 breached its obligations to its insured? Defendant argues that the reasoning in Miller, as applied
 7 to an insurer's consideration of insured's interest in regard to a settlement demand, is in regard to
 8 circumstances *when a policy is in force*. Obviously, the considerations are different when no
 9 policy exists. For example, in such a case as existed here, *do Plaintiffs' propose the Defendant*
 10 *should have paid the policy limits – even without a policy in force – on the off chance, almost 3*
 11 *years later, an insured would suddenly claim he thought his renewal was ambiguous?* Following
 12 this logic to its reasonable extension would certainly not serve public policy as it would bankrupt
 13 every insurer doing business in the state. Insureds could simply fail to pay for new policy terms,
 14 knowing their insurer would need to honor and pay all claims on the speculative chance, some
 15 time in the future, an insured may claim ambiguity in the renewal and succeed in having a policy
 16 retroactively implied. The fact is an insurer is under no duty to speculate as to any possible
 17 argument that a claimant or insured might advance in the future – only the facts and
 18 circumstances known or, reasonably knowable, at the time. Accordingly, Plaintiffs' argument
 19 makes little practical, legal or, common, sense and should thus be disregarded.

20 This conclusion is confirmed by Allstate v. Miller *itself* which stands for the proposition
 21 that Nevada has *follows the genuine dispute doctrine*, as set forth in Guebara v. Allstate
 22 Insurance Company, 237 F.3d 987, 992 (9th Cir. 2001), and reviews insurers actions under a
 23 reasonableness standard based on the facts known at the time. The Court in Allstate v Miller,

24 _____ (Cont.)
 25 was no policy in force and, not merely an argument against coverage for the loss.
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ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 stated:

2 **"When there is a genuine dispute regarding an insurer's legal obligations, the**
 3 **district court can determine if the insurer's actions were reasonable. See Lunsford v.**
 4 **American Guarantee & Liability Ins. Co., 18 F.3d 653, 656 (9th Cir. 1994) (interpreting**
 5 **California law); CalFarm Ins. Co. v. Krusiewicz, 131 Cal. App. 4th 273, 31 Cal. Rptr. 3d**
 6 **619, 629 (Ct. App. 2005) (holding that if an insurer's reasonableness depends on legal**
 7 **precedent, then the issue is reviewed de novo). This court reviews de novo the district**
 8 **court's decision in such cases and evaluates the insurer's actions at the time it made**
 9 **the decision. Cal Farm Ins. Co., 31 Cal. Rptr. 3d at 629.**

10 In Homeowners Ass'n v. Associated Internat. Ins. Co., 90 Cal. App. 4th 335, 108 Cal.
 11 Rptr. 2d 776, 783 (Ct. App. 2001), the California Court of Appeals held that a bad-faith
 12 claim requires a showing that the insurer acted in deliberate refusal to discharge its
 13 contractual duties. **Thus, if the insurer's actions resulted from "'an honest mistake,**
 14 **bad judgment or negligence," then the insurer is not liable under a bad-faith**
 15 **theory. *Id.* (quoting Careau & Co. v. Security Pacific Business Credit, Inc., 222 Cal. App.**
 16 **3d 1371, 272 Cal. Rptr. 387 (Ct. App. 1990)); see Pemberton v. Farmers Ins.**
 17 **Exchange, 109 Nev. 789, 793, 858 P.2d 380, 382 (1993) (holding that bad faith exists**
 18 **when an insurer acts without proper cause); Feldman v. Allstate Ins. Co., 322 F.3d 660,**
 19 **669 (9th Cir. 2003) (interpreting and applying California law and holding that to prove**
 20 **bad faith, plaintiff must show insurer unreasonably or without cause withheld benefits**
 21 **due under the policy).**

22 ***Id.* at 317, 329. (emphasis added) As can be seen from a full reading of the Miller decision, the**
 23 **case actually supports Defendant's position. Namely, that a court can review an insurer's actions**
 24 **– at the time they were made – to determine if they were reasonable as a matter of law.**
 25 **Moreover, that 'bad faith' cannot be premised upon an 'honest mistake, bad judgment or**
 26 **negligence.' Here, Defendant argues, UAIC actions at the time must be found to have been**
 27 **reasonable and, certainly were not in 'bad faith' based on a reasonable review of the record.**

28 Further, it is clear that other Nevada decisions have followed this reasoning and held that
 "[b]ad faith is established where the insurer acts unreasonably and with knowledge that there was
 no reasonable basis for its conduct." Guarantee National Insurance Company v. Potter, 112 Nev.
 199, 206, 912 P.2d 267, 272 (1996). In American Excess Insurance Company v. MGM, 102
 Nev. 601, 729 P.2d 1352 (1986), the Nevada Supreme Court held that an insurer cannot be found
 liable for bad faith, as a matter of law, if it had a reasonable basis to contest coverage. The Court

1 in American Excess, supra, defined bad faith as “an actual or implied awareness of the absence
 2 of a reasonable basis for denying benefits of the policy.” Id. at 605. The Court stated that
 3 “because we conclude that AEI’s interpretation of the contract was reasonable, there was no
 4 basis for concluding that AEI acted in bad faith.” Id. In applying Nevada law, the United States
 5 District Court in Pioneer Chlor Alcholi Company, Inc. v. National Union Fire Insurance
 6 Company, 863 F. Supp. 1237 (D. Nev. 1994) also stated that where a legitimate contractual
 7 dispute exists, the insurer “is entitled to its day in court on such an issue without facing a claim
 8 for bad faith simply because it disagrees with [the insured].” Id. at 1250.

10 Accordingly, from the Allstate v Miller holding and, other decisions cited herein, it is
 11 clear that the key to a bad faith claim is **whether or not the insurer’s decision regarding**
 12 **coverage is reasonable** and, that when the insureds actions are reasonable, the Court *can decide*
 13 *so as a matter of law and dismiss the extra-contractual claims*. Moreover, that the insurer’s
 14 decisions must be reviewed from the facts *at the time it made the decision* – not in hindsight.
 15 Here, Plaintiffs claims that they are entitled to \$3.5 million dollar default judgment, far in excess
 16 of Mr. Lewis’ \$15,000 policy limits, apparently because of Defendant’s ‘bad faith’ for their
 17 failure to defend under Lewis’ policy. However it seems clear that Defendant’s actions related to
 18 a policy which all evidence shows was not in force at the time - by plaintiff’s admission **no**
 19 **payment was made between June 12, 2007 and July 10, 2007** – that Defendant’s actions were
 20 reasonable. Moreover, there is **no evidence** that the ‘ambiguity claim’ was ever made known to
 21 UAIC prior to March 2010 when, during this litigation, the Plaintiffs’ first advanced this
 22 argument after a first theory (that UAIC lost a timely payment) was discarded. As such, now,
 23 years later, while an ambiguity is claimed in the renewal, and while Defendant may be found to
 24 owe coverage on an implied contract, the Plaintiffs’ must admit that a *genuine dispute* existed as
 25 to coverage for this loss *at the time*. Plaintiffs’ tacit acknowledgement of this fact is evident by
 26 their failure to *even discuss*, much less oppose, Defendants citation to the case law regarding this
 27 genuine dispute.
 28

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 2. *UAIC did reasonably investigate the claim and, based on the information known at*
 2 *the time, reasonably believed no policy was in force*

3 Plaintiffs' appear to assert three basis for Defendant's alleged bad faith in their
 4 Opposition to the present Motion. The first basis is that Defendant 'failed to investigate the
 5 claim.' Defendant disputes this charge and has cited facts in evidence in support of a reasonable
 6 investigation under the circumstances at the time. In short, Defendant confirmed with its own
 7 underwriting department, the insured's agent and, attempted to contact the insured himself – and
 8 found no policy in effect at the time of loss. Moreover, never was alleged ambiguity in the
 9 renewal **ever noted**. Accordingly, Defendant argues it did all it reasonably could be expected to
 10 do under the circumstances to investigate whether coverage existed and, thus, there is no bad
 11 faith.

12 First, Defendants acknowledge the duty to investigate, but maintain that such a duty
 13 necessarily must be reviewed in the context of the nature of the issue presented (i.e. investigation
 14 coverage for claim, extent of a claimant's damages or, whether a policy was even in force). This
 15 is because in a situation, where, as Defendant argues existed here, the insurer finds no policy was
 16 in effect, further investigation of the underlying claim would be irrelevant. Furthermore, the
 17 Nevada Supreme Court in Allstate v Miller, cited above, specifically held that a Court "evaluates
 18 the insurer's actions at the time it made the decision" and, accordingly, this should serve as the
 19 standard for any claim/coverage investigation as well. In this case, much of Plaintiffs' arguments
 20 seem based upon the fact UAIC failed to investigate "Nalder's claims" (i.e. Cheyanne Nalder's
 21 injuries and, Lewis' liability for causing same). However, Defendant argues this is not the
 22 correct standard here where the reasonable investigation revealed that there was no policy in
 23 effect. It is axiomatic that insurers first determine if coverage exists for a claim when claim is
 24 presented. If it finds no coverage exists for the claim, the investigation ends (unless, of course,
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ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 investigation of the facts of the claim are necessary to examine coverage, *e.g.* for permissive use
2 etc.). Here, as the investigation by UAIC revealed there was **no policy in force** – investigation
3 into Cheyanne Nalder’s injuries or, Lewis’ liability, would have served no purpose and was
4 simply not UAIC’s duty under the circumstances.

5 Plaintiffs cite broadly to Pemberton v. Farmers Ins. Exch., 109 Nev. 789, 858 P.2d 380
6 (1993), for the proposition that Nevada established standards for insurers in Uninsured or
7 Underinsured motorist coverage claims and, also, for the proposition that ‘insurers have a duty to
8 investigate.’ Regardless of the accuracy of this assertion, Defendant has stated it acknowledges
9 there is a duty to investigate. Certainly, however, a “reasonableness standard” certainly must be
10 applied and, as such, such a duty must be reviewed in the context of the issue involved and, the
11 information available at the time. This concept is actually fairly well explored in the three cases
12 cited by Plaintiffs on this issue, yet not discussed, and as will be shown – *actually support the*
13 *Defendants’ position.*

14
15 For instance, Plaintiffs cite to Troutt v. Colorado Western Ins. Co., 246 F. 3d 1150 (9th
16 Cir. 2001), for the proposition that “insurers have a duty to investigate coverage in a prompt
17 fashion.” A review of that decision reveals that in that case the insured had alleged the insurer
18 had failed to investigate her claim (regarding coverage for a potentially ‘alcohol related loss’
19 under a policy insuring such losses for a tavern), but that the trial Court found the insurer had not
20 failed to investigate and, this finding was affirmed on Appeal. In that case, the issue was whether
21 a claim (for a person severing his fingers while chopping wood for a tavern) was covered under a
22 tavern’s liquor liability policy. The record revealed that after the insurer was notified of the loss
23 it hired an independent adjustor to investigate and all witnesses, including the insureds, denied
24 alcohol being a factor in the loss. Based in part on this investigation, the insurer there denied the
25 defense of the claim. Later, however, deposition testimony suggested alcohol indeed may have
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ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 been a factor in the loss and the trial court noted this in its judgment. After a judgment was
2 entered against the insured, the insureds sued the insurer for coverage. In reviewing the decision
3 finding that, while there was coverage, there was no breach of the duty to defend or, investigate,
4 the Court's ruling is instructive in the case at bar. Specifically, the Court in Troutt did hold that
5 insurers have the duty to investigate claims in a prompt fashion, but that the investigation must
6 be reasonable based on all available evidence. Id. at 1162. In applying these rules to that case,
7 the Court in Troutt found that by the time the insured's had requested a defense under the policy,
8 the insurer had already conducted a three month investigation that had revealed alcohol had *not*
9 been a factor in the loss. Id. at 1162. Therefore, the Court held that though the insurer's decision
10 *was later found to be erroneous*, the investigation had been done promptly and because the facts
11 gathered at the time showed there was no coverage, the insurer did not breach its duty to
12 investigate. Id. at 1162.

15 In Tynes v. Bankers Life Co., 730 P. 2d 1115 (MT. 1986), also cited by Plaintiff for the
16 principle that "insurers have a duty to investigate a claim promptly", similarly lends to the
17 discussion herein. In that case, the insurer had denied benefits, under a group health insurance
18 policy, to a person claiming he was not an "employee" of the insured company and, as such, was
19 owed no benefits. However, in upholding a verdict against the insurer for coverage and, bad
20 faith, the Court found there was ample evidence to support the jury's verdict because the
21 insurer's *initial investigation had actually found the Plaintiff was an employee* and, indeed, the
22 insurer had paid benefits under the policy, before later changing its coverage decision after
23 subsequent investigations. Id. at 1123-24.

25 The final case relied on by Plaintiff, in regard to its claims that UAIC failed to investigate
26 the claim here, is KPFF, Inc. v. Cal. Union Ins. Co., 66 Cal. Rptr. 2d 36 (CA. 1997), where the
27 Court there affirmed an insurer's decision to deny coverage and defense of claims of seismic
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ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 defect against its an insured, a structural engineering firm. In that case, the insured had been
2 hired to draft plans for the construction of a hotel. Later, certain issues arose as to defects in the
3 building (particularly concrete cracking related to tension cables) and the insured was sued and,
4 the insurer defended under its 'claims made policy.' After that original action was settled, a
5 second action was filed which now alleged seismic defects which had contributed to further
6 damage to the building's concrete slabs. The defendant insurer, who no longer insured the
7 engineering firm, accepted the "non-seismic claims" - as they related back to the prior notice and
8 claim - but denied coverage and defense for the seismic claims, stating they had not been part of
9 the original claim. The engineering firm and their new insurer sued the prior insurer for denying
10 coverage of those claims. The issue for the Court was whether the allegations in the first
11 complaint (which did not specifically reference seismic defects, but claimed structural damage)
12 and, a status letter of the engineering firm's counsel (informing the insurer that the building
13 owners were conducting extensive testing and *may* have other claims) was sufficient to put the
14 insurer on notice of the seismic claims and, whether their investigation had been sufficient. In
15 affirming the finding of no coverage and, no breach of the duty to investigate, the Court stated as
16 follows:
17
18

19 "The duty to investigate applies only to performance of
20 contractual duties under the insurance policy since it is an aspect to
21 the covenant of good faith and fair dealing. (*Egan v. Mutual of*
22 *Omaha Ins. Co., supra*, 24 Cal. 3d at p. 817.) An insurer thus has no
23 duty to investigate matters which are not relevant to the
24 performance of its contractual obligation to properly handle the
25 insured's claim according to the terms of the policy. (See *California*
26 *Shoppers, Inc. v. Royal Globe Ins. Co., supra*, 175 Cal. App. 3d at p.
27 37.) As we have noted, the Moran claim--the only claim reported
28 during the policy period--was not based on structural design
deficiencies of the building but on expenses Moran had incurred as
general contractor in repairing certain [***27] cable failures. To
properly handle the Moran claim, the insurer had no need to
investigate matters outside the scope of these repairs, and,
accordingly, the report of cracks and sagging floors, which it
received from Mr. Knox, did not entail a duty of further inquiry.

Furthermore, California Union was under no duty to investigate matters relating to coverage under the awareness provision until it received the written notice that the provision required. We have concluded that the Moran pleadings did not suffice as notice of a potential seismic claim under the awareness clause. Without having received the written notice which would trigger coverage under the awareness provision, the insurer had no duty to inquire on its own of circumstances that might give rise to a claim (cf. [*978] Paulfrey v. Blue Chip Stamps (1983) 150 Cal. App. 3d 187, 199-200 [197 Cal. Rptr. 501] [no duty to investigate until insured complied with claims procedure]), and it cannot be charged with constructive notice of circumstances it had no duty to investigate.”

Id. at 45.

In the instant case, it seems clear that, from the facts present at the time Plaintiffs’ made demand against Lewis, UAIC promptly investigated and, found there was simply no policy in effect for that date of loss based upon a reasonable investigation of this issue. Moreover, no facts were ever found or, presented, at the time regarding an alleged ambiguity. The fact is, contrary to Plaintiff’s arguments that UAIC did ‘no investigation’, UAIC investigated this coverage issue twice before declining coverage and defense of the underlying suit. UAIC investigated coverage **when notified of the loss** by immediately confirming the lapse through their underwriting department. This was done when Lewis initially called to check coverage (on July 13, 2007) as documented by the underwriting note, whereupon customer service representative Eric Cook informed him the loss occurred in a period of no coverage after confirming this with the Underwriting Department. *See Deposition of Eric Cook attached hereto as Exhibit ‘F’, p. 36, Lines 17-23, p. 53, lines 4- 10, and copy of Underwriting notes confirming call with Lewis, attached hereto as Exhibit ‘I’ to deposition of Giselle Molina, Exhibit ‘B’, hereto*⁷. Next, when Counsel for the Nalders’ made a formal claim upon UAIC, the Company double-checked coverage with their underwriting department **and, contacted the insurance agency, U.S. Auto,**

⁷ This same note was used at Eric Cook’s deposition, but Plaintiff never supplied the Exhibit to the court reporter.

1 who confirmed Lewis had not paid his premium until July 10, 2007 and provided a copy of
 2 the receipt for that transaction. *See Exhibit 'C', attached to Declaration of Denise Davis,*
 3 *Document No. 94, herein.* Additionally, UAIC attempted to contact Lewis, but was unsuccessful.
 4 *See copy of deposition testimony of Jan Cook, attached hereto as Exhibit 'G', p. 34, lines 8-19,*
 5 *p. 35, lines 7-18, p. 50, lines 11-14, p. 56, lines 2-15, p. 68, lines 13-16, p. 72, lines 14-20; See*
 6 *Copy of Deposition testimony of Giselle Molina, attached hereto as Exhibit 'B', p. 30, lines 4-5,*
 7 *and see copy of UAIC's claims notes, attached as Exhibit '4' to the deposition of Giselle Molina,*
 8 *Exhibit 'B', hereto.* As such, once it was reasonably confirmed there was no coverage (i.e. no
 9 policy in effect), any further investigation of the claim would have been irrelevant and of no
 10 consequence and, as such, the Defendant had no such duty here.

12 In this way, while Plaintiffs' continue to complain UAIC did "no investigation", the facts
 13 tell a different story. UAIC conducted a reasonable investigation under the circumstances and
 14 found there was no policy in force which was confirmed not only by their underwriting
 15 department – but the insured's own agent. Moreover, UAIC tried to contact Lewis, but to no
 16 avail. Accordingly, like the insurer in Troutt, discussed above, UAIC conducted a prompt
 17 investigation (immediately upon notice of the claim and, again when demand by Plaintiffs' was
 18 made) and found no coverage. The fact that UAIC's decision may now, nearly six years later, be
 19 shown to be erroneous does not mean that UAIC breached its duty as there was no information at
 20 the time suggesting Lewis was claiming an ambiguity in the renewal. Accordingly, *unlike* the
 21 insurer in Tynes, discussed above, none of UAIC's investigations *ever* revealed coverage. The
 22 fact is, Plaintiffs' must admit that the record reveals that the **first time** an ambiguity in the
 23 renewal was raised as a possible argument for coverage was in about March 2010 – *during this*
 24 *litigation.* In fact, the record reveals this was actually the second argument for coverage raised by
 25 Plaintiffs' as, initially, Plaintiffs were apparently claiming Lewis had in fact made his payment
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1 and UAIC lost it. *See Exhibits C' and 'D' to Defendant's Cross-Motion for Summary Judgment,*
2 *Document no. 89, herein.* Accordingly, UAIC could not have possibly guessed at some future
3 legal argument, based on ambiguity, that Plaintiffs' themselves did not raise until March 2010.
4 Moreover, this is not the standard for an insurer. As the Court in KPFF noted above, an insurer
5 has no duty to investigate matters which have a 'speculative possibility' when investigating a
6 claim. KPFF, Inc., 66 Cal. Rptr. 2d 36, 44. Here, like the insurer in KPFF could not foresee the later
7 seismic claims, here as well UAIC reasonably investigated the loss, determined there was no
8 coverage and, had no duty to investigate the *speculative possibility* the insured would claim
9 ambiguity in a renewal when that was never raised to UAIC at the time.
10

11 In sum, based on all the evidence available at the time⁸, after investigating coverage,
12 UAIC denied coverage for the loss based upon a reasonable basis that there was no policy in
13 force and, therefore, no coverage for the loss. Under the case law cited herein, this cannot be a
14 basis for bad faith remedies against UAIC. This is a simple disagreement about the coverage for
15 a loss where the putative insured, Lewis, *admitted he made no timely payment for his new policy*
16 and only in this case claimed an ambiguity in the renewal. At the time of the claim UAIC
17 reviewed coverages, confirmed the payment was late with the insurance agent and, tried to
18 contact Lewis. Based on the information available to it at the time, UAIC investigated and made
19 a reasonable decision that there was *no policy in effect*.
20
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22 ///

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24 ///

1 3. *UAIC did not breach its duty to notify of settlement demands because Allstate v Miller*
 2 *should not be retroactively applied, alternatively, where no policy was in effect and,*
 3 *further in the alternative Lewis could not have satisfied the demand on his own*
 4 *anyway.*

5 For their second 'basis' supporting bad faith conduct by UAIC, Plaintiffs' argue UAIC
 6 breached its duties by failing to inform Lewis of the settlement demand made by Plaintiffs under
 7 the ruling in Allstate v Miller. However, Defendant believes Plaintiffs' argument must fail for
 8 three reasons. First, Defendant believes that, under prevailing case law, the decision of the
 9 Nevada Supreme Court in the Miller case in 2009 should not be retroactively applied to UAIC's
 10 actions in 2007 as UAIC had no way to foresee the new standard set forth in the Miller decision.
 11 In the alternative, Defendant also argues that, if this Court agrees UAIC reasonably relied on
 12 their coverage determination that no policy was in effect, then again, there should be no breach
 13 of the duty to inform. Again, as stated in regard to Plaintiff's other arguments, without a valid
 14 policy in effect or, there exists no implied covenant of good faith and fair dealing from which the
 15 duty to inform springs. Accordingly, without a policy, UAIC had no such duty to inform. Finally,
 16 and also in the alternative, Defendant argues that Lewis had no chance to pay the settlement and,
 17 as such, the failure to inform was not prejudicial.

18
 19 a. The ruling in Miller should not be retroactively applied to UAIC in the case at
 20 bar as the Defendant could not foresee the new precedent and substantial
 21 prejudice would accrue to Defendant.

22 As stated, Plaintiff relies on Allstate v. Miller, 125 Nev. 300, 212 P.3d 318 (2009), for its
 23 argument that UAIC breached the implied covenant of good faith and fair dealing by failing to
 24 notify Lewis of settlement demand. While Defendant acknowledges the Court in Miller did hold
 25 that the implied covenant of good faith and fair dealing included a duty to notify of settlement

26 (Cont.)

27 ⁸ The Nevada Supreme Court in Allstate v Miller, cited above, specifically followed the
 28 California case that held that a Court "evaluates the insurer's actions at the time it made the decision."
 Citing Cal Farm Ins. Co., 31 Cal. Rptr. 3d at 629

1 offer, the Plaintiff fails to note that the Miller case was only released in July 2009 – fully 2 years
 2 after the alleged actions by UAIC in this case occurred. Accordingly, under prevailing case law,
 3 Defendant asks that this Court not apply the Miller decision *retroactively* as same would cause
 4 undue prejudice to Defendant who *could not have foreseen the precedent*.

5 A very similar issue was addressed by the Nevada Supreme Court in Breithaupt v. USAA
 6 Property & Casualty Co., 110 Nev. 31, 867 P.2d 402 (1994), where the Court did not apply a new
 7 rule of law retroactively against an insurer. Specifically, in Breithaupt the insured sought a
 8 finding that the insurer had breached a provision of a new statute requiring insurers to offer
 9 Uninsured motorist ("UM") protection to insureds and, as such, the Court should reform the
 10 policy to include such UM coverage. Moreover, the insured had also argued a prior ruling of the
 11 Supreme Court had been wrongly decided and, asked the Supreme Court to specifically overrule
 12 it. In affirming judgment for the insurer, the Nevada Supreme Court relied on prevailing
 13 precedent that a new rule of law should not be applied retroactively. Specifically, the Court in
 14 Breithaupt stated, as follows:

17 Furthermore, even if this court concludes that Quinlan was wrongly
 18 decided, it does not follow that this court would retroactively impose a
 19 greater burden of disclosure upon insurers. In determining whether a new
 20 rule of law should be limited to prospective application, courts have
 21 considered three factors: (1) "the decision to be applied nonretroactively
 22 must establish a new principle of law, either by overruling clear past
 23 precedent on which litigants may have relied, or by deciding an issue of first
 24 impression whose resolution was not clearly foreshadowed;" (2) the court
 25 must "weigh the merits and demerits in each case by looking to the prior
 26 history of the rule in question, its purpose and effect, and whether
 27 retrospective operation will further or retard its operation;" and (3) courts
 28 consider whether retroactive application "could produce substantial
 inequitable results." Chevron Oil Co. v. Huson, 404 U.S. 97, 106-07, 30 L. Ed.
 2d 296, 92 S. Ct. 349 (1971); ³ [*36] Fain Land & Cattle Co. v. Hassell, 163
 Ariz. 587, 790 P.2d 242, 251 (Ariz. 1990); [**406] Matter of Estate of
McDowell, 245 Kan. 278, 777 P.2d 826, 829 (Kan. 1989); Marinez v.
Industrial Comm'n of State, 746 P.2d 552, 556 (Colo. 1987); [***10] State,
City of Bozeman v. Peterson, 227 Mont. 418, 739 P.2d 958, 960 (Mont.
 1987); Lopez v. Maez, 98 N.M. 625, 651 P.2d 1269, 1276 (N.M. 1982); 21

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 C.J.S. *Courts* § 148 (1990); see Truesdell v. Halliburton Co., Inc., 754 P.2d
 2 236, 239 (Alaska 1988) (court applies similar four-part test). The overruling
 3 of a judicial construction of a statute generally will not be given retroactive
 4 effect. United States v. Estate of Donnelly, 397 U.S. 286, 295, 25 L. Ed. 2d
 5 312, 90 S. Ct. 1033 (1970) ("In rare cases, decisions construing federal
 6 statutes might be denied full retroactive effect, as for instance where this
 7 Court overrules its own construction of a statute."); 20 AM. JUR.
 8 2D *Courts* § 234 (1965).

9 The instant case falls within the general rule. Retroactive application
 10 of NRS 687B.145(2) would not improve pre-1990 consumer awareness of the
 11 benefits of purchasing the optional UM coverage. At this late date, insurers
 12 do not have the opportunity to comply retroactively with a new and more
 13 demanding standard of notice. As a result, insurers such as USAA who
 14 complied with Nevada's pre-1990 insurance law are nonetheless subject to
 15 potentially large liabilities for failing to meet a standard pronounced years
 16 after the fact. Such a result is highly inequitable to insurers and does nothing
 17 to promote the objectives of NRS 687B.145(2). Thus, even if *Quinlan* were
 18 wrongly decided, we would not give retroactive effect to its overruling.

19 Id. at 35-36, 405-406.

20 Defendant argues that the same test and, reasoning, as noted above from the *Breithaupt*
 21 decision, should be applied in the case at bar such that the *Miller* decision *should not be applied*
 22 *retroactively* against UAIC. First, in terms of the first prong of the test, it is clear that the *Miller*
 23 decision clearly established a new principle of law on an issue of first impression not previously
 24 foreshadowed. Specifically, the Court in *Miller* clearly stated it was establishing a new rule of
 25 law⁹. In applying the second prong, looking at the history of the rule and its purpose and whether
 26 application retroactively would 'further or retard its operation', it seems clear that applying it
 27 retroactively would serve no purpose, save to punish UAIC for failure to comply with a rule that
 28 it had no reason to know would later become law in Nevada. Accordingly, also under the third
 prong of the test, whether retroactive application could produce substantial inequitable results,
 UAIC believes this prong clearly weighs in favor of no retroactive application. For the Court

1 here to hold UAIC's action, in July 2007, under a rule of law set by precedent in July 2009,
 2 would cause an inequitable result. Here, Plaintiffs' will argue UAIC's failure to comply with the
 3 yet unannounced rule of law subjects it to bad faith -- resulting in a multi-million dollar judgment
 4 for Plaintiffs'. Defendant believes this is clearly inequitable and, as such, this rule of law should
 5 not be applied retroactively.

6 Accordingly, under the general rule for application of new rules of law and, indeed the
 7 factors for the test for same relied on in Breithaupt, Defendant begs this Court not to
 8 retroactively apply a the rule of law, stated in Miller, to UAIC's actions 2 years prior, as the
 9 result would clearly be inequitable and unfair.

10
 11 b. The duty to inform, under Miller, is inapplicable, where, as here there was a
 12 good faith dispute over the existence of a policy in effect

13 Although the Court in Miller did hold that the implied covenant of good faith and fair
 14 dealing included a duty to notify of settlement offers. However, Plaintiff fails to address the fact
 15 that, in Miller, there *was simply no question as to whether a policy was in effect*. This is an
 16 important factor that distinguishes the Miller case from the case at bar as the implied covenant of
 17 good faith and fair dealing necessarily *flows from the existence of a valid policy* and here UAIC
 18 has always maintained no such policy existed and this position was reasonable.

19 Besides being distinguishable on that point, it cannot be understated that Allstate v Miller
 20 also stands for the proposition that Nevada has *followed the genuine dispute doctrine*, as set forth
 21 in Guebara v. Allstate Insurance Company, 237 F.3d 987, 992 (9th Cir. 2001), as the Court in
 22 Allstate v Miller, stated that "When there is a genuine dispute regarding an insurer's legal
 23 obligations, the district court can determine if the insurer's actions were reasonable. Id. at
 24

25
 26 (Cont.)

27 ⁹ We now join these jurisdictions and conclude that an insurer's failure to adequately
 28 inform an insured of a settlement offer is a factor for the trier of fact to consider when evaluating
 a bad-faith claim. Miller at 310.

1 317, 329. (emphasis added). Accordingly, the failure to inform of settlement offers must be
 2 viewed under this rule as well.

3 That is, the implied covenant of good faith and fair dealing (including the duty to notify
 4 of settlement offers) *can only flow* from a valid policy (contract). Here, UAIC maintains that,
 5 even if it ultimately held wrong on its determination no policy was in force – the record shows
 6 that this was a reasonable decision based on facts known at the time. Accordingly, UAIC should
 7 not be liable for failing to notify of settlement demands, under said implied covenant of good
 8 faith, if there was a reasonable basis for denying a policy in effect.
 9

10 The soundness of this argument is supported by a close examination of the basis for the
 11 decision in Miller. In Miller the insured had claimed the insurer had failed to notify him of
 12 settlement offers and/or give him a chance to contribute to same – while the insurer claimed it
 13 had adequately informed the insured of the offers. It is clear that the logic for the decision in
 14 Miller is that the duties of an insurer in regard to settlement demand flow from the fact that the
 15 insurer, under a valid policy, has a right to control the defense and, settlement of the claim.
 16 Specifically, the court in Miller stated:
 17

18 The duty to defend contains two potentially conflicting rights: the insurer's right to
 19 control settlement discussions and its right to control litigation against the insured.
 20 14 *Couch on Insurance 3d* §§ 200:1, 203:1 (2005). Each of these contractual rights creates
 21 additional duties for the insurer. The right to control settlement discussions creates the
 22 duty of good faith and fair dealing during negotiations. *See Couch, supra*, § 203:1 (stating
 23 that the insurer's right to control settlement negotiations may create a conflict of interest
 24 between the insurer and the insured, and therefore, the insurer must act in good faith and
 25 give the insured's interests equal consideration with its own). The right to control litigation
 26 creates the duty to defend the insured from lawsuits within the insurance policy's
 27 coverage. *Couch, supra*, § 200:1.
 28

Id. at 309.

Accordingly, because if its right to control the settlement, the insurer necessarily has a duty to
 notify of settlement offers – when a policy is in effect – because the insured has a right to know

1 how the insurer values the claim, the possibility it may subject the insured to litigation, and the
2 possibility of an excess verdict, etc. Moreover, in such cases when a policy is in effect, if the
3 insurer *declines the offer*, the insured has right to know (so he/she may contribute, etc.). What is
4 clear, however, is that based on this reasoning, the insurer only has a duty to inform because –
5 only under a valid policy – the insurer would undertake the defense and settlement process – and,
6 accordingly an insured would have an expectation the insurer will pay reasonable settlement
7 demands. Therefore, where, as here, the insured has reason to know no policy was in existence,
8 that expectation does not exist and, therefore, there should be no duty to inform.

10 Alternatively, the Plaintiff is asking this Court to imply a policy – so, even should that
11 occur – this Court should not retroactively apply the covenant of good faith and dealing. As such,
12 without a valid policy in force, based on reasonable, honest belief at the time, there can be no
13 breach of the implied covenant of good faith and fair dealing for failing to notify of a settlement
14 offer – when no policy was even in force.

16 The fact is, this court can review an insurer's actions – at the time they were made – to
17 determine if they were reasonable as a matter of law. Moreover, 'bad faith' cannot be premised
18 upon an 'honest mistake, bad judgment or negligence.' Here, Defendant argues, UAIC actions at
19 the time can be found to have been reasonable and, certainly were not in 'bad faith' based on a
20 reasonable review of the record. Here, UAIC reasonably believed no policy was in force and, as
21 such, that it had no duty to notify of settlement offers and, Defendant asks this Court to review
22 same under the standard set forth in Miller and find that UIAC committed no such bad faith.
23 Moreover, the insured had no expectation to be informed of such offers with no policy in effect.

25 ///

26 ///

27 ///

1 c. UAIC's failure to inform did not prejudice Plaintiffs' because Lewis could not
 2 have satisfied the demand on his own, anyway.

3 As this Court knows, part of the reasoning behind the
 4 Court's ruling in Miller was that the insured would have a duty to notify of settlement offers
 5 such that an insured may contribute to or, satisfy, the demand on his or her own. In this case, it is
 6 clear that Lewis would not have been able to satisfy the offer regardless of whether UAIC had
 7 notified him of same and, as such, Plaintiffs' were not prejudiced by this failure to inform and,
 8 thus, UAIC should not be liable for any failure to inform.

9
 10 In a ruling by this Court, in Hicks v Dairyland Ins. Co., 2010 U.S. Dist. LEXIS 63597
 11 (U.S. Dist NV 2010), the Court ruled that, in part, the capability of the insured to pay a
 12 settlement offer was a factor in determining whether an insurer was liable for a failure to inform
 13 of a judgment. Specifically, this Court held that even where an insurer conceded it failed to
 14 inform of a settlement offer, a factor to consider was whether the insured could have satisfied the
 15 offer. The Court specifically found the Plaintiffs' in that case failed to provide any evidence that
 16 the insured could have paid the offer *even if he had known about it. Id.*

17
 18 In the case at bar, the Plaintiffs' have not presented a shred of evidence that Lewis could
 19 have satisfied their demand *even if he had been informed of same.* Moreover, there is ample
 20 evidence that, in fact, he could not have paid the offer. Specifically, at deposition, Lewis stated
 21 that around the time of this loss (July 2007) "sometimes money was tight." *See copy of Plaintiff*
 22 *Lewis' deposition, attached as Exhibit 'A', to Defendant's Opposition to Plaintiff's Motion for*
 23 *Summary Judgment, p. 54, lines 16-21.* Further, Lewis also testified he was not working at the
 24 time and his girlfriend was supporting him and, he is in debt. *See copy of Plaintiff Lewis'*
 25 *deposition, attached as Exhibit 'A', to Defendant's Opposition to Plaintiff's Motion for Summary*
 26 *Judgment, p. 112, lines 23-25, p. 113, lines 1-12.*

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 Accordingly, it seems clear that Lewis' testimony provides ample proof that it Lewis'
2 would not have been able to satisfy Plaintiffs' offer – even had he known about it. Accordingly,
3 as there was no prejudice to Lewis' for having failed to so inform him, UAIC should not be
4 liable for breach of any duty to so inform here.

5
6 4. *UAIC did not breach its duty to defend Lewis where it reasonably believed there was
no policy in effect at the time.*

7 For their final argument alleging 'bad faith' breach of the implied covenant of good faith
8 and fair dealing Plaintiffs' assert UAIC failed to defend Lewis. However, while Defendant
9 acknowledges no defense was afforded Lewis, it again asserts that, if this Court agrees
10 Defendant reasonably believed no policy was in effect, it cannot have breached the duty to
11 defend.

12
13 In Opposition to Defendant's Motion, Plaintiffs' place much emphasis on the fact that
14 Defendant cited to two California precedents, Lunsford v. American Guarantee Liab. Ins. Co.,
15 18 F.3d 653 (9th Cir. 1994), and Franceschi v Amer. Motor. Ins. Co., 852 F.2d 1217 (9th Cir.
16 1988), in support of its arguments. In so doing, the Plaintiffs show the apparent misapprehension
17 of Defendants argument. That is, Defendant actually relies on *binding Nevada precedent* which
18 Plaintiffs **fail to discuss** and, Defendant only noted the California decisions to more thoroughly
19 discuss the issues at bar. Moreover, Defendants believe that, contrary to Plaintiffs' arguments,
20 these cases are relevant to the discussion for the case at bar.

21
22 However, regardless whether this Court follows the logic in the above-noted California
23 decisions, Defendant notes that it need look no further than the Nevada Supreme Court decision
24 of United Insurance Co. v. Frontier Insurance Company, Inc., 120 Nev. 678 (2004) and or, the
25 Federal decision relying on Nevada law, Turk v. TIG Ins. Co., 616 F. Supp. 2d 1044 (2009), both
26
27
28

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 of which Defendant cited too¹⁰ and, which Plaintiffs *did not even address in their Opposition*.
 2 Again, as noted elsewhere, Defendant must ask this Court to construe Plaintiff's omission of any
 3 response to these cases as a tacit admission that it supports Defendant's position that the duty to
 4 defend is not absolute.

5 As this Court knows, a potential for coverage only exists when there is arguable or
 6 possible coverage. United Insurance Co. v. Frontier Insurance Company, Inc., 120 Nev. 678
 7 (2004.); Turk v. TIG Ins. Co., 616 F. Supp. 2d 1044 (2009). Determining whether an insurer
 8 owes a duty to defend is achieved by comparing the allegations of the complaint with the terms
 9 of the policy. Id. In United Insurance Co. v. Frontier Insurance Co., 120 Nev. 678 (2004), the
 10 Nevada Supreme court found that the insurer was not liable for breach of the duty to defend
 11 when it failed to defend a loss that **did not occur within the policy term**. Obviously, Defendant
 12 argues that this case is very similar to the case here, where UAIC maintains it reasonably
 13 believed this loss did not occur during a policy term. Similarly, in Turk v. TIG Ins. Co., 616 F.
 14 Supp. 2d 1044 (2009), the policy at issue did not list, as an additional insured, *the company* the
 15 for which the insured *was president of* and, as such, there was no possibility for potential
 16 coverage for that company (as an additional insured) and, therefore, no duty to defend.
 17 Defendant also believes the situation in that case, where an additional insured was clearly not
 18 listed on the policy, is similar to the case at bar where Defendant argues there was no policy in
 19 existence. Clearly, an insurer who looks at a policy's declarations and determines an insured is
 20 not listed must be comparable to a situation where the insurer finds no policy to even be in effect
 21 for the loss. In this way, like the insurer in Turk, it was reasonable for UAIC to believe there was
 22 no *potential for coverage*. (See discussion regarding the genuine dispute/reasonable belief
 23
 24
 25
 26

27 ¹⁰ Of note, Plaintiffs also have relied on the Frontier Ins. case in support of their Motion for
 28 Summary Judgment.

1 doctrines, above).

2 In expanding on the decisions in United Ins. v. Frontier and Turk decisions, UAIC also
 3 noted that two cases from the Ninth Circuit Court of Appeals are helpful to the analysis here and,
 4 although based on California law, one has been cited *and, relied upon by the Nevada Supreme*
 5 *Court* in the Allstate v Miller, 125 Nev. 300, 212 P.3d 318 (NV. 2009), holding, cited above. In
 6 that case, Lunsford v. American Guarantee Liab. Ins. Co., 18 F.3d 653 (9th Cir. 1994), the Court
 7 held that an insurer who investigated coverage and based its decision not to defend on reasonable
 8 construction of policy was not liable for bad faith breach of the duty to defend *even after* the
 9 Court resolved the ambiguity in the contract in favor of the insured. Similarly, in a prior case,
 10 Franceschi v Amer. Motor. Ins. Co., 852 F.2d 1217 (9th Cir. 1988) the Court again resolved an
 11 ambiguity in favor of insured, but held the insurer's position had been reasonable and granted
 12 summary judgment as to bad faith claims. Although Plaintiffs' point out that the Lunsford
 13 decision dealt with coverage for 'malicious prosecution' and the Franceschi decision concerned
 14 medical insurance and exclusions, Plaintiffs' fail to note that *the standards for the insurer in*
 15 *those cases*, under the implied covenant of good faith and fair dealing, *in regards to its defense*
 16 *obligations* are the same no matter the *type of insurance coverage*. As such, these cases cannot
 17 be so easily "distinguished" as maintained by Plaintiffs'. Rather, the insurers in those cases
 18 would be held to the same standard as UAIC here. Accordingly, UAIC's reliance on these cases
 19 in support of its position are not only relevant, but clearly seem to be on point. Moreover,
 20 Plaintiff has offered *no authority* on point which is contrary to these cases.

21 As stated above, from the Allstate v. Miller and Guebara holdings and, other decisions
 22 cited herein, it is clear that the key to a bad faith claim **is whether or not the insurer's decision**
 23 **regarding coverage is reasonable** and, that when the insurer's actions are reasonable, the Court
 24 can decide so as a matter of law and dismiss extra-contractual claims. Therefore, under the
 25 United Ins. v Frontier decision Nevada courts have held an insurer is not liable for bad faith
 26 breach of the duty to defend for a loss occurring outside a policy term – even when the insured
 27 argued the Complaint alleged actions within the term. Finally, the California holdings of the
 28

1 Lunsford and Franceschi cases, exploring these issues more deeply, have held that an insurer
2 should not be found liable for bad faith even if an ambiguity (or, other coverage question) is later
3 resolved in favor of the insured.

4 In this case, it seems clear from the discussion in the initial Counter-Motion regarding
5 Defendant's actions on the policy - which was not in force at the time by plaintiff's admission **no**
6 **payment was made between June 12, 2007 and July 10, 2007** - that Plaintiffs' must admit a
7 *genuine dispute* exists as to coverage for the loss. Indeed a Federal District Court Judge has also
8 already found UAIC's interpretation of the renewals (and, therefore their actions thereafter) was
9 a reasonable one in granting summary judgment. Therefore, again, this lawsuit arises from a
10 contested claim for liability insurance on the date of the loss underlying the Nalders' claims.
11 Defendants - with good reason - argue Plaintiff Lewis simply had no coverage in effect on the
12 date of loss. At the very least, regardless of this Court's ultimate determination regarding
13 coverage the Defendant, United Auto, had a *reasonable basis* to deny coverage for the loss and
14 lawsuit underlying Plaintiff's Complaint as the records clearly indicate a failure to make timely
15 payment and expiration of the policy before the loss. Under Nevada law the Defendant need not
16 be correct in denial - merely that it has a reasonable basis for doing so. Defendants maintain that
17 Plaintiff's admission that he failed to pay his renewal premium for his July 2007 policy until
18 after the loss occurring July 8, 2007 clearly created a reasonable basis for United Auto to
19 disclaim coverage for the loss.

20 Accordingly, based on all the evidence available at the time and, after investigating
21 coverage, UAIC denied coverage for the loss based upon a reasonable basis that there was no
22 policy in force and, therefore, no coverage for the loss. Under the case law cited herein, this
23 cannot be a basis for bad faith remedies against UAIC. This is a simple disagreement about the
24 coverage for a loss where the putative insured, Lewis, *admitted he made no timely payment*
25 *under the terms of the policy* and only in this litigation claimed an ambiguity in the renewal that
26 he did not understand. At the time of the claim UAIC reviewed coverages, confirmed the
27
28

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 payment was late with the insurance agent and, tried to contact Lewis. Based on the information
 2 available to it at the time, UAIC made a reasonable decision that there was *no policy in effect*.
 3 Plaintiff cannot, as a matter of law, establish that Defendant's determination that no policy was
 4 in force for the loss is unreasonable or without proper cause. Under the "genuine dispute"
 5 doctrine, Defendant is entitled to summary judgment *as to all* of Plaintiffs' extra-contractual
 6 claims (for breach of the covenant of good faith and fair dealing and for violations of the Nevada
 7 Unfair Claims Practices Act and Nevada Administrative Code) and claim for punitive damages.

8
 9 *5. Plaintiffs' offer no evidence whatsoever to support any breach of N.R.S. 686A.310 by*
 10 *Defendant where a reasonable dispute as to coverage existed and, as such, this Court*
 11 *can grants summary judgment in regard to these claims*

12 As this Court knows, N.R.S. 686A.310 lists several specific bases for liability for an
 13 insurer in the handling and processing of claims. In the case at bar, Plaintiffs' have presented no
 14 evidence supporting any issue of fact regarding the Defendant's breach of any section of this
 15 statute. Accordingly, as a good faith dispute existed as to coverage and, Plaintiffs' have pointed
 16 to no independent evidence of a breach this statute by Defendant. This Court can dismiss same.

17 In a ruling by this Court, in Hicks v Dairyland Ins. Co., 2010 U.S. Dist. LEXIS 63597
 18 (U.S. Dist NV 2010), this Court held that a Plaintiffs' failure to bring forth any evidence or,
 19 make any argument opposing a Motion for summary judgment on these issues, serves as grounds
 20 for dismissal.

21 In the case at bar, Plaintiffs' alleged, in their Complaint, alleges three possible breaches
 22 by Defendant of this statute. Specifically, the Plaintiffs' allege Defendant "wrongfully refused to
 23 cover the value of Nalder's claim", "wrongfully failed to settle when they had opportunity to do
 24 so" and "wrongfully denied coverage." The Complaint goes on to also claim UAIC "failed to
 25 implement reasonable standards for prompt investigation" of such claims. *See copy of*
 26
 27
 28

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 *Complaint, attached as Exh. 'H' to Defendant's Opposition to the Plaintiff's Motion for*
 2 *Summary Judgment, paragraphs 44-46.*

3
 4 Defendant notes, that pursuant to N.R.S. 686A.310, Plaintiffs' only arguable grounds for
 5 a claim would be under subsections (c) and (e) (failing to implement standards and failing to
 6 effectuate prompt settlement when liability reasonably clear.) However, pursuant to the
 7 discussion above, Defendant believes there is no material issue of fact regarding either of these
 8 issues – or, any other under N.R.S. 686A.310 to preclude summary judgment. Specifically,
 9 Defendant has outlined, above, that its investigation was reasonably prompt and, as such, there is
 10 no evidence it did not implement such reasonable standards. Again, as this investigation, in good
 11 faith, found no coverage for the loss, the mere fact that the investigation was later found to be
 12 incorrect does not mean UAIC failed to implement reasonable standards. Similarly, again, UAIC
 13 argues it did not fail to promptly settle because, as discussed above, it relied, in good faith, on its
 14 finding that no policy was in effect. Accordingly, if this Court also agrees UAIC coverage denial
 15 was based on a reasonable basis, etc., there also should be no breach of subsection (e) of this
 16 statute.
 17

18
 19 Accordingly, for all the above, UAIC asks, that this Court also grant summary judgment
 20 as to any possible claims under N.R.S. 686A.310 Plaintiffs' may have.

21 *6. Plaintiffs' offer no evidence in support of their Punitive damages claims and, as such,*
 22 *this Court may grant summary judgment as to these Counts.*

23
 24 Defendant also moved for summary judgment on Plaintiffs' punitive damages claims,
 25 herein, and Plaintiffs' have offered no evidence, in Opposition, to support these claims.
 26 Accordingly, this Court can grant summary judgment as to these claims as well.

27 In a ruling by this Court, in Hicks v Dairyland Ins. Co., 2010 U.S. Dist. LEXIS 63597
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ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

(U.S. Dist NV 2010), this Court applied Nevada law and held that such a claim for punitive should be dismissed when the Plaintiffs' offered no evidence that insurer operated in a fraudulent manner. Further, this Court reiterated that proof of an insurer's bad faith, by itself, is insufficient to support a punitive damage claim. United Fire Ins. Co. v McClelland, 105 Nev. 504, 512, 780 P.2d 193 (Nev. 1989). Further this Court held stated that, punitive damages are awarded only when a plaintiff can prove "by clear and convincing evidence" that the defendant is guilty of malice, fraud or oppression. NRS 42.005. Clear and convincing evidence is defined as "evidence establishing every factual element to be highly probably." In re Discipline of Drakulich, 111 Nev. 1556, 908 P.2d 709 (Nev. 1995).

Here too, the Plaintiffs' have completely failed to offer **any** facts in Opposition to avoid summary judgment on these punitive claims. Although Plaintiffs' present some evidence of alleged bad faith – they present absolutely no evidence of any malicious, oppressive or, fraudulent, conduct by Defendant.

Accordingly, for all the above, UAIC asks, that this Court also grant summary judgment as to Plaintiffs' punitive damages claims.

C. Defendant's Reply to Plaintiffs' Opposition to Motion to dismiss claims under N.R.S. 686A.310 et seq., as same are not available under an implied or, constructive, insurance contract.

It appears from Plaintiffs' Opposition to this portion of Defendant's Motion, herein, that Plaintiffs' may not fully grasp Defendant's arguments in regard to the N.R.S. 686A.310 claims. That is, Plaintiffs' seem to argue that the case relied on by Defendants is *distinguishable* because that case involved a case for an implied contract which is not present here. However, that is *exactly the situation* Defendant's argue is at issue here. Here, the only evidence at bar is that Lewis' June 2007 policy of insurance had terminated *prior* to the loss, by its own language, and,

1 that his new July 2007 policy did not incept until *after* the loss. Accordingly, in this case,
 2 Defendant argues that even if this Court agrees with Plaintiffs and finds an ambiguity¹¹ in the
 3 renewal, Plaintiff's remedy is for the court would then be implying a contract at law.
 4 Accordingly, the case cited by Defendant's is binding herein and, the Unfair Claims Practices
 5 Act claims should be dismissed.

6
 7 First, Defendant notes that it understands the Court will consider this portion of the
 8 Motion as a Motion for summary Judgment. That said, it is clear that Plaintiffs' acknowledge
 9 that in Nevada Assoc. Servs., Inc. v First Amer. Title Ins. Co., 2012 U.S. Dist. LEXIS 105466
 10 (U.S. Dist. NV 2012), the Court there found that the Plaintiffs in that case were seeking an
 11 *implied insurance* contract and, as such, N.R.S. 686A.310 was simply inapplicable to such a
 12 constructed contract and dismissed the claims.

13
 14 In this case, it is undisputed that Plaintiffs' only remaining argument for coverage lies
 15 with the theory that the renewal statement to Lewis (for the July 2007 policy term) was
 16 ambiguous. **Plaintiff has conceded that Lewis failed to remit his premium before June 30,**
 17 **2007 and before July 10, 2007. See Exhibit 'D' to Defendant's Counter-Motion for Summary**
 18 **Judgment, Document No. 89, herein.** Therefore it is equally undisputed that Lewis'
 19 June 2007 insurance policy, number NVA 020021926, had expired, per its terms, on June 30,
 20 2007. *See Declaration of Western Regional Marketing and Underwriting Manager for United*
 21 *Automobile Insurance Company, Danice Davis, with copy of policy number NVA 020021926*
 22 *declarations page and policy, attached thereto as Exhibit 'A.'* Further, it therefore also
 23 undisputed that Lewis presented a money order for payment of his premium for a new policy, on
 24 July 10th, 2007. *See Declaration of Western Regional Marketing and Underwriting Manager for*
 25 *United Automobile Insurance Company, Danice Davis, with copy of cashier's check receipt of*
 26 *premium for said new policy number NVA 030021926 on July 8, 2007 attached as Exhibit 'C',*

27
 28 ¹¹ Plaintiffs other, statutory, claims for coverage have been previously dismissed.

1 *thereto*. At that time a new policy, number *NVA 030021926*, was initiated with a term of July
 2 10, 2007 to August 10th, 2007. See *Declaration of Western Regional Marketing and*
 3 *Underwriting Manager for United Automobile Insurance Company, Danice Davis, with copy of*
 4 *declarations page for number NVA 030021926, attached as Exhibit 'D,' thereto.*

5 As such, it is uncontroverted that **there was simply no policy of insurance (contract)**
 6 **between the parties in place on July 8, 2007** – the date of loss. As such, it is clear from these
 7 facts that Plaintiffs' legal remedy – regardless of their assertions to the contrary – is asking this
 8 Court to *imply* a constructive contract by finding the renewal was ambiguous. Accordingly -
 9 even if the trier of fact agrees with Plaintiff regarding the ambiguity - Plaintiff *would have only*
 10 *an implied insurance contract for the date of loss*. Defendant argues that, under such a construct,
 11 Plaintiff has no cause of action under N.R.S. 686A.310, as these causes of action were not
 12 anticipated for 'implied contracts' as Plaintiff's cause of action here is clearly calling for.

14 Because the statute only applies, by its own terms, to an *insurance policy*. Here as is
 15 undisputed there was no insurance policy in effect on the date of loss, N.R.S. 686A.310 should
 16 not be applied retroactively where no written contract was in place. Moreover, Defendant argues
 17 it would be inherently unfair for a Court to imply a contract where none existed, only then to
 18 apply, retroactively, duties from a statute to the parties of this new, implied contract. It is
 19 undisputed that, while UAIC handled the claim and, denied coverage, it operated under the
 20 reasonable assumption there was no policy in place. Accordingly, if their belief was reasonable,
 21 it would not be just nor, meet the requirements of the statute (assuming the Court now implies an
 22 insurance contract) to hold UAIC to have been governed by this statute 5 years ago on a contract
 23 that would only be formed, by law, *in the future*.

26 Therefore, for all of the above, Defendant asks, in the alternative, that regardless of the
 27 Court's findings in regard to the ambiguity on the renewal statement, or in regard to the genuine
 28

1 dispute doctrine, that this Court dismiss all of Plaintiff's causes of action pursuant to N.R.S.
 2 686A.310 because no such right of action exists for an implied contract (policy), Plaintiff's only
 3 remedy here.
 4

5 **D. Defendant's Reply to Plaintiff's Opposition to the Motion to bifurcate Plaintiffs**
 6 **extra-contractual remedies from the contract claims.**

7 Defendant believes it has met its burden for bifurcation under Federal Rule of Civil
 8 Procedure Rule 42(b). Plaintiff's Opposition to this Motion, offers arguments which are not
 9 founded upon any case law and are based on incorrect assumptions and, therefore, should not
 10 sway this Court.

11 In short, Defendant believes it has met its burden under F.R.C.P. 42(b) because a
 12 bifurcated Trial is absolutely necessary to avoid harsh and unfair prejudice to Defendant. Rather
 13 than first prove he is *entitled to contract benefits* - Plaintiff seeks to bring in evidence of claims
 14 issues, failure to defend, and alleged "bad faith" of an insurer in an effort solely *to inflame the*
 15 *jury*. The fact is, contrary to Plaintiff's assertions, Plaintiff need not introduce a *single piece of*
 16 *'bad faith' related evidence to prove his breach of contract claim*. The main dispute is over
 17 whether there even a contract in existence covering the loss. To prove such a policy was in force
 18 plaintiff needs to introduce evidence of the renewal statements and, alleged ambiguity, or other
 19 testimony/evidence concerning whether a contract existed (or should be implied) *only*. That is
 20 Plaintiff could put on evidence of the alleged ambiguity of the notices of renewal or, of Lewis'
 21 claimed "understanding" of when his premium was due. Contrary to Plaintiffs' argument that
 22 "defendant points to no evidence admissible in a bad faith claim that would not be admissible in
 23 a contract claim", the reality is the converse is actually true. There is **simply no need for**
 24 **insurance claims testimony, damages to Plaintiffs' evidence (injury, default judgment, etc.),**
 25 **or Unfair Claims Practices Act breaches evidence, to make plaintiff's contract case in this**
 26
 27
 28

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 1117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 regard – *except* to inflame the passions of the jury. Quite simply this evidence does not make up
 2 both the contract and extra-contractual claims as Plaintiff argues.

3 Moreover, this bifurcated Trial could be done expediently and without added cost if, after
 4 Plaintiff proves there was coverage - the Court could then instruct the jury on “phase II” of the
 5 Trial wherein Plaintiff can present his ‘bad faith’ evidence. Then the jury can determine for itself
 6 whether Defendants position was reasonable or not. In so doing, the Court avoids the obvious
 7 error of allowing potentially prejudicial evidence to be admitted during the breach of contract
 8 portion of the case. In response to Plaintiff’s “lazy jury” argument (that the jury will find no
 9 contract to avoid Phase II), the cure is simple and, there are two alternatives. The Court can
 10 either, (1) not inform the jury about phase II prior to ruling on the breach of contract or, (2)
 11 merely inform the jury there will be two phases to the Trial and not reveal that phase II will be
 12 potentially unnecessary until after verdict on Phase I. Accordingly, any ‘perceived prejudice’ to
 13 Plaintiffs’ can be addressed in either manner. Again, with these caveats, bifurcation affords no
 14 **prejudice** to Plaintiff as – if his policy was clearly in effect – the jury will agree and then he will
 15 have a chance to advance his bad faith arguments. In any event, any claims of prejudice from
 16 Plaintiff *must be balanced* against the clear prejudice to Defendant without bifurcation.
 17

18
 19 Once again, the “genuine dispute” doctrine protects insurers from bad faith claims where
 20 the insurer can show that there was a genuine dispute about coverage. See Beltran v. Allstate,
 21 2001 U.S. Dist. LEXIS 9614 (2001). In Pulley v. Preferred Risk Mut. Ins. Co., 111 Nev. 856,
 22 897 P.2d 1101 (1995), the parties were not able to agree on the value of the insured’s uninsured
 23 motorist claim so the insured filed a breach of contract action against the insurer to recover
 24 policy benefits. Pulley provides a clear statement that a claim for insurance bad faith is a
 25 *separate and independent tort action* that arises out of the related, but independent, contractual
 26 claim for insurance policy benefits. In Pulley, the bad faith claim was based on the insurer’s
 27 refusal or delay in paying the arbitration award. Until the contractual obligation to pay the award
 28

1 was resolved by either payment, as occurred, or by a judgment in the contract claim, the
2 insured's claim for bad faith against the insurer would have been premature.

3 Additionally, the most recent decision from the District of Nevada concerning this issue
4 is Drennan v. Md. Casualty Co., 366 F. Supp. 2d 1002 (2005 Nev.), which squarely supports
5 such a bifurcation. In that case, the district court again noted that an insured must establish legal
6 entitlement to benefits prior to instituting an action for bad faith. Id. at 1005. The court in that
7 matter bifurcated the contractual and bad faith claims.
8

9 Here, Defendant has argued that resolution of whether Plaintiff actually had a policy in
10 force for the loss is dispositive of his claim of good faith and fair dealing. Moreover, resolution
11 of the breach of contract claim is completely distinct from Plaintiff's other extra-contractual
12 claims, such as under the Unfair Claims Practices Act or for Punitive damages. Moreover, the
13 extra-contractual remedies also are prone to prejudice the Defendant at trial and, as such, offer a
14 completely separate basis for bifurcation. As such, there is absolutely no evidence that the
15 evidence for Plaintiff's breach of contract claim is 'inextricably intertwined' with his extra-
16 contractual claims.

17 The fact is, Plaintiff has cited **no case law**, and there exists none, which stands for the
18 proposition that Plaintiff can so unfairly taint these proceedings by preventing bifurcation. Here,
19 resolution of the contract claim is completely distinct from Plaintiff's other extra-contractual
20 claims, such as under the Unfair Claims Practices Act. As such, this Court can wisely exclude
21 Plaintiff's claims of violation of the Nevada Unfair Claims Practices Act, Punitive damages, and
22 for bad faith by bifurcating those claims. As it stands, Defendant does not deny plaintiff a right
23 to bring a separate claim under the Unfair Claims Practices Act, nor whether damages may
24 assessed separately from a breach of good faith and fair dealing, but, instead, merely that this
25 court bifurcate said claims from the jury to avoid undue prejudice. The fact is, how UAIC
26 handled Plaintiff's claim is really a separate to a final determination of whether Plaintiff has a
27 claim at all.
28

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ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
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1 In reviewing Plaintiffs in Opposition to the instant motion, it is clear that the Plaintiff has
 2 not provided any authority that supports their argument that bifurcation is inappropriate or
 3 disfavored by Nevada in a case such as this. To the contrary, Nevada law mandates bifurcation
 4 of the contractual claims from the extra-contractual claims. For these reasons, Defendant's
 5 submit that their alternative motion to bifurcate must be granted.

6
 7 **E. Defendant's Reply to Plaintiffs' Opposition to Defendant's Motion for leave to**
 8 **Amend its pleadings to add a counter-claim against Plaintiff for collusion and/or**
 9 **breach of the cooperation clause as well as champerty/barratry.**

10 As stated previously, the Nalder Plaintiffs have no contractual relationship with United
 11 Auto and, apparently until February 2010, had no assignment of rights or Covenant not to
 12 execute with Plaintiff Gary Lewis to 'step into his shoes' and sue United Auto. As such, given
 13 the amount of the judgment, the previously friendly relationship between Lewis and the Nalders,
 14 the lack of any assignment before February 2010 and, contact by Plaintiffs Counsel with Lewis
 15 shortly after the loss – Defendants seek leave to amend their Answer to file a Counter-claim for
 16 collusion and/or breach of the cooperation clause by plaintiffs and for common law champerty
 17 against Counsel for Plaintiff¹². Plaintiff has cited no case law which would disallow such a
 18 Counter-claim. Rather, Plaintiff seems to admit the collusion between Lewis and Plaintiffs –
 19 claiming Lewis "had no choice" but to collude to create a judgment.

20
 21 As stated in Defendant's Motion, F.R.C.P. 13 allows for compulsory Counter-claims to
 22 be filed. Additionally, F.R.C.P. 15 allows for amendments to be filed, after the time allowed for
 23 filing same, by leave of court "when justice so requires." Such leave is left to the sound
 24 discretion of trial court. Forsyth v. Humana Inc., 114 F.3d 1467, 1482 (9th Cir. 1997).

25 Here, it is now plain that the Nalders lacked standing to bring suit against United Auto
 26

27 ¹² Defendant apologizes if this was not made clear by the initial pleading, but Defendants had
 28 previously moved for same, *See Document No. 17, herein*, and, herein Defendant again moves to file both

1 when originally filed. The majority rule, and rule followed by this Court, is that a third party
 2 stranger to the contract, like the Nalders here, have no standing to sue for breach of contract and
 3 bad faith against an alleged tortfeasor's insurance company. Gunny v. Allstate Ins. Co., 108
 4 Nev. 344 (Nev. 1992). As this Court knows, in response to a Motion to Compel, Defendants
 5 were only recently provided an alleged "assignment", *attached as Exhibit 'E' to Defendant's*
 6 *Counter Motion, Document No. 89, herein*, between the Nalders' and Lewis that – by its own
 7 terms – was only signed February 28, 2010.

8 The fact that this assignment claims Lewis 'assigned' his claims against United Auto for
 9 "value received", however, this 'value' is not apparent from the face of the document. *See*
 10 *Exhibit 'E.'* If it was for a covenant not to execute the excess judgment or a release of claims – it
 11 certainly is not apparent. This Court, in Hicks v Dairyland Ins. Co., 2010 U.S. Dist. LEXIS
 12 63597 (U.S. Dist NV 2010), found a substantially similar assignment null and void. Clearly, a
 13 material issue exists over 'consideration for this assignment and whether it is at valid on its face.
 14 This is especially troubling for Defendant when considered in conjunction with Plaintiff, Gary
 15 Lewis', Answers to Interrogatories. *See Exhibit 'E' to Defendant's Initial Motion for summary*
 16 *Judgment, Document No. 17, herein.* In Plaintiff's Response No. seven (7), Lewis admits that he
 17 and James Nalder are "friends." Next, at Response to number nineteen (19), states that "shortly
 18 after the accident" he called Plaintiffs' Counsel, David Sampson" at the request of his friend
 19 James Nalder. *See Exhibit 'E' to Document No. 17, herein.*

22 As such, it is clear from the face of the Plaintiffs' complaint that the Nalder Plaintiffs
 23 have not pleaded a prima facie case for breach of contract or bad faith against Defendant as they
 24 lack standing to do so. The eleventh-hour attempt to rectify this defect via the February 28, 2010
 25 assignment has only raised more questions. Specifically, what consideration was given to Lewis,

26 _____ (Cont.)
 27 a counter-claim against Lewis and a third party complaint against Counsel for Plaintiffs', the Christensen
 28 Law Office.

ATKIN WINNER & SHERROD
 ATTORNEYS AT LAW
 1117 SOUTH RANCHO DRIVE
 LAS VEGAS, NEVADA 89102
 PHONE (702) 243-7000 FACSIMILE (702) 243-7059

1 if any, for this assignment and, more importantly, what is the relationship between all Plaintiffs'
2 and Plaintiffs' Counsel. In short, the Nalder plaintiffs are strangers to the contract. Yet, they
3 obtained a multi-million dollar judgment against their friend, who has been in contact with their
4 attorney since shortly after the accident.

5 As such, issues of collusion and, champerty/barratry against Plaintiffs' Counsel, have
6 arisen from Plaintiffs interrogatory responses and purported assignment. Therefore, Defendant
7 can easily show excusable neglect for not having filed its counter-claim sooner as these facts
8 were unknown until March 2010. Thereafter, Defendant immediately moved to amend its
9 Answer, (*See Document No. 17, herein*) but this initial Motion was mooted by ruling on the
10 summary Judgment December 7, 2010. Now this matter has been remanded by the 9th Circuit,
11 Defendant has a right to renew leave to file these claims against Plaintiffs and, their attorneys.
12 Moreover, this Court may grant same leave to file said amendments to do substantial justice
13 between the parties.
14
15

16 IV.

17 CONCLUSION

18 Based upon the foregoing, Defendants UNITED AUTOMOBILE INSURANCE
19 COMPANY respectfully requests that this Court grant its Counter-Motion for Summary
20 Judgment as to all of Plaintiff's extra-contractual or, 'bad faith' remedies, as, at the very least, a
21 reasonable basis existed for UAIC belief that no policy was in existence covering the loss. As
22 such, Defendant asks this Court to grant summary judgment in its favor as to Plaintiff's causes of
23 action for breach of the duty of good faith and fair dealing, insurer bad faith and/or violation of
24 the Nevada Fair Claims Practices Act, and for Punitive damages, with prejudice, as clearly as
25 there was at least a reasonable belief there was no potential for coverage as no policy was in
26 force for the loss.

27 In the alternative, Defendant asks this Court, to find that, as Plaintiffs are seeking this
28

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1 Court to imply a policy of insurance, pursuant to the alleged ambiguity in the renewals, that this
2 Court dismiss and/or grant summary judgment as to Plaintiffs' claims pursuant to N.R.S.
3 686A.310, *et seq.*

4 Further in the alternative, Defendant asks this Court to grant its Motion to Bifurcate all
5 extra-contractual claims at Trial, pending the resolution of Plaintiff's contractual claims.

6 Finally, in the alternative, Defendant asks this Court for Leave to file a Counterclaim
7 against Plaintiffs and Third Party Complaint against Plaintiffs' attorneys as, at least, Defendant
8 have brought forth facts which can be plead to form a prima facie case of collusion, breach of the
9 cooperation clause, and/or a Third Party Complaint for common law champerty/barratry against
10 Plaintiffs' Counsel.

11 DATED this 3rd day of May, 2013.

12 ATKIN WINNER & SHERROD

13
14 /s/ Matthew J. Douglas

15 Matthew J. Douglas
16 Nevada Bar No. 11371
17 1117 S. Rancho Drive
18 Las Vegas, Nevada 89102
19 *Attorneys for Defendant*
20
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ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

CERTIFICATE OF ELECTRONIC SERVICE

I DO HEREBY CERTIFY that I am an employee of ATKIN WINNER & SHERROD and on the 3rd day of May, 2013, I did serve, via electric service, the foregoing **DEFENDANT UNITED AUTOMOBILE INSURANCE COMPANY'S REPLY BRIEF IN SUPPORT OF ITS COUNTER-MOTION FOR SUMMARY JUDGMENT ON ALL EXTRA-CONTRACTUAL CLAIMS OR REMEDIES; OR, IN THE ALTERNATIVE, MOTION TO BIFURCATE CLAIMS FOR EXTRA-CONTRACTUAL CLAIMS OR REMEDIES; FURTHER, IN THE ALTERNATIVE, MOTION FOR LEAVE TO AMEND ANSWER**

/s/ Victoria Hall

An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD
ATTORNEYS AT LAW
1117 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89102
PHONE (702) 243-7000 FACSIMILE (702) 243-7059

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JAMES NALDER, Guardian Ad)	
Litem for minor Cheyanne)	
Nalder, real party in)	
interest, and GARY LEWIS,)	
Individually;)	
)	Case No. 2:09-cv-1348-RCJ-GWF
Plaintiffs,)	
)	Las Vegas, Nevada
vs.)	October 22, 2013
)	1:56 p.m.
UNITED AUTOMOBILE INSURANCE)	
CO., DOES I through V, and)	
ROE CORPORATIONS I through)	
V, inclusive,)	
)	Motions for Summary Judgment
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT COURT CHIEF JUDGE

APPEARANCES:

For the Plaintiff:

THOMAS F. CHRISTENSEN, ESQ.
Christensen Law Offices, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702)870-1000

For the Defendant:

MATTHEW JOHN DOUGLAS, ESQ.
Atkin Winner & Sherrod
1117 South Rancho Drive
Las Vegas, Nevada 89102
(702)243-7059

Court Reporter: Katherine Eismann, CSR, CRR, RDR
(702)431-1919 eismann.csr@gmail.com

Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

1 (Tuesday, October 22, 2013, 1:56 p.m.)

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: This was in Nalder; right?

5 MR. DOUGLAS: Correct.

6 THE COURT: Mr. Christensen.

7 Please, counsel, just state your appearances.

8 MR. CHRISTENSEN: Tom Christensen representing the
9 plaintiff.

10 MR. DOUGLAS: And Matthew Douglas for the defendant
11 United Auto, Your Honor.

12 THE COURT: Thank you. You know, I have a
13 preliminary feeling, and I'll let you argue about it.

14 My preliminary feeling is that based upon the Ninth
15 Circuit's instruction, I really need to grant summary judgment
16 on liability.

17 I think the clear indication from the Circuit is that
18 they saw this as ambiguous, even though Judge Reed did not.
19 Judge Reed, of course, correctly read the renewal notice as
20 part of the overall contract. He did not find the term
21 ambiguous.

22 What was the term? End date? Not end date, but not
23 termination date. What's the -- what's the term?

24 MR. CHRISTENSEN: Expiration date.

25 THE COURT: Expiration date. But it's obvious to me

1 that the Circuit, reading between the lines or reading the
2 opinion itself, says it's ambiguous.

3 And accordingly, my intended disposition on that
4 issue is to rule in favor of plaintiff to whom ambiguities must
5 be given.

6 The other one is a little bit more of a concern
7 though. The bad faith, you know, it's also pretty clearly the
8 law in the Circuit, more importantly, in Nevada, that there has
9 to be proof of intent, or unreasonable position, or, more
10 appropriately, knowledge or reckless disregard of knowledge
11 that the claim of -- of no coverage or no coverage for this
12 event or in this amount. There must be knowledge that they do
13 not have a reasonable basis.

14 And I just can't say that in this case that they --
15 based upon the summary judgment standard, that there's any
16 evidence to support -- even at trial -- support a finding that
17 they came forward with an intentional.

18 I mean, this is a small amount, 15 grand. But on the
19 other hand, you know, it was a clear position from the
20 beginning.

21 So that's kind of my preliminary feeling. Clearly,
22 you would have the right to costs. But the real concern would
23 be granting default judgment for the three-and-a-half-million
24 dollars, the result of the state court default.

25 And even if I did that, without giving them the

1 opportunity to defend -- obviously, Gary Lewis did not defend
2 for whatever reasons including potential assignment. Of course
3 you took this by way of execution or assignment.

4 MR. CHRISTENSEN: It was assignment.

5 THE COURT: By way of assignment. But even if I
6 granted summary judgment on that issue, I -- I could not in
7 good conscious say that they are subject to the
8 three-and-a-half-million dollars. That they would have to be
9 able to defend.

10 So, those are my preliminary feelings, and I welcome
11 your comments. Persuade me otherwise.

12 MR. CHRISTENSEN: Okay. Do I come up?

13 THE COURT: Sure.

14 MR. CHRISTENSEN: Thank you, Your Honor.

15 First of all, I think you are exactly right on a
16 number of -- well, in fact everything that you've talked about,
17 I think you are exactly correct.

18 There's just one little difference, and that is with
19 regard to the damages for the breach of contract itself,
20 whether or not --

21 THE COURT: Now, I have a question in that regard.
22 Assuming that they acknowledged their obligation to defend but
23 then they breached it, what is -- what is the damage? Is it --
24 is it limited to the attorney's fees?

25 He didn't hire an attorney. Can it be as large as

1 the default judgment that was entered because he didn't defend?
2 I mean, he knew -- and this is the last factual question which
3 hopefully you can illuminate a little bit.

4 Did he not know that they were not going to defend,
5 and that unless he defended, there would be no defense? And so
6 then there's a causation problem.

7 So, tell me a little bit about the factual
8 background, whether he knew, whether he was apprised, or
9 whether at the last minute on the date of trial, they -- they
10 said, "We're not going to defend," and what damage accrues?

11 MR. CHRISTENSEN: Okay. So, the -- so, perhaps I
12 would be best to talk about *Miller versus Allstate*, which is
13 the main case in Nevada dealing with these very type of issues.

14 And in *Miller versus Allstate* -- and it will give
15 both information on the damages that are owing but also on the
16 culpability or the negligence or whatever the standard is.

17 And that's a little bit of a shifting standard, but
18 that's why I want to go to *Miller versus Allstate*, because it
19 explicitly deals with this issue.

20 First of all, in *Miller versus Allstate*, the Court --
21 well, maybe I'll give you some facts on *Miller versus Allstate*
22 just for review purposes.

23 But in that case, Allstate was the insurer, and they
24 didn't dispute coverage or anything else like that. In fact,
25 they were rather quick to issue a check on behalf of their

1 insured for the policy limits which were \$25,000.

2 THE COURT: So clearly, they -- in that case, they
3 had no basis -- certainly no knowledge that they had any
4 defense to a coverage claim.

5 MR. CHRISTENSEN: Well, not only that, but they were
6 acting --

7 THE COURT: Sure.

8 MR. CHRISTENSEN: -- very quickly and --

9 THE COURT: They were knowledgeable.

10 MR. CHRISTENSEN: -- and in order to protect their
11 insured. And so they issued a check, but they had it payable
12 to UMC, who was a lienholder, and also to the insured, to the
13 claimant.

14 And the claimant said, "We can't cash this check, but
15 we're willing to release your insured, give your insured, you
16 know, protection. You can protect your insured. All we want
17 you to do is either interplead the funds yourself or allow us
18 to interplead the funds" -- sorry -- "and so that we can handle
19 these competing interests to the money."

20 And Allstate refused to interplead the funds, which
21 the Court in *Miller* said was okay. That was okay for them to
22 do. That wasn't bad faith.

23 But the other thing that they did that was not in
24 keeping with good faith and fair dealing and protecting their
25 insured was that they didn't tell their insured that he had the

1 opportunity to get protection by interpleading the funds,
2 paying for an interpleader himself, basically, or even paying
3 the whole judgment, the 25,000 himself. He could have done
4 that presumably, but Allstate didn't communicate that
5 possibility to him.

6 So there was no finding that Allstate was out to
7 injure the guy or that they did something knowing for sure that
8 they shouldn't be doing it.

9 THE COURT: Now, *Miller* is addressing bad faith.
10 It's not addressing breach of contract.

11 MR. CHRISTENSEN: Well, it's -- they are mixed
12 things.

13 THE COURT: Sure.

14 MR. CHRISTENSEN: But -- but, yes, it's bad faith,
15 claims handling failures.

16 THE COURT: So basically it's a ruling on bad faith.

17 MR. CHRISTENSEN: Correct. And in the context that
18 we have here, too, which is the insured has a contract and is
19 expecting protection from the insurance company. And the
20 insurance company does not deliver on that protection for
21 whatever reason.

22 And it's certainly not -- and that's a confusion
23 that -- that is easy to creep in there when you are talking
24 about bad faith.

25 THE COURT: Here's the issue. On bad faith, my

1 understanding of the law is you must show -- you must show that
2 there is either an intent to -- an intentional disregard of
3 knowledge that there's no basis to defend against the claim or
4 a reckless disregard of facts that establish that.

5 I'm following you if you can show a causal connection
6 of damage to a breach of contract, because the basic effect of
7 my ruling here is that they are liable for breach of contract,
8 not only the principal sum but the obligation to defend.

9 MR. CHRISTENSEN: Right.

10 THE COURT: My problem, though, is tying that in in
11 any regard to a bad faith claim.

12 MR. CHRISTENSEN: Well --

13 THE COURT: Without -- I mean, there's nothing here
14 in this record that shows that they denied coverage of a
15 15,000-dollar sum in bad faith.

16 They clearly took the position that it was because
17 the policy lapsed, and I don't think that that can be said to
18 be bad faith.

19 MR. CHRISTENSEN: Well, in -- in those particular
20 situations -- and the case law is pretty harsh towards the
21 insurance companies because of the very nature of insurance
22 coverage, which is something that we pay to the insurance
23 company so that when there's a problem, we have the financial
24 resources to help us through that problem.

25 And so it's so axosomatic to the insurance contract

1 that that is indeed bad faith to not comply with the terms of
2 the contract, especially not provide a defense. They -- they
3 really take a risk when they don't provide a defense.

4 And -- and the rule in -- expressed in *Miller versus*
5 *Allstate*, and it's in most of those types of cases, the failure
6 to settle, or the failure to inform the insured of the
7 opportunities to get them off the hook, or failing to
8 acknowledge coverage when there's arguable coverage -- and
9 that's what the cases say. Arguable coverage, you've got to
10 defend. You can sort it out later.

11 Because the -- the insurance company is supposed to
12 weigh the two interests, their own interest and that of their
13 insured, and not give any higher weight to their interests, the
14 insured has to be treated at least equal to their interest.

15 THE COURT: For sure. Assuming that I disagree with
16 you and that bad faith cannot be attributed here even on
17 summary judgment, but also assuming that I agree that breach of
18 contract includes any damage for failure to defend, what
19 causally can you assert is the damage?

20 MR. CHRISTENSEN: Okay. Just one word if I might,
21 because it's from *Miller versus Allstate*. And in *Miller versus*
22 *Allstate* the Court says -- the Nevada Supreme Court says that
23 good or bad faith is inherently not -- and they are quoting
24 from another California case, I think -- inherently not subject
25 to precise legal definition, and so it is by its nature

1 inherently a question of fact for the jury to decide.

2 So that's one aspect of -- that should be taken into
3 account here, that -- that the standard is not intentional and
4 reckless disregard. That's for punitive damages in a bad faith
5 claim.

6 But just for the damages of the failure to deliver on
7 the contract and the failure to deal in good faith with the
8 contract are these other damages, which are the same, and so
9 now I'll go to that. And that is the proximate causation of
10 these damages.

11 Whether the insured -- that's why it's so important
12 that they defend, because their duty to defend is bigger than
13 their duty to indemnify. They might -- and I have had cases
14 where the duty to indemnify is a \$15,000 policy, and they spend
15 \$350,000 defending that claim.

16 THE COURT: And it's a separate obligation. They
17 have to pay that or spend that even if it's in excess of the
18 policy limits.

19 MR. CHRISTENSEN: Correct. And so the fact that they
20 didn't, the -- so that was not in keeping with the policy.
21 They had a duty to defend that claim. And the fact that they
22 didn't and he ended up with a judgment against him for
23 three-and-a-half-million dollars is their responsibility,
24 because they could have come in and defended, and they are the
25 ones that chose not to.

1 He didn't say, "Don't come in and defend me." He
2 said, "Do defend me."

3 THE COURT: When did he know -- Gary Lewis, when did
4 he know that they were not going to defend in relation to the
5 trial or the filing of the complaint?

6 MR. CHRISTENSEN: From the very first. When he first
7 contacted them or maybe -- maybe it was three days later. No,
8 I think it was the very day that he contacted them, they said,
9 "We are not -- you don't have insurance with us."

10 THE COURT: There's no coverage. So, how is there
11 any causal connection between the damage of a default of
12 three-and-a-half-million dollars?

13 For all we know, he may have had a perfectly good
14 defense -- and that's why you are saying you want the larger
15 sum -- but he said, "It's just not worth defending. I don't
16 have any way to answer any large judgment anyway, other than
17 the insurance itself, and they are disclaiming.

18 "So I'll -- I agree with you. I'm not going to
19 defend, and you agree with me that you won't chase me. You
20 won't execute on the judgment. You will just simply take an
21 assignment of the judgment for purposes of going against the
22 insurance company."

23 If that's the factual scenario, then how is there any
24 causal connection between the default of
25 three-and-a-half-million dollars?

1 I mean, the default could have been any figure. It
2 could have been \$20,000, or it could have been \$5 million. He
3 just didn't care, because he can't answer any judgment, and,
4 therefore, certainly not 13-and-a-half-million dollars. And
5 therefore, he says, "You take it. You pursue it."

6 MR. CHRISTENSEN: Well, that -- that gets to one of
7 their countermotions to amend their complaint to include all
8 these nefarious things, which I submit is defamation on my
9 character, which I don't really appreciate and is not
10 appropriate, especially where it has no basis in fact.

11 The things that they point to is, "Well, heavens. He
12 talked to the plaintiff's attorney."

13 "Yeah, because you, Mr. Insurance Company, were not
14 willing to talk on his behalf as is your duty."

15 And there's lots of case law on the concept that once
16 you decline to discharge your duty to defend, there is no duty
17 of cooperation.

18 Remember, the duty of cooperation is in the insurance
19 policy, and it's the duty to cooperate in the defense of the
20 case. Well, if the insurance company isn't defending the case,
21 then what -- what are you supposed to do to cooperate in the
22 defense?

23 And in fact, that act by the insurance company -- and
24 they're the ones that chose to do that, and they knowingly
25 chose to do that. And they also -- it could be argued that

1 they were in conscious disregard for the effect it would have
2 on this man.

3 THE COURT: Let me ask one more factual question.

4 In exchange for the judgment against him of
5 three-and-a-half-million dollars, he of course assigned the
6 judgment. That's the quid pro quo.

7 Did he in addition get a covenant that you would not
8 pursue him for any amount?

9 MR. CHRISTENSEN: I don't actually know the answer to
10 that question. I apologize, but I could find that out. And
11 sometimes just -- just to fill in the whole thing, sometimes
12 they do and sometimes they don't.

13 But either way, there is nothing at all nefarious
14 about that. In fact, that's the way these things happen
15 routinely is you get a judgment. There's no agreement prior to
16 the judgment. And -- and I haven't seen anything. If there
17 was, we would certainly see that.

18 But there was no agreement prior to the judgment.
19 And after the judgment, it's -- it's appropriate to exchange
20 his claim against his insurance company for the judgment amount
21 for a release of the judgment or not.

22 And -- and it's been -- it's been all different ways.
23 But that doesn't in any way tarnish the judgment that was
24 obtained or mean that the judgment isn't there.

25 And it really -- it's a judgment. You know, if this

1 was a reason to attack the judgment, they could have come in
2 and attacked the judgment. And they have not done that or
3 attempted to do that.

4 And so that -- that again puts the proximate
5 causation on to that judgment. Because why didn't they? If
6 they are so concerned about the judgment, why didn't they take
7 action last year, or the year before that, or, you know, at any
8 time prior to that. So --

9 THE COURT: Thank you.

10 MR. CHRISTENSEN: Thank you.

11 THE COURT: Let me hear a response, please.

12 MR. DOUGLAS: Good afternoon, Your Honor. Matthew
13 Douglas for United Auto.

14 Your Honor, I'll try to be brief and sort of just
15 kind of cover the issues that Your Honor has talked about.

16 I think I understand Your Honor's ruling regarding
17 the ambiguity. Based upon the ruling of the Ninth Circuit,
18 I -- I completely understand Your Honor's ruling.

19 And I think, as you know from our counter-motion, we
20 have not even moved on that issue, because obviously it would
21 do us no good at this point.

22 But the real issue, obviously, as we've been
23 discussing, is if in fact Your Honor agrees with plaintiff,
24 finds there is an ambiguity, what's the next step in this case?

25 And we've counter-moved for summary judgment on all

1 their extra-contractual remedies. That would be breach of the
2 implied covenant of good faith and fair dealing, breach of
3 unfair practices act and punitive damages.

4 It sounds to me, from Your Honor's statements, that
5 you would tend to agree that we might carry the day on those
6 issues. And sort of where we've left off is -- is these
7 damages.

8 Obviously, if Your Honor finds an ambiguity, I think
9 the first question -- and this is something I brought up in my
10 brief. I don't think it's ever really been adequately
11 discussed or responded to by plaintiffs, is that -- and I think
12 it goes to damages -- is that I think if Your Honor finds there
13 was an ambiguity in the renewal, there's no dispute his policy
14 from June expired.

15 His new policy didn't incept until two days after the
16 accident when he paid. So, the question is for that gap. I
17 think if you are finding the renewal ambiguous, defendant would
18 proffer that the Court would be finding an implied policy of
19 insurance to cover for that lapse.

20 I think that's an important distinction to make,
21 because I think once this Court finds -- if this Court so
22 finds --

23 THE COURT: Oh, I'm not so sure the -- that that
24 implication is there, but I think I would definitely be finding
25 that one way to interpret the contract, in combination with the

1 renewal notice, is there will be no lapse unless you do not pay
2 by the later date, the end of July.

3 MR. DOUGLAS: Okay.

4 THE COURT: So, in other words, we will renew you as
5 of the date of the end of the last policy, not in the interim
6 payment date, as long as you get that payment in to us before
7 the end of second or new policy period. That's the result of
8 the ruling under Nevada law because there's an ambiguity.

9 I'm not necessarily implying that you -- well, I am
10 implying. I am stating that you're required to give that
11 coverage. I'm not implying a coverage or a contract of
12 insurance that doesn't exist.

13 But what I am saying is under interpretation of the
14 contract, you are mandated to give continuous coverage as long
15 as the payment gets in before the end of the next period.

16 MR. DOUGLAS: Okay. So, and anyway, I wanted to
17 state that was an issue that we felt was a possibility here,
18 and certainly we would argue that perhaps that is the legal
19 construct that's created. But if that's not Your Honor's
20 ruling --

21 THE COURT: I know I'm not supposed to imply a
22 contract where none exists.

23 MR. DOUGLAS: So with that, I will move on. I think
24 the next issue we get to then, which really sort of gets to the
25 heart of everything, is, well, we are sitting here over six

1 year later. And the question is, back in 2007, were United's
2 actions reasonable under the circumstances based on all the
3 evidence known.

4 And I think at the very least, I think you would have
5 to agree that their interpretation of the renewal notice, while
6 perhaps in the end not winning the day, was itself reasonable.

7 I think based on this Court's ruling, the parties and
8 the Court might agree that both sides had reasonable
9 interpretations of that renewal notice.

10 THE COURT: Certainly Judge Reed agreed with you.

11 MR. DOUGLAS: Exactly. And though there's been some
12 dispute about it, I think prior counsel for plaintiff also,
13 whether potentially reasonable or reasonable, it came up in
14 that argument, and they conceded.

15 And I think a reasonable person would have to concede
16 that United Auto's interpretation of their renewal was also
17 reasonable.

18 THE COURT: Well, assuming I agreed with you, you
19 certainly would admit, under breach of contract, they get of
20 course the principal of the policy but don't they also get the
21 damage for failure to defend?

22 That's just pure breach of contract without bad
23 faith, and what is the causally connected damage?

24 MR. DOUGLAS: Okay. So, from that, Your Honor, the
25 reason why I went -- I was explaining that is that I think if

1 you -- if you so find that our interpretation -- United Auto's
2 interpretation of the renewal was a reasonable one, I think all
3 their actions based upon that, I think, can be found to be
4 reasonable as well. You know, unlike most --

5 THE COURT: Here's my main question. I don't think I
6 can attribute causally to that damage a
7 three-and-a-half-million dollar default judgment.

8 But can I not at least give them the opportunity to
9 prove the damage here in court? In other words, what the
10 judgment would have been if it were properly defended.

11 MR. DOUGLAS: Well, Your Honor, that's certainly an
12 option open to the Court. But this is --

13 THE COURT: Is that an appropriate breach of contract
14 damage and is it causally connected?

15 MR. DOUGLAS: I don't believe under Nevada law it
16 would be. I don't think -- I don't think under Nevada law
17 those -- that kind of consequential damage beyond the policy,
18 interest on the policy, maybe attorney's fees -- I don't see
19 how -- how there's -- those consequential damages, I don't know
20 of any Nevada case that ever --

21 THE COURT: What was this plaintiff's -- hit in the
22 pedestrian sidewalk?

23 MR. DOUGLAS: No, they were actually -- from my
24 understanding from Mr. Lewis' deposition, he's a member of a
25 motorcycle something call the Vagos. They had a barbecue up in

1 Pioche, and when he was backing out in a pick-up-type area,
2 there was a little girl behind a pickup, and he hit her.

3 THE COURT: What was the damage?

4 MR. DOUGLAS: She sustained, you know, a fairly
5 significant injury that day. She was airlifted, I understand,
6 to Kaliente and then back down here to UMC for appropriate
7 level trauma service.

8 Thankfully, my understanding from continuing in this
9 case and talking with plaintiff, is that she's okay today. She
10 does have a slight scar on her face, and she is a little girl.
11 But thankfully no neurologic impairment or permanent injury, at
12 least from my understanding.

13 THE COURT: Well, they are significant then, so
14 answer that question then one more time.

15 Don't they at least deserve the opportunity in front
16 of a jury to prove the damage? That is, your failure to
17 defend, even if it didn't result fairly in an
18 three-and-a-half-million dollar default judgment, it certainly
19 fairly would have resulted in \$2 million.

20 MR. DOUGLAS: Well, Your Honor, I -- I don't disagree
21 with that, but the problem there is if they only breached the
22 contract, they're still only liable for the \$15,000 and perhaps
23 interest on it.

24 THE COURT: No, no.

25 MR. DOUGLAS: Without bad faith.

1 THE COURT: No, no. There's two separate
2 obligations. One is to defend.

3 MR. DOUGLAS: Right.

4 THE COURT: So if their -- if Gary Lewis is defending
5 against a potential claim of \$10 million, failure to defend is
6 a breach of contract, not bad faith claim, together with the
7 breach of contract claim for failure to pay the policy.

8 MR. DOUGLAS: I -- I understand where Your Honor is
9 going with this, but my problem is -- and this is kind of where
10 I was going with whether UAIC's actions were reasonable at the
11 time.

12 You are going to -- by so finding, you would be
13 saying, in essence, there's no bad faith, but I am finding you
14 breached the contract. And now in hindsight, you should have
15 defended, and we are going to redo the trial here. And based
16 on the damages, that would be the measure of your damages.

17 What I am suggesting is without bad faith, they would
18 have that duty. I'm more than willing to say that UAIC -- if
19 plaintiff will vacate his judgment and he wants to start over,
20 UAIC would now have a contract. He could make a new demand for
21 policy limits. If it's unpaid, plaintiff is free to go through
22 the actions once again and UAIC would have a duty to defend.

23 However, since UAIC now, only now, six years later,
24 Your Honor, would be finding a contract, UAIC needs to be
25 entitled to a chance to defend on the merits.

1 But even if the eventual judgment was \$2 million, if
2 they have now not breached their duty to defend by defending,
3 now that Your Honor has found a contract, they would only still
4 be liable for that contract.

5 THE COURT: Yeah, but you would be liable -- in
6 addition to the 15, you would be liable for all the attorney's
7 fees --

8 MR. DOUGLAS: Right.

9 THE COURT: -- that would have potentially resulted
10 in something less than three-and-a-half-million dollars.

11 MR. DOUGLAS: Sure, but those would not go to
12 plaintiff. Those would go to the defense counsel that were
13 retained by UAIC to defend, or, in this case, Gary Lewis.

14 THE COURT: I am just not quite following you,
15 because he would have potentially received less of a judgment.
16 Maybe he would have gotten a judgment for 15.

17 MR. DOUGLAS: Sure.

18 THE COURT: Maybe he would have got a judgment for
19 \$1 million.

20 MR. DOUGLAS: Sure.

21 THE COURT: If you had properly defended. So -- and
22 those attorney's fees, they could have been a million dollars.

23 MR. DOUGLAS: That may be, but --

24 THE COURT: Or they could have been half-a-million
25 dollars. But at any rate, because he had no defense, he

1 suffered, for whatever reasons, a variety of reasons, a
2 three-and-a-half-million-dollar judgment. That exists.

3 Has he taken bankruptcy?

4 MR. DOUGLAS: I don't know. He may have.

5 THE COURT: So, maybe he did.

6 MR. DOUGLAS: Yeah.

7 THE COURT: So it seems to me that I have to at least
8 give them the opportunity to prove up what is the damage. I'm
9 not going to let you prove the amount of the default judgment.
10 You must prove the damage because of failure to honor the
11 second part of the contract.

12 Not the indemnification. That we all agree. That's
13 15. But the failure to defend, what damage did that cause to
14 Gary Lewis?

15 MR. DOUGLAS: Okay. But Your Honor, but then by
16 making -- and if I am following Your Honor closely, if you are
17 saying that UAIC breached the duty to defend, then you are
18 finding that they committed bad faith.

19 THE COURT: Why?

20 MR. DOUGLAS: You are finding that their position is
21 unreasonable. That is the only way you get to that. That is
22 the only way. You cannot --

23 THE COURT: No, they are not entitled to punitive
24 damages.

25 MR. DOUGLAS: That's true.

1 THE COURT: There is no bad faith. They are not
2 entitled to anything except the ability to prove up in front of
3 a jury what the damage to Gary Lewis is for violation of that
4 second prong of the contract.

5 MR. DOUGLAS: Well -- well, but, Your Honor, that's a
6 very speculative trial, and for -- first off, I don't think
7 it's workable.

8 But -- but even more to the point, because there are
9 so many unknowns in litigation. For instance, some cases go
10 very smoothly. There is no discovery disputes. The parties
11 can go right to trial or maybe have a binding arbitration. The
12 fees are very low.

13 Other cases, as we all are aware of, can take on a
14 life of their own, and the fees can grow enormously. So to put
15 lightening back in a bottle, so to speak, and have it -- I
16 don't think it's a workable plan.

17 THE COURT: Okay. I think I have got both your
18 positions very well. I am definitely going to grant summary
19 judgment on liability, and I am definitely going to denied or
20 rather rule in defendant's favor summary judgment on bad faith.

21 But I'll have to stew about it. I may well say that
22 they have a right to go to a jury on the issue of damages for
23 violation of -- for breach of contract in the second prong.

24 MR. DOUGLAS: Your Honor, could I just add one quick
25 thing? I just wanted to say if it really comes down to this

1 breach of the duty to defend issue, I would ask to -- the case
2 we relied upon is the United Guarant -- I believe -- I apologize
3 here.

4 THE COURT: Yes.

5 MR. DOUGLAS: The *United Insurance versus Frontier*
6 *Case*, 120 Nevada 678. It's from 2004. That really sums up the
7 breach of the duty to defend.

8 THE COURT: 120 Nevada 678. Uh-huh.

9 MR. DOUGLAS: Yes, and I would ask you take a look at
10 that case, and I think from that ruling, you can -- that pretty
11 well sums up our position in this case.

12 THE COURT: Okay.

13 MR. DOUGLAS: Thank you, Your Honor.

14 THE COURT: Anything else?

15 MR. CHRISTENSEN: Yeah, I would only reiterate
16 that -- that you look at *Miller versus Allstate*, because it is
17 squarely similar to this situation. And it was \$25,000 of
18 coverage, the indemnity portion, and they didn't inform the
19 insured of the opportunity to settle the case by interpleading
20 the funds.

21 And the insured later had a judgment against them.
22 They did defend it. The insurance company defended that case,
23 but the insured still got a 500,000-dollar judgment against
24 them. And the original verdict in favor of the insured was
25 1.2 million. That was reversed.

1 The *Miller versus Allstate* decision is reversing it
2 and sending it back down for a retrial just on the duty to
3 inform issue, which was not a knowledgeable, trying to hurt the
4 guy or anything else like that.

5 It was just a failure to perform under the contract
6 reasonably and in good faith. And that verdict was
7 1.8 million, and Allstate didn't appeal. So --

8 THE COURT: Thank you very much.

9 MR. DOUGLAS: Thank you, Your Honor.

10 (Recess 2:31 p.m.)
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COURT REPORTER'S CERTIFICATE

I, KATHERINE EISMANN, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, do hereby certify that the foregoing is a true, complete, and correct transcript of the proceedings had in connection with the above-entitled matter.

Date: January 10, 2013.

/s/ Katherine Eismann

Katherine Eismann, CSR CRR RDR

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By Ashley Rega at 2:26 pm, Oct 30, 2013

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES NALDER, Guardian Ad Litem for
minor Cheyanne Nalder, real party in
interest, and GARY LEWIS, Individually,

Plaintiffs,

v.

UNITED AUTOMOBILE INSURANCE
COMPANY, DOES I through V, and ROE
CORPORATIONS I through V, inclusive,

Defendants.

2:09-cv-1348-RCJ-GWF

ORDER

Currently before the Court are a Motion for Summary Judgment (#88) and a Counter-Motion for Summary Judgment (#89). This case, originally ruled upon by the Honorable Edward C. Reed, is on partial remand from the U.S. Court of Appeals for the Ninth Circuit. The Court heard oral argument on October 22, 2013.

BACKGROUND

In July 2009, Defendant United Automobile Insurance Company ("UAIC") filed a petition for removal based on diversity jurisdiction. (Pet. for Removal (#1) at 1-2). Defendant attached Plaintiffs James Nalder, guardian ad litem for minor Cheyanne Nalder, real party in interest, and Gary Lewis's (collectively "Plaintiffs") complaint which had been filed in the Eighth Judicial District in Clark County, Nevada. (Compl. (#1) at 5-16).

The complaint alleged the following. (*Id.* at 5). Lewis was the owner of a 1996 Chevy Silverado and had an automobile insurance policy with Defendant on July 8, 2007. (*Id.* at 6). On July 8, 2007, Lewis drove over top of Cheyanne while Cheyanne was a pedestrian in a residential area and caused Cheyanne serious personal injuries. (*Id.* at 7). Cheyanne made

1 a claim to Defendant for damages and offered to settle the claim for personal injuries and
2 damages against Lewis within the policy limits. (*Id.*). Defendant refused to settle and denied
3 the claim all together indicating that Lewis did not have coverage at the time of the accident.
4 (*Id.*). Defendant was required to provide insurance coverage under the policy. (*Id.* at 9).
5 Defendant never informed Lewis that Cheyanne was willing to settle the claim for the sum of
6 \$15,000, the policy limit. (*Id.*). Due to the dilatory tactics and failure of Defendant to protect
7 its insured, Cheyanne filed a complaint on October 9, 2007 against Lewis for her personal
8 injuries and damages. (*Id.*). Cheyanne procured a default judgment in the amount of
9 \$3,500,000 against Lewis. (*Id.*). Plaintiffs alleged breach of contract, breach of the implied
10 covenant of good faith and fair dealing, bad faith, breach of Nev. Rev. Stat. § 686A.310, and
11 fraud against Defendant. (*Id.* at 9-14).

12 In March 2010, Defendant filed a motion for summary judgment on all claims. (See
13 Mot. for Summ. J. (#17)). In December 2010, Judge Reed issued an order granting
14 Defendant's motion for summary judgment on all claims and directed the Clerk of the Court
15 to enter judgment accordingly. (Order (#42) at 13). The order provided the following factual
16 history:

17 Lewis was the owner of a 1996 Chevy Silverado insured, at various times,
18 by Defendant. Lewis had an insurance policy issued by UAIC on his vehicle
19 during the period of May 31, 2007 to June 30, 2007. Lewis received a renewal
20 statement, dated June 11, 2007, instructing him to remit payment by the due
21 date of June 30, 2007 in order to renew his insurance policy. The renewal
22 statement specified that "[t]o avoid lapse in coverage, payment must be received
prior to expiration of your policy." The renewal statement listed June 30, 2007
as effective date, and July 31, 2007 as an "expiration date." The renewal
statement also states that the "due date" of the payment is June 30, 2007, and
repeats that the renewal amount is due no later than June 30, 2007. Lewis
made a payment on July 10, 2007.

23 Defendant then issued a renewal policy declaration and automobile
24 insurance cards indicating that Lewis was covered under an insurance policy
between July 10, 2007 to August 10, 2007.

25 (*Id.* at 2-3).¹

26 The order stated the following. (*Id.* at 5). Defendant sought summary judgment on all
27

28 ¹ Record citations omitted.

1 claims on the basis that Lewis had no insurance coverage on the date of the accident. (*Id.*)
 2 Plaintiffs argued that Lewis was covered on the date of the accident because the renewal
 3 notice was ambiguous as to when payment had to be received in order to avoid a lapse in
 4 coverage and that any ambiguities had to be construed in favor of the insured. (*Id.* at 5-6).
 5 Defendants, in the alternative, requested that the Court dismiss Plaintiffs' extra-contractual
 6 claims or bifurcate the claim of breach of contract from the remaining claims. (*Id.* at 6).

7 The order stated the following regarding Lewis's insurance coverage on July 8, 2007:

8 Plaintiffs contend that Lewis was covered under an insurance policy on
 9 July 8, 2007, the date of the accident, because Lewis' payment on July 10, 2007
 10 was timely. Plaintiffs rely on the sentence "[t]o avoid lapse in coverage, payment
 11 must be received prior to expiration of your policy" contained in the renewal
 12 statement. Defendant contends that "expiration of your policy" did not refer to
 13 the expiration date of the renewal policy listed on the renewal statement, but to
 14 the expiration of Lewis' current policy, which coincided with the listed due date
 15 on the renewal statement. Plaintiffs contend that Lewis reasonably believed that
 16 while there was a due date on which UAIC preferred to receive payment, there
 17 was also a grace period within which Lewis could pay and avoid any lapse in
 18 coverage.

19 The renewal statement cannot be considered without considering the
 20 entirety of the contract between Lewis and UAIC. Plaintiff attached exhibits of
 21 renewal statements, policy declarations pages, and Nevada automobile
 22 insurance cards issued by UAIC for Lewis. The contract, taken as a whole,
 23 cannot reasonably be interpreted in favor of Plaintiffs' argument.

24 Lewis received a "Renewal Policy Declarations" stating that he had
 25 coverage from May 31, 2007 to June 30, 2007 at 12:01 A.M. (Pls' Opp., Exhibit
 26 A at 29 (#20-1); Pls' Supp., Exhibit A at 11-12 (#26-1); Pls' Supp., Exhibit A at
 27 15 (#26-1).) The declarations page stated that "[t]his declaration page with
 28 'policy provisions' and all other applicable endorsements complete your policy."
 (Pls' Opp., Exhibit A at 29 (#20-1).) Lewis also received a Nevada Automobile
 Insurance Card issued by UAIC stating that the effective date of his policy was
 May 31, 2007, and the expiration date was June 30, 2007. (*Id.* at 30; Pls' Supp.,
 Exhibit A at 11-12 (#26-1).) The renewal statement Lewis received in June must
 be read in light of the rest of the insurance policy, contained in the declarations
 page and also summarized in the insurance card.

"In interpreting a contract, 'the court shall effectuate the intent of the
 parties, which may be determined in light of the surrounding circumstances if not
 clear from the contract itself.'" *Anvui, LLC v. G.L. Dragon, LLC*, 163 P.3d 405,
 407 (Nev. 2007). Plaintiffs contend that there was a course of dealing between
 Lewis and UAIC supporting a reasonable understanding that there was a grace
 period involved in paying the insurance premium for each month-long policy. In
 fact, the so-called course of dealing tilts, if at all, in favor of Defendant. Lewis
 habitually made payments that were late. UAIC never retroactively covered
 Lewis on such occasions. Lewis' new policy, clearly denoted on the declarations
 page and insurance cards Lewis was issued, would always become effective on
 the date of the payment.

Plaintiffs point to the fact that in April 2007, Lewis was issued a revised
 renewal statement stating that the renewal amount was due on May 6, 2007, a
 date after the effective date of the policy Lewis would be renewing through the

renewal amount. This isolated occasion occurred due to the fact that Lewis added a driver to his insurance policy, resulting in an increase in the renewal amount, after UAIC had previously sent a renewal notice indicating that a lower renewal amount was due on April 29, 2007. UAIC issued a revised renewal statement dated April 26, 2007, and gave Lewis an opportunity to pay by May 6, 2007, instead of April 29, 2007, when the original renewal amount had been due upon expiration of his April policy. In that case, Lewis made a timely payment on April 28, 2007, and therefore there is not a single incident Plaintiffs can point to in which Lewis was retroactively covered for a policy before payment was made, even in the single instance UAIC granted him such an opportunity due to a unique set of circumstances.

(*Id.* at 7-9).

Plaintiffs appealed. (Notice of Appeal (#46)). In a two-page memorandum disposition, the Ninth Circuit held, *inter alia*, the following:

We reverse the district court's grant of United Automobile Insurance Company's motion for summary judgment with respect to whether there was coverage by virtue of the way the renewal statement was worded. Plaintiffs came forward with facts supporting their tenable legal position that a reasonable person could have interpreted the renewal statement to mean that Lewis's premium was due by June 30, 2007, but that the policy would not lapse if his premium were "received prior to expiration of [his] policy," with the "expiration date" specifically stated to be July 31, 2007. We remand to the district court for trial or other proceedings consistent with this memorandum. The portion of the order granting summary judgment with respect to the statutory arguments is affirmed.

(Ninth Cir. Mem. Dispo. (#82) at 2-3).

The pending motions now follow.

LEGAL STANDARD

In reviewing a motion for summary judgment, the court construes the evidence in the light most favorable to the nonmoving party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). Pursuant to Fed.R.Civ.P. 56, a court will grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). Material facts are "facts that might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). A material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.*

The moving party bears the initial burden of identifying the portions of the pleadings and evidence that the party believes to demonstrate the absence of any genuine issue of material

fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). A party asserting that a fact cannot be or is genuinely disputed must support the assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(A)-(B). Once the moving party has properly supported the motion, the burden shifts to the nonmoving party to come forward with specific facts showing that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512. The nonmoving party cannot defeat a motion for summary judgment "by relying solely on conclusory allegations unsupported by factual data." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita*, 475 U.S. at 587, 106 S.Ct. at 1356.

DISCUSSION

I. Plaintiff James Nalder's Motion for Summary Judgment (#88)

Nalder moves for partial summary judgment as to liability against Defendant. (Mot. for Summ. J. (#88) at 1). Nalder makes three arguments which will be addressed in turn.

A. Ambiguous Contract

Nalder argues that because the renewal statement was ambiguous it must be strictly construed against the insurance company pursuant to Nevada law and, thus, Lewis had coverage at the time of the accident. (Mot. for Summ. J. (#88) at 10).

In response, Defendant argues that Lewis's renewal statement is not ambiguous and clearly demanded remittance of the policy premium for the subsequent term by the expiration

1 of the present policy period. (Opp'n to Mot. for Summ. J. (#90) at 15). Defendant argues that
2 a material issue of fact remains over whether the renewals were ambiguous. (*Id.*).

3 Nalder filed a reply. (Reply to Mot. for Summ. J. (#95)).

4 "Summary judgment is appropriate in contract cases only if the contract provision or the
5 contract in question is unambiguous." *Econ. Forms Corp. v. Law Co., Inc.*, 593 F.Supp. 539,
6 540 (D. Nev. 1984). A contract is ambiguous if it is reasonably susceptible to more than one
7 interpretation. *Shelton v. Shelton*, 78 P.3d 507, 510 (Nev. 2003). Whether a contract is
8 ambiguous is a question of law. *Margrave v. Dermody Properties, Inc.*, 878 P.2d 291, 293
9 (Nev. 1994). "The interpretation of an ambiguous contract is a mixed question of fact and
10 law." *Econ. Forms Corp.*, 593 F.Supp. at 541. However, in Nevada, "any ambiguity or
11 uncertainty in an insurance policy must be construed against the insurer and in favor of the
12 insured." *United Nat'l Ins. Co. v. Frontier Ins. Co., Inc.*, 99 P.3d 1153, 1156 (Nev. 2004).

13 In this case, the Court finds that the renewal statement is ambiguous based on the
14 Ninth Circuit's reverse and remand. The Court finds that the renewal statement is reasonably
15 susceptible to more than one interpretation as demonstrated by both Judge Reed and the
16 Ninth Circuit's conflicting interpretations. As such, the Court finds that, pursuant to Nevada
17 law, this ambiguity is construed against Defendant and in favor of the insured such that Lewis
18 was covered by the insurance policy on the date of the accident. The Court grants summary
19 judgment on this issue in favor of Plaintiffs.

20 **B. Bad Faith**

21 Nalder argues that Defendant's actions constitute bad faith. (Mot. for Summ. J. (#88)
22 at 19). Specifically, Nalder argues that Lewis properly renewed his policy pursuant to the
23 policy's renewal statements, Defendant renewed Lewis's policy, and then Defendant claimed
24 that there was a lapse in coverage. (*Id.*). Nalder asserts that Defendant never investigated
25 to determine whether Lewis was covered, made a snap decision that there was no coverage,
26 and left Lewis bereft of protection against Cheyanne's lawsuit. (*Id.*). Nalder contends that
27 these facts constitute bad faith which requires Defendant to compensate Lewis, pay for the
28 judgment currently entered against him, and pay for compensatory and punitive damages.

1 (Id.).

2 In response, Defendant argues that every case cited by Nalder involves a situation
3 where there existed a policy in force at the time of the loss. (Opp'n to Mot. for Summ. J. (#90)
4 at 21). Defendant asserts that, in this case, Nalder asks the Court to find an implied policy
5 from an ambiguity in the renewal. (Id. at 22). Defendant argues that Nevada law provides that
6 a court may review an insurer's actions at the time they were made to determine whether the
7 insurer's actions were reasonable as a matter of law and that bad faith cannot be premised
8 upon an honest mistake, bad judgment, or negligence. (Id. at 25). Defendant asserts that
9 Nevada law provides that an insurer cannot be found liable for bad faith, as a matter of law,
10 if it had a reasonable basis to contest coverage. (Id.). Defendant contends that if an insurer's
11 actions are reasonable the court can decide as a matter of law to dismiss the extra-contractual
12 claims. (Id. at 26). Defendant asserts that because Lewis admits that he did not make any
13 policy payments between June 12, 2007 and July 10, 2007 its actions were reasonable. (Id.).
14 Defendant contends that even if it may be found to owe coverage on an implied contract,
15 Plaintiffs must admit that a genuine dispute existed as to coverage at the time of the accident.
16 (Id.).

17 Nalder filed a reply. (Reply to Mot. for Summ. J. (#95)).

18 Nevada law imposes the covenant of good faith and fair dealing on insurers. *Allstate*
19 *Ins. Co. v. Miller*, 212 P.3d 318, 324 (Nev. 2009). A violation of the covenant gives rise to a
20 bad-faith tort claim. *Id.* The Nevada Supreme Court has defined "bad faith as 'an actual or
21 implied awareness of the absence of a reasonable basis for denying benefits of the [insurance]
22 policy.'" *Id.* (quoting *Am. Excess Ins. Co. v. MGM*, 729 P.2d 1352, 1354-55 (Nev. 1986)). "To
23 establish a prima facie case of bad-faith refusal to pay an insurance claim, the plaintiff must
24 establish that the insurer had no reasonable basis for disputing coverage, and that the insurer
25 knew or recklessly disregarded the fact that there was no reasonable basis for disputing
26 coverage." *Powers v. United Servs. Auto. Ass'n*, 962 P.2d 596, 604 (Nev. 1998) *opinion*
27 *modified on denial of reh'g*, 979 P.2d 1286 (Nev. 1999).

28 In this case, the Court denies Nalder's motion for summary judgment on the bad faith

1 claims. The procedural history of this case demonstrates that Defendant had a reasonable
2 basis for disputing coverage during the time of the incident. As demonstrated by Judge
3 Reed's original order, there was arguably sufficient evidence to find a basis for Defendant to
4 deny Lewis benefits of the insurance policy. Even though the Ninth Circuit reversed and
5 remanded Judge Reed's original order, this Court finds that the procedural history of this case
6 demonstrates that Defendant had a reasonable basis to dispute coverage and, on one
7 occasion, had succeeded in that argument. The Court denies Nalder's motion for summary
8 judgment on this issue.

9 **C. Pre and Post-Judgment Interest**

10 Nalder argues that because there was arguable or possible coverage under the policy,
11 Defendant had a duty to defend Lewis. (Mot. for Summ. J. (#88) at 20). Nalder asserts that
12 Defendant's failure to provide coverage and its breach of the duty to defend was the proximate
13 cause of the default judgment being entered against Lewis. (*Id.*). Nalder contends that
14 Defendant has the duty to indemnify Lewis. (*Id.*).

15 In response, Defendant argues that there are court cases where an insurer who
16 investigated coverage and based its decision not to defend on a reasonable construction of
17 the policy was not liable for bad faith breach of the duty to defend even after the court resolved
18 the ambiguity in the contract in favor of the insured. (Opp'n to Mot. for Summ. J. (#90) at 33).

19 Nalder filed a reply. (Reply to Mot. for Summ. J. (#95)).

20 The Nevada Supreme Court has held that primary liability insurance policies create a
21 hierarchy of duties between the insurer and the insured. *Allstate Ins.*, 212 P.3d at 324. One
22 of these contractual duties is the duty to defend. *Id.* A breach of the duty to defend is a
23 breach of a contractual obligation. See *id.* at 324-25. An insurer bears a duty to defend its
24 insured whenever it ascertains facts which give rise to the potential of liability under the policy.
25 *United Nat'l Ins. Co. v. Frontier Ins. Co., Inc.*, 99 P.3d 1153, 1158 (Nev. 2004). Once the duty
26 to defend arises, it continues through the course of litigation. *Id.* "If there is any doubt about
27 whether the duty to defend arises, this doubt must be resolved in favor of the insured." *Id.*
28 "The purpose behind construing the duty to defend so broadly is to prevent an insurer from

1 evading its obligation to provide a defense for an insured without at least investigating the facts
2 behind a complaint.” *Id.* However, the duty to defend is not absolute. *Id.* “A potential for
3 coverage only exists when there is arguable or possible coverage.” *Id.* “Determining whether
4 an insurer owes a duty to defend is achieved by comparing the allegations of the complaint
5 with the terms of the policy.” *Id.* If an insurer breaches the duty to defend, damages are
6 limited to attorneys’ fees and costs incurred by the insured to defend the action. See *Home*
7 *Sav. Ass’n v. Aetna Cas. & Sur. Co.*, 854 P.2d 851, 855 (Nev. 1993) (holding that an insured
8 was not barred from further pursuing recovery from insurance company for fees and costs
9 incurred in defending an action); *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev.*
10 *Co., Inc.*, 255 P.3d 268, 278 (Nev. 2011) (discussing damages related to an indemnitor’s duty
11 to defend an indemnitee).

12 In this case, as discussed at oral argument, the Court finds that Defendant breached
13 its contractual duty to defend Gary Lewis in the underlying action. As such, Gary Lewis’s
14 damages are limited to the attorneys’ fees and costs he incurred in defending that action.
15 However, the Court awards no damages to Gary Lewis because he did not incur any fees or
16 costs in defending the underlying action because he chose not to defend and, instead, took
17 a default judgment.

18 As such, the Court grants in part and denies in part Nalder’s motion for summary
19 judgment. The Court grants summary judgment for Nalder on the ambiguity issue and finds
20 that there is an ambiguity in the renewal statement and, thus, the policy is construed in favor
21 of coverage at the time of the accident. Defendant must pay the policy limits of the implied
22 insurance policy. The Court denies summary judgment for Nalder on the remaining bad-faith
23 claims. The Court grants in part and denies in part summary judgment for Nalder on the duty
24 to defend issue. The Court finds that Defendant did breach its contractual duty to defend but
25 denies Nalder’s request for damages for that breach.

26 **II. Defendant’s Counter-Motion for Summary Judgment on All Extra-Contractual**
27 **Claims or Remedies (#89)**

28 Defendant seeks summary judgment on all of Plaintiff’s claims for extra-contractual

1 remedies and/or bad faith claims because there was a genuine dispute as to whether
2 coverage existed at the time and its actions were reasonable. (Counter Mot. for Summ. J.
3 (#89) at 15). Defendant argues that because it had a reasonable basis to deny coverage there
4 can be no bad faith. (*Id.* at 16).

5 Nalder filed a response and Defendant filed a reply. (Opp'n to Counter Mot. for Summ.
6 J. (#96); Reply to Counter Mot. for Summ. J. (#97)).

7 The Court grants Defendant's counter-motion for summary judgment on Plaintiffs' extra-
8 contractual claims and/or bad faith claims. As discussed above, the procedural history of this
9 case demonstrates that Defendant had a reasonable basis for disputing coverage during the
10 time of the accident and, thus, there is no bad faith on the part of Defendant.

11 CONCLUSION

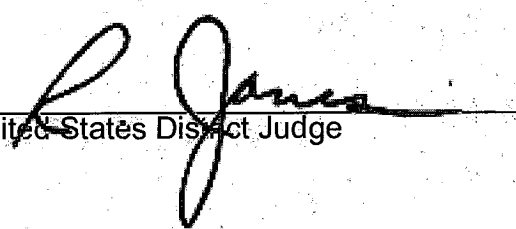
12 For the foregoing reasons, IT IS ORDERED that Plaintiff James Nalder's Motion for
13 Summary Judgment (#88) is GRANTED in part and DENIED in part. The Court grants
14 summary judgment in favor of Nalder and finds that the insurance renewal statement
15 contained an ambiguity and, thus, the statement is construed in favor of coverage during the
16 time of the accident. The Court denies summary judgment on Nalder's remaining bad-faith
17 claims.

18 IT IS FURTHER ORDERED that Defendant's Counter-Motion for Summary Judgment
19 on All Extra-Contractual Claims or Remedies (#89) is GRANTED. The Court grants summary
20 judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant.

21 The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewis's
22 implied insurance policy at the time of the accident.

23 The Clerk of the Court shall enter judgment accordingly.

24 Dated this 30th of October, 2013.

25
26
27 
28 United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF

Nevada

Nalder et al.,

Plaintiffs,

V.

United Automobile Insurance Company,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: 2:09-cv-01348-RCJ-GWF

- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.
- ☐ **Notice of Acceptance with Offer of Judgment.** A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED

The Court grants summary judgment in favor of Nalder and finds that the insurance renewal statement contained an ambiguity and, thus, the statement is construed in favor of coverage during the time of the accident. The Court denies summary judgment on Nalder's remaining bad-faith claims.

The Court grants summary judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant. The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewis's implied insurance policy at the time of the accident.

October 30, 2013

Date

/s/ Lance S. Wilson

Clerk

/s/ Summer Rivera

(By) Deputy Clerk



0744

1 THOMAS CHRISTENSEN, ESQ.
2 Nevada Bar #2326
3 CHRISTENSEN LAW OFFICES, LLC
4 1000 S. Valley View Blvd.
5 Las Vegas, Nevada 89107
6 (702) 216-1475 Phone
(702) 870-6152 Fax
courtnotices@injuryhelpnow.com
Attorneys for Plaintiffs

7 UNITED STATES DISTRICT COURT
8
9 FOR THE DISTRICT OF NEVADA

10 JAMES NALDER, Guardian Ad Litem for minor)
11 Cheyanne Nalder, real party in interest, and)
12 GARY LEWIS, Individually;)
13 Plaintiffs,)

Case No.: 2:09-cv-1348

14 vs.)

NOTICE OF APPEAL

15 UNITED AUTOMOBILE INSURANCE CO,)
16 DOES I through V, and ROE CORPORATIONS)
17 I through V, inclusive)
18 Defendants.)

19 Notice is hereby given that JAMES NALDER, Guardian Ad Litem for minor,
20 Cheyanne Nalder, real party in interest, and GARY LEWIS, Individually, Plaintiffs in the
21 above named case, hereby appeal to the United States Court of Appeals for the 9th Circuit from
22 all judgments and orders in this action from the District Court for the District of Nevada
23 including but not limited to, the Order on Motion for Summary Judgment(#102) entered in this
24 action on the 20th day of December, 2010, Clerk's Judgment (#103) entered in this action on
25 the 30th day of October, 2013 and any and all other orders made final and appealable by the
26 foregoing.
27
28

1 The parties to the judgment [or order or decree] appealed from and the names and
2 addresses of their respective attorneys are as follows:

3
4 THOMAS CHRISTENSEN, ESQ.,
Nevada Bar No: 2326
5 JASON A. GORDON, ESQ.,
Nevada Bar No: 10598
6 CHRISTENSEN LAW OFFICES, LLC
7 1000 S. Valley View Blvd.
Las Vegas, NV 89107
8 (702)216-1446
9 Attorney JAMES NALDER,
Guardian Ad Litem for minor,
10 Cheyanne Nalder, real party in interest,
and GARY LEWIS, Individually
11

THOMAS WINNER, ESQ,
Nevada Bar No: 5168
MATTHEW DOUGLAS, ESQ,
Nevada Bar No: 11371
ATKIN, WINNER & SHERROD
1117 S. Rancho Dr.
Las Vegas, NV 89102
(702)243-7000
Attorneys for UAIC

12
13 Dated this 27th day of November, 2013.

14 CHRISTENSEN LAW OFFICES, LLC

15
16
17 By.  #12588

18 Thomas Christensen, Esq.
19 Nevada Bar No. 2326
1000 S. Valley View Blvd.
20 Las Vegas, Nevada 89107
(702) 216-1475
21 Attorneys for Plaintiffs
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC, and that the following documents were served via electronic service on November 27, 2013: NOTICE OF APPEAL

To:

Thomas E. Winner, Esq.
Matthew J. Douglas, Esq.
ATKIN, WINNER, & SHERROD
1117 S. Rancho Dr.
Las Vegas, NV 89102



An employee of CHRISTENSEN LAW OFFICES, LLC

CLOSED, APPEAL

**United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:09-cv-01348-RCJ-GWF**

Nalder et al v. United Automobile Insurance Company
Assigned to: Chief Judge Robert C. Jones
Referred to: Magistrate Judge George Foley, Jr
Case in other court: 9th Circuit Court of Appeal, 11-15010
9th Circuit Court of Appeal, 11-15462
9th Circuit Court of Appeals, 13-17441
Eighth Judicial District Court, A590967
Cause: 28:1332 Diversity-Insurance Contract

Date Filed: 07/24/2009
Date Terminated: 10/30/2013
Jury Demand: Both
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Plaintiff

James Nalder
Gaurdian Ad Litem
on behalf of
Cheyanne Nalder

represented by **David F Sampson**
Law Office of David Sampson, LLC.
200 E. Charleston Blvd.
Las Vegas, NV 89104
702-605-1099
Fax: 888-209-4199
Email: david@davidsampsonlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas F. Christensen
Christensen Law Offices, LLC
1000 S. Valley View Blvd.
Las Vegas, NV 89107-
702-870-1000
Fax: 702-870-6152
Email: courtnotices@injuryhelpnow.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Gary Lewis

represented by **David F Sampson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Thomas F. Christensen
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

000748

Defendant**United Automobile Insurance Company**represented by **Thomas E. Winner**

Atkin Winner & Sherrod
 7201 W Lake Mead Blvd.; Ste 360
 Las Vegas, NV 89128
 702-243-7000
 Fax: 702-234-7059
 Email: twinner@awsvlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Douglas M Rowan

Wilson Elser Moskowitz Edelman &
 Dicker LLP
 300 South Fourth Street, 11th Floor
 Las Vegas, NV 89101
 702-727-1400
 Fax: 702-727-1401
 Email: douglas.rowan@wilsonelser.com
ATTORNEY TO BE NOTICED

Matthew John Douglas

Atkin Winner & Sherrod
 1117 South Rancho
 Las Vegas, NV 89102
 702-245-7000
 Email: mdouglas@awslawyers.com
ATTORNEY TO BE NOTICED

Susan M Sherrod

Atkin Winner Sherrod
 7201 W Lake Mead Blvd
 Suite 360
 Las Vegas, NV 89128
 702-243-7000
 Fax: 702-234-7059
 Email: ssherrod@awslawyers.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/24/2009	<u>1</u>	PETITION FOR REMOVAL from Eighth Judicial District Court, Case Number A590967, (Filing fee \$ 350 receipt number 0978000000001309652), filed by United Automobile Insurance Company. Certificate of Interested Parties due by 8/3/2009. (Rowan, Douglas) (Entered: 07/24/2009)
07/24/2009	<u>2</u>	CERTIFICATE of Interested Parties filed by United Automobile Insurance Company.. There are no known interested parties other than those participating in the case. (Rowan, Douglas) (Entered: 07/24/2009)

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07/24/2009		Case assigned to Judge Edward C. Reed, Jr and Magistrate Judge George Foley, Jr. (SD) (Entered: 07/24/2009)
07/24/2009	<u>3</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov . Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (no image attached) (SD) (Entered: 07/24/2009)
07/24/2009	<u>4</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Edward C. Reed, Jr, on 7/24/2009. Statement regarding removed action is due by 8/11/2009. Joint Status Report regarding removed action is due by 8/26/2009. (Copies have been distributed pursuant to the NEF - SD) (Entered: 07/24/2009)
07/24/2009	<u>5</u>	DEMAND for Trial by Jury by Plaintiffs Gary Lewis, James Nalder. (Sampson, David) (Entered: 07/24/2009)
07/24/2009	<u>6</u>	CERTIFICATE of Interested Parties filed by Gary Lewis, James Nalder.. There are no known interested parties other than those participating in the case <i>JURY TRIAL REQUESTED</i> . (Sampson, David) (Entered: 07/24/2009)
08/06/2009	<u>7</u>	ANSWER to Complaint with Jury Demand <i>with Affirmative Defenses</i> filed by United Automobile Insurance Company. Certificate of Interested Parties due by 8/16/2009. Discovery Plan/Scheduling Order due by 9/20/2009.(Winner, Thomas) (Entered: 08/06/2009)
08/07/2009	<u>8</u>	STATEMENT RE: REMOVAL filed by Defendant United Automobile Insurance Company. (Douglas, Matthew) (Entered: 08/07/2009)
08/24/2009	<u>9</u>	Interim STATUS REPORT by Plaintiffs Gary Lewis, James Nalder. (Sampson, David) (Entered: 08/24/2009)
09/03/2009	<u>10</u>	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiffs Gary Lewis, James Nalder, Defendant United Automobile Insurance Company. (Sampson, David) (Entered: 09/03/2009)
09/04/2009	<u>11</u>	SCHEDULING ORDER. Discovery due by 5/6/2010. Motions due by 6/7/2010. Proposed Joint Pretrial Order due by 7/7/2010. Signed by Magistrate Judge George Foley, Jr on 9/4/2009. (Copies have been distributed pursuant to the NEF - SD) (Entered: 09/08/2009)
02/05/2010	<u>12</u>	MOTION to Compel to <i>Overrule Objections and Compel Plaintiff's Answers to Written Interrogatories and Requests for Production Under FRCP 37(a)(3)(B)(iii)</i> by Defendant United Automobile Insurance Company. Responses due by 2/22/2010. (Attachments: # <u>1</u> Exhibit Group, # <u>2</u> Exhibit Group, # <u>3</u> Exhibit Group, # <u>4</u> Exhibit Group, # <u>5</u> Exhibit Group)(Rowan, Douglas) (Entered: 02/05/2010)
02/11/2010	<u>13</u>	NOTICE of Hearing on <u>12</u> Defendant's MOTION to <i>Overrule Objections and Compel Plaintiff's Answers to Written Interrogatories and Requests for Production Under FRCP 37(a)(3)(B)(iii)</i> : Motion Hearing set for Monday, March 8, 2010, at 9:30 AM in LV Courtroom 3A before Magistrate Judge George Foley Jr.(JBW) (Entered: 02/11/2010)

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02/22/2010	<u>14</u>	RESPONSE to <u>12</u> MOTION to Compel to <i>Overrule Objections and Compel Plaintiff's Answers to Written Interrogatories and Requests for Production Under FRCP 37(a)(3)(B)(iii)</i> MOTION to Compel to <i>Overrule Objections and Compel Plaintiff's Answers to Written Interrogatories and Requests for Production Under FRCP 37(a)(3)(B)(iii)</i> , filed by Plaintiff Gary Lewis. Replies due by 3/4/2010. (Sampson, David) (Entered: 02/22/2010)
03/03/2010	<u>15</u>	REPLY to Response to <u>12</u> MOTION to Compel to <i>Overrule Objections and Compel Plaintiff's Answers to Written Interrogatories and Requests for Production Under FRCP 37(a)(3)(B)(iii)</i> MOTION to Compel to <i>Overrule Objections and Compel Plaintiff's Answers to Written Interrogatories and Requests for Production Under FRCP 37(a)(3)(B)(iii)</i> ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 03/03/2010)
03/08/2010	<u>16</u>	MINUTES OF PROCEEDINGS - Motion Hearing held on 3/8/2010 before Magistrate Judge George Foley, Jr. Crtrm Administrator: <i>Donna Smith</i> ; Pla Counsel: <i>David Sampson</i> ; Def Counsel: <i>Matthew Douglas, Thomas Winner</i> ; Court Reporter/FTR #: 9:29:24-9:45:58; Time of Hearing: 9:30 a.m.; Courtroom: 3A; Representations of Mr. Douglas and Mr. Sampson heard. Defendant's <u>12</u> Motion to Compel is granted as stated on the record. The Court declines to award costs or impose sanctions at this time. Mr. Sampson moves for an extension of the discovery deadline. The Court denies the motion. (Copies have been distributed pursuant to the NEF - DES) (Entered: 03/08/2010)
03/18/2010	<u>17</u>	MOTION for Summary Judgment <i>on all Claims; Alternatively Motion for Summary Judgment on Extra-Contractual Remedies; or Further in the Alternative, Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finally in the Alternative, Motion for Leave to Amend</i> by Defendant United Automobile Insurance Company. Responses due by 4/11/2010. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit)(Rowan, Douglas) (Entered: 03/18/2010)
03/18/2010	<u>18</u>	DECLARATION of Jan Cook re <u>17</u> MOTION for Summary Judgment <i>on all Claims; Alternatively Motion for Summary Judgment on Extra-Contractual Remedies; or Further in the Alternative, Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finally in the Alternat</i> ; by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 03/18/2010)
03/18/2010	<u>19</u>	DECLARATION of Denise Davis re <u>17</u> Motion for Summary Judgment; by Defendant United Automobile Insurance Company. (Rowan, Douglas) Docket entry relationship added on 3/23/2010. (MJZ) (Entered: 03/18/2010)
04/09/2010	<u>20</u>	RESPONSE to <u>17</u> MOTION for Summary Judgment <i>on all Claims; Alternatively Motion for Summary Judgment on Extra-Contractual Remedies; or Further in the Alternative, Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finally in the Alternat</i> , filed by Plaintiffs Gary Lewis, James Nalder. Replies due by 4/26/2010. (Attachments: # <u>1</u> Exhibit UAIC Claims File, # <u>2</u> Exhibit UAIC Claims File, # <u>3</u> Exhibit UAIC Claims File, # <u>4</u> Exhibit Judgment, # <u>5</u> Exhibit Interrogatory Answers, # <u>6</u> Exhibit Expert Report)(Sampson, David) (Entered: 04/09/2010)
04/26/2010	<u>21</u>	REPLY to Response to <u>17</u> MOTION for Summary Judgment <i>on all Claims; Alternatively Motion for Summary Judgment on Extra-Contractual Remedies; or</i>

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		<i>Further in the Alternative, Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finally in the Alternat ; filed by Defendant United Automobile Insurance Company. Reply in Support (Rowan, Douglas) (Entered: 04/26/2010)</i>
05/05/2010	<u>22</u>	STIPULATION and Order to Amend the Discovery Plan and Scheduling Order (First Request) by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 05/05/2010)
05/06/2010	23	NOTICE of Hearing: Discovery Hearing regarding the Stipulation and Order to Amend the Discovery Plan and Scheduling Order (First Request) (#22) is set for Thursday, May 13, 2010, at 9:30 AM in LV Courtroom 3A before Magistrate Judge George Foley Jr.(JBW) (Entered: 05/06/2010)
05/13/2010	<u>24</u>	SCHEDULING ORDER re: <u>22</u> Stipulation to Amend Discovery Plan and Scheduling Order. Discovery due by 9/1/2010. Motions due by 10/1/2010. Proposed Joint Pretrial Order due by 11/2/2010. Signed by Magistrate Judge George Foley, Jr on 5/13/10. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 05/13/2010)
05/13/2010	25	MINUTES OF PROCEEDINGS - Status Conference held on 5/13/2010 before Magistrate Judge George Foley, Jr. Crtrm Administrator: <i>Melissa Jaime</i> ; Pla Counsel: <i>David Sampson</i> ; Def Counsel: <i>Thomas Winner</i> ; Court Reporter/FTR #: <i>9:30 a.m.</i> ; Time of Hearing: <i>9:30 - 9:35 a.m.</i> ; Courtroom: <i>3A</i> ; The Court makes an inquiry of counsel with respect to <u>22</u> Stipulation and Order to Amend the Discovery Plan and Scheduling Order. The parties represent that there are no issues regarding completing discovery. The Court will APPROVE <u>22</u> Stipulation to Amend Discovery Plan and Scheduling Order. (no image attached) (Copies have been distributed pursuant to the NEF - MAJ) (Entered: 05/14/2010)
08/24/2010	<u>26</u>	SUPPLEMENT to <u>17</u> MOTION for Summary Judgment <i>on all Claims; Alternatively Motion for Summary Judgment on Extra-Contractual Remedies; or Further in the Alternative, Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finally in the Alternat, 20 Response to Motion,, ; by Plaintiffs Gary Lewis, James Nalder. (Attachments: # 1 Exhibit Deposition, # 2 Exhibit Deposition, # 3 Exhibit Deposition, # 4 Exhibit Receipt, # 5 Exhibit Poliy)(Sampson, David) (Entered: 08/24/2010)</i>
08/24/2010	<u>27</u>	MOTION for Leave to File Response by Plaintiffs Gary Lewis, James Nalder. Responses due by 9/10/2010. (Sampson, David) Event type corrected on 8/25/2010. (MJZ) (Entered: 08/24/2010)
09/08/2010	<u>28</u>	SUBPOENA Returned Executed as to Plaintiff (Sampson, David) (Entered: 09/08/2010)
09/10/2010	<u>29</u>	RESPONSE to <u>27</u> MOTION for Leave to File Response, filed by Defendant United Automobile Insurance Company. <i>Opposition to Plaintiff's Motion for Leave to File a Supplement to his Opposition to Motion for Summary Judgment on all Claims and Other Issues; Alternatively Defendant COUNTER-MOTIONS for Leave to File a Response to Plaintiff's Supplement and for Leave to Defendant to file a Supplement to its Original Motion</i> Replies due by 9/27/2010. (Rowan, Douglas) (Entered: 09/10/2010)
10/25/2010	<u>30</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Edward C. Reed, Jr, on 10/25/2010. Plaintiffs Motion for Leave <u>27</u> to file a Supplement <u>26</u> to Defendants

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		Motion for Summary Judgment <u>17</u> is GRANTED. Defendants shall have twenty-one (21) days within which to file a supplement to its Reply <u>21</u> in support of Defendants Motion for Summary Judgment <u>17</u> . (Copies have been distributed pursuant to the NEF - ECS) (Entered: 10/25/2010)
10/25/2010	<u>31</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Edward C. Reed, Jr, on 10/25/2010. A hearing is scheduled for 1:00 p.m., 12/7/10, on Defendants Motion for Summary Judgment <u>17</u> . The hearing will be held at the Lloyd D. George United States Courthouse, Las Vegas, Nevada. At the hearing, each side shall be allowed one (1) hour for oral argument. (Copies have been distributed pursuant to the NEF - ECS) (Entered: 10/25/2010)
11/05/2010	<u>32</u>	PROPOSED Pretrial Order <i>Joint</i> by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 11/05/2010)
11/15/2010	<u>33</u>	RESPONSE to <u>17</u> MOTION for Summary Judgment <i>on all Claims; Alternatively Motion for Summary Judgment on Extra-Contractual Remedies; or Further in the Alternative, Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finally in the Alternat, filed by Defendant United Automobile Insurance Company. Response to Plaintiffs' Supplement to their Opposition to Defendant's Motion for Summary Judgment on all Claims; Alternatively, Motion for Summary Judgment on Extra-Contractual Remedies; or Furhter, in the Alternative, Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finall, in teh Alternative, Motion for Leave to Amend Replies due by 12/2/2010. (Rowan, Douglas)</i> (Entered: 11/15/2010)
11/15/2010	<u>34</u>	EXHIBIT(s) <u>1</u> to <u>33</u> Response to Motion,, ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 11/15/2010)
11/15/2010	<u>35</u>	EXHIBIT(s) <u>2</u> to <u>33</u> Response to Motion,, ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 11/15/2010)
11/15/2010	<u>36</u>	EXHIBIT(s) <u>3</u> to <u>33</u> Response to Motion,, ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 11/15/2010)
11/15/2010	<u>37</u>	EXHIBIT(s) <u>4</u> to <u>33</u> Response to Motion,, ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 11/15/2010)
11/15/2010	<u>38</u>	EXHIBIT(s) <u>5</u> to <u>33</u> Response to Motion,, ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 11/15/2010)
11/18/2010	<u>39</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Edward C. Reed, Jr, on 11/18/2010. By Deputy Clerk: C. Larsen. RE: <u>17</u> MOTION for Summary Judgment <i>on all Claims; Alternatively Motion for Summary Judgment on Extra-Contractual Remedies; or Further in the Alternative; Motion to Stay Discovery and Bifurcate Claims for Extra-Contractual Remedies; Finally in the Alternat Motion Hearing set for 12/7/2010 at 1:30, is RESCHEDULED on 12/7/2010 at 02:00 PM in LV Courtroom 4B before Judge Edward C. Reed Jr. (no image attached)</i> (Copies have been distributed pursuant to the NEF - CLL) (Entered: 11/18/2010)
12/03/2010	<u>40</u>	ERRATA to Response to <u>17</u> MOTION for Summary Judgment, by United Automobile Insurance Company. (Rowan, Douglas) Event type corrected on 12/6/2010. (MJZ) (Entered: 12/03/2010)

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12/06/2010		NOTICE of Docket Correction to <u>40</u> RESPONSE to Motion. ERROR: Wrong event selected by attorney <u>Douglas Rowan</u> . CORRECTION: Entry corrected by court to <u>40</u> ERRATA. (no image attached)(MJZ) (Entered: 12/06/2010)
12/07/2010	<u>41</u>	MINUTES OF PROCEEDINGS - Motion Hearing held on 12/7/2010 before Judge Edward C. Reed, Jr. Crtrm Administrator: <i>C. Larsen</i> ; Pla Counsel: <i>D. Sampson</i> ; Def Counsel: <i>M. Douglas</i> ; <i>T. Winner</i> ; Court Reporter/FTR #: <i>F. Zabin</i> ; Time of Hearing: <i>2:15 PM to 4:35 PM</i> ; Arguments presented; written order to follow. (Copies have been distributed pursuant to the NEF - CLL) (Entered: 12/07/2010)
12/20/2010	<u>42</u>	ORDER granting Defendant's <u>17</u> Motion for Summary Judgment with respect to all of Plaintiffs' claims. Signed by Judge Edward C. Reed, Jr on 12/17/10. (Copies have been distributed pursuant to the NEF - ECS) (Entered: 12/20/2010)
12/20/2010	<u>43</u>	CLERK'S JUDGMENT in favor of United Automobile Insurance Company against Gary Lewis, James Nalder. Signed by Clerk of Court, Lance S. Wilson on 12/20/10. (Copies have been distributed pursuant to the NEF - ECS) (Entered: 12/20/2010)
12/22/2010	<u>44</u>	BILL OF COSTS by Defendant United Automobile Insurance Company. Tax or object to Bill of Costs by 1/9/2011. (Rowan, Douglas) (Entered: 12/22/2010)
12/22/2010	<u>45</u>	MOTION for Attorney Fees by Defendant United Automobile Insurance Company. Responses due by 1/8/2011. (Attachments: # <u>1</u> Exhibit Exhibit A)(Rowan, Douglas) (Entered: 12/22/2010)
01/03/2011	<u>46</u>	NOTICE OF APPEAL by Plaintiff Gary Lewis. Filing fee \$ 455, receipt number 0978-1839446. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Sampson, David) (Entered: 01/03/2011)
01/04/2011	<u>47</u>	USCA Appeal Fees received \$455 receipt number 0978-1839446 re <u>46</u> Notice of Appeal filed by Gary Lewis. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (JAG) (Entered: 01/04/2011)
01/04/2011	<u>48</u>	Designation of Transcripts and Transcript Order forms and instructions for <u>46</u> Notice of Appeal. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov/Forms.aspx . (JAG) (Entered: 01/04/2011)
01/07/2011	<u>49</u>	RESPONSE to <u>45</u> MOTION for Attorney Fees, filed by Plaintiffs Gary Lewis, James Nalder. Replies due by 1/17/2011. (Sampson, David) (Entered: 01/07/2011)
01/07/2011	<u>50</u>	OBJECTION to <u>44</u> Bill of Costs ; filed by Plaintiffs Gary Lewis, James Nalder. (Sampson, David) (Entered: 01/07/2011)
01/07/2011	<u>51</u>	ORDER for Time Schedule as to <u>46</u> Notice of Appeal filed by Gary Lewis. USCA Case Number 11-15010 . (JAG) (Entered: 01/07/2011)
01/11/2011	<u>52</u>	ERRATA to <u>45</u> MOTION for Attorney Fees ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 01/11/2011)
01/14/2011	<u>53</u>	REPLY to Response to <u>45</u> MOTION for Attorney Fees ; filed by Defendant United Automobile Insurance Company. <i>Combined reply to Plaintiff's Response to Motion for Attorneys Fees and Objection to Bill of Costs and Motion for Leave to Amend Bill of Costs to include Documentation of Costs</i> (Rowan, Douglas) (Entered: 01/14/2011)
01/14/2011	<u>54</u>	EXHIBIT(s) to Reply to Response to <u>45</u> MOTION for Attorney Fees, <u>58</u> MOTION to Amend/Correct <u>44</u> Bill of Costs; filed by Defendant United Automobile Insurance

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		Company. (Rowan, Douglas) Docket entry relationship added on 1/24/2011. (MJZ) (Entered: 01/14/2011)
01/14/2011	<u>55</u>	EXHIBIT(s) <i>Group Exhibit A Part 1</i> to Reply to Response to <u>45</u> MOTION for Attorney Fees, <u>58</u> MOTION to Amend/Correct <u>44</u> Bill of Costs ; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) Docket entry relationship added on 1/24/2011. (MJZ) (Entered: 01/14/2011)
01/14/2011	<u>56</u>	EXHIBIT(s) <i>Group Exhibit A Part 3</i> to Reply to Response to <u>45</u> MOTION for Attorney Fees, <u>58</u> MOTION to Amend/Correct <u>44</u> Bill of Costs; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) Docket entry relationship added on 1/24/2011. (MJZ) (Entered: 01/14/2011)
01/14/2011	<u>57</u>	EXHIBIT(s) <i>Group Exhibit A Part 4</i> to Reply to Response to <u>45</u> MOTION for Attorney Fees, <u>58</u> MOTION to Amend/Correct <u>44</u> Bill of Costs; filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) Docket entry relationship added on 1/24/2011. (MJZ) (Entered: 01/14/2011)
01/14/2011	<u>58</u>	MOTION to Amend/Correct <u>44</u> Bill of Costs, by Defendant United Automobile Insurance Company. Responses due by 1/31/2011. (MJZ) (Entered: 01/24/2011)
01/24/2011		NOTICE of Docket Correction to <u>53</u> REPLY to Response to Motion. ERROR: Document should've been filed as <i>two</i> separate entries by attorney <u>Douglas Rowan</u> in accordance with Special Order 109. CORRECTION: Entry refiled by Court as <u>58</u> MOTION to Amend/Correct <u>44</u> Bill of Costs. (no image attached) (MJZ) (Entered: 01/24/2011)
01/26/2011	<u>59</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Edward C. Reed, Jr, on 1/26/2011. By Deputy Clerk: Colleen Larsen. Granting <u>58</u> Motion to Amend/Correct <u>44</u> Bill of Costs. Bill of Costs due by 2/2/2011. Tax or object to Bill of Costs by 2/12/2011. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 01/27/2011)
01/26/2011	<u>60</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Edward C. Reed, Jr, on 1/26/2011. By Deputy Clerk: Colleen Larsen. Denying <u>45</u> Motion for Attorney Fees. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 01/27/2011)
02/01/2011	<u>61</u>	BILL OF COSTS by Defendant United Automobile Insurance Company. Tax or object to Bill of Costs by 2/19/2011. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Exhibit Group Exhibit 2, # <u>3</u> Exhibit Exhibit 3, # <u>4</u> Exhibit Exhibit 4, # <u>5</u> Exhibit Exhibit 5, # <u>6</u> Exhibit Exhibit 6, # <u>7</u> Exhibit Exhibit 7, # <u>8</u> Exhibit Exhibit 8, # <u>9</u> Exhibit Exhibit 9)(Rowan, Douglas) (Entered: 02/01/2011)
02/01/2011	<u>62</u>	DESIGNATION of Transcripts by Plaintiff James Nalder re <u>46</u> Notice of Appeal. (ECS) (Entered: 02/02/2011)
02/01/2011	<u>63</u>	NOTICE: Attorney Notification of Error re <u>62</u> Designation of Transcripts. Attorney David F. Sampson advised to file any future Designation of Transcripts electronically. (no image attached) (ECS) (Entered: 02/02/2011)
02/10/2011	<u>64</u>	OBJECTION to <u>61</u> Bill of Costs, <u>44</u> Bill of Costs ; filed by Plaintiffs Gary Lewis, James Nalder. (Sampson, David) (Entered: 02/10/2011)
02/10/2011	<u>65</u>	MOTION for Re-Taxation of Costs by Plaintiffs Gary Lewis, James Nalder. Responses due by 2/27/2011. (Sampson, David) (Entered: 02/10/2011)

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02/16/2011	<u>66</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Edward C. Reed, Jr, on 2/16/2011. By Deputy Clerk: Colleen Larsen. Denying <u>65</u> Motion for Re-Taxation of Costs. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 02/17/2011)
02/18/2011	<u>67</u>	REPLY to <u>61</u> Bill of Costs, ; <i>Defendant United Automobile Insurance Company's Reply to Plaintiff's Objection to Amended Bill of Costs</i> filed by Defendant United Automobile Insurance Company. (Rowan, Douglas) (Entered: 02/18/2011)
02/24/2011	<u>68</u>	NOTICE OF APPEAL as to <u>60</u> Order on Motion for Attorney Fees, Minute Order by Defendant United Automobile Insurance Company. Filing fee \$ 455, receipt number 0978-1896982. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Rowan, Douglas) (Entered: 02/24/2011)
02/24/2011	<u>69</u>	TRANSCRIPT of Proceedings, 16 Order on Motion to Compel, Motion Hearing, held on 3/8/2010, before Magistrate Judge George Foley, Jr. Transcriber: Felicia Zabin, 702-676-1087. Tape Number: 9:29:24 to 9:45:48. Transcript may be viewed at the court public terminal or purchased through the Transcriber using the court's "Transcript Order" form available on our website www.nvd.uscourts.gov before the deadline for Release of Transcript Restriction. After that date, it may be obtained either through the Transcriber or PACER. Redaction Request due 3/17/2011. Redacted Transcript Deadline set for 3/27/2011. Release of Transcript Restriction set for 5/25/2011. (FRZ) (Entered: 02/24/2011)
02/24/2011	<u>70</u>	TRANSCRIPT of Proceedings, <u>41</u> Reporter's Transcript of Motion Hearing, held on 12/7/2010, before Judge Edward C. Reed, Jr. Court Reporter: Felicia Zabin, 702-676-1087. Transcript may be viewed at the court public terminal or purchased through the Transcriber using the court's "Transcript Order" form available on our website www.nvd.uscourts.gov before the deadline for Release of Transcript Restriction. After that date, it may be obtained either through the Court Reporter or PACER. Redaction Request due 3/17/2011. Redacted Transcript Deadline set for 3/27/2011. Release of Transcript Restriction set for 5/25/2011. (FRZ) (Entered: 02/24/2011)
02/25/2011	<u>71</u>	USCA Appeal Fees received \$455 receipt number 0978-1896982 re <u>68</u> Notice of Appeal, filed by United Automobile Insurance Company. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (JAG) (Entered: 02/25/2011)
02/25/2011	<u>72</u>	Designation of Transcripts and Transcript Order forms and instructions for <u>68</u> Notice of Appeal. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov/Forms.aspx . (JAG) (Entered: 02/25/2011)
02/28/2011	<u>73</u>	ORDER for Time Schedule as to <u>68</u> Notice of Appeal, filed by United Automobile Insurance Company. USCA Case Number 11-15462 . (JAG) (Entered: 02/28/2011)
03/01/2011	<u>74</u>	COSTS TAXED in the amount of \$8,552.24 and included in the judgment re <u>61</u> Bill of Costs. (MJZ) (Entered: 03/01/2011)
08/02/2011	<u>75</u>	MOTION for Bond <i>Defendant United Automobile Insurance Company's Motion for Plaintiff to Post Cost Bond on Appeal Pursuant to F.R.A.P.7</i> by Defendant United Automobile Insurance Company. Responses due by 8/19/2011. (Rowan, Douglas) (Entered: 08/02/2011)

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08/09/2011	<u>76</u>	<p>CERTIFICATE OF RECORD on <u>46</u> Notice of Appeal.</p> <p>The record on appeal, consisting of the reporter's transcripts and the United States District Court clerk's record is ready for the purpose of the appeal.</p> <p>This file exists in electronic format and is accessible via CM/ECF - PACER. The documents comprising the United States District Court clerk's record have been numbered in conformance with Rule 11(b) of the Federal Rules of Appellate Procedure. These document numbers are reflected on the United States District Court's docket sheet and should be used for reference purposes in the briefs.</p> <p>Appeals in Habeas Corpus and 28 USC 2255 Motion to Vacate Sentence cases are treated as civil appeals in the Court of Appeals. Criminal appeals briefing schedules will be issued upon the filing of this document.</p> <p>E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (no image attached) (JAG) (Entered: 08/09/2011)</p>
08/09/2011	<u>77</u>	USCA Appeal Fees received \$455 receipt number 0978-1896982 re <u>68</u> Notice of Appeal, filed by United Automobile Insurance Company. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (JAG) (Entered: 08/09/2011)
08/09/2011	<u>78</u>	Designation of Transcripts and Transcript Order forms and instructions for <u>68</u> Notice of Appeal,. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov/Forms.aspx . (JAG) (Entered: 08/09/2011)
08/15/2011	<u>79</u>	RESPONSE to <u>75</u> MOTION for Bond <i>Defendant United Automobile Insurance Company's Motion for Plaintiff to Post Cost Bond on Appeal Pursuant to F.R.A.P.7</i> , filed by Plaintiffs Gary Lewis, James Nalder. Replies due by 8/25/2011. (Sampson, David) (Entered: 08/15/2011)
08/22/2011	<u>80</u>	REPLY to Response to <u>75</u> MOTION for Bond <i>Defendant United Automobile Insurance Company's Motion for Plaintiff to Post Cost Bond on Appeal Pursuant to F.R.A.P.7</i> ; filed by Defendant United Automobile Insurance Company. <i>Defendant United Automobile Insurance Company's Reply in Support of Its Motion for Plaintiff to Post Cost Bond on Appeal Pursuant to F.R.A.P.7</i> (Rowan, Douglas) (Entered: 08/22/2011)
10/14/2011	<u>81</u>	ORDER Denying <u>75</u> Motion for Plaintiff to Post Cost Bond on Appeal Pursuant to F.R.A.P.7. Signed by Judge Edward C. Reed, Jr on 10/14/11. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 10/14/2011)
12/17/2012	<u>82</u>	MEMORANDUM/OPINION of USCA, Ninth Circuit, REVERSING AND REMANDING in part and AFFIRMING in part <u>68</u> Notice of Appeal and <u>46</u> Notice of Appeal filed by Gary Lewis. (EDS) (Entered: 12/17/2012)
01/11/2013	<u>83</u>	MANDATE of USCA, Ninth Circuit, as to <u>82</u> USCA Memorandum/Opinion REVERSING AND REMANDING in part and AFFIRMING in part as to <u>46</u> and <u>68</u> Notices of Appeal. (MMM) (Entered: 01/18/2013)
01/29/2013	<u>85</u>	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on 1/29/2013. IT IS ORDERED that this case is reassigned to Chief Judge Robert C. Jones for all further proceedings. Judge Edward C. Reed, Jr no longer assigned to case. All further documents must bear the correct case number 2:09-cv-01348-RCJ-GWF.

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		(no image attached) (Copies have been distributed pursuant to the NEF - MMM) (Entered: 01/29/2013)
02/22/2013	<u>86</u>	Submission of PROPOSED ORDER on <u>83</u> USCA Mandate, <u>82</u> USCA Memorandum/Opinion, <u>68</u> Notice of Appeal, <u>46</u> Notice of Appeal ;. (BLG) (Entered: 02/22/2013)
02/25/2013	<u>87</u>	ORDER on Mandate as to <u>82</u> USCA Memorandum/Opinion and <u>83</u> USCA Mandate AFFIRMING, REVERSING, and REMANDING judgment of the US District Court re <u>68</u> and <u>46</u> Notices of Appeal. Signed by Chief Judge Robert C. Jones on 2/22/13. (EDS) (Entered: 02/25/2013)
03/04/2013	<u>88</u>	MOTION for Summary Judgment by Plaintiff James Nalder. Responses due by 3/28/2013. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7)(Christensen, Thomas) (Entered: 03/04/2013)
03/26/2013	<u>89</u>	Counter MOTION for Summary Judgment <i>on All Extra-Contractual Claims or Remedies; or in the Alternative, Motion to Bifurcate Claims for Extra-Contractual Claims or Remedies; Further, in the Alternative, Motion for Leave to Amend Answer to File Counter-Claim Oral Argument Requested</i> by Defendant United Automobile Insurance Company. Responses due by 4/19/2013. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Declaration, # <u>13</u> Declaration)(Sherrod, Susan) (Entered: 03/26/2013)
03/26/2013	<u>90</u>	RESPONSE to <u>88</u> MOTION for Summary Judgment, filed by Defendant United Automobile Insurance Company. <i>Oral Argument Requested</i> Replies due by 4/12/2013. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit)(Sherrod, Susan) (Entered: 03/26/2013)
03/26/2013	<u>91</u>	DECLARATION re <u>89</u> Counter MOTION for Summary Judgment <i>on All Extra-Contractual Claims or Remedies; or in the Alternative, Motion to Bifurcate Claims for Extra-Contractual Claims or Remedies; Further, in the Alternative, Motion for Leave to Amend Answer to File Counte ; by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 03/26/2013)</i>
03/26/2013	<u>92</u>	ERRATA to <u>89</u> Counter MOTION for Summary Judgment <i>on All Extra-Contractual Claims or Remedies; or in the Alternative, Motion to Bifurcate Claims for Extra-Contractual Claims or Remedies; Further, in the Alternative, Motion for Leave to Amend Answer to File Counte ; filed by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 03/26/2013)</i>
03/26/2013	<u>93</u>	DECLARATION of Jan Cook <i>in Support of Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 03/26/2013)
03/26/2013	<u>94</u>	DECLARATION of Denise Davis re <u>90</u> Response to Motion, ; <i>Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i> by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 03/26/2013)
04/12/2013	<u>95</u>	REPLY to Response to <u>88</u> MOTION for Summary Judgment filed by Plaintiffs Gary Lewis, James Nalder. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8)(Christensen,

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		Thomas) (Entered: 04/12/2013)
04/18/2013	<u>96</u>	RESPONSE to <u>89</u> Counter MOTION for Summary Judgment <i>on All Extra-Contractual Claims or Remedies; or in the Alternative, Motion to Bifurcate Claims for Extra-Contractual Claims or Remedies; Further, in the Alternative, Motion for Leave to Amend Answer to File Counte</i> , filed by Plaintiffs Gary Lewis, James Nalder. Replies due by 5/5/2013. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7)(Christensen, Thomas) (Entered: 04/18/2013)
05/03/2013	<u>97</u>	REPLY to Response to <u>89</u> Counter MOTION for Summary Judgment <i>on All Extra-Contractual Claims or Remedies; or in the Alternative, Motion to Bifurcate Claims for Extra-Contractual Claims or Remedies; Further, in the Alternative, Motion for Leave to Amend Answer to File Cou</i> by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 05/03/2013)
05/03/2013		NOTICE of Docket Correction to <u>97</u> Reply Brief. ERROR: Wrong event selected by attorney <u>Susan Sherrod</u> . CORRECTION: Clerk's office modified event as <u>97</u> <u>REPLY to Response to Motion</u> . (no image attached)(ASB) (Entered: 05/03/2013)
07/19/2013	<u>98</u>	MOTION for Hearing re <u>88</u> MOTION for Summary Judgment by Plaintiffs Gary Lewis, James Nalder. Motion ripe 7/19/2013. (Christensen, Thomas) (Entered: 07/19/2013)
09/25/2013	<u>99</u>	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on September 25, 2013, by Carrie Lipparelli, Judicial Assistant. IT IS HEREBY ORDERED that Plaintiffs Request for Hearing (ECF #98) is GRANTED. IT IS HEREBY ORDERED that ORAL ARGUMENT RE: (ECF #88) Motion for Summary Judgment and (ECF #89) Defendant United Automobile Insurance Companys Counter-Motion for Summary Judgment on All Extra-Contractual Claims or Remedies; or, in the Alternative, Motion to Bifurcate Claims for Extra-Contractual Claims or Remedies; Further, in the Alternative, Motion for Leave to Amend Answer to File Counter-Claim is set for TUESDAY, OCTOBER 22, 2013, 09:00 A.M., in LAS VEGAS COURTROOM 4B, before Chief Judge Robert C. Jones. IT IS SO ORDERED. Signed Chief Judge Robert C. Jones. (Copies have been distributed pursuant to the NEF - CL) (Entered: 09/25/2013)
10/21/2013	<u>100</u>	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on 10/21/2013. By Deputy Clerk: Lesa Ettinger. IT IS ORDERED that oral argument RE: <u>88</u> MOTION for Summary Judgment, <u>89</u> Counter MOTION for Summary Judgment currently set for 10/22/2013 9:00 AM is RESCHEDULED (IN TIME ONLY) to 02:00 PM in LV Courtroom 4B before Chief Judge Robert C. Jones. (no image attached) (Copies have been distributed pursuant to the NEF - LE) (Entered: 10/21/2013)

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10/22/2013	<u>101</u>	MINUTES OF PROCEEDINGS - Motion Hearing held on 10/22/2013 before Chief Judge Robert C. Jones. Crtrm Administrator: <i>Eileen Wood</i> ; Pla Counsel: <i>Thomas Christensen</i> ; Def Counsel: <i>Matthew Douglas</i> ; Court Reporter: <i>Kathy Eismann</i> ; Time of Hearing: <i>1:58-2:33 PM</i> ; Courtroom: <i>4B</i> . Representations of counsel are heard re <u>88</u> MOTION for Summary Judgment and <u>89</u> Counter MOTION for Summary Judgment. The Court takes this matter under advisement and a written order will issue. (no image attached) (Copies have been distributed pursuant to the NEF - EW) (Entered: 10/22/2013)
10/30/2013	<u>102</u>	ORDER Granting in part and Denying in part <u>88</u> Motion for Summary Judgment. Granting <u>89</u> Motion for Summary Judgment. Signed by Chief Judge Robert C. Jones on 10/30/2013. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 10/30/2013)
10/30/2013	<u>103</u>	CLERK'S JUDGMENT. The Court grants summary judgment in favor of Nalder and finds that the insurance renewal statement contained an ambiguity and, thus, the statement is construed in favor of coverage during the time of the accident. The Court denies summary judgment on Nalders remaining bad-faith claims. The Court grants summary judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant. The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewiss implied insurance policy at the time of the accident. Signed by Clerk of Court, Lance S. Wilson on 10/30/2013. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 10/30/2013)
11/13/2013	<u>104</u>	MOTION for Attorney Fees by Defendant United Automobile Insurance Company. Responses due by 11/30/2013. (Sherrod, Susan) (Entered: 11/13/2013)
11/13/2013	<u>105</u>	BILL OF COSTS <i>against Defendant United Automobile Insurance Company</i> by Plaintiffs Gary Lewis, James Nalder. Tax or object to Bill of Costs by 12/1/2013. (Christensen, Thomas) (Entered: 11/13/2013)
11/13/2013	<u>106</u>	MOTION for Attorney Fees , <i>Costs and Prejudgment Interest</i> by Plaintiffs Gary Lewis, James Nalder. Responses due by 11/30/2013. (Christensen, Thomas) (Entered: 11/13/2013)
11/21/2013	<u>107</u>	OBJECTION to <u>105</u> Bill of Costs ; filed by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 11/21/2013)
11/25/2013	<u>108</u>	MOTION to Strike <u>106</u> MOTION for Attorney Fees , <i>Costs and Prejudgment Interest Affidavit of Jason S. Gordon, Esq.</i> by Defendant United Automobile Insurance Company. Responses due by 12/12/2013. (Sherrod, Susan) (Entered: 11/25/2013)
11/25/2013	<u>109</u>	REPLY to Response to <u>106</u> MOTION for Attorney Fees , <i>Costs and Prejudgment Interest</i> filed by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 11/25/2013)
11/25/2013	<u>110</u>	RESPONSE to <u>106</u> MOTION for Attorney Fees , <i>Costs and Prejudgment Interest</i> , filed by Defendant United Automobile Insurance Company. Replies due by 12/5/2013. (Sherrod, Susan) (Entered: 11/25/2013)
11/27/2013	<u>111</u>	RESPONSE to <u>104</u> MOTION for Attorney Fees , filed by Plaintiffs Gary Lewis, James Nalder. Replies due by 12/7/2013. (Christensen, Thomas) (Entered: 11/27/2013)

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11/27/2013	<u>112</u>	NOTICE OF APPEAL as to <u>102</u> Order on Motion for Summary Judgment, <u>103</u> Clerk's Judgment,, by Plaintiffs Gary Lewis, James Nalder. Filing fee \$ 455, receipt number 0978-3049606. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Christensen, Thomas) (Entered: 11/27/2013)
11/27/2013	<u>114</u>	ORDER for Time Schedule as to <u>112</u> Notice of Appeal, filed by Gary Lewis and James Nalder. USCA Case Number 13-17441. (EDS) (Entered: 12/03/2013)
12/02/2013	<u>113</u>	Designation of Transcripts and Transcript Order forms and instructions for <u>112</u> Notice of Appeal,. The forms may also be obtained on the Court's website at www.nvd.uscourts.gov/Forms.aspx . (ASB) (Entered: 12/02/2013)
12/03/2013	<u>115</u>	MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Robert C. Jones, on 12/3/2013. ORDERED that Oral Argument RE: <u>104</u> MOTION for Attorney Fees; <u>106</u> MOTION for Costs, Attorney's Fees and Pre-Judgment Interest; and <u>108</u> MOTION to Strike Affidavit of Jason S. Gordon, Esq., in Support of Plaintiffs' Motion for Costs, Attorneys' Fees, and Pre-Judgment Interest Pursuant to F.R.C.P. 56(e) is set for 10:00 a.m. on Thursday, February 13, 2014, in LV Courtroom 4B before Chief Judge Robert C. Jones. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 12/03/2013)
12/05/2013	<u>116</u>	REPLY to Response to <u>104</u> MOTION for Attorney Fees filed by Defendant United Automobile Insurance Company. <i>Reply in Support of its Motion for Attorney Fees</i> (Sherrod, Susan) (Entered: 12/05/2013)
12/05/2013	<u>117</u>	REPLY to Response to <u>106</u> MOTION for Attorney Fees , <i>Costs and Prejudgment Interest</i> filed by Plaintiffs Gary Lewis, James Nalder. (Christensen, Thomas) (Entered: 12/05/2013)
12/12/2013	<u>118</u>	RESPONSE to <u>108</u> MOTION to Strike <u>106</u> MOTION for Attorney Fees , <i>Costs and Prejudgment Interest Affidavit of Jason S. Gordon, Esq.</i> , filed by Plaintiffs Gary Lewis, James Nalder. Replies due by 12/22/2013. (Christensen, Thomas) (Entered: 12/12/2013)
12/19/2013	<u>119</u>	REPLY to Response to <u>108</u> MOTION to Strike <u>106</u> MOTION for Attorney Fees , <i>Costs and Prejudgment Interest Affidavit of Jason S. Gordon, Esq.</i> filed by Defendant United Automobile Insurance Company. (Sherrod, Susan) (Entered: 12/19/2013)
12/27/2013	<u>120</u>	TRANSCRIPT DESIGNATION by Plaintiffs Gary Lewis, James Nalder re <u>112</u> Notice of Appeal, <u>70</u> Transcript,, <u>41</u> Motion Hearing, <u>101</u> Motion Hearing,, <u>69</u> Transcript,, <u>16</u> Order on Motion to Compel,,, Motion Hearing,, (Christensen, Thomas) (Entered: 12/27/2013)
01/14/2014	<u>121</u>	TRANSCRIPT of Proceedings, <u>101</u> Motion for Summary Judgment, held on October 22, 2013, before Judge Robert C. Jones. Court Reporter: Kathy Eismann, 702-431-1919. Transcript may be viewed at the court public terminal or purchased through the Court Reporter using the court's "Transcript Order" form available on our website www.nvd.uscourts.gov before the deadline for Release of Transcript Restriction. After that date it may be obtained through the court reporter or PACER Redaction Request due 2/4/2014. Redacted Transcript Deadline set for 2/14/2014. Release of Transcript Restriction set for 4/14/2014. (KE) (Entered: 01/14/2014)
01/15/2014	<u>122</u>	STRICKEN & VACATED see <u>123</u> MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 1/15/2014 by Deputy Clerk: Ari Caytuero. IT IS

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		ORDERED that a Motion Hearing re: <u>104</u> Defendant's Motion for Attorney Fees, <u>106</u> Plaintiff's Motion for Attorney Fees, <i>Costs and Prejudgment Interest</i> and <u>108</u> Defendant's Motion to Strike is set for 2/6/2014 10:00 AM in LV Courtroom 4B before Judge Robert C. Jones. (Copies have been distributed pursuant to the NEF - AC) Modified on 1/24/2014 (BLG). (Entered: 01/15/2014)
01/24/2014	<u>123</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Robert C. Jones, on 1/24/2014. IT IS HEREBY ORDERED that Minute Order (#122) is STRICKEN and VACATED. IT IS FURTHER ORDERED that Oral Argument RE: (#104) Defendant United Automobile Insurance Companys Motion for Attorneys Fees; (#106) Plaintiffs Motion for Costs, Attorneys Fees and Pre-Judgment Interest; and (#108) Defendant United Automobile Insurance Companys Motion to Strike Affidavit of Jason A. Gordon, Esq., in Support of Plaintiffs Motion for Costs, Attorneys Fees, and Pre-Judgment Interest Pursuant to F.R.C.P. 56(e) WILL REMAIN ON CALENDAR for 10:00 A.M., Thursday, February 13, 2014, in Las Vegas Courtroom 4B, before Judge Robert C. Jones (#115). IT IS FURTHER ORDERED that the Clerk of the Court shall strike Minute Order (#122) from the record. (Copies have been distributed pursuant to the NEF - BLG) (Entered: 01/24/2014)
02/13/2014	<u>124</u>	MINUTES OF PROCEEDINGS - Motion Hearing RE: <u>104</u> MOTION for Attorney Fees, <u>106</u> MOTION for Attorney Fees, <i>Costs and Prejudgment Interest</i> , <u>108</u> MOTION to Strike <u>106</u> MOTION for Attorney Fees, <i>Costs and Prejudgment Interest</i> Affidavit of Jason S. Gordon, Esq. held on 2/13/2014 before Judge Robert C. Jones. Crtrm Administrator: <i>Lesa Ettinger</i> ; Court Reporter/FTR #: <i>Margaret Griener</i> ; Time of Hearing: <i>10:02 - 10:11 a.m.</i> ; Courtroom: <i>4B</i> ; Court convenes. Appearances are noted on the record. Arguments of counsel are heard with respect to the motions at issue. The Court takes this matter under submission. Written ruling of the Court will issue. Court adjourns. (no image attached) (Copies have been distributed pursuant to the NEF - LE) (Entered: 02/13/2014)

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