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*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 16 day of August, 2018.

ATKIN WINNER & SHERROD



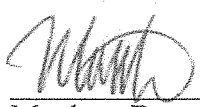
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*Attorneys for Intervenor*

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 19 day of September, 2018, at the hour of In Chambers .m. in the forenoon of said date, or as soon thereafter as counsel can be heard.

DATED this 16<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

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 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 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.'*

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.

## 14 II.

### 15 ARGUMENT

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

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

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

25 The named Defendant LEWIS has been found to be an insured per the United States District  
26 Court Order under an implied policy of insurance with UAIC policy at the time of the accident  
27 underlying the judgments for which Plaintiff seeks relief in the present action. *Exhibit 'G.'*  
28 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 potentially pay any judgment against LEWIS,  
5 UAIC's interests are clearly at stake in this action. Therefore, pursuant to NRCP 24(a)(2), UAIC  
6 should be 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 ///

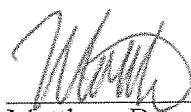
III.

CONCLUSION

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

DATED this 16<sup>th</sup> day of August, 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 16<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

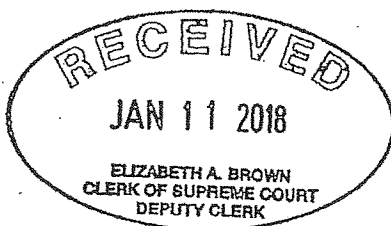
Argued and Submitted January 6, 2016  
San Francisco, California

Filed December 27, 2017

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

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



**SUMMARY\*\***

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**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?

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**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

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\*\* 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

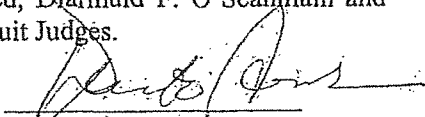
governing the question[] certified . . . shall be res judicata as to the parties." Nev. R. App. P. 5(h).

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.

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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?

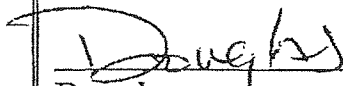
That question is focused on the insurer's liability, but elsewhere in the Ninth Circuit's certification order, it makes clear that the court is concerned with whether the plaintiff in this scenario can continue to seek the amount of the separate judgment against the insured as consequential damages caused 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).

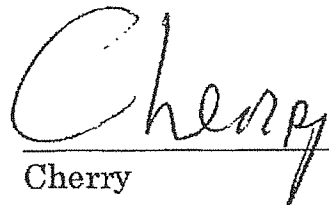
Appellants shall have 30 days from the date of this order to file and serve a supplemental opening brief. Respondent shall have 30 days from the date the supplemental opening brief is served to file and serve a supplemental answering brief. Appellants shall then have 20 days from the date the supplemental 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.

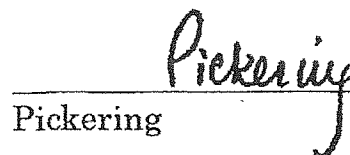
It is so ORDERED.<sup>1</sup>

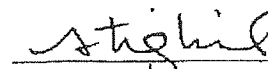
 C.J.  
Douglas

 J.  
Gibbons

 J.  
Hardesty

 J.  
Cherry

 J.  
Pickering

 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

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendants.

07-A-549111  
CASE NO.: A549111

DEPT NO.: XXIX

14 EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF  
15 CHEYENNE NALDER, INDIVIDUALLY

17 Date: N/A

18 Time: N/A

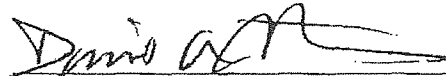
19 NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY  
20 & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her  
21 name as she has now reached the age of majority. Judgment was entered in the name of the  
22 guardian ad litem. (See Exhibit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

26  
27  
28 / / / /

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 STEPHENS GOURLEY & BYWATER

6  
7 

8 David A. Stephens, Esq.  
9 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,

*CRF*  
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 JAMES NALDER, )  
13 as Guardian ad Litem for )  
14 CHEYENNE NALDER, a minor. )  
15 )  
16 Plaintiffs, )

17 vs. )

CASE NO: A549111

DEPT. NO: VI


18 GARY LEWIS, and DOES I )  
19 through V, inclusive )  
20 )  
21 Defendants. )  
22 )

23 JUDGMENT

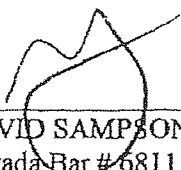
24 In this action the Defendant, GARY LEWIS, having been regularly served with the  
25 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the  
26 legal time for answering having expired, and no answer or demurrer having been filed, the  
27 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according  
28 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   
9 DISTRICT JUDGE

10  
11  
12  
13 Submitted by:  
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@sbglawfirm.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

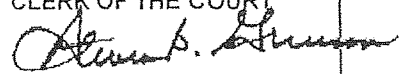
6 DATED this \_\_\_\_\_ day of March, 2018.  
7  
8  
9

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

12 Submitted by:  
STEPHENS GOURLEY & BYWATER  
13

14   
15 DAVID A. STEPHENS, ESQ.  
16 Nevada Bar No. 00902  
STEPHENS GOURLEY & BYWATER  
17 3636 North Rancho Dr  
Las Vegas, Nevada 89130  
18 Attorneys for Plaintiff  
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

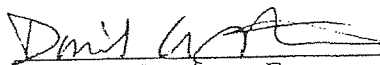
Dept. No. XXIX

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

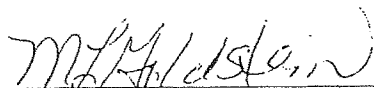
21  
22   
23 David A. Stephens, Esq.  
Nevada Bar No. 00902  
24 3636 North Rancho Drive  
Las Vegas, Nevada 89130  
25 Attorney for Brittany Wilson  
26  
27  
28



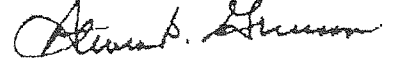
CERTIFICATE OF MAILING

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



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@sbglawfirm.com  
*Attorney for Cheyenne Nalder*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,  
  
Plaintiff,  
  
vs.

07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

GARY LEWIS,  
  
Defendant.

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.

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 CHEYENNE NALDER,

12 Plaintiff,

13 vs.

14 GARY LEWIS,

15 Defendant.

07A549111  
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 ...

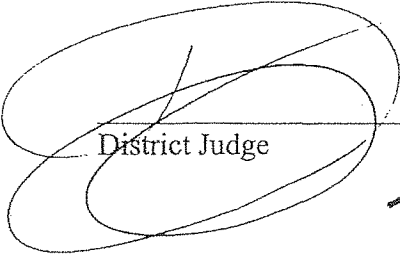
25 ...

26 ...

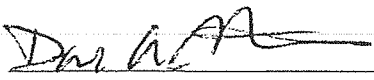
27 ...

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.

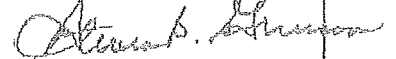
6 DATED this *26* day of March, 2018.

7  
8  
9  
10   
11 District Judge *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@sdblawnfirm.com  
10 Attorney for Cheyenne Nalder

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS and DOES I through V,  
17 inclusive,

18 Defendants.

CASE NO.: A-54944-I A-18-772220-C

DEPT NO.: XXXIX Department 29

19 **COMPLAINT**

20 Date: n/a  
21 Time: n/a

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

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

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

31 3. That the true names or capacities, whether individual, corporate, associate or  
32 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   STEPHENS GOURLEY & BYWATER

6  
7   /s David A. Stephens  
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  
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28

## **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:

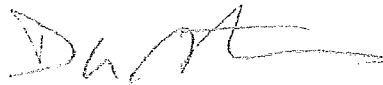
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

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)





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,

10 Plaintiff,

11 vs.

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

14 Defendants.

CASE NO.: A-18-772220-C

DEPT NO.: XXIX

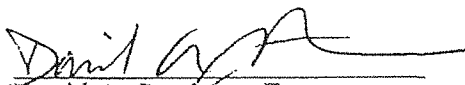
15 **THREE DAY NOTICE TO PLEAD**

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.

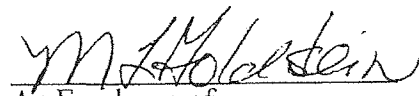
23  
24   
25 David A. Stephens, Esq.  
Nevada Bar No. 00902  
26 Stephens Gourley & Bywater  
3636 N. Rancho Drive  
27 Las Vegas, NV 89130  
Attorney for Plaintiff  
28

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



**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 TO DISMISS  
PLAINTIFF'S COMPLAINT**

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 to Dismiss Plaintiff's Complaint in its entirety. Plaintiff's personal injury claims have been previously litigated, and judgment entered. Plaintiff's request for a second amended judgment should be dismissed because the original judgment expired in 2014, was not properly renewed, and cannot be revived via an amended judgment more than four years after it expired.

///

///

///

///

///

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 to Dismiss for hearing before the above-entitled Court Department 29 on  
17 the \_\_\_\_ day of \_\_\_\_\_, 2018, at the hour of \_\_\_\_\_.m. in the forenoon of said  
18 date, or as soon thereafter as counsel can be heard.

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

20 ATKIN WINNER & SHERROD

21  
22 Matthew Douglas, Esq.  
23 Nevada Bar No. 11371  
24 117 South Rancho Drive  
25 Las Vegas, Nevada 89102  
26 *Attorneys for Intervenor UAIC*  
27  
28

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS

I.

INTRODUCTION

Cheyenne Nalder, ("Cheyenney") alleges in her Complaint that she was injured in an accident in 2007. Cheyenney was 11 years old at the time. She did not wait until she reached the age of majority to pursue her claim for damages against the alleged at-fault driver, Gary Lewis ("Lewis"). Guardian ad litem, James Nalder, was appointed to pursue her claim. He did so, filing a complaint on her behalf and obtaining a Judgment for \$3.5 million. Nalder filed suit against UAIC, eventually obtained an assignment from Lewis and ultimately received Lewis' \$15,000 auto policy limit on the Judgment. That case remains on Appeal before the United States Court of Appeals for the Ninth Circuit and, the Nevada Supreme Court on a certified question of law wherein the viability of said expired judgment is before those courts. It is unknown what efforts James Nalder made to enforce the Judgment prior to this action, if any. What is known is that he did not renew the Judgment before it expired in 2014 while Cheyenney was still a minor.

Despite the fact that Lewis' liability for any injuries Cheyenney may have sustained in the 2007 accident have already been adjudicated and judgment entered, Cheyenney now re-asserts those claims in the instant Complaint. Those claims are subject to dismissal pursuant to the doctrine of claim preclusion.

Cheyenne also seeks a second amended judgment from the Court. Seeking an amended judgment is not a cause of action; rather, it is a motion. Cheyenney's request for a second amended judgment should be dismissed and she should be directed to file a motion.

Finally, Cheyenney seeks a declaration from the court that the statute of limitations to enforce an Amended Judgment (and the second amended judgment she seeks in her Complaint) was tolled because she was a minor and Lewis resides in California. Declaratory Relief is not

1 appropriate in this matter because there is no justiciable controversy and the issues upon which  
2 Cheyenne requests declaratory relief are unripe. In addition, since the Amended Judgment should  
3 not have been issued. The original judgment expired in 2014 and was not subject to revival, there  
4 is nothing for Cheyenne to enforce.

5 In summary, the court should dismiss the Complaint as there are no facts under which  
6 Cheyenne is entitled to relief.  
7

## 8 II.

### 9 STATEMENT OF FACTS

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

13 Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June  
14 3, 2008, a judgment was entered against him in the amount of \$3.5 million.<sup>1</sup> See Judgment  
15 attached hereto as Exhibit "B." James Nalder as guardian ad litem for Cheyenne was the  
16 judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless  
17 it is timely renewed. As such, the Judgment expired on June 3, 2014 as no timely renewal was  
18 filed.  
19

20 On March 22, 2018 nearly 10 years after the Judgment was entered, and nearly four (4)  
21 years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of  
22 Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-  
23 07-54911-C, which is also assigned to this Court. Her Motion did not advise the Court that the  
24 Judgment she sought to amend had expired. The Court granted Cheyenne's Ex Parte Motion and  
25 issued an Amended Judgment on March 28, 2018. See Exhibit "C." Contemporaneous with the  
26 filing of the instant motion, UAIC will be moving to Intervene in the original case, Case No. A-  
27  
28



07-549111-C, to file a Motion for Relief from Judgment, detailing the reasons the Court should void the Amended Judgment.

On April 3, 2018, one day before the statute of limitations ran for Cheyenne to file a personal injury claim (but ten years after she already obtained a judgment), she filed a Complaint alleging identical injuries from the same accident. *See* Exhibit “A,” the 2007 Complaint, and the 2018 Complaint, attached as Exhibit “D.” In the 2018 Complaint, she does not explain why she believes she is entitled to damages for the same injuries for which she received a judgment in 2008. *See* Exhibit “D.” However, the 2018 Complaint does acknowledge that she already received a judgment against Lewis. *Id.* At p.3,11.10-11.

Finally, the 2018 Complaint seeks an amended judgment to add interest to the 2008 judgment, and declaratory relief that the statute of limitations to enforce the judgment was tolled because she was a minor and Lewis was a resident of California.

### III.

#### MOTION TO DISMISS STANDARD

A defendant is entitled to dismissal when a plaintiff fails “to state a claim up which relief can be granted.” NRCP 12(b)(5). The Nevada Supreme Court has Declared that the dismissal of a complaint is appropriate where “it appears beyond a doubt that [the plaintiff] could prove no set of facts which, if true, would entitle [the plaintiff] to relief *Bra Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P. 3d 670,672 (2008).

In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint. *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev Adv. Op. 76,357 P 3d at 930 (2015) “the court is not limited to the four corners of the complaint.” Citing 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure: Civil § 1357, at 376 (3d ed. 2004). The *Baxter* Court also held that courts “may also consider unattached evidence on

(Cont.)

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

1 which the complaint necessarily relies if (1) the complaint refers to the document; (2) the  
2 document is central to the plaintiff's claim; and (3) no party questions the authenticity of the  
3 document." *Id.*, citing United States v. Corinthian Colleges 655 F. 3d 984, 999 (9<sup>th</sup> Cir. 2011)  
4 (internal quotation omitted). The *Baxter* Court continued "while presentation of matters outside  
5 the pleadings will convert the motion to dismiss to a motion for summary judgment,  
6 Fed.R.Civ.P. 12(d); NRCP 12 (b), such conversion is not triggered by a court's consideration of  
7 matters incorporated by reference or integral to the claim," *Id.* Citing 5B Wright & Miller, *supra*,  
8 §1357, at 376.

10 While Intervenor's Motion to Dismiss does rely on certain documents which were not  
11 attached to the Complaint, those documents are either incorporated by reference (the Judgment  
12 and Amended Judgment) or integral to the claim (the Complaint in the 2007 case). Therefore,  
13 this Court should consider this matter a motion to dismiss and not convert it to a motion for  
14 summary judgment. As discussed below, there is no doubt that there are no facts pursuant to  
15 which Cheyenne is entitled to the relief her 2018 Complaint seeks.

#### 17 IV.

#### 18 ARGUMENT

##### 19 A. *The Doctrine of Claim Preclusion Mandates Dismissal of Plaintiff's Claims Related to* 20 *the July 8, 2007 Accident*

21 The October 9, 2007 Complaint filed by Cheyenne's guardian ad litem, James Nalder,  
22 alleged personal injuries caused by the July 8, 2007 accident. See Complaint attached hereto as  
23 Exhibit "A." When Lewis did not respond to that Complaint, a Default was entered against him.  
24 On June 3, 2008, a Judgment in the amount of \$3.5 million was entered against Lewis. *See*  
25 Judgment, attached hereto as Exhibit "B." Plaintiff acknowledged this in Paragraph 10 of her  
26 2018 Complaint. Because the personal injury claims in the 2018 Complaint have already been  
27 litigated, it should be dismissed.  
28

1 Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In  
2 2008, the Nevada Supreme Court set forth a three-part test to be applied to determine when claim  
3 preclusion applies. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713  
4 (2008), holding modified by *Weddell v Sharp* 151 Nev. Adv. Op. 28, 3520 P.3d 80 (2015) (the  
5 modification is not applicable to this case); (2) the final judgment is valid; and (3) the new action  
6 is based on the same claims that were or could have been brought in the first action. Cheyenne's  
7 claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for  
8 dismissal under the doctrine of claim preclusion.

10 First, the parties are the same. The only difference between the 2007 suit and the 2018  
11 suits is that Cheyenne is now an adult, so her claims need not be litigated via a guardian ad litem.

12 Second, the final judgment is valid. There is no question that the Judgment issued in 2008  
13 was valid until it expired in 2014. It could have been renewed, and if so, would have still been  
14 valid today. However, it was not renewed. Cheyenne's (or rather her guardian ad litem's) failure  
15 to fully execute on the Judgment while it was valid does not open the door for her to re-litigate  
16 her claims.

18 Third, the same claims are involved in both actions. A review of the 2008 Complaint and  
19 the 2018 Complaint reveal that the personal injury claims are identical.

20 As the *Five Star* Court noted, public policy supports claim preclusion in situations such  
21 as this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a),  
22 noting that "the purposes of claim preclusion are 'based largely on the ground that fairness to the  
23 defendant, and sound judicial administration require that at some point litigation over the  
24 particular controversy come to an end; and that such reasoning may apply; even though the  
25 substantive issues have not been tried ... *Id.* At 1058, 194 P.3d at 715. These policy reasons are  
26 applicable here. Lewis and UAIC are entitled to finality. A Judgment was already entered against  
27 Lewis. Renewing the Judgment was not Lewis' responsibility—that was the responsibility of  
28

1 Cheyenne's guardian ad litem, James Nalder. Lewis should not be exposed to judgment being  
2 entered against him a second time due to Nalder's failure to act.

3 Cheyenne's personal injury claims are the very type to which claims preclusion applies.  
4 The public policy considerations supporting claims preclusion cited with approval the court in  
5 *Five Star* apply to this action. The claims for personal injuries alleged in the Complaint should  
6 be dismissed.

7  
8 ***B. Plaintiff's Request for A Second Amended Judgment Should Be Dismissed Because it is  
9 not a Cause of Action***

10 Regarding Cheyenne's request that the Court enter another amended judgment, adding  
11 interest accrued through April 3, 2018, it is unclear why this was included in a Complaint.  
12 Seeking to amend judgment is not a cause of action. Cheyenne has demonstrated that she knows  
13 how to properly petition the Court to amend a judgment, as she has already done so once. This  
14 claim is inappropriately included in the Complaint, and should be dismissed.

15 ***C. Cheyenne's Request for Declaratory Relief Should Be Dismissed.***

16 Cheyenne does not ask for relief relative to enforcing an amended judgment, which is a  
17 cause of action. Rather, she asks the Court to declare that the statute of limitations on her original  
18 judgment was tolled because she was a minor and because the judgment debtor lived in another  
19 State: California. Presumably, Plaintiff means the statute of limitations to enforce the judgment,  
20 but that is not clear.

21  
22 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons  
23 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in  
24 the controversy, and (3) the issue is ripe for judicial determination." *City. Of Clark, ex rel. Univ.*  
25 *Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d, 764, 756 (1998), citing *Knittle v.*  
26 *Progressive Casualty Ins. Co.*, 112 Nev. 8,10,908 P. 2d,724,725 (1996). Here, declaratory relief  
27 is not available because the issue as to whether the Amended Judgment or any future amended  
28

1 judgment is enforceable, or whether the statute of limitations has expired, is not ripe.

2 The conditions under where a justiciable controversy exists were addressed by the Nevada  
3 Supreme Court in *Kress v Corey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a  
4 justiciable controversy does not exist, where damage "... is merely apprehended or feared..." *Id.*  
5 At 28-29, 189 P.2d at 366. As the Court in *Doe v Bryan*, 102 Nev.523.728 P.2d 433 (1986)  
6 noted, "the requirement of an actual controversy has been construed as requiring a concrete  
7 dispute admitting of an immediate and definite determination of the parties' rights." *Id.* At 526,  
8 728 P.2d at 444. Cheyenne's concern that any effort to enforce the Amended Judgment will be  
9 thwarted by a determination that the applicable statute of limitations bars such action is  
10 "apprehended or feared" but not existing presently, because she has not taken any action to  
11 enforce the Amended Judgment.  
12

13 Likewise, there is no "concrete dispute" that the statute of limitations would bar an attempt  
14 by Cheyenne to collect on the Amended Judgment because she has not tried. Unless and until  
15 Cheyenne actually tried to enforce the Amended Judgment, there is no 'immediate' need for a  
16 "definite" determination of the parties' rights. Therefore, there is no justiciable controversy  
17 regarding Cheyenne's ability to seek to enforce the Amended Judgment at this time.  
18

19 "Ripeness focuses on the timing of the action rather than on the party bringing the  
20 action... The factors to be weighed in deciding whether a case is ripe for judicial review include:  
21 (1) the hardship of the parties of withholding judicial review, and (2) the suitability of the issues  
22 for review." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1244, 1230-31  
23 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003).  
24 In the unpublished decision in *Cassady v. Main*, 2016 WL412835, a copy of which is attached  
25 hereto as Exhibit "E." the Nevada Supreme Court noted that the plaintiff in that case would  
26 suffer no harm if declaratory relief were not considered, because he could file a complaint  
27 seeking direct redress for complaints. *Id.* At \*2. Similarly here, Cheyenne could seek to have a  
28

1 court address her statute of limitations concerns in an action to execute on the Amended  
2 Judgment. There is no need for such a determination at this time.

3       Regardless as to whether Cheyenne's request for declaratory relief is appropriate at this  
4 juncture, Cheyenne's request for declaratory relief should be dismissed because there is no valid  
5 judgment to enforce. The original Judgment issued on June 3, 2008 expired on June 3, 2014. No  
6 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an  
7 Amended Judgment, entered on March 28, 2018. As demonstrated in Intervenor's Motion for  
8 Relief From Judgment Pursuant to NRCP 60, the Court should not have entered and Amended  
9 Judgment, and no other amended judgments should be entered. Nevada law does not permit  
10 renewal of expired judgments by amendment.  
11

12       Nor is the deadline to file the appropriate documents to renew a judgment tolled by any  
13 statute or rule. The time limit to renew the Judgment was not tolled by Cheyenne's minority  
14 because her guardian ad litem, and adult, was the judgment creditor. The time limit to renew the  
15 Judgment was not tolled by the judgment creditor's absence from the state because the  
16 requirement that a judgment be renewed is not a cause of action to which such tolling provisions  
17 might apply. Because no valid judgment exists, Cheyenne's request for declaratory relief  
18 regarding the tolling of the time to enforce a judgment should be dismissed as a matter of law.  
19

20 ///

21 ///

22 ///

23 ///

V.

CONCLUSION

In her 2018 Complaint, Plaintiff sets forth no facts which, if true, would entitle her to the relief she seeks. Her Complaint should be dismissed in its entirety.

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 **UAIC'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT** 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:

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

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



## EXHIBIT 3

## EXHIBIT 3

*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 Proposed Intervenor United Automobile Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

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

UAIC'S MOTION TO INTERVENE

vs.

GARY LEWIS and DOES I through V,  
inclusive,  
Defendants.

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*  
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 10:00 a.m. in the forenoon of said date, or as soon  
thereafter as counsel can be heard.

DATED this 17th day of AUGUST, 2018.

ATKIN WINNER & SHERROD

  
Matthew Douglas, Esq.  
Nevada Bar No. 10371  
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 or 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 (

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

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

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

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

## II.

## ARGUMENT

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

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

Upon timely application anyone shall be permitted to intervene in an action: . . . (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 parties.

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.

22 Moreover, it also true that these very issues - the validity of the 2008 judgment against  
23 Lewis – are also at issue in a case involving UAIC before the Nevada Supreme Court, as set for  
24 above. The fact that Plaintiff has now sought to have this Court amend same 2008 judgment in a  
25 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

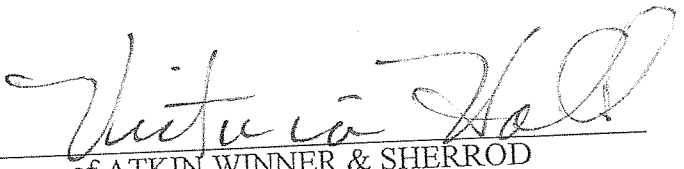
16   
17 \_\_\_\_\_  
18 Matthew Douglas, Esq.  
19 Nevada Bar No. 11370  
20 1117 S. Rancho Drive  
21 Las Vegas, Nevada 89102  
22 *Attorneys for UAIC*  
23  
24  
25  
26  
27  
28

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,*

No. 13-17441

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

v.

ORDER CERTIFYING  
QUESTION TO THE  
NEVADA SUPREME  
COURT

UNITED AUTOMOBILE  
INSURANCE COMPANY,  
*Defendant-Appellee.*

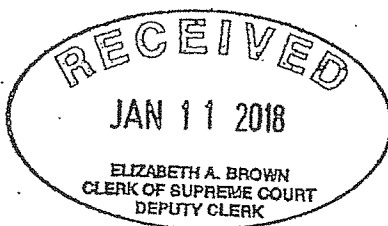
Appeal from the United States District Court  
for the District of Nevada  
Robert Clive Jones, District Judge, Presiding

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.



18-NI-92

**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

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\*\* 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

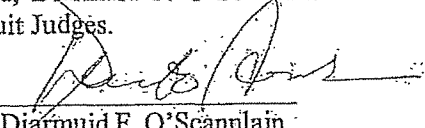
governing the question[] certified . . . shall be res judicata as to the parties." Nev. R. App. P. 5(h).

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”**

*Steven D. Grierson*

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendants.

07-A-849111  
CASE NO.: A549111

DEPT NO.: XXIX

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

Date: N/A

Time: N/A

NOW COMES Cheyenne Nalder, by and through her attorneys at STEPHENS, GOURLEY & BYWATER and moves this court to enter judgment against Defendant, GARY LEWIS, in her name as she has now reached the age of majority. Judgment was entered in the name of the guardian ad litem. (See Exhibit 1) Pursuant to NRS 11.280 and NRS 11.300, Cheyenne now 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  
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,

*CRF*  
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. )

11 Plaintiffs, )  
12 )

13 vs. )

CASE NO: A549111  
DEPT. NO: VI

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

16 Defendants. )  
17 )

JUDGMENT

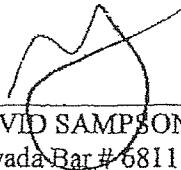
18 In this action the Defendant, GARY LEWIS, having been regularly served with the  
19 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the  
20 legal time for answering having expired, and no answer or demurrer having been filed, the  
21 Default of said Defendant,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

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

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  
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  
16 STEPHENS GOURLEY & BYWATER  
17 3636 North Rancho Dr  
Las Vegas, Nevada 89130  
Attorneys for Plaintiff  
18  
19  
20  
21  
22  
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## **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

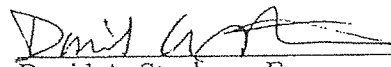
Dept. No. XXIX

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.

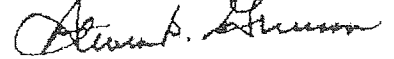
20 STEPHENS & BYWATER

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

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

2



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@sbglawfirm.com  
*Attorney for Cheyenne Nalder*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,  
Plaintiff,  
vs.

07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

GARY LEWIS,  
Defendant.

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.

19 07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

20 AMENDED JUDGMENT

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

26 ...

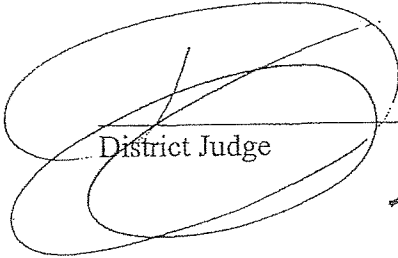
27 ...

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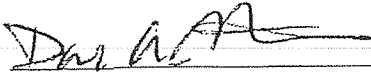


1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *me*  
2 \$ 3,434,444.63  
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~  
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,  
5 2007,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

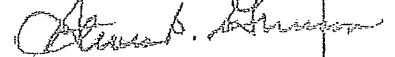
6 DATED this *26* day of March, 2018.

7  
8  
9  
10  District Judge *me*

11 Submitted by:  
12 STEPHENS GOURLEY & BYWATER

13  
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

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS and DOES I through V,  
17 inclusive,

18 Defendants.

CASE NO.: A-5491-H A-18-772220-C

DEPT NO.: XXIX Department 29

19 **COMPLAINT**

20 Date: n/a  
21 Time: n/a

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

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

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

31 3. That the true names or capacities, whether individual, corporate, associate or  
32 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 ///



## **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:

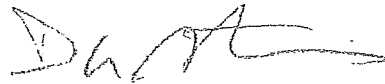
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

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)



Handwritten initials and date:   
JUL 18 2018  
TEW



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@sdblawnfirm.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-18-772220-C

DEPT NO.: XXIX

THREE DAY NOTICE TO PLEAD

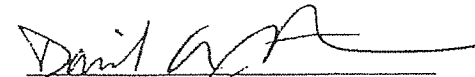
Date: n/a

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.

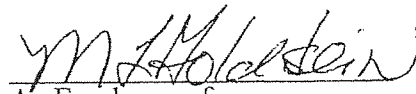
24   
25 David A. Stephens, Esq.  
26 Nevada Bar No. 00902  
27 Stephens Gourley & Bywater  
28 3636 N. Rancho Drive  
Las Vegas, NV 89130  
Attorney for Plaintiff

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

## **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.

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

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 UAIC*

**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 FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** for hearing before the above-entitled Department XXIX 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 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

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

### 19 III.

### 20 ARGUMENT

#### 21 A. *The Judgment Expired on June 3, 2014*

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

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

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

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

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

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

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

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

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

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2. *The Amended Judgment is void.*

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.

IV.

## CONCLUSION

Since the Judgment expired in 2014, the Amended Judgment should not have been issued. It should be voided, and the Court should declare that the Judgment has expired.

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

ATKIN WINNER &amp; 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 **UAIC'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** 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:

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

An employee of ATKIN WINNER & SHERROD

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Electronically Filed  
Feb 27 2019 11:24 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CHEYENNE NALDER, an individual,  
and GARY LEWIS

Petitioners and Real Parties in Interest

Supreme Court No.78085

vs.

EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA IN AND FOR THE  
COUNTY OF CLARK THE  
HONORABLE DAVID JONES  
AND ERIC JOHNSON, DISTRICT  
COURT JUDGES,

District Court Case No. 07A549111

Consolidated with 18-A-772220

DEPT. NO: XX

Respondents,

And

UNITED AUTOMOBILE  
INSURANCE COMPANY,

Respondent.

**ERRATA TO APPENDIX**

Exhibit 3 was inadvertently not efiled with the Appendix although it was included in the hard copy delivered to opposing counsel and the Court. Thus, attached is Exhibit 3 which should have been efiled with the Appendix in this matter and was not.

DATED this 27<sup>th</sup> of February, 2019.

\_\_\_\_s/David A. Stephens, Esq.\_\_\_\_\_  
David A. Stephens, Esq.  
Nevada Bar No. 00902  
STEPHENS & BYWATER, P.C.  
3636 N. Rancho Drive  
Las Vegas, Nevada 89130  
Attorney for Cheyenne Nalder

## CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1) and NRAP 25(c)(1), I hereby certify that I am an employee of Stephens and Bywater and that on the 27<sup>th</sup> day of February, 2019, I caused the foregoing **ERRATA TO APPENDIX** to be served as follows:

☐ personal, including deliver of the copy to a clerk or other responsible person at the office of counsel; and/or

☒ by mail; and/or

The Honorable David Jones  
Eighth Judicial District Court  
Department XXIX  
Regional Justice Center, Courtroom 3B  
200 Lewis Ave  
Las Vegas, Nevada 89155  
Respondent Judge

The Honorable Eric Johnson  
Eighth Judicial District Court  
Department XX  
Regional Justice Center, Courtroom 12A  
200 Lewis Ave  
Las Vegas, Nevada 89155  
Respondent Judge

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Attorney for Third Party Plaintiff Gary Lewis (in case # A-18-772220)

\_\_\_\_\_/S/ MaryLee Goldstein\_\_\_\_\_

Employee of Stephens and Bywater, P.C.