

Case No. 78085

**In the Supreme Court of Nevada**

CHEYENNE NALDER, an individual; and  
GARY LEWIS,

Petitioners,

*vs.*

THE EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA, in and for the  
County of Clark; THE HONORABLE DAVID M.  
JONES, District Judge; and THE HONORABLE  
ERIC JOHNSON, District Judge,

Respondents,

and

UNITED AUTOMOBILE INSURANCE COMPANY,  
Real Party in Interest.

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**UNITED AUTOMOBILE INSURANCE COMPANY'S APPENDIX  
VOLUME 3  
PAGES 501-750**

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## UNITED STATES DISTRICT COURT

DISTRICT OF

Nevada

Nalder et al.,

Plaintiffs,

## JUDGMENT IN A CIVIL CASE

V.

United Automobile Insurance Company,

Case Number: 2:09-cv-01348-RCJ-GWF

Defendant.

- ☐ **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 “I”

CASE NO. 13-17441

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

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

Appellants,

vs.

UNITED AUTOMOILE INSURANCE  
COMPANY,

Respondent.

No. 13-17441

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

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**APPELLANTS' OPENING BRIEF**

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## OTHER AUTHORITIES

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<i>Schwartz, Statutory Strict Liability for an Insurer's Failure to settle: A Balanced Plan for an Unresolved Problem</i> , 1975 Duke L.J. 901; Annotation.....	18
Windt, Allan D., <i>1 Insurance Claims &amp; Disputes 5th</i> , Section 5:13 (Updated March, 2009).....	17



### **CERTIFICATION AS TO INTERESTED PARTIES**

The undersigned certified that there are no other interested parties other than those currently named in the action that have an interest in the outcome of this appeal.

Dated this 6<sup>th</sup> day of March, 2014.

CHRISTENSEN LAW OFFICES, LLC

By: /s/ Thomas Christensen, Esq.  
THOMAS CHRISTENSEN, ESQ.  
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### **CERTIFICATION AS TO RELATED CASES**

The undersigned certifies that the following are known related cases and appeals before this Court which address the subject matter of the foregoing appeal or are otherwise related which Appellants are aware:

US District Court of Nevada Case No. 2:09-cv-01348-RCJ-GWF

Dated this 6<sup>th</sup> day of March, 2014

CHRISTENSEN LAW OFFICES, LLC

By: /s/ Thomas Christensen, Esq.  
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## INTRODUCTION<sup>1</sup>

Insurance companies have strayed from their beginnings in pursuit of greater profits by using the large pool of money from all policy holders to attack the unfortunate few instead of compensate them, to delay instead of timely compensate, and to purchase favorable legislation and influence public opinion against the unfortunate few. The only thing the unfortunate few can do in the face of delay -- is sue -- which causes more delay -- often years -- not the insurance company, but their friends or spouse. Then sue the insurance company -- more delay -- more years. This is what has happened in this case.

In this case in particular, the insured has the financial power and expertise to defend under a reservation of rights while doing its investigation or filing a declaratory relief action; however, the insured and the claimant has no power. UAIC chose this method, deciding not to defend at all, which posed the most severe downsides for them because it has the most severe downside for the insured. However, they picked it. They should have paid the policy or at the least defended under a reservation of rights and filed a declaratory relief action. Because of UAIC's decisions, its insured has a

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<sup>1</sup> In this Introduction, there are no citations to the appendix as this section constitutes counsel's summary of the events and is thus intended as argument. The facts supporting this introduction are set forth in the Statement of Facts and each statement of fact is supported by an appropriate citation to the appendices.

1 judgment against it, and its insured and the claimant were forced to incur  
2 substantial attorneys fees and costs to receive the insurance proceeds that  
3 should have been paid many years ago. The measure of damages for this is, at  
4 a minimum, the excess judgment. Further, interest, attorneys fees and costs,  
5 and all consequential damages should have been awarded for this.  
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8 Respondent's liability for breaching its duty to defend, misrepresenting  
9 coverage, breaching its duty to investigate, breaching its duty to inform, and  
10 violating N.R.S. 686A.310 is, at the very least, an issue of fact to be  
11 determined by a jury. As such, this case should be reversed and remanded.  
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#### 14 JURISDICTIONAL STATEMENT

15 The district court had jurisdiction of this action by virtue of 28 U.S.C. §  
16 1332(a). This court of appeals has jurisdiction under 28 U.S.C. § 1291 as an  
17 appeal from a final judgment. The district court Order on Motion for  
18 Summary Judgment (#102) and Clerk's Judgment (#103) were entered on  
19 October 30, 2013. Appellants filed their Notice of Appeal on November 27,  
20 2013.  
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#### 23 ISSUES PRESENTED FOR REVIEW

24  
25 A. Whether a valid state court judgment is the minimum measure of  
26 damages as a matter of law in a failure to defend case.  
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1 B. Whether, on summary judgment, the Court can disregard a valid state  
2 court judgment, interest, attorney fees and costs as contractual or bad  
3 faith damages.  
4

5 C. Whether all consequential damages should be awarded for Appellee  
6 breaching the duty to defend.  
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8 D. Whether the reasonableness of the insurers conduct is a question of fact  
9 that precludes summary judgment on bad faith issues where the insured  
10 wins on the coverage issue by summary judgment.  
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12 E. Whether Plaintiffs are entitled to the opportunity to present evidence to  
13 a jury on the non-contractual claims.  
14

15 **STATEMENT OF THE CASE**

16 This action arose when GARY LEWIS ran over CHEYANNE  
17 NALDER, a nine year old girl at the time, with GARY LEWIS's truck.  
18 CHEYANNE was nearly killed as a result of the truck running over her head  
19 on July 8, 2007.  
20

21 Plaintiff JAMES NALDER, on behalf of his daughter Cheyanne,  
22 brought a claim for the proceeds of the UAIC policy. UAIC claimed there  
23 was no policy in effect. Suit was then brought against Mr. Lewis with notice  
24 being provided to UAIC. UAIC took no steps to defend the lawsuit and did  
25 nothing to investigate. Because UAIC took no steps to protect Gary,  
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1 judgment was entered against Gary in the amount of \$3,500,000.00 on June 2,  
2 2008. *See* AA I:0075.

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4 Action was instituted in July of 2009 in the Eighth Judicial District  
5 Court of the State of Nevada and removed by Defendant based on diversity  
6 jurisdiction. Summary judgment was entered against Plaintiffs in favor of  
7 Defendant on December 20, 2010. Plaintiff appealed that decision, and the  
8 Ninth Circuit Court of Appeals reversed the District Court's grant of summary  
9 judgment with respect to whether there was coverage by virtue of the way the  
10 renewal statement was worded. *See* AA I:0002.

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14 Upon remand, the District Court found that there was in fact coverage  
15 and that UAIC breached its duty to defend. *See* AA IV:0734. However, the  
16 court entered summary judgment on behalf of UAIC finding that there was no  
17 bad faith. *See* Id.. Further, the court failed to award any damages for UAIC's  
18 failure to defend. *See* Id.. Appellants now appeal the District Court's refusal  
19 to grant summary judgment for contractual damages in appellants favor, grant  
20 of summary judgment on behalf of UAIC on the issue of bad faith and its  
21 finding of no damages for the failure to defend.

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On July 8, 2007, GARY LEWIS ran over CHEYANNE NALDER, a nine year old girl at the time, with GARY LEWIS's truck. CHEYANNE was nearly killed as a result of the truck running over her head.

At the time of the incident Mr. Lewis was insured with Defendant UAIC. Mr. Lewis first purchased insurance through UAIC on March 29, 2007. The period of the policy was March 29, 2007 through April 29, 2007. See AA I:0028. The records from UAIC specifically list the policy as "New Business". See AA I:0033. In mid-April 2007 (Invoice Date April 26, 2007) UAIC sent Gary Lewis a "Renewal Statement" offering to "Renew" Gary's policy with UAIC for from April 29, 2007 through May 29, 2007. See AA I:0042. The "Renewal Statement" indicates that payment to "Renew" the policy had to be made by May 6, 2007, which was seven days after the policy's "Effective Date" of April 29, 2007". The "Renewal Statement" also stated "To avoid lapse in coverage, payment must be received prior to (sic) expiration of your policy." The only expiration date listed on the "Renewal Statement" is "May 29, 2007". Gary Lewis made the payment and renewed the policy. The records from UAIC specifically list the policy as "RENEWAL". AA I:0052.

1 In mid-May 2007 (Invoice Date May 9, 2007) UAIC sent Gary Lewis a  
2 "Renewal Statement" offering to "Renew" Gary's policy with UAIC for from  
3 May 29, 2007 through June 29, 2007. See AA I:0054. The "Renewal  
4 Statement" indicates that payment to "Renew" the policy had to be made by  
5 May 29, 2007. The "Renewal Statement" also stated "To avoid lapse in  
6 coverage, payment must be received prior to (sic) expiration of your policy."  
7 The only expiration date listed on the "Renewal Statement" is "June 29,  
8 2007". Gary Lewis made the payment on May 31, 2007, two days after the  
9 "Due Date" of "May 29, 2007", and renewed the policy. The records from  
10 UAIC specifically list the policy as "RENEWAL". See AA I:0059.

15 In mid-June 2007 (Invoice Date June 11, 2007) UAIC sent Gary Lewis  
16 a "Renewal Statement" offering to "Renew" Gary's policy with UAIC for from  
17 June 30, 2007 through July 31, 2007. See AA I:0060. The "Renewal  
18 Statement" indicates that payment to "Renew" the policy had to be made by  
19 June 30, 2007. The "Renewal Statement" also stated "To avoid lapse in  
20 coverage, payment must be received prior to (sic) expiration of your policy."  
21 The only expiration date listed on the "Renewal Statement" is "July 31, 2007".  
22 Gary Lewis made the payment on July 10, 2007, and renewed the policy. The  
23 records from UAIC specifically list the policy as "RENEWAL". See AA  
24 I:0065.



1 UAIC continued to "Renew" Gary's policy in August 2007, *See* AA  
2 I:0071, and September 2007 through September 2008. *See* AA I:0027-0074.  
3

4 Gary Lewis, having been insured with UAIC for several months and  
5 UAIC having renewed Mr. Lewis insurance through UAIC on multiple  
6 occasions as noted above. It was Gary's understanding that he had insurance  
7 covering the damages done to Cheyenne Nalder. After the incident however  
8 UAIC claimed Mr. Lewis was not its insured, and that there was no coverage  
9 for the incident. UAIC nevertheless continued to renew Mr. Lewis' policy for  
10 another year, but claimed that the policy had lapsed from July 1, 2007 through  
11 July 10, 2007.  
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15 Plaintiff JAMES NALDER, on behalf of his daughter Cheyenne,  
16 brought a claim for the proceeds of the UAIC policy. UAIC claimed there  
17 was no policy in effect. Suit was then brought against Mr. Lewis with notice  
18 being provided to UAIC. UAIC took no steps to defend the lawsuit and did  
19 nothing to investigate coverage or to determine whether Gary's payment on  
20 July 10, 2007, long before the expiration of the policy, warranted Gary being  
21 covered under the policy UAIC renewed with Gary. Because UAIC took no  
22 steps to protect Gary, judgment was entered against Gary in the amount of  
23 \$3,500,000.00. *See* AA I:0075. After Judgment Mr. Lewis, along with  
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1 NALDER on behalf of Cheyanne, the real party in interest, initiated this  
2 action against UAIC.  
3

4 UAIC was granted Summary Judgment on all of Plaintiff's claims.  
5 However, on Appeal, the Ninth Circuit Court of Appeals reversed the District  
6 Court's grant of summary judgment with respect to whether there was  
7 coverage by virtue of the way the renewal statement was worded. The Court  
8 found that  
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11 Plaintiffs came forward with facts supporting their tenable legal  
12 position that a reasonable person could have interpreted the renewal  
13 statement to mean that Lewis's premium was *due* by June 30, 2007, but  
14 that the policy would not *lapse* if his premium were 'received prior to  
15 the expiration of [his] policy,' with the 'expiration date' specifically  
16 stated to be July 31, 2007.

17 See AA I:0002.

18 Upon remand, the District Court found that there was in fact coverage  
19 and that UAIC breached its duty to defend. See AA IV:0734. However, the  
20 court entered summary judgment on behalf of UAIC finding that there was no  
21 bad faith. See *Id.* Further, the court failed to award any damages for UAIC's  
22 failure to defend. See *Id.* Appellants now appeal the District Court's grant of  
23 summary judgment on behalf of UAIC on the issue of bad faith and its finding  
24 of no damages for the failure to defend.  
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**SUMMARY OF ARGUMENT**

Because the District Court found that there was coverage and that UAIC breached its duty to defend, damages should have been awarded to Appellants. Appellants should have been awarded consequential and compensatory damages of the state court judgment, attorneys fees and costs, and interest.

Additionally, the District Court erred in granting summary judgment on behalf of UAIC finding that there was no bad faith as a matter of law. Appellants presented evidence, which construed in the light most favorable to them as the non-moving party, provided a question of fact, and because bad faith is a question of fact for the jury, summary judgment is precluded. As such, this case should be reversed and remanded.

**ARGUMENT**

**A. A VALID STATE COURT JUDGMENT IS THE MINIMUM MEASURE OF DAMAGES IN A FAILURE TO DEFEND CASE**

The district court's legal conclusion that damages are available is reviewed de novo. *See Hemmings v. Tidyman's, Inc.*, 285 F.3d 1174, 1197 (9th Cir. 2002); *EEOC v. Wal-Mart Stores, Inc.*, 156 F.3d 989, 992 (9th Cir. 1998). Whether the district court selected the correct legal standard in computing damages is also reviewed de novo. *See Mackie v. Rieser*, 296 F.3d

1 909, 916 (9th Cir. 2002); *Neptune Orient Lines, Ltd. v. Burlington Northern*  
2 *and Santa Fe Ry Co.*, 213 F.3d 1118, 1119 (9th Cir. 2000); *Evanow v. M/V*  
3 *NEPTUNE*, 163 F.3d 1108, 1113-14 (9th Cir. 1998). The district court's  
4 award of damages is reviewed for an abuse of discretion. *See McLean v.*  
5 *Runyon*, 222 F.3d 1150, 1155 (9th Cir. 2000) (Rehabilitation Act); *Rolex*  
6 *Watch, U.S.A., Inc. v. Michel Co.*, 179 F.3d 704, 712 (9th Cir. 1999) (Lanham  
7 Act).

11 **1. As a Matter of Law, the Valid State Court Judgment,**  
12 **Including Pre- and Post- Judgment Interest, was**  
13 **Proximately Caused by the Failure to Provide Coverage**

14 Primary liability insurance policies create a duty to defend and the duty  
15 to indemnify. *Miller v. Allstate*, 212 P.3d 318 (Nev., 2009) citing *Crawford v.*  
16 *Weather Shield Mfg. Inc.*, 44 Cal.4th 541, 79 Cal.Rptr.3d 721, 187 P.3d 424,  
17 427 (2008). The duty to defend is a "legal duty that arises under the law, as  
18 opposed to a contractual duty arising from the policy." *Miller v. Allstate*, 212  
19 P.3d 318 (Nev., 2009).

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

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

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

1 As, such, the full judgment is the minimum measure of damages for both the  
2 contractual claims and the bad faith claims, as a matter of law.  
3

4 **2. Appellant is Entitled to Costs, Attorney's Fees, and**  
5 **interest on the policy limits that were withheld.**

6 The District court in granting summary judgment to UAIC regarding  
7 the amount of damages. First, Appellants were not given the ability to submit  
8 the amount of damages for consideration. Therefore, there is a question of  
9 fact remaining as to the damages.  
10

11 Further, if an insurer breaches the duty to defend, the insured is entitled  
12 to at least attorney's fees and costs as damages incurred by the insured to  
13 defend the action. *See Home Sav. Ass'n v. Aetna Cas. & Sur. Co.*, 854 P.2d  
14 851, 855 (Nev. 1993) (holding that an insured was not barred from further  
15 pursuing recovery from insurance company for fees and costs incurred in  
16 defending an action). The California Supreme Court held that once an insurer  
17 violates its duty of good faith and fair dealing, it is liable to pay all  
18 compensatory damages proximately caused by its breach. *Neal v. Farmers*  
19 *Ins. Exchange*, 21 Cal.3d 910, 148 Cal.Rptr. 389, 582 P.2d 980, 986 (1978).  
20 The insurer may challenge the reasonableness of a damages amount, but its  
21 breach of duty is a proximate cause of the insurer's reasonable damages. *Noya*  
22 *v. A.W. Coulter Trucking*, 49 Cal.Rptr.3d 584, 589-90 (Ct. App. 2006).  
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1 As the District Court found that UAIC breached its duty to defend,  
2 Appellants are entitled to all compensatory damages, which at a minimum  
3 include Costs, Attorney's Fees, and interest on the policy limits that were  
4 withheld.  
5

6  
7 **3. All consequential damages should be awarded for**  
8 **Appellee breaching the duty to defend**

9 "When the insurer refused to defend and the insured does not employ  
10 counsel and presents no defense, it can be said the ensuing default judgment is  
11 proximately caused by the insurer's breach of the duty to defend." *Pershing*  
12 *Park Villas v. United Pac. Ins. Co.*, 219 F.3d 895 (9<sup>th</sup> Cir. 2000). Further the  
13 California Court of Appeals held that a carrier who breached the duty to  
14 defend may be liable for consequential damages above policy limits. *Carlson*  
15 *v. Century Surety Co.*, 2012 U.S. Dist. LEXIS 23119 (N.D. Cal. Feb 23,  
16 2012). In *Carlson*, the Court held that because "a judgment in excess of the  
17 policy limits is a foreseeable outcome of the breach of the duty to defend,"  
18 even if the insurance company did not violate the implied covenant of good  
19 faith and fair dealing, if the insurer violated its duty to defend, it may be liable  
20 for the default judgment, even if in excess of the policy limit. *Id.*  
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26 Because there was "arguable or possible coverage" under the policy,  
27 UAIC had a duty to defend GARY LEWIS. Further, as explained in detail  
28 above, there was actual coverage under the policy. If an insurer breaches the

1 duty to defend, the insured is entitled to at least attorney's fees and costs as  
2 damages incurred by the insured to defend the action. *See Home Sav. Ass'n v.*  
3 *Aetna Cas. & Sur. Co.*, 854 P.2d 851, 855 (Nev. 1993) (holding that an  
4 insured was not barred from further pursuing recovery from insurance  
5 company for fees and costs incurred in defending an action). As such, the  
6 District Courts order denying any consequential damages should be reversed  
7 and the action remanded for a determination of the appropriate amount of  
8 consequential damages.  
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12 **B. SUMMARY JUDGMENT SHOULD BE REVERSED ON THE**  
13 **NON-CONTRACTUAL CLAIMS**

14 **1. Standard for Granting Summary Judgment**

15  
16 A district court's decision to grant, partially grant, or deny summary  
17 judgment or a summary adjudication motion is reviewed de novo. *See, e.g.,*  
18 *Universal Health Servs., Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th Cir.  
19 2004). A district court's decision on cross motions for summary judgment is  
20 also reviewed de novo. *See Travelers Prop. Cas. Co. of Am. V.*  
21 *ConocoPhillips Co.*, 546 F.3d 1142, 1145 (9th Cir. 2008); *Arakaki v. Hawaii*,  
22 314 F.3d 1091, 1094 (9th Cir. 2002). The appellate court's review is  
23 governed by the same standard used by the trial court under Federal Rule of  
24 Civil Procedure 56(c). *See Suzuki Motor Corp. v. Consumers Union, Inc.*, 330  
25 F.3d 1110, 1131 (9th Cir.), *cert. denied*, 540 U.S. 983 (2003).  
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1 Summary judgment under Fed. R. Civ. P. 56 may be granted only if the  
2 evidence presented shows that there is no genuine issue as to any material fact  
3 and that the moving party is entitled to a judgment as a matter of law. The  
4 party moving for summary judgment has "the burden of showing the absence  
5 of a genuine issue as to any material fact . . ." *Adickes v. S.H. Kress & Co.*,  
6 398 U.S. 144, 158 (1970).  
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9 "[S]ummary judgment will not lie if the dispute about a material fact is  
10 'genuine,' that is, if the evidence is such that a reasonable jury could return a  
11 verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
12 242, 248 (1986) (citation omitted). "[A]t the summary judgment stage the  
13 judge's function is not himself to weigh the evidence and determine the truth  
14 of the matter, but to determine whether there is a genuine issue for trial." *Id.*  
15 at 249.  
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19 The law is well established that in reviewing a motion for summary  
20 judgment, the evidence "must be viewed in the light most favorable to the  
21 opposing party." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159-160 (1970).  
22 "[T]he inferences to be drawn from the underlying facts contained in [the  
23 moving party's materials] must be viewed in the light most favorable to the  
24 party opposing the motion." *Id.*, quoting *United States v. Diebold, Inc.*, 369  
25 U.S. 654, 655 (1962). Therefore, this Court must view the evidence presented  
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1 by both parties and the inferences to be drawn there from in the light most  
2 favorable to the Plaintiffs.  
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4 The standard for summary judgment is essentially the same as the  
5 standard for granting a directed verdict or judgment notwithstanding the  
6 verdict under Fed. R. Civ. P. 50. See *Anderson v. Liberty Lobby, Inc.*, 477  
7 U.S. 242, 251-52 (1986). The inquiry under each is "[W]hether the evidence  
8 presents a sufficient disagreement to require submission to a jury." *Id.*  
9 Summary judgment is only appropriate if "the evidence . . . is so one-sided  
10 that one party must prevail as a matter of law." *Id.* If there are facts sufficient  
11 to support a jury verdict for the Plaintiff, the Court is not to interfere with the  
12 jury's role as the finder of fact. To do so would deny the Plaintiff's right to a  
13 jury trial.  
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## 18 2. Background on Bad Faith

19 In general, there are a few different areas of litigation that involve "bad  
20 faith" by an insurance company. All of these actions, regardless of the parties  
21 involved, however, are founded in the general principle of contract law that in  
22 every contract, including policies of insurance, there is an implied covenant of  
23 good faith and fair dealing that neither party will do anything which will  
24 injure the right of the other to receive the benefits of the agreement. *Comunale*  
25 *v. Traders & General Insurance Company*, 50 Cal.2d 654, 328 P.2d 198, 68  
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1 A.L.R.2d 883. Most courts, including Nevada, have held that an insurance  
2 company always acts in bad faith whenever it breaches its duty to settle by  
3 failing to adequately consider the interest of the insured. Windt, Allan D., *I*  
4 *Insurance Claims & Disputes 5th*, Section 5:13 (Updated March, 2009). This  
5 is true whether there is a "genuine dispute" as to whether payment of the third-  
6 party policy limits is warranted or not.  
7

8  
9 The Nevada Supreme Court recently defined bad faith by holding that  
10 "an insurer must give equal consideration to the insured's interests" and "the  
11 nature of the relationship [between insured and insurer] requires that the  
12 insurer adequately protect the insured's interests." *Miller v. Allstate*, 212 P.3d  
13 318 (2009). There is no question that the rejection of a settlement offer within  
14 the policy limits is an element of a bad faith claim. *Id.* The *Miller* Court held  
15 that the rejection by an insurer of a settlement offer within the policy limits is  
16 indeed an element making up a bad faith claim, but also noted that a bad faith  
17 claim can be based on far more than just the rejection of such an offer. *Id.*  
18 The Court specifically noted that "an insurer's failure to adequately inform an  
19 insured of a settlement offer is a factor for the trier of fact to consider when  
20 evaluating a bad-faith claim." *Id.* at 325; see also *Allen v. Allstate Ins. Co.*,  
21 656 F.2d 487, 489 (9<sup>th</sup> Cir. 1981) (recognizing that under California law  
22 "What is 'good faith' or 'bad faith' on an insurer's part has not yet proved  
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1 susceptible to [definitive] legal definition. An insurer's 'good faith' is  
2 essentially a matter of fact."). *Id.*  
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4 Within the area of first-party bad faith, there are essentially three  
5 standards which courts have imposed on liability insurers in determining  
6 whether the insurer has met its duty to the insured. Those standards involve  
7 strict liability, negligence, and bad faith. *Shamblin v. Nationwide Mutual*  
8 *Insurance Company*, 396 S.E.2d 766 (W.Va. 1990), citing, *Schwartz,*  
9 *Statutory Strict Liability for an Insurer's Failure to settle: A Balanced Plan*  
10 *for an Unresolved Problem*, 1975 Duke L.J. 901; Annotation, *Liability*  
11 *Insurer's Negligence for Bad Faith in Conducting Defense as Ground of*  
12 *Liability to Insured*, 34 A.L.R.3d 533 (1970 & Supp. 1989).  
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17 The courts which have applied the strict liability standard have held that  
18 an insurer who fails to settle within policy limits does so at its own risk, and  
19 even if its position is not entirely groundless, if the failure to settle later  
20 exposes the insured, the carrier is liable for the full amount which will  
21 compensate the insured for all the detriment caused by the insurer's breach of  
22 the express and implied obligations of the contract. *Id.*, citing, *Crisci v.*  
23 *Security Ins. Co.*, 66 Cal2d 425, 58 Cal.Rptr. 13, 426 P.2d 173 (1967); *Rova*  
24 *Farms Resort, Inc. v. Investors Insurance Co.*, 65 N.J. 474, 323 A.2d 495  
25 (1974).  
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1 The *Crisci* Court recognized that the insured's expectation of protection  
2 provides a basis for imposing strict liability in failure to settle cases because it  
3 will always be in the insured's best interest to settle within the policy limits  
4 when there is any danger, no matter how slight, of a judgment in excess of  
5 those limits. *Crisci v. Security Insurance Company of New Haven, Conn.*, 426  
6 P.2d 173, 66 Cal.2d 425, 58 Cal. Rptr. 13, (1967). *Crisci* recognized there is  
7 more than a small amount of elementary justice in a rule that would require  
8 that, in this situation, where the insurer's and insured's interests necessarily  
9 conflict, the insurer, which may reap the benefits of its determination not to  
10 settle, should also suffer the detriments of its decision. *Id.*

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

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

24 When I buy insurance, I buy protection from untoward events. I  
25 do not object to an insurance company's vigorous defense of a  
26 claim, including going to jury trial and exhausting every appeal.  
27 Furthermore, as a policyholder, I will diligently assist my insurer  
28

1 to vindicate its rights and protect its reserves. However, I draw  
2 the line when the insurer decides that in the process of protecting  
3 its reserves, it will play "you bet my house." The insurance  
4 company can bet as much of its own money as it wants, and it  
5 can bet its own money at any odds that it wants, but it cannot bet  
6 one single penny of my money even when the odds are ten  
7 million to one in its favor!

8 *Id.* at 780.

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

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

20 *Johansen v. California State Automobile Association Inter-Insurance Bureau*,  
21 15 Cal.3d 9, 123 Cal.Rptr. 288, 538 P.2d 744, (1975) (emphasis added).

22 Moreover, in deciding whether or not to compromise the claim, the insurer  
23 must conduct itself as though it alone were liable for the entire amount of the  
24 judgment. *Id.*, citing *Crisci*.

25 Nevada has long recognized that there is a fiduciary relationship  
26 between the insurer and the insured. *Powers v. USAA*, 114 Nev. 690, 962 P.2d  
27 596 (1998), citing *Ainsworth v. Combined Ins. Co.*, 104 Nev. 587, 763 P.2d  
28

1 673 (1988). Nevada has also established standards for applying in other types  
2 of bad faith situations. In *Pemberton v. Farmers Insurance Exchange*, 109  
3 Nev. 789, 858 P.2d 380 (1993), the Nevada Supreme Court established  
4 standards to apply when an action is brought related to bad faith denial of  
5 first-party benefits under uninsured or underinsured coverage. There, the  
6 court noted numerous appellate court decisions that hold an insurer's failure to  
7 deal fairly and in good faith with an insured's UM claim is actionable. *Id.* at  
8 794 (citations omitted).

12 The Nevada Supreme Court and Federal District Court of Nevada  
13 articulated a negligence or reasonableness standard in bad faith cases. "To  
14 establish a prima facie case of bad-faith refusal to pay an insurance claim, the  
15 plaintiff must establish that there was no reasonable basis for disputing  
16 coverage." *Powers v. United Services Auto. Ass'n*, 962 P.2d 596, 604 (Nev.  
17 1998), citing *Falline v. GNLV Corp.*, 823 P.2d 888 (Nev. 1991). See also  
18 *Pemberton v. Farmers Ins. Exch.*, 858 P.2d 380, 384 (Nev. 1990).

22 One of the more instructional cases in Nevada, however, on the  
23 standard to be applied when dealing with negative effects resulting from an  
24 insurer's failure to settle a claim prior to litigation is *Landow v. Medical Ins.*  
25 *Exchange*, 892 F.Supp. 239 (D.Nev. 1995). The *Landow* Court, following the  
26 rationale of California courts in excess verdict situations accepted that, "the  
27  
28

1 litmus test for bad faith is whether the insurer, in determining whether to settle  
2 a claim, gave as much consideration to the welfare of its insured as it gave to  
3 its own interests," citing, *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal.3d. 809,  
4 818, 169 Cal.Rptr. 691, 620 P.2d 141 (1979).  
5

6  
7 The above-noted principles were most recently codified and adopted by  
8 the Nevada Supreme Court in *Miller v. Allstate*, 212 P.3d 318 (2009). In  
9 *Miller*, the court held that "an insurer must give equal consideration to the  
10 insured's interest". The court further stated that the insurer's duty to its  
11 insured is "similar to a fiduciary relationship" and noted "the nature of the  
12 relationship requires that the insurer adequately protect the insured's interest."  
13  
14 The court's conclusion mirrored that in *Landlow* as the *Miller* court  
15 recognized "at a minimum, an insurer must equally consider the insured's  
16 interests and its own." The court also recognized the wisdom from decisions  
17 from California holding that "the insurer must give the interests of the insured  
18 at least as much consideration as it gives its own interests, and the insurer  
19 must act as a prudent insurer without policy limits." *Id.* There is no question  
20 that the rejection of a settlement offer within the policy limits is an element of  
21 a bad faith claim. *Id.* The *Miller* Court held that the rejection by an insurer of  
22 a settlement offer within the policy limits is indeed an element making up a  
23 bad faith claim, but also noted that a bad faith claim can be based on far more  
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1 than just the rejection of such an offer. *Id.* The Court specifically noted that  
2 "an insurer's failure to adequately inform an insured of a settlement offer is a  
3 factor for the trier of fact to consider when evaluating a bad-faith claim." *Id.* at  
4 325; see also *Allen*, 656 F.2d at 489 (recognizing that under California law  
5 "What is 'good faith' or 'bad faith' on an insurer's part has not yet proved  
6 susceptible to [definitive] legal definition. An insurer's 'good faith' is  
7 essentially a matter of fact."). *Id.*

### 11 3. UAIC Breached its Duty to Defend

12 Primary liability insurance policies create a duty to defend and the duty  
13 to indemnify. *Miller v. Allstate*, 212 P.3d 318 (Nev., 2009) citing *Crawford v.*  
14 *Weather Shield Mfg. Inc.*, 44 Cal.4th 541, 79 Cal.Rptr.3d 721, 187 P.3d 424,  
15 427 (2008). The duty to defend is a "legal duty that arises under the law, as  
16 opposed to a contractual duty arising from the policy." *Miller v. Allstate*, 212  
17 P.3d 318 (Nev., 2009).

18 "If there is any doubt about whether the duty to defend arises, this  
19 doubt must be resolved in favor of the insured." *United Nat'l Ins. Co. v.*  
20 *Frontier Ins. Co.*, 99 P.3d 1153, 120 Nev. 678 (Nev., 2004) (emphasis added)  
21 citing *Aetna Cas. & Sur. Co. v. Centennial Ins. Co.*, 838 F.2d 346, 350 (9th  
22 Cir. 1988). "The purpose behind construing the duty to defend so broadly is  
23 to prevent an insurer from evading its obligation to provide a defense for an  
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1 insured without at least investigating the facts behind a complaint.” *United*  
2 *Nat’l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 120 Nev. 678 (Nev., 2004)  
3  
4 See also *Helca Min. Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083, 1090  
5 (Colo. 1991). A potential for coverage only exists when there is **arguable or**  
6 **possible coverage**. *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153,  
7 120 Nev. 678 (Nev., 2004) (emphasis added); see also *Morton v. Safeco Ins.*  
8 *Co.*, 905 F.2d 1208, 1212 (9th Cir. 1990). “The duty to defend arises when  
9 there is a potential for coverage based on the allegations in a complaint and  
10 the duty to indemnify arises when there is actual coverage under an insurance  
11 policy. *Id.* at 1155.  
12  
13

14  
15 Here, UAIC evaded “its obligation to provide a defense for an insured  
16 without at least investigating the facts behind a complaint.” *United Nat’l Ins.*  
17 *Co. v. Frontier Ins. Co.*, 99 P.3d 1153, 120 Nev. 678 (Nev., 2004). UAIC  
18 received a copy of the complaint in October, 2007. See AA I:0001. UAIC did  
19 not investigate the facts of the complaint. Further, UAIC’s failure to provide  
20 coverage and their breach of their duty to defend was the proximate cause of  
21 the Default Judgment being entered against GARY LEWIS.  
22  
23  
24

25 Although the District Court found that UAIC breached its duty to  
26 defend, it found that there was no bad faith. As a failure to defend can be bad  
27 faith, this presents a question of fact for the jury which prevents summary  
28

1 judgment. As such, the District Court's order should be reversed and  
2 remanded.  
3

#### 4 4. UAIC Misrepresented Coverage

5 UAIC misrepresented to its insured that there was no coverage under  
6 his policy. An insurance policy, which would include the renewal statements  
7 of the policy, is a contract and is governed by contract law. *United Insurance*  
8 *Co., v. Frontier Insurance Company, Inc.*, 120 Nev. 678 684, 99 P.3d 1152,  
9 1156 (2004). Under general contract law, the Nevada Supreme Court has  
10 noted, "When a contract is ambiguous, it **will** be construed against the  
11 drafter." *Glenbrook Homeowners Ass'n v. Glenbrook Co.*, 111 Nev. 909, 917,  
12 901 P.2d 132, 138 (1995) (emphasis added). The Court has gone even further  
13 in its discussion of insurance contracts, holding, "Contracts of insurance are  
14 **always** construed most strongly against the insurance company. Stated  
15 another way, a policy of insurance **is** to be construed liberally in favor of the  
16 insured and **strictly against the insurer.**" *Hartford Ins. Group v. Winkler*, 89  
17 Nev. 131, 135, 508 P.2d 8, 11 (1973) (Citations omitted) (emphasis added).  
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24 In addition, the Nevada Supreme Court has held, "An insurance policy  
25 is a contract of adhesion." *Id.* As a result "the language of an insurance  
26 policy is broadly interpreted in order to afford 'the greatest possible coverage  
27 to the insured.'" *Id.*, citing *Farmers Insurance Group v. Stonik*, 110 Nev. 64,  
28

1 67, 867 P.2d 389, 391 (1994). The pivotal language from the UAIC contract  
2 comes from the policy's "Renewal Statements" which UAIC drafted, and  
3 which UAIC sent to Gary Lewis on multiple occasions advising Gary how the  
4 contract of insurance could be renewed and continue to be in effect with  
5 UAIC. The statements provide a due date for payment, but also specifically  
6 state that if payment is "received prior the expiration of your policy" there will  
7 be no lapse in coverage. The only "Expiration Date" listed in the policy's  
8 "Renewal Statements" is the expiration date for the offered policy that UAIC  
9 invited Gary Lewis to renew.  
10  
11  
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13

14 The policy's "Renewal Statements" which give a due date but then state  
15 that the policyholder can avoid a lapse in coverage by paying before the  
16 expiration of the policy, and providing an "Expiration Date" for the policy that  
17 is different than the "Due Date" are ambiguous. As noted above, **ambiguous**  
18 **language in a contract, or in a writing seeking to renew a contract, is**  
19 **construed against the drafter of the contract, or the writing seeking to**  
20 **renew the contract.** See, *Glenbrook Homeowners Ass'n v. Glenbrook Co.*,  
21 111 Nev. 909, 917, 901 P.2d 132, 138 (1995). The Nevada Supreme Court  
22 has noted that an insurance company does business as a quasi-public  
23 institution, and cannot avoid liability under ambiguous provisions of policy.  
24 *Hartford Ins. Group v. Winkler*, 89 Nev. 131, 136, 508 P.2d 8, 12 (1973).  
25  
26  
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28

1 Although the District Court found that there was coverage due to the  
2 ambiguity, it failed to acknowledge that the insurance company has the  
3 knowledge of how policies work, and that ambiguities are construed in favor  
4 of coverage. Despite there being evidence of ambiguity, UAIC  
5 misrepresented that there was no coverage for the policy. As such, there is  
6 evidence of bad faith, that prevents granting summary judgment in favor of  
7 UAIC. As such, As such, the District Court's order should be reversed and  
8 remanded.  
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11

#### 12 5. UAIC Breached its Duty to Investigate

13  
14 Insurers have a duty to investigate. *Pemberton v. Farmers Ins.*  
15 *Exchange*, 109 Nev. 789, 858 P.2d 380, 382 (Nev., 1993). "Insurers have the  
16 duty to investigate claims and coverage in a prompt fashion." *Troutt v. CO*  
17 *W. Ins. Co.*, 246 F.3d 1150, 1162. See also *Tynes v. Bankers Life Co.*, 730  
18 P.2d 1115, 1124 (Mont. 1986) (9th Cir., 2001). The duty to investigate is an  
19 extension of the duty of good faith and fair dealing that the insurer owes its  
20 insured and, in a claims-made-and-reported policy, extends to the handling of  
21 reported claims. *KPFF, Inc. v. California Union Ins. Co.*, 56 Cal.App.4th 963,  
22 66 Cal.Rptr.2d 36, 44 (1997). UAIC utterly failed to investigate whether  
23 coverage existed for Gary on the claim, made no attempt to investigate the  
24 claim made against Gary Lewis, and failed to abide by established insurance  
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1 claims handling practices in its handling of this claim. Although UAIC claims  
2 that it investigated the claim, "confirming the lapse through their underwriting  
3 department" is not an investigation. Furthermore, as discussed in detail  
4 above, there was coverage under this claim.  
5

6  
7 As explained in detail above, Lewis had coverage under the policy and  
8 UAIC failed to investigate. Therefore, summary judgment was not proper in  
9 finding that UAIC did not commit bad faith. As such, the District Court's  
10 order should be reversed and remanded.  
11

#### 12 **6. UAIC Breached its Duty to Inform**

13  
14 UAIC also made absolutely no efforts to inform Gary Lewis of the  
15 demand for the policy limits and the offer to settle Cheyanne's significant  
16 claim for a mere \$15,000.00. UAIC completely ignored Cheyanne's claim  
17 and did absolutely nothing other than send Cheyanne's counsel a letter stating  
18 that there was no coverage. As noted above, the Court has continually held  
19 "at a minimum, an insured must equally consider the insured's interest and its  
20 own." *Allstate v. Miller*, 212 P.3d 318, 326 (Nev. 2009). If the insurer fails to  
21 equally consider its insured's interests and its own it violates the implied  
22 covenant of good faith and fair dealing and can be held responsible for any  
23 resulting damages suffered by its insured. *Id.* The undisputed fact is that  
24 UAIC made absolutely no efforts to inform Gary Lewis of the demand for the  
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1 policy limits and the offer to settle Cheyanne's significant claim for a mere  
2 \$15,000.00. Therefore, they breached their duty to inform. This failure to  
3 inform, on its own, is sufficient to present the facts to the jury to determine  
4 whether the carrier violated the duty of good faith and fair dealing and is thus  
5 liable for a judgment entered against its insured in excess of the applicable  
6 policy limits. *Id.* As such, the District Court's order should be reversed and  
7 remanded.  
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11 **7. UAIC Violated N.R.S. 686A.310**

12 As explained above, there was a valid contract of insurance between  
13 Lewis and UAIC and there was actual coverage under the policy for the loss  
14 in question. When ambiguous language in a contract is construed in the  
15 insureds favor, it does not establish an "implied" contract, but rather provides  
16 coverage under an actual insurance contract.  
17  
18

19 UAIC violated N.R.S. § 686A.030. UAIC wrongfully refused to cover  
20 the value of the claim of Cheyanne Nalder, wrongfully failed to settle within  
21 the Policy Limits when they had the opportunity to do so, wrongfully denied  
22 coverage, failed to adopt and implement reasonable standards for the prompt  
23 investigation and processing of claims arising under its insurance policies, and  
24 failed to effectuate the prompt, fair and/or equitable settlement of the claims  
25 in which liability of the insurer was very clear, and which clarity was  
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1 conveyed to UAIC. This is sufficient to present the facts to the jury to  
2 determine whether the carrier violated the duty of good faith and fair. As  
3 such, the District Court's order should be reversed and remanded.  
4

5 **8. Where the Insured Wins on the Coverage Issue by**  
6 **Summary Judgment, the Potential Bad Faith for that**  
7 **Denial of Coverage is a Question of Fact for the Jury that**  
8 **Precludes Summary Judgment**

9 Entitlement to a jury trial is a question of law reviewed de novo. See  
10 *Hale v. United States Trustee*, 509 F.3d 1139, 1146 (9th Cir. 2007); *California*  
11 *Scents v. Surco Prods., Inc.*, 406 F.3d 1102, 1105 (9th Cir. 2005).  
12

13 Although the District Court found that there was coverage; however, he  
14 found as a matter of law there was no bad faith. Pursuant to *Miller*, bad faith  
15 is a question of fact. The Court specifically noted that "an insurer's failure to  
16 adequately inform an insured of a settlement offer is a factor for the trier of  
17 fact to consider when evaluating a bad-faith claim." *Id* at 325; see also *Allen*,  
18 656 F.2d at 489 (recognizing that under California law "What is 'good faith'  
19 or 'bad faith' on an insurer's part has not yet proved susceptible to [definitive]  
20 legal definition. An insurer's 'good faith' is essentially a matter of fact.").  
21 Thus, the District Court should have submitted this issue to the jury. As such,  
22 the case should be reversed and remanded.  
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**CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that this Court reverse and remand with instructions to enter judgment for the verdict amount plus interest, cost, attorney fees and submit the question of bad faith and other compensatory damages to the jury.

DATED this 6<sup>th</sup> day of March, 2014

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**CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)**

The undersigned hereby certifies that the foregoing "Appellants' Opening Brief" complies with the type-volume limitations of FRAP 32(a)(7)(B)(i).

The brief contains 7,270 words of text, and a *14-point* proportionately spaced type face has been used. Consistent with FRAP 32(a)(4), this brief's top, bottom, left, and right margins are each precisely one inch in width.

DATED this 6<sup>th</sup> day of March, 2014

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**PROOF OF SERVICE**

Pursuant to FRCP 5(b), I hereby certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC, and that on this 6<sup>th</sup> day of March, 2014, I served a copy of APPELLANT'S OPENING BRIEF on the party below via Case Management/Electronic Case Filing (CM/ECF):

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

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

# EXHIBIT "J"

## 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.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE  
COMPANY, RANDALL TINDALL, ESQ.  
and RESNICK & LOUIS, P.C., and DOES I  
through V.,

Third Party Defendants.

I, BRANDON CARROLL, declare:

CASE NO.: A-18-772220-C

DEPT. NO.: 19

**AFFIDAVIT OF VICE PRESIDENT OF  
BODILY INJURY CLAIMS BRANDON  
CARROLL IN SUPPORT OF  
INTERVENOR/THIRD PARTY  
DEFENDANT UNITED AUTOMOBILE  
INSURANCE COMPANY'S  
OPPOSITION TO COUNTER-MOTION  
FOR SUMMARY JUDGMENT AND  
COUNTER-MOTION FOR STAY OF  
SUMMARY JUDGMENT FOR  
DISCOVERY PURSUANT  
TO N.R.C.P. 56 (f)**

1. That I am the Vice President of Bodily Injury claims employed at United Automobile Insurance Company ("UAIC"). I make this declaration in support of UAIC's Opposition to Third Party Plaintiff Lewis' Counter-Motion for Summary Judgment and, alternatively Motion to Stay

hearing on same summary judgment for discovery pursuant to N.R.C.P. 56(f). I have personal knowledge of the facts set forth below and, if called as a witness, could and would competently testify to them under oath.

2. I have familiarized myself with the claims file for the claims made by James Nalder, as Guardian for Minor, Cheyanne Nalder, as well as Cheyanne Nalder, individually, against Gary Lewis' implied policy of insurance with UAIC. I have familiarized myself with the Nalder's claim file since its opening. As part of that process, I reviewed claims notes made and correspondence sent and received in connection with the handling of the claim. The claims adjuster makes notes at or near the time of the activities in question occur. The creation and maintenance of the claims notes is a regularly conducted business activity of UAIC and said notes are true and accurate. Similarly, all correspondence sent by or, to, an adjuster is kept in the Claims file in the usual and ordinary course of business and those documents are true and accurate.

3. A review of the claims reveals the following: that the Nalder's made a claim under Gary Lewis' policies with UAIC for the loss, on July 8, 2007, occurring to minor Cheyanne Nalder.

4. A review of the claims reveals the following: that the Nalders and their Counsel were informed in writing on October 10, 2007 that no coverage existed for Lewis on the date of the accident, July 8, 2007, as his policy had expired June 30, 2007 and no new policy term was incepted until July 10, 2007.

5. That, thereafter, the claims file reveals that following a judgment being entered on Nalders claim, in 2008, an action was filed against UAIC by Lewis and the Nalders alleging bad

faith and extra-contractual remedies which was removed to U.S. Federal District Court for the District of Nevada and the case proceed there as *Nalder et al. v UAIC*, case no. 2:09-cv-01348.

6. A review of the claims reveals the following: Following Motions for summary judgment, the first District Court Judge hearing the matter, the Honorable Edward Reed, granted summary judgment in favor of UAIC finding no policy in force for Lewis for the subject loss and, as such, found no bad faith or extra-contractual breaches had been committed by UAIC.

7. A review of the claims reveals the following: Following Nalder's appeal to the U.S. Court of Appeals for the Ninth circuit, the case was remanded to the District Court due to an ambiguity in the renewal notice that had been sent to Lewis for his policy.

8. A review of the claims reveals the following: After the matter was remanded, a new round of cross-motions for summary judgment before the Federal District court proceeded where the new judge hearing the case, The Honorable R. Clive Jones, again found that UAIC had been reasonable and granted summary judgment in favor of UAIC on all the claims for bad faith and/or extra-contractual damages; however, due to the ambiguity in the renewal, the Court implied a policy of insurance for the loss and ordered UAIC to tender its \$15,000 policy limits for Gary Lewis. Said Order was entered October 30, 2013 and also, for the first time, found UAIC had a duty to defend Lewis under the implied policy for claims arising out of the July 2007 loss.

9. A review of the claims reveals the following: UAIC paid said \$15,000 policy limits, in one payment, on November 1, 2013, two days following the judgment. A true and accurate copy proof of the November 1, 2013 check payment for \$15,000, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'A.'

10. A review of the claims reveals the following: Nalders then appealed the October 30, 2013 ruling, again to the U.S. Court of appeals for the Ninth Circuit and, following briefing and oral argument, that Court certified a first certified question to the Nevada Supreme Court, on June 1, 2016, regarding whether Nalders could collect consequential damages, on the 2008 judgment against Lewis, from UAIC in the absence of bad faith by UAIC. This question was accepted by the Nevada Supreme Court.

11. A review of the claims reveals the following: While that question was pending, UAIC discovered that, pursuant to Nevada law, the Nalders' 2008 judgment against Lewis had not been renewed pursuant to N.R.S. 17.214 and, thus, the judgment had expired in June 2014, pursuant N.R.S. 11.190(1)(a).

12. A review of the claims reveals the following: Upon learning of the expiration of the judgment against Lewis, UAIC filed a Motion to dismiss the Nalders' appeal for lack of standing on March 14, 2017.

13. A review of the claims reveals the following: Upon learning of the Motion to dismiss, the Nevada Supreme Court stayed the first certified question for ruling on the Motion to dismiss by the U.S. Court of Appeals for the Ninth Circuit. However, that the Ninth Circuit then certified a second question to the Nevada Supreme Court on December 27, 2017, which the Nevada Supreme Court accepted on January 11, 2018. This second certified question concerns whether the potential liability for consequential damages is extinguished if the judgment has expired.



14. A review of the claims reveals the following: This second certified question is still being briefed before the Nevada Supreme Court and it UAIC's belief that the Supreme Court's ruling will confirm whether or not the Nalder's 2008 judgment against Lewis is expired.

15. A review of the claims reveals the following: On about July 19, 2018 UAIC's received notice from a new counsel for Nalder, David Stephens, Esq., that a new suit had been filed by Nalder against Lewis, concerning the same expired 2008 judgment currently on appeal, under *Nalder v Lewis*, case no. A-18-772220-C, and that he had served Lewis with same and was giving 3 days notice of his intent to take default against Lewis. A true and accurate copy letter from David Stephens dated July 17, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'B.'

16. A review of the claims reveals the following: Upon learning of this new action, and given the October 30, 2013 ruling of the Federal District court that an implied policy in effect for Lewis for the July 2007 loss - from which case no. A-18-772220-C arises - UAIC immediately sought to retain counsel for Lewis to defend him in this new action and prevent this default

17. A review of the claims reveals the following: UAIC also discovered that David Stephens had "amended" the expired 2008 judgment, *ex parte*, in about March 2018 - while the above-referenced appeal was pending and, accordingly, UAIC also sought to have retained defense counsel for Lewis vacate this improperly amended expired judgment.

18. A review of the claims reveals the following: UAIC engaged attorney Steven Rogers, Esq. to represent Lewis in regard to both this "amended" expired judgment in case no. 07A549111 as well as in regard to the new action case no. A-18-772220-C.

19. A review of the claims reveals the following: In early August 2018 attorney Rogers attempted to represent his client, Mr. Lewis, but was immediately met with resistance from Nalder's Counsel, Thomas Christensen, Esq., who claimed to also represent Lewis, whereby he asked Rogers if he believed his defense would cause "problems" for Lewis. Accordingly, on August 10, 2018 attorney Rogers sent a letter to attorney Christensen specifically responding to his concerns by noting Rogers did not believe his defense, seeking to relieve Lewis of a multi-million dollar judgment, would cause him any "problems." Attorney Rogers also attached copies of motions his office drafted on behalf of Lewis, to be filed in the 07A549111 action as well as in regard to the new action case no. A-18-772220-C. A true and accurate copy of the letter from Steve Rogers to Christensen dated August 10, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'C.'

20. A review of the claims reveals the following: In response to Attorney Rogers August 10, 2018 letter, Attorney Christensen responded, with a letter dated August 13, 2018, wherein he specifically advised Attorney Rogers he could neither speak to Lewis nor file the planned motions he had drafted on his behalf. A true and accurate copy of the letter from Christensen to Rogers dated August 13, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'D.'

21. A review of the claims reveals the following: In response to Christensen's August 13, 2018 letter, Rogers advised he could not represent Lewis due to Christensen's interference in preventing him from speaking to his client and he confirmed same in a letter to Christensen on August 23, 2018. A true and accurate copy of the letter from Rogers to Christensen dated August 23, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'E.'

22. A review of the claims reveals the following: Learning of the interference by Christensen in preventing retained defense counsel from defending Lewis in regard to both the 07A549111 action as well as in regard to the new action case no. A-18-772220-C, UAIC had counsel for UAIC file Motions to intervene in both actions on about August 17, 2018 and August 16, 2018, respectively.

23. A review of the claims reveals the following: Thereafter, on about September 6-7, 2018, Christensen indicated to Rogers that he was retaining Attorney Breen Arntz, Esq., to represent Lewis and confirmed same in an email to Rogers. A true and accurate copy of the emails from Christensen to Rogers dated September 6-7, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'F.'

24. A review of the claims reveals the following: Fearing the 6 month deadline to seek to vacate the improperly amended judgment on the expired 2008 judgment would run in late September 2018, UAIC engaged Randy Tindall, Esq. to file the necessary Motions to protect Lewis in both actions, noted above.

25. A review of the claims reveals the following: Christensen then threatened Tindall to withdraw all Motions on behalf of Lewis and, eventually, filed a Third Party Complaint against Tindall and his law firm as well as UAIC. The third Party Complaint also makes allegations against Nevada Bar counsel and the sitting judge that was hearing the case as co-conspirators.

26. A review of the claims reveals the following: Now Lewis has moved for summary judgment on this Third Party complaint alleging many things against UAIC, all of which UAIC disputes.

27. UAIC is not in a conspiracy with Bar Counsel and District Judge David Jones, nor any counsel in this matter, against Christensen and Lewis.

28. UAIC has been motivated by utmost good faith to comply with Federal Court's order of October 30, 2013, finding a policy for Lewis with UAIC, at law, for the first time regarding the 2007 loss, in seeking to retain counsel and defend him in regard to the 07A549111 action as well as in regard to the new action case no. A-18-772220-C.

29. That UAIC is seeking to relieve Lewis of an improperly amended expired judgment for over \$3.5 million and, dismiss the new action filed against him.

30. That UAIC, through retained counsel, tried to discuss Lewis' defense with him, but this was refused by Counsel for Nalder and Lewis, Thomas Christensen.

31. That UAIC never misinformed Attorney Steve Rogers of the legal basis for the representation of Lewis.

32. The UAIC has not engaged in trickery, delay or misrepresentation to harm Lewis.

33. That due to the prevention of retained defense counsel from ever putting forth a defense on Lewis' behalf in regard to the 07A549111 action as well as in regard to the new action case no. A-18-772220-C, UAIC has filed a declaratory judgment action regarding lack of cooperation as well as seeking a determination whether UAIC owes Lewis "Cumis Counsel" due to the conflict alleged by attorney Christensen.

34. Accordingly, at this time, Lewis has not complied with all policy conditions as he is not cooperating in his defense or investigation of this amended judgment and new suit.

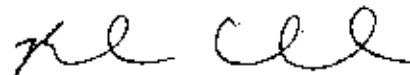
35. UAIC has never delayed investigation of this claim, or failed to respond to settlement requests or, done a one-sided investigation or, committed any other violation of the covenant of good faith and fair dealing and/or N.R.S. 686A.310.

36. Indeed, UAIC has thus far been precluded from even speaking to its insured, Lewis and, accordingly, has filed a Counter Motion for stay of the instant summary judgment for discovery pursuant to N.R.C.P. 56(f).

37. Specifically, UAIC needs discovery including, but not limited to, depositions and written interrogatories of Gary Lewis, which UAIC believes will lead to material issues of fact to understand if Lewis has been informed that UAIC's attempts to defend him seek to relieve him a multi-million dollar expired judgment such that he will owe nothing to Nalder and how and why he believes UAIC is injuring him or, in bad faith, for doing so.

38. Additionally, UAIC seeks the depositions of Lewis and Attorneys Arntz, Christensen and Stephens to understand all of their relationships vis-à-vis Nalder as UAIC believes this reveal material issues of fact concerning a fraud perpetrated on the Court

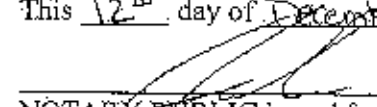
DATED this 12<sup>th</sup> day of December, 2018.

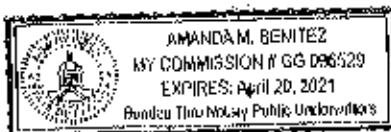


Brandon Carroll, As VP of Bodily Injury Claims  
and Duly authorized representative of United  
Automobile Insurance Company

SUBSCRIBED AND SWORN to before me

This 12<sup>th</sup> day of December 2018

  
NOTARY PUBLIC in and for said  
Miami Dade County, Florida



# **EXHIBIT "A"**

## **TO AFFIDAVIT**

UNITED AUTOMOBILE INSURANCE COMPANY      DETACH AND RETAIN THIS STATEMENT

DATE: 11/01/13    CHECK#: 0956661    CHECK AMOUNT: \$ \*\*\*\*\*15,000.00  
POLICY#: NVA -030021926    LOSS DATE: 7/08/07    ADJ: V03  
PAYEE: Christensen Law Office  
      & James Nalder, Guardian Ad Litem for minor Cheyenne Nalder  
      FULL AND FINAL SETTLEMENT OF ALL CLAIMS

CLAIM #: 0006000455    Claimant: 002 - CHEYANNE NALDER  
Unit # : 001 - 96 CHEV PICKUP1500    Coverage: BI - BODILY INJURY  
REASON:

ATKIN WINNER AND SHERROD  
1117 S RANCHO DR  
LAS VEGAS NV 89102-2216



# **EXHIBIT "B"**

## **TO AFFIDAVIT**

# 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:

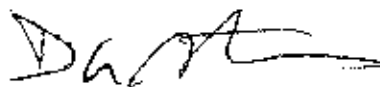
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

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)  
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@sdblwfir.com  
10 Attorney for Cheyenne Nalder

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DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants.

CASE NO.: A-18-772220-C

DEPT NO.: XXIX

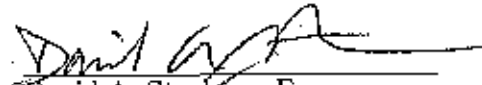
THREE DAY NOTICE TO PLEAD

Date: n/a  
Time: n/a

To: Gary Lewis, Defendant

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

Dated this 17 day of July 2018.

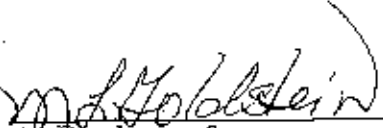
  
David A. Stephens, Esq.  
Nevada Bar No. 00902  
Stephens Gourley & Bywater  
3636 N. Rancho Drive  
Las Vegas, NV 89130  
Attorney for Plaintiff

## CERTIFICATE OF MAILING

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

Gary Lewis  
733 Minnesota Avenue  
Glendora, CA 91740

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

  
An Employee of  
Stephens Gourley & Bywater

# **EXHIBIT "C"**

## **TO AFFIDAVIT**



ROGERS  
MASTRANGELO  
CARVALHO &  
MITCHELL

Attorneys At Law  
Stephen H. Rogers  
Rebecca L. Mastrogirola  
Daniel E. Carvalho  
Paul Mitchell  
Najim Anwar  
Christy A. Michalek  
Dawn L. Davis  
Marissa R. Neppely  
Wm C. Mitchell  
Nicholas C. Real  
\*Of Counsel  
\*Also admitted in AZ

August 10, 2018

Via Email: [thomasc@injuryhelpnow.com](mailto:thomasc@injuryhelpnow.com)

Tommy Christensen, Esq.  
Christensen Law Office, LLC  
1000 South Valley View Blvd.  
Las Vegas, Nevada 89107

Re: Cheyenne Nalder v. Gary Lewis  
Court Case Nos.: A-07-549111-C and A-18-772220-C

Dear Tommy:

In response to your recent correspondence, it is my understanding that you and Dennis represent Mr. Lewis with regard to his claims against UAIC. I have been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions. Please advise if you are now also acting as Mr. Lewis' personal counsel with regard to my defense of Ms. Nalder's 2018 actions. If so, I will include you on all correspondence and meetings with Mr. Lewis.

As for your question about the legal issues presented by Ms. Nalder's 2018 actions, and whether the defenses I propose would cause Mr. Lewis any "problems," I do not believe they would. Ms. Nalder moved to amend an expired \$3.5 million judgment against him, and also filed a complaint for damages for the personal injuries which were previously adjudicated and to add interest through April 8, 2018, increasing the amount of the judgment to nearly \$5.6 million. My advice as Mr. Lewis' defense counsel is that we should attempt to protect him by moving to void the Amended Judgment and Dismiss the new Complaint.

Regarding the motion to void the Amended Judgment, Ms. Nalder's proposition that her guardian ad litem's responsibility to renew the judgment was tolled while she was a minor, and while Mr. Lewis was out of state, is legally unsupported. Attached is a draft of our proposed Motion for Relief from Judgment which sets forth the legal arguments. Presumably, Mr. Lewis would prefer not having this judgment against him. This motion is supported by the law, and should prove successful. If not, Mr. Lewis would be in no worse position than he is now.

Regarding Ms. Nalder's 2018 Complaint, the personal injury claims appear to be subject to dismissal pursuant to the doctrine of claim preclusion, as judgment has already been entered on the claims. That Ms. Nalder's guardian ad litem did not take the appropriate steps to renew the judgment was not Mr. Lewis' responsibility. Mr. Lewis should not be placed in legal jeopardy because of the



ROGERS  
MASTRANGELO  
CARVALHO &  
MITCHELL

Tommy Christensen, Esq.  
Chayenne Nalder v. Gary Lewis  
Page 2 of 2

guardian ad litem's failure to act. Ms. Nalder's request for another amended judgment in her 2018 Complaint is procedurally inappropriate, since a request for an amended judgment is not a cause of action. Her request for declaratory relief does not meet the criteria. Overall, all of her claims regarding the validity of further amended judgments suffer from the same problems as the Amended Judgment - the original Judgment expired and cannot be revived. Attached is a copy of our proposed Motion to Dismiss the 2018 Complaint. Mr. Lewis' interests would be protected if the 2018 Complaint were dismissed, as, presumably, he would prefer not having to risk litigating Ms. Nalder's personal injury claims and potential exposure to an increased judgment. He would not be in any worse position than he is now if the Motion to Dismiss were denied.

In your letter, on Mr. Lewis' behalf, you instruct me not to file motions such as those attached. It is not clear to me why you have done so. I expect this letter and the attached motions answer any questions or concerns you may have. If you have specific concerns that I have not addressed, please advise. Otherwise, please confirm that Mr. Lewis will cooperate with his defense by agreeing to allow us to protect him by filing the attached motions, or, if not, why not.

Your prompt attention is appreciated. (Note: This letter is copied to Mr. Lewis so that he can participate with his counsel in our efforts to defend him his interests).

Sincerely,

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

Dictated by Stephen Rogers, Esq.  
Signed in his absence *CM*

Stephen H. Rogers, Esq.

SHR:TLHK/cm

Attachments

cc: Gary Lewis

\\Rogers\Lewis\pde\_Nalder\Correspondence\Tommy Christensen\letter 080918 11.pdf

1 MDSM  
 2 STEPHEN H. ROGERS, ESQ.  
 3 Nevada Bar No. 5755  
 4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
 5 700 South Third Street  
 6 Las Vegas, Nevada 89101  
 7 Phone (702) 383-3400  
 8 Fax (702) 384-1460  
 9 Email: [srogers@rincmlaw.com](mailto:srogers@rincmlaw.com)  
 10 Attorneys for Defendant.

11 DISTRICT COURT  
 12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

CASE NO.: A-18-772220-C

DEPT. NO.: 29

15 GARY LEWIS and DOES'1 through \_\_\_\_\_

16 Defendants.

17 DEFENDANT'S MOTION TO DISMISS

18 Defendant, Gary Lewis, by and through his counsel, Stephen H. Rogers, Esq., of the law firm  
 19 of Rogers, Mastrangelo, Carvalho & Mitchell, hereby brings his Motion to Dismiss Plaintiff's  
 20 Complaint in its entirety. Plaintiff's personal injury claims have been previously litigated and  
 21 judgment entered. Plaintiff's request for a second amended judgment should be dismissed because  
 22 the original judgment expired in 2014, was not properly renewed, and cannot be revived via an  
 23 amended judgment more than four years after it expired.

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

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

4 ROGERS, MASTRANGELO, CARVALHO &  
 5 MITCHELL

6  
 7 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
 700 South Third Street  
 8 Las Vegas, Nevada 89101  
 9 Attorneys for Defendant

10 NOTICE OF MOTION

11 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

12 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO DISMISS

13 will come on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_, 2018:

14 at \_\_\_\_ a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

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

16 ROGERS, MASTRANGELO, CARVALHO &  
 17 MITCHELL

18  
 19 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
 700 South Third Street  
 20 Las Vegas, Nevada 89101  
 Attorneys for Defendant

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## POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

Cheyenne Nalder, ("Cheyenne") alleges in her Complaint that she was injured in an accident in 2007. Cheyenne 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"). A 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. For unknown reasons, no payments other than Lewis' \$15,000 auto insurance policy limit have been paid on the Judgment. It is unknown what efforts James Nalder made to enforce the Judgment, if any. What is known is that he did not renew the Judgment before it expired in 2014, while Cheyenne was still a minor.

Despite the fact that Lewis' liability for any injuries Cheyenne may have sustained in the 2007 accident have already been adjudicated and judgment entered, Cheyenne 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. Cheyenne's request for a second amended judgment should be dismissed and she should be directed to file a motion.

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

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

## 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, a judgment was entered against him in the amount of \$3.5 million.<sup>1</sup> See Judgment, attached hereto as Exhibit "B." James Nalder as guardian ad litem for Cheyenne was the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires (unless renewed) 10 years, unless it is timely renewed. As such, the Judgment expired on June 3, 2014.

On March 22, 2018, nearly 10 years after the Judgment was entered, and nearly four (4) years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-07-549111-C, which is also assigned to this Court. Her Motion did not advise the Court that the Judgment she sought to amend had expired. The Court granted Cheyenne's Ex Parte Motion and issued an Amended Judgment on March 22, 2018. See Exhibit "C." Contemporaneous with the filing of the instant motion, Lewis filed a Motion for Relief from Judgment in Case No. A-07-549111-C, 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 (not 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, ll. 10 - 11.

///

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

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

### 4 III.

#### 5 MOTION TO DISMISS STANDARD

6 A defendant is entitled to dismissal when a plaintiff fails "to state a claim upon which relief can  
7 be granted." NRCP 12(b)(5). The Nevada Supreme Court has declared that the dismissal of a  
8 complaint is appropriate where "it appears beyond a doubt that [the plaintiff] could prove no set of  
9 facts which, if true, would entitle [the plaintiff] to relief." *Stew, LLC v. City of N. Las Vegas*,  
10 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

11 In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint.  
12 *Id.* As the Nevada Supreme Court held in *Baxter v. Quality Health*, 131 Nev. Adv. Op. 76, 357 P.3d  
13 at 930 (2015) "the court is not limited to the four corners of the complaint." Citing 5B Charles Alan  
14 Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d ed.2004). The  
15 *Baxter* Court also held that courts "may also consider unattached evidence on which the complaint  
16 necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the  
17 plaintiff's claim; and (3) the party questions the authenticity of the document." *Id.*, citing *United*  
18 *States v. Comptroller of the Currency*, 655 F.3d 984, 999 (9th Cir.2011) (internal quotation omitted). The  
19 *Baxter* Court continued "while presentation of matters outside the pleadings will convert the  
20 motion to dismiss to a motion for summary judgment, Fed.R.Civ.P. 12(d); NRCP 12(b), such  
21 conversion is not triggered by a court's consideration of matters incorporated by reference or integral  
22 to the claim," *Id.*, citing 5B Wright & Miller, *supra*, § 1357, at 376.

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

## IV.

## ARGUMENT

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

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

Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In 2008, the Nevada Supreme Court set forth a three-part test to be applied to determine when claim preclusion applies. *Five Star Capital Corp. v. Ruby*, 134 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Shattuck*, 134 Nev. Adv. Op. 28, 350 P.3d 80 (2015) (the modification is not applicable in this case). According to the *Five Star* test, claim preclusion applies when: (1) the parties in their prior cases are the same; (2) the final judgment is valid; and (3) the new action is based on the same claims that were or could have been brought in the first action. Cheyenne's claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for dismissal under the doctrine of claim preclusion.

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

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

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

///

1 As the *Five Star* Court noted, public policy supports claims preclusion in situations such as  
 2 this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a), noting  
 3 that "the purposes of claims preclusion are 'based largely on the ground that fairness to the defendant,  
 4 and sound judicial administration, require that at some point litigation over the particular controversy  
 5 come to an end' and that such reasoning may apply 'even though the substantive issues have not  
 6 been tried . . .'" *Id.* at 1058, 194 P.3d at 715. These policy reasons are applicable here. Lewis is  
 7 entitled to finality. A Judgment was already entered against him. Renewing the Judgment was not  
 8 Lewis' responsibility—that was the responsibility of Cheyenne's guardian ad litem, James Nalder.  
 9 Lewis should not be exposed to judgment being entered against him a second time due to Nalder's  
 10 failure to act.

11 Cheyenne's personal injury claims are the very type to which claims preclusion applies. The  
 12 public policy considerations supporting claims preclusion cited with approval by the Court in *Five*  
 13 *Star* apply to this action. The claims for personal injuries alleged in the Complaint should be  
 14 dismissed.

15 *B. Plaintiff's Request for a Second Amended Judgment Should Be Dismissed Because it is*  
 16 *not a Cause of Action*

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

22 *///*

23 *///*

24 *///*

25 *///*

26 *///*

27 *///*

28 *///*

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

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

7 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons  
8 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the  
9 controversy, and (3) the issue is ripe for judicial determination." *City of Clark, ex rel. Univ. Med.*  
10 *Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998), citing *Knittle v. Progressive*  
11 *Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 723, 725 (1996). Here, declaratory relief is not available  
12 because the issue as to whether the Amended Judgment or any future amended judgment is  
13 enforceable, or whether the statute of limitations has expired, is not ripe.

14 The conditions under where a justiciable controversy exists were addressed by the Nevada  
15 Supreme Court in *Kress v. Carey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a  
16 justiciable controversy does not exist, where "damage" . . . is merely apprehended or feared. . . . *Id.*  
17 at 28-29, 189 P.2d at 360. As the Court in *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986) noted,  
18 "the requirement of an actual controversy has been construed as requiring a concrete dispute  
19 admitting of an immediate and definite determination of the parties' rights." *Id.* at 526, 728 P.2d at  
20 444. Cheyenne's concern that any effort to enforce the Amended Judgment will be thwarted by a  
21 determination that the applicable statute of limitations bars such action is "apprehended or feared"  
22 but not existing presently, because she has not taken any action to enforce the Amended Judgment.

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

28 ///

1 "Ripeness focuses on the timing of the action rather than on the party bringing the action.  
2 The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the  
3 hardship to the parties of withholding judicial review, and (2) the suitability of the issues for  
4 review." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1224, 1230-31  
5 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003)). In  
6 the unpublished decision in *Cassady v. Main*, 2016 WL 412835, a copy of which is attached hereto  
7 as Exhibit "E," the Nevada Supreme Court noted that the plaintiff in that case would suffer no harm  
8 if declaratory relief were not considered, because he could file a complaint seeking direct redress for  
9 complaints. *Id.* at \*2. Similarly here, Cheyenne could have a court address her statute of  
10 limitations concerns in an action to execute on the Amended Judgment. There is no need for such  
11 a determination at this time.

12 Regardless as to whether Cheyenne's request for declaratory relief is appropriate at this  
13 juncture, Cheyenne's request for declaratory relief should be dismissed because there is no valid  
14 judgment to enforce. The original Judgment entered on June 3, 2008 expired on June 3, 2014. No  
15 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an Amended  
16 Judgment, entered on March 28, 2018. As demonstrated in Defendant's Motion for Relief From  
17 Judgment Pursuant to NRS 20.010, the Court should not have entered an Amended Judgment, and no  
18 other amended judgments should be entered. Nevada law does not permit renewal of expired  
19 judgments by amendment.

20 Nor is the deadline to file the appropriate documents to renew a judgment tolled by any  
21 statute or rule. The time limit to renew the Judgment was not tolled by Cheyenne's minority because  
22 her guardian ad litem, an adult, was the judgment creditor. The time limit to renew the Judgment was  
23 not tolled by the judgment creditor's absence from the state, because the requirement that a judgment  
24 be renewed is not a cause of action to which such tolling provisions might apply. Because no valid  
25 judgment exists, Cheyenne's request for declaratory relief regarding the spilling of the time to enforce  
26 a judgment should be dismissed as a matter of law.

27 ///

28



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 August, 2018.

ROGERS, MASTRANGELO, CARVALHO &  
MITCHELL

Stephen H. Rogers, Esq.  
Nevada Bar No. 6755  
700 South Third Street  
Las Vegas, Nevada 89101  
Attorneys for Defendant

DRAFT

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R., I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the \_\_\_\_ day of August, 2018, a true and correct copy of the foregoing **DEFENDANT'S MOTION TO DISMISS** was served upon the following counsel of record as indicated below:

David A. Stephens, Esq.  
 Stephens, Gourley & Bywater  
 3636 North Rancho Drive  
 Las Vegas, Nevada 89130  
 Telephone: (702) 656-2355  
 Facsimile: (702) 656-2776  
 Email: [dstephens@sgblawfirm.com](mailto:dstephens@sgblawfirm.com)  
 Attorneys for Plaintiff

☐ Via First Class, U.S. Mail, Postage  
 Prepaid  
☐ Via Facsimile  
☐ Via Hand-Delivery  
☒ Via Electronic Service Pursuant to  
 Rule 9 of the N.E.F.C.R.  
 (Administrative Order 14-2)

An employee of  
 Rogers, Mastrangelo, Carvalho & Mitchell

1 MREL  
 2 STEPHEN H. ROGERS, ESQ.  
 3 Nevada Bar No. 5755  
 4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
 5 700 South Third Street  
 6 Las Vegas, Nevada 89101  
 7 Phone (702) 383-3400  
 8 Fax (702) 384-1460  
 9 Email: [stogers@rmcmlaw.com](mailto:stogers@rmcmlaw.com)  
 10 Attorneys for Defendant.

- Line 6 page 3

11 DISTRICT COURT  
 12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

CASE NO.: 07A549111

DEPT. NO.: 29

15 vs.

16 GARY LEWIS and DOES I through [unclear]

17 Defendants.

18 DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60

19 Defendant, Gary Lewis, by and through his counsel, Stephen H. Rogers, Esq., of the law firm  
 20 of Rogers, Mastrangelo, Carvalho & Mitchell, hereby brings his Motion for Relief from Judgment  
 21 Pursuant to NRCP 60, asking that this Court declare as void the Amended Judgment entered on  
 22 March 28, 2018, because the underlying Judgment expired in 2014 and is not capable of being  
 23 revived.

24 ///

25 ///

26 ///

27 ///

28 ///

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

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

4 ROGERS, MASTRANGELLO, CARVALHO &  
 5 MITCHELL

6  
 7 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
 700 South Third Street  
 8 Las Vegas, Nevada 89101  
 Attorneys for Defendant

10 **NOTICE OF MOTION**

11 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

12 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION FOR RELIEF  
 13 FROM JUDGMENT PURSUANT TO NRCP 60 will come on for hearing before the above-  
 14 entitled Court on the \_\_\_\_ day of \_\_\_\_ 2018 at \_\_\_\_ a.m. in Department XXIX of the  
 15 Eighth Judicial District Court, Clark County, Nevada.

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

17 ROGERS, MASTRANGELLO, CARVALHO &  
 18 MITCHELL

19  
 20 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
 700 South Third Street  
 21 Las Vegas, Nevada 89101  
 Attorneys for Defendant

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

POINTS AND AUTHORITIES

I

INTRODUCTION

This Court made a mistake of law based on incomplete/incorrect facts presented in an Ex Parte Motion to Amended Judgment, when entering the Order 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 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 on 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 NRCF 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 an accident which occurred on July 8, 2007. Cheyenne, who was then a minor, claimed that she suffered injuries from the accident. On October 9, 2007, Cheyenne, through her guardian ad litem, James Nalder, presumably a relative, 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.* Eventually, a judgment was entered against him in the amount of \$3.5 million. See Judgment, attached hereto.

///

///

///

///

1 as Exhibit "B." The Judgment was entered on June 3, 2008.<sup>1</sup> James Nalder as guardian ad litem for  
 2 Cheyenne is the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires by  
 3 limitation in six (6) years. 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) years  
 5 after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne  
 6 Nalder, Individually" ("Ex Parte Motion"). Her Motion did not advise the Court that the Judgment  
 7 she sought to amend had expired. Rather, it cited two statutes, NRS 11.280 and 11.300, without  
 8 explaining why they were applicable to her request, and asked the Court to amend the Judgment to  
 9 be in her name alone. In short, the Court was not put on notice that it was being asked to ostensibly  
 10 revive an expired judgment.

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

13 As the Judgment had expired and an Amended Judgment could not be issued to revive it,  
 14 Lewis brings the instant Motion pursuant to NRCP 60(b), to void the Amended Judgment and  
 15 declare that the original Judgment has expired.

### 16 III.

#### 17 ARGUMENT

##### 18 A. The Judgment Expired on June 3, 2014.

19 Nevada law provides that the statute of limitations for execution upon a judgment is six (6)  
 20 years. NRS 11.190(1)(a). The judgment creditor may renew a judgment (and therefore the statute  
 21 of limitations), for an additional six years by following the procedure mandated by NRS 17.214. The  
 22 mandated procedures were not followed. Therefore the Judgment expired.

23 NRS 17.214(1)(a) sets forth the procedure that must be followed to renew a judgment. A  
 24 document titled "Affidavit of Renewal" containing specific information outlined in the statute must  
 25 be filed with the clerk of court where the judgment is filed within 90 days before the date the  
 26 judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No

27  
 28 <sup>1</sup>Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(C).

1 such Affidavit of Renewal was filed by James Nalder, the judgment creditor. Cheyenne was still a  
2 minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment  
3 was recorded, and the judgment debtor must be served. No evidence of recordation (if such was  
4 required) or service on Lewis is present in the record.

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

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

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

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

18 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six-  
19 year "catch all" provision of NRS 11.090(1)(g). *Leven* at 403, 168 P.3d at 715 ("An action on a  
20 judgment or its renewal must be commenced within six years under NRS 11.190(1)(a); thus a  
21 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS  
22 17.214, provides for any tolling of the time period to renew a judgment.

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

24 Setting aside the fact that the deadline to renew a judgment is not an action to which statutes  
25 of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS 17.214 were  
26 tolled by her minority are apt for a few reasons. First, the tolling statute cited by Cheyenne, NRS  
27 11.280, does not universally toll all statutes of limitations while a plaintiff is a minor. Rather, it is  
28 expressly limited to actions involving sales of probate estates.

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

4 Emphasis added. NRS 11.260 applies to actions to recover a estate sold by a guardian. NRS 11.270  
 5 applies to actions to recover estates sold by an executor or administrator. Neither of those causes of  
 6 action are at issue here. Therefore, NRS 11.280 would not authorize tolling the deadline for the  
 7 renewal of a judgment while a judgment creditor was a minor. This statute would not apply in any  
 8 instance because the judgment creditor, James, was not a minor, and so did not have a legal  
 9 disability.

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

14 As Cheyenne was not the judgment creditor at any time prior to the date of the issuance of  
 15 the Amended Judgment, anyone looking at the Judgment would believe that it expired on June 4,  
 16 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were given  
 17 credence, either the judgment never expired, because she was the real party in interest and was a  
 18 minor at the time, the Judgment would have otherwise expired or the judgment did expire but was  
 19 revived upon her reaching the age of majority. To adopt this proposition would frustrate the certainty  
 20 NRS 17.214 was enacted to promote -- the reliability of title to real property.

21 If tolling of deadlines to amend judgments were sanctioned, title to real property owned by  
 22 anyone who had overbeen a judgment debtor would be clouded, as a title examiner would not know  
 23 whether a judgment issued more than six years prior had expired pursuant to statute, or was still  
 24 valid, or could be revived when a real party in interest who was a minor reached the age of majority.  
 25 As the Court held in *Leven*, one of the primary reasons for the need to strictly comply with NRS  
 26 17.214's recordation requirement is to "procure reliability of title searches for both creditors and  
 27 debtors since any lien on real property created when a judgment is recorded continues upon that  
 28 judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance with the notice



1 requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor.

2 *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe  
3 that the judgment has expired and he need take no further action to defend himself against execution.

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

5 Cheyenne's Ex Parte Motion next cites NRS 11.300, which provides "if, when the cause of  
6 action shall accrue against a person, the person is out of the State, the action may be commenced  
7 within the time herein limited after the person's return to the State; and if after the cause of action  
8 shall have accrued the person departs from the State, the time of the absence shall not be part of the  
9 time prescribed for the commencement of the action." Cheyenne's argument that the deadline to  
10 renew the Judgment are tolled by NRS 11.300 fails because, again, renewing a judgment is not a  
11 cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada  
12 regarding judgments, held in *F/S Manufacturing v. Kensmore*, 798 N.W.2d 853 (N.D. 2011),  
13 "Because the statutory procedure for renewal by affidavit is not a separate action to renew the  
14 judgment, the specific time period [provided to renew] cannot be tolled under [the equivalent to NRS  
15 11.300] based on a judgment debtor's absence from the state." *Id.* at 853.

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

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

26 NRCp 60(b) allows this Court to relieve a party from a final judgment due to mistake (NRCp  
27 60(b)(1)) or because a judgment is void (NRCp 60(b)(4)). Both of these provisions apply.

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

1 Because the Ex Parte Motion was ex parte, it was not served on Lewis nor did he have an  
2 opportunity to make the Court aware that the Judgment had already expired on its own terms, and  
3 that Cheyenne's proposition that the deadline to renew the judgment was tolled was inapt. The Ex  
4 Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not been  
5 properly renewed. Had the Court been fully apprised of the facts, it likely would not have granted  
6 the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, a motion to set  
7 aside the amended judgment on the basis of mistake is timely as it is made within six months of the  
8 entry of the judgment. This Court should rectify the mistake and void the Amended Judgment in  
9 accordance with NRCF 60(b)(1).

10 2. *The Amended Judgment is void*

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

16 IV.

17 CONCLUSION

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

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

21 ROGERS, MASTRANGELO, CARVALHO &  
22 MITCHELL

23  
24 Stephen H. Rogers, Esq.  
25 Nevada Bar No. 5755  
26 700 South Third Street  
27 Las Vegas, Nevada 89101  
28 Attorneys for Defendant

**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R., I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the \_\_\_\_ day of August, 2018, a true and correct copy of the foregoing **DEPENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served upon the following counsel of record as indicated below:

David A. Stephens, Esq.  
 Stephens, Gourley & Bywater  
 3636 North Rancho Drive  
 Las Vegas, Nevada 89130  
 Telephone: (702) 656-2355  
 Facsimile: (702) 656-2776  
 Email: [dstephens@sgblawfirm.com](mailto:dstephens@sgblawfirm.com)  
*Attorneys for Plaintiff*

☐ Via First Class, U.S. Mail, Postage  
 Prepaid  
☐ Via Facsimile  
☐ Via Hand-Delivery  
☒ Via Electronic Service Pursuant to  
 Rule 9 of the N.E.F.C.R.  
 (Administrative Order 14-2)

An Employee of  
 Rogers, Mastrangelo, Carvalho & Mitchell

# **EXHIBIT “D”**

## **TO AFFIDAVIT**



CHRISTENSEN LAW  
www.toljuryhelpnow.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@rmcmjlaw.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.

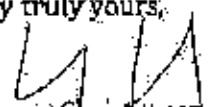
1. A judgment creditor or a judgment creditor's successor in interest may renew a judgment which has not been paid by:

(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 "E"**

## **TO AFFIDAVIT**



Attorneys At Law  
Stephen H. Rogers  
Rebecca L. Mastrangelo  
Daniel E. Carvalho  
Bart Mitchell\*  
Imran Anwar  
Charles A. Michalek  
Dawn L. Davis\*  
Marissa A. Temple  
WILL C. MITCHELL  
Kimberly C. Boel  
\*Of Counsel  
\*Also admitted in AZ

August 23, 2018

**Via Email:** [thomasc@injuryhelpnow.com](mailto:thomasc@injuryhelpnow.com)

Thomas F. Christensen, Esq.  
Christensen Law Office, LLC  
1000 South Valley View Blvd.  
Las Vegas, Nevada 89107

**Re: Cheyenne Nalder v. Gary Lewis**  
**Court Case Nos.: A-07-549111-C and A-18-772220-C**

Dear Tommy:

You have advised that, as Mr. Lewis' personal counsel, I will not be permitted to speak with him. As such, I will not be able to defend him with respect to the amended judgment and the current Complaint. You have also advised that I am not to copy him on any letters. As I copied him on my initial letter, I ask that you advise him that I cannot represent him as he will communicate with me.

Sincerely,

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

Dictated by Stephen Rogers, Esq.  
Signed in his absence

Stephen H. Rogers, Esq.

SHR/mms

cc: Gary Lewis

M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 082318.wpd



**bcc: United Automobile Insurance Company**  
**Brandon Carroll (via email)**  
**Michael Harvey (via email)**

# **EXHIBIT "F"**

## **TO AFFIDAVIT**

**Carolyn Mangundayao**

**From:** Steve Rogers  
**Sent:** Friday, September 07, 2018 8:12 AM  
**To:** Carolyn Mangundayao; Thomas Christensen; breenamtz@me.com  
**Cc:** Reception  
**Subject:** RE: Gary Lewis

Tom:

In response to your second 09/06/18 email, you'll recall that you declined my request that you conference Mr. Lewis in on our 08/13/18 phone call. My request confirms that I was agreeable to your participation in my communications with Mr. Lewis.

I will convey to UAIC your wish to retain Mr. Arntz to represent Mr. Lewis.

Please contact me with any questions.

Steve

(please f that there is a typo in the concluding line of my 08/23/18 letter: "he will communicate with me" inaccurately omitted the word "not")



Stephen H. Rogers, Esq.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

700 South Third Street

Las Vegas, Nevada 89101

Telephone: (702) 383-3400

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**From:** Carolyn Mangundayao  
**Sent:** Friday, September 07, 2018 7:55 AM  
**To:** Thomas Christensen <thomasc@injuryhelpnow.com>; Steve Rogers <srogers@rmcmllaw.com>; breenamtz@me.com  
**Cc:** Reception <reception1st@injuryhelpnow.com>  
**Subject:** RE: Gary Lewis

See attached.

Thank you.



ROGERS  
MASTRANGELO  
CARVALHO &  
MITCHELL

*Carolyn Mangundayao*

Legal Assistant to Stephen H. Rogers, Esq., Bert O. Mitchell, Esq. & William C. Mitchell, Esq.  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL

700 South Third Street

Las Vegas, Nevada 89101

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From: Thomas Christensen [<mailto:thomasc@injuryhelpnow.com>]

Sent: Thursday, September 06, 2018 5:48 PM

To: Steve Rogers <[rogers@rmcmllaw.com](mailto:rogers@rmcmllaw.com)>; [breenamtz@ma.com](mailto:breenamtz@ma.com)

Cc: Carolyn Mangundayao <[cmangundayao@rmcmllaw.com](mailto:cmangundayao@rmcmllaw.com)>; Reception <[receptionist@injuryhelpnow.com](mailto:receptionist@injuryhelpnow.com)>

Subject: Gary Lewis

Stephen,

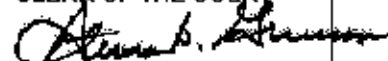
What is the date of your letter and how was it delivered? We do not have that letter. Please forward it to us. Given your dual representation of UAIC and Mr Lewis and that you feel communication with Mr Lewis through my office is not acceptable we think it better to allow Breen Arntz to represent Mr Lewis's interest in these two actions as independent counsel. Could you make a request that UAIC pay for independent counsel? Thank you.

Tommy Christensen

Christensen Law Offices

# EXHIBIT “K”

Electronically Filed  
9/13/2018 12:26 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 STPJ (CIV)  
2 David A. Stephens, Esq.  
3 Nevada Bar No. 00902  
4 Stephens & 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,

Case No. A-18-772220-C

11 vs.

Dept. No. XXIX

12 GARY LEWIS,

13 Defendant.

14 STIPULATION TO ENTER JUDGMENT

15 Date: n/a  
16 Time: n/a

17 Gary Lewis, through his attorney, B. Breen Arntz, Esq., and Cheyenne Nalder, through her  
18 attorney, David A. Stephens, Esq., to hereby stipulate as follows:

19 1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.  
20 2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the  
21 present.

22 3. Gary Lewis has been a resident and subject to service of process in California from 2010  
23 to the present.

24 4. Plaintiff obtained a judgment against GARY LEWIS which was entered on August 26,  
25 2008. Because the statute of limitations on the 2008 judgment had been tolled as a result of GARY  
26 LEWIS' absence from the State of Nevada pursuant to NRS 11.300, Plaintiff obtained an amended  
27 judgment that was entered on May 18, 2018.

28 5. Plaintiff filed an action on the judgment under *Mandlebaum v. Gregovich*, 50 P. 849, 851

1 (Nev. 1897), in the alternative, with a personal injury action should the judgment be invalid.

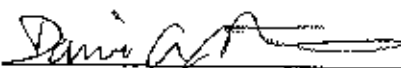
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis  
3 does not want to incur greater fees or damages.

4 7. Cheyenne Nalder is willing to allow judgment to enter in the amount of the judgment plus  
5 interest minus the payment of \$15,000.00 and without additional damages, attorney fees or costs.  
6 Plaintiff is also willing to accept the judgment so calculated as the resulting judgment of the  
7 alternatively pled injury claim. Plaintiff will not seek additional attorney fees from Defendant.

8 8. The parties stipulate to a judgment in favor of Cheyenne Nalder in the sum of  
9 \$3,500,000.00, plus interest through September 4, 2018 of \$2,211,820.41 minus \$15,000.00 paid for  
10 a total judgment of \$5,696,820.41, with interest thereon at the legal rate from September 4, 2018, until  
11 paid in full.

12 9. The attached judgment may be signed and entered by the Court.

13 Dated this 12 day of September, 2018

14  
15 

16 David A. Stephens, Esq.  
17 Nevada Bar No. 00902  
18 Stephens & Bywater  
3636 North Rancho Drive  
Las Vegas, Nevada 89130  
Attorney for Cheyenne Nalder

14  
15 

16 E. Brian Arntz, Esq.  
17 Nevada Bar No. 03853  
18 5545 Mountain Vista, #E  
Las Vegas, NV 89120  
Attorney for Gary Lewis

1 JMT (CIV)  
2 David A. Stephens, Esq.  
3 Nevada Bar No. 00902  
4 Stephens & Bywater, P.C.  
5 3636 North Rancho Drive  
6 Las Vegas, Nevada 89130  
7 Telephone: (702) 656-2355  
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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,

17 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

18 JUDGMENT

19 Date: n/a

20 Time: n/a

21 Pursuant to the stipulation of the parties, and good cause appearing therefore,

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff Cheyenne Nalder  
23 have and recover judgment from Defendant Gary Lewis in the sum of three million five hundred  
24 thousand dollars, (\$3,500,000.00), plus prejudgment interest through September 4, 2018 in the sum  
25 of two million two hundred eleven thousand eight hundred twenty and 41/100 dollars,  
26 (\$2,211,820.41), minus fifteen thousand dollars, (\$15,000.00), previously paid to Cheyenne Nalder,

27 ///

28 ///

///



1 for a total judgment of five million six hundred ninety six thousand eight hundred twenty and 41/100  
2 dollars, (\$5,696,820.41), with interest thereon at the legal rate from September 4, 2018, until paid in  
3 full.

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

5  
6  
7 \_\_\_\_\_  
8 DISTRICT JUDGE

9 Submitted by:

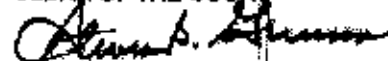
10 STEPHENS & BYWATER, P.C.

11  
12 \_\_\_\_\_  
13 DAVID A. STEPHENS, ESQ.

14 Nevada Bar No. 00902  
15 3636 North Rancho Drive  
16 Las Vegas, Nevada 89130  
17 Attorneys for Plaintiff  
18  
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28

# EXHIBIT “L”

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10/24/2018 1:38 PM  
Steven D. Grierson  
CLERK OF THE COURT



1 TPC

2 Thomas Christensen, Esq.  
3 Nevada Bar No. 2326  
4 1000 S. Valley View Blvd.  
5 Las Vegas, Nevada 89107  
6 T: (702) 870-1000  
7 F: (702) 870-6152  
8 courtnotices@injuryhelpnow.com  
9 Attorney for Third Party Plaintiff

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 Cheyenne Nalder )  
11 Plaintiff, )

12 vs. )

13 Gary Lewis, )  
14 Defendant. )

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

15 United Automobile Insurance Company, )  
16 Intervenor, )

17 Gary Lewis, )  
18 Third Party Plaintiff, )

19 vs. )

20 United Automobile Insurance Company, )  
21 Randall Tindall, Esq. and Resnick & Louis, P.C, )  
22 and DOES I through V, )  
23 Third Party Defendants. )

24 THIRD PARTY COMPLAINT

25 Comes now Cross-claimant/Third-party Plaintiff, GARY LEWIS, by and through his  
26 attorney, Thomas Christensen, Esq. and for his Cross-Claim/Third party complaint against the  
27 cross-defendant/third party defendants, United Automobile Insurance Co., Randall Tindall,  
28 Esq., and Resnick & Louis, P.C., for acts and omissions committed by them and each of them,

1 as a result of the finding of coverage on October 30, 2013 and more particularly states as  
2 follows:  
3

4 1. That Gary Lewis was, at all times relevant to the injury to Cheyenne Nalder, a  
5 resident of the County of Clark, State of Nevada. That Gary Lewis then moved his residence to  
6 California at the end of 2008 and has had no presence for purposes of service of process in  
7 Nevada since that date.

8 2. That United Automobile Insurance Company, hereinafter referred to as "UAIC",  
9 was at all times relevant to this action an insurance company doing business in Las Vegas,  
10 Nevada.  
11

12 3. That third-party defendant, Randall Tindall, hereinafter referred to as "Tindall,"  
13 was and is at all times relevant to this action an attorney licensed and practicing in the State of  
14 Nevada. At all times relevant hereto, third-party Defendant, Resnick & Louis, P.C. was and is a  
15 law firm, which employed Tindall and which was and is doing business in the State of Nevada.  
16

17 4. That the true names and capacities, whether individual, corporate, partnership,  
18 associate or otherwise, of Defendants, DOES I through V, are unknown to cross-claimant, who  
19 therefore sues said Defendants by such fictitious names. cross-claimant is informed and  
20 believes and thereon alleges that each of the Defendants designated herein as DOE is  
21 responsible in some manner for the events and happenings referred to and caused damages  
22 proximately to cross-claimant as herein alleged, and that cross-claimant will ask leave of this  
23 Court to amend this cross-claim to insert the true names and capacities of DOES I through V,  
24 when the same have been ascertained, and to join such Defendants in this action.  
25

26 5. Gary Lewis ran over Cheyenne Nalder (born April 4, 1998), a nine-year-old girl  
27 at the time, on July 8, 2007.

28 6. This incident occurred on private property.

1           7.       Lewis maintained an auto insurance policy with United Auto Insurance  
2 Company ("UAIC"), which was renewable on a monthly basis.

3  
4           8.       Before the subject incident, Lewis received a statement from UAIC instructing  
5 him that his renewal payment was due by June 30, 2007.

6           9.       The renewal statement also instructed Lewis that he remit payment prior to the  
7 expiration of his policy "[t]o avoid lapse in coverage."

8           10.      The statement provided June 30, 2007 as the effective date of the policy.

9           11.      The statement also provided July 31, 2007 as the expiration date of the policy.

10           12.     On July 10, 2007, Lewis paid UAIC to renew his auto policy. Lewis's policy  
11 limit at this time was \$15,000.00.

12  
13           13.     Following the incident, Cheyenne's father, James Nalder, extended an offer to  
14 UAIC to settle Cheyenne's injury claim for Lewis's policy limit of \$15,000.00.

15           14.     UAIC never informed Lewis that Nalder offered to settle Cheyenne's claim.

16           15.     UAIC never filed a declaratory relief action.

17           16.     UAIC rejected Nalder's offer.

18           17.     UAIC rejected the offer without doing a proper investigation and claimed that  
19 Lewis was not covered under his insurance policy and that he did not renew his policy by June  
20 30, 2007.

21  
22           18.     After UAIC rejected Nalder's offer, James Nalder, on behalf of Cheyenne, filed a  
23 lawsuit against Lewis in the Nevada state court.

24           19.     UAIC was notified of the lawsuit but declined to defend Lewis or file a  
25 declaratory relief action regarding coverage.

26           20.     Lewis failed to appear and answer the complaint. As a result, Nalder obtained a  
27 default judgment against Lewis for \$3,500,000.00.  
28

1           21.     Notice of entry of judgment was filed on August 26, 2008.

2           22.     On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of  
3 contract, an action on the judgment, breach of the implied covenant of good faith and fair  
4 dealing, bad faith, fraud, and violation of NRS 686A.310.  
5

6           23.     Lewis assigned to Nalder his right to "all funds necessary to satisfy the  
7 Judgment." Lewis left the state of Nevada and located in California prior to 2010. Neither Mr.  
8 Lewis nor anyone on his behalf has been subject to service of process in Nevada since 2010.  
9

10          24.     Once UAIC removed the underlying case to federal district court, UAIC filed a  
11 motion for summary judgment as to all of Lewis's and Nalder's claims, alleging Lewis did not  
12 have insurance coverage on the date of the subject collision.

13          25.     The federal district court granted UAIC's summary judgment motion because it  
14 determined the insurance contract was not ambiguous as to when Lewis had to make payment to  
15 avoid a coverage lapse.

16          26.     Nalder and Lewis appealed to the Ninth Circuit. The Ninth Circuit reversed and  
17 remanded the matter because Lewis and Nalder had facts to show the renewal statement was  
18 ambiguous regarding the date when payment was required to avoid a coverage lapse.  
19

20          27.     On remand, the district court entered judgment in favor of Nalder and Lewis and  
21 against UAIC on October 30, 2013. The Court concluded the renewal statement was ambiguous  
22 and therefore, Lewis was covered on the date of the incident because the court construed this  
23 ambiguity against UAIC.

24          28.     The district court also determined UAIC breached its duty to defend Lewis, but  
25 did not award damages because Lewis did not incur any fees or costs in defense of the Nevada  
26 state court action.  
27  
28

1           29. Based on these conclusions, the district court ordered UAIC to pay the policy  
2 limit of \$15,000.00.

3           30. UAIC made three payments on the judgment: on June 23, 2014; on June 25, 2014;  
4 and on March 5, 2015, but made no effort to defend Lewis or relieve him of the judgment  
5 against him.

6           31. UAIC knew that a primary liability insurer's duty to its insured continues from  
7 the filing of the claim until the duty to defend has been discharged.

8           32. UAIC did an unreasonable investigation, did not defend Lewis, did not attempt to  
9 resolve or relieve Lewis from the judgment against him, did not respond to reasonable  
10 opportunities to settle and did not communicate opportunities to settle to Lewis.

11           33. Both Nalder and Lewis appealed to the Ninth Circuit, which ultimately led to  
12 certification of the first question to the Nevada Supreme Court, namely, whether an insurer that  
13 breaches its duty to defend is liable for all foreseeable consequential damages to the breach.

14           34. After the first certified question was fully briefed and pending before the Nevada  
15 Supreme Court, UAIC embarked on a new strategy putting their interests ahead of Lewis's in  
16 order to defeat Nalder's and Lewis's claims against UAIC.

17           35. UAIC mischaracterized the law and brought new facts into the appeal process that  
18 had not been part of the underlying case. UAIC brought the false, frivolous and groundless  
19 claim that neither Nalder nor Lewis had standing to maintain a lawsuit against UAIC without  
20 filing a renewal of the judgment pursuant to NRS 17.214.

21           36. Even though UAIC knew at this point that it owed a duty to defend Gary Lewis,  
22 UAIC did not undertake to investigate the factual basis or the legal grounds or to discuss this  
23 with Gary Lewis, nor did it seek declaratory relief on Lewis's behalf regarding the statute of  
24 limitations on the judgment.  
25  
26  
27  
28

1 37. All of these actions would have been attempts to protect Gary Lewis.

2 38. UAIC, instead, tried to protect themselves and harm Lewis by filing a motion to  
3 dismiss Gary Lewis' and Nalder's appeal with the Ninth Circuit for lack of standing.

4 39. This was not something brought up in the trial court, but only in the appellate  
5 court for the first time.

6 40. This action could leave Gary Lewis with a valid judgment against him and no  
7 cause of action against UAIC.

8 41. UAIC ignored all of the tolling statutes and presented new evidence into the  
9 appeal process, arguing Nalder's underlying \$3,500,000.00 judgment against Lewis is not  
10 enforceable because the six-year statute of limitation to institute an action upon the judgment or  
11 to renew the judgment pursuant to NRS 11.190(1)(a) expired.

12 42. As a result, UAIC contends Nalder can no longer recover damages above the  
13 \$15,000.00 policy limit for breach of the contractual duty to defend. UAIC admits the Nalder  
14 judgment was valid at the time the Federal District Court made its decision regarding damages.

15 43. The Ninth Circuit concluded the parties failed to identify Nevada law that  
16 conclusively answers whether a plaintiff can recover consequential damages based on a  
17 judgment that is over six years old and possibly expired.

18 44. The Ninth Circuit was also unable to determine whether the possible expiration of  
19 the judgment reduces the consequential damages to zero or if the damages should be calculated  
20 from the date when the suit against UAIC was initiated, or when the judgment was entered by  
21 the trial court.

22 45. Both the suit against UAIC and the judgment against UAIC entered by the trial  
23 court were done well within even the non-tolled statute of limitations.  
24  
25  
26  
27  
28



1           46. Even though Nalder believed the law is clear that UAIC is bound by the  
2 judgment, regardless of its continued validity against Lewis, Nalder took action in Nevada and  
3 California to demonstrate the continued validity of the underlying judgment against Lewis.  
4

5           47. These Nevada and California state court actions are further harming Lewis and  
6 Nalder but were undertaken to demonstrate that UAIC has again tried to escape responsibility  
7 by making misrepresentations to the Federal and State Courts and putting their interests ahead  
8 of their insured's.

9           48. Cheyenne Nalder reached the age of majority on April 4, 2016.

10           49. Nalder hired David Stephens to obtain a new judgment. First David Stephens  
11 obtained an amended judgment in Cheyenne's name as a result of her reaching the age of  
12 majority.  
13

14           50. This was done appropriately by demonstrating to the court that the judgment was  
15 still within the applicable statute of limitations.

16           51. A separate action was then filed with three distinct causes of action pled in the  
17 alternative. The first, an action on the amended judgment to obtain a new judgment and have  
18 the total principal and post judgment interest reduced to judgment so that interest would now  
19 run on the new, larger principal amount. The second alternative action was one for declaratory  
20 relief as to when a renewal must be filed base on when the statute of limitations, which is  
21 subject to tolling provisions, is running on the judgment. The third cause of action was, should  
22 the court determine that the judgment is invalid, Cheyenne brought the injury claim within the  
23 applicable statute of limitations for injury claims - 2 years after her majority.  
24

25           52. Nalder also retained California counsel, who filed a judgment in California, which  
26 has a ten year statute of limitations regarding actions on a judgment. Nalder maintains that all  
27 of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the  
28

1 judgment; but out of an abundance of caution and to maintain the judgment against Lewis, she  
2 brought them to demonstrate the actual way this issue should have been litigated in the State  
3 Court of Nevada, not at the tail end of an appeal.

4  
5 53. UAIC did not discuss with its insured, GARY LEWIS, his proposed defense, nor  
6 did it coordinate it with his counsel Thomas Christensen, Esq.

7 54. UAIC hired attorney Stephen Rogers, Esq. to represent GARY LEWIS,  
8 misinforming him of the factual and legal basis of the representation. This resulted in a number  
9 of improper contacts with a represented client.

10 55. Thomas Christensen explained the nature of the conflict and Lewis's concern  
11 regarding a frivolous defense put forth on his behalf. If the state court judge is fooled into an  
12 improper ruling that then has to be appealed in order to get the correct law applied damage  
13 could occur to Lewis during the pendency of the appeal.

14 56. A similar thing happened in another case with a frivolous defense put forth by  
15 Lewis Brisbois. The trial judge former bar counsel, Rob Bare, dismissed a complaint  
16 erroneously which wasn't reversed by the Nevada Supreme Court until the damage from the  
17 erroneous decision had already occurred.

18 57. UAIC's strategy of delay and misrepresentation was designed to benefit UAIC,  
19 but harm GARY LEWIS.

20 58. In order to evaluate the benefits and burdens to Lewis and likelihood of success of  
21 the course of action proposed by UAIC and each of the Defendants, Thomas Christensen asked  
22 for communication regarding the proposed course of action and what research supported it. It  
23 was requested that this communication go through Thomas Christensen's office because that  
24 was Gary Lewis's desire, in order to receive counsel prior to embarking on a course of action.  
25  
26  
27  
28

1           59. Christensen informed Stephen Rogers, Esq. that when Gary Lewis felt the  
2 proposed course by UAIC was not just a frivolous delay and was based on sound legal research  
3 and not just the opinion of UAIC's counsel, that it could be pursued.  
4

5           60. Stephen Rogers, Esq. never adequately responded to requests.

6           61. Instead, UAIC obtained confidential client communications and then misstated  
7 the content of these communications to the Court. This was for UAIC's benefit and again  
8 harmed Gary Lewis.

9           62. UAIC, without notice to Lewis or any attorney representing him, then filed two  
10 motions to intervene, which were both defective in service on the face of the pleadings.  
11

12           63. In the motions to intervene, UAIC claimed that they had standing because they  
13 would be bound by and have to pay any judgment entered against Lewis.

14           64. In the motions to intervene, UAIC fraudulently claimed that Lewis refused  
15 representation by Stephen Rogers.

16           65. David Stephens, Esq., counsel for Naider in her 2018 action, through diligence,  
17 discovered the filings on the court website. He contacted Matthew Douglas, Esq., described the  
18 lack of service, and asked for additional time to file an opposition.  
19

20           66. These actions by UAIC and counsel on its behalf are a violation of NRPC 3.5A.

21           67. David Stephens thereafter filed oppositions and hand-delivered courtesy copies to  
22 the court. UAIC filed replies. The matter was fully briefed before the in chambers "hearing,"  
23 but the court granted the motions citing in the minuted order that "no opposition was filed."

24           68. The granting of UAIC's Motion to Intervene after judgment is contrary to NRS  
25 12.130, which states: Intervention: Right to intervention; procedure, determination and costs;  
26 exception. 1. Except as otherwise provided in subsection 2: (a) Before the trial ...  
27  
28

1           69.     These actions by State Actor David Jones ignore due process, the law, the United  
2 States and Nevada constitutional rights of the parties. The court does the bidding of insurance  
3 defense counsel and clothes defense counsel in the color of state law in violation of 42 USCA  
4 section 1983.  
5

6           70.     David Stephens and Breen Arntz worked out a settlement of the action and  
7 signed a stipulation. This stipulation was filed and submitted to the court with a judgment prior  
8 to the "hearing" on UAIC's improperly served and groundless motions to intervene.  
9

10          71.     Instead of signing the judgment and ending the litigation, the court asked for a  
11 wet signed stipulation as a method of delaying signing the stipulated judgment.  
12

13          72.     This request was complied with prior to the September 19, 2018 "hearing" on the  
14 Motion to Intervene. The judge, without reason, failed to sign the judgment resolving the case.  
15

16          73.     Instead, the judge granted the Motion to Intervene, fraudulently claiming, in a  
17 minute order dated September 26, 2018, that no opposition had been filed.  
18

19          74.     Randall Tindall, Esq. filed unauthorized pleadings on behalf of Gary Lewis on  
20 September 26, 2018.  
21

22          75.     UAIC hired Tindall to further its strategy to defeat Naider and Lewis' claims.  
23 Tindall agreed to the representation despite his knowledge and understanding that this strategy  
24 amounted to fraud and required him to act against the best interests of his "client" Lewis.  
25

26          76.     Tindall mischaracterized the law and filed documents designed to mislead the  
27 Court and benefit UAIC, to the detriment of Gary Lewis.  
28

          77.     These three filings by Randall Tindall, Esq. are almost identical to the filings  
proposed by UAIC in their motion to intervene.

          78.     Gary Lewis was not consulted and he did not consent to the representation.

          79.     Gary Lewis did not authorize the filings by Randall Tindall, Esq.

1           80. Gary Lewis himself and his attorneys, Thomas Christensen, Esq. and E. Breen  
2 Arntz, Esq., have requested that Tindall withdraw the pleadings filed fraudulently by Tindall.

3           81. Tindall has refused to comply and continues to violate ethical rules regarding  
4 Gary Lewis.  
5

6           82. Gary Lewis filed a bar complaint against Tindall, but State Actors Daniel Hooge  
7 and Phil Pattee dismissed the complaint claiming they do not enforce the ethical rules if there is  
8 litigation pending.

9           83. This is a false statement as Dave Stephens was investigated by this same state  
10 actor Phil Pattee while he was currently representing the client in ongoing litigation.

11           84. The court herein signed an order granting intervention while still failing to sign  
12 the judgment resolving the case.  
13

14           85. UAIC, and each of the defendants, and each of the state actors, by acting in  
15 concert, intended to accomplish an unlawful objective for the purpose of harrasing Gary Lewis.

16           86. Gary Lewis sustained damage resulting from defendants' acts in incurring  
17 attorney fees, litigation costs, loss of claims, delay of claims, judgment against him and as more  
18 fully set forth below.  
19

20           87. Defendants and each of them acting under color of state law deprived plaintiff of  
21 rights, privileges, and immunities secured by the Constitution or laws of the United States.

22           88. Gary Lewis has duly performed all the conditions, provisions and terms of the  
23 agreements or policies of insurance with UAIC relating to the claim against him, has furnished  
24 and delivered to UAIC full and complete particulars of said loss and has fully complied with all  
25 the provisions of said policies or agreements relating to the giving of notice as to said loss, and  
26 has duly given all other notices required to be given by Gary Lewis under the terms of such  
27 policies or agreements.  
28

1           89. That Gary Lewis had to sue UAIC in order to get protection under the policy.  
2 That UAIC, and each of them, after being compelled to pay the policy limit and found to have  
3 failed to defend its insured, now fraudulently claims to be defending him when in fact it is  
4 continuing to delay investigating and processing the claim; not responding promptly to requests  
5 for settlement; doing a one-sided investigation, and have compelled Gary Lewis to hire counsel  
6 to defend himself from Nalder, Tindall and UAIC. All of the above are unfair claims  
7 settlement practices as defined in N.R.S. 686A.310 and Defendant has been damaged in an  
8 amount in excess of Ten Thousand Dollars (\$10,000.00) as a result of UAIC's delay in settling  
9 and fraudulently litigating this matter.  
10

11           90. That UAIC failed to settle the claim within the policy limits when given the  
12 opportunity to do so and then compounded that error by making frivolous and fraudulent claims  
13 and represented to the court that it would be bound by any judgment and is therefore responsible  
14 for the full extent of any judgment against Gary Lewis in this action.  
15

16           91. UAIC and Tindall's actions have interfered with the settlement agreement Breen  
17 Aritz had negotiated with David Stephens and have caused Gary Lewis to be further damaged.  
18

19           92. The actions of UAIC and Tindall, and each of them, in this matter have been  
20 fraudulent, malicious, oppressive and in conscious disregard of Gary Lewis' rights and therefore  
21 Gary Lewis is entitled to punitive damages in an amount in excess of Ten Thousand Dollars  
22 (\$10,000.00).  
23

24           93. Upon information and belief, at all times relevant hereto, that all Defendants, and  
25 each of them, whether individual, corporate, associate or otherwise, were the officers, directors,  
26 brokers, agents, contractors, advisors, servants, partners, joint venturers, employees and/or  
27 alter-egos of their co-Defendants, and were acting within the scope of their authority as such  
28

1 agents, contractors, advisors, servants, partners, joint venturers, employees and/or alter-egos  
2 with the permission and consent of their co-Defendant.

3  
4 94. That during their investigation of the claim, UAIC, and each of them, threatened,  
5 intimidated and harassed Gary Lewis and his counsel.

6 95. That the investigation conducted by UAIC, and each of them, was done for the  
7 purpose of denying coverage and not to objectively investigate the facts.

8 96. UAIC, and each of them, failed to adopt and implement reasonable standards for  
9 the prompt investigation and processing of claims.

10 97. That UAIC, and each of them, failed to affirm or deny coverage of the claim  
11 within a reasonable time after proof of loss requirements were completed and submitted by  
12 Gary Lewis.

13  
14 98. That UAIC, and each of them, failed to effectuate a prompt, fair and equitable  
15 settlement of the claim after liability of the insured became reasonably clear.

16 99. That UAIC, and each of them, failed to promptly provide to Gary Lewis a  
17 reasonable explanation of the basis in the Policy, with respect to the facts of the Nalder claim  
18 and the applicable law, for the delay in the claim or for an offer to settle or compromise the  
19 claim.  
20

21 100. That because of the improper conduct of UAIC, and each of them, Gary Lewis  
22 was forced to hire an attorney.

23 101. That Gary Lewis has suffered damages as a result of the delayed investigation,  
24 defense and payment on the claim.

25 102. That Gary Lewis has suffered anxiety, worry, mental and emotional distress as a  
26 result of the conduct of UAIC, and each of the Defendants.  
27  
28

1           103. The conduct of UAIC, and each of the Defendants, was oppressive and malicious  
2 and done in conscious disregard for the rights of Gary Lewis.  
3

4           104. UAIC, and each of them, breached the contract existing between UAIC and Gary  
5 Lewis by their actions set forth above which include but are not limited to:

- 6           a. Unreasonable conduct in investigating the loss;  
7           b. Unreasonable failure to affirm or deny coverage for the loss;  
8           c. Unreasonable delay in making payment on the loss;  
9           d. Failure to make a prompt, fair and equitable settlement for the loss;  
10           e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or  
11 making payment on the loss;  
12           f. Failing to defend Gary Lewis;  
13           g. Fraudulent and frivolous litigation tactics;  
14           h. Filing false and fraudulent pleadings;  
15           i. Conspiring with others to file false and fraudulent pleadings;  
16

17           91. As a proximate result of the aforementioned breach of contract, Gary Lewis has  
18 suffered and will continue to suffer in the future damages as a result of the delayed payment on  
19 the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert  
20 those figures when such have been fully ascertained.  
21

22           92. As a further proximate result of the aforementioned breach of contract, Gary  
23 Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages  
24 and out of pocket expenses, all to their general damage in excess of \$10,0000.  
25

26           93. As a further proximate result of the aforementioned breach of contract, Gary  
27 Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of  
28 them, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.



1           94. That UAIC, and each of them, owed a duty of good faith and fair dealing  
2 implied in every contract.

3           95. That UAIC, and each of the them, breached the covenant of good faith and fair  
4 dealing by their actions which include but are not limited to:

- 5
- 6       a. Unreasonable conduct in investigating the loss;
  - 7       b. Unreasonable failure to affirm or deny coverage for the loss;
  - 8       c. Unreasonable delay in making payment on the loss;
  - 9       d. Failure to make a prompt, fair and equitable settlement for the loss;
  - 10      e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
  - 11         making payment on the loss;
  - 12      f. Failing to defend Gary Lewis;
  - 13      g. Fraudulent and frivolous litigation tactics;
  - 14      h. Filing false and fraudulent pleadings;
  - 15      i. Conspiring with others to file false and fraudulent pleadings;
  - 16
  - 17

18           96. As a proximate result of the aforementioned breach of the covenant of good faith  
19 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a  
20 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis  
21 prays leave of the court to insert those figures when such have been fully ascertained.

22           97. As a further proximate result of the aforementioned breach of the covenant of  
23 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional  
24 distress, and other incidental damages and out of pocket expenses, all to their general damage in  
25 excess of \$10,0000.

26           98. As a further proximate result of the aforementioned breach of the covenant of  
27 good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this  
28

1 claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and  
2 necessarily incurred in connection therewith.

3  
4 99. The conduct of UAIC, and each of the Defendants, was oppressive and malicious  
5 and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore  
6 entitled to punitive damages.

7 100. That UAIC, and each of the Defendants, acted unreasonably and with knowledge  
8 that there was no reasonable basis for their conduct, in their actions which include but are not  
9 limited to:

- 10  
11 a. Unreasonable conduct in investigating the loss;  
12 b. Unreasonable failure to affirm or deny coverage for the loss;  
13 c. Unreasonable delay in making payment on the loss;  
14 d. Failure to make a prompt, fair and equitable settlement for the loss;  
15 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or  
16 making payment on the loss;  
17 f. Failing to defend Gary Lewis;  
18 g. Fraudulent and frivolous litigation tactics;  
19 h. Filing false and fraudulent pleadings;  
20 i. Conspiring with others to file false and fraudulent pleadings;

21  
22 101. As a proximate result of the aforementioned breach of the covenant of good faith  
23 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a  
24 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis  
25 prays leave of the court to insert those figures when such have been fully ascertained.

26  
27 102. As a further proximate result of the aforementioned breach of the covenant of  
28 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional

1 distress, and other incidental damages and out of pocket expenses, all to their general damage in  
2 excess of \$10,000.

3  
4 103. As a further proximate result of the aforementioned breach of the covenant of  
5 good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this  
6 claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and  
7 necessarily incurred in connection therewith.

8  
9 104. The conduct of UAIC, and each of the Defendants, was oppressive and malicious  
10 and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore  
11 entitled to punitive damages.

12 105. That UAIC, and each of them, violated NRS 686A.310 by their actions which  
13 include but are not limited to:

- 14 a. Unreasonable conduct in investigating the loss;  
15 b. Unreasonable failure to affirm or deny coverage for the loss;  
16 c. Unreasonable delay in making payment on the loss;  
17 d. Failure to make a prompt, fair and equitable settlement for the loss;  
18 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or  
19 making payment on the loss;  
20 f. Failing to defend Gary Lewis;  
21 g. Fraudulent and frivolous litigation tactics;  
22 h. Filing false and fraudulent pleadings;  
23 i. Conspiring with others to file false and fraudulent pleadings;  
24

25 106. As a proximate result of the aforementioned violation of NRS 686A.310, Gary  
26 Lewis has suffered and will continue to suffer in the future damages as a result of the delayed  
27  
28

1 payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court  
2 to insert those figures when such have been fully ascertained.  
3

4 107. As a further proximate result of the aforementioned violation of NRS 686A.310,  
5 Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental  
6 damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

7 108. As a further proximate result of the aforementioned violation of NRS 686A.310,  
8 Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each  
9 of them, are liable for their attorney's fees reasonably and necessarily incurred in connection  
10 therewith.  
11

12 109. The conduct of UAIC, and each of them, was oppressive and malicious and done  
13 in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore entitled to  
14 punitive damages.

15 110. That UAIC, and each of them, had a duty of reasonable care in handling Gary  
16 Lewis' claim.  
17

18 111. That at the time of the accident herein complained of, and immediately prior  
19 thereto, UAIC, and each of them, in breaching its duty owed to Gary Lewis, was negligent and  
20 careless, inter alia, in the following particulars:

- 21 a. Unreasonable conduct in investigating the loss;  
22 b. Unreasonable failure to affirm or deny coverage for the loss;  
23 c. Unreasonable delay in making payment on the loss;  
24 d. Failure to make a prompt, fair and equitable settlement for the loss;  
25 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or  
26 making payment on the loss;  
27 f. Failing to defend Gary Lewis;  
28

- g. Fraudulent and frivolous litigation tactics;
- h. Filing false and fraudulent pleadings;
- i. Conspiring with others to file false and fraudulent pleadings;

112. As a proximate result of the aforementioned negligence, Gary Lewis has suffered and will continue to suffer in the future damages as a result of the delayed payment on the claim in a presently unascertained amount. Plaintiff prays leave of the court to insert those figures when such have been fully ascertained.

113. As a further proximate result of the aforementioned negligence, Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

114. As a further proximate result of the aforementioned negligence, Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, is liable for his attorney's fees reasonably and necessarily incurred in connection therewith.

115. The conduct of UAIC, and each of them, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis are therefore entitled to punitive damages.

116. The aforementioned actions of UAIC, and each of them, constitute extreme and outrageous conduct and were performed with the intent or reasonable knowledge or reckless disregard that such actions would cause severe emotional harm and distress to Gary Lewis.

117. As a proximate result of the aforementioned intentional infliction of emotional distress, Gary Lewis has suffered severe and extreme anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

1           118. As a further proximate result of the aforementioned negligence, Gary Lewis was  
2 compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are  
3 liable for his attorney's fees reasonably and necessarily incurred in connection therewith.  
4

5           119. The conduct of UAIC, and each of them, was oppressive and malicious and done  
6 in conscious disregard for the rights of Gary Lewis and Gary Lewis is therefore entitled to  
7 punitive damages.

8           120. That Randall Tindall, as a result of being retained by UAIC to represent Gary  
9 Lewis, owed Gary Lewis the duty to exercise due care toward Gary Lewis.  
10

11           121. Randall Tindall also had a heightened duty to use such skill, prudence, and  
12 diligence as other members of the profession commonly possess and exercise.

13           122. Randall Tindall breached the duty of care by failing to communicate with Gary  
14 Lewis, failing to follow his reasonable requests for settlement, case strategy and communication.

15           123. That breach caused harm to Gary Lewis including but not limited to anxiety,  
16 emotional distress, delay, enhanced damages against him.

17           124. Gary Lewis was damaged by all of the above as a result of the breach by Randall  
18 Tindall.  
19

20           WHEREFORE, Gary Lewis prays judgment against UAIC, Tindall and each of  
21 them, as follows:  
22

23           1. Indemnity for losses under the policy including damages paid to Mr. Lewis,  
24 attorney fees, interest, emotional distress, and lost income in an amount in excess of  
25 \$10,000.00;

26           2. General damages in an amount in excess of \$10,000.00;

27           3. Punitive damages in an amount in excess of \$10,000.00;  
28

0000620

**Abstract**

**00000000000000000000000000000000**

1. **Introduction**

\_\_\_\_\_

20

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) and NEFCR 9, I certify that I am an employee of CHRISTENSEN LAW OFFICES and that on this 24<sup>th</sup> day of Oct, 2018, I served a copy of the foregoing Cross-Claim/Third Party Complaint as follows:


xx E-Served through the Court's e-service system to the following registered recipients:

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An employee of CHRISTENSEN LAW OFFICES



# EXHIBIT “M”



**UNITED AUTOMOBILE INSURANCE COMPANY**

**NEVADA PERSONAL AUTOMOBILE POLICY**

United Automobile Insurance Company  
P.O. Box 14950  
Las Vegas, NV 89114 - 4950

**WARNING:**

Any person who knowingly files a statement of claim containing any misrepresentation or any false, incomplete or misleading information may be guilty of a criminal act punishable under state or federal law, or both, and may be subject to civil penalties and MAY LEAD TO THE DENIAL OF A CLAIM.

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## AGREEMENT

We agree with you, in return for your premium payment, to insure you subject to the terms of this policy. These policy provisions, along with your application, the declarations page and any applicable endorsements will constitute your policy of insurance. We will insure you for the coverages and Limits of Liability for which a premium is shown in the Declarations of this policy.

### DEFINITIONS USED THROUGHOUT THIS POLICY

- (1) "We," "us," and "our" mean the Company providing this insurance.
- (2) "You" and "your" mean the Policyholder named in the Declarations and spouse if living in the same household.
- (3) "Bodily injury" means bodily injury, sickness, disease or death.
- (4) "Property damage" means damage to or destruction of tangible property, including loss of its use.
- (5) "Car" means a licensed and registered automobile of the private passenger type designed for use upon a public road. "Car" also means a vehicle with a load capacity of 1,500 pounds or less of the pick-up or van type not used in any business. This definition shall not include:
  - (a) motorcycles, scooters, mopeds;
  - (b) midget cars;
  - (c) golf mobiles;
  - (d) tractors;
  - (e) farm machinery;
  - (f) any vehicle operated on rails or crawler treads;
  - (g) or any vehicle used as a residence or premises.
  - (h) go carts
- (6) "Utility trailer" means a vehicle designed to be towed by a private passenger car.
- (7) "Your insured car" means:
  - (a) the car owned by you described in the Declarations.
  - (b) a car you acquire during the policy period.
    1. "Replacement Car": The car must replace the car described in the Declarations. It will have the same coverages as the car it replaced with the exception of Car Damage Coverage. If you want coverage to apply to the replacement car you must notify us within 30 days of the date you acquire it.  
When you ask us to add Car Damage Coverage for the replacement car, such coverage will be in effect no earlier than the time and day on which you ask us to add the coverage. If you ask us to add Car Damage Coverage in writing, the coverage will not be in effect until 12:01 A.M. on the day following the date of the postmark shown on the envelope containing your request. If a postage meter is used on the envelope containing your request to add Car Damage Coverage, coverage will be in effect no earlier than the time and day your request is received by us. All insurance for the car being replaced is ended when you take delivery of the replacement car.
    2. "Newly Acquired Additional Car": When you ask us to add an additional car, not previously owned by you, a relative, or a resident, acquired by you while this policy is in effect, you must notify us of the newly acquired additional car within 14 days of date it was acquired to have liability coverage apply.
    3. "Substitute Car": any substitute car or utility trailer not owned by you, a relative, or a resident being temporarily used by you with the express permission of the owner. The car must be a substitute for another car covered which is withdrawn from normal use due to breakdown, repair, servicing, loss or destruction.

For purposes of this policy, any car leased by you under a written agreement for a continuous period of at least six months shall be deemed to be owned by you.

- (8) "Non-owned car" means a car used by you with the express permission of the owner and not owned by, furnished, or available for the regular use of you, a relative or a resident.
- (9) "Private passenger car" means a car of the private passenger type with not less than four wheels. This definition shall not include a van or pick-up truck.
- (10) "Auto business" means the business or occupation of selling, leasing, repairing, servicing, delivering, testing, storing or parking cars.
- (11) "Business" includes trade, profession, or occupation, or any use where compensation of any type is received.
- (12) "Relative" means a person living in your household and related to you by blood, marriage or adoption, including a ward or foster child.
- (13) "Resident" means a person, other than a relative, living in your household.
- (14) "Occupying" means in, on, getting into or out of.
- (15) "State" means the District of Columbia and any state of the United States of America.
- (16) "Racing" means preparation for any racing, speed, demolition or stunting contest or activity. Racing also includes participation in the event itself, whether or not such event, activity or contest is organized.
- (17) "Crime" means any felony and or misdemeanor and any act of eluding the police.
- (18) "Diminution in value" means the actual loss in market or resale value of property which results from a loss.

- (19) **"Loss"** means sudden, direct, and accidental loss or damage.
- (20) **"Regular use"** means authorized use of a car without being required to ask permission each time it is used or recurring use of a car.
- (21) **"Compensatory money damages"** means any money required to be paid to compensate a person for economic or non-economic damages resulting from bodily injury or property damage.
- (22) **"Punitive or Exemplary damages"** means any money required to be paid for any purpose other than compensatory money damages for bodily injury or property damage.

## **PART 1 - LIABILITY**

### **COVERAGE A - LIABILITY COVERAGE INSURING AGREEMENT**

We will pay damages for bodily injury or property damage for which an insured person is legally liable because of the ownership or use of your insured car or a non-owned car. The bodily injury or property damage must be caused by an auto accident.

We will defend any suit or settle any claim for damages as we think appropriate. We will not defend or settle any suit or claim after we reach our limit of liability. We have no duty to defend any suit or settle any claim for bodily injury or property damage not covered under this policy.

### **ADDITIONAL DEFINITIONS USED IN THIS PART ONLY**

As used in this Part, "insured person" means:

- (1) you, a relative or resident.
- (2) any person using your insured car with your express or implied permission.
- (3) any other person or organization but only with respect to legal liability for acts or omissions of:
  - (a) a person covered under this Part while using your insured car; or
  - (b) you while using a car other than your insured car. The car must not be owned or hired by that person or organization.

As used in this Part, "insured person" means with respect to a non-owned car only you, a relative or a resident.

### **ADDITIONAL PAYMENTS**

We will pay, in addition to our limit of liability:

- (1) all costs we incur in the settlement of a claim or defense of a suit.
- (2) all costs assessed against you in our defense of a suit.
- (3) interest on damages awarded in a suit we defend accruing after a judgment is entered. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
- (4) Any other reasonable expenses incurred at our request.

### **EXCLUSIONS**

We do not provide coverage for bodily injury or property damage:

- (1) resulting from the ownership or use of a vehicle when used to carry persons or property for a charge. This includes rental of your insured car to others. This exclusion does not apply to shared expense car pools.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes, but is not limited to, mail, newspaper, floral and food delivery.
- (3) caused intentionally by or at the direction of an insured person.
- (4) for which a person is an insured under a nuclear energy liability insurance policy. This exclusion applies even if the limits of that policy are exhausted.
- (5) to an employee of an insured person arising in the course of employment by an insured person. Coverage does apply to a domestic employee unless workers' compensation benefits are required or available for that employee.
- (6) resulting from the ownership or use of a vehicle by any person while that person is employed or otherwise engaged in a business, unless we were told of this use before an accident, and an additional premium was charged.
- (7) to property owned or being transported by an insured person.
- (8) to property rented to, used by or in the care of an insured person, except a residence or private garage.
- (9) resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels.
- (10) arising out of the ownership or use of any vehicle, other than your insured car, which is owned by or available for regular use by you, a relative or resident.
- (11) resulting from the use of any vehicle for racing.
- (12) assumed by an insured person under any contract or agreement.
- (13) arising out of the ownership, maintenance or use of a car when rented or leased to others by any insured person.
- (14) incurred while the car is used for towing a trailer designed for use with other than a private passenger car.
- (15) For any amount in excess of the minimum financial responsibility laws of the state where the accident occurs or the State of

Nevada resulting from the use of a car by a person specifically excluded.

- (16) due to or resulting from war, insurrection, rebellion, riot, or revolution.
- (17) arising out of the use of:
  - (a) your insured car by a person without your express or implied permission; or
  - (b) a car by any person without the owner's express or implied permission
- (18) arising out of actual, alleged, or threatened discharge, dispersal, release, or escape of any pollutant except if it is sudden and accidental and arises directly from collision of your insured car.
- (19) in the event of an accident occurring outside the state of Nevada, we will not pay any amount in excess of the minimum financial responsibility limits of that state, or greater than the minimum financial responsibility limits of Nevada, whichever is higher.
- (20) While the insured person is in the commission of a crime.
- (21) to any insured person or third party which results from the discharge of a firearm
- (22) for punitive or exemplary damages.
- (23) arising out of the operation of farm machinery.
- (24) as an insured driver of a non-owned vehicle, this insurance will be secondary to any and all insurance applicable to the non-owned vehicle operated by the insured with permission of the owner of said non-owned vehicle.
- (25) sustained by any person while using or operating your insured car while engaged in the business of selling, leasing, repairing, servicing, parking or storing motor vehicles. This includes testing, road testing and delivery.
- (26) After the sale or relinquished ownership of an insured car.

#### **FEDERAL TORT CLAIMS ACT EXCLUSION**

The following are not insured persons under PART I- LIABILITY of the policy:

- (1) the United States of America or any of its agencies.
- (2) any person for bodily injury or property damage arising from operation of a vehicle by that person as an employee of the United States Government.

#### **CONFORMITY WITH STATE FINANCIAL RESPONSIBILITY LAWS**

When we certify this policy as proof under a state financial responsibility law, it will comply with that law to the extent of the coverage and limits of liability required by that law.

You agree to reimburse us for any payment made by us that we would not have been obligated to make under the terms of this policy.

#### **OUT OF STATE INSURANCE**

If you are traveling in a state that has compulsory motor vehicle insurance requirements for non-residents, we will automatically provide the required liability insurance. We will not provide any coverage under the no-fault law or any other similar law of any other state.

#### **LIMITS OF LIABILITY**

The limits of liability shown in the Declarations apply subject to the following:

- (1) the bodily injury liability limits for "each person" is the maximum we will pay as damages for bodily injury to one person in one accident, including, but not limited to, derivative claims of a relative.
- (2) subject to the bodily injury liability limit for "each person," the bodily injury liability limit for "each accident" is the maximum we will pay as damages for all bodily injury to two or more persons in any one accident.
- (3) the property damage liability limit for "each accident" is the maximum we will pay for all damages to property in one accident.
- (4) all bodily injury or property damage limits are subject to Exclusion (19), if applicable.

All bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions, or occurrence shall be considered as arising out of one accident.

We will pay no more than the maximum limit of liability regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

We will reduce any amount payable under this coverage to an injured person by any amount paid to that person under PART III, Uninsured/Underinsured Motorists Coverage, of this policy.

#### **OTHER INSURANCE**

If there is other applicable liability insurance on a loss covered by this Part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits. However, any insurance afforded under this part for a vehicle you do not own is excess over any other collectible insurance.

No insurance is afforded on newly acquired vehicles if there is other valid and/or collectible insurance.

**PART II - MEDICAL PAYMENTS****COVERAGE B - MEDICAL PAYMENTS COVERAGE INSURING AGREEMENT**

We will pay reasonable expenses incurred for necessary medical and funeral services because of **bodily injury**,

- (1) sustained by an **insured person**; and
- (2) caused by accident.

We will pay those expenses incurred within one year from the date of the accident.

**ADDITIONAL DEFINITIONS USED IN THIS PART ONLY**

As used in this Part "**insured person**" means:

- (1) Any person while occupying your insured car while the car is being used by you, a relative, a resident or another person if that person has your express or implied permission.

**EXCLUSIONS**

This coverage does not apply for **bodily injury** to any person:

- (1) sustained while occupying your insured car when used to carry persons for a charge. This exclusion does not apply to shared expense car pools.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes but is not limited to mail, newspaper, floral, and food delivery.
- (3) sustained while occupying any vehicle located for use as a residence or premises.
- (4) sustained while occupying a motorized vehicle with less than four wheels.
- (5) sustained while occupying or through being struck by any vehicle, other than your insured car, which is owned by or furnished or available for regular use by you, a relative or resident.
- (6) sustained while occupying a vehicle while the vehicle is being used in the business of an insured person.
- (7) occurring during the course of employment if benefits are payable or must be provided under a workers' compensation law or similar law.
- (8) caused by war, insurrection, rebellion, riot, revolution, nuclear reaction, radiation or radioactive contamination.
- (9) while in the commission of a crime.
- (10) sustained while occupying a vehicle without the owner's express permission to do so.
- (11) resulting from the use of a car by a person or persons specifically excluded.
- (12) while involved in any racing event

**LIMITS OF LIABILITY**

The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

**NO DUPLICATION, STACKING OR COMBINING OF MEDICAL COVERAGE**

If you have more than one car insured by us, we will not pay any insured person for bodily injury sustained in any one accident, more than the limit of "Medical Payment Coverage" which you have on any one of those insured cars.

Any amount paid or payable for medical expenses under the Liability or Uninsured/Underinsured Motorists coverages of this policy shall be deducted from the amounts payable under this Part. No payment will be made under this coverage unless the injured person or his legal representative agrees that any payment shall be applied toward any settlement or judgment that person receives under Part I or Part III of this policy.

**OTHER INSURANCE**

Any payment we make under this Part to an insured person shall be prorated with any other applicable auto medical payments insurance.

We will not be liable under this policy for any medical expense paid or payable under the provisions of any:

- (1) premises insurance providing coverage for medical expenses; or
- (2) individual blanket, or group accident, disability or hospitalization plan; or
- (3) medical, surgical, hospital, or funeral services, benefit or reimbursement plan; or
- (4) worker's compensation or disability benefits law or any similar law.



## ARBITRATION

If any **insured person** and we do not agree that the **insured person** is legally entitled to recover **compensatory money damages** or on the amount of **compensatory money damages**, then the dispute will be arbitrated. However, disputes concerning coverage under this part may not be arbitrated.

The **insured person** may make a written demand for arbitration. We and the **insured person** will each select an arbitrator. The two selected arbitrators will then select a third arbitrator. If they cannot agree within 30 days then upon request of the **insured person** or us, the third arbitrator will be selected by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear equally the expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** lives. Local rules of law and evidence will apply. Any decision of the arbitrators will not be binding.

## PART III UNINSURED/UNDERINSURED MOTORIST COVERAGE C - UNINSURED/UNDERINSURED MOTORISTS COVERAGE INSURING AGREEMENT

We will pay **compensatory damages** which an **insured person** is legally entitled to recover from the owner or operator of an **Uninsured or Underinsured motor vehicle** because of **bodily injury**,

- (a) sustained by an **insured person**; and
- (b) caused by an accident.

The owner's or operator's liability for these damages must be caused by an accident and arise out of the ownership, maintenance or use of the **uninsured or underinsured motor vehicle**.

Any judgment for damages arising out of a suit brought without our written consent is not binding on us.

## ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part:

- (1) **"Insured person"** means:
  - (a) you, a relative or a resident.
  - (b) any other person occupying your insured car.
- (2) **Underinsured motor vehicle** means a land motor vehicle or trailer of any type for which the sum of the damages for bodily injury which the insured has incurred and is legally entitled to recover from the owner or operator of the other vehicle up to the limits of his own coverage to the extent that those damages exceed the limits of the coverage for bodily injury carried by that owner or operator at the time of the accident and is:
  - (a) on the Declarations page of the insured as Underinsured Motorists Coverage.
 However, **underinsured motor vehicle** does not include:
  - (b) an uninsured motor vehicle.
  - (c) a vehicle insured under the liability coverage of the same policy of which this Underinsured Motorists Coverage is a part.
- (3) **Uninsured motor vehicle** means a land motor vehicle or trailer of any type:
  - (a) to which no liability bond or policy applies at the time of the accident.
  - (b) to which a liability bond or policy applies at the time of the accident. In this case, its limit for liability must be less than the minimum limit for liability specified by Nevada law.
  - (c) a hit-and-run vehicle whose owner or operator cannot be identified and which hits:
    - (i) the insured person;
    - (ii) a vehicle an insured person is occupying; or
    - (iii) your insured car.
  - (d) to which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
    - (i) denies coverage; or
    - (ii) is or becomes insolvent.

However, **uninsured motor vehicle** does not include:

- (a) an underinsured motor vehicle.

In addition, neither **uninsured** nor **underinsured motor vehicle** includes any vehicle or equipment:

- (a) owned by or furnished or available for the regular use of you, a relative, or a resident.
- (b) operated on rails or crawler treads.
- (c) designed mainly for use off public roads while not on public roads.
- (d) while located for use as a residence or premises.

**EXCLUSIONS**

This coverage does not apply for bodily injury:

- (1) to a person sustained while using a vehicle without the owner's express or implied permission to do so.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes but is not limited to mail, newspaper, floral, and food delivery.
- (3) to a person if that person or the legal representative of that person makes a settlement without our written consent.
- (4) to a person occupying or struck by a motor vehicle owned by you, a relative or a resident which is not insured for this coverage under this policy.
- (5) to a person occupying your insured car when used to carry persons or property for a charge. This exclusion does not apply to shared expense car pools.
- (6) resulting from the use of a car by a person or persons specifically excluded.
- (7) for punitive or exemplary damages.
- (8) to a person claiming Uninsured / Underinsured Motorists Coverage who does not notify the police within 24 hours if a hit and run driver is involved.
- (9) resulting from the use of an insured car while involved in any racing event.
- (10) resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels.
- (11) resulting from the discharge of a firearm.
- (12) which arises from an auto accident that does not involve physical contact with another vehicle.

This coverage shall not apply directly or indirectly to benefit:

- (a) any insurer or self-insurer under any of the following or similar law.
  - (i) workers' compensation law, or
  - (ii) disability benefits law.
- (b) any insurer of property.

**LIMITS OF LIABILITY****NO DUPLICATION, STACKING OR COMBINING OF UNINSURED MOTORIST BODILY INJURY COVERAGE**

If you have more than one car insured by us, we will not pay any injured person more than the limit of "Uninsured Motorist Injury Coverage" which you have on any one of those insured cars, regardless of the number of claims made or motor vehicles involved in the accident. Coverage on your other motor vehicles insured by us CANNOT be added, stacked together or combined.

- (1) The limits of liability shown in the Declarations for Uninsured Motorists Coverage or Underinsured Motorists Coverage apply subject to the following:
  - (a) the bodily injury liability limits for "each person" is the maximum we will pay as damages for bodily injury to one person in one accident, including, but not limited to, derivative claims of a relative.
  - (b) subject to the bodily injury liability limit for "each person," the bodily injury liability limit for "each accident" is the maximum we will pay as damages for all bodily injury to two or more persons in any one accident.
- (2) The limits of liability shall be reduced by all sums paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under PART I - LIABILITY of this policy.
- (3) Any amounts otherwise payable for damages under this coverage shall be reduced by all sums paid or payable because of the bodily injury under any of the following or similar laws:
  - (a) workers' compensation law, or
  - (b) disability benefits law.
- (4) Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under PART I - LIABILITY of this policy.
- (5) We will reduce any amount payable under this coverage to an injured person by any amount paid to that person under PART II, MEDICAL PAYMENTS COVERAGE, of this policy.
- (6) No one will be entitled to receive duplicate payments for the same elements of loss.

All bodily injury arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one accident.

We will pay no more than the maximum limit of liability as shown in the Declarations for Uninsured Motorists Coverage or Underinsured Motorists Coverage regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

**OTHER INSURANCE**

If there is other similar insurance on a loss covered by this Part we will pay our proportionate share as our limit of liability bears to the total limits of all applicable similar insurance. However, any insurance we provide for a vehicle you do not own is excess over any other applicable similar insurance.

**ARBITRATION**

If any insured person and we do not agree that the insured person is legally entitled to recover compensatory money damages or on the amount of compensatory money damages, then the dispute will be arbitrated. However, disputes concerning coverage under this part may not be arbitrated.

The insured person may make a written demand for arbitration. We and the insured person will each select an arbitrator. The two selected arbitrators will then select a third arbitrator. If they cannot agree within 30 days then upon request of the insured person or us, the third arbitrator will be selected by a judge of a court having jurisdiction.

Each party will pay the expenses it incurs and bear equally the expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in the county in which the insured person lives. Local rules of law and evidence will apply. Any decision of the arbitrators will not be binding.

**TRUST AGREEMENT**

If we pay you for a loss under this coverage:

- (1) We are entitled to recover from you an amount equal to such payment if there is a legal settlement made or a judgment paid on your behalf with or against any person or organization legally responsible for the loss.
- (2) You must hold in trust for us all rights to recover money which you have against the person or organization legally responsible for the loss.
- (3) You must do everything reasonable to secure our rights and do nothing to prejudice these rights.
- (4) If we ask, you must take necessary or appropriate action, through a representative designated by us, to recover payment as damages from the responsible person or organization.
- (5) You must execute and deliver to us any legal instrument or papers necessary to secure all rights and obligations of you and us as established here.
- (6) An insured person under this coverage must do nothing before or after a loss to prejudice our rights of recovery from any uninsured motorists.

**ADDITIONAL CONDITIONS UNDER THIS PART OF THE POLICY**

- (1) No claim can be brought against us unless the insured person has fully complied with all the terms of this policy.
- (2) No claim will accrue to an insured person under this part of the policy unless within two years from the date of the accident:
  - (a) the insured person gives us notice of the claim subject to the other terms and conditions of the policy; or
  - (b) an agreement between us and the insured person on any amount due under this part of the policy has been concluded.

**ADDITIONAL DUTIES UNDER THIS PART OF THE POLICY**

Any Insured person making a claim under this part of the policy shall:

- (1) Give us all the details about any bodily injury and any other information we request;
- (2) Be examined by physicians chosen and paid by us as often as we may reasonably require. Provide us with an authorization and list of medical providers which will allow us to obtain any and all medical records which we deem relevant to the claim made by you. If the insured person is no longer living or unable to act, his or her legal representative shall authorize us to obtain all medical reports and records;
- (3) As a condition precedent to receiving any benefits under this Policy, any person seeking benefits must cooperate with us in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by us when or as often as we may reasonably require at a place designated by us within a reasonable time after we are notified of the claim. Only the person being examined and his attorney may be present during the examination. A minor seeking benefits must submit to an examination with a guardian who may also be present;
- (4) Report a hit and run accident to the police or proper authorities within 24 hours.
- (5) Allow us to see and inspect the car that the insured person occupied in a hit and run accident.
- (6) Immediately send us a copy of all suit papers if the insured person or his or her legal representative sues the party liable for the accident for compensatory money damages.

**PART IV - CAR DAMAGE / PHYSICAL DAMAGE (COMPREHENSIVE & COLLISION)****COVERAGE D - CAR DAMAGE COVERAGE INSURING AGREEMENT**

We will pay for loss to your insured car:

- (1) caused by collision; or

(2) not caused by **collision**

less any applicable deductibles shown in the Declarations. The deductible shall apply separately to each loss. Coverage does not apply under this Part for a car or utility trailer not owned by you other than your insured car.

#### LOSS SETTLEMENT

We may pay the loss in money or repair or replace damaged or stolen property. Repair or replacement may be made with materials or equipment of the same like, kind, and quality. We may, at any time before the loss is paid or the property is replaced, return, at our expense, any stolen property either to you or to the address shown in the Declarations, with payment for any resulting damage. We may apply depreciation. We may keep all or part of the property at the agreed or appraised value. You do not have the right to abandon salvage to us.

#### ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part:

- (1) "Your insured car" means:
  - (a) The vehicle listed in the Declarations for this coverage.
  - (b) A vehicle you acquire during the policy period provided:
    - (i) it replaces the vehicle which was insured under the Car Damage portion of this policy; and
    - (ii) you notify us within 30 days of the date you acquire it.
  - (c) A car or utility trailer not owned by or furnished or available for the regular use of you, a relative or a resident while being used with the express permission of the owner.
- (2) "Insured person" means:
  - (a) You, a relative or resident.
  - (b) Any person using your insured car with your express permission.
- (3) "Collision" means the impact of your insured car with another object or upset of your insured car. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is loss not caused by collision.
- (4) "Comprehensive" (excluding collision) at the Company's option to have repaired or to pay for loss caused other than by collision to the owned automobile or to a non-owned automobile operated by an insured but only for the amount of each such loss in excess of the deductible amount stated in the Declaration as applicable hereto. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, shall not be deemed to be loss caused by collision.
- (5) "Loss" means sudden, direct and accidental loss of or damage to:
  - (a) your insured car;
  - (b) its original equipment, as available and permanently installed by the manufacturer as part of a standard option package at the time of purchase; or
  - (b) special equipment as described in the Declarations of this policy.
- (6) "Like kind and quality part" includes but is not limited to a replacement part for any vehicle obtained from another vehicle.

Loss shall not include confiscation of the vehicle by any governmental authority.

- (7) "Special Equipment" means equipment that was not installed by the manufacturer as part of a standard option package at the time of purchase. This includes but is not limited to:
  - (a) radios, stereos, CD players, tape or cassette players and their accessories;
  - (b) camper shells, toppers, and bed liners;
  - (c) custom interior work such as carpeting, seats, paneling or furniture;
  - (d) any equipment that modifies the vehicles standard appearance or performance;
  - (e) T-tops, moon roofs, sun roofs, nose bras, custom wheels and tires, custom paint work, decals and graphics; or
  - (i) utility trailers.

#### CAR STORAGE COVERAGE

We will pay up to \$10 a day with a maximum of \$300 for the cost of storage of your insured car in the event of a loss to your insured car for which coverage is provided under this Part, provided that you must cooperate with us in any effort deemed necessary by us to move your insured car to a storage free facility.

#### TOWING AND RENTAL COVERAGE

This coverage is only available when CAR DAMAGE (Comprehensive and Collision) coverage is purchased. If this optional coverage is purchased, in effect and indicated on the declaration page of the insured at the time of loss, we will pay the following:

1. Towing: \$50 per occurrence, up to \$100 per 12 month period.
2. Rental: \$25 per day to a maximum of \$450 within a 12 month period.

**NOTICE: This Towing & Rental coverage is limited to Comprehensive and Collision losses, not mechanical breakdowns.**

## EXCLUSIONS

We do not cover loss:

- (1) to your insured car while used to carry persons or property for a charge. This includes rental of your insured car to others. This exclusion does not apply to shared-expense car pools.
- (2) Resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes, but is not limited to, mail, newspaper, floral and food delivery.
- (3) caused by war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequences of any of these.
- (4) to sound reproducing equipment not permanently installed in the dash or console opening of your insured car.
- (5) to tapes, compact discs, or similar items used with sound equipment
- (6) to sound receiving or transmitting equipment designed for use as citizens band radios, two-way mobile radios, telephones, scanning monitor receivers, radar detectors, television sets, video cassette recorders, audio cassette recorders, personal computers, their accessories or antennas.
- (7) to awnings, cabanas, or equipment designed to provide living facilities.
- (8) resulting from prior loss or damage, manufacturer's defects, wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires. However, coverage does apply if the damage is the result of other loss covered by this policy.
- (9) to your insured car due to destruction or confiscation by governmental authorities because of use in illegal activities, or failure to bring it into compliance with the Environmental Protection Agency or the Department of Transportation.
- (10) to special equipment not described in the Declarations.
- (11) to refrigeration, cooling or sleeping facilities.
- (12) resulting from your or a family member's ownership, maintenance or use of your insured car in any racing event.
- (13) caused by the theft or conversion of your insured car by a person you have voluntarily entrusted your insured car to. This exclusion does not apply when your insured car is stolen from the person you loaned the car to, if the theft is reported to the police within 24 hours of the loss.
- (14) to your insured car arising out of or during its use for the transportation of any:
  - (a) explosive substance;
  - (b) flammable liquid, or
  - (c) similar hazardous materials; except transportation incidental to your ordinary household or farm activities.
- (15) to clothes, tools or personal effects.
- (16) to your insured car caused by or resulting from you acquiring your insured car from the seller without legal title available to you.
- (17) to any equipment which mechanically or structurally changes your insured car and results in an increase in performance.
- (18) resulting from the use or operation of your insured car in the commission of a crime or while driving under the influence of alcohol or illegal drug usage.
- (19) To your insured car caused intentionally by or at the direction of an insured person.
- (20) To your insured car while being operated by a person or persons specifically excluded.
- (21) To any vehicle not owned by you not caused by collision.
- (22) To any vehicle that is subject to any bailment lease, conditional sale or consignment agreement, not specifically declared and described in this policy.
- (23) To your insured car due to diminution in value.

## LIMIT OF LIABILITY

Our limit of liability for loss shall not exceed the lesser of:

- (1) the actual cash value of your insured car which was stolen or damaged; or
- (2) the amount necessary to repair or replace your insured car which was stolen or damaged; or
- (3) the amount necessary to repair or replace a utility trailer not owned by you, a relative or resident subject to a maximum of \$500.

However, in the event that the coverage applies to a car you do not own, our liability is limited to the highest actual cash value of your insured car described in the Declarations for which Car Damage Coverage has been purchased.

Special Equipment is not covered unless the value of the equipment has been reported to us prior to the loss and a premium has been paid for the additional coverage as described in the Declarations. Our limit of liability for this equipment shall be the lesser of:

- (1) the actual cash value; or
- (2) the declared value subject to a \$50 deductible.

Sound reproducing equipment and component parts shall be subject to a maximum limit of \$1,000 in the aggregate.

## OTHER INSURANCE

If there is other applicable similar insurance on a loss covered by this Part, we will pay only that proportion of the loss that our limit of liability bears to the total limits of all applicable similar insurance. However, any insurance afforded under this Part for a vehicle you do not own is excess over any other applicable similar insurance.

### APPRAISAL

You or we may demand appraisal of the loss. Each will appoint and pay a competent and licensed appraiser and will equally share other appraisal expenses. The appraisers will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of loss. An award in writing by any two will determine the amount payable subject to the terms of this policy.

### NO BENEFIT TO BAILEE

This insurance shall not in any way benefit any person or organization caring for or handling property including your insured car for a fee.

## PART V - NON-OWNER COVERAGE

This Part V applies only if the term "Non-Owner" appears on the Declarations of the policy. The purpose of "Non-Owner" Coverage is to insure the named insured against the liability imposed by the law upon the named insured for bodily injury to or death of any person or damage to property to the amounts and limits stated on the Declaration of this policy and growing out of the use or operation by the named insured within the continental limits of the United States or the Dominion of Canada of a non-owned automobile. If the term "Non-Owner" appears on the Declarations of the policy, then all the terms and conditions of the policy apply except as modified herein, and to the extent that any definition, term or provision of Part V conflicts with any definition, term or provision of any other Part of this policy, the purpose, definitions, terms and provisions of Part V shall control the other Part of this policy.

If this Part V applies then:

1) In Part I - Liability and in all other Parts incorporating said section "Insured Person" is deleted and the following is substituted: **Insured Person.** The only person insured under this policy is the named insured and his or her spouse, if a resident of the same household, and then only with respect to a non-owned automobile, provided the use and operation thereof is with the permission of its owner and within the scope of permission.

2) Part V Definitions to be substituted for definitions in Part I - Liability and as incorporated in other Parts or Conditions from Part I - Liability:

"Non-owned automobile" means an automobile not owned by or furnished for the regular use of the named insured or any resident of the household of the named insured.

"Your insured car" means any automobile owned by or furnished for the regular use of the named insured or a resident of the household of the named insured.

3) Part V definitions to be substituted in specified Parts and related Conditions:

For purpose of Part III - Uninsured / Underinsured Motorist Coverage and of Part II - Medical Payments Coverage:

"insured person" means the named insured and any relative of the named insured.

4) The following are added Exclusions:

In Part I - Liability:

(26) to any automobile owned by or furnished for the regular use of the named insured, or owned by or furnished for the regular use of a resident of the household of the named insured;

(27) to any automobile while used in a business or occupation of the named insured.

In Part II - Medical Payments:

(13) by arising out of the use, operation, or maintenance of any automobile owned by or furnished for the regular use of the named insured or a resident of the household of the named insured;

In Parts III - Uninsured / Underinsured Motorist Coverage:

(13) to injuries arising out of the operation, use or maintenance of a motor vehicle owned by or furnished for the regular use of the named insured, resident spouse or other resident of the named insured's household.

5) In all Parts, delete the Other Insurance section and replace it with:

**Other Insurance:** This insurance shall be excess insurance over any other valid and collectible insurance or self-insurance.

## PART VI - GENERAL PROVISIONS

### TWO OR MORE CARS INSURED

If there is an accident or loss to which this or any other automobile policy issued to you by us applies, the total limit of our liability under all the policies will not exceed the highest applicable limit of liability under any one policy. **YOU CANNOT STACK COVERAGES OR POLICIES.**

**NOTICE TO COMPANY**

Your notice to our authorized agent will be deemed to be notice to us.

**POLICY PERIOD, TERRITORY**

This policy applies only to accidents and losses during the policy period shown in the Declarations and occurring within the United States of America, its territories or possessions, or between their ports.

**CHANGES**

This policy and the Declarations include all the agreements between you and us relating to this insurance. No change or waiver may be effected in this policy except by endorsement issued by us. Messages left after normal business hours will not affect coverage. All changes are subject to underwriting review and approval. If a premium adjustment is necessary we will make it as of the effective date of the change. When we broaden coverage during the policy period without charge, the policy will automatically provide the broadened coverage when effective.

**SUIT AGAINST US**

We may not be sued unless there is full compliance with all terms of this policy. We may not be sued under PART I - Liability coverage until the obligation of an insured person to pay is finally determined. This determination can be made either by judgment against the person after actual trial or by written agreement of the person, the claimant and us. No one shall have any right to make us a party to a suit to determine the liability of an insured person.

No suit or action whatsoever shall be brought against us for the recovery of any claim under Part III - UNINSURED / UNDERINSURED MOTORISTS coverage unless same is commenced within twenty-four months next after the date of the accident.

**OUR RECOVERY RIGHTS**

In the event of a payment under this policy, we are entitled to all the rights of recovery that the person or organization to whom payment was made has against another. That person or organization must sign and deliver to us any legal papers relating to that recovery. They must also do whatever else is necessary to help us exercise those rights and do nothing after loss to prejudice our rights.

When a person has been paid damages by us under this policy and also recovers from another, the amount recovered shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

**ASSIGNMENT**

Interest in this policy may not be assigned without our written consent. If you die, the policy will cover for the remainder of the policy term:

- (1) any surviving spouse;
- (2) the legal representative of the deceased person while acting within the scope of duties of a legal representative while occupying your insured car.

**BANKRUPTCY**

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an insured person.

**CANCELLATION AND NON-RENEWAL**

This policy may be canceled during the policy period as follows:

- (1) You may cancel by:
  - (a) returning this policy to us; or
  - (b) giving us advance written notice of the future date cancellation is to take effect.
- (2) We may cancel by mailing to you at the address shown in the Declarations:
  - (a) at least 10 days notice:
    - (i) if cancellation is for nonpayment of premium; or
    - (ii) if notice is mailed during the first 69 days this policy is in effect and this is not a renewal policy; or
  - (b) at least 30 days notice in all other cases.
- (3) After this policy is in effect for 70 days, or if this is a renewal, we will cancel only:
  - (a) for nonpayment of premium; or
  - (b) if your driver's license or that of:
    - (i) any driver who lives with you; or

- (ii) any driver who customarily uses your insured car has been suspended or revoked; or
- (c) for fraud, willful misrepresentation or concealment on the part of any insured with respect to a material fact or circumstance relating to the issuance or continuation of this policy.

If we decide not to renew this policy, we will mail notice to you at the address shown in the Declarations. Notice will be mailed at least 30 days before the end of the policy period.

Proof of mailing any notice shall be sufficient proof of notice. The effective date of cancellation stated in a notice is the end of the policy period.

Upon cancellation, you may be entitled to a premium refund. Our making or offering a refund is not a condition of cancellation.

If we cancel this policy for a reason other than nonpayment of premium, any refund due will be computed on a daily pro-rate basis. Earned premium is calculated on a daily basis.

If you or we cancel, any premium due you of less than \$10 it will be refunded to you only upon your written request.

With regards to dormant accounts, as defined by the Unclaimed Property Act, and property deemed abandoned is subject to a dormancy charge of \$5 per month. This charge shall occur each consecutive month that the account remains dormant until such time the value of the property equals zero dollars.

#### **AUTOMATIC TERMINATION**

This policy will automatically terminate at the end of the current policy period if you or your representative does not accept our offer to renew it. Your failure to pay the required renewal premium when due means that you have declined our offer.

If the down payment check for a new policy or renewal term is not honored by the bank, the policy will be rescinded and no coverage will be afforded.

We will mail or deliver any premium billing notice for renewal of this policy to you, at the address shown in the Declarations.

If other insurance is obtained on your insured car, similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.

#### **FRAUD AND MISREPRESENTATION**

The statements made by you in the application are deemed to be your representations. If any representation contained in the application is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of facts or incorrect statements, this policy will be null and void from its inception.

If any representation contained in any notification of change is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of facts or incorrect statements, this policy will be null and void from the effective date of the change.

This policy will be void at our option if you or an insured person or any other individual act at or by the direction of you or any insured person has:

- (1) concealed or misrepresented any material fact; or
- (2) committed or attempted fraud concerning any matter regarding this policy whether before or after a loss.

#### **PART VII WHAT TO DO IN CASE OF AN AUTO ACCIDENT OR LOSS**

##### **NOTICE OF ACCIDENT OR LOSS**

In the event of an accident or loss, notice must be given to us promptly. The notice must give the time, place and circumstances of the accident or loss, including the names and addresses of injured persons and witnesses.

**FAILURE TO PROMPTLY REPORT A LOSS OR ACCIDENT TO US MAY JEOPARDIZE YOUR COVERAGE UNDER THIS POLICY.**

##### **OTHER DUTIES**

A person claiming any coverage under this policy must also:

- (1) cooperate with us and assist us in any matter concerning a claim or suit, including presence at a trial.
- (2) send us promptly any legal papers received relating to any claim or suit.
- (3) submit to physical examinations at our expense by doctors we select as often as we may reasonably require.
- (4) authorize us to obtain medical and other records including but not limited to credit and financial records.
- (5) submit a proof of loss under oath if required by us.



- (6) As a condition precedent to receiving any benefits under this Policy, any person seeking benefits must cooperate with us in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by us when or as often as we may reasonably require at a place designated by us within a reasonable time after we are notified of the claim. Only the person being examined and his attorney may be present during the examination. A minor seeking benefits must submit to an examination with a guardian who may also be present.
- (7) upon our request, allow us to obtain a written or recorded statement concerning the circumstances of the claim and any damages claimed.

#### CAR DAMAGE

A person claiming Car Damage Coverage must also:

- (1) take reasonable steps after loss to protect the car / and its equipment from further loss. We will pay reasonable expenses incurred in providing that protection.
- (2) report a theft of the car or its equipment to the police within 24 hours of discovering the theft.
- (3) allow us to inspect and appraise the damaged car before its repair or disposal.

#### PART VIII LOSS PAYEE CLAUSE

We will pay loss or damage due under this policy according to your interest and that of the loss payee if one is shown in the Declarations. We may make separate payments according to those interests.

We will not make payment to the loss payee for a loss under this policy if you or anyone acting on your behalf has violated the terms of this policy. This is inclusive, but not limited to fraud, material misrepresentation, material omission, racing, the commission of a crime or any other intentional damage or loss wantonly, or intentionally caused by you or the loss payee in the process of something done, or failed to do in violation of the terms of this agreement.

We may cancel this policy according to its terms. We will protect the loss payee's interest for 10 days after we mail them notice that the policy will terminate. If we pay the loss payee for any loss or damage suffered during that period, we have the right to recover the amount of any such payment from you.

If you fail to give proof of loss within the time allowed, the loss payee may protect its interest by filing a proof of loss within 30 days after that time.

The loss payee must notify us of any known change of ownership or increase in the risk. If it does not, it will not be entitled to any payment under this protection.

If we pay the loss payee under the terms of this protection for a loss not covered under the policy, we are subrogated to its rights against you. This will not affect the loss payee's right to recover the full amount of its claim. The loss payee must assign us its interest and transfer to us all supporting documents if we pay the balance due to the loss payee on the vehicle.

When the deductible amount shown in the Declarations Page for Car Damage coverage is less than \$250, the deductible amount applicable to losses payable to the loss payee under this coverage shall be \$250.

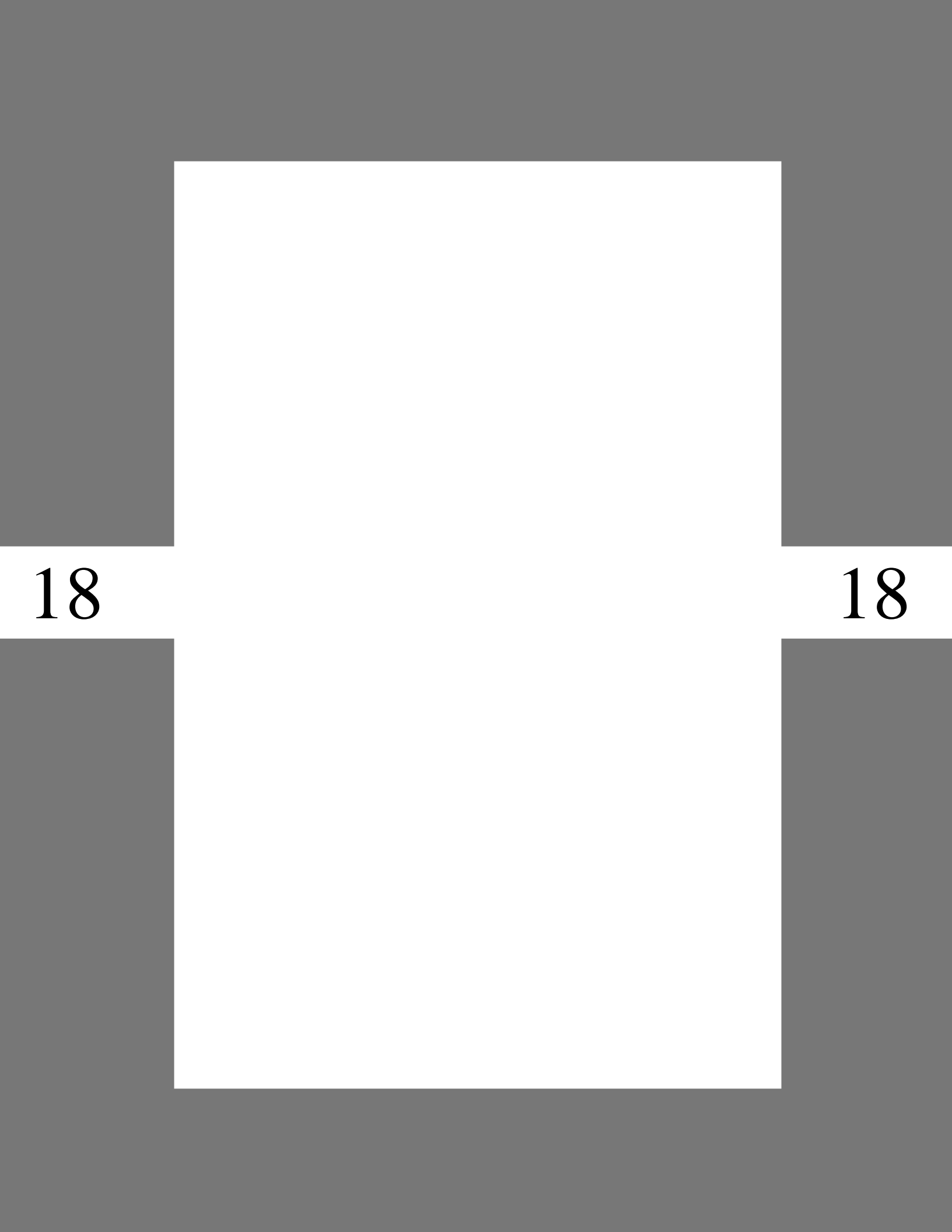
This deductible amount applies only when the covered automobile has been repossessed by or surrendered to the loss payee and the interest of the loss payee has become impaired.

All other losses payable under PART IV - CAR DAMAGE are subject to the deductible amount shown in the Declarations.

In Witness Whereof, the company has caused this policy to be executed and attested. This policy is countersigned on the declarations page by our authorized representative.

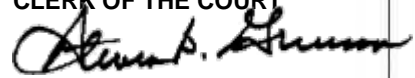
*Jack Ramirez*  
PRESIDENT

*Charles F. Grimsley*  
SECRETARY



18

18



MATTHEW J. DOUGLAS  
Nevada Bar No. 11371  
ATKIN WINNER & SHERROD  
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Phone (702) 243-7000  
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*Attorneys for Intervenor/Third Party Defendant 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.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE  
COMPANY, RANDALL TINDALL, ESQ.  
and RESNICK & LOUIS, P.C., and DOES I  
through V.,

Third Party Defendants.

CASE NO.: 07A549111  
DEPT. NO.: 20

CASE NO.: A-18-772220-C  
DEPT. NO.: 20.

**UAIC'S OPPOSITION TO THIRD  
PARTY PLAINTIFF LEWIS' MOTION  
FOR RELIEF FROM ORDER AND  
JOINDER IN MOTIONS FOR RELIEF  
FROM ORDERS ON ORDER  
SHORTENING TIME AS WELL AS  
UAIC'S OPPOSITION TO PLAINTIFF'S  
MOTION TO SET ASIDE ORDER,  
PURSUANT TO N.R.C.P. 60(b),  
ALLOWING UAIC TO INTERVENE &  
OPPOSITION TO DEFENDANT LEWIS'  
MOTION FOR RELIEF FROM ORDERS  
AND JOINDER IN MOTIONS FOR  
RELIEF FROM ORDERS AND, UAIC's  
COUNTER-MOTION TO STAY  
PENDING RULING ON APPEAL**

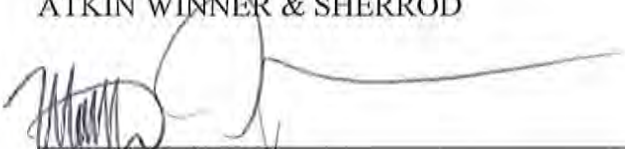
COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter  
referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD  
and hereby files its Opposition to Defendant/Third Party Plaintiff Gary Lewis' Motion for Relief  
from Order and Joinder in Motions for Relief from Orders on Order Shortening Time as well as

1 UAIC's Opposition to Plaintiff's Motion to set Aside Order, pursuant to N.R.C.P. 60(b),  
 2 allowing UAIC to Intervene & Opposition to Defendant Lewis' Motion for Relief from Order  
 3 and Joinder in Motions for Relief from Orders and UAIC's Counter-Motion for Stay pending  
 4 ruling on Appellate issues. In short, the Motions to intervene in both actions were properly  
 5 served & granted as UAIC has a right to intervene in these actions as the case law and rules cited  
 6 by the movants is distinguishable.

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

10 DATED this 27<sup>th</sup> day of DECEMBER, 2018.

11 ATKIN WINNER & SHERROD

12  
 13   
 14 Matthew J. Douglas  
 15 Nevada Bar No. 11371  
 16 1117 South Rancho Drive  
 Las Vegas, Nevada 89102  
*Attorneys for Intervenor/Third Party Defendant*  
 UAIC

17 **AFFIDAVIT OF COUNSEL IN SUPPORT OF UAIC's**  
 18 **OPPOSITION TO MOTIONS FOR RELIEF FROM ORDERS ALLOWING UAIC's**  
 19 **INTERVENTION & COUNTER-MOTION FOR STAY**

20 STATE OF NEVADA )  
 21 ) SS:  
 22 COUNTY OF CLARK )

23 Matthew J. Douglas, Esq., having been first duly sworn, deposes and states:

24 1. I am a duly licensed and practicing attorney of the State of Nevada and I am partner of  
 the law firm of Atkin Winner & Sherrod maintaining offices at 1117 South Rancho  
 Drive, Las Vegas, Nevada 89102;

25 2. I represent Intervenor, United Automobile Insurance Company ("UAIC"), in the above-  
 26 captioned actions as well as in a Federal Court action, under case no 2:09-cv-01348-RCJ-PAL  
 27 before the U.S. District Court for the District of Nevada, involving these parties, which is before  
 the U.S. Court of Appeals for the Ninth Circuit under docket no. 13-17441 as well as before the  
 28 Nevada Supreme Court on a certified question under case no. 70504;



3. I have reviewed the facts and circumstances surrounding this matter and the Movants' Motions for Relief from Orders and, I am competent to testify to those facts contained herein upon personal knowledge, or if so stated, upon my best information and belief;

4. That the following is true and accurate to the best of affiant's knowledge and information;

5. That, Defendant/Third Party Plaintiff Lewis is the judgment-debtor in the initial action filed by Cheyanne Nalder to collect on a 2008 judgment, within which Lewis filed this Third-party Complaint;

6. Counsel for Third Party Plaintiff Lewis is Thomas Christensen, Esq.;

7. Thomas Christensen, Esq. also represents the judgment-creditor, Cheyanne Nalder, on the original 2008 judgment in the consolidated matter 07A549111 and in an ongoing appeal in the case of *Nalder, et al. v UAIC*, Federal District Court case no. 2:09-cv-01348-RCJ-PAL which is before the U.S. Court of Appeals for the Ninth Circuit under docket no. 13-17441 as well as before the Nevada Supreme Court on certified questions under case no. 70504;

8. I have never represented Gary Lewis and, instead have only represented UAIC in this action and in an ongoing appeal in the case of *Nalder, et al. v UAIC*, Federal District Court case no. 2:09-cv-01348-RCJ-PAL which is before the U.S. Court of Appeals for the Ninth Circuit under docket no. 13-17441 as well as before the Nevada Supreme Court on certified questions under case no. 70504;

9. On July 19, 2018 my office received a letter, dated July 17, 2018, from a new Counsel for Plaintiff Nalder, David Stephens, Esq., in this new action, case no. A-18-772220-C, wherein Mr. Stephens stated Mr. Lewis had allegedly been served in the this new 2018 action and he was giving 3 day notice of intent to take default on Lewis. *A true and correct copy of David Stephens letter received by my office and kept in the usual and ordinary course of business is attached hereto as Exhibit 'A'*; The letter incorrectly stated the Plaintiff's Counsel "understood" we were representing Lewis in "related cases";

10. The July 17, 2018 letter from David Stephens was the first time my office and, my client UAIC, was made aware of this new action, case no. A-18-772220-C, and, moreover, of Plaintiff Nalder's "Amendment" of the expired 2008 judgment by way of *Ex Parte* Motion in March 2018 - which was learned only after researching the court docket after receiving the July 17, 2018 letter;

11. Upon receiving the July 17, 2018 letter from Mr. Stephens, on July 19, 2018, I immediately called Mr. Stephens and explained to him that, if he was not already aware, the actions he was taking or, already took, regarding the 2008 judgment as well as this new action being filed, may be infringing upon issues and jurisdiction of the above-mentioned case on appeal before the Nevada Supreme Court and directed him to appellate counsel for Nalder; I further alerted Mr. Stephens that we believed his client's 2008 judgment had expired. Additionally, I asked Mr. Stephens to refrain from taking any default while I notified my client, UIAC, of the new action;

12. Mr. Stephens never responded to me regarding any of the issues raised in my call to him.



13. My client, UAIC, then attempted to retain counsel, Steve Rogers, Esq., to defend Mr. Lewis in regard to both the improperly amended 2008 judgment in case no. 07A549111 as well as in the new action, case no. A-18-772220-C, but despite said retained Counsel, Steve Rogers, Esq., drafting appropriate proposed Motions to defend Mr. Lewis, counsel for Nalder, Tom Christensen, Esq., stated to Mr. Rogers that he represented Lewis and forbade contact between Rogers and Lewis as well as forbade Rogers from filing the proposed motions to protect Lewis in both actions; *See copy of Affidavit of UAIC representative Brandon Carroll and attached exhibits, attached hereto as Exhibit 'B.'*

14. Upon learning of Mr. Christensen's interference with retained counsel for Lewis' attempts to defend Lewis and, in order to protect both UAIC's interests and Lewis' interests – given Mr. Stephens notice of intent to default Lewis – my office filed Motions to intervene in both case no. case no. A-18-772220-C and case no. 07A549111 on August 16<sup>th</sup>, 2018 and August 17<sup>th</sup>, 2018, respectively. *See copies of UAIC's Motions to intervene in both matters, attached as Exhibit '3' & '4' to Third Party Plaintiff Lewis' Motion for Relief from order;* The Motions to intervene were filed as soon as this issue of interference by Tom Christensen arose as UAIC was concerned about the approaching 6 month deadline to file a N.R.C.P. 60 Motion to vacate the “amended” judgment from March 2018; The Motions to intervene in both actions were electronically filed and served by my assistant, Victoria Hall, to the only party of record in both cases, Plaintiff Nalder; *See attached exhibit 'C', Affidavit of Victoria Hall;*

15. Next, on September 11, 2018, I received an email from David Stephens where, for the first time, he claimed he did not receive notice of the Motion to intervene filed in the 2018 case on August 16<sup>th</sup>, 2018 nor, in the 2007 case filed August 17<sup>th</sup>, 2018, and he asked the Motions be continued. *A true and correct copy of the emails between David Stephens and myself from 9/11/18 through 9/14/18, received by my office and kept in the usual and ordinary course of business, are attached hereto as Exhibit 'D.';*

16. Due to the fact that both the Motions to intervene were set to be heard, in Chambers, on September 19, 2018 and, aware of the deadline for filing N.R.C.P. 60 Motion may have been about September 28, 2018 (as the amended judgment was filed March 28, 2018) and, because UAIC felt Plaintiff's Counsel, Tom Christensen, was interfering with their ability to defend these actions, UAIC was hesitant to grant any extension.

17. Moreover, it is my office's belief that both Motions to intervene were served properly regardless of alleged defects in the certificate of service; *See copy of affidavit of Victoria Hall, attached hereto as Exhibit 'C.'*

18. Further, my office was unaware of what, if any, arguments David Stephens, on behalf of Nalder, herein, had to oppose UAIC's Motions to intervene - which we believed were ministerial in nature - and, moreover, were well warranted given Tom Christensen had interfered with retained defense counsel's ability to defend Lewis in both actions.

19. Accordingly, on the same date as Stephens's request for extension, September 11, 2018, I responded to his email specifically noting that we believed our service of both Motions was proper and, additionally, asking him to articulate his oppositions to same motions in order to assess his request for an extension. *See Exhibit 'D.';*



20. In reply to my email, on September 12, 2018 at 5:23 p.m., Stephens admitted he did not know what occurred such that he did not receive my office's Motions to intervene and, even stated they may have been "lost in the mail" or "mishandled", but again asked for an extension – though no basis for the oppositions to either Motion was given. See Exhibit 'D.'

21. The next day, on September 13, 2018, I again replied to Stephens and, again, reiterated that, in order to assess his request for extension, I requested he articulate his legal oppositions to same motions. See Exhibit 'D.'

22. On September 14, 2018, at 9:08 a.m., Stephens responded to my email of September 13, 2018 noting that if he "had to answer [my] question [he] would just file an Opposition" and, further, that he was "researching to see if there was a basis for opposing either motion." He further mentioned that, as to the 2007 case, UAIC's motion "may be too late." See Exhibit 'D.'

23. Before I could respond to Stephens' email of September 14, 2018, my office received a fax, time stamped 10:37 a.m. on September 14<sup>th</sup>, 2018, with his opposition to UAIC's Motion to intervene in the 2007 case; *A copy of the faxed copy of Stephens Opposition to the Motion to intervene in the 2007 matter is attached hereto as Exhibit 'E.'*

24. Given that Stephens had never articulated a legal defense/objection to UAIC's Intervention in the 2018 action, that Stephens prepared an Opposition to the 2007 Motion to intervene and, because of the fear of the impending N.R.C.P. 60 deadline to vacate the amended judgment, my office did not further respond to Stephens request for extension and assumed same request for extension was mooted by his oppositions being filed;

25. Indeed, prior to both Motions to Intervene being heard by the Court, Plaintiff Nalder – through attorney Stephens – filed Oppositions to the Motions to intervene in both the 2007 and 2018 actions on September 17, 2018. *Copies of the Oppositions to the 2007 and 2018 Motions to Intervene filed by Nalder are attached hereto as Exhibits 'F' & 'G', respectively.*

25. Further, on September 21, 2018, Defendant Lewis, through attorney Breen Arntz, Esq., filed his Opposition to UAIC's Motion to intervene in the 2018 action, though my office had received a faxed, un-filed, copy of same Opposition on about September 18, 2018. *A copy of Defendant Lewis' Opposition to the Motion to intervene in the 2007 action is attached hereto as Exhibit 'H.'*

26. The September 21, 2018 filing of the Opposition to the Motion to intervene by Attorney Arntz was the first notice my office had of any appearance by any counsel for Lewis in the 2018 action.

27. Thereafter, my office found that, on September 13, 2018, Attorney Arntz and Attorney Stephens filed an alleged "stipulation to enter judgment" in the 2018 action; Said Stipulation was not served on my office, despite our having filed an appearance prior, via motions to intervene, on August 16, 2018. *A copy of the Stipulation to enter Judgment is attached hereto as 'I.'*

28. UAIC filed replies to Nalder's Oppositions to the Motions to intervene in both actions as well as Lewis' Opposition to the Motion to intervene in the 2018 action on September 18, 2018; *Copies of UAIC's replies to all 3 oppositions are attached hereto as Exhibits 'J', 'K' & 'L', respectively.*

29. Accordingly, due to the above filed oppositions and replies, it was my office's understanding the motions to intervene in both actions were fully briefed.

30. On September 26, 2018 a minute order was electronically served by Judge David Jones in case no. 07A549111 at 7:57 a.m., granting UAIC's Motion to intervene. *A copy of the minute order is attached hereto as Exhibit 'M'*; Importantly, new retained counsel for Lewis, Randall Tindall, Esq., filed his first pleading in the 2007 case, a motion for relief from judgment, at 2:20 p.m. on September 27, 2018. *A copy of the Motion for relief from judgment is attached as Exhibit 'N.'*

31. On September 26, 2018 a minute order was e-served by Judge David Jones in case no. A-18-772220-C at 4:51 p.m., granting UAIC's Motion to intervene. *A copy of the minute order is attached hereto as Exhibit 'O'*; Importantly, new retained counsel for Lewis, Randall Tindall, Esq., filed his first pleading in the 2018 case, a motion to dismiss, at 4:42 p.m. on September 26, 2018. *A copy of the Motion to Dismiss is attached as Exhibit 'P.'*

32. Following receipt of the Court's minute order in case no. 07A549111, I emailed David Stephens, with a proposed order on the intervention, on September 27, 2018. *A true and correct copy of the emails between David Stephens and myself from 9/27/18 through 10/3/18, received/sent by my office and kept in the usual and ordinary course of business, are attached hereto as Exhibit 'Q'*;

33. Attorney Stephens asked for a change to the order to note that the minute order stated the Motion was unopposed though he had in fact filed an Opposition. I made the requested change and, Stephens approved the order and it was sent to the Court; See Exhibit 'Q';

34. Following receipt of the Court's minute order in case no. A-18-772220-C, I emailed David Stephens and Breen Arntz, with a proposed order on the intervention, on September 27, 2018. *A true and correct copy of the emails between David Stephens, Breen Arntz and myself from 9/27/18 through 10/3/18, received/sent by my office and kept in the usual and ordinary course of business, are attached hereto as Exhibit 'R'*;

35. I never received any response from Attorney Arntz regarding the proposed order for intervention in the 2018 case, but Attorney Stephens responded that "it is hard to stop" my client's intervention in an ongoing case so he would "sign off on the order." See Exhibit 'R'; Accordingly, that order was sent to the Court;

36. The order allowing intervention in the 2007 matter was not signed by the Court until October 11, 2018 and same was not received by my office until October 19, 2018<sup>9</sup> when it was filed with a notice of entry. *A copy of the Order is attached hereto as Exhibit 'S'*; Importantly, the Court's final order struck the line stating that the minute order stated no opposition had been filed;

37. The order allowing intervention in the 2018 matter was not signed by the Court until October 11, 2018 and same was not received by my office until October 19, 2018<sup>9</sup> when it was filed with a notice of entry. *A copy of the Order is attached hereto as Exhibit 'T'*;



38. UAIC currently has pending a counter-motion for evidentiary hearing regarding an alleged fraud upon the Court, involving the actions and, conflicts of interest, primarily surrounding Nalder and Lewis' Counsel, Tom Christensen, which is set for hearing January 9, 2018; In the present Motion for relief from order allowing UAIC's intervention Tom Christensen is seeking to have the motion for relief motion heard before UAIC's Motion for Evidentiary hearing, even though UAIC's motion was filed long before this one, and same can be seen as attempt to avoid this court examining the alleged collusion and/or fraud, based on conflict, raised by UAIC's Motion and, thus, UAIC believes it's Motion should be heard first;

39. That given many of the issues raised in the instant motion(s) and matter, filed by Nalder, as well as in Lewis' third party Complaint, are on appeal before the Ninth Circuit and Nevada Supreme Court, this motion for relief from orders should be stayed pending resolution of the pending appeals;

40. This Motion for stay is brought for good cause and not for purposes of unnecessary delay.

Further Affiant Sayeth Naught.

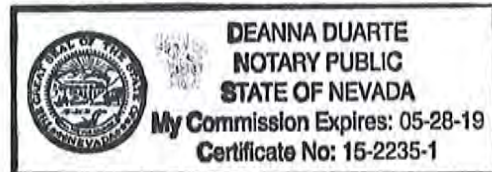
DATED this 27<sup>th</sup> day of December, 2018.

Matthew J. Douglas, Esq.

SUBSCRIBED AND SWORN to before me

This 27<sup>th</sup> day of December 2018

Deanna Duarte  
 NOTARY PUBLIC in and for said  
 Clark County, Nevada



**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
 COUNTER MOTION TO STAY PENDING APPEAL & OPPOSITION TO ALL 3  
 MOTIONS FOR RELIEF FROM ORDER ALLOWING  
 UAIC TO INTERVENE IN BOTH CASES**

**I.**

**INTRODUCTION**

As this Court can see, the present Motions have been filed by 2 parties, *but by 3 different counsel*. Specifically, Cheyanne Nalder (through her Counsel David Stephens) filed her Motion "to set aside order, pursuant to NRCP 60(b), allowing UAIC to intervene" and Gary Lewis, both

as Defendant, through his Counsel Breen Arntz, as well as *Third-Party Plaintiff*, through his Counsel Thomas Christensen, filed his Motions “for Relief from Orders and Joinder in Motions for Relief.” Notably, only The Motion for relief filed by Lewis as third party Plaintiff *has actually been noticed for hearing*, with a notice of motion on order shortening time. Accordingly, at the outset, UAIC argues this Court should only consider Third Party Plaintiff Lewis’ Motion for Relief from orders – as the other two have not been properly noticed. That said, as all 3 Motions essentially make the same arguments and, because UAIC is unsure of these parties’ intentions, should this Court consider the other *un-noticed* 2 Motions, UAIC asks this Court to consider this Opposition as *to all 3 Motions*.

Also, UAIC would like to point out, that the only noticed Motion for Relief, by Tom Christensen’s office, is the one Motion brought by a party with arguably no standing to bring the Motion. Lewis, as third party Plaintiff, was not a party when the Motions to intervene were filed and, indeed, could not have even filed his Third party complaint against UAIC unless and until UAIC had intervened. Thus, third party Lewis really has no standing to contest UAIC’s intervention and this should be considered by this court. At the very least, should third party plaintiff’s motion be granted, this court should also find the third party complaint void as well and dismiss same as to UAIC.

Moreover, it cannot be understated that Mr. Christensen also represents Nalder in the original action, Case No. 07A549111. See Exhibit ‘I’ to Exhibit ‘A’ of Exhibit ‘K’, herein, copy of the original 2008 judgment entered. Accordingly, as is more fully set forth in Intervenor’s Counter-Motion for evidentiary hearing for a fraud upon the Court (currently set before this Court for also hearing on January 9, 2018), Mr. Christensen has a clear conflict as he representing both the judgment-debtor and, the judgement creditor, in these actions. It is surely for this reason that Mr. Christensen is advancing this Motion, seeking to vacate UAIC’s intervention and avoid hearing on UAIC’s Motion for Evidentiary hearing as, now that the cases



have been consolidated, his naked conflict of interest is exposed for all to clearly behold<sup>1</sup>. As such, this Court must consider any of Mr. Christensen's arguments in light of this clear conflict of interest. The fact is, Mr. Christensen **has orchestrated these proceedings in a fairly obvious attempt to "fix" or, cover up, his error in failing to renew Nalder's 2008 judgment,** which is currently before the Nevada Supreme Court on a certified question. *See Copy of the order certifying the question whether Nalder's judgment is expired, attached hereto as Exhibit 'W' and, Copy of Order of Nevada Supreme Court accepting same question, attached hereto as Exhibit 'X.'* Because all of these matters are just so intertwined UAIC seeks not only a stay, but also asks this Court to hear the Motions filed first *in time* at the hearing on January 9, 2018. Specifically, that UAIC's Motions to vacate the 2018 judgment, dismiss and, Motion for evidentiary hearing are heard before this later filed motion for relief from orders such that these issues may be examined and a record made **as same is necessary to highlight these clear attempts to forum shop and foment litigation and, likely, perpetrate a fraud upon the court.**

Accordingly, UAIC requests the 3 pending Motions for relief from the Orders allowing UAIC to intervene be stayed or, deferred, pending appeal discovery and/or, alternatively, all 3 Motions be denied for the reasons set forth herein as they were properly served and granted.

## II.

### FACTS AND BACKGROUND

This action was originally filed back in 2007 in regard to an automobile accident that occurred in July 2007 between Nalder and Lewis. UIAC 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

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<sup>1</sup> Thus far, to avoid being so exposed, Mr. Christensen has, to wit, filed a third party action against retained defense counsel for Mr. Lewis, reported attorneys in this case to the State bar and, then, announced such confidential matters in open court, made allegations in his third party complaint against the former Judge hearing this case (David Jones) as well as members of the Nevada Bar Counsel, asked judge Jones to recuse himself and, retained counsel for Lewis in this matter (Arntz) and forbade anyone from communicating with Lewis. *See Lewis' 3<sup>rd</sup> Party Complaint and Counter-Motion for Summary Judgment filed in this matter, attached hereto as Exhibits 'U' and 'V', respectively.*



United States Court of Appeals for the Ninth Circuit, which was filed on January 11, 2018. See Exhibit 'W.' Rather, the salient points are that Plaintiff's "amended judgment", entered recently in 2018, is premised on an original judgment which had been entered against Gary Lewis on August 26, 2008. After obtaining the judgment, Counsel for Plaintiff<sup>2</sup> then filed an action against Mr. Lewis' insurer, United Automobile Insurance Company ("UAIC"), Intervenor herein.

That action - *on coverage for the 2008 judgment by Nalder/Lewis against UAIC* - has proceeded in the United States District Court for the District of Nevada and, the United States Court of Appeals for the Ninth Circuit, since 2009. Initially, the District Court found no coverage for Lewis as *his policy was expired* when the loss occurred, but after a first appeal the case was remanded and, ultimately, the court *found an ambiguity in Lewis' renewal statement and implied a policy at law for the loss - in 2013.* See Copy of the District Court's judgment 10/30/13, attached hereto as Exhibit 'Y.' However, the Court also found that **UAIC committed no actionable "bad faith" and granted summary judgment in favor of UAIC on those claims.** *Id.* The Court also found a duty to defend on the part of UAIC as to Lewis. *Id.* Nalder and Lewis appealed again.

During the pendency of this second appeal it was observed that Plaintiff had failed to renew her 2008 judgment against Lewis pursuant to Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for action to execute on such a judgment would be six (6) years, unless renewed under N.R.S. 17.214. Upon realizing the judgment had never been timely renewed, UAIC filed a Motion to Dismiss the Appeal for Lack of Standing with the Ninth Circuit on March 14, 2017. On December 27, 2017 the Ninth Circuit certified a second question to the Nevada Supreme Court - specifically certifying the following question:

"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

<sup>2</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.

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

*Exhibit 'W.'*

On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified question and ordered Appellants to file their Opening brief within 30 days, or by March 26, 2018. See Exhibit 'X.' In accepting the certified question, the Nevada Supreme Court rephrased 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?**

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

Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on March 22, 2018 seeking, innocently enough, to "amend" the 2008 expired judgment to be in the name of Cheyenne Nalder individually. See Exhibit 'B.' Thereafter, this Court obviously not having been informed of the above-noted Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of entry on May 18, 2018. *Id.*

Furthermore, Plaintiff then initiated a "new" action, under case no. A-18-772220-C in a thinly veiled attempt to have this Court rule on issues pending before the Nevada Supreme Court and "fix" their expired judgment. *Id.* This intent appears clearly evidenced by paragraph five (5) of Plaintiff's prayer for relief herein which states Plaintiff is seeking this Court to make "a declaration that the statute of limitations on the judgment on the judgment is still tolled as a result of Defendant's continued absence from the state." Plaintiff then apparently served Lewis



1 and, on July 17, 2018, sent a letter to UAIC's counsel with a copy of a "three Day notice to  
2 Plead", and, as such, threatening default of Lewis on this "new" action. *Id.*

3 Upon learning of this "amended judgment" and "new" action and, given the United States  
4 District Court's ruling that Gary Lewis is an insured under an *implied* UAIC policy for the loss  
5 belying these judgments and, present action, UAIC immediately sought to engage counsel to  
6 appear on Lewis' behalf in the present action. *Id.* Following retained defense Counsel's attempts  
7 to communicate with Mr. Lewis to defend him in this action and, potentially, vacate this  
8 improper amendment to an expired judgment – retained defense counsel was sent a letter by  
9 Tommy Christensen, Esq. – the Counsel for Plaintiff judgment-creditor in the above-referenced  
10 action and appeal – stating that Counsel could not communicate with Mr. Lewis, nor appear and  
11 defend him in this action and take action to get relief from this amended judgment. *Id.*

12 Accordingly, given a court order finding an implied policy insurance as between UAIC  
13 and Lewis, learning of new actions against Lewis triggering a defense, and then having retained  
14 defense counsel precluded from communicating with Lewis or filing pleadings to defend him –  
15 UAIC decided it must intervene in both these matters to protect its interests and Lewis'. *Id.*  
16 UAIC did this by filing a motion to intervene in the 2018 action on August 16, 2018 and in the  
17 2007 action on August 17, 2018. See Exhibit '4' & '5' to Third Party Plaintiff's Motion for  
18 Relief from Orders. Both these motions were properly served to the only party of record in both  
19 cases – Plaintiff Nalder – through her Counsel David Stephens. See Exhibit 'C.' Indeed, both  
20 motions had oppositions filed against them, by both Nalder and Lewis, and UAIC filed replies.  
21 See Exhibits 'F', 'G', 'H' & 'J.' Accordingly, after the Motion was fully briefed, the Court  
22 granted both interventions.

23 Given the above noted outrageous conduct by Mr. Christensen in representing the  
24 creditor and judgment in the same action and, further, preventing UAIC from defending Mr.  
25 Lewis, UAIC has also filed a Motion for an evidentiary hearing for a fraud upon the court given  
26

what is clear forum shopping and an improper attempt to re-litigate issues between the same parties.

Now, months after the interventions were granted and, *after UAIC filed a Counter-motion for Evidentiary hearing to expose the conflicts of Mr. Christensen*, Nalder and Lewis suddenly claim notice issues as well as legal issues seeking this Court to void or, vacate the interventions. In short, UAIC believes the movants are incorrect on the facts, and the law.

Further, as stated above, UAIC pleads this Court to hear the Counter-Motion for Evidentiary hearing, prior to these motions to have a full record of these events, and/or to stay these matters.

### III. ARGUMENT

#### A. COUNTER-MOTION TO STAY PROCEEDINGS PENDING APPELLATE RULING.

UAIC counter-moves this Court to stay all proceedings in this matter and/or, third party plaintiff's Motion for Relief from orders<sup>3</sup> due to the intertwined and inter-related issues now on appeal, which could substantially affect this litigation. The stay may be granted within this Court's discretion and under N.R.A.P. 8 (a)(1)(A).

In the case at bar it is unassailable that the subject of the expiration or, ongoing validity, of the 2008 judgment in the case of *Nalder v Lewis*, 07A549111, which is consolidated herein, is at issue both in this Court in both consolidated actions and, on appeal to the Nevada Supreme Court. See Exhibits 'W' & 'X.' As stated above, the issue of whether the 2008 expired or, is tolled per case law and statutes argued by Plaintiff and Lewis, is squarely before the Nevada Supreme Court. It is further uncontroverted Plaintiff and Lewis have raised the issues herein. See Exhibits 'W' & 'X.' Indeed, the plaintiff's complaint in the 2018 case, third party plaintiff

<sup>3</sup> As well as, if the Court considers them, Defendant Lewis' and Plaintiff Nalder's essentially identical motions and joinders hereto.



Lewis' claims are premised upon their arguments that the original 2008 judgment is not expired and/or Plaintiff's attempts to revive it herein are proper.

As such, to avoid forum shopping and, potentially, conflicting outcomes, both equitable principles and judicial economy favor staying or, deferring these matters and, including these motions for relief from orders, until the appeal is resolved.

As such, UAIC asks this Court to exercise its discretionary authority and stay or, defer, these proceedings or, least these motions for relief from orders, until a decision is rendered in the Nevada Supreme Court.

**B. OPPOSITION TO MOVANTS' MOTION FOR RELIEF FROM ORDERS ALLOWING UAIC TO INTERVENE**

Overall, the Movants' Motions for relief from judgment are all based on N.R.C.P. 60(b) and, each makes essentially the same 3 arguments: (1) that the motions to intervene were noticed improperly, (2) that UAIC has no right to intervene post-judgment in the 2007 case, and (3) UAIC has no right to intervene in either case because it was found to have breached its duty to defend in 2007. First, UAIC believes these Motions should be denied because same should have been filed as Motions for Rehearing and, as movants failed to comply with that rule, the Motions should be denied. Second, and alternatively, UAIC believes that even considering these Motions under N.R.C.P. 60(b), the movants have failed to meet their burden and, thus, same should be denied. Finally, and further in the alternative, UAIC believes that movants are incorrect on both the facts and law on all 3 arguments and, thus, should be denied.

***1. Movants have failed to satisfy the Standard governing relief from orders pursuant to E.D.C.R. 2.24.***

According to the Eighth Judicial Court Rule ("E.D.C.R.") 2.24, Rehearing of Motions, subpart (b) provides that a party may seek reconsideration of ruling of the Court via motion within ten (10) days "after service of written notice of the order or judgment." Rule 2.24 further provides that if the motion for reconsideration is granted, "the court may make a final disposition



of the cause without re-argument or may reset it for re-argument or resubmission or may make such other orders as are deemed appropriate.”<sup>4</sup>

Such “Motions to reconsider are generally left to the discretion of the trial court. In order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.”<sup>5</sup>

The Order allowing UAIC’s intervention in both actions was filed on October 19, 2018 and the Notice of Entry of the Order was filed the same day.<sup>6</sup> Thus, if either Lewis or Nalder desired a Motion for Rehearing on these orders, the instant motions needed to be filed on or before ten days “after service of written notice of the order or judgment” as provided by E.D.C.R. 2.24(b), or by November 5, 2018.

Here, despite both Nalder and Lewis knowing of the both the Motion and Orders at that time – as they had both opposed same – they should have filed these Motions by November 5, 2018. Accordingly, these motions, which are really motions for rehearing, should be denied as untimely.

**2. *Movants have failed to satisfy the Legal Standard governing relief from orders pursuant to N.R.C.P. 60(b).***

Nevada Rule of Civil Procedure 60(b), states in pertinent part:

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or, a party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;...The motion shall be made within a reasonable time...not more than six (6) months after the proceeding was taken or... notice of entry of the judgment or order was served.

The determination of what will establish the existence of one or more specified conditions required by subdivision (b)(1) of Rule 60 is *largely discretionary*, but certain guides have been declared.<sup>7</sup> In short, the factors are: (a) prompt application to remove the judgment, (b) absence of intent to delay the proceedings, (c) lack of knowledge of the party or counsel of

<sup>4</sup> E.D.C.R. 2.24(b).

<sup>5</sup> See *Bray v. Palmer*, 2012 U.S. Dist. LEXIS 43375 at 6-7, 2012 WL 1067972 (D. Nev).

<sup>6</sup> See *Exhibits ‘S’ & ‘T.’*

1 procedural requirements, and (d) good faith.<sup>8</sup>

2 Here, UAIC argues **none** of the four (4) factors from *Ogle* are met. Indeed, the only  
3 noticed Motion – by third party Plaintiff Lewis – does not even address these factors and,  
4 accordingly, the motion should be denied on this basis alone.

5 First, Movants have not promptly moved to seek relief from these orders. As this Court  
6 can see, the minute orders were served September 26, 2018. See Exhibit 'O.' Further, the orders  
7 were filed and noticed on October 19, 2018. See Exhibits 'S' & 'T.' Despite this, these motions  
8 were filed the week of December 10, 2018 – over 2 months after the minute order was first  
9 entered and served and, well over a month after the orders were filed. Movants have no excuse  
10 for this delay and, do not even try to explain it. The only party to mention the factors in its  
11 Motion, Plaintiff, merely states that because the Motion was filed “within the 6 month time  
12 frame” it is timely. This is not sufficient. Merely because it was timely under the rule, does not  
13 mean the motion was *prompt*. Accordingly, without explanation of the reason for their delay, the  
14 motions should fail on this factor. As will be addressed further, below, this delay has caused  
15 considerable prejudice to UAIC who has filed Motions for relief and to dismiss and, moreover,  
16 has had to respond to countless (baseless) motions by Nalder and Lewis in the intervening time  
17 frame.

18 Second, Movants cannot satisfy the prong requiring a showing of absence of intent to  
19 delay the proceedings. The only noticed motion – by third party plaintiff Lewis – does not even  
20 address this factor and, thus, this serves as basis for denial. Plaintiff at least notes the factor, but  
21 her argument is simply unpersuasive. Plaintiff claims “as to the 2007 case, she maintains the case  
22 is over.” Obviously, this fails to address this factor as to the 2018 case and, thus, must fail as to  
23 that intervention. Moreover, it is also true that this statement does not actually address the  
24 *absence of intent to delay* the proceedings in either case. This is because the motions **are clearly**  
25 **an intent to delay**. As set forth above and, throughout the numerous other briefings in these  
26

27 (Cont.)

28 <sup>7</sup> *Ogle v Miller*, 87 Nev. 573, 491 P.2d 40 (1971).

<sup>8</sup> *Id.*



1 matters, it is UAIC's position that, despite these issues being on appeal, Plaintiff has sought to  
2 try and forum shop and "fix" here expired judgment in these cases. This, in and of itself, may be  
3 considered delay. Moreover, Tom Christensen, representing Plaintiff and Lewis (creditor and  
4 judgment-debtor, here) has interfered with UAIC's ability to have retained defense counsel  
5 defend Lewis from these attacks in a collusive manner. Again, delay. Moreover, after opposing  
6 the motions to intervene and UAIC appearing in the case and filing numerous motions –  
7 including one seeking an evidentiary hearing on the alleged fraud by Mr. Christensen – movants  
8 now seek to void UAIC's intervention. Further, they seek these Motions to be heard before  
9 UAIC's pending motions. More delay. The attempts to delay the proceedings are patent and for  
10 this reason the motion should fail.

11  
12 Next, in terms of lack of knowledge of procedural requirements, again, this factor is not  
13 even mentioned by the movant for the *only noticed motion*, third party plaintiff Lewis, and, thus,  
14 serves a basis for denial outright. Plaintiff addresses it, but maintains there was no procedural  
15 error because she was represented by counsel and, instead claims it involves a "wrong decision  
16 under Nevada law." This explanation actually raises a procedural deficiency. That is, if Plaintiff  
17 is maintains it wrongly decided under law (and the law has not changed), *the proper mode of*  
18 *seeking redress would be a Motion for Rehearing which, as noted above, the movants failed to*  
19 *do*. Regardless, it is clear that even Plaintiff admits that this point does not serve as a basis for  
20 their Motions as there was no lack of knowledge of procedural requirements at issue.  
21 Accordingly, the motions fail on this prong as well.

22  
23 The final prong is whether the movant(s) can show good faith. Again, the only noticed  
24 motion, by third party plaintiff, does not even dare address this factor and, therefore, again, the  
25 Motion should be denied on this basis. Plaintiff notes this factor, but merely claims she is good  
26 faith because she "moved to amend the judgment" to "put it her name" and, "enforce the action."  
27 Quite simply, this is not enough and movants fail to meet their burden on this factor as, if  
28

anything, movants' actions herein have been in anything but "good faith." As explained throughout, knowing their judgment had expired and, that the issue was likely fatal in their appeal, Nalder and her cohorts tried to fix the judgment though an improper *ex parte* amendment. Then, in what UAIC argues was a blatant attempt to perpetrate a fraud upon the court, Tom Christensen, Counsel for Nalder and Lewis attempted to (1) prevent UAIC's retained defense counsel from defending these improper actions, (2) has sought to exclude UAIC from protecting itself and its insured, and (3) referred Lewis to counsel Breen Arntz, Esq. *who then tried to have a 'stipulated judgment' entered while UAIC was trying to intervene*. This is not good faith. Instead, *per Tom Christensen*, he can represent both sides of this case and, then, have a stipulated sham judgment entered and, no one can contest it – even those whose interest may be affected. UAIC urges that, on this final prong alone – given all the shenanigans by Nalder and Lewis – there has not been a showing of good faith in bringing these motions – actually the opposite would appear to be true and, thus, the Court should deny these motions.

For all of the above, movants cannot meet their burden for relief from orders allowing UAIC's intervention per *Ogle* and, thus, the Court should deny the Motions.

**3. *The Motions to Intervene were properly noticed and, regardless, both Nalder and Lewis opposed same and, accordingly, this argument is a red-herring.***

Overall, all of the movants arguments regarding defects in service of both UAIC's Motions to intervene are incorrect or, red-herrings, as *both motions were mailed* to the only counsel of record, David Stephens (counsel for Nalder) and, *both Motions were fully briefed*. Moreover, at the very least, if this Court considers all the arguments raised by the movants herein, than any issues regarding service of the original motion are moot. Accordingly, for the reasons set forth herein, UAIC asks the court to deny the movants motion for any allegations of insufficient notice.

Additionally, UAIC must note, in response to the movants' suggestion that UAIC's



1 Motions were improper because they failed to serve Lewis or his attorneys is amusing. As set  
2 forth in UAIC's initial Motion to intervene and, herein, UAIC had tried to retain counsel for Mr.  
3 Lewis, but said counsel was quickly advised by Counsel for third party plaintiff he could not  
4 speak with Mr. Lewis nor, file any Motions on his behalf in regard to this suit. See Exhibit 'B.'  
5 Accordingly, for Lewis to now suggest UAIC is improper for having failed to notify Lewis or his  
6 attorneys and "violated his due process rights" - in filing its motions to intervene - is the height  
7 of hypocrisy and, thus, same should be disregarded by this Court.

9 (a) Both Motions to Intervene were served on the only counsel of record.

10 Although Lewis argues that UAIC somehow 'violated his rights' for failing to serve him  
11 with the Motions to intervene, he gives absolutely no support for this proposition. Indeed, there  
12 is none. Lewis had not appeared in either matter when UAIC filed its Motions to intervene and,  
13 thus, UAIC had no duty to serve him.

14 Moreover, this argument is ridiculous as Lewis, though Tom Christensen, knew full well  
15 UAIC was trying to appear and defend him (and prevent a default), but his counsel was  
16 forbidding same. Thus, this argument is both incorrect and, somewhat specious. After all,  
17 Plaintiff Nalder did not serve Lewis with her *ex parte* motion - to revive an expired judgment -  
18 in the 2007 action. Accordingly, to agree with Lewis' argument here, then this Court should  
19 vacate the order amending the 2008 judgment for the same reasons.

20 In short, Lewis did not file anything, nor 'appear' in any fashion *in either case* until  
21 Breen Arntz and David Stephens filed their purported stipulated judgment on September 13,  
22 2018 - which was well after both Motions to intervene were filed in August. See Exhibits 'C' &  
23 'I.' Moreover, Counsel for UAIC was not served with any pleading, or notice of Arntz'  
24 appearance in either matter for Lewis, until receiving his Opposition to the Motion to intervene  
25 in the 2018 matter. See Exhibits 'C' & 'H.'

26 Accordingly, for all of the above, this argument should be disregarded by this Court as it

1 is both incorrect and, a red-herring anyway as Lewis actually opposed the motion.

2 (b) Oversights in the certificates of service on both Motions to intervene are red-herrings  
 3 as both Motions were mailed and David Stephens failure to properly register for  
 4 electronic service, as required, is not the fault of UAIC.

5 Movants also allege defects in the certificates of service for the Motions to intervene and,  
 6 that UAIC somehow was improper to electronically serve Mr. Stephens when he apparently  
 7 failed to register for electronic service on the case *when he filed both actions*. In short, while  
 8 UAIC acknowledges the legal secretary serving these motions did make some oversights in the  
 9 certificates, these arguments are red-herrings because Mr. Stephens had a duty to register for  
 10 electronic filing and, the Motions were mailed anyway.

11 Movants argue the certificate of service for the motion in the 2018 case is “false” because  
 12 it notes electronic service, but claims Mr. Stephens was unable to receive such electronic service  
 13 at that time. First, this argument is incorrect because Stephens had a duty, when he filed the  
 14 action, to register for electronic service – *in accordance with the usual and customary, indeed,*  
 15 *mandatory, practice in this Court for the past few years. See Exhibit ‘C.’*

16 The local rules of civil procedure, under Part II, contains the following:

17 **Rule 8.02. Use of the E-Filing System.**

18 (c) A document that the Court or a party files electronically under these rules has the same legal  
 19 effect as a document filed in paper form.

20 [Added; effective April 11, 2006; amended; effective July 29, 2011.]

21 The fact that Stephens failed to so register (for whatever reason) is no fault of UAIC and thus,  
 22 UAIC’s valid electronic service of the motion to intervene in the 2018 case cannot be  
 23 disregarded for Plaintiff’s counsel’s own failures to comply with rules of court.

24 Moreover, as noted above, UAIC actually mailed the Motion to intervene in the 2018  
 25 case to his office and, it was not returned. See Exhibit ‘C.’ Accordingly, even if the certificate of  
 26 service did not note it was also mailed, the Affidavit of Victoria Hall confirms she did mail it  
 27 and, it was not returned. Accordingly, this simple oversight (of failing to note the Motion was  
 28



also mailed) should not be grounds to support these motions – *as it was simple mistake*. Indeed, Plaintiff did oppose the motion and, thus, there was no prejudice anyway.

Movants also argue that the certificate of service for the Motion to intervene in the 2007 case was “false” because no box was checked indicating the service type. Here again, UAIC acknowledges the legal secretary filing the motion mistakenly failed to check a box. See Exhibit ‘C.’ However, this was merely an oversight and the Motion, with notice of same, was sent that same day to Mr. Stephens at address noted on certificate and same was not returned by the post office. See Exhibit ‘C.’ Accordingly, though mistakenly omitted, the Affidavit of Victoria Hall states she did serve the motion by mail and, here too, this simple oversight should not therefore be ground to support these motions. Indeed, Plaintiff did oppose the motion and, thus, there was no prejudice anyway.

(c) The argument that UAIC failed to grant an extension is a red-herring as the Motion was fully briefed and, UAIC never actually refused the extension anyway and, in no way did counsel violate R.P.C. 3.5A.

Movants have also made the argument that because UAIC failed to give Mr. Stephens an extension, after being alerted to allege service defects, this also should serve as grounds to void the Motion because Counsel violated R.P.C. 3.5A. This argument is not only unsupported, but is incorrect and, twists the facts. In short, given filing deadlines for a potential N.R.C.P. 60 motion (to vacate the amended judgment) UAIC was wary of granting an extension – given the roadblocks, delays and tactics third party plaintiff had already engaged in - when it believed the Motions were served properly. Moreover, Stephens himself admitted he did not know why he did not receive the Motions, failed to respond to UAIC with his basis to oppose the motions, and filed oppositions anyway. Accordingly, Counsel did not violate R.P.C. 3.5A and, this argument also serves as no ground to support this motion.

As can be seen from Counsel’s affidavit, *herein*, and copies of the email chain between UAIC’s Counsel and Mr. Stephens, it is clear that as soon as Stephens requested the extension

1 counsel for UAIC responded and requested he explain his basis for opposition so we could  
 2 consider the request. See Exhibit 'D.' After all, UAIC considered these motions straightforward  
 3 and ministerial - *especially given Nalder and Lewis' clear interference* in forbidding UAIC's  
 4 retained defense Counsel from defending Lewis in these actions. See Exhibit 'B.' Given that fact  
 5 and, due to fears that Nalder was seeking to delay and 'run out the clock' on the deadline to file  
 6 an N.R.C.P. 60 motion, UAIC was wary of granting the extension anyway. Moreover, UAIC's  
 7 fears were somewhat substantiated by Stephens final response, a few days later, when he  
 8 admitted he needed to "research his basis" for opposition. See Exhibit 'D.' Moreover, before  
 9 Counsel could even respond to Stephens response regarding this "basis for opposition", UAIC  
 10 received a copy of Stephens Opposition a little over an hour later on September 18, 2018. See  
 11 Exhibit 'E.' Accordingly, UAIC believed Nalder was simply filing oppositions and, no longer  
 12 needed the extension and, thus, the request for extension was moot.

13  
 14 As such, not only did UAIC not ever actually deny the extension, but given the above  
 15 dialogue between counsel – as set for the in the emails in *Exhibit 'D'* – Counsel can in no way be  
 16 alleged to have violated R.P.C. 3.5A. R.P.C. 3.5A states:

17  
 18 **Rule 3.5A. Relations With Opposing Counsel.** When a lawyer knows or reasonably should know  
 19 the identity of a lawyer representing an opposing party, he or she should not take advantage of the lawyer  
 20 by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's  
 21 intention to proceed.

22 [Added; effective May 1, 2006.]

23 As this Court can plainly see – no portion of R.P.C. 3.5A was violated. At no time did Counsel  
 24 for UAIC take a default or dismissal against any party, much less Mr. Stephens client, Nalder.  
 25 Accordingly, this argument is completely spurious as well and cannot support his motion.

26 (d) the Motions were fully briefed and, thus there is no prejudice anyway.

27 As can be seen all of the movants' arguments regarding alleged deficiencies in service of  
 28 the Motions are really red-herrings because both Nalder and Lewis opposed the Motions and,  
 thus, there is no prejudice. Moreover, should the court hear their arguments against UAIC's



1 intervention now, same would also moot these arguments.

2 Obviously, the point of proper notice is such that a party has a chance to review and  
3 oppose any motion as, without same, they may be prejudiced in failing to respond. In the case at  
4 bar, regardless of any alleged failures in notice, it is the case that both Nalder and, Lewis,  
5 opposed the Motions to intervene. See Exhibits 'F', 'G' & 'H'. As such, as oppositions were  
6 filed, there is no prejudice and, these issues are moot.

7  
8 Accordingly, because the motions were fully briefed and, movants are getting a second  
9 hearing on the propriety of UAIC's interventions, the issues regarding lack of notice are moot as  
10 there is no prejudice.

- 11 ***4. UAIC should not be precluded from intervening in the 2007 matter due to the fact***  
12 ***that judgment had already been entered in the 2007 case, because UAIC is not***  
13 ***trying to attack the judgment itself and the situation here is distinguishable from***  
14 ***law cited by Plaintiff and, public policy and/or equitable principles should allow***  
15 ***same due to the unethical conduct of the parties and/or their counsel.***

16 The movants' main argument to have this Court void UAIC's intervention, particularly in  
17 regard to the 2007 action<sup>9</sup>, is that – as judgment had been entered (in 2008) – UAIC should not  
18 be allowed to intervene under both the language of N.R.S. 12.130 and prior case law prohibiting  
19 an insurer from intervening post-judgment. While movants argument is *generally* correct, UAIC  
20 believes that both the intent of the statute and, the case law movants' rely on, is distinguishable  
21 from the case at bar. Specifically, UAIC has not sought intervention to *substantively attack the*  
22 *initial judgment entered in 2008*. Moreover, UAIC is not intervening in a case it had notice of,  
23 but failed to intervene earlier to protect its rights – here, UAIC had no notice Plaintiff took  
24 improper action to attempt to amend her expired judgment in March 2018. Indeed, Federal case  
25 law exists allowing a non-party intervention, post judgment and, UAIC begs this Court to

26  
27 <sup>9</sup> As no judgment has ever been entered in the 2018 case this argument cannot be applied, despite  
28 the arguments of third party plaintiff and, defendant, Lewis. These movants have produced absolutely no  
support a judgment has been entered in the 2018 case and, thus, UAIC intervention in the 2018 action is  
plainly proper under statute.

1 consider the facts and issues herein and use its equitable powers to affirm UAIC's Intervention  
2 here.

3 In fact, UAIC poses the question this way:

4 **Should an insurer be denied a post judgment intervention in a case where it**  
5 **seeks merely to vacate an improperly amended expired judgment against its**  
6 **insured where the plaintiff-creditor and, its own insured, may be colluding**  
7 **and interfering with UAIC's retained defense counsel's attempts to vacate**  
8 **same amended judgment?**

9 When the question is reviewed this way, UAIC believes the facts here (as set forth above  
10 and in UAIC's Counsel's affidavit and, the Affidavit of Brandon Carrol, *Exhibit '2'*) give  
11 this court *ample grounds of potential unethical misconduct as well as public policy*  
12 *considerations to use its equitable powers to affirm UAIC's intervention.*

13 (a) This matter is distinguishable from the purpose of N.R.S. 12.130 mandating  
14 intervention 'before trial' as well as from case law cited by movants.

15 Movants rely on the "before trial" mandate in N.R.S. 12.130(1)(a) as well as the cases,  
16 including, *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993), for its main argument that NRS 12.130  
17 does not permit entry intervention subsequent to entry of a final judgment. However, UAIC  
18 believes these arguments are overly simplistic by movants as they fail to take into account the  
19 unique circumstances here, which distinguish this matter from the above stated law.

20 (i) *The language of N.R.S. 12.130 requiring intervention "before trial" is to*  
21 *prevent non-parties from seeking to 'open up' final actions and, therefore,*  
22 *cause less certainty over final judgments – which is UAIC is not*  
23 *attempting here.*

24 UAIC does not dispute that the language of N.R.S. 12.130(1)(a) requires intervention be  
25 "before the trial" and the courts have interpreted this to mean, prior to final adjudication on the  
26 merits, whether by default judgment or settlement. However, UAIC argues that the reason for  
27 this rule is the Legislature was seeking to insure finality of judgments and settlements and  
28 prevent non-parties from opening up judgments and, re-litigating them. That intent is not  
frustrated here by allowing UAIC's intervention in the 2007 matter because UAIC has no intent



to “open up” or, “re-litigate” the original 2008 judgment or, its damages of \$3.5 million. Rather, UAIC actually believes that judgment *expired* and only seeks a chance to show the Court that the Plaintiff’s amending the judgment, in 2018, was improper.

The argument that the intent of this section of N.R.S. 12.130 was to insure finality of judgments was directly cited by the Nevada Supreme Court in *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993) where the court re-stated a prior ruling, in *Ryan v Landis*, 58 Nev. 256 (1938), where the court stated:

**“It is not the intention of the statute that one not a party to the record shall be allowed to interpose and open up and renew a controversy which has been settled between the parties of record, either by verdict or voluntary agreement.”**

*Lopez* at 556. Accordingly, this Court can see that the Nevada Supreme Court has explicitly stated that the *intent* behind the requirement that an intervention occur “before trial” is *to prevent a third party from re-litigating issues already settled*.

In the case at bar, UAIC does not seek intervention into the 2007 case (nor the 2018 case for that matter) to in any way “open up” or “re-litigate” the issues or damages set forth in the original 2008 judgment. Rather, as set forth herein, UAIC believes the 2008 judgment expired and was improperly “amended” and, merely seeks to have this Court review same “amended judgment” and vacate same. UAIC is not asking this court to vacate the *original judgment or to re-litigate the action underlying it*. As such, in no way is UAIC attacking the award of the original judgment or, seeking to re-litigate any of the issues decided by that judgment. Accordingly, UAIC’s intervention does not violate the intent of N.R.S. 12.130 and, thus, the portion of the statute requiring intervention before trial should not apply here.

(ii) *The case law cited by movants preventing insurers from intervening post-judgment is distinguishable here.*

Movants have also cited Nevada case law stating that parties, particularly insurers, may not intervene post-judgment. However, these cases are clearly distinguishable from the case at

1 bar for several reasons – most importantly, because UAIC is not the uninsured motorist carrier,  
2 UAIC is not seeking to re-litigate the judgment and, UAIC had no notice of the “amended  
3 judgment.” For these clearly distinguishable factors, UAIC argues these cases should not prevent  
4 its intervention in either the 2007 nor, 2018 matters.

5  
6 As can be seen the movants cite to three main cases in support of their arguments that  
7 UAIC should be prevented from intervening: *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993),  
8 *Gralnick v. Eighth Jud. Dist. Ct.*, 2017 Nev. App. Unpub. LEXIS 141 (Ct. of App. 2017), and  
9 *Dangberg Holdings Nev., LLC v Douglas County*, 115 Nev. 129 (1999).

10 First, *Gralnick* is an unpublished decision and, thus, is not proper authority. Regardless,  
11 as will be set forth below, *Gralnick* essentially concerned the same circumstance as *Lopez* and,  
12 thus, is distinguishable for the same reasons as will be discussed for *Lopez*, below.

13  
14 In terms of *Dangberg* the case is distinguishable on the same grounds as were noted in  
15 regard to N.R.S. 12.130, above. Initially, the court in *Dangberg* actually allowed the  
16 interventions, because they determined the parties had not settled the matter prior to the  
17 intervention. *Dangberg Holdings Nev., LLC v Douglas County*, 115 Nev. 129 (1999). In  
18 discussing interventions post-judgment, the *Dangberg* court cited a prior decision of the Nevada  
19 Supreme Court, *Ryan v Landis*, 58 Nev. 256 (1938), in confirming that the purpose of requiring  
20 interventions pre-judgment was to preserve finality of verdicts or, settlements between the  
21 parties. *Id.* Accordingly, for these reasons, *Dangberg* is distinguishable because UAIC does not  
22 seek intervention into the 2007 case (nor the 2018 case) to in any way “open up” or “re-litigate”  
23 the issues or damages set forth in the original 2008 judgment. Rather, as set forth herein, UAIC  
24 believes the 2008 judgment expired and was improperly “amended” and, merely seeks to have  
25 this Court review same “amended judgment” and vacate same. UAIC is not asking this court to  
26 vacate the *original judgment or litigate the amount*. As UAIC is not *attacking the award of the*  
27 *original judgment or, seeking to re-litigate any of the issues decided by that judgment*, the  
28



1 proposition noted by the court in *Dangberg* is distinguishable here. Accordingly, UAIC's  
 2 intervention does not violate the intent of N.R.S. 12.130 and, thus, UAIC's intervention should  
 3 stand.

4 Turning to the main case advanced by movants, *Lopez v Merit Ins. Co.*, 109 Nev. 553  
 5 (1993), UAIC argues that this case is distinguishable as *Lopez* dealt with a situation where an  
 6 insurer was seeking to intervene in a case filed by its insured against an alleged tortfeasor and,  
 7 not as here, where **UAIC is seeking to intervene to protect its insured from a judgment on a**  
 8 **suit filed by a claimant.** As this Court is likely aware, the case of *Allstate Ins. Co. v Pietrosh*,  
 9 454 P.2d 106 (1969), provides generally that an insurer is bound by judgments in favor of its  
 10 insured against a tortfeasor, when it fails to intervene, for purposes of any Underinsured Motorist  
 11 claim made by its insured. Accordingly, the Court in *Lopez* was dealing with a completely  
 12 different situation than the case at bar as, in *Lopez*, the insurer was seeking intervention after  
 13 judgment to potentially alleviate itself of Underinsured motorist obligations on a judgment *in*  
 14 *favor of its insured and against a tortfeasor* where it had an affirmative obligation to intervene  
 15 before judgment to do so. *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993). Indeed, the insurer in  
 16 *Lopez* had notice of the action prior to judgment and, still failed to intervene. *Id.*

17 Quite simply, that is not the situation here. UAIC is **not Plaintiff's insurer** (and thus, no  
 18 immediate contractual duty to satisfy the judgment) and, more importantly, **UAIC had no such**  
 19 **opportunity to intervene prior to entry of this 'amended judgment.'** As discussed herein,  
 20 Plaintiff failed to renew the original, 2008, judgment in this case pursuant to Nevada law.  
 21 Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for action to execute  
 22 on such a judgment would be six (6) years, unless renewed under N.R.S. 17.214. Upon realizing  
 23 the judgment had never been timely renewed, UAIC filed a Motion to Dismiss the Appeal for  
 24 Lack of Standing with the Ninth Circuit (in the sister litigation on appeal, which is also set forth  
 25 in UAIC's initial Motion) on March 14, 2017. See Exhibit 'B.' Thereafter, on February 23, 2018  
 26  
 27  
 28

the Nevada Supreme Court issued an order accepting this second certified question and ordered Appellants to file their Opening brief within 30 days, or by March 26, 2018. See Exhibits 'W' & 'X.' In accepting the certified question, the Nevada Supreme Court rephrased 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?**

See Exhibit 'X.'

On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC just filed Response Brief and, accordingly, the above-quoted question and, issue, remains pending before the Nevada Supreme Court. See Exhibit 'B' and Affidavit of Counsel for UAIC, herein. Despite the above, in what appears to be a clear case of forum shopping, Nalder retained additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on March 22, 2018 seeking to "amend" the 2008 expired judgment to be in the name of Cheyenne Nalder individually. *Id.* Thereafter, this Court, obviously not having been informed of the above-noted Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of entry on May 18, 2018. *Id.* Upon learning of this "amended judgment" and "new" action (the sister case A-18-772220-C), on July 19, 2018<sup>10</sup>, and, given the prior United States District Court's ruling that Gary Lewis is an insured under an *implied* UAIC policy for the loss belying these judgments, UAIC immediately sought to engage counsel to appear on Lewis' behalf in the present action. *Id.* Following retained defense Counsel's attempts to communicate with Mr. Lewis to defend him in this action and, potentially, vacate this improper amendment to an expired judgment – retained defense counsel was sent a letter by Tommy Christensen, Esq. –

<sup>10</sup> UAIC was only informed of this alleged 'amended judgment' when it received a 3 day notice of intent to take default against Gary Lewis in the 'new' action filed by Nalder on the amended judgment on July 19, 2018. See Exhibit 'B.'



the other Counsel for Plaintiff judgment-creditor herein and in the above-referenced appeal – stating that Counsel could not communicate with Mr. Lewis, nor appear and defend him in this action and take action to get relief from this amended judgment. *Id.*

In this way, the case at bar is simply not analogous to *Lopez* as UAIC simply **never had a duty to intervene prior to this amended judgment, much less ability (e.g. notice) to do so.** That is, the original 2008 judgment was expired and only by Plaintiff's improper attempt to file this 'amended judgment' earlier this year *did a need to intervene arise*. Moreover, UAIC never even knew of these surreptitious actions on the expired judgment until July 2018 and, thus, intervening prior to the date it did would have been an impossibility. Furthermore, UAIC's intervention was only needed due to the interference by Nalder's counsel, Tom Christensen, claiming to also represent its insured, who was preventing retained defense counsel from taking necessary actions to defend Lewis from this improperly amended judgment. Further, UAIC is in **no way seeking to intervene to attack the original judgment (in 2008) nor, re-litigate its issues.** Finally, UAIC is not seeking to just relieve itself of a judgment that may be enforced against it (as the insurer in *Lopez* was), but instead to relieve its insured of an improperly amended judgment.

Accordingly, given the circumstances – the *Lopez* case and its progeny are distinguishable for a myriad of reasons. UAIC is not seeking to attack the judgment, UAIC is not the uninsured motorist carrier with a duty to intervene pre-judgment, UAIC had no notice of the "amended judgment" and, not least important, Plaintiff's counsel Tom Christensen necessitated UAIC's intervention by his interference which is potentially both unethical and collusive. For all of the above, the cases cited by movants should not be a bar to UAIC's intervention here.

(iii) *This Court's equitable powers permit it to allow UAIC's intervention in the 2007 action given the potential unethical conduct of the parties and public policy considerations.*

UAIC also argues that the facts set forth above also offer additional reasons to allow

UAIC's intervention herein where unusual circumstances are present which require the Court to exercise its equitable powers to do substantial justice. That is, the clear conflict of interest and attempts at perpetrating a fraud upon the court by Plaintiff and/or Lewis. As noted above, Plaintiff Nalder is represented by Mr. Christensen. See Exhibit 'B' and Affidavit of Counsel for UAIC, herein. Mr. Christensen also purports to be counsel for Lewis and has informed UAIC's first retained counsel for Lewis that he may not appear and attempt to vacate this judgment. *Id.* Now, after learning of this and trying to intervene to protect Lewis and, its own interests, UAIC is told by Plaintiff it cannot intervene. *Id.* So, per Plaintiff, UAIC's retained defense counsel cannot move to vacate this amended judgment and – UAIC cannot either. This is clearly an attempt at a fraud upon the court solely to benefit Plaintiff and her counsel - and same should not be tolerated from a public policy perspective.<sup>11</sup> Moreover, this Court has wide discretion to sanction parties and vacate orders/judgments on its own motion. Additionally, federal court cases have allowed for interventions post-judgment in certain extraordinary circumstances. UAIC argues each of these alternative arguments allows this Court to affirm UAIC's interventions herein.

First, as stated in UAIC's Counter-Motion for Evidentiary hearing (which UAIC incorporates herein), in *NC-DSH, Inc. v Garner*, 125 Nev. 647 (2009) the Nevada Supreme Court set forth the definition of a fraud upon the Court in considering motion for relief from judgment under NRCP 60. In *NC-DSH, Inc.* the lawyer for a plaintiff's malpractice case forged settlement documents and disappeared with the settlement funds. *Id.* In allowing the Plaintiff's Rule 60 motion to set aside the dismissal (and settlement) the Court set forth the following definition for such a fraud, as follows:

<sup>11</sup> UAIC has filed a counter-Motion for evidentiary hearing on these issues which is set before the Court on the same day as the instant Motion. UAIC asks this Court to hear this motion for evidentiary hearing first, such that a full record of these issues can be made prior to ruling on this motion. Alternatively, UAIC asks this Court to consider them, herein.



1       **“The most widely accepted definition, which we adopt, holds that the concept**  
 2 **embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of**  
 3 **the court itself, or is a fraud perpetrated by officers of the court so that the judicial**  
 4 **machinery cannot perform in the usual manner its impartial task of adjudging cases ...**  
 5 **and relief should be denied in the absence of such conduct.**

6 *Id* at 654.

7       In the case at bar it seems clear that Plaintiff’s counsel (Mr. Christensen) is attempting  
 8 just such a fraud. That is, besides the original judgment being expired and, the effect of its  
 9 expiration on appeal before both the Nevada Supreme Court and the U.S. Court of Appeals for  
 10 the Ninth Circuit, Plaintiff still attempted this ‘amendment of judgment’. See Exhibit ‘B’ &  
 11 Exhibits ‘W’ & ‘X.’ Moreover, Mr. Christensen (Plaintiff’s additional Counsel) represents **both**  
 12 **the judgment-creditor and judgment-debtor.** *Id.* Further, in his role as counsel for Plaintiff  
 13 and Defendant, Mr. Christensen is attempting, as an officer of the court, to prevent UAIC from  
 14 exercising its contractual and legal duty to defend Mr. Lewis and vacate this farce of a judgment  
 15 by telling UAIC’s first retained counsel to not file the motion for relief from this judgment. See  
 16 Exhibit ‘B.’ Additionally, Plaintiff is now seeking to deny UAIC a chance to intervene. UAIC  
 17 pleads this clearly a **fraud perpetrated by officers of the court so that the judicial machinery**  
 18 **cannot perform in the usual manner its impartial task of adjudging cases.** In other words,  
 19 Mr. Christensen, Counsel for Plaintiff Nalder, is seeking on the one hand to enforce an invalid  
 20 judgment and, with the other, prevent anyone from contesting it – **by representing both sides.**  
 21 **This is the definition of a conflict of interest.** Indeed, Lewis, through Counsel appointed by  
 22 Christensen (Breen Arntz) tried to stipulate to a judgment in the 2018 case while UAIC’s  
 23 intervention was pending. See Exhibit ‘B’ & ‘I.’ It seems that this is all an attempt to cover up  
 24 Mr. Christensen’s failure to renew the 2008 judgment and, “fix” this expired multi-million  
 25 judgment. Despite arguments to the contrary, this does not benefit Mr. Lewis - **it only benefits**  
 26 **Plaintiff and her counsel.** UAIC argues this is clear fraud and collusive conduct and, at the very  
 27  
 28

1 least, the Court should therefore exercise its equitable power and allow UAIC's intervention  
2 and/or, alternatively, first hold an evidentiary hearing on this fraud.

3 Moreover, based on the above-stated conduct, UAIC believes these circumstances offer  
4 further grounds for intervention and notes federal courts have allowed post-judgment  
5 intervention when unusual circumstances are present. Indeed, federal courts have allowed  
6 insurers to intervene post-judgment. See McDonald v. E.J. Lavino Co., 430 F. 2d 1065 (1970)  
7 (allowing a worker's compensation carrier to intervene post-judgment in its employee-insured's  
8 tort action against third party tortfeasor). When courts have allowed intervention by a party post-  
9 judgment it has usually required a 'strong showing' by the party. *McClain v. Wagner Elec.*  
10 *Corp.*, 550 F.2d 1115, 1120 (8<sup>th</sup> Cir. 1976). Generally, these motions have centered around an  
11 analysis of timeliness of the intervention and why it was not made sooner. Here, UAIC argues a  
12 timeliness must be in its favor as it had no duty to intervene in the 2007 action, much less notice,  
13 of the amended judgment prior to July 2018.

14 Further, federal courts examining the issue have also examined whether it prejudice the  
15 interests of the parties or, burden the court. *McDonald v. E.J. Lavino Co.*, 430 F. 2d 1065  
16 (1970). Indeed, "it has been the traditional attitude of the federal courts to allow intervention  
17 where no one would be hurt and greater justice would be attained." *Id.* at 1072. Here, UAIC  
18 argues just such a determination may be made here. The fact is no party will be prejudiced by  
19 UAIC's intervention. The issue of the expired judgment 2008 judgment and, this attempt to  
20 "amend" it were on appeal anyway, so Plaintiff is not prejudiced. UAIC is seeking to alleviate a  
21 multi-million dollar judgment against Lewis so, *he will be helped, not prejudiced* by UAIC's  
22 intervention. Finally, and most importantly, given what appears to be clear conflicts and,  
23 potential collusive attempts at a fraud upon the court, **greater justice will be attained** by  
24 allowing UAIC's intervention in the 2007 matter. Accordingly, based on the above-cited case  
25 law and principles, this Court may allow UAIC's intervention, post-judgment.



Alternatively, UAIC argues that the facts set forth herein are plain and offer grounds for this court to sanction Plaintiff and/or third party plaintiff Lewis. In *Bahena v Goodyear Tire & Rubber Co.*, 126 Nev. 243 (2010), the court specifically reiterated that this court has the **inherent equitable power to dismiss actions or enter defaults for “abusive litigation practices.”** In that case, the court’s decision to impose “non case concluding sanctions” against Goodyear for abusive discovery practices was upheld. *Id.* In the case at bar, UAIC argues that Plaintiff and third party plaintiff Lewis’ actions and likely collusive conduct is sufficient to warrant hearing and imposition of sanctions which, in this case, should be vacating the 2018 amended judgment.

UAIC further pleads, in the alternative, that this Court vacate the 2018 “amended judgment” on its own Motion given the clear fraud that appears to have been perpetrated and is set forth herein. As this Court is aware, District Courts have the inherent power to set aside judgments procured by extrinsic fraud. *Lauer v District Court*, 62 Nev. 78, 140 P.2d 953. In the case at bar the potential extrinsic fraud abounds. Besides the inherent conflict of interest of Plaintiff’s Counsel, it also true that Plaintiff failed to advise this court that 1) the 2008 judgment had expired and, 2) that the issue over the effect of same expired judgment was before both the Nevada Supreme Court and the U.S. Court of Appeals for the Ninth Circuit when it filed its *ex parte* Motion to amend this judgment. Extrinsic fraud is usually found when conduct prevents a real trial on the issues or, prevents the losing party from having a fair opportunity of presenting his/her defenses. *Murphy v Murphy*, 65 Nev. 264 (1948). The Court may vacate or set aside a judgment under Rule 60 on its own Motion. *A-Mark Coin Co. v. Estate of Redfield*, 94 Nev. 495 (1978).

Given the fairly egregious attempt to prevent UAIC from having retained defense counsel vacate the improper attempt to amend an expired judgment, when such judgment was procured without notice, while these issues were on appeal and, with Plaintiff’s counsel representing both

sides – UAIC pleads with this Court to exercise its own discretion and authority and allow UAIC’s intervention in the 2007 case and/or to vacate the amended judgment under its equitable authority to do so based on all of the above.

5. *UAIC’s breach of the duty to defend in 2007, should have no effect on its ability to intervene in and, defend, the new 2018 matter, where no judgment has been entered and where it was filed/initiated later only after UAIC’s duty to defend was found.*

It appears that movants’ additional argument is that, as UAIC breached the policy in 2007, when it initially refused to defend Lewis *in regard to the original 2007 action*, it cannot intervene or defend him now in the new 2018 action (or, the 2007 action) as it has relinquished the right to control the defense. Movants rely on a California citation for this proposition. In short, the theory being advanced is distinguishable from the case at bar for 2 simple reasons: UAIC had no policy in effect for Lewis (and, therefore, duty to defend) until October 2013 and, second, these *are both new actions* and, thus UAIC never breached the duty to defend these “new” actions. Accordingly, this argument fails to serve as grounds to deny UAIC’s interventions herein..

It is axiomatic that a policy a liability insurance comes with a duty to defend and, that same duty is broader than the duty to indemnify.<sup>12</sup> *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 120 Nev. 678 (2004). It is further well-settled in Nevada that when an insurer retains defense counsel to defend its insured, same counsel represents **both** the insurer and insured and has duties to both. *Nev. Yellow Cab Corp. v Eight Jud. Dist. Court of Nev.*, 123 Nev. 44 (2007). Such dual representation is allowed as long as no actual conflict exists. *Id.*

Accordingly, under the above noted case law, UAIC has a duty to defend the newly filed 2018 action on Lewis’ behalf – and attempt to relieve Lewis from the “amended judgment” in



the 2007 action. There is nothing improper in this regard. The fact remains UAIC's duty to defend was only established, at law, in 2013 and, thus, UAIC is trying to comply with same here. See Exhibit 'B.' The issues surrounding the amending of the 2008 judgment and, new suit filed, only arose this year and, thus, UAIC's duty to defend these new judgments and claims only arose now. By seeking to stand by its duty to defend Lewis and, seeking to relieve him of an expired multi-million dollar judgment - which UAIC believes was improperly attempted to be revived- UAIC was only acting on a duty to defend that was only found by the Court in 2013 as stated in the Affidavit of Brandon Carroll (*Exhibit 'B'*). Moreover, these issues are partially before the Nevada Supreme Court. See Exhibit 'X.'

The case cited by movants in support of these arguments, *Hinton v. Beck*, 176 Cal. App. 4<sup>th</sup> 1378 (Ca. Ct. of App. 2009), is both non-binding on this court and, easily distinguishable. In that case the Court prevented an insurer from intervening in a personal injury case, while it was still being litigated, after it failed to defend. *Id.* Here, the matter UAIC allegedly failed to defend was litigated back *in 2008* and the judgment entered then. UAIC has not tried to intervene in that *original* matter, nor challenge the *original default judgment entered in 2008*. Rather, only after a court found a duty to defend and, then, after UAIC learned of an improper attempt to revive the expired 2008 judgment through amendment and, that a *new action had been filed*, did UAIC seek to intervene. Accordingly, these factors distinguish this matter from the *Hinton* case and, defeat movants argument on this point.

In the case at bar, the federal district court case, in the matter on appeal, the court there has implied an insurance policy between Lewis and UAIC for the time of the July 2007 loss. See Exhibit 'B.' The right of an insurer to control the defense has been recognized by the Nevada Supreme Court in *Allstate v Miller*, 125 Nev. 300, 212 P.3d 318 (NV. 2009).

(Cont.)

<sup>12</sup> Thus, UAIC would have a duty to defend even if policy limits have been tendered, which they have been here.

As can be seen from the above-cited principles and, implied contract, UAIC had a duty to defend Lewis beginning only on October 30, 2013. As discussed above, this implied duty was not triggered until UAIC was made aware of the new “amendment” of the expired judgment and, the new action thereupon, herein, when Nalder gave notice she was going to default Lewis. See *Exhibit ‘B’, including attachments thereto*. Given these events, UAIC felt it needed to defend its insured and did so, despite counsel for third party Lewis’ interference because of his conflicted dual representation of the creditor and debtor, eventually retaining Randy Tindall, Esq. to file necessary motions to vacate the “amended” judgment and dismiss the new action. *Id.* This was reasonable and proper under the circumstances. Lewis has yet to articulate how this will/has harmed him. Accordingly, at the very least UAIC’s actions were reasonable and timely under statute and case law. Most importantly, there has been no judgment entered in the 2018 case and UAIC can meet the criteria for intervention, so movants motion should be denied in regard to both interventions- but certainly in regard to the 2018 action.

**6. UAIC intervention in both the 2007 and 2018 matters complied with the factors for such intervention.**

As can be seen, movants do not dare argue that UAIC did not meet the criteria for intervention under N.R.C.P. 24. Accordingly, this Court should take this omission *as an admission* movants’ acknowledge UAIC’s intervention is proper under this rule.

UAIC sought to intervene under N.R.C.P. 24. NRCP 24(a)(2) imposes four (4) requirements for the intervention of right: (1) the application must be timely; (2) it must show an interest in the subject matter of the action; (3) it must show that the protection of the interest may be impaired by the disposition of the action; and (4) it must show that the interest is not adequately represented by an existing party. *State Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 888 P.2d 911 (1995).<sup>13</sup>

<sup>13</sup> The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be



1 In arguing the Motion UAIC argued, alternatively, that it had an interest that may be  
2 impaired *not only in protecting Lewis*, but because “UAIC could potentially be responsible for  
3 any damages Lewis is found liable for – including the instant amended judgment.” As this Court  
4 can plainly see, if UAIC did not have such an interest to protect – both for itself and, its insured  
5 Lewis - the judgment-creditor would likely not being engaged in such machinations to prevent  
6 same.

8 The fact is, UAIC’s intervention was done as a necessity to protect both Lewis and UAIC  
9 due to Lewis’ counsel’s conflicted machinations. To allow these motions to void the  
10 interventions now would be to undermine the issues of the validity of an expired judgment – the  
11 exact issue Nalder has sought to forum shop away from the Nevada Supreme Court – and reward  
12 this behavior. Thus, the motions should be denied.

13 ///

17 ///

21 ///

24 ///

26 \_\_\_\_\_ (Cont.)  
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.



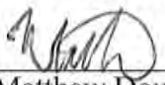
V.

CONCLUSION

Based upon the foregoing, Defendants UNITED AUTOMOBILE INSURANCE COMPANY respectfully requests that this Court deny movants' motions seeking relief from the orders allowing UAIC's Intervention in both actions, consolidated herein. Additionally, UAIC asks for a stay of all matters in both actions pending the appeal. Alternatively, UAIC asks for an evidentiary hearing for a fraud upon the court and/or for the court to vacate the 2008 amended judgment on its own motion.

DATED this 31 day of December, 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 31 day of December, 2018, the foregoing **UAIC'S OPPOSITION TO THIRD PARTY PLAINTIFF LEWIS' MOTION FOR RELIEF FROM ORDERS ON ORDER SHORTENING TIME AND, ALL JOINDERS THERETO** 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:

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STEPHENS & BYWATER, P.C.  
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An employee of ATKIN WINNER & SHERROD

# EXHIBIT “A”

# STEPHENS & BYWATER, P.C.

ATTORNEYS AT LAW

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

Gordon E. Bywater email: [gbywater@sdblawnfirm.com](mailto:gbywater@sdblawnfirm.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.sdblawnfirm.com](http://www.sdblawnfirm.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

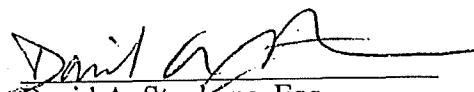
15 **THREE DAY NOTICE TO PLEAD**

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.

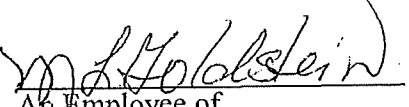
23  
24   
25 David A. Stephens, Esq.  
Nevada Bar No. 00902  
26 Stephens Gourley & Bywater  
3636 N. Rancho Drive  
27 Las Vegas, NV 89130  
Attorney for Plaintiff  
28

## CERTIFICATE OF MAILING

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

Gary Lewis  
733 Minnesota Avenue  
Glendora, CA 91740

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

  
An Employee of  
Stephens Gourley & Bywater

# EXHIBIT “B”



## 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.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE  
COMPANY, RANDALL TINDALL, ESQ.  
and RESNICK & LOUIS, P.C., and DOES I  
through V.,

Third Party Defendants.

I, BRANDON CARROLL, declare:

CASE NO.: A-18-772220-C

DEPT. NO.: 19

**AFFIDAVIT OF VICE PRESIDENT OF  
BODILY INJURY CLAIMS BRANDON  
CARROLL IN SUPPORT OF  
INTERVENOR/THIRD PARTY  
DEFENDANT UNITED AUTOMOBILE  
INSURANCE COMPANY'S  
OPPOSITION TO COUNTER-MOTION  
FOR SUMMARY JUDGMENT AND  
COUNTER-MOTION FOR STAY OF  
SUMMARY JUDGMENT FOR  
DISCOVERY PURSUANT  
TO N.R.C.P. 56 (f)**

1. That I am the Vice President of Bodily Injury claims employed at United Automobile Insurance Company ("UAIC"). I make this declaration in support of UAIC's Opposition to Third Party Plaintiff Lewis' Counter-Motion for Summary Judgment and, alternatively Motion to Stay

hearing on same summary judgment for discovery pursuant to N.R.C.P. 56(f). I have personal knowledge of the facts set forth below and, if called as a witness, could and would competently testify to them under oath.

2. I have familiarized myself with the claims file for the claims made by James Nalder, as Guardian for Minor, Cheyanne Nalder, as well as Cheyanne Nalder, individually, against Gary Lewis' implied policy of insurance with UAIC. I have familiarized myself with the Nalder's claim file since its opening. As part of that process, I reviewed claims notes made and correspondence sent and received in connection with the handling of the claim. The claims adjuster makes notes at or near the time of the activities in question occur. The creation and maintenance of the claims notes is a regularly conducted business activity of UAIC and said notes are true and accurate. Similarly, all correspondence sent by or, to, an adjuster is kept in the Claims file in the usual and ordinary course of business and those documents are true and accurate.

3. A review of the claims reveals the following: that the Nalder's made a claim under Gary Lewis' policies with UAIC for the loss, on July 8, 2007, occurring to minor Cheyanne Nalder.

4. A review of the claims reveals the following: that the Nalders and their Counsel were informed in writing on October 10, 2007 that no coverage existed for Lewis on the date of the accident, July 8, 2007, as his policy had expired June 30, 2007 and no new policy term was incepted until July 10, 2007.

5. That, thereafter, the claims file reveals that following a judgment being entered on Nalders claim, in 2008, an action was filed against UAIC by Lewis and the Nalders alleging bad

faith and extra-contractual remedies which was removed to U.S. Federal District Court for the District of Nevada and the case proceed there as *Nalder et al. v UAIC*, case no. 2:09-cv-01348.

6. A review of the claims reveals the following: Following Motions for summary judgment, the first District Court Judge hearing the matter, the Honorable Edward Reed, granted summary judgment in favor of UAIC finding no policy in force for Lewis for the subject loss and, as such, found no bad faith or extra-contractual breaches had been committed by UAIC.

7. A review of the claims reveals the following: Following Nalder's appeal to the U.S. Court of Appeals for the Ninth circuit, the case was remanded to the District Court due to an ambiguity in the renewal notice that had been sent to Lewis for his policy.

8. A review of the claims reveals the following: After the matter was remanded, a new round of cross-motions for summary judgment before the Federal District court proceeded where the new judge hearing the case, The Honorable R. Clive Jones, again found that UAIC had been reasonable and granted summary judgment in favor of UAIC on all the claims for bad faith and/or extra-contractual damages; however, due to the ambiguity in the renewal, the Court implied a policy of insurance for the loss and ordered UAIC to tender its \$15,000 policy limits for Gary Lewis. Said Order was entered October 30, 2013 and also, for the first time, found UAIC had a duty to defend Lewis under the implied policy for claims arising out of the July 2007 loss.

9. A review of the claims reveals the following: UAIC paid said \$15,000 policy limits, in one payment, on November 1, 2013, two days following the judgment. A true and accurate copy proof of the November 1, 2013 check payment for \$15,000, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'A.'

10. A review of the claims reveals the following: Nalders then appealed the October 30, 2013 ruling, again to the to the U.S. Court of appeals for the Ninth Circuit and, following briefing and oral argument, that Court certified a first certified question to the Nevada Supreme Court, on June 1, 2016, regarding whether Nalders could collect consequential damages, on the 2008 judgment against Lewis, from UAIC in the absence of bad faith by UAIC. This question was accepted by the Nevada Supreme Court.

11. A review of the claims reveals the following: While that question was pending, UAIC discovered that, pursuant to Nevada law, the Nalders' 2008 judgment against Lewis had not been renewed pursuant to N.R.S. 17.214 and, thus, the judgment had expired in June 2014, pursuant N.R.S. 11.190(1)(a).

12. A review of the claims reveals the following: Upon learning of the expiration of the judgment against Lewis, UAIC filed a Motion to dismiss the Nalders' appeal for lack of standing on March 14, 2017.

13. A review of the claims reveals the following: Upon learning of the Motion to dismiss, the Nevada Supreme Court stayed the first certified question for ruling on the Motion to dismiss by the U.S. Court of Appeals for the Ninth Circuit. However, that the Ninth Circuit than certified a second question to the Nevada Supreme Court on December 27, 2017, which the Nevada Supreme Court accepted on January 11, 2018. This second certified question concerns whether the potential liability for consequential damages is extinguished if the judgment has expired.

14. A review of the claims reveals the following: This second certified question is still being briefed before the Nevada Supreme Court and it UAIC's belief that the Supreme Court's ruling will confirm whether or not the Nalder's 2008 judgment against Lewis is expired.

15. A review of the claims reveals the following: On about July 19, 2018 UAIC's received notice from a new counsel for Nalder, David Stephens, Esq., that a new suit had been filed by Nalder against Lewis, concerning the same expired 2008 judgment currently on appeal, under *Nalder v Lewis*, case no. A-18-772220-C, and that he had served Lewis with same and was giving 3 days notice of his intent to take default against Lewis. A true and accurate copy letter from David Stephens dated July 17, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'B.'

16. A review of the claims reveals the following: Upon learning of this new action, and given the October 30, 2013 ruling of the Federal District court that an implied policy in effect for Lewis for the July 2007 loss - from which case no. A-18-772220-C arises - UAIC immediately sought to retain counsel for Lewis to defend him in this new action and prevent this default

17. A review of the claims reveals the following: UAIC also discovered that David Stephens had "amended" the expired 2008 judgment, *ex parte*, in about March 2018 - while the above-referenced appeal was pending and, accordingly, UAIC also sought to have retained defense counsel for Lewis vacate this improperly amended expired judgment.

18. A review of the claims reveals the following: UAIC engaged attorney Steven Rogers, Esq. to represent Lewis in regard to both this "amended" expired judgment in case no. 07A549111 as well as in regard to the new action case no. A-18-772220-C.

19. A review of the claims reveals the following: In early August 2018 attorney Rogers attempted to represent his client, Mr. Lewis, but was immediately met with resistance from Nalder's Counsel, Thomas Christensen, Esq., who claimed to also represent Lewis, whereby he asked Rogers if he believed his defense would cause "problems" for Lewis. Accordingly, on August 10, 2018 attorney Rogers sent a letter to attorney Christensen specifically responding to his concerns by noting Rogers did not believe his defense, seeking to relieve Lewis of a multi-million dollar judgment, would cause him any "problems." Attorney Rogers also attached copies of motions his office drafted on behalf of Lewis, to be filed in the 07A549111 action as well as in regard to the new action case no. A-18-772220-C. A true and accurate copy of the letter from Steve Rogers to Christensen dated August 10, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'C.'

20. A review of the claims reveals the following: In response to Attorney Rogers August 10, 2018 letter, Attorney Christensen responded, with a letter dated August 13, 2018, wherein he specifically advised Attorney Rogers he could neither speak to Lewis nor file the planned motions he had drafted on his behalf. A true and accurate copy of the letter from Christensen to Rogers dated August 13, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'D.'

21. A review of the claims reveals the following: In response to Christensen's August 13, 2018 letter, Rogers advised he could not represent Lewis due to Christensen's interference in preventing him from speaking to his client and he confirmed same in a letter to Christensen on August 23, 2018. A true and accurate copy of the letter from Rogers to Christensen dated August 23, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'E.'

22. A review of the claims reveals the following: Learning of the interference by Christensen in preventing retained defense counsel from defending Lewis in regard to both the 07A549111 action as well as in regard to the new action case no. A-18-772220-C, UAIC had counsel for UAIC file Motions to intervene in both actions on about August 17, 2018 and August 16, 2018, respectively.

23. A review of the claims reveals the following: Thereafter, on about September 6-7, 2018, Christensen indicated to Rogers that he was retaining Attorney Breen Arntz, Esq., to represent Lewis and confirmed same in an email to Rogers. A true and accurate copy of the emails from Christensen to Rogers dated September 6-7, 2018, kept in usual and ordinary course of business by UAIC, is attached hereto as Exhibit 'F.'

24. A review of the claims reveals the following: Fearing the 6 month deadline to seek to vacate the improperly amended judgment on the expired 2008 judgment would run in late September 2018, UAIC engaged Randy Tindall, Esq. to file the necessary Motions to protect Lewis in both actions, noted above.

25. A review of the claims reveals the following: Christensen then threatened Tindall to withdraw all Motions on behalf of Lewis and, eventually, filed a Third Party Complaint against Tindall and his law firm as well as UAIC. The third Party Complaint also makes allegations against Nevada Bar counsel and the sitting judge that was hearing the case as co-conspirators.

26. A review of the claims reveals the following: Now Lewis has moved for summary judgment on this Third Party complaint alleging many things against UAIC, all of which UAIC disputes.



27. UAIC is not in a conspiracy with Bar Counsel and District Judge David Jones, nor any counsel in this matter, against Christensen and Lewis.

28. UAIC has been motivated by utmost good faith to comply with Federal Court's order of October 30, 2013, finding a policy for Lewis with UAIC, at law, for the first time regarding the 2007 loss, in seeking to retain counsel and defend him in regard to the 07A549111 action as well as in regard to the new action case no. A-18-772220-C.

29. That UAIC is seeking to relieve Lewis of an improperly amended expired judgment for over \$3.5 million and, dismiss the new action filed against him.

30. That UAIC, through retained counsel, tried to discuss Lewis' defense with him, but this was refused by Counsel for Nalder and Lewis, Thomas Christensen.

31. That UAIC never misinformed Attorney Steve Rogers of the legal basis for the representation of Lewis.

32. The UAIC has not engaged in trickery, delay or misrepresentation to harm Lewis.

33. That due to the prevention of retained defense counsel from ever putting forth a defense on Lewis' behalf in regard to the 07A549111 action as well as in regard to the new action case no. A-18-772220-C, UAIC has filed a declaratory judgment action regarding lack of cooperation as well as seeking a determination whether UAIC owes Lewis "Cumis Counsel" due to the conflict alleged by attorney Christensen.

34. Accordingly, at this time, Lewis has not complied with all policy conditions as he is not cooperating in his defense or investigation of this amended judgment and new suit.

35. UAIC has never delayed investigation of this claim, or failed to respond to settlement requests or, done a one-sided investigation or, committed any other violation of the covenant of good faith and fair dealing and/or N.R.S. 686A.310.

36. Indeed, UAIC has thus far been precluded from even speaking to its insured, Lewis and, accordingly, has filed a Counter Motion for stay of the instant summary judgment for discovery pursuant to N.R.C.P. 56(f).

37. Specifically, UAIC needs discovery including, but not limited to, depositions and written interrogatories of Gary Lewis, which UAIC believes will lead to material issues of fact to understand if Lewis has been informed that UAIC's attempts to defend him seek to relieve him a multi-million dollar expired judgment such that he will owe nothing to Nalder and how and why he believes UAIC is injuring him or, in bad faith, for doing so.

38. Additionally, UAIC seeks the depositions of Lewis and Attorneys Arntz, Christensen and Stephens to understand all of their relationships vis-à-vis Nalder as UAIC believes this reveal material issues of fact concerning a fraud perpetrated on the Court

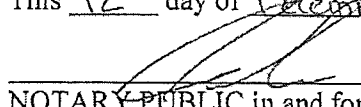
DATED this 12<sup>th</sup> day of December, 2018.

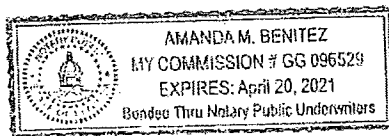


Brandon Carroll, As VP of Bodily Injury Claims  
and Duly authorized representative of United  
Automobile Insurance Company

SUBSCRIBED AND SWORN to before me

This 12<sup>th</sup> day of December 2018

  
NOTARY PUBLIC in and for said  
Miami Dade County, Florida



**EXHIBIT "A"**  
**TO AFFIDAVIT**

UNITED AUTOMOBILE INSURANCE COMPANY DETACH AND RETAIN THIS STATEMENT

DATE: 11/01/13 CHECK#: 0956661 CHECK AMOUNT: \$ \*\*\*\*\*15,000.00  
POLICY#: NVA -030021926 LOSS DATE: 7/08/07 ADJ: V03  
PAYEE: Christensen Law Office  
& James Nalder, Guardian Ad Litem for minor Cheyanne Nalder  
FULL AND FINAL SETTLEMENT OF ALL CLAIMS

CLAIM #: 0006000455 Claimant: 002 - CHEYANNE NALDER  
Unit # : 001 - 96 CHEV PICKUP1500 Coverage: BI - BODILY INJURY  
REASON:

ATKIN WINNER AND SHERROD  
1117 S RANCHO DR  
LAS VEGAS NV 89102-2216

**EXHIBIT "B"**  
**TO AFFIDAVIT**

## STEPHENS &amp; BYWATER, P.C.

ATTORNEYS AT LAW

David A. Stephens email: dstephens@sgblawfirm.com

Gordon E. Bywater email: 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:

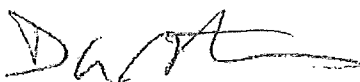
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I recognize that you have not appeared in this matter. I served Mr. Lewis some time ago and he has never filed an answer. Thus, as a courtesy to you, who I understand to be representing Mr. Lewis in related cases, I am providing this Three Day Notice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

I appreciate your consideration.

Sincerely,

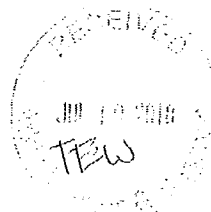
STEPHENS &amp; BYWATER



David A. Stephens, Esq.

DAS:mlg  
enclosure

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Website: [www.sgblawfirm.com](http://www.sgblawfirm.com)





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

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

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

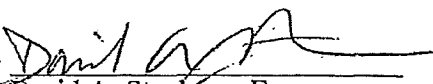
15 THREE DAY NOTICE TO PLEAD

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.

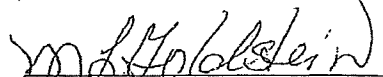
24   
25 David A. Stephens, Esq.  
26 Nevada Bar No. 00902  
27 Stephens Gourley & Bywater  
28 3636 N. Rancho Drive  
Las Vegas, NV 89130  
Attorney for Plaintiff

## CERTIFICATE OF MAILING

I hereby certify that service of this THREE DAY NOTICE TO PLEAD was made this 17<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 "C"**  
**TO AFFIDAVIT**



Attorneys At Law  
 Stephen H. Rogers  
 Rebecca L. Mastrangelo  
 Daniel E. Carvalho  
 Bori Mitchell\*  
 Imran Anwar  
 Charles A. Micholek  
 Dawn L. Davis^  
 Marissa R. Temple  
 Will C. Mitchell  
 Kimberly C. Best  
 \*Of Counsel  
 ^Also admitted in AZ

August 10, 2018

Via Email: [thomasc@injuryhelpnow.com](mailto:thomasc@injuryhelpnow.com)

Tommy Christensen, Esq.  
 Christensen Law Office, LLC  
 1000 South Valley View Blvd.  
 Las Vegas, Nevada 89107

Re: Cheyenne Nalder v. Gary Lewis  
 Court Case Nos.: A-07-549111-C and A-18-772220-C

Dear Tommy:

In response to your recent correspondence, it is my understanding that you and Dennis represent Mr. Lewis with regard to his claims against UAIC. I have been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions. Please advise if you are now also acting as Mr. Lewis' personal counsel with regard to my defense of Ms. Nalder's 2018 actions. If so, I will include you on all correspondence and meetings with Mr. Lewis.

As for your question about the legal issues presented by Ms. Nalder's 2018 actions, and whether the defenses I propose would cause Mr. Lewis any "problems," I do not believe they would. Ms. Nalder moved to amend an expired \$3.5 million judgment against him, and also filed a complaint for damages for the personal injuries which were previously adjudicated and to add interest through April 8, 2018, increasing the amount of the judgment to nearly \$5.6 million. My advice as Mr. Lewis' defense counsel is that we should attempt to protect him by moving to void the Amended Judgment and Dismiss the new Complaint.

Regarding the motion to void the Amended Judgment, Ms. Nalder's proposition that her guardian ad litem's responsibility to renew the judgment was tolled while she was a minor, and while Mr. Lewis was out of state, is legally unsupported. Attached is a draft of our proposed Motion for Relief from Judgment which sets forth the legal arguments. Presumably, Mr. Lewis would prefer not having this judgment against him. This motion is supported by the law, and should prove successful. If not, Mr. Lewis would be in no worse position than he is now.

Regarding Ms. Nalder's 2018 Complaint, the personal injury claims appear to be subject to dismissal pursuant to the doctrine of claim preclusion, as judgment has already been entered on the claims. That Ms. Nalder's guardian ad litem did not take the appropriate steps to renew the judgment was not Mr. Lewis' responsibility. Mr. Lewis should not be placed in legal jeopardy because of the



ROGERS  
MASTRANGELO  
CARVALHO &  
MITCHELL

*Tommy Christensen, Esq.*  
*Cheyenne Nalder v. Gary Lewis*  
*Page 2 of 2*


guardian ad litem's failure to act. Ms. Nalder's request for another amended judgment in her 2018 Complaint is procedurally inappropriate, since a request for an amended judgment is not a cause of action. Her request for declaratory relief does not meet the criteria. Overall, all of her claims regarding the validity of further amended judgments suffer from the same problems as the Amended Judgment - the original Judgment expired and cannot be revived. Attached is a copy of our proposed Motion to Dismiss the 2018 Complaint. Mr. Lewis' interests would be protected if the 2018 Complaint were dismissed, as, presumably, he would prefer not having to risk litigating Ms. Nalder's personal injury claims and potential exposure to an increased judgment. He would not be in any worse position than he is now if the Motion to Dismiss were denied.

In your letter, on Mr. Lewis' behalf, you instruct me not to file motions such as those attached. It is not clear to me why you have done so. I expect this letter and the attached motions answer any questions or concerns you may have. If you have specific concerns that I have not addressed, please advise. Otherwise, please confirm that Mr. Lewis will cooperate with his defense by agreeing to allow us to protect him by filing the attached motions, or, if not, why not.

Your prompt attention is appreciated. (Note: This letter is copied to Mr. Lewis so that he can participate with his counsel in our efforts to defend him his interests).

Sincerely,

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

Dictated by Stephen Rogers, Esq.  
Signed in his absence   
Stephen H. Rogers, Esq.

SHR:TLHK/cm

Attachments

cc: Gary Lewis

M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 080916 3 wpd

1 MDSM  
 2 STEPHEN H. ROGERS, ESQ.  
 3 Nevada Bar No. 5755  
 4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
 5 700 South Third Street  
 6 Las Vegas, Nevada 89101.  
 7 Phone (702) 383-3400  
 8 Fax (702) 384-1460  
 9 Email: [srogers@rmcmfaw.com](mailto:srogers@rmcmfaw.com)  
 10 Attorneys for Defendant.

11 DISTRICT COURT  
 12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,  
 14 Plaintiff,

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

15 vs.

16 GARY LEWIS and DOES I through 9 inclusive  
 17 Defendants.

18 DEFENDANT'S MOTION TO DISMISS

19 Defendant, Gary Lewis, by and through his counsel, Stephen H. Rogers, Esq., of the law firm  
 20 of Rogers, Mastrangelo, Carvalho & Mitchell, hereby brings his Motion to Dismiss Plaintiff's  
 21 Complaint in its entirety. Plaintiff's personal injury claims have been previously litigated and  
 22 judgment entered. Plaintiff's request for a second amended judgment should be dismissed because  
 23 the original judgment expired in 2014, was not properly renewed, and cannot be revived via an  
 24 amended judgment more than four years after it expired.

25 ///

26 ///

27 ///

28 ///

29 ///

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

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

4 ROGERS, MASTRANGELO, CARVALHO &  
 5 MITCHELL

6  
 7 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
 700 South Third Street  
 8 Las Vegas, Nevada 89101  
 Attorneys for Defendant

10 NOTICE OF MOTION

11 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

12 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO DISMISS

13 will come on for hearing before the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 2018

14 at \_\_\_\_ a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

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

16 ROGERS, MASTRANGELO, CARVALHO &  
 17 MITCHELL

18  
 19 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
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 20 Las Vegas, Nevada 89101  
 Attorneys for Defendant

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1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Cheyenne Nalder, ("Cheyenne") alleges in her Complaint that she was injured in an accident  
5 in 2007. Cheyenne was 11 years old at the time. She did not wait until she reached the age of  
6 majority to pursue her claim for damages against the alleged at-fault driver, Gary Lewis ("Lewis").  
7 A guardian ad litem, James Nalder, was appointed to pursue her claim. He did so, filing a complaint  
8 on her behalf and obtaining a Judgment for \$3.5 million. For unknown reasons, no payments other  
9 than Lewis' \$15,000 auto insurance policy limit have been sought on the Judgment. It is unknown  
10 what efforts James Nalder made to enforce the Judgment, if any. What is known is that he did not  
11 renew the Judgment before it expired in 2014, while Cheyenne was still a minor.

12 Despite the fact that Lewis' liability for any injuries Cheyenne may have sustained in the  
13 2007 accident have already been adjudicated and judgment entered, Cheyenne now re-asserts those  
14 claims in the instant Complaint. Those claims are subject to dismissal pursuant to the doctrine of  
15 claim preclusion.

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

19 Finally, Cheyenne seeks a declaration from the Court that the statute of limitations to enforce  
20 an Amended Judgment (and the second amended judgment she seeks in her Complaint) was tolled  
21 because she was a minor and Lewis resides in California. Declaratory relief is not appropriate in this  
22 matter because there is no justiciable controversy and the issues upon which Cheyenne requests  
23 declaratory relief are unripe. In addition, since the Amended Judgment should not have been issued.  
24 The original judgment expired in 2014 and was not subject to revival, there is nothing for Cheyenne  
25 to enforce.

26 In summary, the Court should dismiss the Complaint as there are no facts under which  
27 Cheyenne is entitled to relief.

## 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, a judgment was entered against him in the amount of \$3.5 million.<sup>1</sup> See Judgment, attached hereto as Exhibit "B." James Nalder as guardian ad litem for Cheyenne was the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless it is timely renewed. As such, the Judgment expired on June 3, 2014.

On March 22, 2018, nearly 10 years after the Judgment was entered, and nearly four (4) years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-07-549111-C, which is also assigned to this Court. Her Motion did not advise the Court that the Judgment she sought to amend had expired. The Court granted Cheyenne's Ex Parte Motion and issued an Amended Judgment on March 23, 2018. See Exhibit "C." Contemporaneous with the filing of the instant motion, Lewis has filed a Motion for Relief from Judgment in Case No. A-07-549111-C, 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, ll. 10 - 11.

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

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

### 4 III.

#### 5 MOTION TO DISMISS STANDARD

6 A defendant is entitled to dismissal when a plaintiff fails "to state a claim up which relief can  
7 be granted." NRCP 12(b)(5). The Nevada Supreme Court has declared that the dismissal of a  
8 complaint is appropriate where "it appears beyond a doubt that [the plaintiff] could prove no set of  
9 facts which, if true, would entitle [the plaintiff] to relief." *Baxter Stew, LLC v. City of N. Las Vegas*,  
10 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

11 In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint.  
12 *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev. Adv. Op. 76, 357 P.3d  
13 at 930 (2015) "the court is not limited to the four corners of the complaint." Citing 5B Charles Alan  
14 Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d ed.2004). The  
15 *Baxter* Court also held that a court "may also consider unattached evidence on which the complaint  
16 necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the  
17 plaintiff's claim; and (3) no party questions the authenticity of the document." *Id.*, citing *United*  
18 *States v. Cornithian Colleges*, 655 F.3d 984, 999 (9th Cir.2011) (internal quotation omitted). The  
19 *Baxter* Court continued "[w]hile presentation of matters outside the pleadings will convert the  
20 motion to dismiss to a motion for summary judgment, Fed.R.Civ.P. 12(d); NRCP 12(b), such  
21 conversion is not triggered by a court's 'consideration of matters incorporated by reference or integral  
22 to the claim,'" *Id.*, citing 5B Wright & Miller, *supra*, § 1357, at 376.

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

## IV.

## ARGUMENT

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

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

Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In 2008, the Nevada Supreme Court set forth a three-part test to be applied to determine when claim preclusion applies. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Shann*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015) (the modification is not applicable to this case). According to the *Five Star* test, claim preclusion applies when: (1) the parties or their priors are the same; (2) the final judgment is valid; and (3) the new action is based on the same claims that were or could have been brought in the first action. Cheyenne's claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for dismissal under the doctrine of claim preclusion.

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

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

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

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1 As the *Five Star* Court noted, public policy supports claims preclusion in situations such as  
2 this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a), noting  
3 that "the purposes of claim preclusion are 'based largely on the ground that fairness to the defendant,  
4 and sound judicial administration, require that at some point litigation over the particular controversy  
5 come to an end' and that such reasoning may apply 'even though the substantive issues have not  
6 been tried . . .'" *Id.* at 1058, 194 P.3d at 715. These policy reasons are applicable here. Lewis is  
7 entitled to finality. A Judgment was already entered against him. Renewing the Judgment was not  
8 Lewis' responsibility – that was the responsibility of Cheyenne's guardian ad litem, James Nalder.  
9 Lewis should not be exposed to judgment being entered against him a second time due to Nalder's  
10 failure to act.

11 Cheyenne's personal injury claims are the very type to which claims preclusion applies. The  
12 public policy considerations supporting claims preclusion cited with approval by the Court in *Five*  
13 *Star* apply to this action. The claims for personal injuries alleged in the Complaint should be  
14 dismissed.

15 *B. Plaintiff's Request for a Second Amended Judgment Should Be Dismissed Because it is*  
16 *not a Cause of Action*

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

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

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

7 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons  
8 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the  
9 controversy, and (3) the issue is ripe for judicial determination." *Cty. of Clark, ex rel. Univ. Med.*  
10 *Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 254, 756 (1998), citing *Knittle v. Progressive*  
11 *Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996). Here, declaratory relief is not available  
12 because the issue as to whether the Amended Judgment or any future amended judgment is  
13 enforceable, or whether the statute of limitations has expired, is not ripe.

14 The conditions under where a justiciable controversy exists were addressed by the Nevada  
15 Supreme Court in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a  
16 justiciable controversy does not exist, when damage "... is merely apprehended or feared..." *Id.*  
17 at 28-29, 189 P.2d at 366. As the Court in *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986) noted,  
18 "the requirement of an actual controversy has been construed as requiring a concrete dispute  
19 admitting of an immediate and definite determination of the parties' rights." *Id.* at 526, 728 P.2d at  
20 444. Cheyenne's concern that any effort to enforce the Amended Judgment will be thwarted by a  
21 determination that the applicable statute of limitations bars such action is "apprehended or feared"  
22 but not existing presently, because she has not taken any action to enforce the Amended Judgment.

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

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1 "Ripeness focuses on the timing of the action rather than on the party bringing the action .  
2 . . The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the  
3 hardship to the parties of withholding judicial review, and (2) the suitability of the issues for  
4 review." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1224, 1230-31  
5 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003)). In  
6 the unpublished decision in *Cassady v. Main*, 2016 WL 412835, a copy of which is attached hereto  
7 as Exhibit "E," the Nevada Supreme Court noted that the plaintiff in that case would suffer no harm  
8 if declaratory relief were not considered, because he could file a complaint seeking direct redress for  
9 complaints . *Id.* at \*2. Similarly here, Cheyenne could seek to have a court address her statute of  
10 limitations concerns in an action to execute on the Amended Judgment. There is no need for such  
11 a determination at this time.

12 Regardless as to whether Cheyenne's request for declaratory relief is appropriate at this  
13 juncture, Cheyenne's request for declaratory relief should be dismissed because there is no valid  
14 judgment to enforce. The original Judgment issued on June 3, 2008 expired on June 3, 2014. No  
15 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an Amended  
16 Judgment, entered on March 28, 2018. As demonstrated in Defendant's Motion for Relief From  
17 Judgment Pursuant to NRS 40, the Court should not have entered an Amended Judgment, and no  
18 other amended judgments should be entered. Nevada law does not permit renewal of expired  
19 judgments by amendment.

20 Nor is the deadline to file the appropriate documents to renew a judgment tolled by any  
21 statute or rule. The time limit to renew the Judgment was not tolled by Cheyenne's minority because  
22 her guardian ad litem, an adult, was the judgment creditor. The time limit to renew the Judgment was  
23 not tolled by the judgment creditor's absence from the state, because the requirement that a judgment  
24 be renewed is not a cause of action to which such tolling provisions might apply. Because no valid  
25 judgment exists, Cheyenne's request for declaratory relief regarding the tolling of the time to enforce  
26 a judgment should be dismissed as a matter of law.

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1 V.

2 CONCLUSION

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

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

6 ROGERS, MASTRANGELO, CARVALHO &  
7 MITCHELL

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9 Stephen H. Rogers, Esq.  
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DRAFT

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R., I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the \_\_\_\_ day of August, 2018, a true and correct copy of the foregoing DEFENDANT'S MOTION TO DISMISS was served upon the following counsel of record as indicated below:

David A. Stephens, Esq.  
 Stephens, Gourley & Bywater  
 3636 North Rancho Drive  
 Las Vegas, Nevada 89130  
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*Attorneys for Plaintiff*

\_\_\_\_ Via First Class, U.S. Mail, Postage  
 Prepaid  
 \_\_\_\_ Via Facsimile  
 \_\_\_\_ Via Hand-Delivery  
X Via Electronic Service Pursuant to  
 Rule 9 of the N.E.F.C.R.  
 (Administrative Order 14-2)

\_\_\_\_\_  
 An Employee of  
 Rogers, Mastrangelo, Carvalho & Mitchell

1 MREL  
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- Aug 6 page 3

11 DISTRICT COURT  
 12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,  
 14 Plaintiff,

CASE NO.: 07A549111

DEPT. NO.: 29

15 vs.

16 GARY LEWIS and DOES I through V inclusive

17 Defendants.

18 DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60

19 Defendant, Gary Lewis, by and through his counsel, Stephen H. Rogers, Esq., of the law firm  
 20 of Rogers, Mastrangelo, Carvalho & Mitchell, hereby brings his Motion for Relief from Judgment  
 21 Pursuant to NRCP 60, asking that this Court declare as void the Amended Judgment entered on  
 22 March 28, 2018, because the underlying Judgment expired in 2014 and is not capable of being  
 23 revived.

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1 This Motion is made and based upon the papers and pleadings on file herein, the Points and  
 2 Authorities attached hereto, and such oral argument as the Court may permit.  
 3 DATED this \_\_\_\_ day of August, 2018.

4 ROGERS, MASTRANGELO, CARVALHO &  
 5 MITCHELL

6  
 7 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
 700 South Third Street  
 8 Las Vegas, Nevada 89101  
 Attorneys for Defendant  
 9

10 NOTICE OF MOTION

11 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

12 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION FOR RELIEF  
 13 FROM JUDGMENT PURSUANT TO NRCF 40 will come on for hearing before the above-  
 14 entitled Court on the \_\_\_\_ day of \_\_\_\_, 2018 at \_\_\_\_ a.m. in Department XXIX of the  
 15 Eighth Judicial District Court, Clark County, Nevada.

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

17 ROGERS, MASTRANGELO, CARVALHO &  
 18 MITCHELL

19  
 20 Stephen H. Rogers, Esq.  
 Nevada Bar No. 5755  
 700 South Third Street  
 21 Las Vegas, Nevada 89101  
 Attorneys for Defendant

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1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 This Court made a mistake of law based on incomplete/incorrect facts presented in an Ex  
5 Parte Motion to Amended Judgment, when entering the Order granting the Motion on March 28,  
6 2018. The Judgment which Plaintiff, Cheyenne Nalder ("Cheyenne") moved to amend was entered  
7 on June 3, 2008. The judgment creditor, Cheyenne's guardian ad litem, James Nalder, did not renew  
8 the Judgment as required by Nevada law before it expired on June 3, 2104, six years after it was  
9 entered.

10 The Amended Judgment ostensibly revived the expired Judgment, despite the fact that  
11 Cheyenne presented this Court with no legal support for such revival. Cheyenne's Motion proposes  
12 that tolling provisions applicable to causes of action are also applicable to the deadlines to renew  
13 judgments. However, none of the authority cited in her Motion supports misappropriating tolling  
14 provisions applicable to certain causes of action to extend the time to renew a judgment, nor does  
15 any other authority. Pursuant to NRC P 600 the Court should declare that the Amended Judgment is  
16 void and that the original judgment has expired, and therefore is not enforceable.

17 II.

18 STATEMENT OF FACTS

19 This case involves an accident which occurred on July 8, 2007. Cheyenne, who was then a  
20 minor, claimed that she suffered injuries from the accident. On October 9, 2007, Cheyenne, through  
21 her guardian ad litem, James Nalder, presumably a relative, filed a Complaint against Gary Lewis  
22 ("Lewis"). See Complaint attached hereto as Exhibit "A."

23 Lewis did not respond to the Complaint and a default was taken against him. *Id.* Eventually,  
24 a judgment was entered against him in the amount of \$3.5 million. See Judgment, attached hereto

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1 as Exhibit "B." The Judgment was entered on June 3, 2008.<sup>1</sup> James Nalder as guardian ad litem for  
2 Cheyenne is the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires by  
3 limitation in six (6) years. 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) years  
5 after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne  
6 Nalder, Individually" ("Ex Parte Motion"). Her Motion did not advise the Court that the Judgment  
7 she sought to amend had expired. Rather, it cited two statutes, NRS 11.280 and 11.300, without  
8 explaining why they were applicable to her request, and asked the Court to amend the Judgment to  
9 be in her name alone. In short, the Court was not put on notice that it was being asked to ostensibly  
10 revive an expired judgment.

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

13 As the Judgment had expired and an Amended Judgment could not be issued to revive it,  
14 Lewis brings the instant Motion pursuant to NRCp 60(b), to void the Amended Judgment and  
15 declare that the original Judgment has expired.

### 16 III.

#### 17 ARGUMENT

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

19 Nevada law provides that the statute of limitations for execution upon a judgment is six (6)  
20 years. NRS 11.190(1)(a). The judgment creditor may renew a judgment (and therefore the statute  
21 of limitations), for an additional six years by following the procedure mandated by NRS 17.214. The  
22 mandated procedures were not followed. Therefore the Judgment expired.

23 NRS 17.214(1)(a) sets forth the procedure that must be followed to renew a judgment. A  
24 document filed "Affidavit of Renewal" containing specific information outlined in the statute must  
25 be filed with the clerk of court where the judgment is filed within 90 days before the date the  
26 judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No  
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28 <sup>1</sup> Judgments are entered when filed, not when a Notice of Entry is made. NRCp 58(C).

1 such Affidavit of Renewal was filed by James Nalder, the judgment creditor. Cheyenne was still a  
2 minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment  
3 was recorded, and the judgment debtor must be served. No evidence of recordation (if such was  
4 required) or service on Lewis is present in the record.

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

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

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

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

18 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six-  
19 year "catch all" provision of NRS 11.090(1)(a). *Leven* at 403, 168 P.3d at 715 ("An action on a  
20 judgment or its renewal must be commenced within six years under NRS 11.190(1)(a); thus a  
21 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS  
22 17.214, provides for any tolling of the time period to renew a judgment.

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

24 Setting aside the fact that the deadline to renew a judgment is not an action to which statutes  
25 of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS 17.214 were  
26 tolled by her minority are inapt for a few reasons. First, the tolling statute cited by Cheyenne, NRS  
27 11.280, does not universally toll all statutes of limitations while a plaintiff is a minor. Rather, it is  
28 expressly limited to actions involving sales of probate estates.



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

5 Emphasis added. NRS 11.260 applies to actions to recover a estate sold by a guardian. NRS 11.270  
6 applies to actions to recover estates sold by an executor or administrator. Neither of those causes of  
7 action are at issue here. Therefore, NRS 11.280 would not authorize tolling the deadline for the  
8 renewal of a judgment while a judgment creditor was a minor. This statute would not apply in any  
9 instance because the judgment creditor, James, was not a minor, and so did not have a legal  
10 disability.

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

15 As Cheyenne was not the judgment creditor at any time prior to the date of the issuance of  
16 the Amended Judgment, anyone looking at the Judgment would believe that it expired on June 4,  
17 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were given  
18 credence, either the judgment never expired, because she was the real party in interest and was a  
19 minor at the time, the Judgment would have otherwise expired or the judgment did expire but was  
20 revived upon her reaching the age of majority. To adopt this proposition would frustrate the certainty  
21 NRS 17.214 was enacted to promote — the reliability of title to real property.

22 If tolling of deadlines to amend judgments were sanctioned, title to real property owned by  
23 anyone who had ever been a judgment debtor would be clouded, as a title examiner would not know  
24 whether a judgment issued more than six years prior had expired pursuant to statute, or was still  
25 valid, or could be revived when a real party in interest who was a minor reached the age of majority.  
26 As the Court held in *Leven*, one of the primary reasons for the need to strictly comply with NRS  
27 17.214's recordation requirement is to "procure reliability of title searches for both creditors and  
28 debtors since any lien on real property created when a judgment is recorded continues upon that  
judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance with the notice

1 requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor.  
2 *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe  
3 that the judgment has expired and he need take no further action to defend himself against execution.

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

5 Cheyenne's Ex Parte Motion next cites NRS 11.300, which provides "if, when the cause of  
6 action shall accrue against a person, the person is out of the State, the action may be commenced  
7 within the time herein limited after the person's return to the State; and if after the cause of action  
8 shall have accrued the person departs from the State, the time of the absence shall not be part of the  
9 time prescribed for the commencement of the action." Cheyenne's argument that the deadline to  
10 renew the Judgment are tolled by NRS 11.300 fails because, again, renewing a judgment is not a  
11 cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada  
12 regarding judgments, held in *F/S Manufacturing v. Kensmore*, 798 N.W.2d 853 (N.D. 2011),  
13 "Because the statutory procedure for renewal by affidavit is not a separate action to renew the  
14 judgment, the specific time period [provided to renew] cannot be tolled under [the equivalent to NRS  
15 11.300] based on a judgment debtor's absence from the state." *Id.* at 858.

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

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

26 NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake (NRCP  
27 60(b)(1)) or because a judgment is void (NRCP 60(b)(4)). Both of these provisions apply.

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

1 Because the Ex Parte Motion was ex parte, it was not served on Lewis nor did he have an  
2 opportunity to make the Court aware that the Judgment had already expired on its own terms, and  
3 that Cheyenne's proposition that the deadline to renew the judgment was tolled was inapt. The Ex  
4 Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not been  
5 properly renewed. Had the Court been fully apprised of the facts, it likely would not have granted  
6 the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, a motion to set  
7 aside the amended judgment on the basis of mistake is timely as it is made within six months of the  
8 entry of the judgment. This Court should rectify the mistake and void the Amended Judgment in  
9 accordance with NRCP 60(b)(1).

10 2. *The Amended Judgment is void*

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

16 IV.

17 CONCLUSION

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

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

21 ROGERS, MASTRANGELO, CARVALHO &  
22 MITCHELL

23  
24 Stephen H. Rogers, Esq.  
25 Nevada Bar No. 5755  
26 700 South Third Street  
27 Las Vegas, Nevada 89101  
28 Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R., I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the \_\_\_\_ day of August, 2018, a true and correct copy of the foregoing DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60 was served upon the following counsel of record as indicated below:

David A. Stephens, Esq.  
Stephens, Gourley & Bywater  
3636 North Rancho Drive  
Las Vegas, Nevada 89130  
Telephone: (702) 656-2355  
Facsimile: (702) 656-2776  
Email: [dstephens@sgblawfirm.com](mailto:dstephens@sgblawfirm.com)  
*Attorneys for Plaintiff*

☐ Via First Class, U.S. Mail, Postage  
Prepaid  
☐ Via Facsimile  
☐ Via Hand-Delivery  
☒ Via Electronic Service Pursuant to  
Rule 9 of the N.E.F.C.R.  
(Administrative Order 14-2)

An Employee of  
Rogers, Mastrangelo, Carvalho & Mitchell

000722

000722

**EXHIBIT "D"**  
**TO AFFIDAVIT**



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 "E"**  
**TO AFFIDAVIT**



Attorneys At Law  
 Stephen H. Rogers  
 Rebecca L. Mastrangelo  
 Daniel E. Carvalho  
 Bert Mitchell\*  
 Imran Anwar  
 Charles A. Michalek  
 Dawn L. Davis^  
 Marissa R. Temple  
 Will C. Mitchell  
 Kimberly C. Beal  
 \*Of Counsel  
 ^Also admitted in AZ

August 23, 2018

Via Email: [thomasc@injuryhelpnow.com](mailto:thomasc@injuryhelpnow.com)

Thomas F. Christensen, Esq.  
 Christensen Law Office, LLC  
 1000 South Valley View Blvd.  
 Las Vegas, Nevada 89107

Re: Cheyenne Nalder v. Gary Lewis  
 Court Case Nos.: A-07-549111-C and A-18-772220-C

Dear Tommy:

You have advised that, as Mr. Lewis' personal counsel, I will not be permitted to speak with him. As such, I will not be able to defend him with respect to the amended judgment and the current Complaint. You have also advised that I am not to copy him on any letters. As I copied him on my initial letter, I ask that you advise him that I cannot represent him as he will communicate with me.

Sincerely,

ROGERS, MASTRANGELO, CARVALHO  
 & MITCHELL

Dictated by Stephen Rogers, Esq.  
 Signed in his absence

Stephen H. Rogers, Esq.

SHR/mms

cc: Gary Lewis

M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 082318.wpd

bcc: United Automobile Insurance Company  
Brandon Carroll (via email)  
Michael Harvey (via email)

**EXHIBIT "F"**  
**TO AFFIDAVIT**

**Carolyn Mangundayao**

**From:** Steve Rogers  
**Sent:** Friday, September 07, 2018 8:12 AM  
**To:** Carolyn Mangundayao; Thomas Christensen; breenarntz@me.com  
**Cc:** Reception  
**Subject:** RE: Gary Lewis

Tom:

In response to your second 09/06/18 email, you'll recall that you declined my request that you conference Mr. Lewis in on our 08/13/18 phone call. My request confirms that I was agreeable to your participation in my communications with Mr Lewis.

I will convey to UAIC your wish to retain Mr. Arntz to represent Mr. Lewis.

Please contact me with any questions.

Steve

(please f that there is a typo in the concluding line of my 08/23/18 letter: "he will communicate with me" inaccurately omitted the word "not")



Stephen H. Rogers, Esq.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
 700 South Third Street  
 Las Vegas, Nevada 89101  
 Telephone: (702) 383-3400  
 Facsimile: (702) 384-1460  
 Email: srogers@rmcmlaw.com

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**From:** Carolyn Mangundayao  
**Sent:** Friday, September 07, 2018 7:55 AM  
**To:** Thomas Christensen <thomasc@injuryhelpnow.com>; Steve Rogers <srogers@rmcmlaw.com>; breenarntz@me.com  
**Cc:** Reception <reception1st@injuryhelpnow.com>  
**Subject:** RE: Gary Lewis

See attached.

Thank you.



ROGERS  
MASTRANGELO  
CARVALHO &  
MITCHELL

*Carolyn Mangundayao*

Legal Assistant to Stephen H. Rogers, Esq., Bert O. Mitchell, Esq. & William C. Mitchell, Esq.  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL

700 South Third Street

Las Vegas, Nevada 89101

Telephone: (702) 383-3400

Facsimile: (702) 384-1460

Email: [cmangundayao@rmcmllaw.com](mailto:cmangundayao@rmcmllaw.com)

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From: Thomas Christensen [<mailto:thomasc@injurynow.com>]

Sent: Thursday, September 06, 2018 5:46 PM

To: Steve Rogers <[srogers@rmcmllaw.com](mailto:srogers@rmcmllaw.com)>; [breenarntz@me.com](mailto:breenarntz@me.com)

Cc: Carolyn Mangundayao <[cmangundayao@rmcmllaw.com](mailto:cmangundayao@rmcmllaw.com)>; Reception <[receptionist@injurynow.com](mailto:receptionist@injurynow.com)>

Subject: Gary Lewis

Stephen,

What is the date of your letter and how was it delivered? We do not have that letter. Please forward it to us. Given your dual representation of UAIC and Mr Lewis and that you feel communication with Mr Lewis through my office is not acceptable we think it better to allow Breen Arntz to represent Mr Lewis's interest in these two actions as independent counsel. Could you make a request that UAIC pay for independent counsel? Thank you.

Tommy Christensen

Christensen Law Offices

# EXHIBIT “C”

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

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE  
COMPANY,

Intervenor.

CASE NO.: 07A549111  
DEPT NO.: XX

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

AFFIDAVIT OF VICTORIA HALL IN  
SUPPORT OF UAIC'S OPPOSITIONS TO  
THE MOTIONS FOR RELIEF FROM  
ORDERS AND JOINDERS IN MOTIONS  
FOR RELIEF FROM ORDERS ON ORDER  
SHORTENING TIME

STATE OF NEVADA       )  
                                  )ss  
COUNTY OF CLARK     )

I, VICTORIA HALL, being duly sworn, on oath, deposes and says:

1. That I am an employee of the law firm, Atkin Winner & Sherrod.
2. That I am the legal assistant to Matthew J. Douglas, Esq.
3. I am familiar with the matters set forth in this affidavit and same are based upon my own personal knowledge of filing documents with the court in this case and contacting the Clerk of the Court, and if called as a witness, I could and would competently testify to the facts stated herein.
4. I make this declaration in support of UAIC's Opposition to the Motions for Relief from Order and Joinders in Motions for Relief from Orders, on an Order Shortening Time;



5. On August 16<sup>th</sup>, 2018 I electronically filed and served UAIC's Motion to Intervene on the Odyssey e-File NV web site in case no. A-18-772220-C matter in accordance with the usual and customary practice of electronically serving pleadings in said Court;
6. That I served UAIC's Motion to Intervene in case no. A-18-772220-C electronically, as indicated on the certificate of service I prepared with same filing, and then submitting it in the Odyssey system to serve all parties of record;
7. That, from my review of the Court docket at the time I served UAIC's Motion to Intervene in case no. A-18-772220-C the only party that had filed any pleading or made an appearance was counsel for Plaintiff David Stephens, Esq.;
8. That on August 17<sup>th</sup>, 2018 I electronically filed and served UAIC's Motion to Intervene in case no. 07A549111 on the Odyssey e-File NV in accordance with the usual and customary practice of electronically serving pleadings in said Court;
9. That, from my review of the Court docket at the time I served UAIC's Motion to Intervene in case no. 07A549111 the only party that had filed any pleading or made an appearance in 2018 was counsel for Plaintiff David Stephens, Esq.;
10. It was unknown to me at the time of filing the above noted Motions to Intervene, that David Stephens, Esq. had, for some unknown reason, failed to add his firm to the electronic service list for these matters on Odyssey;
11. That I have since contacted the Clerk of the Court for the Eighth Judicial District who confirmed that all attorneys filing pleadings in the said court must be registered for electronic service and, add themselves to the electronic service on Odyssey and, serve electronically;
12. I also mailed "Filed", stamped, copies of the both the Motions to intervene, in case no. A-18-772220-C and in case no. 07A549111, with Notices of the Motion indicating that the hearing of the Motions were to be held "IN CHAMBERS", from our office at 1117 S. Rancho, Las Vegas, NV. 89183, by regular U.S. mail, to Plaintiff's counsel David A. Stephens, Esq. at STEPHENS, GOURLEY &

BYWATER 3636 North Rancho Drive Las Vegas, NV 89130 on August 17, 2018,  
the same address for said counsel noted on my certificate of service;

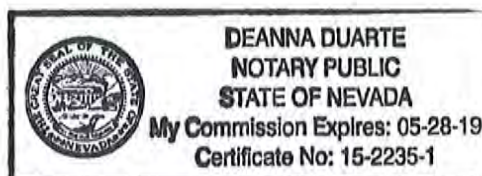
13. The copies of both of UAIC's Motions to Intervene, in both cases, that I mailed to Plaintiff's counsel David Stephens, Esq. on August 17<sup>th</sup>, 2018, were not returned by the post office;
14. That although I served both Motions to Intervene, in both cases, by mailing a copy of said Motions to Counsel David Stephens, Esq. at the address listed on my certificate of service, on August 17<sup>th</sup>, 2018, as an oversight I failed to check the appropriate box on the certificate of service for the Motion filed in case no. A-18-772220-C indicating service was made by both electronic service and U.S. mail and, instead only checked the box that the motion was served via electronic service;
15. That although I served both Motions to Intervene, in both cases, by mailing a copy of said Motions to Counsel David Stephens, Esq. at the address listed on my certificate of service, on August 17<sup>th</sup>, 2018, as an oversight, I failed to check any appropriate box on the certificate of service for the Motion filed in case no. 07A549111, indicating service was made by both electronic service and U.S. mail and, instead failed to check any box;
16. Further Affiant sayeth naught;

DATED this 20<sup>th</sup> day of December, 2018.

  
VICTORIA HALL

Subscribed and sworn to before me  
This 20<sup>th</sup> day of December 2018

  
NOTARY PUBLIC



# EXHIBIT “D”

From : dstephens@sdblawnfirm.com  
To : mdouglas@awslawyers.com  
Sent : 9/14/2018 9:08AM  
Subject : RE: Cheyenne Nalder v. Gary Lewis

Dear Matt,

If I had an answer to your question I would just file an opposition. I am researching to see if there is a basis for opposing either motion.

Off the top of my head, I think your motion is too late as to the 2007 lawsuit.

Thanks,

David A. Stephens, Esq.  
Stephens Gourley & Bywater  
3636 N. Rancho Drive  
Las Vegas, NV 89130  
Phone: (702) 656-2355  
Facsimile: (702) 656-2776  
<mailto:dstephens@sdblawnfirm.com>

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---

**From:** Matthew Douglas [<mailto:mdouglas@awslawyers.com>]  
**Sent:** Thursday, September 13, 2018 12:02 PM  
**To:** David Stephens  
**Cc:** Tom Winner  
**Subject:** RE: Cheyenne Nalder v. Gary Lewis

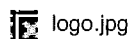
David-

Thanks for the email and further explanation. However, you have not responded to my question posed in my initial response to you earlier this week.

Specifically, in order to assess your request *can you kindly articulate what ☐response☐ or, opposition, you have or, would like to file, in regard to the 2 Motions to intervene?* In other words what is the nature of you planned objection or, opposition, to these two essentially ministerial motions?

Kindly let me know so I can consider your request. Thanks,

Matthew J. Douglas

*Partner*

1117 South Rancho Drive

Las Vegas, NV 89102

PHONE (702) 243-7000 | FAX (702) 243-7059

[mdouglas@awslawyers.com](mailto:mdouglas@awslawyers.com)[www.awslawyers.com](http://www.awslawyers.com)

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**From:** David Stephens <dstephens@sgblawfirm.com>**Sent:** Wednesday, September 12, 2018 5:23 PM**To:** Matthew Douglas <mdouglas@awslawyers.com>**Subject:** RE: Cheyenne Nalder v. Gary Lewis

Dear Matt,

Thanks for the courtesy.

I hope you did not think I was accusing you of not practicing properly. I have worked on cases against Trevor and Tom and they have always followed the rules and been professionals. I believe that you would do the same working for them. All I know is that I did not receive them. Whether they got lost in the Ethernet and mail or we mishandled them I do not know.

I can have an opposition filed within one week from today if that works for you. If you need time to file a reply you could calculate that from then.

If my suggestion does not work, let me know what you think works.

I appreciate your courtesy.

Sincerely,

David A. Stephens, Esq.

Stephens Gourley &amp; Bywater

3636 N. Rancho Drive

Las Vegas, NV 89130

Phone: (702) 656-2355

Facsimile: (702) 656-2776

<mailto:dstephens@sgblawfirm.com>

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**From:** Matthew Douglas [<mailto:mdouglas@awslawyers.com>]  
**Sent:** Tuesday, September 11, 2018 6:28 PM  
**To:** David Stephens  
**Cc:** Victoria Hall; Tom Winner  
**Subject:** RE: Cheyenne Nalder v. Gary Lewis

David-

I was in deposition today so I am just getting a chance to respond to your email. In any event, my assistant tells me we properly e-served the Motion to Intervene in the ☐new☐ case A-18-772220-C, pursuant to court rules and, further, as to the original case, case no. 07A549111, mailed the notice and Motion to intervene to you as it is an old case not on e-filing. So, you should have received proper notice for both.

Regardless, in order to assess your request can you kindly articulate what ☐response☐ or, opposition, you have or, would like to file, in regard to the 2 Motions to intervene?

Thanks,

 logo.jpg

**Matthew J. Douglas**  
*Partner*  
1117 South Rancho Drive  
Las Vegas, NV 89102  
PHONE (702) 243-7000 | FAX (702) 243-7059  
[mdouglas@awslawyers.com](mailto:mdouglas@awslawyers.com)  
[www.awslawyers.com](http://www.awslawyers.com)

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**From:** David Stephens <[dstephens@sgblawfirm.com](mailto:dstephens@sgblawfirm.com)>  
**Sent:** Tuesday, September 11, 2018 10:51 AM  
**To:** Matthew Douglas <[mdouglas@awslawyers.com](mailto:mdouglas@awslawyers.com)>  
**Subject:** Cheyenne Nalder v. Gary Lewis

Dear Matthew:

As I was recently checking on the status of a default against Mr. Lewis, I learned that you had filed a motion to intervene in the case on behalf of United Automobile Insurance Company on August 16, 2018. That motion to intervene has never been served upon me. Thus, I have not had the opportunity to respond to that motion to intervene.

I am writing to request that you continue the motion to intervene and serve me a copy so that I can file an appropriate and timely response with the court.

That finding made me curious and I checked the other case filed by James Nalder against Gary Lewis in which I am the attorney of record for Cheyenne Nalder, now that she has reached the age of majority, I found that you filed a motion to intervene in that case on August 17, 2018.

I have not been served a copy of that motion and I am writing to request that you continue the hearing of that motion and serve me a copy so that I can file an appropriate and timely response with the court.

I appreciate your consideration and look forward to hearing from you promptly as to this request.

Sincerely,

David A. Stephens, Esq.  
Stephens Gourley & Bywater  
3636 N. Rancho Drive  
Las Vegas, NV 89130  
Phone: (702) 656-2355  
Facsimile: (702) 656-2776  
<mailto:dstephens@sghlawfirm.com>

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000739

# EXHIBIT “E”



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

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

9 CHEYENNE NALDER,

CASE NO.: 07A549111

10 Plaintiff,

DEPT NO.: XXIX

11 vs.

12 GARY LEWIS,

13 Defendants.

14 **PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

15 Date: 9/19/2018  
16 Time: Chambers

17 Cheyenne Nalder, through her attorney, David A. Stephens, Esq., opposes the Motion to  
18 Intervene filed by United Automobile Insurance Company, as follows:

19 **POINTS AND AUTHORITIES**

20 **I. INTRODUCTION**

21 Initially, Counsel for Plaintiff apologizes for the lateness filing of this opposition to the  
22 motion to intervene. Counsel first learned of this motion to intervene on September 10, 2018.  
23 Counsel then contacted Matthew Douglas, Esq., by email requesting an extension of time to respond  
24 to the motion in that he had never received the motion to intervene.<sup>1</sup>

25 Mr. Douglas responded by stating that the motion to intervene was served by mail on August  
26 17, 2018. Counsel for Plaintiff indicated that it had not been received. Mr. Douglas then indicated

27  
28 <sup>1</sup> Counsel for Plaintiff does not mean to imply, by this statement, that counsel for UAIC did not serve the motion properly. He can only represent that he did not receive the motion. He does not know the reason why it was not received.

1 that he needed to know the grounds for opposing the motion before he could agree to an extension.  
2 Thus, it became easier to do the research and file the opposition late, than do the research on the  
3 possible grounds to get an extension of time to file an opposition. Thus, this opposition is being  
4 filed late.

## 5 II. FACTS

6 On the 8<sup>th</sup> day of July, 2007, Defendant, Gary Lewis, ("Lewis"), ran over Cheyenne Nalder,  
7 ("Cheyenne"), while he was driving his vehicle on private property located in Lincoln County,  
8 Nevada.<sup>2</sup>

9 Cheyenne was a minor at the time of the accident.

10 Gary Lewis carelessly and negligently drove his car such that it struck Cheyenne Nalder.

11 This accident caused serious injuries to Cheyenne.

12 Following the accident, Cheyenne, with her father as guardian ad litem, filed suit against  
13 Lewis. Lewis did not respond to the suit. Therefore, on June 3, 2008, Cheyenne obtained a default  
14 judgment against Lewis for \$3,500,00.00. A notice of entry of this judgment was filed on August  
15 26, 2008.

16 When the lawsuit was filed, and at the time the judgment was entered on June 3, 2008,  
17 Cheyenne was represented by Christensen Law Offices.<sup>3</sup>

18 None of that judgment has ever been paid, with the exception of \$15,000.00, which was  
19 later paid by United Auto Insurance Company, ("UAIC"), following a suit filed against UAIC,  
20 which was alleged to be the insurer for Lewis at the time of the accident, for bad faith, failure to  
21 defend, and other claims for relief.

22 In 2018, Cheyenne, due to the fact she had reached the age of majority, filed a motion to  
23 amend the judgment to make herself the plaintiff, rather than her father, who had been her guardian  
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25 <sup>2</sup> These statements of facts are based upon allegations in the pleadings filed in this matter, and  
26 the statements made in the motion to intervene.

27 <sup>3</sup> It is counsel's understanding that Cheyenne is still represented by Tom Christensen, Esq.,  
28 and also by Dennis Prince, Esq., in the litigation and pending appeals involving UAIC's duty to defend  
Lewis and any related claims.

ad litem.

The amended judgment was signed by this Court and filed on March 28, 2018. On May 18, 2018, a notice of entry of judgment was served on Mr. Lewis.

Until it filed this motion to intervene, UAIC had never appeared in this lawsuit. Now it seeks to intervene.

### III. UAIC IS NOT ENTITLED TO INTERVENE IN THIS MATTER

It is too late for UAIC to file a motion to intervene.

A party cannot intervene into a matter where a judgment is final.

"We conclude that once the district court dismissed this case with prejudice, it lost all jurisdiction concerning that judgment, except to alter, set aside, or vacate its judgment in conformity with the Nevada Rules of Civil Procedure."

*SFPP, LP v. District Court*, 123 Nev. 608, 173 P.3d 715, (2007).

While the *SFPP* case involved a dismissal of the case, rather than judgment in the case, the analysis still applies. Here, there is a judgment which disposes of all issues in the case. It is too late to intervene. That final judgment disposed of all issues in the case.

"To avoid any confusion regarding this matter, we clarify that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs. A post-judgment order awarding attorney's fees and/or costs may be appealed as a special order made after final judgment, pursuant to NRAP 3A(b)(2).

*See Smith v. Crown Financial Services*, 111 Nev. 277, 280 n. 2, 890 P.2d 769, 771 n. 2 (1995)."

*Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416, 417 (2000).

Thus, this Court lacks the jurisdiction to even consider a motion to intervene after the entry of a final judgment, which has occurred.

Additionally, the Nevada Supreme Court has held, "The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment." *Lopez v. Merit Insurance Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993). Thus, the language of the statute on intervention

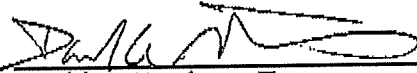
1 has been held to not permit intervention after the entry of a final judgment.

2 Because final judgment has been entered in this case, the court lacks jurisdiction to consider  
3 a motion to intervene. Additionally, it has been held that the statute on intervention does not allow  
4 a post judgment intervention in a case.

5 For these reasons it is respectfully requested that this Court deny the motion to intervene.

6 Dated this 14 day of September, 2018.

7 STEPHENS & BYWATER, P.C.

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10 David A. Stephens, Esq.  
11 Nevada Bar No. 00902  
12 3636 North Rancho Drive  
13 Las Vegas, Nevada 89130  
14 Attorneys for Plaintiff  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of September, 2018, I served the following document: **PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

☐ VIA ELECTRONIC FILING; (N.E.F.R. 9(b))

☐ VIA ELECTRONIC SERVICE (N.E.F.R. 9)

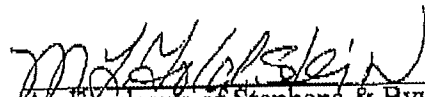
☒ BY MAIL: by placing the documents(s) listed above in a sealed envelope, postage prepaid in the U. S. Mail at Las Vegas, Nevada, addressed as set forth below:

Matthew J. Douglas, Esq.  
Atkin Winner & Sherrod  
117 S. Rancho Drive  
Las Vegas, NV 89102

☒ BY FAX: by transmitting the document(s) listed above via telefacsimile to the fax number(s) set forth below. A printed transmission record is attached to the file copy of this document(s).

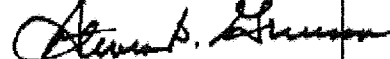
Matthew J. Douglas, Esq., 702-243-7059

☐ BY HAND DELIVER: by delivering the document(s) listed above to the person(s) at the address(es) set forth below.

  
An Employee of Stephens & Bywater

# EXHIBIT “F”

Electronically Filed  
9/17/2018 12:33 PM  
Steven D. Grierson  
CLERK OF THE COURT



OPPS (CIV)  
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Nevada Bar No. 00902  
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Email: dstephens@sgblawfirm.com  
Attorney for Cheyenne Nalder

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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