

**IN THE SUPREME COURT OF THE STATE OF NEVADA  
CASE NO. 70504**

---

JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF CHEYANNE  
NALDER; AND GARY LEWIS, INDIVIDUALLY  
Appellants,

v.

UNITED AUTOMOBILE INSURANCE COMPANY,  
Respondent.

---

**APPENDIX TO RESPONDENT'S SUPPLEMENTAL  
ANSWERING BRIEF TO SECOND CERTIFIED QUESTION  
VOLUME I**

---

Ninth Circuit Case No. 13-17441  
U.S.D.C. No. 2:09-cv-01348-RCJ-GWF

Thomas E. Winner, Esq.  
Matthew J. Douglas, Esq.  
Nevada Bar No. 11371  
ATKIN WINNER & SHERROD  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
(702) 243-7000 Telephone  
(702) 243-7059 Facsimile

Thomas E. Scott, Esq.  
Scott A. Cole, Esq.  
COLE, SCOTT & KISSANE, P.A.  
9150 South Dadeland Boulevard  
Suite 1400  
Miami, Florida 33156  
(305) 350-5300 Telephone  
(305) 373-2294 Facsimile

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19th day of November, 2018, I served the foregoing **Appendix to Respondent's Supplemental Answering Brief to Second Certified Question Volume 1** by electronically filing and serving the document listed above with the Nevada Supreme Court.

Richard Christensen, Esq.  
Thomas Christensen  
CHRISTENSEN LAW OFFICES  
1000 S. Valley View Blvd.  
Las Vegas, NV 89107

Dennis M. Prince, Esq.  
Kevin T. Strong, Esq.  
EGLET PRINCE  
400 South 7th Street, 4th Floor  
Las Vegas, NV 89101

**COLE, SCOTT & KISSANE, P.A.**

/s/ Thomas E. Scott  
**Thomas E. Scott, Esq.**  
Florida Bar No.: 149100  
**Scott A. Cole, Esq.**  
Florida Bar No.: 885630  
9150 South Dadeland Boulevard  
Suite 1400  
Miami, FL 33156  
*Counsel for Respondent*

**ATKIN, WINNER & SHERROD**

  
Matthew J. Douglas, Esq.  
Nevada Bar No. 11371  
Thomas E. Winner, Esq.  
1117 South Rancho Drive  
Las Vegas, NV 89102  
*Counsel for Respondent*

## APPENDIX

Date	DOCUMENT	Appendix Page Number
7/24/2018	Judgment Based on Sister-State Judgment	APPX 0001- APPX 0011
3/19/2018	Ex Parte Motion to Amend Judgment in the Name of Cheyenne Nalder, Individually, <i>James Nalder v. Gary Lewis</i> , Case No. A549111	APPX 0012 - APPX 0019
5/17/18	Notice of Entry of Amended Judgment, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. 07A549111	APPX 0020 – APPX 0024
7/17/2018	Correspondence to Thomas Winner from David A. Stephens, Esq.	APPX 0025 – APPX 0027
4/03/2018	Complaint, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. A-18-772220-C	APPX 0028 – APPX 0032
8/17/2018	UAIC's Motion to Intervene, <i>Cheyenne Nalder v. Gary Lewis</i> , Case No. 07A549111	APPX 0033 – APPX 0107
10/19/18	Notice of Entry of Order on Intervenor United Automobile Insurance Company's Motion to Intervene, <i>James Nalder v. Gary Lewis</i> , Case No. 07A549111	APPX 0106 – APPX 0111

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp <b>FILED</b> Superior Court of California County of Los Angeles <b>JUL 24 2018</b> Sherri R. Carter, Executive Officer/Clerk Deputy Clerk G. Moreno KS021378
COURTHOUSE ADDRESS: Pomona Courthouse, 400 Civic Center Plaza, Pomona CA 91766		
PLAINTIFF/PETITIONER: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder		
DEFENDANT/RESPONDENT: Gary Lewis		
<b>JUDGMENT BASED ON SISTER-STATE JUDGMENT</b> (Code Civ. Proc., § 1710.25)		

An application has been filed for entry of judgment based upon judgment entered in the State of: Nevada

**BY FAX**

Pursuant to Code of Civil Procedure section 1710.25, judgment is hereby entered in favor of plaintiff/judgment creditor

James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

and against defendant/judgment debtor  
Gary Lewis

For the amount shown in the application remaining unpaid under said Judgment in the sum of \$ 3,485,000, together with interest on said Judgment in the sum of \$ 2,174,998.52, Los Angeles Superior Court filing fees in the sum of \$ 435, costs in the sum of \$ 0, and interest on said judgment accruing from the time of entry of Judgment at the rate provided by law.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: JUL 24 2018

By: G. MORENO  
Deputy Clerk

### CERTIFICATE OF MAILING

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment Based on Sister-State Judgment (Code Civ. Proc., § 1710.25) upon each party or counsel named below by depositing in the United States mail at the courthouse in California, one copy of the original filed herein in a separate sealed envelope for each address as shown below with the postage thereon fully prepaid.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy Clerk

LACIV 209 (Rev. 09/13)  
LASC Approved  
For Optional Use

**JUDGMENT BASED ON SISTER-STATE JUDGMENT**  
(Code Civ. Proc., § 1710.25)

Code Civ. Proc., § 1710.25

14:29:38 2018-07-17

APPX0001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name): Mark J. Linderman (State Bar No. 144685) mlinderman  
Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.co  
311 California Street San Francisco, California 94104

TELEPHONE NO.: 415-956-2822  
415-956-2828

FOR COURT USE ONLY

ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder

NAME OF COURT: Superior Court of California, County of Los Angeles

STREET ADDRESS: 400 Civic Center Plaza

MAILING ADDRESS:

CITY AND ZIP CODE: Pomona 91766

BRANCH NAME: Pomona Courthouse

PLAINTIFF: James Nalder, individually and as Guardian ad Litem for  
Cheyenne Nalder

DEFENDANT: Gary Lewis

**FILED**  
Superior Court of California  
County of Los Angeles

JUL 24 2018

Sherri R. Carter, Executive Officer/Clerk

By G. Moreno Deputy

CASE NUMBER

KS021378

**NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT**

1. TO JUDGMENT DEBTOR (name): Gary Lewis  
733 S. Minnesota Ave, Glendora, CA 91740

**BY FAX**

2. YOU ARE NOTIFIED

- a. Upon application of the judgment creditor, a judgment against you has been entered in this court as follows:

(1) Judgment creditor (name): James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

(2) Amount of judgment entered in this court: \$5,660,433.52

- b. This judgment was entered based upon a sister-state judgment previously entered against you as follows:

(1) Sister state (name): Nevada

(2) Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
200 Lewis Ave, Las Vegas, NV. 89155

(3) Judgment entered in sister state on (date): June 2, 2008

(4) Title of case and case number (specify): Nalder v. Lewis, Case No. A549111

3. A sister-state judgment has been entered against you in a California court. Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final.

This court may order that a writ of execution or other enforcement may issue. Your wages, money, and property could be taken without further warning from the court.

If enforcement procedures have already been issued, the property levied on will not be distributed until 30 days after you are served with this notice.

Date: JUL 24 2018

**SHERRI R. CARTER**, Clerk, by G. MORENO, Deputy

4. ☒ NOTICE TO THE PERSON SERVED: You are served

a. ☒ as an individual judgment debtor.

b. ☐ under the fictitious name of (specify):

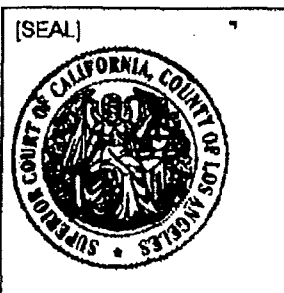
c. ☐ on behalf of (specify):

Under:

- ☐ CCP 416.10 (corporation)  
☐ CCP 416.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)  
☐ other:

- ☐ CCP 416.60 (minor)  
☐ CCP 416.70 (conservatee)  
☒ CCP 416.90 (individual)

(Proof of service on reverse)



Form Approved by the  
Judicial Council of California  
CJ 110 (Rev. July 1 1993)

**NOTICE OF ENTRY OF JUDGMENT ON  
SISTER-STATE JUDGMENT**

CCP 1710.30, 1710.40  
1710.45

14:29:38 2018-07-17

APPX0002

PROOF OF SERVICE

(Use separate proof of service for each person served)

1. I served the Notice of Entry of Judgment on Sister-State Judgment as follows:

a. on judgment debtor (name): GARY LEWIS

b. by serving ☒ judgment debtor ☐ other (name and title or relationship to person served):

c. ☒ by delivery ☒ at home ☐ at business

(1) date: 07/26/18

(2) time: 7:00 p.m.

(3) address: 733 S. Minnesota Ave  
Glendora, CA 91740

d. ☐ by mailing

(1) date:

(2) place:

2. Manner of service (check proper box):

a. ☒ **Personal service.** By personally delivering copies. (CCP 415.10)

b. ☐ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))

c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)

d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)

e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)

f. ☐ Other (specify code section):

☐ Additional page is attached.

3. The "Notice to the Person Served" was completed as follows:

a. ☒ as an individual judgment debtor.

b. ☐ as the person sued under the fictitious name of (specify):

c. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)  
☐ CCP 416.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)

☐ CCP 416.60 (minor) ☐ other:  
☐ CCP 416.70 (conservatee)  
☐ CCP 416.90 (individual)

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

a. ☐ California sheriff, marshal, or constable.

b. ☒ Registered California process server.

c. ☐ Employee or independent contractor of a registered California process server.

d. ☐ Not a registered California process server.

e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

Jorge Rivera (Reg# 4690 Los Angeles County)  
52 Second Street, 3rd Floor  
San Francisco, California 94105  
(415) 546-6000

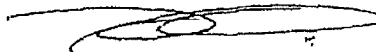
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date: 07/27/18

Date:

  
(SIGNATURE)

  
(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) Mark J. Linderman (State Bar No. 144685) mlinderman 415-956-2828 Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.com 415-956-2828 311 California Street San Francisco, California 94104		TELEPHONE NO. 415-956-2828		FOR COURT USE ONLY	
ATTORNEY FOR (Name) Cheyenne Nalder, James Nalder		RECEIVED JUL 17 2018 EAST DISTRICT		FILED Superior Court of California County of Los Angeles JUL 17 2018	
NAME OF COURT: Superior Court of California, County of Los Angeles					
STREET ADDRESS: 400 Civic Center Plaza					
MAILING ADDRESS:					
CITY AND ZIP CODE: Pomona 91766					
BRANCH NAME: Pomona Courthouse					
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder					
DEFENDANT: Gary Lewis					
APPLICATION FOR ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT <input type="checkbox"/> AND ISSUANCE OF WRIT OF EXECUTION OR OTHER ENFORCEMENT <input type="checkbox"/> AND ORDER FOR ISSUANCE OF WRIT OR OTHER ENFORCEMENT				CASE NUMBER KS021378	

Judgment creditor applies for entry of a judgment based upon a sister-state judgment as follows:

BY FAX

1. Judgment creditor (name and address):  
 James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder  
 5037 Sparkling Sky Avenue  
 Las Vegas, Nevada, 89130
2. a. Judgment debtor (name): Gary Lewis
  - b. ☒ An individual (last known residence address): 733 S. Minnesota Ave, Glendora, CA 91740
  - c. ☐ A corporation of (specify place of incorporation):
    - (1) ☐ Foreign corporation
      - ☐ qualified to do business in California
      - ☐ not qualified to do business in California
  - d. ☐ A partnership (specify principal place of business):
    - (1) ☐ Foreign partnership which
      - ☐ has filed a statement under Corp C 15700
      - ☐ has not filed a statement under Corp C 15700
3. a. Sister state (name): Nevada
  - b. Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
 200 Lewis Ave, Las Vegas, NV. 89155
  - c. Judgment entered in sister state on (date): June 2, 2008
4. An authenticated copy of the sister-state judgment is attached to this application. Include accrued interest on the sister-state judgment in the California judgment (Item 5c).
  - a. Annual interest rate allowed by sister state (specify): 6.5%
  - b. Law of sister state establishing interest rate (specify): NRS 17.130
5. a. Amount remaining unpaid on sister-state judgment: \$ 3,485,000
  - b. Amount of filing fee for the application: \$ 435
  - c. Accrued interest on sister-state judgment: \$ 2,174,998.52
  - d. Amount of judgment to be entered (total of 5a, b, and c): \$ 5,660,433.52

(Continued on reverse)

Amended

SHORT TITLE: Nalder v. Lewis

CASE NUMBER:

KS021378

6. ☐ Judgment creditor also applies for issuance of a writ of execution or enforcement by other means before service of notice of entry of judgment as follows:

a. ☐ Under CCP 1710.45(b).

b. ☐ A court order is requested under CCP 1710.45(c). Facts showing that great or irreparable injury will result to judgment creditor if issuance of the writ or enforcement by other means is delayed are set forth as follows:

☐ continued in attachment 6b.

7. An action in this state on the sister-state judgment is not barred by the statute of limitations.

8. I am informed and believe that no stay of enforcement of the sister-state judgment is now in effect in the sister state.

9. No action is pending and no judgment has previously been entered in any proceeding in California based upon the sister-state judgment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters which are stated to be upon information and belief, and as to those matters I believe them to be true.

Date:

7/17/12

Joshua M. Deitz  
(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGMENT CREDITOR OR ATTORNEY)

# EXHIBIT A

ORIGINAL

FILED

AUG 26 11 00 AM '08

CLERK

JUDG

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

THOMAS CHRISTENSEN, ESQ.,  
Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

(702) 870-1000

Attorney for Plaintiff,

JAMES NALDER As Guardian Ad

Litem for minor, CHEYENNE NALDER

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER, individually )  
and as Guardian ad Litem for )  
CHEYENNE NALDER, a minor. )

Plaintiffs,

vs.

CASE NO: A549111

DEPT. NO: VI

GARY LEWIS, and DOES I )  
through V, inclusive ROES I )  
through V )

Defendants.

**NOTICE OF ENTRY OF JUDGMENT**

PLEASE TAKE NOTICE that a Judgment against Defendant, GARY LEWIS, was

entered in the above-entitled matter on June 2, 2008. A copy of said Judgment is attached

hereto.

DATED this 5 day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: [Signature]

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

CLERK OF THE COURT

RECEIVED  
AUG 26 2008

APPX0007

1  
2  
3 **CERTIFICATE OF SERVICE**

4 Pursuant to NRCp 5(b), I certify that I am an employee of CHRISTENSEN LAW  
5 OFFICES, LLC., and that on this 5<sup>th</sup> June day of ~~March~~, 2008, I served a copy of the  
6 foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:  
7

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

10 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile  
11 number(s) shown below and in the confirmation sheet filed herewith. Consent to  
12 service under NRCp 5(b)(2)(D) shall be assumed unless an objection to service by  
13 facsimile transmission is made in writing and sent to the sender via facsimile within  
14 24 hours of receipt of this Certificate of Service; and/or

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

16 Gary Lewis  
17 5049 Spencer St. #D  
18 Las Vegas, NV 89119

19   
20 An employee of CHRISTENSEN LAW  
21 OFFICES, LLC  
22  
23  
24  
25  
26  
27  
28

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,

*Chris [Signature]*  
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES NALDER, )  
as Guardian ad Litem for )  
CHEYENNE NALDER, a minor. )  
Plaintiffs, )  
vs. )  
GARY LEWIS, and DOES I )  
through V, inclusive )  
Defendants. )

CASE NO: A549111  
DEPT. NO: VI

JUDGMENT

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


...  
...  
...

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 ~~RECEIVED~~  
9 DISTRICT JUDGE

10  
11  
12 Submitted by:  
13 CHRISTENSEN LAW OFFICES, LLC.

14  
15 BY:   
16 DAVID SAMPSON  
17 Nevada Bar # 6811  
18 1000 S. Valley View  
19 Las Vegas, Nevada 89107  
20 Attorney for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

*Alvin L. Williams*  
CLERK OF THE COURT 2-25-2010

APPX0011

*Steven D. Grierson*

1 MTN  
2 David A. Stephens, Esq.  
3 Nevada Bar No. 00902  
4 STEPHENS, GOURLEY & BYWATER  
5 3636 North Rancho Drive  
6 Las Vegas, Nevada 89130  
7 Telephone: (702) 656-2355  
8 Facsimile: (702) 656-2776  
9 Email: dstephens@sgblawfirm.com  
10 Attorney for Cheyenne Nalder

11  
12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 ~~07-A-54911~~  
CASE NO.: A54911-1

16 Plaintiff,

DEPT NO.: XXIX

17 vs.

18 GARY LEWIS,

19 Defendants.

20 EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF  
21 CHEYENNE NALDER, INDIVIDUALLY

22 Date: N/A

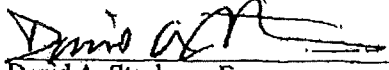
23 Time: N/A

24 NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY  
25 & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her  
26 name as she has now reached the age of majority. Judgment was entered in the name of the  
27 guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now  
28 moves this court to issue the judgment in her name alone (See Exhibit 2) so that she may pursue  
collection of the same. Cheyenne turned 18 on April 4, 2016. In addition, Defendant Gary Lewis,  
has been absent from the State of Nevada since at least February 2010.

1 Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of  
2 \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

3 Dated this 19 day of March, 2018.

4  
5 STEPHENS GOURLEY & BYWATER

6  
7   
8 David A. Stephens, Esq.  
9 Nevada Bar No. 00902  
10 3636 North Rancho Drive  
11 Las Vegas, Nevada 89130  
12 Attorneys for Plaintiff  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT “1”**

APPX0014

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,

*Clark*  
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 JAMES NALDER,  
10 as Guardian ad Litem for  
11 CHEYENNE NALDER, a minor.

12 Plaintiffs,

13 vs.

14 GARY LEWIS, and DOES I  
15 through V, inclusive

16 Defendants.

CASE NO: A549111  
DEPT. NO: VI

JUDGMENT

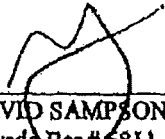
18  
19 In this action the Defendant, GARY LEWIS, having been regularly served with the  
20 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the  
21 legal time for answering having expired, and no answer or demurrer having been filed, the  
22 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according  
23 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as  
24 follows:  
25  
26 ...  
27 ...  
28 ...

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 ~~DAVID A. GARDNER~~  
9 DISTRICT JUDGE

10  
11  
12 Submitted by:  
13 CHRISTENSEN LAW OFFICES, LLC.

14  
15 BY:   
16 DAVID SAMPSON  
17 Nevada Bar #6811  
18 1000 S. Valley View  
19 Las Vegas, Nevada 89107  
20 Attorney for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT "2"**

APPX0017

1 **JMT**  
2 DAVID A. STEPHENS, ESQ.  
Nevada Bar No. 00902  
3 STEPHENS GOURLEY & BYWATER  
4 3636 North Rancho Dr  
Las Vegas, Nevada 89130  
5 Attorneys for Plaintiff  
T: (702) 656-2355  
6 F: (702) 656-2776  
E: dstephens@sbgllawfirm.com  
7 Attorney for Cheyenne Nalder

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

11  
12 CHEYENNE NALDER,  
13 Plaintiff,  
14 vs.  
15 GARY LEWIS,  
16 Defendant.

CASE NO: A549111  
DEPT. NO: XXIX

17 **AMENDED JUDGMENT**


18  
19 In this action the Defendant, Gary Lewis, having been regularly served with the Summons  
20 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for  
21 answering having expired, and no answer or demurrer having been filed, the Default of said  
22 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon  
23 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:  
24  
25 ...  
26 ...  
27 ...  
28 ...

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  
3 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,  
4 2007, until paid in full.  
5

6 DATED this \_\_\_\_\_ day of March, 2018.  
7  
8  
9

10 \_\_\_\_\_  
District Judge  
11

12 Submitted by:  
STEPHENS GOURLEY & BYWATER  
13

14   
DAVID A. STEPHENS, ESQ.  
15 Nevada Bar No. 00902  
STEPHENS GOURLEY & BYWATER  
16 3636 North Rancho Dr  
17 Las Vegas, Nevada 89130  
Attorneys for Plaintiff  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Electronically Filed  
5/18/2018 3:37 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

1 **NOE**  
David A. Stephens, Esq.  
2 Nevada Bar No. 00902  
Stephens & Bywater  
3 3636 North Rancho Drive  
Las Vegas, Nevada 89130  
4 Telephone: (702) 656-2355  
Facsimile: (702) 656-2776  
5 Email: dstephens@sgblawfirm.com  
Attorney for Cheyenne Nalder  
6

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.  
14

Case No. 07A549111

Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26<sup>th</sup> day of March, 2018, the Honorable David  
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in  
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

20 **STEPHENS & BYWATER**

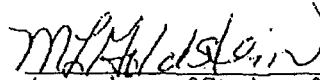
21 *David A. Stephens*

22 David A. Stephens, Esq.  
23 Nevada Bar No. 00902  
24 3636 North Rancho Drive  
25 Las Vegas, Nevada 89130  
26 Attorney for Brittany Wilson  
27  
28

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,  
and that on the 18<sup>th</sup> day of May, 2018, I served a true copy of the foregoing **NOTICE OF**  
**ENTRY OF AMENDED JUDGMENT**, by depositing the same in a sealed envelope upon  
which first class postage was fully prepaid, and addressed as follows:

Gary Lewis  
733 S. Minnesota Ave.  
Glendora, California 91740



An employee of Stephens & Bywater

Electronically Filed  
3/28/2018 3:05 PM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

JMT  
DAVID A. STEPHENS, ESQ.  
Nevada Bar No. 00902  
STEPHENS GOURLEY & BYWATER  
3636 North Rancho Dr  
Las Vegas, Nevada 89130  
Attorneys for Plaintiff  
T: (702) 656-2355  
F: (702) 656-2776  
E: dstephens@sbgllawfirm.com  
Attorney for Cheyenne Nalder

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,  
Plaintiff,  
vs.  
GARY LEWIS,  
Defendant.

07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

AMENDED JUDGMENT

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

...

...

...

...

1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbgllawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

19 AMENDED JUDGMENT

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

25 ...

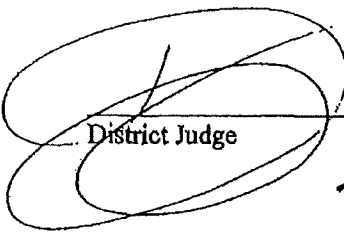
26 ...

27 ...


28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *me*  
2 \$ 3,434,444.63  
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~  
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,  
5 2007, until paid in full.

6 DATED this *26* day of March, 2018.

7  
8  
9  
10  District Judge *me*

11  
12 Submitted by:  
13 STEPHENS GOURLEY & BYWATER

14   
15 DAVID A. STEPHENS, ESQ.  
16 Nevada Bar No. 00902  
17 STEPHENS GOURLEY & BYWATER  
18 3636 North Rancho Dr  
19 Las Vegas, Nevada 89130  
20 Attorneys for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28

# STEPHENS & BYWATER, P.C.

ATTORNEYS AT LAW

David A. Stephens email: [dstephens@sgblawfirm.com](mailto:dstephens@sgblawfirm.com)

Gordon E. Bywater email: [gbywater@sgblawfirm.com](mailto:gbywater@sgblawfirm.com)

July 17, 2018

VIA REGULAR U.S. MAIL  
Thomas E. Winner, Esq.  
Atkin Winner & Sherrod  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102

RE: Cheyenne Nalder vs. Gary Lewis

Dear Tom:

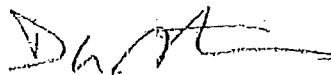
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

I recognize that you have not appeared in this matter. I served Mr. Lewis some time ago and he has never filed an answer. Thus, as a courtesy to you, who I understand to be representing Mr. Lewis in related cases, I am providing this Three Day Notice to you in addition to Mr. Lewis.

I appreciate your consideration.

Sincerely,

STEPHENS & BYWATER



David A. Stephens, Esq.

DAS:mlg  
enclosure

3636 N. Rancho Drive, Las Vegas, Nevada 89130  
Telephone: (702) 656-2355 | Facsimile: (702) 656-2776  
Website: [www.sgblawfirm.com](http://www.sgblawfirm.com)



APPX0025

1 TDNP (CIV)  
David A. Stephens, Esq.  
2 Nevada Bar No. 00902  
STEPHENS, GOURLEY & BYWATER  
3 3636 North Rancho Drive  
Las Vegas, Nevada 89130  
4 Telephone: (702) 656-2355  
Facsimile: (702) 656-2776  
5 Email: dstephens@sgblawfirm.com  
Attorney for Cheyenne Nalder

6  
7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

CASE NO.: A-18-772220-C

10 Plaintiff,

DEPT NO.: XXIX

11 vs.

12 GARY LEWIS and DOES I through V,  
13 inclusive,

14 Defendants.

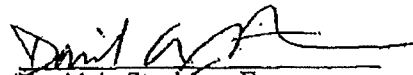
15 THREE DAY NOTICE TO PLEAD

16 Date: n/a  
17 Time: n/a

18 To: Gary Lewis, Defendant

19 PLEASE TAKE NOTICE that the Plaintiff intends to take a default and default judgment  
20 against you if you have not answered or otherwise filed a response of pleading within three (3) days  
21 of the date of this notice.

22 Dated this 17 day of July 2018.

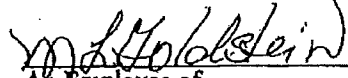
23  
24   
25 David A. Stephens, Esq.  
26 Nevada Bar No. 00902  
Stephens Gourley & Bywater  
3636 N. Rancho Drive  
27 Las Vegas, NV 89130  
28 Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that service of this THREE DAY NOTICE TO PLEAD was made this 17th day of July, 2018, by depositing a copy thereof in the U.S. Mail, first class postage prepaid, addressed to:

Gary Lewis  
733 Minnesota Avenue  
Glendora, CA 91740

Thomas E. Winner, Esq.  
Atkin Winner Shorrod  
1117 S. Rancho Drive  
Las Vegas, NV 89102

  
An Employee of  
Stephens Gourley & Bywater

*Steven D. Grierson*

1 **COMP**  
David A. Stephens, Esq.  
2 Nevada Bar No. 00902  
STEPHENS, GOURLEY & BYWATER  
3 3636 North Rancho Drive  
Las Vegas, Nevada 89130  
4 Telephone: (702) 656-2355  
Facsimile: (702) 656-2776  
5 Email: dstephens@sgblawfirm.com  
Attorney for Cheyenne Nalder

6  
7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS and DOES I through V,**  
13 **inclusive,**

14 Defendants.

CASE NO.: A-5494-H A-18-772220-C

DEPT NO.: XXIX Department 29

15 **COMPLAINT**

16 Date: n/a  
17 Time: n/a

18 COMES NOW the Plaintiff, CHEYENNE NALDER, by and through Plaintiff's attorney,  
19 DAVID A. STEPHENS, ESQ., of STEPHENS & BYWATER, and for a cause of action against the  
20 Defendants, and each of them, alleges as follows:

21 1. Upon information and belief, that at the time of the injury the Defendant, GARY  
22 LEWIS, was a resident of Las Vegas, Clark County, Nevada, and that on or about December 2008  
23 GARY LEWIS moved out of state and has not been present or resided in the jurisdiction since that  
24 time.

25 2. That Plaintiff, CHEYENNE NALDER, was at the time of the accident, a resident of  
26 the County of Clark, State of Nevada

27 3. That the true names or capacities, whether individual, corporate, associate or  
28 otherwise, of Defendants names as DOES I through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and  
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some  
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as  
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the  
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join  
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of  
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this  
9 action.

10 5. On the 8<sup>th</sup> day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's  
11 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder,  
12 was playing on the private property; that Defendant, did carelessly and negligently operate  
13 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder, and that as a direct and proximate  
14 result of the aforesaid negligence of Defendant, Gary Lewis, and each of the Defendants, Plaintiff,  
15 Cheyenne Nalder, sustained the grievous and serious personal injuries and damages as hereinafter  
16 more particularly alleged.

17 6. At the time of the accident herein complained of, and immediately prior thereto,  
18 Defendant, Gary Lewis, in breaching a duty owed to Plaintiffs, was negligent and careless, inter  
19 alia, in the following particulars:

- 20 A. In failing to keep Defendant's vehicle under proper control;  
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;  
22 C. In failing to keep a proper lookout for plaintiffs  
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,  
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of  
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid  
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained  
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or  
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in  
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid  
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has  
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of  
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and  
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of  
9 Court will be requested to include said additional damages when the same have been fully  
10 determined.

11 9. Prior to the injuries complained of herein, Plaintiff, Cheyenne Nalder, was an able-  
12 bodied female, capable of being gainfully employed and capable of engaging in all other activities  
13 for which Plaintiff was otherwise suited. By reason of the premises, and as a direct and proximate  
14 result of the negligence of the said Defendants, and each of them, Plaintiff, Cheyenne Nalder, was  
15 caused to be disabled and limited and restricted in her occupations and activities, and/or suffered a  
16 diminution of Plaintiff's earning capacity and future loss of wages, all to her damage in a sum not  
17 yet presently ascertainable, the allegations of which Plaintiff prays leave of Court to insert here  
18 when the same shall be fully determined.

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained  
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in  
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of  
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations  
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer  
28 on February 5, 2015. This payment extends any statute of limitation.

1 15. After reaching the age of majority an amended judgment was entered in Cheyenne  
2 Nalder's name.

3 16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment  
4 against Gary Lewis including the full damages assessed in the original judgment plus interest and  
5 minus the one payment made.

6 17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of  
7 limitations on the judgments expire.

8 18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to  
9 prosecute this action, and is entitled to a reasonable attorney's fee.

10 CLAIM FOR RELIEF;

11 1. General damages in an amount in excess of \$10,000.00;

12 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus  
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently  
14 unascertainable amount;

15 3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of  
16 Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's  
17 earning capacity in a presently unascertainable amount;

18 4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of  
19 \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20 5. A declaration that the statute of limitations on the judgment is still tolled as a result of  
21 the Defendant's continued absence from the state.

22 4. Costs of this suit;

23 5. Attorney's fees; and

24 ///

25

26 ///

27

28 ///

1           6. For such other and further relief as to the Court may seem just and proper in the  
2 premises.

3       DATED this 3<sup>rd</sup> day of April, 2018.

4

STEPHENS GOURLEY & BYWATER

5

6

7

/s David A. Stephens  
David A. Stephens, Esq.  
Nevada Bar No. 00902  
3636 North Rancho Drive  
Las Vegas, Nevada 89130  
Attorneys for Plaintiff

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

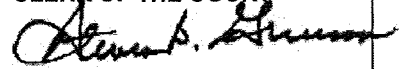
24

25

26

27

28



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](mailto:mdouglas@awslawyers.com)

*Attorneys for Proposed Intervenor United Automobile Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants,


CASE NO.: 07A549111  
DEPT. NO.: 29

**UAIC'S MOTION TO INTERVENE**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby submits this Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached hereto, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this 17<sup>th</sup> day of August, 2018.

ATKIN WINNER & SHERROD




Matthew J. Douglas  
Nevada Bar No. 11371  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Intervenor*

**NOTICE OF MOTION**

TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:  
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Intervene for hearing before the above-entitled Court on the **19th** day of **September**, 2018, at the hour of \_\_\_\_\_m. in the forenoon of said date, or as soon thereafter as counsel can be heard.

DATED this **17<sup>th</sup>** day of **AUGUST**, 2018.

ATKIN WINNER & SHERROD

  
Matthew Douglas, Esq.  
Nevada Bar No. 11371  
117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Intervenor*

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
**MOTION FOR INTERVENTION**

**I.**

**Introduction & Factual Background**

This action was originally filed back in 2007 in regard to an automobile accident that occurred in July 2007 between Nalder and Lewis. Proposed Intervenor will not re-state the entire history as it is adequately set forth in Order Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals for the Ninth Circuit, which was filed on January 11, 2018. *A copy of the Order certifying the second question of law is attached hereto as Exhibit 'A.'* Rather, the salient points are that Plaintiff's "amended judgment", entered recently in 2018, is premised on an original judgment which had been entered against Gary Lewis on

1 August 26, 2008. After obtaining the judgment, Counsel for Plaintiff<sup>1</sup> then filed an action against  
2 Mr. Lewis' insurer, United Automobile Insurance Company ("UAIC"), Proposed Intervenor  
3 herein. Despite the prohibition against direct actions against an insurer, Plaintiff failed to obtain  
4 an assignment prior to filing that action against UAIC and, only later, during the litigation  
5 obtained an assignment from Lewis.

6  
7 In any event, that action - on coverage for the 2008 judgment by Nalder against UAIC -  
8 has proceeded in the United States District Court for the District of Nevada and, the United  
9 States Court of Appeals for the Ninth Circuit, since 2009. During the pendency of those appeals  
10 it was observed that Plaintiff had failed to renew her 2008 judgment against Lewis pursuant to  
11 Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for  
12 action to execute on such a judgment would be six (6) years, unless renewed under N.R.S.  
13 17.214. Upon realizing the judgment had never been timely renewed, UAIC filed a Motion to  
14 Dismiss the Appeal for Lack of Standing with the Ninth Circuit on March 14, 2017. On  
15 December 27, 2017 the Ninth Circuit certified a second question to the Nevada Supreme Court -  
16 specifically certifying the following question:

17  
18 "Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a  
19 separate judgment against its insured, does the insurer's liability expire when the statute of  
20 limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life  
21 of the judgment?"

22 On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified  
23 question and ordered Appellants to file their Opening brief within 30 days, or by March 26,  
24 2018. *A copy of the Order accepting the second certified question is attached hereto as Exhibit*  
25 *'B.'* In accepting the certified question, the Nevada Supreme Court rephrased the question as  
26 follows:  
27

28  
<sup>1</sup> At that time, in 2008, Ms. Nalder was a minor so the judgment was entered in favor of her  
through her Guardian Ad Litem and, father, James Nalder.

1 In an action against an insurer for breach of the duty to defend its insured, can the  
2 plaintiff continue to seek consequential damages in the amount of a default  
3 judgment obtained against the insured when the judgment against the insured was  
4 not renewed and the time for doing so expired while the action against the insurer  
5 was pending?

6 On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC  
7 has yet to file its Response Brief and, accordingly, the above-quoted question and, issue, remains  
8 pending before the Nevada Supreme Court.

9 Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained  
10 additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on  
11 March 22, 2018 seeking, innocently enough, to "amend" the 2008 expired judgment to be in the  
12 name of Cheyenne Nalder individually. *A copy of the Ex Parte Motion is attached hereto as*  
13 *Exhibit 'C.'* Thereafter, this Court obviously not having been informed of the above-noted  
14 Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of  
15 entry on May 18, 2018. *A copy of the filed Amended Judgment is attached hereto as Exhibit 'D.'*

16 Furthermore, Plaintiff then initiated a "new" action, under case no. A-18-772220-C<sup>2</sup> in a  
17 thinly veiled attempt to have this Court rule on issues pending before the Nevada Supreme Court  
18 and "fix" their expired judgment. This intent appears clearly evidenced by paragraph five (5) of  
19 Plaintiff's prayer for relief herein which states Plaintiff is seeking this Court to make "a  
20 declaration that the statute of limitations on the judgment on the judgment is still tolled as a  
21 result of Defendant's continued absence from the state." *A copy of Plaintiff's Complaint for that*  
22 *action is attached hereto as Exhibit 'E.'* Plaintiff then apparently served Lewis and, on July 17,  
23 2018, sent a letter to UAIC's counsel with a copy of a "three Day notice to Plead", and, as such,  
24 threatening default of Lewis on this "new" action. *A copy of Plaintiff's letter and three day*  
25 *notice is attached hereto as Exhibit 'F.'*

26  
27  
28 <sup>2</sup> This case is also pending before this Court and UAIC has filed a Motion to intervene in that  
action as well and same is pending before this Court.



1 Court Order under an implied policy of insurance with UAIC policy at the time of the accident  
2 underlying the judgments for which Plaintiff seeks relief or, may seek relief, in the present  
3 action. *Exhibit 'G.'* When UAIC became informed of the amended judgment herein and  
4 attempted to retain counsel to defend LEWIS, UAIC was informed by Counsel for Plaintiff that  
5 he would not allow retained defense counsel to file any motion to defend LEWIS or vacate the  
6 amended judgment. *Exhibit "H."* Without the ability of retained defense counsel to appear and  
7 mount a defense on LEWIS' behalf, it is apparent that UAIC cannot provide him an effective  
8 defense in regards to this "amended" judgment. As long as UAIC is obligated to provide such a  
9 defense, and to potentially pay any judgment against LEWIS or pay fees resulting from  
10 enforcement of said judgment, UAIC's interests are clearly at stake in this action. Therefore,  
11 pursuant to NRCP 24(a)(2), UAIC should be allowed to intervene in this action.

12  
13 Intervention is governed by NRCP 24 and NRS 12.130. Although strikingly similar,  
14 NRCP 24 requires "timely application" to intervene whereas NRS 12.130 merely requires  
15 intervention at the district court level. *Stephens v. First National Bank*, 64 Nev. 292, 182 P.2d  
16 146 (1947). NRS 12.130(1)(c), however, specifically provides that intervention may be made as  
17 provided by the Nevada Rules of Civil Procedure. As such, given this mandate, the procedural  
18 rule will be specifically addressed in the instant Motion.

19  
20 NRCP 24(a)(2) imposes four (4) requirements for the intervention of right: (1) the  
21 application must be timely; (2) it must show an interest in the subject matter of the action; (3) it  
22 must show that the protection of the interest may be impaired by the disposition of the action;  
23 and (4) it must show that the interest is not adequately represented by an existing party. *State*  
24 *Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 888 P.2d 911 (1995).<sup>3</sup>

25  
26  
27 <sup>3</sup> The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be  
28 permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2)  
when the applicant claims an interest relating to the property or transaction which is the subject of the  
action and he is so situated that the disposition of the action may as a practical matter impair or impede  
his ability to protect that interest, unless the applicant's interest is adequately represented by existing

1 When determining the timeliness of an application for intervention, it is not the length of  
2 the delay by the intervenor that is of primary importance, per se, but the extent of prejudice to the  
3 rights of existing parties resulting from the delay. *Lawler v. Ginocchio*, 94 Nev. 623, 584 P.2d 667  
4 (1978). This determination is, of course, within the sound discretion of the court. *Id.* Here, this  
5 amended judgment was just sought via *Ex parte* Motion in March 2018 and the amended  
6 judgment was only filed with Notice of Entry on May 18, 2018 and, accordingly, the six (6)  
7 month deadline to seek relief from same judgment under N.R.C.P. 60 has not expired. Moreover,  
8 Plaintiff has taken no further action to enforce this amended judgment and the matter has had no  
9 dispositive rulings; as such, UAIC'S intervention in the instant matter should be considered  
10 timely and no prejudice shall accrue to Plaintiff.

12 Furthermore, as outlined above, it is clear that UAIC's Petition meets the other three  
13 requirements for intervention as of right based upon the clear fact that UAIC has a significant  
14 interest in the action as the insurer for LEWIS under the aforementioned U.S. District Court Order.  
15 By dint of this fact UAIC could potentially be responsible for any damages LEWIS is found  
16 liable for – including the instant amended judgment. This substantial interest serves to satisfy the  
17 two remaining requirements as protection of the interest will be impaired by disposition of this  
18 amended judgment entered against LEWIS - without his ability to seek to vacate it on his own -  
19 would necessarily impair UAIC. Finally, that as there is currently no defendant defending this  
20 cause – UAIC's interest is not sufficiently protected.

23 Moreover, it also true that these very issues - the validity of the 2008 judgment against  
24 Lewis – are also at issue in a case involving UAIC before the Nevada Supreme Court, as set for  
25 above. The fact that Plaintiff has now sought to have this Court amend same 2008 judgment in a  
26 thinly veiled attempt to cure the expiration of the 2008 judgment not only would appear to

27 \_\_\_\_\_ (Cont.)  
28 parties.

1 infringe upon issues before the Nevada Supreme Court and, Ninth Circuit, but also may directly  
2 affect UAIC's interests, adding further good cause to show UAIC is an interested third party  
3 whom should be allowed to intervene.

4 The final requirement under N.R.C.P. 24(c) is that the Motion to intervene "shall be  
5 accompanied by a pleading setting forth the claim or defense for which intervention is sought.  
6 Accordingly, *attached hereto as Exhibit "I"*, is a copy of UAIC's proposed responsive pleading  
7 to this action, a Motion for Relief from the Judgment pursuant to N.R.C.P. 60.  
8

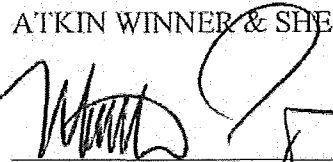
9 III.

10 CONCLUSION

11 Based on the foregoing, it is necessary for UAIC to intervene in this matter to protect its  
12 interests and LEWIS'.

13 DATED this 17<sup>th</sup> day of August, 2018.

14  
15 ATKIN WINNER & SHERROD

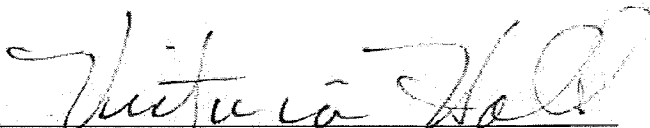
16   
17 Matthew Douglas, Esq.  
18 Nevada Bar No. 11370  
19 1117 S. Rancho Drive  
20 Las Vegas, Nevada 89102  
21 Attorneys for UAIC  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I certify that on this 17<sup>th</sup> day of August, 2018, the foregoing MOTION TO INTERVENE was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☐ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

PLAINTIFFS' COUNSEL

David A. Stephens, Esq.  
STEPHENS, GOURLEY & BYWATER  
3636 N. Rancho Dr.  
Las Vegas, Nevada 89130

  
An employee of ATKIN WINNER & SHERROD

# **EXHIBIT “A”**

FILED

JAN 11 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

No. 70504

JAMES NALDER, Guardian  
Ad Litem on behalf of  
Cheyanne Nalder; GARY  
LEWIS, individually,  
*Plaintiffs-Appellants,*

v.

UNITED AUTOMOBILE  
INSURANCE COMPANY,  
*Defendant-Appellee.*

No. 13-17441

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

ORDER CERTIFYING  
QUESTION TO THE  
NEVADA SUPREME  
COURT

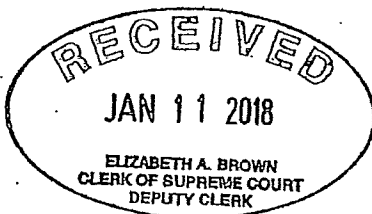
Appeal from the United States District Court  
for the District of Nevada  
Robert Clive Jones, District Judge, Presiding

Argued and Submitted January 6, 2016  
San Francisco, California

Filed December 27, 2017

Before: Diarmuid F. O'Scannlain and  
William A. Fletcher, Circuit Judges.\*

\* This case was submitted to a panel that included Judge Kozinski,  
who recently retired.



BPX004392

**SUMMARY\*\***

---

**Certified Question to Nevada Supreme Court**

The panel certified the following question of law to the Nevada Supreme Court:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

---

**ORDER**

Pursuant to Rule 5 of the Nevada Rules of Appellate Procedure, we certify to the Nevada Supreme Court the question of law set forth in Part II of this order. The answer to this question may be determinative of the cause pending before this court, and there is no controlling precedent in the decisions of the Nevada Supreme Court or the Nevada Court of Appeals.

Further proceedings in this court are stayed pending receipt of an answer to the certified question. Submission remains withdrawn pending further order. The parties shall notify the Clerk of this court within one week after the

---

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Nevada Supreme Court accepts or rejects the certified question, and again within one week after the Nevada Supreme Court renders its opinion.

I

Plaintiffs-appellants, James Nalder, guardian ad litem for Cheyanne Nalder, and Gary Lewis will be the appellants before the Nevada Supreme Court. Defendant-appellee, United Automobile Insurance Company ("UAIC"), a Florida corporation with its principal place of business in Florida, will be the respondent.

The names and addresses of counsel for the parties are as follows:

Thomas Christensen, Christensen Law Offices, LLC, 1000 South Valley View Boulevard, Las Vegas, Nevada 89107, and Dennis M. Prince, Eglet Prince, 400 South Seventh Street, Suite 400, Las Vegas, Nevada 89101, for appellants.

Thomas E. Winner, Susan M. Sherrod and Matthew J. Douglas, Atkin Winner & Sherrod, 1117 South Rancho Drive, Las Vegas, Nevada 89102, for respondent.

II

The question of law to be answered is:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the

statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

The Nevada Supreme Court may rephrase the question as it deems necessary.

### III

#### A

This is the second order in this case certifying a question to the Nevada Supreme Court. We recount the facts essentially as in the first order.

On July 8, 2007, Gary Lewis ran over Cheyanne Nalder. Lewis had taken out an auto insurance policy with UAIC, which was renewable on a monthly basis. Before the accident, Lewis had received a statement instructing him that his renewal payment was due by June 30, 2007. The statement also specified that "[t]o avoid lapse in coverage, payment must be received prior to expiration of your policy." The statement listed June 30, 2007, as the policy's effective date and July 31, 2007, as its expiration date. Lewis did not pay to renew his policy until July 10, 2007, two days after the accident.

James Nalder ("Nalder"), Cheyanne's father, made an offer to UAIC to settle her claim for \$15,000, the policy limit. UAIC rejected the offer, arguing Lewis was not covered at the time of the accident because he did not renew the policy by June 30. UAIC never informed Lewis that Nalder was willing to settle.

Nalder sued Lewis in Nevada state court and obtained a \$3.5 million default judgment. Nalder and Lewis then filed the instant suit against UAIC in state court, which UAIC removed to federal court. Nalder and Lewis alleged breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and breach of section 686A.310 of the Nevada Revised Statutes. UAIC moved for summary judgment on the basis that Lewis had no insurance coverage on the date of the accident. Nalder and Lewis argued that Lewis was covered on the date of the accident because the renewal notice was ambiguous as to when payment had to be received to avoid a lapse in coverage, and that this ambiguity had to be construed in favor of the insured. The district court found that the contract could not be reasonably interpreted in favor of Nalder and Lewis's argument and granted summary judgment in favor of UAIC.

We held that summary judgment "with respect to whether there was coverage" was improper because the "[p]laintiffs came forward with facts supporting their tenable legal position." *Nalder v. United Auto. Ins. Co.*, 500 F. App'x 701, 702 (9th Cir. 2012). But we affirmed "[t]he portion of the order granting summary judgment with respect to the [Nevada] statutory arguments." *Id.*

On remand, the district court granted partial summary judgment to each party. First, the court found the renewal statement ambiguous, so it construed this ambiguity against UAIC by finding that Lewis was covered on the date of the accident. Second, the court found that UAIC did not act in bad faith because it had a reasonable basis to dispute coverage. Third, the court found that UAIC breached its duty to defend Lewis but awarded no damages "because [Lewis] did not incur any fees or costs in defending the underlying

action” as he took a default judgment. The court ordered UAIC “to pay Cheyanne Nalder the policy limits on Gary Lewis’s implied insurance policy at the time of the accident.” Nalder and Lewis appeal.

B

Nalder and Lewis claim on appeal that they should have been awarded consequential and compensatory damages resulting from the Nevada state court judgment because UAIC breached its duty to defend. Thus, assuming that UAIC did not act in bad faith but did breach its duty to defend Lewis, one question before us is how to calculate the damages that should be awarded. Nalder and Lewis claim they should have been awarded the amount of the default judgment (\$3.5 million) because, in their view, UAIC’s failure to defend Lewis was the proximate cause of the judgment against him. The district court, however, denied damages because Lewis chose not to defend and thus incurred no attorneys’ fees or costs. Because there was no clear state law and the district court’s opinion in this case conflicted with another decision by the U.S. District Court for the District of Nevada on the question of whether liability for breach of the duty to defend included all losses consequential to an insurer’s breach, we certified that question to the Nevada Supreme Court in an order dated June 1, 2016. In that order, we also stayed proceedings in this court pending resolution of the certified question by the Nevada Supreme Court.

After that certified question had been fully briefed before the Nevada Supreme Court, but before any ruling or oral argument, UAIC moved this court to dismiss the appeal for lack of standing. UAIC argues that the six-year life of the

default judgment had run and that the judgment had not been renewed, so the judgment is no longer enforceable. Therefore, UAIC contends, there are no longer any damages above the policy limit that Nalder and Lewis can seek because the judgment that forms the basis for those damages has lapsed. For that reason, UAIC argues that the issue on appeal is moot because there is no longer any basis to seek damages above the policy limit, which the district court already awarded.

In a notice filed June 13, 2017, the Nevada Supreme Court stayed consideration of the question already certified in this case until we ruled on the motion to dismiss now pending before us.

#### IV

In support of its motion to dismiss, UAIC argues that under Nev. Rev. Stat. § 11.190(1)(a), the six-year statute of limitations during which Nalder could enforce his default judgment against Lewis expired on August 26, 2014, and Nalder did not renew the judgment. Therefore, says UAIC, the default judgment has lapsed, and because it is no longer enforceable, it no longer constitutes an injury for which Lewis or Nalder may seek damages from UAIC.

In response, Nalder and Lewis do not contest that the six-year period of the statute of limitations has passed and that they have failed to renew the judgment, but they argue that UAIC is wrong that the issue of consequential damages is mooted. First, they make a procedural argument that a lapse in the default judgment, if any, may affect the amount of damages but does not affect liability, so the issue is inappropriate to address on appeal before the district court

has evaluated the effect on damages. Second, they argue that their suit against UAIC is itself "an action upon" the default judgment under the terms of Nev. Rev. Stat. § 11.190(1)(a) and that because it was filed within the six-year life of the judgment it is timely. In support of this argument, they point out that UAIC has already paid out more than \$90,000 in this case, which, they say, acknowledges the validity of the underlying judgment and that this suit is an enforcement action upon it.

Neither side can point to Nevada law that definitively answers the question of whether plaintiffs may still recover consequential damages based on the default judgment when six years passed during the pendency of this suit. Nalder and Lewis reach into the annals of Nevada case law to find an opinion observing that at common law "a judgment creditor may enforce his judgment by the process of the court in which he obtained it, or he may elect to use the judgment, as an original cause of action; and bring suit thereon, and prosecute such suit to final judgment." *Mandlebaum v. Gregovich*, 50 P. 849, 851 (Nev. 1897); *see also Leven v. Frey*, 168 P.3d 712, 715 (Nev. 2007) ("An action on a judgment or its renewal must be commenced within six years." (emphasis added)). They suggest they are doing just this, "us[ing] the judgment, as an original cause of action," to recover from UAIC. But that precedent does not resolve whether a suit against an insurer who was not a party to the default judgment is, under Nevada law, an "action on" that judgment.

UAIC does no better. It also points to *Leven* for the proposition that the Nevada Supreme Court has strictly construed the requirements to renew a judgment. *See Leven*, 168 P.3d at 719. Be that as it may, Nalder and Lewis do not

rely on any laxity in the renewal requirements and argue instead that the instant suit is itself a timely action upon the judgment that obviates any need for renewal. UAIC also points to Nev. Rev. Stat. § 21.010, which provides that “the party in whose favor judgment is given may, at any time before the judgment expires, obtain the issuance of a writ of execution for its enforcement as prescribed in this chapter. The writ ceases to be effective when the judgment expires.” That provision, however, does not resolve this case because Nalder and Lewis are not enforcing a writ of execution, which is a direction to a sheriff to satisfy a judgment. *See* Nev. Rev. Stat. § 21.020.

Finally, apart from Nalder and Lewis’s argument that it is inappropriate to address on appeal the effect of the statute of limitations on the size of damages they may collect, neither side squarely addresses whether the expiration of the judgment in fact reduces the consequential damages for UAIC’s breach of the duty to defend. Does the judgment’s expiration during the pendency of the suit reduce the consequential damages to zero as UAIC implies, or should the damages be calculated based on when the default judgment was still enforceable, as it was when the suit was initiated? Neither side provides Nevada law to answer the question, nor have we discovered it.

## V

It appears to this court that there is no controlling precedent of the Nevada Supreme Court or the Nevada Court of Appeals with regard to the issue of Nevada law raised by the motion to dismiss. We thus request the Nevada Supreme Court accept and decide the certified question. “The written opinion of the [Nevada] Supreme Court stating the law

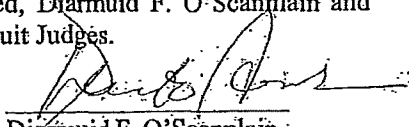
governing the question[] certified . . . shall be res judicata as to the parties." Nev. R. App. P. 5(h).

If the Nevada Supreme Court accepts this additional certified question, it may resolve the two certified questions in any order it sees fit, because Nalder and Lewis must prevail on both questions in order to recover consequential damages based on the default judgment for breach of the duty to defend.

The clerk of this court shall forward a copy of this order, under official seal, to the Nevada Supreme Court, along with copies of all briefs and excerpts of record that have been filed with this court.

**IT IS SO ORDERED.**

Respectfully submitted, Diarmuid F. O'Scannlain and  
William A. Fletcher, Circuit Judges.

  
\_\_\_\_\_  
Diarmuid F. O'Scannlain  
Circuit Judge

# **EXHIBIT “B”**

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES NALDER, GUARDIAN AD  
LITEM ON BEHALF OF CHEYANNE  
NALDER; AND GARY LEWIS,  
INDIVIDUALLY,  
Appellants,  
vs.  
UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Respondent.

No. 70504

FILED

FEB 23 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER ACCEPTING SECOND CERTIFIED QUESTION AND  
DIRECTING SUPPLEMENTAL BRIEFING*

The United States Ninth Circuit Court of Appeals previously certified a legal question to this court under NRAP 5, asking us to answer the following question:

Whether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred by the insured in mounting a defense, or is the insurer liable for all losses consequential to the insurer's breach?

Because no clearly controlling Nevada precedent answers that legal question and the answer could determine part of the federal case, we accepted that certified question and directed the parties to file briefs addressing that question. After briefing had been completed, respondent United Automobile Insurance Company informed this court that it had filed a motion to dismiss in the federal case. We then stayed our consideration of the certified question because a decision by the Ninth Circuit granting the motion to dismiss would render the question before this court advisory.

The Ninth Circuit has now certified another legal question to this court under NRAP 5. The new question, which is related to the motion to dismiss pending in the Ninth Circuit, asks us to answer the following:

Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

That question is focused on the insurer's liability, but elsewhere in the Ninth Circuit's certification order, it makes clear that the court is concerned with whether the plaintiff in this scenario can continue to seek the amount of the separate judgment against the insured as consequential damages caused by the insurer's breach of the duty to defend its insured when the separate judgment was not renewed as contemplated by NRS 11.190(1)(a) and NRS 17.214 during the pendency of the action against the insurer. We therefore choose to accept the Ninth Circuit's invitation to "rephrase the question as [we] deem necessary." Consistent with language that appears elsewhere in the certification order, we rephrase the question as follows:

In an action against an insurer for breach of the duty to defend its insured, can the plaintiff continue to seek consequential damages in the amount of a default judgment obtained against the insured when the judgment against the insured was not renewed and the time for doing so expired while the action against the insurer was pending?

As no clearly controlling Nevada precedent answers this legal question and the answer may determine the federal case, we accept this certified question as rephrased. See NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).

Appellants shall have 30 days from the date of this order to file and serve a supplemental opening brief. Respondent shall have 30 days from the date the supplemental opening brief is served to file and serve a supplemental answering brief. Appellants shall then have 20 days from the date the supplemental answering brief is served to file and serve any supplemental reply brief. The supplemental briefs shall be limited to addressing the second certified question and shall comply with NRAP 28, 28.2, 31(c), and 32. See NRAP 5(g)(2). To the extent that there are portions of the record that have not already been provided to this court and are necessary for this court to resolve the second certified question, the parties may submit a joint appendix containing those additional documents. See NRAP 5(d). Given the relationship between the two certified questions, we lift the stay as to the first certified question.

It is so ORDERED.<sup>1</sup>

Douglas, C.J.  
Douglas

Gibbons, J.  
Gibbons

Hardesty, J.  
Hardesty

Cherry, J.  
Cherry

Pickering, J.  
Pickering

Stiglich, J.  
Stiglich

<sup>1</sup>As the parties have already paid a filing fee when this court accepted the first certified question, no additional filing fee will be assessed at this time.

The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Eglet Prince  
Christensen Law Offices, LLC  
Atkin Winner & Sherrod  
Cole, Scott & Kissane, P.A.  
Lewis Roca Rothgerber Christie LLP/Las Vegas  
Pursiano Barry Bruce Lavelle, LLP  
Laura Anne Foggan  
Mark Andrew Boyle  
Matthew L. Sharp, Ltd.  
Clerk, United States Court of Appeals for the Ninth Circuit

# **EXHIBIT “C”**



1 MTN  
2 David A. Stephens, Esq.  
3 Nevada Bar No. 00902  
4 STEPHENS, GOURLEY & BYWATER  
5 3636 North Rancho Drive  
6 Las Vegas, Nevada 89130  
7 Telephone: (702) 656-2355  
8 Facsimile: (702) 656-2776  
9 Email: dstephens@sgblawfirm.com  
10 Attorney for Cheyenne Nalder

11  
12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendants.

07-A-549111  
CASE NO.: A549111

DEPT NO.: XXIX

19 EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF  
20 CHEYENNE NALDER, INDIVIDUALLY

21 Date: N/A

22 Time: N/A


23 NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY  
24 & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her  
25 name as she has now reached the age of majority. Judgment was entered in the name of the  
26 guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now  
27 moves this court to issue the judgment in her name alone (See Exhibit 2) so that she may pursue  
28 collection of the same. Cheyenne turned 18 on April 4, 2016. In addition, Defendant Gary Lewis,  
has been absent from the State of Nevada since at least February 2010.

/ / / /

Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

Dated this 19 day of March, 2018.

STEPHENS GOURLEY &amp; BYWATER

  
David A. Stephens, Esq.  
Nevada Bar No. 00902  
3636 North Rancho Drive  
Las Vegas, Nevada 89130  
Attorneys for Plaintiff

# **EXHIBIT “1”**

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,

*Chris Smith*  
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 JAMES NALDER, )  
10 as Guardian ad Litem for )  
11 CHEYENNE NALDER, a minor. )  
12 )  
13 Plaintiffs, )  
14 )  
15 vs. )  
16 )  
17 GARY LEWIS, and DOES I )  
18 through V, inclusive )  
19 )  
20 Defendants. )  
21 )

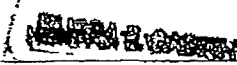
CASE NO: A549111  
DEPT. NO: VI

JUDGMENT

19 In this action the Defendant, GARY LEWIS, having been regularly served with the  
20 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the  
21 legal time for answering having expired, and no answer or demurrer having been filed, the  
22 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according  
23 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as  
24 follows:  
25  
26  
27  
28

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 <sup>June</sup>~~May~~, 2008.

7  
8   
9 DISTRICT JUDGE

10  
11  
12 Submitted by:  
13 CHRISTENSEN LAW OFFICES, LLC.

14  
15  
16 BY: 

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

# **EXHIBIT “2”**

1 JMT  
2 DAVID A. STEPHENS, ESQ.  
3 Nevada Bar No. 00902  
4 STEPHENS GOURLEY & BYWATER  
5 3636 North Rancho Dr  
6 Las Vegas, Nevada 89130  
7 Attorneys for Plaintiff  
8 T: (702) 656-2355  
9 F: (702) 656-2776  
10 E: dstephens@sbgllawfirm.com  
11 Attorney for Cheyenne Nalder

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

12 CHEYENNE NALDER,

13 Plaintiff,

14 vs.

15 GARY LEWIS,

16 Defendant.

CASE NO: A549111  
DEPT. NO: XXIX

17 AMENDED JUDGMENT


18  
19 In this action the Defendant, Gary Lewis, having been regularly served with the Summons  
20 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for  
21 answering having expired, and no answer or demurrer having been filed, the Default of said  
22 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon  
23 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:  
24  
25 ...  
26 ...  
27 ...  
28 ...

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  
3 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,  
4 2007, until paid in full.  
5

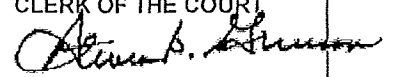
6 DATED this \_\_\_\_\_ day of March, 2018.  
7  
8  
9

10 \_\_\_\_\_  
District Judge  
11

12 Submitted by:  
STEPHENS GOURLEY & BYWATER  
13

14   
DAVID A. STEPHENS, ESQ.  
15 Nevada Bar No. 00902  
STEPHENS GOURLEY & BYWATER  
16 3636 North Rancho Dr  
17 Las Vegas, Nevada 89130  
Attorneys for Plaintiff  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT “D”**



1 **NOE**  
David A. Stephens, Esq.  
2 Nevada Bar No. 00902  
Stephens & Bywater  
3 3636 North Rancho Drive  
Las Vegas, Nevada 89130  
4 Telephone: (702) 656-2355  
Facsimile: (702) 656-2776  
5 Email: dstephens@sgblawfirm.com  
Attorney for Cheyenne Nalder  
6

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.  
14

Case No. 07A549111

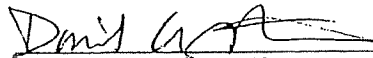
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26<sup>th</sup> day of March, 2018, the Honorable David  
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in  
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

20 STEPHENS & BYWATER

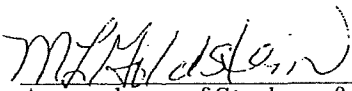
21  
22   
23 David A. Stephens, Esq.  
Nevada Bar No. 00902  
24 3636 North Rancho Drive  
Las Vegas, Nevada 89130  
25 Attorney for Brittany Wilson  
26  
27  
28

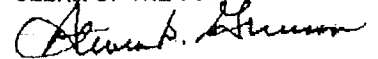
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF MAILING**

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,  
and that on the 18<sup>th</sup> day of May, 2018, I served a true copy of the foregoing **NOTICE OF**  
**ENTRY OF AMENDED JUDGMENT**, by depositing the same in a sealed envelope upon  
which first class postage was fully prepaid, and addressed as follows:

Gary Lewis  
733 S. Minnesota Ave.  
Glendora, California 91740

  
An employee of Stephens & Bywater



1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbgllawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

67A549111  
CASE NO: A549111  
DEPT. NO: XXIX

19 AMENDED JUDGMENT

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

25 ...

26 ...

27 ...

28 ...

1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

19 AMENDED JUDGMENT

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

25 ...

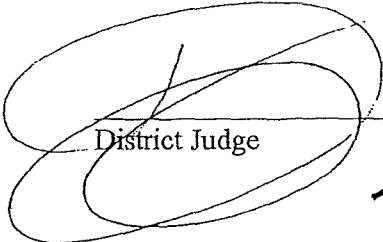
26 ...

27 ...


28 ...

1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *me*  
2 ~~\$3,500,000.00~~ *\$3,434,444.63*  
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~  
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,  
5 2007, until paid in full.

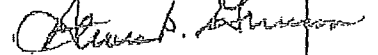
6 DATED this *26* day of March, 2018.

7  
8  
9  
10  District Judge  
11 *me*

12 Submitted by:  
13 STEPHENS GOURLEY & BYWATER

14   
15 DAVID A. STEPHENS, ESQ.  
16 Nevada Bar No. 00902  
17 STEPHENS GOURLEY & BYWATER  
18 3636 North Rancho Dr  
19 Las Vegas, Nevada 89130  
20 Attorneys for Plaintiff  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT “E”**



1 **COMP**  
2 David A. Stephens, Esq.  
3 Nevada Bar No. 00902  
4 STEPHENS, GOURLEY & BYWATER  
5 3636 North Rancho Drive  
6 Las Vegas, Nevada 89130  
7 Telephone: (702) 656-2355  
8 Facsimile: (702) 656-2776  
9 Email: dstephens@sgblawfirm.com  
10 Attorney for Cheyenne Nalder

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS and DOES I through V,  
13 inclusive,

14 Defendants.

CASE NO.: A-5494-H A-18-772220-C

DEPT NO.: XXIX Department 29

COMPLAINT

Date: n/a  
Time: n/a

18 COMES NOW the Plaintiff, CHEYENNE NALDER, by and through Plaintiff's attorney,  
19 DAVID A. STEPHENS, ESQ., of STEPHENS & BYWATER, and for a cause of action against the  
20 Defendants, and each of them, alleges as follows:

21 1. Upon information and belief, that at the time of the injury the Defendant, GARY  
22 LEWIS, was a resident of Las Vegas, Clark County, Nevada, and that on or about December 2008  
23 GARY LEWIS moved out of state and has not been present or resided in the jurisdiction since that  
24 time.

25 2. That Plaintiff, CHEYENNE NALDER, was at the time of the accident, a resident of  
26 the County of Clark, State of Nevada

27 3. That the true names or capacities, whether individual, corporate, associate or  
28 otherwise, of Defendants names as DOES I through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and  
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some  
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as  
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the  
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join  
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of  
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this  
9 action.

10 5. On the 8<sup>th</sup> day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's  
11 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder,  
12 was playing on the private property; that Defendant, did carelessly and negligently operate  
13 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder, and that as a direct and proximate  
14 result of the aforesaid negligence of Defendant, Gary Lewis, and each of the Defendants, Plaintiff,  
15 Cheyenne Nalder, sustained the grievous and serious personal injuries and damages as hereinafter  
16 more particularly alleged.

17 6. At the time of the accident herein complained of, and immediately prior thereto,  
18 Defendant, Gary Lewis, in breaching a duty owed to Plaintiffs, was negligent and careless, inter  
19 alia, in the following particulars:

- 20 A. In failing to keep Defendant's vehicle under proper control;  
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;  
22 C. In failing to keep a proper lookout for plaintiffs  
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,  
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of  
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid  
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained  
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or  
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in  
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid  
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has  
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of  
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and  
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of  
9 Court will be requested to include said additional damages when the same have been fully  
10 determined.

11 9. Prior to the injuries complained of herein, Plaintiff, Cheyenne Nalder, was an able-  
12 bodied female, capable of being gainfully employed and capable of engaging in all other activities  
13 for which Plaintiff was otherwise suited. By reason of the premises, and as a direct and proximate  
14 result of the negligence of the said Defendants, and each of them, Plaintiff, Cheyenne Nalder, was  
15 caused to be disabled and limited and restricted in her occupations and activities, and/or suffered a  
16 diminution of Plaintiff's earning capacity and future loss of wages, all to her damage in a sum not  
17 yet presently ascertainable, the allegations of which Plaintiff prays leave of Court to insert here  
18 when the same shall be fully determined.

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained  
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in  
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of  
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations  
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer  
28 on February 5, 2015. This payment extends any statute of limitation.

1           15. After reaching the age of majority an amended judgment was entered in Cheyenne  
2       Nalder's name.

3           16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment  
4       against Gary Lewis including the full damages assessed in the original judgment plus interest and  
5       minus the one payment made.

6           17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of  
7       limitations on the judgments expire.

8           18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to  
9       prosecute this action, and is entitled to a reasonable attorney's fee.

10       CLAIM FOR RELIEF;

11           1. General damages in an amount in excess of \$10,000.00;

12           2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus  
13       future medical expenses and the miscellaneous expenses incidental thereto in a presently  
14       unascertainable amount;

15           3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of  
16       Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's  
17       earning capacity in a presently unascertainable amount;

18           4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of  
19       \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20           5. A declaration that the statute of limitations on the judgment is still tolled as a result of  
21       the Defendant's continued absence from the state.

22           4. Costs of this suit;

23           5. Attorney's fees; and

24       ///

25

26       ///

27

28       ///

1           6. For such other and further relief as to the Court may seem just and proper in the  
2 premises.

3   DATED this 3<sup>rd</sup> day of April, 2018.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

STEPHENS GOURLEY & BYWATER

/s David A. Stephens

David A. Stephens, Esq.

Nevada Bar No. 00902

3636 North Rancho Drive

Las Vegas, Nevada 89130

Attorneys for Plaintiff

# **EXHIBIT “F”**

# STEPHENS & BYWATER, P.C.

ATTORNEYS AT LAW

David A. Stephens email: [dstephens@sgblawfirm.com](mailto:dstephens@sgblawfirm.com)

Gordon E. Bywater email: [gbywater@sgblawfirm.com](mailto:gbywater@sgblawfirm.com)

July 17, 2018

VIA REGULAR U.S. MAIL

Thomas E. Winner, Esq.  
Atkin Winner & Sherrod  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102

RE: Cheyenne Nalder vs. Gary Lewis

Dear Tom:

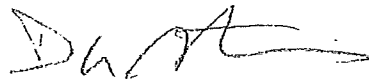
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

I recognize that you have not appeared in this matter. I served Mr. Lewis some time ago and he has never filed an answer. Thus, as a courtesy to you, who I understand to be representing Mr. Lewis in related cases, I am providing this Three Day Notice to you in addition to Mr. Lewis.

I appreciate your consideration.

Sincerely,

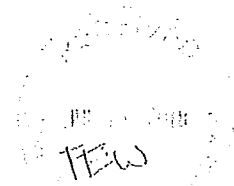
STEPHENS & BYWATER



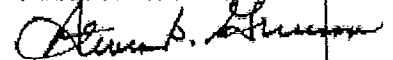
David A. Stephens, Esq.

DAS:mlg  
enclosure

3636 N. Rancho Drive, Las Vegas, Nevada 89130  
Telephone: (702) 656-2355 | Facsimile: (702) 656-2776  
Website: [www.sgblawfirm.com](http://www.sgblawfirm.com)



APPX0080



1 TDNP (CIV)  
2 David A. Stephens, Esq.  
3 Nevada Bar No. 00902  
4 STEPHENS, GOURLEY & BYWATER  
5 3636 North Rancho Drive  
6 Las Vegas, Nevada 89130  
7 Telephone: (702) 656-2355  
8 Facsimile: (702) 656-2776  
9 Email: dstephens@sgblawfirm.com  
10 Attorney for Cheyenne Nalder

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

CASE NO.: A-18-772220-C

10 Plaintiff,

DEPT NO.: XXIX

11 vs.

12 GARY LEWIS and DOES I through V,  
13 inclusive,

14 Defendants.

THREE DAY NOTICE TO PLEAD

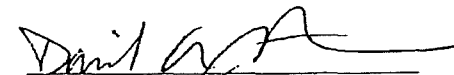
Date: n/a

Time: n/a

18 To: Gary Lewis, Defendant

19 PLEASE TAKE NOTICE that the Plaintiff intends to take a default and default judgment  
20 against you if you have not answered or otherwise filed a response of pleading within three (3) days  
21 of the date of this notice.

22 Dated this 17 day of July 2018.

24   
25 David A. Stephens, Esq.  
26 Nevada Bar No. 00902  
27 Stephens Gourley & Bywater  
28 3636 N. Rancho Drive  
Las Vegas, NV 89130  
Attorney for Plaintiff

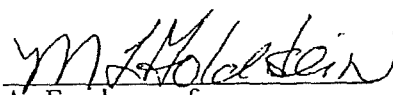
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF MAILING**

I hereby certify that service of this THREE DAY NOTICE TO PLEAD was made this 7<sup>th</sup>  
day of July, 2018, by depositing a copy thereof in the U.S. Mail, first class postage prepaid,  
addressed to:

Gary Lewis  
733 Minnesota Avenue  
Glendora, CA 91740

Thomas E. Winner, Esq.  
Atkin Winner Shorrod  
1117 S. Rancho Drive  
Las Vegas, NV 89102

  
An Employee of  
Stephens Gourley & Bywater

# **EXHIBIT “G”**

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

APPX0084

# **EXHIBIT “H”**



CHRISTENSEN LAW  
www.injuryhelpnow.com

August 13, 2018

Stephen H. Rogers, Esq.  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
700 S. Third Street  
Las Vegas, Nevada 89101

VIA Fax: (702)384-1460  
Email: srogers@rmcmlaw.com

Re: Gary Lewis

Dear Stephen:

I am in receipt of your letter dated Friday, August 10, 2018. I was disappointed that you have chosen to disregard my request that you communicate with me and not directly with my client. You say you have "been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions." Would you be so kind as to provide me with all communications written or verbal or notes of communications you have had with UAIC, their attorneys and/or Mr. Lewis from your first contact regarding this matter to the present?

Please confirm that UAIC seeks now to honor the insurance contract with Mr. Lewis and provide a defense for him and pay any judgment that may result? This is the first indication I am aware of where UAIC seeks to defend Mr. Lewis. I repeat, please do not take any actions, including requesting more time or filing anything on behalf of Mr. Lewis without first getting authority from Mr. Lewis through me. Please only communicate through this office with Mr. Lewis. If you have already filed something or requested an extension without written authority from Mr. Lewis, he requests that you immediately reverse that action. Please also only communicate with UAIC that any attempt by them to hire any other attorneys to take action on behalf of Mr. Lewis must include notice to those attorneys that they must first get Mr. Lewis' consent through my office before taking any action including requesting extensions of time or filing any pleadings on his behalf.

Regarding your statement that Mr. Lewis would not be any worse off if you should lose your motions. That is not correct. We agree that the validity of the judgment is unimportant at this stage of the claims handling case. UAIC, however, is arguing that Mr. Lewis' claims handling case should be dismissed because they claim the judgment is not valid. If you interpose an insufficient improper defense that delays the inevitable entry of judgment against Mr. Lewis and the Ninth Circuit dismisses the appeal then Mr. Lewis will have a judgment against him and no claim against UAIC. In addition, you will cause additional damages and expense to both parties for which, ultimately, Mr. Lewis would be responsible.



CHRISTENSEN LAW  
www.injuryhelpnow.com

Could you be mistaken about your statement that "the original judgment expired and cannot be revived?" I will ask your comment on just one legal concept -- Mr. Lewis' absence from the state. There are others but this one is sufficient on its own. There are three statutes applicable to this narrow issue: NRS 11.190; NRS 11.300 and NRS 17.214.

NRS 11.190 Periods of limitation. ... actions .. may only be commenced as follows:

1. Within 6 years:

(a) ... an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

NRS 11.300 Absence from State suspends running of statute. If, ... after the cause of action shall have accrued the person (defendant) departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action.

NRS 17.214 Filing and contents of affidavit; recording affidavit; notice to judgment debtor; successive affidavits.

1. A judgment creditor or a judgment creditor's successor in interest may renew a judgment which has not been paid by:

(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation.

These statutes make it clear that both an action on the judgment or an optional renewal is still available through today because Mr. Lewis has been in California since late 2008. If you have case law from Nevada contrary to the clear language of these statutes please share it with me so that I may review it and discuss it with my client.

Your prompt attention is appreciated. Mr. Lewis does not wish you to file any motions until and unless he is convinced that they will benefit Mr. Lewis -- not harm him and benefit UAIC. Mr. Lewis would like all your communications to go through my office. He does not wish to have you copy him on correspondence with my office. Please do not communicate directly with Mr. Lewis.

Very truly yours,

Tommy Christensen  
CHRISTENSEN LAW OFFICE, LLC

# **EXHIBIT “I”**

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](mailto:mdouglas@awslawyers.com)  
*Attorneys for Intervenor United Automobile Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE  
COMPANY,

Intervenor.

CASE NO.: A-18-772220-C  
DEPT. NO.: XXIX

**UAIC'S MOTION FOR RELIEF FROM  
JUDGMENT PURSUANT TO NRCP 60**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Motion for Relief from Judgment Pursuant to NRCP 60(b), asking that this Court declare as void the Amended Judgment entered on March 28, 2018, because the underlying Judgment expired on 2014 and is not capable of being revived.

///

///

///

///

///

///

///

1 This Motion s made and based upon the papers and pleadings on file herein, the  
2 Memorandum of Points and Authorities attached hereto, and such oral argument as the Court  
3 may permit.

4 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

5 ATKIN WINNER & SHERROD

6  
7  
8 Matthew J. Douglas  
9 Nevada Bar No. 11371  
10 1117 South Rancho Drive  
11 Las Vegas, Nevada 89102  
12 *Attorneys for Intervenor UAIC*

13 **NOTICE OF MOTION**

14 TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:  
15 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring  
16 the foregoing **MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** for  
17 hearing before the above-entitled Department XXIX on the \_\_\_\_ day of \_\_\_\_\_, 2018,  
18 at the hour of \_\_\_\_\_.m. in the forenoon of said date, or as soon thereafter as counsel can be  
19 heard.

20 DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

21 ATKIN WINNER & SHERROD

22  
23  
24 Matthew Douglas, Esq.  
25 Nevada Bar No. 11371  
26 117 South Rancho Drive  
27 Las Vegas, Nevada 89102  
28 *Attorneys for Intervenor UAIC*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court made a mistake of law based on incomplete/incorrect facts presented in and Ex Parte Motion to Amended Judgment, when entering the Oder granting the Motion on March 28, 2018. The judgment which Plaintiff, Cheyenne Nalder ("Cheyenne") moved to amend was entered on June 3, 2008. The judgment creditor, Cheyenne's guardian ad litem, James Nalder, did not renew the Judgment as required By Nevada Law before it expired on June 3, 2014, six (6) years after it was entered.

The Amended Judgment ostensibly revived the expired Judgment, despite the fact that Cheyenne presented this Court with no legal support for such revival. Cheyenne's Motion proposes that tolling provisions applicable to causes of action are also applicable to the deadlines to renew judgments. However, none of the authority cited in her Motion supports misappropriating tolling provisions applicable to certain causes of action to extend the time to renew a judgment, nor does any other authority. Pursuant to NRCP 60, the Court should declare that the Amended Judgment is void and that the original judgment has expired, and therefore is not enforceable.

II.

STATEMENT OF FACTS

This case involves a July 8, 2007 accident, Cheyenne Nalder, ("Cheyenne") who was then a minor, alleged injuries. On October 9, 2007, Cheyenne's guardian ad litem, James Nalder, filed a Complaint against Gary Lewis ("Lewis"). See Complaint attached hereto as Exhibit "A."

Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June 3, 2008,<sup>1</sup> a judgment was entered against him in the amount of \$3.5 million. See Judgment

<sup>1</sup> Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(c).

1 attached hereto as Exhibit "B". James Nalder as guardian ad litem for Cheyenne was the  
2 judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless  
3 it is timely renewed. As such, the Judgment expired on June 3, 2014.

4 On March 22, 2018 nearly 10 years after the Judgment was entered, and nearly four (4)  
5 years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of  
6 Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-  
7 07-54911-C. Her Motion did not advise the Court that the Judgment she sought to amend had  
8 expired. Rather, it cited two statutes, NRS 11280 and 11.300, without explaining why they were  
9 applicable to her request, and asked the Court to amend the Judgment to be in her name alone. In  
10 short, the Court was not put on notice that it was being asked to ostensibly revive an expired  
11 judgment.  
12

13 With an incomplete account of the issues presented, the Court granted Cheyenne's Ex  
14 Parte Motion and issued an Amended Judgment on March 28, 2018. *See* Exhibit "C."  
15

16 As the judgment had expired and an Amended Judgment could not be issued to revive it.  
17 Lewis brings the instant Motion pursuant to NRCP 60(b), to avoid the Amended Judgment and  
18 declare that the original Judgment has expired.

19  
20 **III.**

21 **ARGUMENT**

22 ***A. The Judgment Expired on June 3, 2014***

23 Nevada law provides that the statute of limitations for execution upon a judgment is six(6)  
24 years. NRS 11.190(1)(b). The judgment creditor may renew a judgment (and therefore the statute  
25 of limitation) for an additional six years by following the procedure mandated by NRS 17.214.  
26 The mandated procedures were not followed. Therefore the judgment expired.

27 NRS 17.214(1)(a) sets forth the procedure that must be followed to renew a judgment. A  
28 document titled "Affidavit of Renewal" containing specific information outlined in the statute

1 must be filed with the clerk of the court where the judgment is filed within 90 days before the  
2 date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5,  
3 2014. No such Affidavit of Renewal was filed by James Nalder, the judgement creditor.  
4 Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if  
5 the original judgment was recorded, and the judgment debtor must be served. No evidence of  
6 recordation (if such was required) or service on Lewis is present in the record.  
7

8 The Nevada Supreme Court, in *Leven v Frey*, 123 Nev.399,168 P.3d 712 (2007), held that  
9 judgment creditors must strictly comply with the procedure set forth in NRS 17.214 in order to  
10 validly renew a judgment. *Id.* At 405-408, 168 P.3d 717-719. There is no question that neither  
11 Cheyenne nor her guardian ad litem did so. Therefore the Judgment expired.  
12

13 *1. The deadline to renew the Judgment was not tolled by any statute or rule*

14 In her Ex Parte Motion, Cheyenne suggested that the deadlines mandated by NRS 17.214  
15 were somehow extended because certain statutes of information can be tolled for causes of action  
16 under some circumstances. No such tolling applies to renewal of a judgment because renewal of  
17 a judgment is not a cause of action.

18 The introduction to NRS 11.090, the statute of limitation law, states that it applies to:  
19 "...actions other than those from the recovery of real property, unless further limited by specific  
20 statute..." The list which follows includes various causes of action for which suit can be brought.  
21 Nowhere in the list is renewing a judgment defined as or analogized to a cause of action.  
22

23 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six  
24 year "catch all" provision of NRS 11.090(1)(a). *Leven* at 403, 168 P.3d at 715 ("An action on a  
25 judgment or its renewal must be commenced within six years under NRS 11.190 (1) (a); thus a  
26 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS  
27 17.214, provides for any tolling of the time period to renew a judgment.  
28

///

1           2. *The deadline to renew the Judgment was not tolled by Cheyenne's minority.*

2           Setting aside the fact that the deadline to renew a judgment is not an action to which  
3 statutes of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS  
4 17.214 were tolled by her minority are inapt for a few reasons. First, the tolling statute cited by  
5 Cheyenne, NRS 11.280, does not universally toll all statutes of limitations while a plaintiff is a  
6 minor. Rather, it is expressly limited to actions involving sales of probate estates.

7  
8           **Legal disability prevents running of statute. NRS 11.260 and 11.270 shall not**  
9           **apply to minors or others under any legal disability to sue at the time when the**  
10           **right of action first accrues, but all such persons may commence an action at any**  
11           **time within 1 year after the removal of the disability.**

12           Emphasis added. NRS 11.260 applies to actions to recover an estate sold by a guardian. NRS  
13 11.270 applies to actions to recover estates sold by an executor or administrator. Neither of those  
14 causes of action are at issue here. Therefore, NRS 11.260 would not authorize tolling the  
15 deadline for the renewal of a judgment while a judgment creditor was a minor. This statute  
16 would not apply in any instance because the judgment creditor, James, was not a minor, and so  
17 did not have a legal disability.

18           On March 5, 2014, the deadline to file the Affidavit of Renewal, Cheyenne was still a  
19 minor. The judgment creditor was her guardian ad litem James Nalder. It was James Nalder, not  
20 Cheyenne, who had the responsibility to file the Affidavit of Renewal by the March 5, 2014  
21 deadline. The fact that Cheyenne, the real party in interest was a minor is not legally relevant.

22           As Cheyenne was not the judgment creditor at any time prior to the date of the issuance  
23 of the Amended Judgment, anyone looking at the Judgment would believe that it expired on June  
24 4, 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were  
25 given credence, either the judgment never expired, because she was the real party in interest and  
26 was a minor at the time, the Judgment would have otherwise expired, or the judgment did expire  
27 but was revived upon her reaching the age of majority. To adopt this proposition would frustrate  
28

1 the certainty NRS 17.214 was enacted to promote - the reliability of the title to real property.

2 If tolling of deadlines to amend judgments were sanctioned, title to real property owned  
3 by anyone who had ever been a judgment debtor would be clouded, as a title examiner would not  
4 know whether a judgment issued more than six years prior had expired pursuant to statute, or was  
5 still valid, or could be revived when a real party in interest who was a minor reached the age of  
6 majority. As the court held in *Leven*, one of the primary reasons for the need to strictly comply  
7 with NRS 17.214's recordation requirement is to "procure reliability of the title searches for both  
8 creditors and debtors since any lien on real property created when a judgment is recorded  
9 continues upon that judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance  
10 with the notice requirement of NRS 17.124 is important to preserve the due process rights of the  
11 judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a  
12 Judgment, he may believe that the judgment has expired and he need take no further action to  
13 defend himself against execution.  
14

15  
16 3. *Lewis' residency in California did not toll the deadline to renew the Judgment*

17 Cheyenne's Ex Parte Motion next cites NRS 11.3000, which provides "If, when the cause  
18 of action shall accrue against a person, the person is out of State, the action may be commenced  
19 within the time herein limited after the person's return to the State; and if after the cause of  
20 action shall have accrued the person departs from the State, the time of the absence shall not be  
21 part of the time prescribed for the commencement of the action." Cheyenne's argument that the  
22 deadline to renew the Judgment are tolled by NRS 11.300 fails because, again renewing a  
23 judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar  
24 statutes to Nevada regarding judgments, held in *F/S Manufacturing v Kensmore*, 789 N.W.2d  
25 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate  
26 action to renew the judgment, the specific time period[provided to renew] cannot be tolled under  
27 [the equivalent to NRS 11.300] based on a judgment debtor's absence for the state." *Id.* At 858.  
28

1 In addition, applying Cheyenne's argument that the time to renew a judgment was tolled  
2 because of the judgment debtor's absence from Nevada would have a similarly negative impact  
3 on the ability for property owners to obtain clear title to their property. Nothing on a judgment  
4 would reflect whether a judgment debtor was outside of the state and a facially expired judgment  
5 was still valid. Therefore, essentially, a responsible title examiner would have to list any  
6 judgment that had ever been entered against a property owner on the title insurance policy,  
7 because he could not be sure the judgments older than six years for which no affidavit of renewal  
8 had been filed were expired or the expiration was tolled.

10 ***B. The Court made an Error of Law, Likely Based on Mistake of Fact, When it Granted***  
11 ***the Ex Parte Motion to Amend Judgment***

12 NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake  
13 (NRCP 60(b)(1) or because a judgment is void (NRCP 60(b)(4)). Both of these provisions apply.

14 ***1. The Court made a mistake of law when it granted the Amended Judgment***

15 Because the Ex Parte Motion was ex parte, it was not served on Lewis nor did he have an  
16 opportunity to make the Court aware that the Judgment had already expired on its own terms,  
17 and that Cheyenne's position that the deadline to renew the judgment was tolled was inapt. The  
18 Ex Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not  
19 been properly renewed. Had the court been fully apprised of the facts, it likely would not have  
20 granted the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, and  
21 the Notice of Entry not filed until May 18, 2018, a motion to set aside the amended judgment on  
22 the basis of mistake is timely as it is made within six months of the entry of the judgment.  
23 Accordingly, this Motion is timely and this Court should rectify the mistake and void the  
24 Amended Judgment in accordance with NRCP 60(b)(1).  
25  
26

27 ///

28 ///

As demonstrated above, the Judgment expired. It was not renewed. There is no legal or equitable basis for the Court to revive it. The six-month deadline does not apply to requests for relief from a judgment because the judgment is void. Therefore, the instant motion is timely. The Amended Judgment is void and, pursuant to NRCP 60(b)(4) this Court should declare it void and unenforceable.

## CONCLUSION

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Matthew Douglas, Esq.  
Nevada Bar No. 11371  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for UAIC*

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_ day of August, 2018, the foregoing **UAIC'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served on the following by  
☒ [ X ] Electronic Service pursuant to NEFR 9 ☐ [ ] Electronic Filing and Service pursuant to NEFR 9  
☐ [ ] hand delivery ☐ [ ] overnight delivery ☐ [ ] fax ☐ [ ] fax and mail ☐ [ ] mailing by depositing with the  
U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid,  
addressed as follows:

David A. Stephens, Esq.  
STEPHENS, GOURLEY & BYWATER  
3636 N. Rancho Drive  
Las Vegas, Nevada 89130  
*Counsel for Plaintiff*

\_\_\_\_\_  
An employee of ATKIN WINNER & SHERROD

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](mailto:mdouglas@awslawyers.com)

*Attorneys for Proposed Intervenor United Automobile Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants.

CASE NO.: A-18-772220-C  
DEPT. NO.: 29

**UAIC'S MOTION TO INTERVENE**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby submits this Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached hereto, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

ATKIN WINNER & SHERROD

Matthew J. Douglas  
Nevada Bar No. 11371  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Intervenor*

**NOTICE OF MOTION**

TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:  
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring  
the foregoing Motion to Intervene for hearing before the above-entitled Court on the \_\_\_\_ day of  
\_\_\_\_\_, 2018, at the hour of \_\_\_\_\_.m. in the forenoon of said date, or as soon  
thereafter as counsel can be heard.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

ATKIN WINNER & SHERROD

Matthew Douglas, Esq.  
Nevada Bar No. 11371  
117 South Rancho Drive  
Las Vegas, Nevada 89102  
Attorneys for Intervenor

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
**MOTION FOR INTERVENTION**

**I.**

**Introduction & Factual Background**

Although this action was only recently filed, this matter actually has a long history that  
dates back eleven (11) years, to July 2007 when the loss underlying this action occurred.  
Proposed Intervenor will not re-state the entire history as it is adequately set forth in Order  
Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals  
for the Ninth Circuit, which was filed on January 11, 2018. *A copy of the Order certifying the  
second question of law is attached hereto as Exhibit 'A.'* Rather, the salient points are that  
Plaintiff's causes of action are premised on a judgment which had been entered against Gary

1 Lewis on August 26, 2008. After obtaining the judgment, Counsel for Plaintiff<sup>1</sup> then filed an  
2 action against Mr. Lewis' insurer, United Automobile Insurance Company ("UAIC"), Proposed  
3 Intervenor herein. Despite the prohibition against direct actions against an insurer, Plaintiff failed  
4 to obtain an assignment prior to filing that action against UAIC and, only later, during the  
5 litigation obtained an assignment from Lewis.

6  
7 In any event, that action - on coverage for the 2008 judgment by Nalder against UAIC -  
8 has proceeded in the United States District Court for the District of Nevada and, the United  
9 States Court of Appeals for the Ninth Circuit, since 2009. During the pendency of those appeals  
10 it was observed that Plaintiff had failed to renew her 2008 judgment against Lewis pursuant to  
11 Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for  
12 action to execute on such a judgment would be six (6) years, unless renewed under N.R.S.  
13 17.214. Upon realizing the judgment had never been timely renewed, UAIC filed a Motion to  
14 Dismiss the Appeal for Lack of Standing with the Ninth Circuit on March 14, 2017. On  
15 December 27, 2017 the Ninth Circuit certified a second question to the Nevada Supreme Court -  
16 specifically certifying the following question:

17  
18 "Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a  
19 separate judgment against its insured, does the insurer's liability expire when the statute of  
20 limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life  
21 of the judgment?"

22 On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified  
23 question and ordered Appellants to file their Opening brief within 30 days, or by March 26,  
24 2018. *A copy of the Order accepting the second certified question is attached hereto as Exhibit*  
25 *'B.'* In accepting the certified question, the Nevada Supreme Court rephrased the question as  
26 follows:

27  
28 <sup>1</sup> At that time, in 2008, Ms. Nalder was a minor so the judgment was entered in favor of her  
through her Guardian Ad Litem and, father, James Nalder.

1 **In an action against an insurer for breach of the duty to defend its insured, can the**  
2 **plaintiff continue to seek consequential damages in the amount of a default**  
3 **judgment obtained against the insured when the judgment against the insured was**  
4 **not renewed and the time for doing so expired while the action against the insurer**  
5 **was pending?**

6 On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC  
7 has yet to file its Response Brief an, accordingly, the above-quoted question and, issue, remains  
8 pending before the Nevada Supreme Court.

9 Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained  
10 additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on  
11 March 22, 2018 seeking, innocently enough, to "amend" the 2008 expired judgment to be in the  
12 name of Cheyenne Nalder individually. *A copy of the Ex Parte Motion is attached hereto as*  
13 *Exhibit 'C.'* Thereafter, this Court obviously not having been informed of the above-noted  
14 Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of  
15 entry on May 18, 2018. *A copy of the filed Amended Judgment is attached hereto as Exhibit 'D.'*

16 Furthermore, Plaintiff then initiated this "new" action in a thinly veiled attempt to have  
17 this Court rule on issues pending before the Nevada Supreme Court and "fix" their expired  
18 judgment. This intent appears clearly evidenced by paragraph five (5) of Plaintiff's prayer for  
19 relief herein which states Plaintiff is seeking this Court to make "a declaration that the statute of  
20 limitations on the judgment on the judgment is still tolled as a result of Defendant's continued  
21 absence from the state." *A copy of Plaintiff's Complaint is attached hereto as Exhibit 'E.'*

22 Plaintiff then apparently served Lewis and, on July 17, 2018, sent a letter to UAIC's counsel  
23 with a copy of a "three Day notice to Plead", and, as such, threatening default of Lewis on this  
24 "new" action. *A copy of Plaintiff's letter and three day notice is attached hereto as Exhibit 'F.'*

25 Upon learning of this new action and, given the United States District Court's ruling that  
26 Gary Lewis is an insured under an *implied* UAIC policy for the loss belying these judgments  
27 and, present action, UAIC immediately sought to engage counsel to appear on Lewis' behalf in  
28

1 the present action. *A copy of the Judgment of the U.S. District Court finding coverage and*  
2 *implying an insurance policy is attached hereto as Exhibit 'G.'* Following retained defense  
3 Counsel's attempts to communicate with Mr. Lewis to defend him in this action and, potentially,  
4 vacate this improper amendment to an expired judgment – retained defense counsel was sent a  
5 letter by Tommy Christensen, Esq. – the Counsel for Plaintiff judgment-creditor in the above-  
6 referenced action and appeal – stating in no uncertain terms that Counsel could not communicate  
7 with Mr. Lewis, nor appear and defend him in this action. *A copy of Tommy Christensen's letter*  
8 *of August 13, 2018 is attached hereto as Exhibit 'H.'*

9  
10 Despite the apparent contradiction of counsel representing both the judgment-creditor and  
11 judgment-debtor in the same action, it is also clear that Mr. Christensen's letter has caused the  
12 need for UAIC to intervene in the present action and, this Motion follows.

## 13 14 II.

### 15 ARGUMENT

16  
17 **A. The insurer UAIC must be permitted to intervene in this action because it has an**  
18 **interest to protect given UAIC's duty to defend LEWIS per the October 30, 2013**  
19 **Order of the U.S. District court.**

20 NRCP 24(a)(2) provides for the intervention of right under the following circumstances:

21 Upon timely application anyone shall be permitted to intervene an action: . . . (2)  
22 when the applicant claims an interest relating to the property or transaction which  
23 is the subject of the action and he is so situated that the disposition of the action  
24 may as a practical matter impair or impede his ability to protect that interest,  
25 unless the applicant's interest is adequately represented by existing parties.

26 The named Defendant LEWIS has been found to be an insured per the United States District  
27 Court Order under an implied policy of insurance with UAIC policy at the time of the accident  
28 underlying the judgments for which Plaintiff seeks relief in the present action. *Exhibit 'G.'*  
When UAIC became informed of the present action and attempted to retain counsel to defend  
LEWIS, UAIC was informed by Counsel for Plaintiff that he would not allow retained defense

1 counsel to file any motion to defend LEWIS or vacate the amended judgment. *Exhibit "H."*  
2 Without the ability of retained defense counsel to appear and mount a defense on LEWIS'  
3 behalf, it is apparent that UAIC cannot provide him an effective defense. As long as UAIC is  
4 obligated to provide such a defense, and to pay any judgment against LEWIS, UAIC's interests  
5 are clearly at stake in this action. Therefore, pursuant to NRCP 24(a)(2), UAIC should be  
6 allowed to intervene in this action.

7  
8 Intervention is governed by NRCP 24 and NRS 12.130. Although strikingly similar,  
9 NRCP 24 requires "timely application" to intervene whereas NRS 12.130 merely requires  
10 intervention at the district court level. *Stephens v. First National Bank*, 64 Nev. 292, 182 P.2d  
11 146 (1947). NRS 12.130(1)(c), however, specifically provides that intervention may be made as  
12 provided by the Nevada Rules of Civil Procedure. As such, given this mandate, the procedural  
13 rule will be specifically addressed in the instant Motion.

14  
15 NRCP 24(a)(2) imposes four (4) requirements for the intervention of right: (1) the  
16 application must be timely; (2) it must show an interest in the subject matter of the action; (3) it  
17 must show that the protection of the interest may be impaired by the disposition of the action;  
18 and (4) it must show that the interest is not adequately represented by an existing party. *State*  
19 *Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 888 P.2d 911 (1995).<sup>2</sup>

20  
21 When determining the timeliness of an application for intervention, it is not the length of  
22 the delay by the intervenor that is of primary importance, per se, but the extent of prejudice to the  
23 rights of existing parties resulting from the delay. *Lawler v. Ginocchio*, 94 Nev. 623, 584 P.2d 667  
24 (1978). This determination is, of course, within the sound discretion of the court. *Id.* Here, this

25  
26 <sup>2</sup> The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be  
27 permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2)  
28 when the applicant claims an interest relating to the property or transaction which is the subject of the  
action and he is so situated that the disposition of the action may as a practical matter impair or impede  
his ability to protect that interest, unless the applicant's interest is adequately represented by existing  
parties.

1 matter is newly filed, LEWIS was only recently served, no default has been taken, no discovery  
2 has progressed, and the matter has had no dispositive rulings made nor trial date set; as such,  
3 UAIC'S intervention in the instant matter will not delay the trial proceedings and, thus, should  
4 be considered timely.

5  
6 Furthermore, as outlined above, it is clear that UAIC's Petition meets the other three  
7 requirements for intervention as of right based upon the clear fact that UAIC has a significant  
8 interest in the action as the insurer for LEWIS under the aforementioned U.S. District Court Order.  
9 By dint of this fact UAIC could potentially be responsible for any damages LEWIS is found  
10 liable for. This substantial interest serves to satisfy the two remaining requirements as protection  
11 of the interest will be impaired by disposition of this action as any judgment entered against  
12 LEWIS - without his ability to defend it - would necessarily impair UAIC. Finally, that as there is  
13 currently no defendant defending this cause - UAIC's interest is not sufficiently protected.

14  
15 Moreover, it also true that these very issues - the validity of the 2008 judgment against  
16 Lewis - are also at issue in a case involving UAIC before the Nevada Supreme Court, as set for  
17 above. The fact that Plaintiff now seeks this Court to make declarations about the validity to the  
18 2008 judgment not only would appear to infringe upon issues before the Nevada Supreme Court  
19 and, Ninth Circuit, but also may directly affect UAIC's interests, adding further good cause to  
20 show UAIC is an interested third party whom should be allowed to intervene.

21  
22 The final requirement under N.R.C.P. 24(c) is that the Motion to intervene "shall be  
23 accompanied by a pleading setting forth the claim or defense for which intervention is sought.  
24 Accordingly, *attached hereto as Exhibit "I"*, is a copy of UAIC's proposed responsive pleading  
25 to this action, a Motion to Dismiss.

26 ///

27  
28 ///

III.

CONCLUSION

Based on the foregoing, it is necessary for UAIC to intervene in this matter to protect its interests and LEWIS'.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

ATKIN WINNER & SHERROD

---

Matthew Douglas, Esq.  
Nevada Bar No. 11371  
1117 S. Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for UAIC*

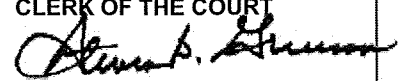
**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_ day of August, 2018, the foregoing **MOTION TO INTERVENE** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☐ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

**PLAINTIFFS' COUNSEL**

David A. Stephens, Esq.  
STEPHENS, GOURLEY & BYWATER  
3636 N. Rancho Dr.  
Las Vegas, Nevada 89130

\_\_\_\_\_  
An employee of ATKIN WINNER & SHERROD



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](mailto:mdouglas@awslawyers.com)  
*Attorneys for Intervenor United Automobile Ins. Co.*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants.

CASE NO.: 07A549111  
DEPT. NO.: XXIX


**NOTICE OF ENTRY OF ORDER ON  
INTERVENOR UNITED AUTOMOBILE  
INSURANCE COMPANY'S MOTION TO  
INTERVENE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached **ORDER ON INTERVENOR  
UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was  
entered by the Court on the 19<sup>th</sup> day of October, 2018.

DATED this 19<sup>th</sup> day of October, 2018.

ATKIN WINNER & SHERROD



Matthew J. Douglas  
Nevada Bar No. 11371  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
*Attorneys for Intervenor United Automobile Ins. Co.*

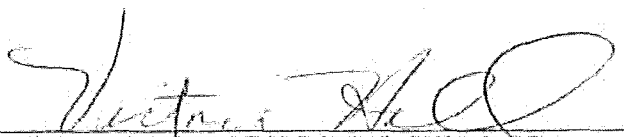
ATKIN WINNER & SHERROD  
A NEVADA LAW FIRM

CERTIFICATE OF SERVICE

I certify that on this 19<sup>th</sup> day of October, 2018, the foregoing **NOTICE OF ENTRY OF ORDER ON INTERVENOR UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 - to all counsel on the service list ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☒ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

David Stephens, Esq.  
STEPHENS & BYWATER, P.C.  
3636 North Rancho Drive  
Las Vegas, NV 89130

Randall Tindall, Esq.  
Carissa Christensen, Esq.  
RESNICK & LOUIS, P.C.  
8925 West Russell Road Suite 220  
Las Vegas, NV 89148

  
An employee of ATKIN WINNER & SHERROD

*Steven D. Grierson*

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](mailto:mdouglas@awslawyers.com)

*Attorneys for Intervenor United Automobile Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

*B*  
*James*  
CHEYANNE NALDER,

Plaintiff,

CASE NO.: 07A549111  
DEPT. NO.: 29

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants.

ORDER

Intervenor UNITED AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene came on for hearing on the Chambers Calendar before the Honorable Judge David Jones, on September 19, 2018, and upon review of and consideration of the proceedings and circumstances of this matter, the papers and pleadings on file, and for good cause appearing, and the Court's minute order stating there being no Opposition,

//

//

//

//

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Intervenor UNITED  
2 AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene is GRANTED;

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Intervenor  
4 UNITED AUTOMOBILE INSURANCE COMPANY'S shall file its responsive pleading within  
5 seven (7) days from the date of entry of this Order.

6 DATED this 11 day of October 2018

7  
8 DISTRICT COURT JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Submitted by:

ATKIN WINNER & SHERROD

Matthew J. Douglas  
Nevada Bar No. 11371  
1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Attorneys for Intervenor UNITED  
AUTOMOBILE INSURANCE COMPANY