

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
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District Court Case No. 07A549111, Consolidated with 18-A-772220

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SUMMARY**

Certified Question to Nevada Supreme Court

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

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

ORDER

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

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 Submission remains withdrawn pending further order.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

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

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

I

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

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

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

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

II

The question of law to be answered is:

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

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

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

III

A

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

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

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

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

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

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

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

B

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

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

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

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

IV

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

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

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

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

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

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

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

V

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

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

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

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

IT IS SO ORDERED.

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

Diarmuid F. O’Scannlain
Circuit Judge

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EXHIBIT “F”

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 70504

FILED

vs.
UNITED AUTOMOBILE INSURANCE
COMPANY,
Respondent.

FEB 23 2018

ELIZABETH A. HROWN
CLERK OF SUPREME COURT
BY: S. Young
DEPUTY CLERK

*ORDER ACCEPTING SECOND CERTIFIED QUESTION AND
DIRECTING SUPPLEMENTAL BRIEFING*

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

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

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

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

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

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

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

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

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

It is so ORDERED.¹

Douglas C.J.
Douglas

Cherry J.
Cherry

Gibbons J.
Gibbons

Pickering J.
Pickering

Hardesty J.
Hardesty

Stiglich J.
Stiglich

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

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

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

EXHIBIT “G”

Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT



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TPC
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Attorney for Third Party Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

Cheyenne Nalder)	
Plaintiff,)	CASE NO. A-18-772220-C
vs.)	DEPT NO. XXIX
)	
Gary Lewis,)	
Defendant.)	
)	
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.)	

THIRD PARTY COMPLAINT

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

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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 5. Gary Lewis ran over Cheyenne Nalder (born April 4, 1998), a nine-year-old girl
26 at the time, on July 8, 2007.
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28 6. This incident occurred on private property.

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

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

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

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

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

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

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

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

15. UAIC never filed a declaratory relief action.

16. UAIC rejected Nalder's offer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. Both the suit against UAIC and the judgment against UAIC entered by the trial court were done well within even the non-tolled statute of limitations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 74. Randall Tindall, Esq. filed unauthorized pleadings on behalf of Gary Lewis on
17 September 26, 2018.
18

19 75. UAIC hired Tindall to further its strategy to defeat Nalder and Lewis' claims.
20 Tindall agreed to the representation despite his knowledge and understanding that this strategy
21 amounted to fraud and required him to act against the best interests of his "client" Lewis.

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

24 77. These three filings by Randall Tindall, Esq. are almost identical to the filings
25 proposed by UAIC in their motion to intervene.
26

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

28 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

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

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

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

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 harming Gary Lewis.
16

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

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

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

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

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

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

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

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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.

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

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.
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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 \$10,000.
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.

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

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

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

96. As a proximate result of the aforementioned breach of the covenant of good faith and fair dealing, 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. Gary Lewis prays leave of the court to insert those figures when such have been fully ascertained.

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

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

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

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

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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.

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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.

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

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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;
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26 106. As a proximate result of the aforementioned violation of NRS 686A.310, Gary
27 Lewis has suffered and will continue to suffer in the future damages as a result of the delayed
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payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert those figures when such have been fully ascertained.

107. As a further proximate result of the aforementioned violation of NRS 686A.310, 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.

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

109. 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 is therefore entitled to punitive damages.

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

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

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

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

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

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

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

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

19 20 116. The aforementioned actions of UAIC, and each of them, constitute extreme and
21 outrageous conduct and were performed with the intent or reasonable knowledge or reckless
22 disregard that such actions would cause severe emotional harm and distress to Gary Lewis.

23 24 117. As a proximate result of the aforementioned intentional infliction of emotional
25 distress, Gary Lewis has suffered severe and extreme anxiety, worry, mental and emotional
26 distress, and other incidental damages and out of pocket expenses, all to his general damage in
27 excess of \$10,0000.
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118. 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, are
liable for his attorney's fees reasonably and necessarily incurred in connection therewith.

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119. 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 is therefore entitled to
punitive damages.

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

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

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

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

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

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

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

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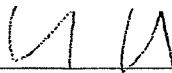
4. Special damages in the amount of any Judgment ultimately awarded against him in favor of Nalder plus any attorney fees, costs and interest.

5. Attorney's fees; and

6. Costs of suit;

7. For such other and further relief as the Court may deem just and proper.

DATED THIS 24 day of October, 2018.



Thomas Christensen, Esq.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
T: (702) 870-1000
F: (702) 870-6152
courtnotices@injuryhelpnow.com
Attorney for Cross-Claimant
Third-party Plaintiff

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 24th 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:

Randall Tindall, Esq.
Resnick & Louis
8925 W. Russell Road, Suite 225
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rtindall@rlattorneys.com
lbell@rlattorneys.com
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5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
breen@breen.com



An employee of CHRISTENSEN LAW OFFICES

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EXHIBIT “H”

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

10 UNITED STATES DISTRICT COURT
11 FOR THE DISTRICT OF NEVADA

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

Case No.: 2:09-cv-1348

16 vs.)

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

JURY DEMAND REQUESTED

21 ANSWER TO INTERROGATORIES

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

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

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

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

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

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

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

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

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

3 ANSWER TO INTERROGATORY NO. 4: OBJECTION: This Interrogatory is objected to on
4 the grounds it is overly broad, unduly burdensome, compound and seeks information not
5 reasonably calculated to lead to the discovery of admissible evidence. However without
6 waiving said objections, Plaintiff responds as follows: (2000-2002)ACB Components and
7 Fasteners, Covina, CA , warehouse associate, purchasing agent and sales representative,
8 supervisor-David Hanson; (2002-2007) American Leak Detection, Las Vegas, NV, plumber
9 technician/customer service representative, supervisor-Rich Welsh; (2007-2010)Self
10 employed. Plaintiff reserves the right to supplement this answer as discovery continues.
11

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

15 ANSWER TO INTERROGATORY NO. 5: OBJECTION: This Interrogatory is objected to on
16 the grounds it is overly broad, unduly burdensome, compound and calls for a narrative
17 response. However without waiving said objections, Plaintiff responds as follows: I ran over
18 Cheyanne Nalder with my truck. Plaintiff reserves the right to supplement this answer as
19 discovery continues.
20

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

22 ANSWER TO INTERROGATORY NO. 6: OBJECTION: This Interrogatory is objected to on
23 the grounds it is overly broad, unduly burdensome, compound and seeks information not
24 reasonably calculated to lead to the discovery of admissible evidence. However without
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1 waiving said objections, Plaintiff responds as follows: I was friends with Cheyanne's father.

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

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

4 ANSWER TO INTERROGATORY NO. 7: OBJECTION: This Interrogatory is objected to on

5 the grounds it is overly broad, unduly burdensome, compound and seeks information not

6 reasonably calculated to lead to the discovery of admissible evidence. However without

7 waiving said objections, Plaintiff responds as follows: friends. Plaintiff reserves the right to

8 supplement this answer as discovery continues.

9 INTERROGATORY NO. 8: If you consumed any intoxicating beverages or consumed any

10 type of drug within twenty-four (24) hours preceding each accident, please state the time and

11 place of each drink or consumption and the kind and amount of intoxicating beverages or drug

12 used or consumed.

13 ANSWER TO INTERROGATORY NO. 8: OBJECTION: This Interrogatory is objected to on

14 the grounds it is overly broad, unduly burdensome, compound and seeks information not

15 reasonably calculated to lead to the discovery of admissible evidence. However without

16 waiving said objections, Plaintiff responds as follows: None. Plaintiff reserves the right to

17 supplement this answer as discovery continues.

18 INTERROGATORY NO. 9: If you maintain you were insured under a policy of automobile

19 insurance issued by United Automobile Insurance Company please state the dates of coverage

20 for said policy and policy number.

21 ANSWER TO INTERROGATORY NO. 9: OBJECTION: This Interrogatory is objected to on

22 the grounds it is overly broad, unduly burdensome and compound. However without waiving

23 said objections, Plaintiff responds as follows: I was covered by a policy of insurance through

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

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

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

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

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

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

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

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

23 ANSWER TO INTERROGATORY NO. 13: OBJECTION: This Interrogatory is objected to
 24 on the grounds it is overly broad, unduly burdensome and compound. However without
 25 waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received
 26 said that I would not have a lapse in coverage if payment was made before the expiration of my
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1 policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10,
2 2007. Plaintiff reserves the right to supplement this answer as discovery continues.

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

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

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

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

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

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

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

16
 17 INTERROGATORY NO. 18: If you have ever made any claim or filed any lawsuit against any
 18 person, group, organization, corporation, industrial commission or any other entity, describe in
 19 detail the nature of the claim or lawsuit or how it was resolved.

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

26
 27 INTERROGATORY NO. 19: The date you first spoke to, were contacted by, contacted,
 28 corresponded with, or otherwise communicated with counsel for James Nalder, Guardian Ad

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

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

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

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

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

10
11 DATED this 3rd day of March, 2010.

12
13 CHRISTENSEN LAW OFFICES, LLC

14
15 BY: 
16 THOMAS CHRISTENSEN, ESQ.
17 Nevada Bar No. 2326
18 DAVID F. SAMPSON, ESQ.
19 Nevada Bar No. 6811
20 1000 S. Valley View Blvd.
21 Las Vegas, Nevada 89107
22 Attorney for Plaintiffs

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EXHIBIT "I"

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

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

8 JAMES NALDER, Guardian Ad Litem for minor)
 Cheyanne Nalder, real party in interest, and)
 9 GARY LEWIS, Individually;)
)
 10 Plaintiffs,) Case No.: 2:09-cv-1348
)
 11 vs.)
)
 12 UNITED AUTOMOBILE INSURANCE CO,)
 13 DOES I through V, and ROE CORPORATIONS)
 I through V, inclusive)
)
 14)
 15 Defendants.)
)

PLAINITFF'S 12th SUPPLEMENT TO LIST OF WINTESSES AND DOCUMENTS

I

LIST OF WITNESSES

- 21 1. JAMES NALDER, c/o Christensen Law Offices, LLC, 1000 S. Valley View Blvd., Las Vegas, NV 89107, is expected to testify as to facts and circumstances surrounding this litigation.
- 23 2. CHEYENNE NALDER, c/o Christensen Law Offices, LLC, 1000 S. Valley View Blvd., Las Vegas, NV 89107, is expected to testify as to facts and circumstances giving rise this litigation.
- 26 3. GARY LEWIS, c/o Christensen Law Offices, LLC, 1000 S. Valley View Blvd., Las Vegas, NV 89107, is expected to testify as to facts and circumstances giving rise this litigation.

RECORDED

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COURT REPORTER & SERVICE CO



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- 1 4. PERSON MOST KNOWLEDGABLE OF UNITED AUTOMOBILE INSURANCE
2 CO. c/o Atkin, Winner, Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102, is expected
3 to testify as facts and circumstances giving rise to this litigation.
- 4 5. PERSON MOST KNOWLEDGABLE OF US AUTO INSURANCE AGENCY, INC.,
5 is expected to testify as to facts and circumstances giving rise to this litigation.
- 6 6. ELSIE CABRERA OF US AUTO INSURANCE AGENCY, INC., 3909 W. Sahara
7 Ave. #4 Las Vegas, NV 89102, is expected to testify as to facts and circumstances
8 giving rise to this litigation.
- 9 7. ELSIE MALDONADO OF US AUTO INSURANCE AGENCY, INC., 3909 W. Sahara
10 Ave. #4 Las Vegas, NV 89102, is expected to testify as to facts and circumstances
11 giving rise to this litigation.
- 12 8. MANNY CORDOVA OF US AUTO INSURANCE AGENCY, INC., 3909 W. Sahara
13 Ave. #4 Las Vegas, NV 89102, is expected to testify as to facts and circumstances
14 giving rise to this litigation.
- 15 9. ALEX PEREZ or PMK at US Auto Insurance Agency, 3909 W. Sahara, Suite #4, Las
16 Vegas, NV 89102; is expected to testify regarding his knowledge of the facts and
17 circumstances surrounding the incident in question , in specifically regarding Lewis
18 payment of his policy premium July 10, 2007.
- 19 10. PMK at US Auto Insurance Agency, 3909 W. Sahara, Suite #4, Las Vegas, NV 89102;
20 is expected to testify regarding his knowledge of the facts and circumstances
21 surrounding the incident in question , in specifically regarding Lewis payment of his
22 policy premium July 10, 2007.
- 23 11. Charles M. Miller, 1442A Walnut St. #55 Berkeley, CA 94709; is expected to testify as
24 an expert regarding any subject matter related to his expertise in the field of insurance,
25 findings on his review and examinations, including but not limited to testing results, as
26 well as the damages as a result of this incident and his report and opinions.
- 27 12. Steven Plitt, KUNG, PLITT, HYLAND DEMOLONG & KLEIFIELD, 3838 N. Central
28 Ave. 15th Fl. Phoenix, AZ 85012, is expected to testify as an expert designated by
Defendants to offer expert testimony as defined in N.R.C.P. 26(b)(5) consistent with his
report surrounding his review of the documentation and claim file, and extra-
contractual or "bad faith" claims of Plaintiff.
- 13. Kristen Scott, 399 McClure St. Apt. 4, El Cajon, CA 92021; is expected to testify as to
the facts and circumstances giving rise to this litigation.
- 14. ELYSE CABRERA aka MONICA MALDONADO, 8976 High Horizon Ave. Las
Vegas, NV 89149 is expected to testify as to the facts and circumstances giving rise to
this litigation.

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15. GISELLE MOLINA, c/o Atkin Winner & Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102; is expected to testify as to the facts and circumstances giving rise to this litigation.

16. LISA WATSON, unknown address, is expected to testify as to the facts and circumstances giving rise to this litigation.

17. ERIC COOK, c/o Atkin Winner & Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102; is expected to testify as to the facts and circumstances giving rise to this litigation.

18. ANNIE VEGA, c/o U.S. Auto Insurance Agency, 3909 W. Sahara Ave., #4, Las Vegas, NV 89102, is expected to testify to the facts and circumstances giving rise to this litigation.

19. PMK of U.S. Auto Insurance Agency, 3909 W. Sahara Ave., #4, Las Vegas, NV 89102, is expected to testify to the facts and circumstances giving rise to this litigation.

20. DANICE DAVIS of UAIC, c/o Atkin Winner & Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102; is expected to testify as to the facts and circumstances giving rise to this litigation.

21. DOUG HOUSBECK of UAIC 5012 Moose Falls Drive Las Vegas, NV 89141; is expected to testify as to the facts and circumstances giving rise to this litigation.

CUSTODIAN OF RECORDS for all witnesses listed by Plaintiff herein and supplements hereto, are expected to testify as to the records provided to the Plaintiff.

PERSONS MOST KNOWLEDGEABLE for all witnesses listed by Plaintiff herein and supplements hereto, are expected to testify as expert witnesses about the injuries sustained by Plaintiffs as a result of this incident.

All witnesses listed by the Defendant and any other party to this litigation.

All witnesses identified during discovery and or deposed during discovery of this litigation.

Rebuttal and/or impeachment witnesses.

Experts unknown at this time.

Plaintiff reserves the right to supplement this list as the discovery process continues.

II
LIST OF DOCUMENTS

- 1 1. Judgment/Notice of Entry
- 2 2. Various insurance documents
- 3 3. Letter dated 8/2/2007 from Christensen Law to United Automobile Insurance Company
- 4 4. Letter dated 8/6/07 from United Automobile Insurance Company to Christensen Law
- 5 Offices, LLC
- 6
- 7 5. Letter dated 10/10/2007 from United Automobile Insurance Company to Christensen
- 8 Law Offices, LLC
- 9
- 10 6. Letter dated 10/23/07 from Christensen Law to United Automobile Insurance Company
- 11 7. Letter dated 11/1/07 from United Automobile Insurance Company to Christensen Law
- 12 Offices, LLC
- 13
- 14 8. Defendant's claim file
- 15
- 16 9. Defendant's Underwriting file materials for policies of insurance with Lewis
- 17
- 18 10. Charles Miller's report, Deposition/Trial history and curriculum vitae and supplemental
- 19 report, second supplemental report
- 20
- 21 11. Assignment
- 22
- 23 12. Steven Plitt report, curriculum vitae, testimony history and fee schedule
- 24
- 25 13. US Auto Insurance Agency documentation
- 26
- 27 14. Recording of UAIG call
- 28
15. Article, United Auto Set up in Bad-Faith Case?, published 10/20/2009
<http://www.claimsmag.com/News?2009/10/Pages?United-Auto-Set-Up...>
16. United Automobile Insurance Company A.M. Best Rating
17. Article, United Automobile Insurance Complaints-Will no Honor Claim, posted 08-22-
2008, complaintsboard.com,

- 1 18. Article, United Automobile unhappy being caught denying payments to medical
2 providers, posted April 27, 2010, <http://injurylaw.labovick.com>
3
4 19. UAIC-Mission Statement
5 20. UAIC web page
6 21. UAIC-Our Products
7 22. Correspondence from UAIC to Christensen Law Offices and SeegMiller & Associates
8 23. Underwriter diary notes
9 24. Specimen Policy Language (terms) for each such policy term referenced in Exhibit
10 "E" to Defendant's Initial Production.
11 25. All records from U.S. Auto Insurance Agency, 3909 W. Sahara Ave., #4, Las
12 Vegas, NV 89102 related to this matter.
13 26. Various documents faxed to Christensen Law from U.S. Auto Insurance Agency, Inc.
14 **27. Color photographs of Cheyanne Nalder**
15 101. University Medical Records for Cheyanne Nalder
16 102. Northstar Imaging Records for Cheyanne Nalder
17 103. Mercy Air Records for Cheyanne Nalder
18 104. Desert Radiologists Records for Cheyanne Nalder
19 105. Grover C. Dills Medical Center Records for Cheyanne Nalder
20 106. Meadow Valley Ambulance Records for Cheyanne Nalder
21
22 All exhibits listed by any other party to this litigation.
23
24 All documents identified during discovery in this litigation.
25
26 All pleadings filed in the case
27
28 All depositions including exhibits
Rebuttal and/or impeachment documents.

1 Plaintiff reserves the right to supplement this list as the discovery process continues.

2 **III**

3 **COMPUTATION OF DAMAGES**

4
5 Plaintiff has summarized the special damages incurred thus far and, according to current
6 calculations, the special damages appear to be at least \$3,500,000.00. See Judgment listed in
7 preceding section. Plaintiff reserves the right to supplement this section as the discovery
8 process continues.

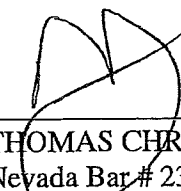
9 **IV**

10 **INSURANCE AGREEMENTS**

11 Plaintiff reserves the right to supplement this section as the discovery process continues.

12
13 DATED this 15 day of Sept, 2010.

14
15 CHRISTENSEN LAW OFFICES, LLC

16
17 By: 
18 THOMAS CHRISTENSEN, ESQ.
19 Nevada Bar # 2326
20 DAVID F. SAMPSON, ESQ.
21 Nevada Bar # 6811
22 1000 S. Valley View Blvd.
23 Las Vegas, NV 89107
24 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

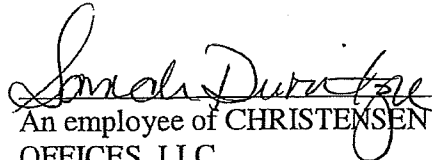
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC., and that on this 15 day of Sept., 2010, I served a copy of the foregoing **PLAINTIFF'S 12th SUPPLEMENT TO LIST OF WITNESSES AND DOCUMENTS** as follows:

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

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

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

Thomas E. Winner, Esq.,
Matthew J. Douglas, Esq.,
1117 S. Rancho Dr.
Las Vegas, NV 89102
Attorney for Defendant


An employee of CHRISTENSEN LAW OFFICES, LLC

001057

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EXHIBIT "K"

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 <receptionist@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@rmcmlaw.com

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

Sent: Thursday, September 06, 2018 5:46 PM

To: Steve Rogers <srogers@rmcmlaw.com>; breenarntz@ms.com

Cc: Carolyn Mangundayao <cmangundayao@rmcmlaw.com>; Reception <reception1st@inlurvhelppnow.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 “J”

AO450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

DISTRICT OF

Nevada

Nalder et al.,

Plaintiffs,

V.

United Automobile Insurance Company,

Defendant.

JUDGMENT IN A CIVIL CASE

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

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.
- Notice of Acceptance with Offer of Judgment.** A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED

The Court grants summary judgment in favor of Nalder and finds that the insurance renewal statement contained an ambiguity and, thus, the statement is construed in favor of coverage during the time of the accident. The Court denies summary judgment on Nalder's remaining bad-faith claims.

The Court grants summary judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant. The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewis's implied insurance policy at the time of the accident.

October 30, 2013

Date



/s/ Lance S. Wilson

Clerk

/s/ Summer Rivera

(By) Deputy Clerk

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EXHIBIT "K"



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

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.

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From: Carolyn Mangundayao

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To: Thomas Christensen <thomasc@injuryhelpnow.com>; Steve Rogers <srogers@rmcmlaw.com>; breenarntz@me.com

Cc: Reception <receptionist@injuryhelpnow.com>

Subject: RE: Gary Lewis

See attached.

Thank you.



Carolyn Mangundayao

Legal Assistant to Stephen H. Rogers, Esq., Bert O. Mitchell, Esq. & William C. Mitchell, Esq.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

Sent: Thursday, September 06, 2018 5:46 PM

To: Steve Rogers <srogers@rmcmlaw.com>; breenartztz@me.com

Cc: Carolyn Mangundayao <cmangundayao@rmcmlaw.com>; Reception <receptionist@injuryhelpnow.com>

Subject: Gary Lewis

Stephen,

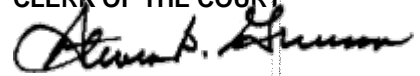
What is the date of your letter and how was it delivered? We do not have that letter. Please forward it to us. Given your dual representation of UAIC and Mr Lewis and that you feel communication with Mr Lewis through my office is not acceptable we think it better to allow Breen Arntz to represent Mr 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

20

20



OPP S

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS
and DOES I through V, inclusive
Defendants,

CASE NO: 07A549111
DEPT. NO: XX

Consolidated with 18-A-772220

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.

**Opposition to Counter-Motion to Strike Affidavit of Lewis in Support of his
Counter-Motion for Summary Judgment AND Opposition to UAIC's Counter-Motion to
Stay proceedings pending Appellate Ruling and Stay Counter-Motion for Summary
Judgment Pending Necessary Discovery Pursuant to NRCP 56(f) and Reply in Support of
Motion to Set Aside Order Allowing Intervention and Oppositions and Replies in
Support of any other Motions to be heard on January 9, 2019**

Pursuant to N.R.C.P. 56, Gary Lewis moved this Honorable Court for summary judgment as
to liability and the minimum damages, for a finding that UAIC has breached its duty of good faith

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1 and fair dealing and is liable for the damages which were proximately caused by UAIC’s breach,
 2 on the basis that the pleadings and documents on file show there is no genuine issue as to any
 3 material of fact and that Gary Lewis is entitled to judgment as a matter of law on this issue.
 4 UAIC filed an opposition and various counter motions. This pleading is the opposition to each
 5 counter motion. This pleading is also the opposition and reply to any and all motions brought by
 6 UAIC and Randy Tindall that are to be heard on January 9, 2019. Gary Lewis reserves the right
 7 to file a timely reply in support of his motion for summary judgment.
 8

9 **A. UAIC’s counter motion to strike Lewis’ affidavit**

10 UAIC correctly states the law that, in general, certain statements in an affidavit may be
 11 insufficient to support summary judgment pursuant to NRC P 56(e). UAIC does not cite any law
 12 for the conclusion that this Court can strike the affidavit or any portion of it. UAIC goes on for
 13 14 pages asking the Court to strike the affidavit with no supporting legal authority. This motion
 14 should be denied. As will be seen below judgment against UAIC is independent of Gary Lewis’
 15 affidavit.
 16

17 **B. UAIC’s counter motion to stay/defer pending appeal**

18 This one page motion contains no legal authority at all. Pursuant to
 19 “**EDCR 2.20. Motions; contents; responses and replies; calendaring a fully briefed**
 20 **matter.** (i) A memorandum of points and authorities which consists of bare citations to statutes,
 21 rules, or case authority does not comply with this rule and the court may decline to consider it...”
 22 This counter motion should be denied. In addition, UAIC again misstates the nature of the issues.
 23 The issue in these Nevada cases is the enforceability of the judgment against Lewis pursuant to
 24 *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897). Mandlebaum clearly
 25 supports the validity of a judgment when tolling statutes apply:
 26
 27

28 The averments of the complaint and the undisputed facts are that, at the
 time of the rendition and entry of the judgment in 1882, the appellant was out of

1 the state, and continuously remained absent therefrom until March, 1897,
2 thereby preserving the judgment and all rights of action of the judgment creditor
3 under the same. **Notwithstanding nearly fifteen years had elapsed since the**
4 **entry of the judgment**, yet, for the purposes of action, the judgment was not
5 barred — for that purpose **the judgment was valid**. *Id.*, *Mandlebaum at*
6 *851(emphasis added)*.

7 The issue in the second certified question in the federal claims handling case is the
8 enforceability of the judgment against UAIC, not Gary Lewis. In fact, the issue was created by
9 UAIC's counsel's false affidavit and flawed legal reasoning suggesting that Nalder had to renew
10 the underlying judgment while the claims handling case was on appeal. Now, UAIC argues that
11 Nalder cannot sue on the judgment to obtain a new judgment or demonstrate that the time for
12 renewal has not yet arrived while the case is on appeal. So UAIC tells the Ninth Circuit Nalder
13 must demonstrate the collectibility of her judgment but then when Nalder seeks to do just that
14 UAIC tells this Court it should stay those very proceedings. Judicial estoppel applies to these
15 two contradictory positions "whether it is an expression of intention, a statement of fact, or a
16 legal assertion." The court reasoned in *Helfand v. Gerson*, 105 F.3d 530 (9th Cir. 1997) that "[t]
17 he integrity of the judicial process is threatened when a litigant is permitted to gain an advantage
18 by the manipulative assertion of inconsistent positions, factual or legal."

19
20 **C. UAIC's counter motion to stay pending additional discovery pursuant to Rule**
21 **56(f)**

22 The filing of an affidavit that discusses obtaining facts that are irrelevant does not allow for
23 a stay pending additional discovery. The affidavit supporting a stay must set forth what facts
24 could be found that would demonstrate the existence of a genuine issue for trial. In this case the
25 only relevant fact for trial regarding UAIC's liability for just the judgment is whether they are
26 liable for the amount of any judgment entered against Lewis under any theory.
27
28

1 No reasonable interpretation of the facts could be construed by a finder of fact as placing
 2 liability anywhere but on UAIC for any judgment against Lewis in this case. In order to gain
 3 intervention UAIC admitted: “As long as UAIC is obligated to ... pay any judgment against
 4 LEWIS...” (Page 6 lines 9 and 10 of UAIC’s motion to intervene filed 8/17/2018) and “UAIC
 5 could potentially be responsible for any damages LEWIS is found liable for -- including the
 6 instant amended judgment.” (Id. at Page 7, lines 16 an 17) Based on this admission alone, Lewis
 7 is entitled to partial summary judgment against UAIC. It must pay any judgment Nalder obtains
 8 against Lewis.
 9

10 The Nevada Supreme Court has removed any potential other than the potential that Nalder
 11 does not get a judgment against Lewis. The Nevada Supreme Court’s decision in *Century Surety*
 12 *Company v. Andrew*, 134 Nev. Advance Opinion 100, filed on December 13, 2008, settled the law
 13 in Nevada by stating “...an insurer’s liability where it breaches its contractual duty to defend is
 14 not capped at the policy limits plus the insured’s defense costs, and instead, an insurer may be
 15 liable for any consequential damages caused by its breach. We further conclude that good faith
 16 determinations are irrelevant for determining damages upon a breach of this duty.” This recently
 17 issued opinion is instructive herein because this long and contentious litigation, which UAIC has
 18 now attempted to bring before this Honorable Court, has essentially had a foundational issue
 19 decided by way of the Andrew decision.
 20
 21

22 As in Andrew, the Federal District Court determined (this finding was appealed) that
 23 UAIC did not act in bad faith, but it did breach its duty to defend Gary Lewis. The Andrew
 24 decision, states: Damages that may naturally flow from an insurer’s breach include: (1) the
 25 amount of the judgment or settlement against the insured plus interest [even in excess of the
 26 policy limits]; (2) costs and attorney fees incurred by the insured in defending the suit; and (3)
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1 any additional costs that the insured can show naturally resulted from the breach. (citations
2 omitted).

3
4 The Court has already determined that UAIC breached its duty to defend Gary Lewis.
5 In addition, UAIC admits they breached their duty to defend Lewis. UAIC's admissions and
6 the Andrew decision require partial summary judgment in favor of Lewis for any judgment
7 owing to Nalder now or in the future. The affidavits presented by UAIC now do not
8 demonstrate any facts to be developed through discovery that would create a genuine issue of
9 fact and therefore the request should be denied.

10 Likewise, UAIC does not allege, as it is required, that any of the proposed discovery will
11 create issues of fact contradicting the following 8 independent additional basis for liability:

- 12
13 1. UAIC did nothing to defend Lewis in 2013, 2014, 2015, 2016 and 2017. UAIC does not
14 allege any facts that will be discovered that will demonstrate a question of fact. In fact
15 UAIC admits they did nothing to defend or relieve Lewis from the judgment.
- 16
17 2. UAIC has not pursued negotiations to relieve Lewis of the judgment. It has not
18 investigated ways to relieve Lewis of the judgment. These actions are a breach of the duty
19 of good faith and fair dealing. See *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d
20 318 (2009) UAIC does not allege any facts that will be discovered that will demonstrate a
21 question of fact. In fact UAIC admits they did nothing to relieve Lewis from the judgment.
- 22
23 3. Mr. Lewis requested that if UAIC hired anyone to defend Lewis in this action that UAIC
24 "must include notice to those attorneys that they must first get Mr. Lewis' consent before
25 taking any action ... on his behalf." By disregarding this reasonable request UAIC has
26 breached the duty of good faith and fair dealing. See *Powers v. USAA*, 114 Nev. 690, 962
27 P.2d 596 (1998) (USAA disregarded reasonable request by the insured and harassed the
28 insured) UAIC does not allege any facts that will be discovered that will demonstrate a

1 question of fact. In fact UAIC admits that Lewis requested communication go through his
2 counsel and that UAIC disregarded that request.

3
4 4. UAIC and Randall Tindall have no right to interpose a defense at all in the instant case,
5 much less a frivolous defense that is not in the best interest of Mr. Lewis and is against his
6 wishes because it prolongs the litigation and creates more fees and costs. This is UAIC
7 conspiring with Tindall to advance UAIC’s interests, at the expense of Lewis. Putting its
8 interests ahead of the insured’s interests is a breach of the covenant of good faith and fair
9 dealing. See *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009) UAIC
10 does not allege any facts that will be discovered that will demonstrate a question of fact. In
11 fact UAIC admits that Tindall was instructed to not contact Lewis and disregard his
12 requests.
13

14 5. Although UAIC admits it is liable for any judgment against Lewis in this action and the
15 Nevada Supreme Court in Andrew has decided that UAIC will be liable for any judgment
16 entered against Mr. Lewis, it has not paid anything over the \$15,000 policy limit it was
17 ordered to pay by the Federal District Court. It has not pursued negotiations to relieve
18 Lewis of the judgment. It has not investigated ways to relieve Lewis of the judgment.
19 These actions are a breach of the duty of good faith and fair dealing. See *Allstate*
20 *Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009). UAIC does not allege any
21 facts that will be discovered that will demonstrate a question of fact. In fact, UAIC admits
22 it did nothing to investigate or relieve Lewis from the judgment.
23

24 6. Gary Lewis will end up with an even larger judgment and has already incurred attorney
25 fees that, so far, UAIC refuses to pay. Failure to pay for Cumis counsel is a breach of the
26 duty of good faith and fair dealing. See *State Farm Mut. Auto. Ins. Co. v. Hansen*, 357
27 P.3d 338 (Nev. 2015). “Nevada law requires an insurer to provide independent counsel for
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1 its insured when a conflict of interest arises between the insurer and the insured.” UAIC
2 does not allege any facts that will be discovered that will demonstrate a question of fact. In
3 fact UAIC admits they have not paid anything for Cumis counsel. In fact, UAIC sued Mr.
4 Lewis, claiming it does not owe anything for Cumis counsel.
5

6 7. Mr. Lewis has now sued Mr. Tindall once and UAIC twice. Now, UAIC has sued Mr.
7 Lewis. Mr. Lewis has not waived that conflict. The disregarding of the requests by the
8 insured for communication through his attorney is yet another new breach of the covenant
9 of good faith and fair dealing. See *Powers v. USAA*, 114 Nev. 690, 962 P.2d 596 (1998)
10 (USAA disregarded reasonable request by the insured and harassed the insured) UAIC
11 does not allege any facts that will be discovered that will demonstrate a question of fact. In
12 fact, UAIC admits it refused to communicate through counsel for Lewis. UAIC admits it
13 instructed Tindall to file pleadings in its interest and against the interests of Lewis.
14

15 8. In these pleadings, UAIC argues that renewal is the only method. Now, UAIC admits in its
16 pleading filed with the Nevada Supreme Court that a “second method is via bringing of an
17 independent action on the original judgment...” (See Exhibit 1, UAIC’s appellate brief, at
18 page 11.) Filing frivolous pleadings alleging just the opposite, and against the wishes of the
19 insured, is improper. This is a new breach of the covenant of good faith and fair dealing.
20 UAIC does not allege any facts that will be discovered that will demonstrate a question of
21 fact. In fact UAIC admits this breach by not even discussing it.
22

23 Each of the breaches identified above alone provide a basis for imposition of liability on
24 UAIC for any judgment entered against Lewis. Since nothing has been demonstrated that UAIC
25 will develop through discovery to raise a material issue of fact regarding these issues, the request
26 for a stay pending discovery should be denied.
27
28

D. Reply in support of Gary Lewis motion for relief from order opposition to any UAIC countermotions and Reply and joinder in support of any other motions to be heard on January 9, 2019.

UAIC does not cite any Nevada Supreme Court authority allowing intervention after a case has gone to judgment. UAIC does not cite any Nevada Supreme Court authority allowing intervention after a case is settled by agreement. That is because there is none. All Nevada authority does not allow intervention after settlement or judgment. The Federal cases are not dealing with the Nevada intervention statute. The granting of intervention to UAIC is against the law. This information was in the filed oppositions, which were ignored by the prior judge. The only appropriate course of action is to: 1) Vacate the order allowing intervention; 2) Deny UAIC's motions; 3) Deny the motions filed on behalf of UAIC by Randy Tindall and against the interests of Gary Lewis; 4) Sign the judgment pursuant to the stipulation signed by counsel for Nalder and Lewis.

Because UAIC files the same lengthy briefs with the same arguments and counter motions, Gary Lewis interposes his Opposition to any counter motions filed by UAIC that have not been previously opposed by incorporating into this pleading all pleadings filed by David Stephens, Breen Arntz or this office.

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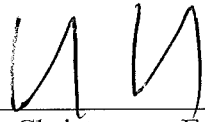
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CONCLUSION

UAIC's three counter motions should be denied. UAIC's Intervention order should be vacated and its motions stricken and or denied. Randall Tindall's motions should be denied. The Court should sign the judgment pursuant to the stipulation signed by counsel for Nalder and Lewis.

DATED THIS 2 day of January, 2019.



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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 2 day of Jan., 2019, I served a copy of the foregoing Opposition 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

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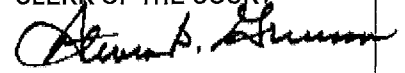
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EXHIBIT 1

Electronically Filed
12/31/2018 10:25 AM
Steven D. Grierson
CLERK OF THE COURT



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5 *Attorneys for Intervenor/Third Party Defendant United Automobile Insurance Company*

6 EIGHTH JUDICIAL DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 CHEYANNE NALDER,
9 Plaintiff,

10 vs.

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

14 UNITED AUTOMOBILE INSURANCE
15 COMPANY,

16 Intervenor.

17 GARY LEWIS,

18 Third Party Plaintiff,

19 vs.

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

23 Third Party Defendants.
24

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

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

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

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

3 *Exhibit 'W.'*

4 On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified
5 question and ordered Appellants to file their Opening brief within 30 days, or by March 26,
6 2018. See Exhibit 'X.' In accepting the certified question, the Nevada Supreme Court rephrased
7 the question as follows:

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

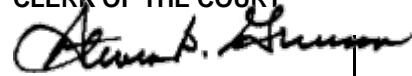
13 On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC
14 has filed its Response Brief and, accordingly, the above-quoted question and, issue, remains
15 pending before the Nevada Supreme Court.

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

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

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES NALDER, et al,)
)
Plaintiffs,)
)
vs.)
)
GARY LEWIS, et al,)
)
Defendants.)
)
AND ALL RELATED PARTIES)

CASE NO. 07A549111
A-18-772220-C

DEPT NO. XX

**Transcript of
Proceedings**

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

**DEFENSE'S MOTION TO WITHDRAW ON ORDER SHORTENING TIME
DEFENDANT'S MOTIONS TO DISMISS AND MOTIONS FOR RELIEF
DEFENDANT'S MOTIONS TO STRIKE MOTIONS TO DISMISS AND FOR RELIEF
UAIC'S MOTION FOR RELIEF, MOTION TO DISMISS PLAINTIFFS'
COMPLAINT, MOTION FOR COURT TO DENY STIPULATION TO ENTER
JUDGMENT BETWEEN PLAINTIFF AND LEWIS, AND OPPOSITION TO THIRD
PARTY PLAINTIFF LEWIS'S MOTION FOR RELIEF FROM ORDER AND JOINDER
IN MOTIONS FOR RELIEF FROM ORDERS ON ORDER SHORTENING TIME**

WEDNESDAY, JANUARY 9, 2019

APPEARANCES:

FOR THE PLAINTIFFS: DAVID ALLEN STEPHENS, ESQ.

FOR THE THIRD PARTY PLAINTIFF
GARY LEWIS: THOMAS F. CHRISTENSEN, ESQ.

FOR THE DEFENDANT GARY LEWIS: BREEN E. ARNTZ, ESQ.

FOR THIRD PARTY DEFENDANTS: DAN R. WAITE, ESQ.
MATTHEW J. DOUGLAS, ESQ.
THOMAS E. WINNER, ESQ.

RECORDED BY: ANGIE CALVILLO, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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1 LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 9, 2019, 8:50 A.M.

2 (Court was called to order)

3 THE COURT: James Nalder versus Gary Lewis, Case No.
4 A549111. I guess I should say because it's the As, 07A549111.
5 Counsel, please note your appearances for the record.

6 MR. STEPHENS: David Stephens for plaintiff, Cheyenne
7 Nalder, Your Honor.

8 MR. CHRISTENSEN: Tom Christiansen for third party
9 plaintiff Gary Lewis, Your Honor.

10 THE COURT: Okay.

11 MR. ARNTZ: Breen Arntz appearing for defendant Gary
12 Lewis.

13 MR. WAITE: Dan Wait, Your Honor, for third party
14 defendant attorney Randall Tindall and his law firm, Resnick
15 Louis.

16 MR. WINNER: Tom Winner for UAIC.

17 MR. DOUGLAS: And Matthew Douglas for UAIC, Your
18 Honor.

19 THE COURT: Okay. Well, we've got a bunch of things
20 here. The thing that caught my eye was Mr. Tindall's motion to
21 -- to withdraw.

22 MR. WAITE: Could we hear that first.

23 THE COURT: Is that where we should be -- huh?

24 MR. WAITE: Can we hear that one first, Your Honor?

25 THE COURT: I was going to say, that seems to me maybe

1 something we should deal with initially. So we've got that on
2 order shortening time. Does anyone have an issue with us going
3 forward and dealing with it today, or does somebody want to file
4 paperwork or something else in regard to this?

5 MR. WAITE: I've spoken with some of the counsel, Your
6 Honor, and I don't believe anyone has any objection to it.

7 THE COURT: Okay. All right. Let's -- let me hear
8 what you have. You seem to be moving toward the podium, so let
9 me hear what you have to say.

10 MR. WAITE: Your Honor, I don't know that since it's
11 unopposed, I don't know that I have anything more to add other
12 than the unique circumstances of this case has created a
13 conflict of interest for Mr. Tindall and his firm to -- to
14 proceed. And so we filed the motion and, unfortunately, it was
15 on very shortened time. We appreciate your considering and
16 granting the order shortening time to today.

17 But given the circumstances that present themselves,
18 it just puts Mr. Tindall and his firm in a position where
19 they're damned if they do, damned if they don't. They really
20 can't take a position given the relationship they have to both
21 Mr. Lewis, the insured, the client, and then the insurance
22 company, UAIC, that hired them. He's just -- he can't -- he
23 can't act, so he needs to get out.

24 THE COURT: What does that, from your perspective,
25 then, as to the motions Mr. Tindall has filed on behalf of Mr.

1 Lewis?

2 MR. WAITE: Well, those -- those motions that were
3 filed were filed in good faith.

4 THE COURT: I'm not suggesting they weren't. I'm just
5 asking where does that leave us with those motions? Are they
6 being withdrawn or --

7 MR. WAITE: Well, you have the unique situation where
8 you have UAIC who hired Mr. Tindall to represent Mr. Lewis's
9 interest, and you have Mr. Lewis who hired Mr. Arntz to
10 represent his interest. And so we have Mr. Tindall who has
11 filed some motions, and then Mr. Arntz filing the withdrawal of
12 those motions.

13 THE COURT: Right.

14 MR. WAITE: Which took us by surprise. We did not --
15 we were not aware of that. But as we -- as put in the moving
16 papers, we have conflicting instructions from our client Mr.
17 Lewis, who their side had previously indicated withdraw the
18 motions, UAIC saying go forward with the motions. We don't --
19 we don't take a position, if you will, Your Honor, other than
20 motions were filed initially in good faith, and Mr. Lewis has
21 decided, through Mr. Arntz, to withdraw the motions.

22 THE COURT: Okay. Let me ask you. I assume that's
23 your position, Mr. Arntz?

24 MR. ARNTZ: Yes, Your Honor.

25 THE COURT: Okay. All right. Now, let me just ask

1 what's UAIC's position. I mean, it sounds -- we no longer have
2 any other attorney, assuming I grant the motion to withdraw, we
3 no longer have any other attorney than Mr. Arntz representing
4 Mr. Lewis.

5 MR. CHRISTENSEN: As -- as the plaintiff.

6 THE COURT: Yeah, and he's wanting to withdraw this
7 motion. So what's your take on that?

8 MR. DOUGLAS: Thank you, Your Honor. Matthew Douglas
9 for UAIC. Your Honor, UAIC, given that this has all come up in
10 the past week and they only learned that Mr. Tindall was going
11 to be withdrawing, I believe, last Thursday the 4th, they would
12 ask this Court to continue the issue as to the motions filed by
13 Mr. Tindall, and the motions to -- whatever their status is, to
14 leave them time to get new counsel to come in.

15 I have an affidavit, actually, from the adjuster
16 explaining they have not been able to get new counsel since
17 learning of Mr. Tindall's withdrawal. I can -- I can provide
18 that to the Court if that's okay.

19 THE COURT: Sure. I mean, has -- a copy has been
20 provided to everybody else?

21 MR. DOUGLAS: I think so.

22 THE COURT: I mean --

23 MR. DOUGLAS: I have copies for everyone else.

24 THE COURT: Well, let me just -- I mean, Mr. Lewis
25 doesn't want your company to hire anybody to represent him. I

1 mean, I guess it's not clear for me as I know you have a
2 contractual obligation to provide a defense to Mr. Lewis, but if
3 he declines that, what in your contract says that he can't
4 decline that and that he has to -- I mean, is there something in
5 there you want to argue that the -- his contract requires him to
6 have you hire somebody to represent him?

7 MR. CHRISTENSEN: Just --

8 THE COURT: I'll let you talk in a second.

9 MR. CHRISTENSEN: I just want to --

10 THE COURT: Hold on. I'm asking -- I'm asking him.

11 MR. CHRISTENSEN: Okay.

12 THE COURT: I'll let you talk. Don't worry.

13 MR. CHRISTENSEN: Okay.

14 THE COURT: I'm pretty good with that.

15 MR. CHRISTENSEN: Before you decide. Okay.

16 THE COURT: I'm sorry. What?

17 MR. CHRISTENSEN: Before you decide.

18 THE COURT: Well, no, don't -- don't -- no. I think
19 I'm sort of going through everyone here and --

20 MR. CHRISTENSEN: Okay.

21 THE COURT: -- trying to get positions. So, I mean --
22 so what -- I mean, like I said, I've seen the paperwork.

23 MR. DOUGLAS: Sure.

24 THE COURT: You talk about how you've got an
25 obligation to defend him, that's why you hired Mr. Tindall.

1 MR. DOUGLAS: Yeah.

2 THE COURT: I mean, he's now saying I don't want --

3 MR. DOUGLAS: Yes.

4 THE COURT: -- you to hire anybody, I like Mr. Arntz.
5 And, I mean, is there something in your contract you're
6 contending requires him to accept your -- your attorney?

7 MR. DOUGLAS: Well, you put it that way, Your Honor,
8 this is obviously a very strange situation. I think we can all
9 agree. But clearly, yes, in short answer, the contract, as most
10 liability insurance policies, the insurer has the ability to
11 control the defense. In fact, the leading case in the bad faith
12 arena, the Allstate versus Miller case specifically notes it,
13 and that's why, in fact, the insurer was held liable in not
14 providing notice of settlement demands.

15 So it's clear the contract provides the duty, the
16 control of the defense, to the insurer. If they're going to be
17 liable, unless plaintiff wants to stipulate or Mr. Lewis wants
18 to stipulate that UAIC will have no liability from either of
19 these two actions proceeding, I think they have a right to have
20 somebody control the defense for Mr. Lewis. Otherwise, it's a
21 farce. So that's why we've asked for the continuance.

22 And I think it's also important to note kind of a
23 hypothetical here, and it's something I presented in some of the
24 moving papers. You can have a situation, obviously, under
25 Nevada law, single vehicle accident, let's say a husband and

1 wife. Husband is negligent, causes the accident. Wife, in
2 order to recover, would have to sue her husband tortfeasor dry.
3 We can all agree on that.

4 Under their position, what would stop the husband from
5 saying, no, I don't want a defense? Maybe the wife's injuries
6 are illegitimate. Does the insurance company not still have a
7 right to appoint counsel to defend those claims just because the
8 insurance says no, because maybe the insured has a self-interest
9 against the insurer. That's a conflict, too.

10 THE COURT: All right. Mr. Christensen, Mr. Arntz.
11 One of you want to --

12 MR. ARNTZ: Two points.

13 MR. CHRISTENSEN: Let me say real quick, and then he
14 can --

15 THE COURT: I don't -- I mean, however you want to do
16 it. I mean, you both have a fish in the fight, so --

17 MR. ARNTZ: The problem we have here, and with all due
18 respect to Mr. Tindall who I -- I have no problem with and I get
19 along fine with, the issue is that UAIC is creating a farce by
20 hiring a lawyer to come in and represent Mr. Lewis in a way that
21 he doesn't want to be represented. Because what they're doing
22 is they're hiring that lawyer to represent UAIC. They're not
23 hiring that lawyer to represent my client.

24 And so that's the farce. That's the ruse is that
25 they're using this contract, this supposed contract, which they

1 breached a long time ago. They breached it when they didn't
2 give him a defense. So now they want to say, no, we want to
3 accept this contract and hire a lawyer to represent Mr. Lewis,
4 when in reality all they're doing is hiring that lawyer to
5 represent UAIC, and that's the conflict.

6 THE COURT: Well, I think that's exactly what he said.
7 I don't think that there is a farce or a misrepresentation. I
8 think their position is that if they're potentially going to be
9 liable on this, they have a right to come in under their
10 contract and provide -- provide a defense. So I don't think
11 anybody is misrepresenting or misleading anybody. The issue is
12 does the contract require that.

13 MR. ARNTZ: Well, it -- it --

14 THE COURT: You know, the contract -- the client has
15 at this stage after, I know you raised the breach and, I mean,
16 there's arguments once you breach it then, you know, all the
17 little applications of the contract principles potentially come
18 into play as to whether they're still binding. But, I mean,
19 that's -- I mean, I think that's -- no one is -- there's no
20 misleading here.

21 The issue I see is, you know, that now that we're
22 stepping down this road is does your client have an obligation
23 under either contract or -- I don't know the case law to -- to
24 let them hire somebody on his behalf to represent, to
25 effectively represent their interest. So that's what I --

1 MR. ARNTZ: Well --

2 THE COURT: I'll let -- I know you're there.

3 MR. ARNTZ: -- last -- last -- last comment. Mr.
4 Lewis is being represented. That's the point. And so any
5 effort by UAIC to come in and impose some other lawyer on Mr.
6 Lewis is not for his benefit. It's for UAIC's benefit. That's
7 the ruse I'm talking about. And I'm not talking about, you
8 know, some dastardly kind of scheme that counsel is creating.
9 That's not the issue, obviously.

10 The issue is what is UAIC doing here when hiring
11 another lawyer who is -- who is then doing things that Mr. Lewis
12 doesn't even want them to do? And so Mr. Lewis is represented
13 by me. But any effort by UAIC to impose some other lawyer on
14 him would be for UAIC's protection only, not for Mr. Lewis.

15 THE COURT: Okay. Mr. Christensen.

16 MR. CHRISTENSEN: And the one thing that I wanted to
17 correct earlier is the misapprehension that has been created by
18 UAIC that Mr. Lewis has said we don't want you to defend us.
19 That has not ever been said by Mr. Lewis.

20 In fact, what -- what has been said by me representing
21 Mr. Lewis in the claims against UAIC that are on appeal to the
22 Ninth Circuit and tangentially relate to these actions here is
23 that if you hire somebody to represent Mr. Lewis, please have
24 them talk to me, not to Mr. Lewis directly, because Mr. Lewis
25 has a conflict with UAIC, his insurance company. And that

1 conflict is he has sued his insurance company.

2 His insurance company didn't defend him back in 2008,
3 2007 when this thing went down, and that's when they had their
4 duty to defend and they breached it. And now they can't come in
5 10 years down the road and say we have to get -- fix that
6 judgment, we have to get rid of that judgment for you. That's
7 what they're saying they're doing. They don't have -- and they
8 don't have that ability because they breached the duty to defend
9 back in 2007 and 2008 to get into this lawsuit right here.

10 They still had the duty to defend as of 2013 when the
11 Ninth Circuit reversed the trial court and sent back down and
12 the trial court then determined that UAIC had breached their
13 duty to defend, then they had a duty to defend going on from
14 there. But that duty to defend is that they should be paying
15 this judgment. Paying this judgment, not messing with this
16 judgment, not filing false pleadings on behalf of Mr. Lewis that
17 he doesn't want filed on his behalf.

18 So instead of saying -- Mr. Lewis saying, no, I don't
19 want you to defend me, he has said what is it that you're
20 intending to file? What is the basis for your motion for relief
21 from the judgment, for example. And because -- because as I
22 read the -- the Nevada case law, the Mandelbaum case in
23 particular, that judgment is solid gold, you know. It -- it --
24 in the Mandelbaum case a judgment --

25 THE COURT: Listen, I don't -- I don't read the

1 paperwork as them challenging the 2008 judgment. I see them as
2 -- I'm essentially reading the paperwork, you're trying to get a
3 renewal of the judgment, and they're essentially saying that
4 judgment has died because it wasn't properly renewed.

5 And so, you know, I -- you know, no one -- I don't --
6 and I may be wrong, but I don't read it saying that the initial
7 -- that they're trying to go back and relitigate the initial
8 judgment in that there was a judgment for the three and a half
9 million dollars. I see all the paperwork here as saying this
10 judgment expired and --

11 MR. CHRISTENSEN: Right.

12 THE COURT: -- we're coming in and defending, you
13 know, his interest and, admittedly, their interest in -- in a
14 claim that they no longer -- that they contend no longer exists.
15 And so it's a little bit --

16 MR. CHRISTENSEN: May I approach the bench --

17 THE COURT: -- different from --

18 MR. CHRISTENSEN: -- Your Honor?

19 THE COURT: -- the Mandelbaum case, in my opinion.

20 MR. CHRISTENSEN: Well, may I approach the bench?

21 THE COURT: Sure. Well, I mean, if you're going to
22 give me something --

23 MR. CHRISTENSEN: I'm going to give you Mandelbaum.

24 THE COURT: -- give them --

25 MR. CHRISTENSEN: Do you have Mandelbaum --

1 THE COURT: -- give them a copy of it.

2 MR. CHRISTENSEN: -- or you want another copy?

3 MR. DOUGLAS: I'm okay.

4 MR. WINNER: 1897 case? We've seen it.

5 THE COURT: Okay. Go ahead. I think I've got this,
6 but I'll take it --

7 MR. CHRISTENSEN: I have it highlighted --

8 THE COURT: -- so we have it for the record.

9 MR. CHRISTENSEN: -- on the second page there.

10 THE COURT: And let me just not for the record that
11 you did give a copy of Mandelbaum versus Gregovich, 50 P. 849.

12 MR. CHRISTENSEN: And that counsel for UAIC didn't
13 want one.

14 THE COURT: Okay.

15 MR. CHRISTENSEN: But so the second page, the first
16 highlighted paragraph says the averments of the complaint and
17 the undisputed facts are that at the time of the rendition and
18 entry of the judgment in 1882, the appellant was out of the
19 state and continuously remained absent therefrom until March
20 1897, thereby preserving the judgment and all rights of action
21 of the judgment creditor under the same. Notwithstanding,
22 nearly 15 years had elapsed since the entry of the judgment, yet
23 for purposes of the action, the judgment was not barred. For
24 that purpose the judgment was valid.

25 That's the same judgment that we have in this case

1 that UAIC is trying to say is invalid, and that is clearly
2 against the law in Nevada. That's -- that's -- this has -- this
3 has been the law in Nevada for over 100 years, Your Honor. And
4 it goes on because it was the law in Nevada, it comes from the
5 common law. This is a common law cause of action, and it's
6 discussed in the -- in the Mandelbaum case.

7 So when they come in and say, oh, there's all these
8 crazy things going on and Mr. Christensen isn't allowing us to
9 represent our insured, they're being disingenuous, Your Honor,
10 because my -- I wrote the letters and they never said that.
11 What I said is, hey, my reading of the Mandelbaum case tells me
12 you're going to lose your defense of Mr. Lewis, and who is going
13 to pay for that when it's lost? So never has Mr. Lewis said
14 don't defend me. He's only said defend me properly.

15 THE COURT: Okay.

16 MR. CHRISTENSEN: If there's -- if there's a real
17 defense, I'm -- I'm more than interested in it, tell me what it
18 is. And Mr. Rogers couldn't give me one, Mr. Tindall didn't
19 give me one, and California counsel said -- couldn't give me
20 one, and he opposed UAIC's motion to intervene in California.

21 And the California court denied their motion to
22 intervene appropriately because there are also case law that
23 says when you breach the duty to defend, you no longer have a
24 right to direct the defense. So that's one reason. And we use
25 California law all the time on -- especially on claims handling

1 issues or bad faith cases like we have here. So that -- that --
2 and that's cited in my briefs and stuff.

3 But that's not all in this case. When Mr. Rogers was
4 first -- we were first having discussions with Mr. Rogers, it
5 became apparent that Mr. Lewis would need independent counsel
6 under the Hansen case, a Nevada case that adopted the Kumis
7 (phonetic) case, a California case, that allows for independent
8 counsel, Breen Arntz, who doesn't have the tripartite
9 relationship with UAIC where UAIC is kind of directing the
10 defense, but it's not in Mr. Lewis's best interest.

11 So that's why Mr. Breen Arntz is here. And they owe.
12 UAIC is supposed to be paying Breen Arntz's fees, and they have
13 resisted that to this point. But they certainly don't need to
14 hire another attorney who can carry their water instead of
15 actually filing things that are in the best interest of Mr.
16 Lewis. Thank you.

17 THE COURT: Okay. I mean -- I mean --

18 MR. DOUGLAS: Your Honor, can -- can I just briefly?

19 THE COURT: We have -- we have more time --

20 MR. DOUGLAS: Okay.

21 THE COURT: -- so don't worry. All right. I lost my
22 train of thought that I was going to ask Mr. Christensen.

23 MR. WINNER: I need to -- I'm sorry to interrupt. I
24 need to be downstairs at another hearing if the Court wouldn't
25 mind leaving Mr. Douglas in charge of UAIC's position in the

1 case.

2 THE COURT: I'm sorry. Say that again? What are you
3 asking?

4 MR. WINNER: I need to be downstairs for another
5 hearing.

6 THE COURT: Okay.

7 MR. WINNER: I'd like to say a couple of things before
8 I go downstairs if the Court would permit me to exempt myself.

9 THE COURT: All right. I'll let you. Go ahead.

10 THE RECORDER: Mr. Winner, if you could move closer to
11 the microphone.

12 MR. WINNER: All due respect to everyone here, the
13 same law firm represents the plaintiff and the defendant in this
14 case. The same law firm represents the judgment creditor and
15 the judgment debtor. Nobody has explained to me or explained to
16 the Court how is it in Mr. Lewis's best interest to have a \$5
17 million judgment standing against him when it benefits the
18 lawyer who is representing the plaintiff in the case who is --
19 there is a finding by the federal district judge in this case
20 that there was no bad faith. There was no bad faith.

21 The issue being decided by the Supreme Court is
22 whether UAIC would have to pay the judgment in the absence of
23 bad faith as a consequence for the breach. That's the question.
24 A motion to dismiss that appeal was filed because the judgment
25 had expired. It expired. All UAIC wanted to do was hire a

1 lawyer to file papers to decide on the merits whether that
2 judgment had, in fact, expired.

3 Mr. Christensen will not allow anybody to speak with
4 his client, Mr. Lewis, or file papers on Mr. Lewis's behalf. He
5 is representing both sides of the same lawsuit and accusing
6 everyone else of having a conflict. That's why we're here.

7 THE COURT: I think everyone has a tremendous conflict
8 in this. The issue, of course, is clients can waive conflicts
9 if they're properly discussed with the client. We can --

10 MR. WINNER: Yeah, some conflicts.

11 THE COURT: -- get into that but --

12 MR. WINNER: Yes.

13 THE COURT: -- but it's -- it's a messy scenario at
14 this point in time.

15 MR. WINNER: That said, with the Court's permission, I
16 need to absent myself. Thank you.

17 THE COURT: Well, you've got someone else still here,
18 I mean, who --

19 MR. WINNER: He's smarter than I am anyway.

20 THE COURT: I'll let you absent yourself. Thank you
21 for your comments.

22 MR. WINNER: Thank you.

23 THE COURT: All right. Let's see. All right. I
24 understand your position and I understand the issue in terms of
25 conflict. I can see how you can argue that there is a conflict

1 in view of the fact that they didn't represent him back in 2008,
2 and now they're coming back now and so there's a reason I think
3 you can suggest of mistrust which could exist between Mr. Lewis
4 and UAIC.

5 But let's look, though, at what I'm hearing from UAIC,
6 though, which is that -- and maybe this is probably more proper
7 to Mr. Arntz rather than to you, but, I mean, you know, UAIC is
8 asserting that under their agreement with Mr. Lewis, they have
9 certain right to protect their -- their interest in the -- in
10 this.

11 And while they're not challenging the 2007 judgment,
12 they're entitled to come in and assert a defense on Mr. Lewis's
13 behalf to the renewal or the extension of the judgment. I mean,
14 what's your -- I'm not talking about whether that's correct
15 legally at this point, but what's your thoughts in terms of do
16 they have the ability to do that under their agreement.

17 MR. WAITE: Breen, can I just ask one thing?

18 MR. ARNTZ: Sure.

19 MR. WAITE: Your Honor, I'm not sure if we're still on
20 Mr. Tindall's and Resnick and Louis's motion to withdraw. If
21 we're on to other matters, I would ask that the motion be
22 granted so that my silence and sitting here isn't construed as
23 some --

24 THE COURT: All right. I will. At this point I think
25 it is appropriate. I will go ahead and grant Mr. Tindall's

1 motion to withdraw.

2 MR. WAITE: Thank you.

3 THE COURT: He's already gone. That's good.

4 MR. WAITE: He had to go to the discovery
5 commissioner, Your Honor.

6 THE COURT: Okay. And I'll -- I'll no longer hold you
7 here.

8 MR. WAITE: Well, I still -- I am still here as a
9 third party defendant, but I was representing him on his firm's
10 motion --

11 THE COURT: Okay.

12 MR. WAITE: -- to dismiss. So I'll stay here, but
13 I --

14 THE COURT: Another representation between parties.

15 MR. WAITE: Yeah. I'll prepare an order on the motion
16 to withdraw --

17 THE COURT: Okay.

18 MR. WAITE: -- Your Honor. Thank you.

19 THE COURT: That's fine. All right. So I just want
20 -- because I'm dealing here now -- I mean, UAIC is asking for
21 essentially a continuance on the issue of whether -- on the
22 issue of the motions that they filed. And so, I mean, that's
23 the way essentially I read it is they're saying give us a chance
24 to hire new counsel to represent whether or not we can continue
25 on with these motions. So I'm just asking you, I mean, is there

1 -- you know, what's your argument that there's no basis and I
2 should just pop those motions out today?

3 MR. ARNTZ: Okay. So I'm a pretty simple-minded
4 person, so my simple way of looking at this is that -- is the
5 following. First, UAIC breached its contract with my client
6 years ago by -- by failing to provide a defense. As a result of
7 that breach, a judgment was entered, and that's the only reason
8 the judgment was entered was because they breached their duty to
9 defend him. So they breached their contract, a judgment was
10 entered against him.

11 I think it's -- it's telling that the person arguing
12 most forcefully for allowing another attorney to come in and
13 represent my client is UAIC. What that reflects is that UAIC is
14 the person -- is the -- is the party in interest as it relates
15 to this judgment. It's not my client. And in fact, in point of
16 fact, my client was harmed, which is the substance of Mr.
17 Christensen's presence here.

18 My client was harmed as a result of UAIC's failure to
19 defend him along the lines of the Campbell case in Utah where a
20 party was exposed and made to consider bankruptcy and they --
21 they incurred their damages as a result of that insurance
22 company's failure to defend them properly and failure to
23 indemnify them. So Mr. Lewis is in a similar situation now
24 where he's been harmed as a result of this judgment being
25 entered. He has a right to pursue those damages.

1 The only party that benefits by UAIC's presence here
2 through the ruse, as I call it, of a separate attorney
3 representing Mr. Lewis is UAIC. UAIC is the only party that
4 benefits by having that judgment dismissed because Mr. -- Mr.
5 Lewis was harmed by that judgment and he has a cause of action,
6 he has a right to pursue for damages resulting from that
7 judgment. So that's all UAIC wants to do here is represent its
8 interest, not Mr. Lewis's interest.

9 THE COURT: Okay. Let me just ask UAIC, I mean, Mr.
10 Lewis doesn't want to be represented. To the degree you have a
11 contractual or case law basis to come in at this point and
12 assert anything, can't you do that, you know, by yourself rather
13 than through Mr. Lewis?

14 MR. DOUGLAS: Well, it's funny you mention that, Your
15 Honor, because I think also up this morning is a motion to void
16 our intervention. So Mr. Christensen would like no one to
17 oppose this -- this attempt to fix the expired judgment that
18 they're trying to perpetrate. And that's really the key issue.
19 I mean, I think Mr. Arntz kind of admitted that.

20 I mean, yeah, UAIC is protesting what every other
21 attorney here -- I mean, sorry, I'm excluding counsel for the
22 other third party defendants. But essentially all the other
23 counsel here are aligned in plaintiffs' interest, you know. And
24 this is no -- this is no -- not trying to blame Mr. Arntz for
25 his position, but the fact of the matter is, he's aligned with

1 plaintiff. He tried to enter a stipulated judgment which gives
2 plaintiff everything they want.

3 And -- and so is there -- is there -- is no party
4 allowed to contest what Mr. Christensen is doing? That's what
5 they would have you think. So I understand Your Honor's
6 question, but when you're moving to strike our intervention, we
7 have no choice. The only way we --

8 THE COURT: Well, if I -- if I don't strike the
9 intervention, if don't grant that motion, is there anything that
10 precludes you from continuing on as to this issue and me
11 essentially saying Mr. Arntz is Mr. Lewis's attorney in this
12 matter?

13 MR. DOUGLAS: Your Honor, all I would say to that is
14 this. Even if you were to not strike our interventions in both
15 actions, Mr. Christensen has made clear he will be appealing.
16 And --

17 THE COURT: Well, I mean, that's -- that's what --

18 MR. DOUGLAS: Which is -- which is -- which is his --
19 that's not -- but the fact is, then, if you go ahead, then, and
20 dismiss or, you know, extinguish the motions filed by Mr.
21 Tindall, they may be forever lost to UAIC. The fact is, it's
22 not just our contractual right. I've cited case law. I mean,
23 Nevada law is clear. There's a tripartite relationship for
24 counsel. There's nothing scandalous about UAIC wanting to argue
25 their interest also on behalf of their insured through counsel

1 for the insured. This is not any kind of sinister plot. I
2 mean --

3 THE COURT: And I'm not suggesting it.

4 MR. DOUGLAS: Yeah. But what I mean is --

5 THE COURT: Let -- let me just -- I'm not -- I'm not
6 going to get into the allegations of sinisterness among all the
7 parties here. I know each side is alleging sinister -- I'm only
8 interested in the legal, you know, if your -- your motive -- I
9 mean, I don't think anybody has particularly got super clean
10 hands in --

11 MR. DOUGLAS: Okay.

12 THE COURT: -- in this whole mess. Everyone has
13 probably got a little issue here or a little issue there. I
14 don't want to get in -- the issue is, you know, legally where we
15 -- where we're here. And so, I mean, Mr. Christensen, if I
16 don't grant the motion to intervene, I mean, he has appeal
17 issue. If I say that Mr. Arntz is the sole representative for
18 Mr. Lewis, I assume you got -- and I'm wrong on that, you've got
19 -- you've got an appeal issue.

20 So, I mean, you know, I'm here to make a decision and
21 I get appealed all the time. It's one of the perks of the job.
22 And so I understand -- you know, we've got to make some decisions and
23 move forward as best we can.

24 MR. DOUGLAS: Your Honor, I'll keep it -- I'll keep it
25 short. What I meant, and pointing out that potentiality, the

1 only thing I wanted to bring the Court's attention is if Mr.
2 Tindall's motions are extinguished, looking down the road, and
3 our intervention is appealed and perhaps Mr. Christensen is
4 successful in overturning it, Rule 60 has a six-month window to
5 contest that amended -- potentially to contest that amended
6 judgment. Mr. Tindall's motions are vacated.

7 That may be lost forever to my client, that route of
8 contesting what has gone on here. And so for that reason I
9 think that -- that situation should live on. Because I think
10 UAIC has a right to at least argue that issue on behalf -- with
11 counsel appointed for Mr. Lewis. So that's -- that's my only
12 drawback.

13 THE COURT: All right. All right. Let me ponder this
14 for a second. Let's move to what probably is the next optimal
15 issue, which is your motion to strike the intervention. So, I
16 mean, I'll let you give me your thoughts on that if you want to
17 add anything to your briefing.

18 MR. CHRISTENSEN: Well, and -- and it actually is a
19 good segue into that, this discussion of the tripartite
20 relationship. Because they don't have the right to direct the
21 defense if there's a conflict between their interest and the
22 insured's interest, and that's already been established.

23 And the way Nevada deals with that, it's case law,
24 Hansen case, which is cited in the briefs, that adopts Cumis
25 counsel, and that's what Breen Arntz is. That's how Nevada law

1 handles that conflict between the insurance carrier and the
2 insured is they appoint Cumis counsel.

3 And, again, I go back to -- because -- because you,
4 again, have said in the arguments back and forth and the
5 discussions, you again said, well, what's to prevent counsel --
6 I mean, Lewis from just telling you I don't want you to defend
7 me. And, again, that is not the situation. That's what UAIC
8 tries to say. That's not what has occurred here.

9 We have welcomed the defense, but we want an ethical
10 defense and a proper defense that actually takes his interest
11 into account. Okay. So -- and that's why we get to the
12 Mandelbaum case because this all started because of an affidavit
13 that said this -- this judgment has expired. That affidavit
14 isn't the law. It's not true. That -- that hasn't happened,
15 even under the renewal statutes because they reflect back to the
16 statute of limitations statutes. So I just want to make that
17 clear.

18 And one other thing to be clear about is, yes, my
19 office represented James Nalder in the original 2007/2008 action
20 against Gary Lewis. My office. It was Dave Sampson, actually,
21 in my office, who was the attorney, you know, in contact with
22 the client at that time.

23 THE COURT: Right.

24 MR. CHRISTENSEN: Judgment was entered. Then Dave
25 Sampson in my office represented the Nalders, James Nalder, and

1 Gary Lewis against UAIC --

2 THE COURT: Right. In the federal case.

3 MR. CHRISTENSEN: -- in the action filed in state
4 court, removed to federal court. It decided wrong once,
5 appealed, decided wrongly a second time, appealed, and it's up
6 on appeal right now. And that is the bad faith issue is on
7 appeal right now. Yes, the trial court said you breached the
8 duty to defend, but I don't think it was bad faith. But that's
9 still on appeal. That's still a valid, ongoing issue that may
10 be decided against UAIC yet, right, on that -- in that case.

11 THE COURT: Well, I mean, that's -- and that's
12 something that's of interest to the Court because I looked and
13 apparently, you know, there's a certified question to the Nevada
14 Supreme Court, which is essentially on point with a lot of what
15 UAIC is raising in terms of its support for the expiration of
16 the -- of the judgment as far as this litigation.

17 MR. CHRISTENSEN: Right. But it's not the same thing.
18 Well, and let's -- let's talk about that for a second.

19 THE COURT: They look pretty close.

20 MR. CHRISTENSEN: Well, not really because -- now, let
21 me just explain how that works. Even if it was exactly the same
22 issue, I had another case here in -- and I think I talked about
23 it in one of the briefs, but here in Las Vegas where we filed
24 because of strategic reasons or whatever on behalf of the
25 injured party. His name was Louis Vinola (phonetic) against the

1 defendant Gillman (phonetic) in state court.

2 We already had one case against the insurance carriers
3 and Ann Gillman that had been removed to federal court, and then
4 we filed an additional case in state court. And Judge Bare
5 dismissed that at the behest of Gillman, dismissed that case,
6 and we had to appeal it. And, finally, the Supreme Court
7 reversed it saying you can have concurrent things, litigations
8 going along in different courts. There is nothing wrong with
9 that. That's improper to stay one action to let this other
10 action go along. That's not -- there is no case law for that.

11 And so to argue that, oh, we have to have some way to
12 come in here and -- and mess with this judgment by UAIC is -- is
13 not true. They had their opportunity to defend Mr. Lewis. It
14 was in 2007/2008. Now they don't get to come in, and that gets
15 us to the motion to intervene because that's what all the case
16 law says. And let me get to that.

17 But so there's no equity reason that they should be
18 able to come in here and -- and do this. They had that
19 opportunity in 2007/2008. That's why they're responsible for
20 the judgment. And this is just a minor demonstration that the
21 judgment is still valid. That's all it is. It's just to
22 demonstrate that fact.

23 THE COURT: You mean this litigation is for that
24 purpose?

25 MR. CHRISTENSEN: Correct.

1 THE COURT: Okay. Now I'm -- but, I mean, that's --
2 that's obviously -- I mean, you refer to it as a minor
3 demonstration that the judgment is still valid, but if the
4 judgment isn't still valid in view of the underlying three and a
5 half million dollars, I mean, that UAIC may be liable for, it
6 obviously is -- I don't -- you know, whether or not that
7 judgment is still valid is not what I would consider a minor --
8 minor question.

9 MR. CHRISTENSEN: Well, it actually -- and I apologize
10 for calling it a minor question. It's -- with regard to the one
11 aspect, that's not even the question in the first case. In the
12 -- in the amendment of the judgment to Cheyenne Nalder, that is
13 just an amendment of the judgment. That does nothing.

14 THE COURT: Well, I mean, if it's -- I would agree. I
15 mean, if it had expired, I mean, it doesn't --

16 MR. CHRISTENSEN: It's an amendment of the expired
17 judgment.

18 THE COURT: -- it doesn't --

19 MR. CHRISTENSEN: If it's --

20 THE COURT: It's an amendment of an expired judgment.

21 MR. CHRISTENSEN: If it's still valid, it's an
22 amendment of a valid judgment.

23 THE COURT: Okay. Yeah.

24 MR. CHRISTENSEN: And we, of course, say it's an
25 amendment of a valid judgment. But so to set aside that order

1 is -- is meaningless. It shouldn't even be -- that's -- that's
2 the minor part.

3 THE COURT: Okay.

4 MR. CHRISTENSEN: Then the other case, the subsequent
5 case, is just to demonstrate that, yes, that judgment is still
6 valid because I can sue on that judgment and that judgment does
7 have to have that -- that Mandelbaum analysis. You're going to
8 have to make that Mandelbaum analysis and say, yeah, the
9 judgment is ten years old, but it's been stayed for eight of
10 those ten years, and so it still has another four years provided
11 he returns to the state, right.

12 So but -- but on this intervention question, the plain
13 language of NRS 12.130 does not permit intervention subsequent
14 to the entry of the final judgment. And -- and this is from the
15 Dangberg Holdings versus Douglas County case.

16 THE COURT: And I know what you're -- you're going
17 down. I guess -- and that concerns me in terms of the Court's
18 ruling on the intervention. But I guess what -- I mean, what
19 none of those cases really seem to deal with is what we sort of
20 have here which is, you know, I mean, if this was 2013, I would
21 completely agree with you that an insurance company can't come
22 in and intervene. I mean, we've got a judgment, the statute
23 certainly hasn't run on it, it's a final judgment, it's done.

24 But, you know, now essentially you've initiated
25 additional litigation to declare that judgment a valid or

1 continuing, renewed or whatever, judgment. And the insurance
2 company, obviously, has an interest in that if you're going to
3 be alleging that, you know, their bad faith makes them liable
4 for the whole three and a half million or whatever with interest
5 and everything it's worth -- it's worth now. And that seems to
6 change to some degree the -- at least the facts in terms of the
7 application of the prior decisions.

8 So, I mean, that's -- I'm -- I'm going to agree with
9 you completely, if we were looking at this in 2013, the case law
10 says we've got a final judgment, you can't come in, but we
11 obviously have a little bit of a different scenario here where
12 now it's we want to, you know, revalidate or continue to
13 validate this judgment. And there is an argument that it's no
14 longer valid, and it seems to me the insurance company has an
15 interest at that point in time that justifies them jumping into
16 the -- into the litigation. That's -- if you -- you know, so
17 I'm on board with you in terms of the general -- what I need you
18 to do is focus on that issue that I'm looking at.

19 MR. CHRISTENSEN: Well, first of all, and just to --
20 just to keep us clean here because I -- it's very important,
21 Dave Stephens represents Cheyenne Nalder.

22 THE COURT: Right.

23 MR. CHRISTENSEN: He is the one that brought both, did
24 the amendment and also brought the subsequent action. So let's
25 not confuse that. I didn't bring those.

1 THE COURT: But, I mean --

2 MR. CHRISTENSEN: Dave Stephens --

3 THE COURT: -- I'm not suggesting --

4 MR. CHRISTENSEN: -- brought those --

5 THE COURT: -- saying who brought them.

6 MR. CHRISTENSEN: -- on behalf of Cheyenne.

7 THE COURT: I'm saying we now have it, so --

8 MR. CHRISTENSEN: Right. And this is -- so -- so the
9 fact is that your statement that it would have been good if it
10 was 2013 actually argues against the process in my view, right.
11 The -- the fact that more time has gone by makes it more
12 improper for them to be coming in here. This isn't something
13 that just came out of the clear blue sky, but -- but they are
14 kind of the interrelated things.

15 I agree with you that -- that there's this
16 interrelated thing. But assume for a second that the law is
17 crystal clear, black letter law says that that judgment is still
18 valid. Then does the insurance company have a right to come in?
19 Well, of course not. Well, I submit that is what the black
20 letter law is. But so let's -- let's talk a little bit more
21 about how shortly that fuse is and why it's improper.

22 So it's the -- it's the fact that the plain language
23 of NRS 12.130 does not permit intervention after final judgment.
24 What it says is you can intervene before trial. That's what the
25 statutory authorization is. And there's numerous cases from

1 Nevada. I only cited two, but there's numerous cases from
2 Nevada that say that's what it means.

3 So if there's a judgment in the case, you can't
4 intervene period. I don't care what defense you want to put in
5 there. You can't intervene. There's a judgment. It's
6 improper. And the Dangberg versus Douglas Holdings case goes on
7 to say a voluntary agreement of the parties stands in the place
8 of the verdict. And as between the parties to the record as
9 fully and finally determines the controversy as a verdict could
10 do, and intervention is denied if there's an agreement settling
11 the thing.

12 So that -- that has to do with the second case that
13 was filed because an agreement had been entered into between the
14 parties that -- that resolved the case. And so the intervention
15 at that point in time was improper as the case had been
16 resolved. In the -- well, so that's enough on that issue.

17 The one other thing I wanted to talk about here is
18 this analogy that Matt Douglas has brought up because that's --
19 because I'd like to extend it to how this case really is. So if
20 in our hypothetical situation the husband sued the wife and got
21 a judgment, and then the wife and husband sued the insurance
22 company because they didn't intervene, they didn't defend the
23 wife in the case, and then the insurance company -- so they sued
24 the insurance company. Then the insurance company came and
25 tried to intervene in the case to present some defense.

1 Let's say that they were going to present the defense
2 that the wife had a preexisting condition, and the wife and the
3 husband both know there was no preexisting condition but the
4 insurance company wants to present that defense. Number one,
5 they wouldn't be able to intervene anyway because it's against
6 the law. Oh, that's the other case I wanted to -- I'm sorry,
7 Your Honor.

8 THE COURT: That's all right.

9 MR. CHRISTENSEN: Because this one is an important one
10 and I forgot that that's the reason I wanted to talk about it.
11 And that's Gralnick, Gralnick, G-R-A-L-N-I-C-K, versus Eighth
12 Judicial District Court. That's a writ petition that was
13 granted because the District Court allowed intervention, and
14 then granted setting aside of the judgment and the Supreme Court
15 directed it back down and said NRS 12.130 does not permit
16 intervention subsequent to the entry of a final judgment and
17 directed the District Court to send them out and -- and
18 reinstate the judgment.

19 And that's exactly where we are right now. And so
20 there is no right to intervene. There's no interest to protect
21 other than preserving the false affidavit that said this
22 judgment has been expired. Maybe I should deal with that just a
23 little bit because you -- you did talk about that.

24 In the Ninth Circuit, that issue was brought to the
25 fore, what, two years ago, by a motion to dismiss the appeal for

1 lack of standing. This is after two appeals, two decisions by
2 the trial court, now there is suddenly a lack of standing. I
3 can't tell you how the Ninth Circuit makes their decisions, but
4 that -- that seems a lot to me.

5 THE COURT: When I was on the criminal side, I
6 couldn't figure that out, either.

7 MR. CHRISTENSEN: Well, there you go. And so -- but
8 -- but when we got that motion, we had, I don't know, what, 10,
9 20 days, whatever the time frame is for responding to those
10 motions. It was supported by an affidavit of counsel that just
11 said I've checked the registry and I don't see any renewals, and
12 so this judgment is expired because it's got a six-year statute
13 of limitations on it, right.

14 But he didn't talk about tolling. There's no mention
15 of tolling things. But so that's how that issue came about.
16 And we, of course, opposed the motion, but our main opposition,
17 Your Honor, is the fact that after the judgment was entered, the
18 defendant and the plaintiff, in order to bring the action
19 against UAIC, entered into an assignment agreement.

20 It was a partial assignment agreement where the
21 judgment amounts that might be recovered from UAIC on behalf of
22 the insured, Gary Lewis, the judgment amounts would go to the
23 Nalders, and anything above that would go to Gary Lewis. So
24 that was the assignment agreement. And it didn't have anything
25 in there about we won't continue to chase after you or execute

1 on you, but that was kind of the understanding, you know, that
2 we're going to cooperate together and obtain this compensation
3 from UAIC.

4 And so -- so in the briefing with the Ninth Circuit,
5 it wasn't said because we were mainly just saying it doesn't
6 matter. The judgment could be expired, it could be valid, it
7 doesn't matter. When we assign these rights and the fact that
8 he's been living with the judgment for x number of years and the
9 fact that the decision disregarding the judgment was made in
10 2013.

11 I mean, it would be the same thing as the federal
12 district court making a decision on a -- on a plaintiff's
13 personal injury case where -- and awarded or didn't award
14 \$400,000 of medical bills and then it was up on appeal for three
15 years, and then the -- the insurance carrier files a motion to
16 dismiss the appeal because now they don't have standing because
17 the \$400,000 of medical bills, the hospital never sued on them,
18 and the time for them to sue on them has passed. It would be
19 the same thing. And that's -- it doesn't make sense to me,
20 anyway.

21 Anyway, so the motion to intervene -- oh, let's talk
22 about that, too, with regard to the motion to intervene because
23 that's part of the motion is that it was improperly granted
24 under the law, but it was also procedurally totally and
25 completely improper. And that's not a minor thing because the

1 -- it -- one of them wasn't -- the affidavit of service didn't
2 have anybody checked. Nobody. So it was an affidavit of
3 nonservice.

4 The other affidavit of service checked served by the
5 automatic filing system, the -- I mean, the, you know,
6 electronic serving system on Dave Stephens, but at that time,
7 and we've printed those out and they're attached to our motion,
8 at that time Dave Stephens wasn't even on the service list. So
9 that's a false affidavit on its face, right, because they --
10 they checked that he was served that way, but they knew that he
11 wasn't.

12 Because when you go in and do that filing, which I
13 have never done myself, but I'm told that when you go in and do
14 that filing, you have to check. And if they're not on the
15 service list, you can't check them. And so you -- it could not
16 have been a mistake that -- that they didn't know, they thought
17 they did serve it, right.

18 But then when Dave Stephens finds out about it just
19 because he's checking the -- the court records and stuff like
20 that and he calls up defense counsel and says, hey, you know,
21 you didn't serve this on me, could you give me more time, they
22 wouldn't give him more time. So then he quickly filed an
23 opposition, you know, not with -- not all that time, and got it
24 to the court, and then the court disregarded it.

25 And the minute order was no opposition having been

1 filed, and it was an in-chambers hearing. It wasn't even a
2 hearing, you know, where people got to be heard. And -- and so
3 then when the order came out, again, that order the judge
4 crossed out the no opposition having been filed in the order,
5 but they -- he didn't deal with any of the issues. And all of
6 this information was put forward in that opposition. So --

7 THE COURT: All right.

8 MR. CHRISTENSEN: So the only thing to do now is to
9 void those orders and -- and then that resolves all the other
10 issues in this case.

11 THE COURT: All right.

12 MR. CHRISTENSEN: And that's the way it should be.
13 UAIC can still claim that, oh, this was a big fraud and there --
14 there were this thing and that thing and that shouldn't have
15 been done, but they would be doing it in the proper place, not
16 -- not by intervening in this action where they don't have any
17 business being.

18 THE COURT: All right. I have another proceeding
19 starting around 10:00, so I'll give you -- Mr. Christensen had a
20 wide swap. I'll give you something close to that, but --

21 MR. DOUGLAS: Thank you, Your Honor.

22 THE COURT: -- don't feel you need to --

23 MR. DOUGLAS: I'll try to keep it --

24 THE COURT: -- need to --

25 MR. DOUGLAS: -- as straightforward as I can and try

1 to stick to the issues. I think just because he ended with it,
2 let's talk about the notice issue very quickly. Your Honor,
3 we've, in the opposition, we've supplied the affidavit of my
4 paralegal. There was an inadvertence, apparently, in the
5 certificates of service. That said, she attested she mailed
6 both motions to Mr. Stephens, the interventions in both cases.
7 So I think that this notice issue is moot for that reason.

8 Any suggestion that I didn't grant Mr. Stephens an
9 extension or I was somehow violating rules of professional
10 conduct, that is absurd. I checked with my office after Mr.
11 Stephens raised the issue. They said they were properly served.
12 I mean, my understanding, my paralegal talked to the clerk of
13 the court, everyone is required to sign up for e-service. Mr.
14 Stephens filed this case. I don't know why he wouldn't be on
15 the service list.

16 Mr. Christensen is wrong. I don't think you check the
17 boxes anymore. You just file it and everyone that's on -- has
18 assigned themselves to e-service gets a copy. So there's no way
19 to notice whether or not until -- until after it's already in
20 that there's no one that has signed up. So either way, they
21 were mailed.

22 And I think when you get down to it, it's moot, the
23 notice issue, for two reasons. One, these -- both motions were
24 opposed. In fact, Mr. Arntz even opposed them. So they were
25 fully briefed. And here's the main issue. All these issues are

1 before us now. So even if there was an issue as to notice
2 initially, they're getting a full and fair hearing as to all
3 their problems and objections to this -- to these interventions
4 now, so I think the notice issue is really moot.

5 And -- and because we're -- we can just have them as
6 -- as argued today. Clearly, everyone got a full chance to
7 respond. I had to do it under fairly quick circumstances.
8 These were filed on OST right before the holidays, but we still
9 responded. So and you'll see my email trail, I have my
10 affidavit there, my email trail with Mr. Stephens. We were in
11 contact. And I asked Mr. Stephens if you -- you know, we were
12 dealing with an issue where timing was -- was, we believe, of
13 the essence because of the Rule 60 timelines.

14 And so we felt this was a stalling tactic. We
15 couldn't tell. UAIC, understandably, was suspicious of perhaps
16 some of the motives given the interference that had gone on by
17 Mr. Christensen and the retained defense counsel, which, of
18 course, necessitated our whole reason to intervene. And so I
19 was emailing with Mr. Stephens and I was asking him explain to
20 me your objections to these motions so that I can see, you know,
21 are you just stalling or do you have a real legal objection, and
22 Mr. Stephens never responded.

23 The first response I got was his filed opposition. So
24 I assume the issue of his request for extension was moot by
25 then. So that being said, if the Judge wants any other

1 questions on the notice issue, I'm happy to talk about it, but I
2 really think that issue is moot.

3 So now we can talk about the motion to void the 2018
4 intervention. I think this can be dispensed with fairly simply,
5 as well. Clearly, there's no judgment been entered in this
6 case, so plaintiffs' arguments concerning the statute 12.130
7 really had absolutely no bearing here. The only argument I
8 heard counsel make was in relation to the Dangberg decision
9 which where there's a settlement that should count the same as a
10 trial judgment.

11 And I'm not disputing the Dangberg holding, but what I
12 would point out is that it is distinguishable here if you note
13 the timing of this alleged settlement, which has never been
14 consummated by the Court, this alleged settlement was filed in
15 the form of a stipulation entered judgment signed between Mr.
16 Arntz and Mr. Stephens. It was filed after our motion to
17 intervene.

18 So if anything, it was a clear attempt to try and
19 create an issue. Oh, they're trying to intervene, let's --
20 let's enter this, what we think is a sham, Judge. I don't know
21 any other way to put it. Certainly, there's nothing Mr. Lewis
22 seems to gain from it. I've still yet to hear what he gains
23 from it. So that's a red herring.

24 The fact is we filed our intervention, it was pending,
25 and they rush to court and try to -- without notice, by the way.

1 My office didn't receive notice of that filed stipulation, Your
2 Honor, and we were on the e-service list once we filed our
3 appearance with our motion. I'd point that out. So -- so
4 basically, in terms of the 2018 case, I don't really think there
5 is anything that they can do to stop our intervention.

6 And, in fact, after the order was entered, Mr.
7 Stephens, in response to my sending him a copy of the proposed
8 order, admitted he didn't think there was anything they could do
9 to stop my client's intervention in that case. And, obviously,
10 we met all the qualifications for NRCP 24. We clearly have an
11 interest that's not being protected here given -- especially
12 given our previous argument where our counsel, appointed
13 retained defense counsel for Mr. Lewis, has been forced to
14 withdraw and those issues are up in the air.

15 So, you know, it kind of dovetails with their
16 argument. So -- so unless, again, in terms of the 2018 case
17 intervention, unless the Judge has specific questions, I'm happy
18 to -- to respond to them. The other -- the only other point I'd
19 make is that their argument that we breached the duty to defend
20 in '07, obviously, again, kind of a different distinguishing
21 factual scenario here because we didn't get a duty to defend
22 until the District Court implied the contract of law because of
23 a renewal --

24 THE COURT: Well, you still had a duty to defend. I
25 mean, the fact that the District Court found and implied, that

1 means that you still had -- you had a duty.

2 MR. DOUGLAS: No, no, I agree. I agree. What I meant
3 to say by that is it wasn't found until 2013. And so these --
4 this new filing, the 2018 filing triggered that duty to defend
5 that was found in 2013. There was no new action filed since
6 2013.

7 So my point is, in terms of the 2018 intervention, I
8 think we've met all the factors. I think the notice issue are
9 moot. I think we have a right to intervene. There's been no
10 judgment. There's been no settlement before our intervention.
11 And so I think -- I think that that's what I would have to say
12 on that.

13 I would also just point out, too, in response to this
14 motion to strike our interventions, we also filed a
15 countermotion to stay pending the appellate ruling. I think
16 those issues, as the Court pointed out, I think they're more
17 than tangentially related. I think they are very much related.

18 Specifically, the Court -- the question the Nevada
19 Supreme Court rephrased on a certification, specifically it
20 deals with whether or not that judgment is expired. I mean,
21 their ruling could be the judgment is not expired. Their ruling
22 could be that the judgment is expired. But so that is directly
23 on point to many of the substantive issues that are being raised
24 here.

25 And so I would point out that there is precedent.

1 It's an appellate procedure 8(a)(1)(A) which does ask that you
2 move a district court for a stay prior to moving the appellate
3 court. So there is a -- there is a rule of civil procedure that
4 would give Your Honor -- and it's within Your Honor's discretion
5 to -- to stay. So I'd note that we filed it as a counter-motion.

6 Now, in regard to the old motions to void our
7 intervention, but also switching to the '07 case with the,
8 quote, unquote, amended judgment, I would first point out to the
9 Court that I don't even think these motions have met the
10 standard for NRCP 60(b) which is the rule that they have moved
11 to void these interventions under. It's a pretty simple
12 four-prong standard.

13 It should be -- these motions should be prompt, there
14 should be an absence of intent to delay, you can also consider
15 lack of knowledge of a party procedurally if they're
16 unrepresented and so on, and there must be a showing of good
17 faith. Your Honor, I propose they can't meet any of these
18 factors, and for this reason alone you can deny these motions.

19 These were not prompt, all right. The minute orders
20 were entered in late September. The orders were entered with
21 notice of entry in, I think, around October 19th or so. Our
22 motions after the intervention to vacate and -- and to dismiss
23 have been pending for some time, and they file this motion on
24 December 10th or 12th, all right. So I don't -- I don't think
25 this was prompt. They don't even address the absence of any

1 intent to delay any of their motions.

2 And I think that as this Court can see, at least from
3 UAIC's perspective, we see plenty of intent to delay because we
4 have wanted hearings on whether or not that amendment of the
5 judgment was valid, hearings on whether or not this new action
6 is valid. For some time these motions have been filed and it's
7 been obfuscation and delay, so I don't think they meet that
8 factor.

9 They admit -- Mr. Stephens admits in his brief there's
10 not a lack of knowledge issue. They're all represented. And
11 then good faith? Where do I begin? There's no good faith here.
12 This has been an orchestrated attempt from the very beginning by
13 plaintiff and counsel that plaintiffs' counsel got for Mr.
14 Lewis, Mr. Arntz, to avoid these issues getting any kind of
15 hearing. They wanted to run into court between themselves,
16 enter a judgment to try and fix their problem on appeal with
17 their expired judgment. I think that's clear.

18 I've gone through the factors exhaustively in many of
19 our briefs, Your Honor. It's why we've asked for a
20 countermotion for an evidentiary hearing. I think there was an
21 attempt to perpetrate a fraud on the Court. I've never made
22 that allegation in my career in 20 years. This is the first
23 time I think there are facts that show that that may have
24 occurred here. So I don't think there's any good faith.

25 THE COURT: All right.

1 MR. DOUGLAS: And then just real simply, Your Honor,
2 Your Honor touched on it, the owing judgment, we're not looking
3 to attack it. That's why our intervention in the '07 case is
4 distinguishable from the statute and case law cited. We're not
5 looking to attack the underlying judgment. We're not looking to
6 relitigate. We're not looking to argue there's a preexisting
7 condition. We're arguing the amendment was void. It's pretty
8 clear from our motion, our Rule 60 motion, that's exactly what
9 we're arguing.

10 THE COURT: Well, what about the amendment -- I mean,
11 this is how -- Mr. Christensen, I mean, I don't know if he --
12 the way I understood what he said, and this is sort of how I see
13 it, the amendment just moved it into the plaintiffs', the now
14 majority, major majority plaintiffs' name.

15 If it was a judgment -- I mean, not amendment. The
16 judgment was expired, then we now have an expired judgment in
17 the amended -- in the now adult plaintiff's name. If the
18 amendment -- if the judgment hasn't expired, now we have a
19 non-expired judgment in the now adult plaintiff's name. That's
20 how I see it.

21 And if I was to deny your motion on that, that would
22 be my order, which is I'm not making any ruling by -- by
23 amending the judgment into the name of the now adult plaintiff
24 as to whether or not it's expired or not. I don't see it -- I
25 don't see what was done as being a decision on the merits

1 whether or not the judgment continued. I definitely would agree
2 you would have had to -- you know, that there had to be more
3 done in that regard. So if I -- if that's the way I look at it,
4 I mean, how is that handicapping you in some way?

5 MR. DOUGLAS: Well, Your Honor, I understand your
6 point and clearly, you know, something to consider. The problem
7 is, you know, I don't know eventually what an appellate court
8 might say, and to us this looked like an attempt to an end
9 around the jurisdiction of the Supreme Court and -- and somehow
10 sanctify what was an expired judgment without going through the
11 renewal process that [indiscernible] requires --

12 THE COURT: Let me -- let me tell you how I'm leaning
13 on terms of your -- well, let me deal with -- with the issue
14 relating to intervention. I don't see any issue with the
15 intervention in the 2018 case. I have serious concerns in
16 reference to the 2007 case, but I do think that there are
17 distinctions factually between those cases that say once you've
18 got a final judgment you can't come hopping into it.

19 And what's happening here, which is, you know, does
20 that judgment continue to exist. And, essentially, we have new
21 litigation on that, which I think -- so I am going to be denying
22 the motion to strike the intervention. I'm leaning -- I mean,
23 my inclination at this point is to deny your motion to -- for
24 relief from judgment pursuant to NRCP 60. But I want to make it
25 clear in any -- in my order that, you know, I just see that as

1 moving the case from the name of the father to the name of the
2 now adult plaintiff.

3 And, you know, I would ask, you know, whoever ends up
4 drafting the -- the order in that regard to -- to make that
5 point clear. I don't see -- you know, I see that as just being
6 a ministerial thing that was requested by plaintiffs' counsel to
7 -- to get it into her name at this point since dad really
8 doesn't have any authority over her anymore.

9 At this point I am going to grant and withdraw, you
10 know, Defendant Lewis's motion for relief from judgment pursuant
11 to NRCP 60, defendant's motion to dismiss, and Defendant Lewis's
12 motion to strike defendant's motion for relief from judgment --
13 well, no, not that one. I mean, that's the one, essentially,
14 I'm granting. I'm going to -- the ones that Mr. Tindall filed,
15 I'm going to pull those. I'm going to grant Mr. Arntz, whoever
16 filed it, I can't -- everybody is representing everybody here,
17 the motion to -- to pull those.

18 I don't see -- you know, the issue here is whether
19 you've got anything under the contract or under case law that
20 gives you a right to -- to assert anything. And so if Mr. Lewis
21 wants to use Mr. Arntz as his attorney in this one, and Mr.
22 Christensen on the other one, I mean, that, I think, is his
23 choice. And to the degree that there's any legal implications
24 from that, that's the case.

25 As far as your motion for an evidentiary hearing for a

1 fraud upon the Court, I'm going to deny that at this point in
2 time. I'm not balled up in whether there is a sinister plan
3 here. I will say that this is unusual. I've -- this has caught
4 my eye as something, you know, not logical in every sense, but I
5 can't say I've seen anything here which, you know, and, I mean,
6 making some -- I'm making the assumption that counsel in terms
7 of Mr. Lewis, to the degree that there is potential conflicts
8 here, and there obviously are some potential conflicts, have
9 explained those to Mr. Lewis, and that he has made appropriate
10 waiver of those conflicts.

11 So I assume, you know, you've discussed this issue
12 with Mr. Arntz?

13 MR. ARNTZ: That's right, Your Honor.

14 THE COURT: Okay. And you're now independent, but for
15 Mr. Christensen, who obviously does have some arguable conflicts
16 in view of the case, I assume you've -- you've discussed that
17 with Mr. Christensen?

18 MR. CHRISTENSEN: Yes, and there are appropriate
19 conflict waivers.

20 THE COURT: Okay. That's --

21 MR. CHRISTENSEN: And there's also an appropriate
22 conflict non-waiver that's -- that was filed with Mr. Tindall's
23 things.

24 THE COURT: Okay. All right.

25 MR. CHRISTENSEN: So the conflicts that he has with

1 UAIC are clearly there and he does not waive them.

2 THE COURT: That's fine. I mean, and I'm not -- I'm
3 talking in terms of his counsel now, so I just want to make --
4 you know, I may -- absent me seeing something of more than I see
5 now, I'm not going to make an assumption that there's been an
6 ethical violation. So I am going to deny the motion for an
7 evidentiary hearing on the fraud.

8 I've granted Mr. Tindall's motion to withdraw as
9 counsel, and -- and now the UAIC's motion to dismiss plaintiffs'
10 complaint and motion for Court to deny stipulation to enter
11 judgment. At this point in time, and I'll let everybody have
12 two minutes to give me any final thought on this one, but at
13 this point my general inclination is to dismiss Claim No. 1
14 because I don't see that as being a cause of action here under
15 Nevada looking at the Mendina case.

16 I'm leaning toward dismissing Claim No. 3 based on
17 claim preclusion, but I am looking at staying the ruling on
18 Claim No. 2 pending a decision from the Nevada Supreme Court as
19 to whether the judgment has expired because I looked at the
20 filings in, I think, September and November, and the issues
21 relating to Claim No. 2 appear dead on point with what the
22 Supreme Court is being asked. And it seems to me in terms of
23 judicial economy, it makes sense for me to stay a ruling as to
24 that.

25 So that's where I'm leaning as to all of these

1 motions. So I'll give everybody, if you want to add anything,
2 Mr. Christensen, Mr. Arntz, Mr. Stephens, counsel, I'll give you
3 no more than two minutes to give me any final thoughts, but
4 that's where I'm leaning on everything at this point in time.
5 So --

6 MR. STEPHENS: Let me start, Your Honor.

7 THE COURT: Okay.

8 MR. STEPHENS: One housekeeping matter. My motion to
9 strike Mr. -- or UAIC's intervene -- motion to intervene is set
10 for January 23rd. In view of your ruling today, I don't think
11 it would change your mind on January 23rd. It may be easier to
12 just simply deny that today and take it off your calendar.

13 THE COURT: That's fine. You're probably right on
14 that.

15 MR. STEPHENS: Right. So, yeah, okay, so as to this
16 motion. I have no problem as to Claim 3 because I think it is
17 claim preclusion. I think I can see that in my points and
18 authorities. Claim is my claim to enforce the judgment and I
19 was -- I filed a suit to enforce the judgment. If you dismiss
20 that, I no longer have the ability to enforce my judgment
21 against Mr. Lewis. And so I don't think you can dismiss Claim
22 1. You can stay it pending the appeal. I prefer you don't,
23 obviously, but that's your call, not mine.

24 But if you dismiss my complaint and enforce judgment,
25 which is my Mandelbaum claim, saying I have this judgment, I'm

1 now suing to enforce it, then I lose my ability to enforce the
2 judgment which Mandelbaum specifically allows. And as to
3 declaratory relief, if you think the issues are the same as the
4 Supreme Court, then it ought to be stayed pending the decision
5 of the Supreme Court.

6 THE COURT: Okay.

7 MR. STEPHENS: I think they're distinct, but you've
8 had that argument from counsel. I'm not going to reargue that
9 with my two minutes.

10 THE COURT: Okay.

11 MR. STEPHENS: Thank you, Judge.

12 THE COURT: Thanks.

13 Do you want to add anything, Mr. Christensen?

14 MR. CHRISTENSEN: Just a few --

15 THE COURT: I know it's going to be hard in two
16 minutes, but --

17 MR. CHRISTENSEN: Actually, impossible. But I just
18 want to correct a couple things.

19 THE COURT: Sure.

20 MR. CHRISTENSEN: Mr. Tindall was not forced to
21 withdraw. He withdrew because there is a conflict between UAIC
22 and -- and Mr. Lewis, and that's why he withdrew. He wasn't
23 forced to withdraw. And that's what counsel for UAIC said, that
24 he was forced to withdraw. That's not true. And -- and as to
25 the prompt issue, this case, the judge granted it on a non -- on

1 a non-hearing, granted the intervention without a hearing.

2 And then the first hearing that we had, which wasn't
3 even a hearing on a motion, shortly after that granting of the
4 motion but before an order had been issued, he recused himself.
5 Oh, no, no. But after the order had been issued, then he
6 recused himself, but didn't void the order. Then the case was
7 in limbo land getting reassigned. It got reassigned, and then
8 the UAIC did a peremptory challenge of one of the judges.

9 And that, of course, then put it into limbo land
10 again, and so we couldn't file any motions during that period of
11 time. Who would we file them with? And then it got reassigned,
12 and then UAIC filed a motion to consolidate. And in our
13 opposition to the motion to consolidate was our countermotion to
14 strike the intervention. So it was definitely timely.

15 And the only other thing I'd like to know is since you
16 are denying our motions to strike the intervention, I would like
17 to know the reasons for that because I think it's clearly not
18 the law that you can do that.

19 THE COURT: All right. Well, I think, you know, the
20 2018 litigation is -- there's been no judgment entered in terms
21 of the complaint filed in the 2018 litigation and I think that
22 they meet the requirements for intervention, at least as it
23 relates to that complaint that's filed.

24 As far as the 2007, I understand your point with that,
25 and, I mean, there's case law that talks in terms of once that

1 final judgment has been entered, you know, you can't be hopping
2 into -- into the case. But I do see, you know, a distinction
3 between that case, those cases, and what we have here, which is
4 you now have essentially the prospect of new litigation, which
5 is that 2018 case, on -- to enforce that 2007 judgment.

6 And that new litigation creates new issues, which is
7 whether that judgment has expired or was -- or has been renewed.
8 And I think definitely UAIC has -- has an interest in that and
9 meets the elements necessary to intervene.

10 MR. CHRISTENSEN: So how are you dealing with the
11 voluntary agreement between the parties that was entered into
12 prior to any intervention? And I'm not talking about an
13 improperly noticed motion to intervene, because that's not
14 intervention, okay. You're not in the case until you actually
15 get to intervene. So how do you deal with that agreement that
16 was entered into?

17 THE COURT: Well, I mean, that agreement was never
18 signed off on by the Court. And so, you know, I don't think we
19 have a judgment that has been entered into that are approved by
20 the Court in reference to that stipulation.

21 MR. CHRISTENSEN: So you don't think that the
22 settlement agreement entered into between the two parties to the
23 litigation is effective in preventing intervention by some third
24 party?

25 THE COURT: At this point in time, since it was never

1 signed off on by the Court, I mean, that agreement has been
2 sitting out there for quite some time prior with the prior
3 court, if I remember correctly.

4 MR. CHRISTENSEN: Correct.

5 THE COURT: But it was never signed off on, and I
6 think that you don't have that -- I mean, technically, again,
7 looking at things from a legal perspective, I don't think we
8 have -- you have a judgment, that final judgment at that point
9 until the Court has signed off on it.

10 MR. CHRISTENSEN: Okay. The Dangberg case says just
11 the opposite, Your Honor.

12 THE COURT: Okay.

13 MR. CHRISTENSEN: It says that if there is an
14 agreement entered into, that is the same as a judgment. It
15 doesn't have to be signed off on by the Court. It's just the
16 agreement. If the case is settled by agreement, it's done, over
17 with, there can be no intervention. So that would not be a
18 proper reason to allow intervention int his situation.

19 THE COURT: All right. Well, I'll take one more look
20 at it, but that's where I'm going to -- I am going to be ending
21 up at this point in time. But I will take one more look at that
22 case that you're -- you're giving me, and take -- do you have a
23 final thought?

24 MR. DOUGLAS: Just in brief response to that, Your
25 Honor. Again, as I pointed out when I was up there, we have the

1 only proof of the settlement was the filing of that proposed
2 stipulation which was done after we intervened. And so --

3 THE COURT: Now, you said it was filed before they
4 intervened.

5 MR. CHRISTENSEN: Yeah, before they intervened, after
6 -- after they filed their improperly noticed motion to
7 intervene.

8 THE COURT: Okay.

9 MR. CHRISTENSEN: But before their order allowing them
10 to intervene, yes.

11 THE COURT: Okay.

12 MR. CHRISTENSEN: Before the decision on their motion
13 to intervene, it was filed before that.

14 THE COURT: Okay. I'll -- I'll look at the timeline.

15 MR. CHRISTENSEN: And I would ask one other question,
16 too, then. And that is why -- so right now my understanding is,
17 right, that you have the stipulation, the filed stipulation, and
18 the judgment with a request to execute it; right? And so I
19 would also ask why -- what are the reasons in law or factually
20 or whatever that you are not signing that particular order, that
21 particular judgment that's been stipulated to by the parties.
22 What is the reason?

23 THE COURT: I think at this point, I mean, you've got
24 UAIC coming in. They filed a motion to dismiss the complaint.
25 And, you know, there are a lot of -- I'll be frank, there are

1 questionable parts to this. And so at this point in time I'm
2 not going to be signing off on it.

3 We're going to see what happens with the Supreme
4 Court. If it says that the judgment continues, I think that
5 resolves a lot of things here in this case and we'll move
6 forward on that basis. If they say it doesn't, I think that
7 there are a lot of open issues here. The fact that it's up
8 there in the Supreme Court and been certified, I think judicial
9 economy it makes sense for us to take -- let them say what it
10 is.

11 I have no issue -- I mean, I have no issue if they say
12 there's an extended judgment. I think the plaintiff is entitled
13 to everything that she's entitled. If they say there is an
14 extended judgment, I think that their -- UAIC has got a valid
15 concern, so that's how I'm going to proceed.

16 MR. CHRISTENSEN: Okay. And then I have one other
17 question.

18 THE COURT: Okay.

19 MR. CHRISTENSEN: And I apologize, Your Honor, but
20 this is an extremely important situation.

21 THE COURT: No, that's why I let it go for another --
22 for a little bit longer.

23 MR. CHRISTENSEN: I apologize. But -- and I can't
24 remember, maybe you can help me out, but if this was on appeal
25 to the Nevada Supreme Court, this case, and -- and you were not

1 wanting to rule because it's on appeal, there is that case --
2 anybody know what I'm talking about? Where you say to the
3 Supreme Court I would rule this way but for it being on appeal.
4 So if you want to send it back so I can change my rulings to
5 correct some --

6 Do you know what --

7 MR. WAITE: Honeycutt.

8 MR. CHRISTENSEN: Honeycutt. Yeah. A Honeycutt
9 order. Sorry. Thank you.

10 We would request that a Honeycutt order, that where
11 you resolve these issues based on what you think and say to the
12 Supreme Court I didn't -- I didn't want to mess with you, but if
13 you were done with this thing and -- and it was down here with
14 me, I would rule this way on these issues. That's -- that's
15 what I would propose doing. And it's kind of a weird situation
16 because it's not really a Honeycutt situation because, like I
17 said, this is not on appeal.

18 THE COURT: It's not on appeal.

19 MR. CHRISTENSEN: It's not on appeal.

20 THE COURT: I mean, no, it's not on appeal. I think
21 -- I do have the -- I would have the ability to make a ruling.
22 I don't have any issue on that. I'm making -- using my
23 discretion and saying, at least my reading, the exact issues as
24 to the question of extension renewal are -- have now special
25 questions on the Ninth Circuit appeal before the Nevada Supreme

1 Court, and so I'm using my discretion to let -- you know, for
2 judicial economy, it's what they say. Because I can -- what
3 they do there, I think, will quickly resolve the issues that we
4 have here.

5 MR. CHRISTENSEN: Well, just to -- so one -- one fact
6 on that, and that is the issue on appeal is not Mr. Lewis's --
7 the judgment against Mr. Lewis being valid or not. That's not
8 the issue on appeal. The issue on appeal is whether Mr. Lewis
9 and Nalder can maintain an action against UAIC. That's the
10 issue that's on appeal. And --

11 THE COURT: But -- but the question --

12 MR. CHRISTENSEN: -- and it's assumed --

13 THE COURT: -- that has been certified to the Nevada
14 Supreme Court encompasses --

15 MR. CHRISTENSEN: Yeah.

16 THE COURT: -- the issue that --

17 MR. CHRISTENSEN: But not to -- not to decide is the
18 -- is the judgment valid. It's like assumed that the judgment
19 is not valid, then do you still -- are you still able to bring
20 the action against UAIC. That's the issue on appeal. They're
21 not -- the Supreme Court isn't going, well, is it this or is it
22 that, or, you know, is the judgment still valid against Mr.
23 Lewis? That's not -- it's assuming the judgment isn't valid
24 against Mr. Lewis, can he still bring the claim against UAIC.
25 And I think that answer is, yes, he can --

1 THE COURT: Okay.

2 MR. CHRISTENSEN: -- for the other reasons that I
3 talked about. But those are the issues on appeal. This down
4 here is -- this is the proper court to decide is this judgment
5 valid. And by not doing that, you are not doing your
6 responsibility --

7 THE COURT: Okay.

8 MR. CHRISTENSEN: -- to these parties, to these two
9 parties, and it's going to affect -- could affect their appeal
10 with the Ninth Circuit. But we'll -- we'll take --

11 THE COURT: Well, we'll see what --

12 MR. CHRISTENSEN: -- whatever action we have to take.

13 THE COURT: -- how long -- hopefully, the Supreme --
14 of course, we're talking the Nevada Supreme Court, but hopefully
15 the Supreme Court will take some action. I don't have a
16 problem, you know, if they don't take action, file a motion
17 asking for the Court to reconsider its stay on that issue, and
18 we'll -- we'll take a look at it at that point.

19 MR. CHRISTENSEN: Okay.

20 THE COURT: All right.

21 MR. DOUGLAS: Your Honor, I just -- a couple
22 housekeeping because I know you want to get done. I just,
23 because I know you granted the withdrawals of Mr. Tindall's
24 motions, we did make an oral motion to continue to get new
25 counsel. I'm assuming we'll deny -- you're going to deny that

1 for --

2 THE COURT: I mean, I'm not -- you can get new counsel
3 and see.

4 MR. DOUGLAS: Okay.

5 THE COURT: I mean, I'm not telling you what you can't
6 and can do.

7 MR. DOUGLAS: Okay.

8 THE COURT: If you think you've got a basis to get new
9 counsel, get new counsel. I'm not making any ruling on that.

10 MR. DOUGLAS: Okay.

11 THE COURT: I'm just saying at this point in time, Mr.
12 Lewis has -- Mr. Tindall has withdrawn, Mr. Lewis's current
13 attorneys say we want those withdrawn, I'm granting the motion
14 to essentially withdraw those motions filed by Mr. Tindall. If
15 you think you've got a basis to force Mr. Lewis to take -- take
16 counsel you hire, you know, go for it. We'll deal with it at
17 that point.

18 MR. DOUGLAS: Two other quick things, Your Honor. I
19 understand just in regard to what was said about the Dangberg
20 case. Again, there was some back and forth, but I think at
21 least as far as the court docket is concerned, we filed our
22 motion to intervene prior to that stipulation alleging the
23 settlement having been filed. And I think that's why it's
24 distinguishable from Dangberg.

25 Once they -- if they had looked at the court docket,

1 which as good counsel I'm sure they did, they knew we were
2 trying to come in. That's why -- that's why that settlement can
3 be stated. I would also ask, the one thing we didn't deal with
4 in my motion to dismiss the 2018 case, we talked about the three
5 causes of action, dismissal of one, stay of the other. We also
6 had a countermotion to stay that affidavit. I don't know what
7 Your Honor wants to do with that motion.

8 THE COURT: Stay.

9 MR. DOUGLAS: Stay -- stay -- to do anything with the
10 affidavit, that was filed. Because that affidavit, as you
11 mentioned, which kind of goes to this Dangberg issue was just
12 float -- it's floating out there. It was filed. It's never
13 been signed. I don't know if Your Honor feels the need to do
14 anything with that. We did file our countermotion to stay.
15 Stay -- stay -- again, we could stay that or grant that.

16 THE COURT: It's on calendar for next week.

17 MR. DOUGLAS: Oh, it's on calendar next week. Okay.
18 Is that the 23rd?

19 THE CLERK: Yes.

20 MR. DOUGLAS: Okay. Sorry. We'll deal with it then.

21 THE COURT: Well, I'll look at it and --

22 MR. DOUGLAS: We'll deal with it then.

23 THE COURT: But all right.

24 MR. DOUGLAS: I'm not going to take up any more of
25 your time, Your Honor.

1 THE COURT: All right. Mr. Arntz, do you have
2 anything?

3 MR. ARNTZ: No, Your Honor.

4 THE COURT: Okay. Thanks a lot, everybody.

5 MR. DOUGLAS: Thank you.

6 MR. STEPHENS: I wasn't clear if you were still going
7 to dismiss my first claim for relief.

8 THE COURT: You know --

9 MR. STEPHENS: That's the only thing for purposes of
10 the order.

11 THE COURT: -- I'll take -- I think since I'm going to
12 stay on No. 2, I'll go ahead and acquiesce to your point
13 there --

14 MR. STEPHENS: Thank you.

15 THE COURT: -- and I will stay on No. 1.

16 MR. STEPHENS: I just wanted to make sure it's clear
17 for the order. Thank you.

18 THE COURT: Okay. All right.

19 MR. DOUGLAS: Thank you, Your Honor.

20 THE COURT: Thank you all.

21 MR. CHRISTENSEN: Thank you, Your Honor.

22 (Proceedings concluded at 10:22 a.m.)

23 * * * * *

24

25

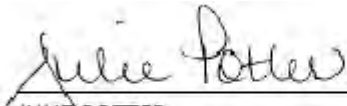
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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

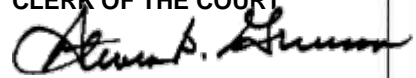
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10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 CHEYANNE NALDER,

13 Plaintiff,

14 vs.

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

17 Defendants,

18 UNITED AUTOMOBILE INSURANCE
19 COMPANY,

20 Intervenor.

21 GARY LEWIS,

22 Third Party Plaintiff,

23 vs.

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

28 Third Party Defendants.

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

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

**UAIC'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS LEWIS' THIRD
PARTY COMPLAINT & REPLIES IN
SUPPORT OF ITS COUNTER-MOTION
TO STRIKE AFFIDAVIT OF LEWIS IN
SUPPORT OF THE COUNTER-
MOTION FOR SUMMARY JUDGMENT
AND/OR TO STAY PROCEEDINGS
PENDING APPELLATE RULING
AND/OR STAY COUNTER-MOTION
FOR SUMMARY JUDGMENT
PENDING NECESSARY DISCOVERY
PURSUANT TO N.R.C.P. 56(f)**

Hearing date: 1/23/19 at 8:30 am

29 COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter
30 referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD
31 and hereby files its Reply in support of its Motion to Dismiss Third Party Plaintiff Gary Lewis'
32 Third Party Complaint as well as Replies in support of UAIC's Counter Motions to Strike


ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

1 Affidavit of Gary Lewis, Stay Proceedings for appellate ruling, and/or for discovery pursuant to
 2 N.R.C.P. 56(f). Third Party Plaintiff's extra-contractual claims have been previously litigated or,
 3 may be litigated, in the case on appeal. Third Party Plaintiff's continued requests to re-litigate
 4 these claims is both improper and clear forum shopping which should be summarily dismissed
 5 by this Court. Moreover, the Affidavit of Lewis filed in support of his Counter-Motion for
 6 summary judgment is improper and must be stricken in whole or in part or, alternatively, this
 7 matter stayed pending appeal and/or for necessary discovery under N.R.C.P. 56(f).

8 These Replies are made and based upon the papers and pleadings on file herein, the
 9 Memorandum of Points and Authorities attached hereto, and such oral argument as the Court
 10 may permit.

11 DATED this 16th day of JANUARY, 2019

12 ATKIN WINNER & SHERROD

13 
 14 _____
 15 Matthew J. Douglas
 16 Nevada Bar No. 11371
 17 1117 South Rancho Drive
 18 Las Vegas, Nevada 89102
 19 *Attorneys for Intervenor/Third Party Defendant*
 20 *UAIC*

21 ///

22 ///

23 ///

ATKIN WINNER & SHERROD
 A NEVADA LAW FIRM

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REPLY TO**
2 **UAIC's MOTION TO DISMISS THIRD PARTY COMPLAINT & REPLIES IN**
3 **SUPPORT OF UAIC's COUNTER MOTIONS TO STRIKE LEWIS AFFIDAVIT,**
4 **AND/OR STAY COUNTER-MOTION PENDING APPEAL AND/OR, FOR DISCOVERY**
5 **PURSUANT TO N.R.C.P. 56(f).**

6 **I.**

7 **INTRODUCTION**

8 Overall, UAIC argues that Third Party Plaintiff Lewis' Opposition to UAIC's Motion to
9 dismiss his Third-Party Complaint, as well as his Oppositions to UAIC's Counter-Motions to his
10 Counter-Motion for summary judgment, fail to offer any persuasive law, facts or arguments to
11 support his positions. Indeed, for the most part, Lewis' simply re-hashes his initial arguments
12 and does not even both to respond to the case law and facts, including those through affidavit,
13 provided by UAIC. For this reason alone UAIC points out to this court that Lewis has no real
14 response to UAIC's motions, particularly UAIC's Counter-Motions to his summary judgment,
15 and thus this Court should grant same.

16 Most importantly, as was borne out at the last hearing on pending Motions (January 9th,
17 2019) it seems this Court agrees many of the issues herein are, at the very least, substantially
18 related too and/or, contingent upon, the decision(s) of the Nevada Supreme Court in the sister-
19 case on appeal, *Nalder & Lewis v UAIC*, case no. 70504. For this reason, whether or not the
20 Court is inclined to rule the third-party claims are *precluded* per the orders in that case, UAIC
21 argues that because of the intertwined issues of law this Court should grant its counter-motion to
22 stay these proceedings and, indeed, hearing on all Motions in regard to the third party complaint
23 pending decision of the Nevada Supreme Court.

24 In short, it is clear that Lewis' claims of continuing bad faith (which UAIC vigorously
25 deny are valid) may be contingent on the Supreme Court's ruling. That is, if UAIC's position
26 concerning either the status of the expired judgment or, whether it owes consequential damages,
27 is confirmed by the Nevada Supreme Court it would, at the very least, impact Lewis' claims
28

1 herein. For instance, Lewis claims UAIC improperly tried to vacate the expired judgment and/or
 2 defend him from the new 2018 action. Should the Supreme Court determine that, indeed, the
 3 judgment is expired, **Lewis' arguments would be defeated.** Accordingly, UAIC argues the
 4 most prudent course would be to grant its counter-Motion to stay all proceedings in the third
 5 party action and defer ruling on all pending motions related to the third party complaint (*i.e.* The
 6 Motion to dismiss, the Counter-Motion for summary judgment, and the counter-motions to strike
 7 the affidavit of Lewis and/or for additional discovery under N./R.C.P. 56).

9 II.

10 **ARGUMENT**

11 **A. REPLY IN SUPPORT OF COUNTER-MOTION TO STAY PROCEEDINGS**
 12 **PENDING APPEAL**

13 In response to Third Party Plaintiff's counter-motion for summary judgment, UAIC
 14 further counter-moved this Court to stay all proceedings in this matter and/or, Third Party
 15 Plaintiff's Counter-Motion for summary judgment due to the intertwined and inter-related issues
 16 now on appeal, which could substantially affect this litigation. In response, Lewis offers no real
 17 opposition to this Motion and, in fact, *his opposition actually supports the Motion* and thus, it
 18 should be granted.

19
 20 For his first argument, Lewis maintains UAIC offers no support for the stay. However,
 21 this is untrue. UAIC has noted in this matter, through other moving papers (heard 1/9/19), that
 22 such a stay may be granted within this Court's discretion and, under N.R.A.P. 8(a)(1)(A),
 23 requiring parties to first move the District court for stay of matters when there is a pending
 24 appeal. Indeed, this Court agreed with its inherent authority to enter such a stay when it stayed (2
 25 counts of) the Plaintiff's Complaint at the hearing on January 9, 2019. Given the issues here
 26 contain much of the same interdependence as Plaintiff's Complaint, UAIC urges this Court to
 27 grant such a stay of proceedings on Lewis' Third Party complaint and defer all pending motions.
 28

1 Lewis' second argument *makes* UAIC's case for the stay. That is, Lewis argues his same
 2 position in the appeal for these actions - that the 1897 *Mandlebaum* decision should govern
 3 whether the judgment is expired and/or Plaintiff can maintain her new action. Whether or not
 4 Lewis is correct in this assertion, this issue is *directly before the Nevada Supreme Court on*
 5 *appeal*. Indeed, the Order of the Ninth Circuit Court of appeals, certifying the current issue to the
 6 Nevada Supreme Court specifically notes that Appellants' claim that the judgment may still be
 7 valid under *Mandelbaum*. See Exhibit 'A' to Counter-Motion to Stay, at p. 8. Accordingly,
 8 without getting into the merits of Lewis' claims regarding this case – it is clear that the issue of
 9 Mandelbaum's applicability is directly before the court on appeal. UAIC will not re-state all of
 10 its arguments opposing this view on appeal – as they have been exhaustively briefed elsewhere –
 11 but the point is the issue has not been decided by the Nevada Supreme Court yet, and,
 12 accordingly, Lewis' assertion of his position on this issue illustrates why a stay is required.

13
 14
 15 Accordingly, as UAIC noted in its initial motion to stay, it is unassailable that the subject
 16 of the expiration or, ongoing validity, of the 2008 judgment in the case of *Nalder v Lewis*,
 17 07A549111, which is consolidated herein, is at issue both in this Court and on appeal to the
 18 Nevada Supreme Court. See Exhibit 'B' to Counter-Motion to Stay. It is further uncontroverted
 19 Plaintiff and Lewis have raised the issues herein. See Exhibit 'L' to Counter-Motion to Stay.
 20 Indeed, Lewis' Third Party Complaint and, the present Motion for summary judgment, is
 21 essentially premised upon his argument that UAIC **has acted improperly in arguing the**
 22 **judgment is expired and by trying to relieve Lewis of the attempts to revive it herein by**
 23 **seeking to dismiss the new action.**

24
 25 Furthermore, there is nothing contradictory in UAIC's position as Lewis asserts. UAIC
 26 has applied to the appellate court's to determine, in part, whether *Nalder's* judgment against
 27 Lewis is valid and, the Nevada Supreme Court has accepted this issue. Lewis now seeks to allege
 28 new damages for bad faith in UAIC asserting this position. As the outcome of the appeal

1 questions will undoubtedly have implication on Lewis' claims herein (and Plaintiff's for that
2 matter), UAIC's request for stay is not contradictory. Indeed, UAIC seeks the stay to avoid
3 conflicting or, contradictory, outcomes.

4 As such, to avoid forum shopping and, potentially, conflicting outcomes, both equitable
5 principles and judicial economy favor staying or, deferring, these matters and, particularly
6 Lewis' Counter Motion for summary judgment, until the appeal is resolved. Accordingly, UAIC
7 asks this Court to exercise its discretionary authority and/or, under N.R.A.P. 8(a)(1), and stay or,
8 defer, these proceedings or, at least Lewis' counter-Motion for summary judgment, until a
9 decision is rendered in the Nevada Supreme Court.

10
11 **B. REPLY IN SUPPORT OF MOTION TO DISMISS THIRD PARTY**
12 **COMPLAINT**

13 In Opposition to UAIC's Motion to dismiss Lewis offers absolutely no case law or other
14 rule in contravention of UAIC's Motion that his Third party claims are precluded per rulings in
15 the prior action under *Five Star*. For this reason alone the Court can grant UAIC's Motion. The
16 entirety of Lewis' opposition appears to be arguing facts to show why the claims are not
17 precluded. However, these arguments are not well founded and, at the very least, offer further
18 support for UAIC's Motion to stay (See above, Section A.). Overall, UAIC asks this Court to stay
19 proceedings, but should this Court hear argument on this Motion to dismiss, UAIC asks this
20 Court to grant same.

- 21
22 1. *This Court can consider this Motion as either a Motion to dismiss or a Motion*
23 *for Summary Judgment and, grants same.*

24 Lewis argues that as matters are presented beyond the complaint, this Court must
25 consider this matter as a Motion for summary judgment. Although UAIC contests this, for
26 purposes of this Motion, if this Court considers same under Rule 56, UAIC believes this Court
27 may still grant same for lack of material issue of fact.

28 As this Court knows, the court may treat a Motion to dismiss based upon failure to state a

1 claim as a Motion for summary judgment, pursuant to N.R.C.P. 56, if matters are presented
 2 outside the pleadings. *Buss v. Consolidated Casinos Corp.*, 82 Nev. 355 (1966). Summary
 3 judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to
 4 interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate
 5 that no genuine issue of material fact exists, and the moving party is entitled to judgment as a
 6 matter of law. The substantive law controls which factual disputes are material and will preclude
 7 summary judgment; other factual disputes are irrelevant. The factual dispute is genuine when
 8 the evidence is such that a rational trier of fact could return a verdict for the non-moving party.
 9 *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005).

11 Here, UAIC believes there are no issues or facts in dispute such as to deny grant of
 12 dismissal and/or summary judgment. That is, Lewis claims are barred, by claim preclusion, from
 13 the prior litigation. In a nutshell, *even if*, this court considers the prior finding that UAIC did not
 14 act in bad faith as technically not yet final (pending final appellate mandate) it is still true that all
 15 of Lewis' claims herein stem from UAIC's claim handling in regard to the loss *which all arise*
 16 *from the original July 2007 accident*. As such, *even if* Lewis claims he has "new" allegations of
 17 continuing bad faith - as they all still arise from the original claim – they need to be raised in his
 18 original bad faith action, *Nalder and Lewis v UAIC* (on appeal) and cannot be sought herein
 19 under the doctrine of claim preclusion.

22 2. *Claim Preclusion applies to Lewis claims even if he claims they are "new"*
 23 *allegations of bad faith.*

24 Lewis' arguments opposing dismissal essentially boil down to 3 claims: (1) the parties
 25 are not the same, (2) the federal court judgment is not final, and (3) the causes of action are not
 26 the same. None of these arguments should persuade this Court as they avoid the obvious – these
 27 claims are bad faith claims *between the same parties* arising from the July 2007 loss which is
 28 *already the subject of another action on appeal*. For these reasons there are no material issues of

1 fact these claims are precluded and this court can dismiss this action.

2 As noted in UAIC’s initial Motion, under *Five Star Capital Corp. v. Ruby*, 124 Nev.
3 1048,1054-55, 194 P.3d 709,713 (2008), holding modified by *Weddell v Sharp* 151 Nev. Adv.
4 Op.28, 3520 P.3d 80 (2015)(the modification is not applicable to this case), the following must
5 be shown for claim preclusion to apply: (1) the parties of their privies are the same¹; (2) the final
6 judgment is valid; and (3) the new action is based on the same claims that were or could have
7 been brought in the first action. It is clear that there is no material issue of fact that each factor is
8 met here and, thus, the third party complaint must be dismissed for claim preclusion.

9
10 a. The parties are the same

11 Inexplicably, Lewis argues that the parties in his Third Party Complaint are not the same
12 merely because he added retained defense counsel Randall Tindall, Esq. and his firm to his
13 action. This argument is a red herring *vis-à-vis* Lewis’ claims against UAIC and, thus, should be
14 disregarded.
15

16 Quite simply, Lewis points to no case law or rule which suggests that by merely adding
17 additional Defendants, a party can bring their claims outside the purview of claim preclusion as
18 to the party they already sued. This is because there is none and, adopting such a rule would
19 allow any party means by which to re-bring claims previously brought. The fact that Tindall and
20 his firm were added does not change that fact that Lewis has already sued UAIC for claims of
21 bad faith arising from the handling of the July 2007 loss.
22

23 Accordingly, for purpose of analysis of prong one of the test from *Five Star*, it is clear
24 that Lewis has already sued UAIC for claims handling and other bad faith arising out of the July
25 2007 loss in the action on appeal. The fact that he includes 2 new Defendants does not alter this
26 analysis and, thus, this Court can dismiss Lewis’ claims *against UAIC* from the Third Party
27

28 ¹ Lewis points out that UAIC inadvertently omitted factor one from its brief. UAIC apologizes for this, but as UAIC argued throughout the brief that the parties are indeed the same – UAIC addressed this factor - and, thus, such a minor inadvert omission serves as no basis to deny the motion substantively.

1 Complaint.

2 b. The causes of action are based on the same claims that were or
3 could have/can be brought in the original action

4 One of the main thrusts of Lewis' Opposition to the Motion to dismiss is that the claims
5 herein are not the same because the alleged bad acts occurred (primarily) in 2018. First, UAIC
6 must point out that this claim again goes to the point of UAIC's motion to stay pending decision
7 on appeal as will be discussed below. Moreover, the fact these claims allegedly occurred in 2018
8 does not change the fact they are claims **that could be brought in the action on appeal** and,
9 thus, do not provide a basis to deny the Motion or, create any issue of fact and, the Motion
10 should be granted.

11
12 At the outset, UAIC must point out that Lewis admits in his brief that there are "general
13 allegations" that "overlap" the claims in the case on appeal. This is an understatement. As can be
14 seen, the third party complaint starts out by admitting the alleged bad faith claims handling stem
15 from a July 2007 loss. *See Exhibit 'M' to UAIC's initial Motion, paragraph no. 5.* Further, the
16 pleading then goes on to allege all the facts/issues currently before the Court on appeal. *Id. at*
17 *paragraphs no. 7-35.* Accordingly, as this court can see, these allegations are no mere overlap,
18 but serve as the foundational allegations for Lewis' claims. As these issues are clearly the subject
19 of the ongoing appeal in the original action they are certainly barred by claim preclusion and
20 should be dismissed.

21
22 Furthermore, it is also true that these "new" allegations, stemming from UAIC's alleged
23 bad faith in seeking to defend Lewis, and/or itself, from these new actions herein, still all arise
24 from the original loss. Accordingly, these claims (if even valid) should be more properly in the
25 original action filed by Lewis and Nalder against UAIC, which is on appeal. Lewis actually
26 admits as much in his brief when he states the following:
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28 **"Certainly, Lewis expects that the finding by the Federal District Court that
UAIC's failure to defend, failure to use it's policy limits to protect the**

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insured, failure to communicate settlement offers to the insured and failure to file a declaratory relief action are breaches of the covenant of good faith and fair dealing; or, are at least issues of fact that should have been sent to a jury, not decided by the Federal District Court on summary judgment. When the Ninth Circuit reverses the trial court the judgement will be vacated and the case will again go back for trial.”

See Opposition at p. 5, lines 1-7. As this Court can see, the above quoted statements by Lewis betray the fact that his claims are actually part and parcel with those on appeal. Indeed, Lewis admits he still expects to get a reversal and, go back before the District Court to argue issues of UAIC’s bad faith. Therefore, these “new” claims of bad faith can be brought in the original case on appeal.

As such, it is for this very reason UAIC argues the issues of the third party complaint arise from the same circumstances (the July 2007 loss) and, thus, could be brought in the original action. Indeed, as Lewis expects to be back before the District Court to argue these issues anew, he can certainly also argue the “new” allegations of bad faith he makes herein. As such, as Lewis admits his claims can be brought in the original action on appeal, his claims herein meet the criteria of prong three of the *Five Star* test and no material issue of fact precludes their dismissal.

c. The fact of whether the appeal is final has no bearing on the issues herein.

For his final argument, Lewis argues that, as the original matter is still on appeal, the judgment is not technically final and, therefore, his claims should not be dismissed. UAIC disputes that the finality of the order regarding its own bad faith is at issue. Nonetheless, the fact is this argument supports UAIC’s position. Similar to the preceding argument, in arguing that the appeal is not final, *Lewis tacitly admits these are issues that could have been brought in the original action on appeal*. Accordingly, by this tacit admission Lewis is again admitting these claims of “new” bad faith could be brought in the original action and, thus there is no material fact precluding dismissal. If, however, this court feels that, due to the overall appeal (UAIC notes the issue of its having been found to have acted in good faith is not at issue before the Nevada

1 Supreme Court) not being final, this argument actually offers more evidence for this Court to
2 grant UAIC’s counter-motion to stay all proceedings on the third party complaint.

3 Accordingly, for all of the above, UAIC feels there is no material issue of fact the third
4 party complaint meets the *Five Star* factors and this Court can dismiss. Alternatively, if there is
5 an issue, the matters should be stayed pending the appeal as noted above.

6
7 **C. REPLIES IN SUPPORT OF COUNTER-MOTION TO STRIKE LEWIS’**
8 **AFFIDAVIT AND/OR FOR DISCOVERY PURUANT TO N.R.C.P. 56(f)**

9 Further, in the alternative, UAIC has also moved to strike Lewis’ affidavit in support of
10 his counter-motion for summary judgment as well as to stay same summary judgment pending
11 additional discovery pursuant to N.R.C.P. 56(f). From review of Lewis’ response it is clear he
12 offers absolutely no rule or case law – much less facts – to support his opposition to these
13 motions. Instead, it appears he merely re-asserts his arguments made in summary judgment
14 without ever addressing the issues raised by UAIC and, thus, UAIC argues these motions may be
15 granted.

16
17 1. *Lewis’ Affidavit must be stricken in whole or in part.*

18 In opposition to UAIC’s Motion to strike Lewis’ affidavit, Lewis admits that an affidavit
19 may be insufficient under N.R.C.P. 56(e), but then inexplicably proceeds to argue UAIC has not
20 cited any rule or case allowing for Lewis’ opposition to be stricken. Given that UAIC has
21 directly argued the affidavit be stricken under N.R.C.P. 56(e), Lewis’ argument basically admits
22 the merit of UAIC’s motion. Moreover, as Lewis **offers absolutely nothing to contradict**
23 **UAIC’s arguments** in the Motion to strike, UAIC argues Lewis has admitted same are viable
24 and this Court should grant UAIC’s Motion.

25
26 UAIC will not re-state its entire argument for the Motion to strike, but suffice it to say
27 UAIC has offered ample law allowing for this affidavit to be stricken. Rule 56(e) of the Nevada
28 Rules of Civil Procedure requires that “[s]upporting and opposing affidavits shall be made on
personal knowledge, shall set forth such facts as would be admissible in evidence, and shall

1 show affirmatively that the affiant is competent to testify to the matters stated therein.” It must
 2 be noted that this rule is exactly the same as the Federal counter-part, F.R.C.P. 56(e). The
 3 Nevada Supreme Court has confirmed that affidavits pursuant to Rule 56(e) must be on personal
 4 knowledge and must present admissible evidence cited to federal court opinions regarding same.
 5 *Daugherty v Wabash Life Ins. Co.*, 87 Nev. 32, 482, P.2d 814 (1971); See *Cuzze v Univ. & Cmty*
 6 *College Sys.*, 123 Nev 598, 602-3, 172 P.3d 131, 134 (2007) (finding when a Motion for
 7 summary judgment relies on affidavits, the affidavits must be set forth on “facts that would be
 8 admissible as evidence”). A party must come forth with more than his own uncorroborated
 9 statements in an affidavit to support a claim. *Yeager v Harrah’s Club*, 111 Nev. 830, 897 P.2d
 10 1093 (1995).

11 In reviewing motions for summary judgment, courts may not consider affidavits or
 12 declarations that do not comply with these requirements. *El Deeb v. Univ. of Minnesota*, 60 F.3d
 13 423, 428 (8th Cir. 1995); *School Dist. 1J v. AC and S*, 5 F.3rd 1255, 1261 (9th Cir. 1993), *cert.*
 14 *denied*, 512 U.S. 1236 (1983); *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 585 (6th Cir. 1992);
 15 *Friedel v. City of Madison*, 832 F.2d 965, 970 (7th Cir. 1987); *United States v. M.E. Dibble*, 429
 16 F.2d 598 (9th Cir. 1970).

17 All matters set forth in declarations must be based on personal knowledge and statements
 18 in a declaration are inadmissible unless the declaration itself affirmatively demonstrates that the
 19 declarant has personal knowledge of those facts. *Daugherty v Wabash Life Ins. Co.*, 87 Nev. 32,
 20 482, P.2d 814 (1971); *Love v. Commerce Bank of St. Louis, N.A.*, 37 F.3d 1295, 1296 (8th Cir.
 21 1994); *Gagne v. Northwestern Nat’l Ins. Co.*, 881 F.2d 309, 315-16 (6th Cir. 1989) (holding that
 22 statements in affidavits that are not based on personal knowledge and personal observation do
 23 not contain facts that are admissible evidence for summary judgment purposes); *El Deeb*, 60
 24 F.3d at 428 (affidavits “shall be made on personal knowledge” and must include facts “to show
 25 the affiant possesses that knowledge.”) *Dibble*, 429 F.2d at 602.

26 While it is true that a court may exercise discretion in dealing with deficiencies in
 27 declarations, “leniency does not stretch so far that Rule 56(e) becomes meaningless.” *School*
 28 *Dist. No. 1J*, 5 F.3d at 1261, citing *Peterson v. United States*, 694 F.2d 943, 945 (3rd Cir.

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1 1982)(lack of personal knowledge and failure to attach authenticated document violated rule
2 56(e) and made summary judgment improper).

3 In the case at bar, Third Party Plaintiff has attached the affidavit of Gary Lewis (See
4 *Exhibit 3 to Lewis' motion, herein*) in support of his request for summary judgment. However,
5 UAIC argues this affidavit is clearly not based upon personal knowledge and, additionally, fails
6 to offer facts, but instead conclusory allegations, which are improper and cannot support a
7 Motion for summary judgment under N.R.C.P. 56. Lewis has offered **absolutely no argument,**
8 **law, or facts to contradict the numerous and lengthy arguments UAIC has made in regard**
9 **to Lewis' affidavit.**

10 Accordingly, as Lewis essentially agrees with UAIC's motion, UAIC asks this Court to
11 strike Lewis' affidavit in whole or, in part, based on the un-opposed arguments in its initial
12 motion. The fact is the affidavit contains obvious conclusory and argumentative averments in
13 and UAIC also has well-founded doubts about the personal knowledge of Mr. Lewis in offering
14 many statements in his affidavit. The affidavit appears to be nothing more than the arguments of
15 counsel, signed by his client. Moreover, the language of the affidavit cite legal argument (though
16 he is not an attorney) and, moreover, offers conclusory allegations which are the subject of
17 ongoing litigation on appeal and/or, in this case. Accordingly, UAIC asks this Court to strike the
18 affidavit in whole or, alternatively, to strike the most objection paragraphs as set forth in its
19 initial motion.
20

21 2. *UAIC's Motion for a stay to conduct discovery was properly supported and*
22 *Lewis' Opposition does not contradict same and, thus, same should be*
23 *granted.*

24 Additionally, and/or further in the alternative, UAIC also brings its Counter-Motion to
25 stay the hearing on this Lewis' Counter Motion for summary judgment until UAIC can conduct
26 discovery, pursuant to N.R.C.P. 56(f), necessary to respond to the motion, UAIC believes this
27 discovery will lead to material issues of fact and development of a record. In his response Lewis
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1 essentially rehearses his arguments from his initial Motion and **absolutely fails to respond** to the
2 issues raised in UAIC’s properly supported motion for additional discovery. Accordingly, while
3 UAIC will respond to his arguments, it asks this Court to find its motion well supported and
4 grant same discovery and stay.

5
6 In order to grant a motion pursuant to rule 56(f) the movant expresses how discovery will
7 lead to the creation of issues of fact. *Bakerink v. Orthopaedic Assoc. Ltd.,m* 94 Nev. 428, 431,
8 581 P.2df 9, 11 (1978). A motion granting a continuance under rule 56(f) will be reviewed only
9 for an abuse of discretion. *Harrison v Falcon Products*, 103 Nev. 558, 560, 746 P.2d 642, 642
10 (1987).

11 As can be seen, from the affidavit of counsel for UAIC and the affidavit of Claims V.P.
12 Brandon Carroll², UAIC has set forth meaningful discovery it requests to oppose the Motion and
13 *how same will lead to genuine issues of material fact*. Lewis does not dare dispute these
14 arguments. Instead, Lewis’ asserts that the issues of fact UAIC seeks are irrelevant to this motion
15 because “the only relevant fact is UAIC’s liability ...for the judgment entered against Lewis
16 under any theory.” See Lewis’ Opposition p. 3 lines 26-28. This argument is non-sensical and,
17 regardless, is an unpersuasive attempt to distract this court for several reasons.

18
19 First, Third Party Lewis’ Complaint is only tangentially related to the liability of UAIC
20 for the judgment entered against him. As discussed above (in regard to the reply in support of
21 UAIC’s Motion to dismiss) and as Lewis argues in his summary judgment, the thrust of Lewis’
22 third party complaint is new alleged bad faith claims handling relating to UAIC’s motion to
23 dismiss his appeal and, the attempts at dismissing the actions against him, herein. Indeed, the
24 issues regarding UAIC’s liability for the judgment entered against Lewis is the exact issue on
25 appeal! Accordingly, it is unclear why Lewis argues this liability on the judgment is the only
26 issue for resolution of his third party complaint, but clearly it’s inaccurate. Moreover, if this
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1 Court accepts Lewis’ argument in this regard – *it would support UAIC’s Motion to stay pending*
2 *resolution of that appeal.* Accordingly, this argument must be disregarded.³

3 Rather, the issues on the third party complaint and, indeed Lewis’ counter-motion for
4 summary judgment on same complaint, concern (primarily) the “new” allegations of bad faith
5 that have occurred in 2018. UAIC’s motion more than adequately sets forth – **via uncontested**
6 **affidavits** - *not only the discovery requested, but how each will lead to material issues of fact.*
7 As Lewis has not contested these averments and requests for new discovery, this Court can grant
8 same and stay the motion pending this discovery.
9

10 Additionally, Lewis alleged “8 independent basis for liability” for which he claims there
11 is no material issue of fact or, for which discovery is not requested, is merely a re-stating of his
12 arguments for his summary judgment. It is as if Lewis failed to even read UAIC’s Opposition to
13 his motion as UAIC addressed each of these issues and Lewis has utterly failed to address those
14 arguments. Accordingly, these claims do not support denial of UAIC’s Motion to stay.
15 Regardless, UAIC will address each herein, as follows:
16

17 a. **That UAIC did nothing to defend Lewis 2013-2017.**

18 In his Motion, Lewis argues UAIC did nothing to defend him in 2013-2018 and, as such,
19 UAIC cannot possibly claim to be defending Lewis now. This argument misses one clear issue –
20 that ***there was no new duty to defend triggered*** in the time after the Federal District court first
21 found an implied policy, in October 2013, and when the attempt to amend the judgment and new
22 action being filed was discovered in July 2018. Quite simply, **there was nothing to defend** in the
23

24 _____ (Cont.)

25 ² See *Exhibit 'J' to UAIC’s initial counter-motion.*

26 ³ UAIC must also point out that Lewis’ argument concerning the issue of liability on the
27 judgment having been decided per the *Century Surety* decision is incorrect and irrelevant to the issues
28 herein. First, the Nevada Supreme Court has yet to rule on UAIC’s liability for the judgment against
Lewis in our appeal. Second, UAIC argues the *Century Surety* decision is distinguishable as the insurer in
that case had its defense triggered by allegations in the complaint (*i.e.* that the insured was in the course
and scope of employment) while in our case there were no such allegations in the complaint to trigger
coverage. Instead, the averments of the original action against Lewis noted a loss date in July 2007, which
fell outside UAIC’s policy term and, thus, no duty to defend was triggered.

1 time noted by Plaintiff and, accordingly, this argument is hollow and should be disregarded.

2 That said, it is also true that the discovery sought by UAIC could shed light on these
3 issues and establish a material issue of fact as, for instance, at the requested deposition of Lewis,
4 UAIC would inquire as to what defense obligations Lewis maintains he was owed during 2013-
5 2017. Accordingly, this argument does not defeat the request for stay for discovery.

6
7 **b. That UAIC has not pursued settlement negotiations or investigated ways
8 to relieve Lewis of the judgment.**

9 The argument that UAIC has not pursued settlement or investigated ways to relieve
10 Lewis of the judgment is improper and, absurd. First, introduction of evidence of settlement
11 negotiations are improper under statute. See N.R.S. 48.105. More importantly, however, UAIC
12 has tried to negotiate settlement by participating in at least 2 court-mandated settlement
13 conferences through the Ninth Circuit while on appeal as well as one private mediation in 2016.
14 Accordingly, this allegation is nonsense. In terms of investigating ways to relieve Lewis of the
15 judgment – UAIC has actively tried to engage counsel to defend Lewis and relieve him of this
16 judgment in this action. Moreover, UAIC has also sought to do the same by intervening and
17 filing motions to vacate the amended judgment and dismiss the new suit. Indeed, UAIC has
18 moved the appellate court to find the judgment against Lewis *is expired*. As such, the record
19 shows UAIC has done more than merely investigate – it has actively tried to relieve Lewis for
20 liability on the judgment. Accordingly, this argument is also baseless.

21
22 That said, it is also true that the discovery sought by UAIC could shed light on these
23 issues and establish a material issue of fact as, for instance, at the requested deposition of Lewis,
24 UAIC would inquire as to what negotiations to settle and/or investigations it has failed to
25 perform. Accordingly, this argument does not defeat the request for stay for discovery.

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c. That UAIC breached some duty by allegedly failing to communicate through Lewis' Counsel, who also represents Plaintiff.

As noted in UAIC's Opposition to the summary judgment, Lewis' allegations in regard to allegedly failing to communicate through Plaintiff's Counsel to him, are completely baseless. In support of this claim, Lewis cites Powers v USAA, 114 Nev. 690, 962 P.2d 596 (1998). The problem is, nowhere in the Powers case is such a principle noted. In Powers the insurer was found to have wrongfully denied a claim and, indeed sought to prosecute its insured for making a fraudulent claim, when it appeared the insurer may have manufactured evidence against its insured. Id. Indeed, because of such behavior the court upheld the bad faith finding against the insurer. Id. The only mention in the Powers decision of the insurer "disregarding" requests of the insured is in relation to the fact the jury agreed with Powers that USAA had refused his (1) requests for photos used at his E.U.O., (2) failed to allow him to be present when his sunk boat was raised and, (3) failed to protect the boat (evidence) after it was raised. Id. at 602, 700.

As such, when one reviews the case relied upon by Lewis for his claims, it is clearly distinguishable. In Powers the insurer denied the insured requests that dealt with access to evidence – evidence he needed to defend a criminal fraud case. Such actions do not even come close to equating with the claims Lewis' makes against UAIC here. Rather, Lewis complains the UAIC failed to communicate or, communicated improperly, or failed to heed his demand to cease the defense. As such, this is dissimilar to the case at bar and, moreover, offers no valid "cause of action" for Lewis here anyway.

Besides being completely different than the alleged refusals in Powers, it also true that these arguments omit relevant facts. Namely, that conflicted counsel Thomas Christensen was prohibiting retained defense counsel from communicating with Lewis. See affidavit of Brandon Carroll attached as Exhibit 'J' to UAIC's initial Motion. As such, the complaint that UAIC failed to communicate with Lewis, or copy Christensen on correspondence, is a red-herring

1 considering issues of fact exist over Christensen’s true motivations and conflicts, as well as
 2 interference with or, non-cooperation, under the policy. *Id.* The other problem with this argument
 3 is it ignores UAIC’s right to control the defense of its insured under the policy, noted above. As
 4 such, given UAIC’s right to control the defense there is at least a material issue of fact or,
 5 genuine dispute over this issue and Lewis’ right to “deny himself a defense.”

7 That said, it is also true that the discovery sought by UAIC could shed light on these
 8 issues and establish a material issue of fact as, for instance, at the requested deposition of Lewis,
 9 UAIC would inquire as to what communications Lewis is complaining of. Further, with the
 10 deposition requested of Tom Christensen UAIC would like to inquire as to his interference with
 11 retained defense counsel attempts to contact Lewis. These are certainly just some material issues
 12 of fact in this regard. Accordingly, this argument does not defeat the request for stay for
 13 discovery.

15 **d. That UAIC has no right to maintain a defense for Lewis with retained
 16 defense counsel.**

17 Lewis argues that UAIC puts its own interests ahead of Lewis’ when it sought to have
 18 retained defense counsel relieve him of an improperly amended judgment and, dismiss a new
 19 action against him. Once again, this arguments ignores UAIC’s counter-arguments and,
 20 moreover, UAIC believes its requested discovery will yield many material issues of fact in this
 21 regard and, thus, this argument can be disregarded.

23 It is axiomatic that a policy a liability insurance comes with a duty to defend and, that
 24 same duty is broader than the duty to indemnify.⁴ *United Nat’l Ins. Co. v. Frontier Ins. Co.*, 120
 25 Nev. 678 (2004). It is further well-settled in Nevada that when an insurer retains defense counsel
 26 to defend its insured, same counsel represents **both** the insurer and insured and has duties to
 27

28 ⁴ Thus, UAIC would have a duty to defend even if policy limits have been tendered, which they
 have been here.

1 both. *Nev. Yellow Cab Corp. v Eight Jud. Dist. Court of Nev.*, 123 Nev. 44 (2007). Such dual
 2 representation is allowed as long as no actual conflict exists. *Id.*

3 Accordingly, under the above noted case law, UAIC has a duty to defend this action on
 4 Lewis' behalf – and attempt to relieve Lewis from this “amended judgment- and has retained
 5 counsel to do just that. There is nothing improper in this regard. The fact remains UAIC's duty to
 6 defend was only established, at law, in 2013 and, thus, UAIC is trying to comply with same here.
 7 The issues surrounding the amending of the 2008 judgment and, new suit filed, *only arose this*
 8 *year* and, thus, UAIC's duty to defend these new judgments and claims only arose now. By
 9 seeking to stand by its duty to defend Lewis and, seeking to relieve him of an expired multi-
 10 million dollar judgment - which UAIC believes was improperly attempted to be revived- there is,
 11 at the very least, a material issue of fact as noted in the Affidavit of Brandon Carroll (*Exhibit*
 12 *'J'*). Moreover, these issues are partially before the Nevada Supreme Court.

13
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 15 In this way, not only due material issues of fact and law exist in regard to these
 16 allegations, but more importantly UAIC believes issues of fact will be gained from the requested
 17 discovery. Most importantly, for instance, for the requested deposition of Lewis – UAIC would
 18 like to question him on how he believes preventing UAIC from relieving the judgment against
 19 him (for \$3.5 million plus interest) and, dismissing the new action, put their interests ahead of his
 20 or, *harmed him?*

21
 22 These are certainly material issues of fact in this regard. Accordingly, this argument does
 23 not defeat the request for stay for discovery.

24 **e. UAIC does not admits its liable for any judgment**

25 Lewis attempts to argue that because UAIC noted, in intervening, it has an interest
 26 because it *may* be liable for any judgment – does not mean it “is” liable for any judgment. Lewis'
 27 continued attempts to have this “tail wag this dog” are desperate and incorrect as UAIC has never
 28 admitted it will be liable. Further, in terms of the *Andrew v Century Surety* decision, this is again

1 an issue on appeal, but regardless, UAIC again asserts that case is distinguishable as the duty to
2 defend in the 2007 case was not triggered by the allegations of the complaint as the loss fell
3 outside the policy term. Lewis' final arguments concerning failures to settle and investigate were
4 previously noted, above in section 'b', above and UAIC refers the Court to same. Regardless, all
5 of these arguments offer nothing to grant summary judgment – much less defeat UAIC's Motion
6 for N.R.C.P. 56(f) discovery.
7

8 **f. UAIC has filed a declaratory judgment action on the issue of liability for**
9 **cumis counsel.**

10 Lewis' argument that he will end up with an even larger judgment if UAIC defends him
11 is absolutely absurd. Again, UAIC has asked Lewis to *explain how he will be harmed by UAIC's*
12 *defense and no response has even been given.* It is just for this reason that UAIC has requested
13 Lewis' deposition so it may inquire as to his allegations in this regard. Accordingly, this section
14 actually supports UAIC's Motion for discovery as, currently, Lewis has never articulated a harm
15 from UAIC's defense.
16

17 In terms of Lewis' claims he has had to engage conflict counsel, UAIC disputes the need
18 for this counsel and, *actually argues any alleged costs (damages) from his conflict counsel has*
19 *been caused by Plaintiff and Lewis' collusion in trying to prevent UAIC from relieving him of the*
20 *judgment.* Accordingly, at the very least, the depositions of Tom Christensen and Breen Arntz
21 have been sought to question them in this regard and UAIC has argues this will lead to creation of
22 material issues of fact.
23

24 Finally, UAIC has a pending declaratory judgment action in U.S. Federal District court
25 on the issues of its responsibility for cumis counsel herein and, thus, a material issue of fact
26 remains.
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g. This section re-asserts the claims that either Tindall or UAIC improperly communicated with Lewis.

This section is, essentially, the same arguments Lewis makes in sections ‘c’ and ‘d’, above, and therefore, UAIC re-states its arguments therein. In short, UAIC reasonably believes it has a duty to defend Lewis herein and, retained Counsel Tindall to do so. Issues surrounding such representation and, its legality, are certainly issues of fact. Moreover, UAIC believes the depositions of Lewis and Tom Christensen it has requested will yield multiple issues of fact surrounding attempts at interference and/or collusion.

h. This section asserts that UAIC has committed some bad faith in its arguments on appeal concerning validity of the judgment.

While hard to completely apprehend, it appears that Lewis is arguing because UAIC has allegedly noted, on appeal, that under statute a party may file an action on the judgment or renew, it has somehow committed bad faith. The argument mis-quotes UAIC and, regardless, is incorrect. At the very least, this argument presents material issues of fact and law, many of which are the subject of the appeal. Regardless, there is no inconsistency in UAIC’s position. UAIC has consistently maintained Nalder had to properly renew her judgment against Lewis. Although she may file an action on the judgment – she still needs a viable judgment to do so. Here, it is uncontroverted she did not renew the judgment and, thus it expired. There is nothing inconsistent in this position. It is also not grounds for any bad faith cause of action. Regardless, it is an issue that is the subject of appeal and offers no grounds for Lewis’ counter-Motion for summary judgment, much less denial of UAIC’s counter-motion or discovery pursuant to Rule 56(f).

As such, as Lewis offers no counter-affidavits, much less argument, to controvert the affidavits presented by UAIC in support of its Rule 56(f) Motion, the Motion should be granted. Specifically, that given the lengthy averments of the Lewis affidavit and, the issues surrounding

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1 the creation of same, UAIC requests, at a minimum, the following discovery:

- 2
3 a-written discovery to Gary Lewis;
4 b-deposition of Gary Lewis;
5 c-deposition of Thomas Christensen, Esq.;

6 d-deposition of Breen Arntz, Esq.;

7 e-deposition of David Stephens, Esq.;

8 This discovery is necessary to respond to the Motion and, will lead to the creation of genuine
9 issues of facts, as follows:

10 a & b – the written discovery and deposition of Gary Lewis will lead to a creation of
11 genuine issue of fact because UAIC needs to examine Lewis on who drafted the affidavit, who
12 advised him to refuse UAIC’s retained defense counsel, whether Lewis was advised of the fact
13 that the original 2008 judgment expired, whether Lewis was advised that the issues raised by his
14 counsel to combat the theory that the 2008 judgment is expired are already on appeal before the
15 Ninth Circuit and Nevada Supreme court, where he got his knowledge and understanding of the
16 alleged facts he testified to regarding the case on appeal, why he believes UAIC ‘s efforts to
17 vacate an “amended judgment” made on an expired judgment will cause him more damages;
18 why, despite the preceding issue, he wanted Breen Arntz, Esq. to enter into a stipulated judgment
19 in this action for the same increased judgment he now claims to fear, how Breen Arntz, Esq.
20 came to represent him, what support he has for his allegations concerning UAIC’s
21 actions/failures to act in regard to his claims (*e.g.* that UAIC ignored statutes, mischaracterized
22 the law, failed to investigate, that UAIC damaged his contractual relationship with Nalder (and
23 what contractual relationship exists), what facts he has to support his allegations UAIC’s defense
24 is frivolous or that he will lose, what damages Lewis has actually sustained, the factual bases for
25 his allegations that UAIC has violated N.R.S. 686A.310, what facts he has to support the
26 allegation that UAIC breached the covenant of good faith and fair dealing or acted unreasonably,
27 what facts he has to support his claims of a conspiracy involving UAIC);

28 c- the deposition of Thomas Christensen, Esq. is necessary and will lead to genuine issues
of fact in regard to his representation of both the judgment-creditor, Nalder, and the judgment-
debtor, Lewis, in the same action, that said conflict has caused a fraud upon the court which he
continues to perpetrate by fomenting more litigation and has precluded UAIC from abiding its
duty to defend Lewis in blocking retained defense counsel’s attempts to confer with Lewis and
retaining other counsel for both Lewis and Nalder to obfuscate his intentions, regarding his role
in drafting the affidavit signed by Lewis;

d – the deposition of Breen Arntz, Esq. is necessary and will lead to genuine issues of
material fact concerning his retention to represent Lewis by attorney Christensen and also
blocking UAIC’s retained counsel from defending Lewis and prevent them from either vacating
the improper “amended judgment” in the 2007 action or, dismissing the current complaint and,
instead seeking to enter a stipulated judgment which subjects his client, Lewis, to damages when
a judgment against him already expired and said issue on appeal;

e. the deposition of David Stephens is necessary and will lead to material issues of fact
concerning how he was retained to amend an expired judgment for Nalder, his discussions with

1 Mr. Arntz, Esq. to enter a stipulated judgment on this action while UAIC’s intervention was
2 pending, his understanding of the case on appeal when he undertook his attempt to amend an
3 expired judgment;

4 UAIC has presented the affidavit of Brandon Carroll has attested that UAIC has been
5 hindered in any defense of these claims because it has been forbidden from speaking to its
6 insured Lewis, through retained defense counsel. *See Exhibit ‘J’ to the initial Motion.* This has
7 not only inhibited any investigation of the claims alleged by Lewis, but also prejudiced UAIC in
8 its defense herein - as can clearly be seen. *Id.* Moreover, this raises issues of non-cooperation
9 under the policy by Lewis and, thus, possible defenses for UAIC. UAIC needs the discovery and,
10 deposition of Lewis, to explore these issues. *Id.*

11 The case of *Aviation Ventures, Inc. v Joan Morris, Inc.*, 121 Nev. 113, 110 P.3d 59
12 (2005), is squarely on point. In that case a party brought a summary judgment motion before
13 discovery commenced and, despite a rule 56(f) motion by the party opposing the motion – with
14 affidavits attesting to the discovery needed and how it would lead to material issues of fact – the
15 Court denied the Motion. On appeal, the Nevada Supreme Court reversed and noted that
16 summary judgment is improper when the case is in the early stages of litigation and a party
17 seeks additional time to compile facts to support its opposition. *Aviation Ventures, Inc. v Joan*
18 *Morris, Inc.*, 121 Nev. 113, 110 P.3d 59 (2005).

19 In short, UAIC believes this case is premature for summary judgment as the matter was
20 just filed. No discovery order has been entered and, no discovery conducted. Thus, no record has
21 been created and, moreover, no prejudice will accrue any party in allowing same discovery. The
22 above requested discovery will lead to material issues of fact because such discovery will reveal
23 the hollowness of Lewis’s affidavit or lack of support for same. Moreover, it will likely lead to
24 defenses for UAIC concerning its prejudice by Lewis’ failure to cooperate or communicate. As
25 such, the entire counter-motion for summary judgment as all the alleged “facts” in support of
26 same motion are, at least, all in dispute or, at worst, interposed improperly to produce a fraud
27
28

1 upon the court and UAIC believes this discovery will reveal same and, thus, the continuance, per
2 rule 56(f), should be granted and the above-requested discovery allowed.

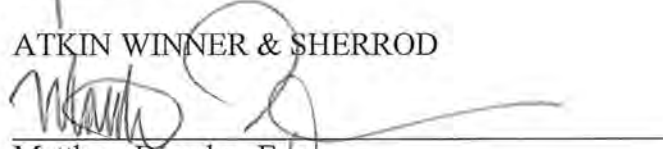
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4 **III.**

5 **CONCLUSION**

6 Based upon the foregoing, Defendants UNITED AUTOMOBILE INSURANCE
7 COMPANY respectfully requests that this Court grant its Counter-Motions and/or deny Lewis'
8 Motion for Summary Judgment as materials issues of fact abound, the issues are intertwined with
9 those on appeal and/or vital discovery is needed.

10 DATED this 16th day of JANUARY, 2019.

11 ATKIN WINNER & SHERROD

12 
13 Matthew Douglas, Esq.
14 Nevada Bar No. 11371
15 1117 S. Rancho Drive
16 Las Vegas, Nevada 89102
17 *Attorneys for UAIC*

18
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ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

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CERTIFICATE OF SERVICE

I certify that on this 16th day of January, 2019, the foregoing **UAIC'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS LEWIS' THIRD PARTY COMPLAINT & REPLIES IN SUPPORT OF ITS COUNTER-MOTION TO STRIKE AFFIDAVIT OF LEWIS IN SUPPORT OF COUNTER-MOTION FOR SUMMARY JUDGMENT AND/OR STAY PROCEEDINGS PENDING APPELLATE RULING AND/OR STAY COUNTER-MOTION FOR SUMMARY JUDGMENT PENDING NECESSARY DISCOVERY PURSUANT TO N.R.C.P. 56(f)** was served on the following by Electronic Service pursuant to NEFR 9 Electronic Filing and Service pursuant to NEFR 9 hand delivery overnight delivery fax fax and mail mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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

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

Breen Arntz, Esq.
5545 S. Mountain Vista St. Suite F
Las Vegas, NV 89120
Additional Attorney for Defendant Lewis

Thomas Christensen, Esq.
CHRISTENSEN LAW OFFICES
1000 S. Valley View Blvd.
Las Vegas, NV. 89107
Counsel for Third Party Plaintiff Lewis


An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

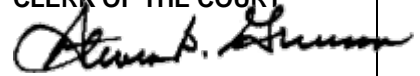
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4 DPolsenberg@lrrc.com
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9 3993 Howard Hughes Parkway, Suite 600
10 Las Vegas, Nevada 89169
11 Telephone: 702-949-8200
12 Facsimile: 702-949-8398
13
14 *Attorneys for Third-Party Defendants*
15 *Randall Tindall, Esq., and Resnick & Louis P.C.*
16 *In Consolidated Case No. A-18-772220-C*

DISTRICT COURT
CLARK COUNTY, NEVADA

12 CHEYENNE NALDER,
13 Plaintiff,

14 vs.

15 GARY LEWIS and DOES I through V,
16 inclusive
17 Defendant.

Case No.: 07A549111
Dept. No.: 20

Case No.: A-18-772220-C
Dept. No.: 20

**NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR DISMISSAL OF ALL
THIRD-PARTY CLAIMS, WITH
PREJUDICE, AGAINST THIRD PARTY
DEFENDANTS RANDALL TINDALL, ESQ.,
AND RESNICK & LOUIS, P.C.**

18
19 UNITED AUTOMOBILE INSURANCE
20 COMPANY,
21 Intervenor,

22 GARY LEWIS,
23 Third Party Plaintiff,

24 vs.

25 UNITED AUTOMOBILE INSURANCE
26 COMPANY, RANDALL TINDALL, ESQ.
27 and RESNICK & LOUIS, P.C., and DOES I
28 through V,
Third Party Defendants.

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

1 PLEASE TAKE NOTICE that a Stipulation and Order for Dismissal of all Third-Party Claims,
2 With Prejudice, Against Third Party Defendants Randall Tindall, Esq., And Resnick & Louis, P.C. was
3 filed on January 28, 2019. A copy of the Stipulation and Order is attached hereto.

4
5 Dated this 29th day of January, 2019.

6 LEWIS ROCA ROTHGERBER CHRISTIE
7 LLP

8
9 By: /s/ Dan R. Waite
10 DANIEL F. POLSENBERG (SBN 2376)
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17 *Randall Tindall and Resnick & Louis,*
18 *P.C.*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on this day, I caused a true and correct copy of “*Notice of Entry of Stipulation and Order for Dismissal of all Third-Party Claims, With Prejudice, Against Third Party Defendants Randall Tindall, Esq., And Resnick & Louis, P.C.*” to be E-Served through the Court’s E-Filing System on the following counsel:

David Stephens, Esq
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3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Plaintiff Cheyenne Nalder

Thomas Christensen, Esq.
THOMAS CHRISTENSEN
100 S. Valley View Blvd.
Las Vegas, NV 89107
Attorneys for Third-Party Plaintiff Gary Lewis

E. Breen Arntz, Esq.
E. BREEN ARNTZ
5545 Mountain Vista, Ste. E
Las Vegas, NV 89120
Attorneys for Third-Party Plaintiff Gary Lewis

Matthew J. Douglas, Esq.
ATKIN WINNER & SHRROD
1117 S. Rancho Drive
Las Vegas, NV 89102
*Attorneys for Intervenor/Third Party Defendant
United Automobile Insurance Company*

Dated this 29th day of January, 2019

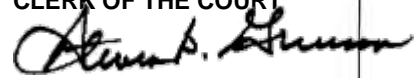
/s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP

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14 *Attorneys for Third-Party Defendants*
15 *Randall Tindall, Esq., and Resnick & Louis P.C.*
16 *In Consolidated Case No. A-18-772220-C*

DISTRICT COURT
CLARK COUNTY, NEVADA

12 CHEYENNE NALDER,
13 Plaintiff,

Case No.: 07A549111
Dept. No.: 20

14 vs.

Case No.: A-18-772220-C
Dept. No.: 20

15 GARY LEWIS and DOES I through V,
16 inclusive
17 Defendant.

**STIPULATION AND ORDER FOR
DISMISSAL OF ALL THIRD-PARTY
CLAIMS, WITH PREJUDICE, AGAINST
THIRD PARTY DEFENDANTS RANDALL
TINDALL, ESQ., AND RESNICK & LOUIS,
P.C.**

19 UNITED AUTOMOBILE INSURANCE
20 COMPANY,
21 Intervenor,

21 GARY LEWIS,
22 Third Party Plaintiff,

23 vs.

24 UNITED AUTOMOBILE INSURANCE
25 COMPANY, RANDALL TINDALL, ESQ.
26 and RESNICK & LOUIS, P.C., and DOES I
27 through V,
28 Third Party Defendants.

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca
ROTHGERBER CHRISTIE

STIPULATION

1
2 Third Party Plaintiff, GARY LEWIS and Third Party Defendants, RANDALL
3 TINDALL, ESQ. and RESNICK & LOUIS, P.C., by and through their undersigned counsel,
4 stipulate that all third-party claims asserted by Third Party Plaintiff GARY LEWIS against Third
5 Party Defendants RANDALL TINDALL, ESQ. and RESNICK & LOUIS, P.C., may be
6 dismissed in their entirety, with prejudice, and with each party to bear their own attorney fees and
7 costs.

8 Based on the foregoing, the parties to this Stipulation further agree that the following
9 motions are withdrawn, with prejudice, and the hearing on said motions may be vacated:

10 1. GARY LEWIS'S NRCP 11 Motion for Sanctions against RANDALL TINDALL
11 filed on November 8, 2018, and currently set for hearing on January 23, 2019 (two similar
12 motions were filed before consolidation; one in Case No. 07A549111 and one in Case No. A-18-
13 772220), and

14 2. Third-Party Defendants RANDALL TINDALL, ESQ., and RESNICK & LOUIS
15 P.C.'S (1) Motion to Dismiss, or (2) In the Alternative, for a More Definite Statement, or (3) In
16 the Alternative, to Dismiss Resnick & Louis for Failure to State a Claim, filed on December 20,
17 2018, and currently set for hearing on January 30, 2019.

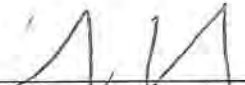
18 Pursuant to EDCR 2.75, the parties state there has been no Request for Trial Setting or
19 Scheduling Order filed in this action, i.e., and there is no currently pending trial date.


20 Dated this 23rd day of January, 2019.

20 Dated this 22nd day of January, 2019.

21
22 THOMAS CHRSTENSEN, ESQ.

21 LEWIS ROCA ROTHGERBER CHRISTIE
22 LLP

23
24 By: 
25 THOMAS CHRISTENSEN (SBN 2326)
26 ThomasC@injuryhelpnow.com
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*Attorney for Third-Party Defendants
Randall Tindall and Resnick & Louis,
P.C.*

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Lewis Roca
ROTHGERBER CHRISTIE

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1 Dated this 23rd day of January, 2019.

2 E. BREEN ARNTZ, ESQ.

3
4
5 By: 
6 E. BREEN ARNTZ (SBN 3853)
7 breen@breen.com
8 5545 Mountain Vista, Ste. E
9 Las Vegas, Nevada 89120
10 *Attorneys for Third-Party Plaintiff Gary*
11 *Lewis*

12
13 **ORDER DISMISSING ALL THIRD PARTY CLAIMS, WITH PREJUDICE,**
14 **AGAINST THIRD PARTY DEFENDANTS RANDALL TINDALL, ESQ.,**
15 **AND RESNICK & LOUIS, P.C.**

16
17 BASED ON THE FOREGOING STIPULATION and good cause appearing:
18 IT IS HEREBY ORDERED as follows:

- 19 1. All third party claims filed by Third Party Plaintiff GARY LEWIS against Third Party
20 Defendants RANDALL TINDALL, ESQ., and RESNICK & LOUIS, P.C., are dismissed with
21 prejudice, each party to bear its own attorney fees and costs;
22 2. The hearing on GARY LEWIS'S NRCP 11 Motion for Sanctions scheduled for
23 January 23, 2019, is vacated; and
24 3. The hearing on RANDALL TINDALL'S and RESNICK & LOUIS'S Motion to
25 Dismiss, or, in the Alternative, For a More Definite Statement, or, in the Alternative, to Dismiss
26 Resnick & Louis for Failure to State a Claim, scheduled for January 30, 2019, is vacated.

27 Dated this 25 day of January, 2019.

28

DISTRICT COURT JUDGE *SS*
ERIC JOHNSON

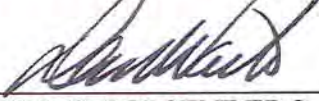
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Lewis Roca
ROTHGERBER CHRISTIE

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1 Respectfully Submitted By:

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3
4 By: 

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Las Vegas, Nevada 89169
Attorney for Third-Party Defendants
Randall Tindall and Resnick & Louis, P.C.

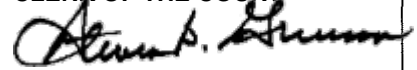
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24



1 MATTHEW J. DOUGLAS
 Nevada Bar No. 11371
 2 ATKIN WINNER & SHERROD
 1117 South Rancho Drive
 3 Las Vegas, Nevada 89102
 Phone (702) 243-7000
 4 Facsimile (702) 243-7059
mdouglas@awslawyers.com
 5 *Attorneys for Intervenor United Automobile Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

8 CHEYANNE NALDER,

9 Plaintiff,

10 vs.

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

13 Defendants,

14 UNITED AUTOMOBILE INSURANCE
COMPANY,

15 Intervenor.

CASE NO.: 07A549111
 DEPT. NO.: XX

Consolidated with
 CASE NO.: A-18-772220-C
 DEPT. NO.: XX

**UAIC'S MOTION FOR RELIEF FROM
 JUDGMENT, ENTERED 1/23/19 IN CASE
 NO A-18-772220-C, PURSUANT TO NRCP
 60 AND/OR, IN THE ALTERNATIVE,
 MOTION FOR REHEARING ON MOTION
 TO DISMISS PLAINTIFF'S FIRST CAUSE
 OF ACTION IN CASE NO A-18-772220-C
 ON AN ORDER SHORTENING TIME**

17 COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter
 18 referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD
 19 and hereby brings its Motion for Relief from Judgment pursuant to NRCP 60(b) as well as
 20 Motion for Rehearing on the Motion to Dismiss Plaintiff's first cause of action, asking that this
 21 Court declare as void the Judgment entered on January 23, 2018, because the Judgment entered
 22 was based on a null offer of judgment made after this Court stayed the present action and/or,
 23 alternatively, for this Court to rehear Intervenor's Motion to Dismiss Plaintiff's first cause of
 24 action, which the court had stayed only because of Plaintiff's request to stay the matter to
 25 "preserve her action."

26 ///

27 ///

28 ///

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

4 DATED this 8th day of FEBRUARY, 2018.


5 ATKIN WINNER & SHERROD

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

13 **ORDER SHORTENING TIME**


14 Good cause appearing therefore, IT IS HEREBY ORDERED that the time for hearing the
15 Motion for Relief from Judgment pursuant to NRCPC 60(b) as well as Motion for Rehearing on
16 the Motion to Dismiss Plaintiff's first cause of action on an Order Shortening Time is hereby
17 shortened to the 20th day of February, 2019 at the hour of 8:00 a.m./p.m. or as soon as
18 counsel may be heard in the above-entitled Department of the District Court, Clark County,
19 Nevada.

20 DATED this 16 day of February, 2019

21 
22 _____
23 DISTRICT COURT JUDGE
24 ERIC JOHNSON ES

25 Submitted by,

26 ATKIN WINNER & SHERROD

27 
28 _____
29 Matthew Douglas, Esq.
30 Nevada Bar No. 11371
31 1117 South Rancho Drive
32 Las Vegas, Nevada 89102
33 *Attorneys for Intervenor UAIC*

ATKIN WINNER & SHERROD LLP
A NEVADA LAW FIRM

**AFFIDAVIT OF COUNSEL IN SUPPORT OF INTERVENOR'S REQUEST
FOR ORDER SHORTENING TIME**

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

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

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.
2. I represent Intervenor, UAIC, in the above-captioned action as well as in another cases titled *Nalder v Lewis*, Case No. A-18-772220-C.
3. I have reviewed the facts and circumstances surrounding this matter 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 prior to the instant action, *Nalder v Lewis*, Case No. A-18-772220-C, the parties have been involved in substantially similar litigation in the matter of *Nalder v UAIC*, which is currently on appeal before the U.S. Court of Appeals for the Ninth Circuit, under case no. 13-17441, as well as before the Nevada Supreme Court, under case no 70504, on a certified question.
6. On January 9, 2019, hearings were held on the instant action which included Intervenor's Motion to dismiss Plaintiff's Complaint as well as Intervenor's Counter-Motion to stay this action pending the Nevada Supreme Court's decision in case no 70504, wherein, this Court dismissed Plaintiff's 3rd claim for relief, but stayed the first two claims for relief based on said appeal.
7. Thereafter, before the order on the above-noted motions had even been filed, Plaintiff served an Offer of Judgment on Defendant Lewis on January 11, 2019, in apparent contravention of the stay ordered 2 days earlier; *A copy of Plaintiff's Offer of Judgment dated 1/1/19 is attached hereto as Exhibit 'A.'*
8. Next, Counsel for Lewis accepted this offer of judgment and, on January 22, 2019, Plaintiff filed for a judgment on the acceptance of the offer – which the Clerk of the Court signed January 23, 2019; *See copies of acceptance of offer and, judgment, attached hereto as Exhibits 'B' & 'C', respectively.*
9. Thereafter, Plaintiff's other Counsel (Counsel for third party defendant Lewis, herein) filed same judgment with the U.S. Court of Appeals for the Ninth Circuit, under case no. 13-17441 as part of a supplemental citation to the record wherein Plaintiff argued this January 22, 2019 judgment in case No. A-18-772220-C mooted the issue on appeal regarding the expired

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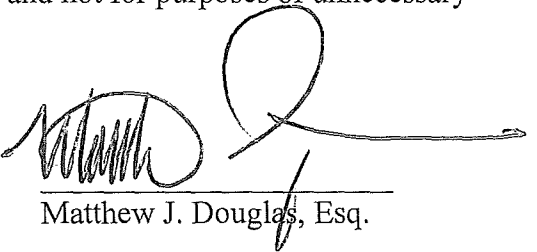
1 judgment. *A copy of Plaintiff's Supplemental citation to the Ninth Circuit is attached hereto as*
2 *Exhibit 'D.'*

3 10. As this Court can see, contrary to the arguments by Plaintiff's Counsel at the January 9, 2019
4 hearing that this action had "no relation" to the issues on appeal and, in contravention of this
5 Court's stay, Plaintiff has attempted to enter an improper judgment which is prejudicing
6 Intervenor on appeal;

7 11. Based upon the prejudice to Intervenor by Plaintiff's actions and, filings in the Ninth Circuit,
8 if these issues in this Motion are not heard on an order shortening time, permanent prejudice may
9 accrue to Intervenor should the Ninth Circuit issue a ruling on the basis of this improper
10 judgment;

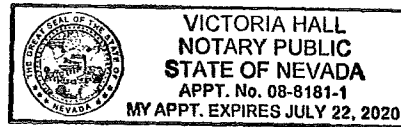
11 12. Intervenor's Motions for Relief from Judgment and Motion for Rehearing for its Motion to
12 dismiss Plaintiff's Complaint are brought for good cause and not for purposes of unnecessary
13 delay.

14 Further Affiant Sayeth Naught.

15 
16 Matthew J. Douglas, Esq.

17 Subscribed and sworn to before me
18 This 8th day of February 2019

19 
20 NOTARY PUBLIC



21 I.

22 **GOOD CAUSE EXISTS FOR AN ORDER SHORTENING TIME**

23 The grounds necessitating the present Motion to Shorten time relate to the issues
24 regarding the "judgment" entered by Plaintiff on January 23, 2019 which Plaintiff is attempting
25 to use to moot the issues on appeal before the Ninth Circuit. This was done after this Court
26 specifically stayed Plaintiff's first cause of action because the matters were related to those on
27 appeal. Indeed, this Court was inclined to dismiss Plaintiff's first cause of action – to enter a new
28 judgment on the old 2008 judgment – *because no such cause of action exists for this in Nevada.*
However, the Court agreed to stay it after Counsel for Plaintiff pleaded with the court that she
wanted to "preserve that action" only during appeal. Instead, in direct contravention to this
Court's order and contrary to what Plaintiff's Counsel claimed in open court – Plaintiff made an

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1 offer of judgment with the clear intent to enter a judgment on an improper claim. Now, Plaintiff
2 has filed this "judgment" with the U.S. Court of Appeals for the Ninth Circuit and argues same
3 moots the appeal. Accordingly, Intervenor has already been prejudiced and, further permanent
4 prejudice may accrue it, should the Ninth Circuit make some ruling on the basis of this improper
5 judgment. Accordingly, time is of the essence and thus an Order Shortening Time is appropriate.
6

7 LR IA 6-1 governs Orders Shortening Time states that:

8 (a) A motion or stipulation to extend time must state the reasons for the extension
9 requested and must inform the court of all previous extensions of the subject deadline the
10 court granted.

11 In the present matter the reasons for the Order are set forth and this is the second such request for
12 an Order shortening time on this case, but the first on these issues. For all of the above reasons,
13 an Order Shortening Time is necessary and, this Motion should be granted.
14

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **II.**

17 **STATEMENT OF FACTS**

18 As this Court is well aware, Lewis and Nalder have appealed the decision in the Federal
19 Court case to the Ninth Circuit and that appeal *remains pending*. Intervenor will not re-state the
20 entire history of this matter as it is adequately set forth in the Order Certifying a Second
21 Question to the Nevada Supreme Court by United States Court of Appeals for the Ninth Circuit,
22 which was filed on January 11, 2018. *A copy of the Order certifying the second question of law is*
23 *attached hereto as Exhibit 'E.'* Said certified question was accepted by the Nevada Supreme
24 Court on February 23, 2018 and reformulated to state, as follows:
25

26 **In an action against an insurer for breach of the duty to defend its insured, can the**
27 **plaintiff continue to seek consequential damages in the amount of a default**
28 **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?

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A copy of the Order accepting the second certified question of law by the N. Sup. Ct. is attached hereto as Exhibit 'F.'

This issue remains pending and - is currently being briefed before the Nevada Supreme Court. Despite the above, in what Intervenor has repeatedly argued is a clear case of forum shopping, Plaintiff retained additional Counsel (Plaintiff's Counsel herein, David Stephens, Esq.) who filed an *ex parte* Motion on March 22, 2018 seeking, innocently enough, to "amend" the 2008 expired judgment to be in the name of Cheyenne Nalder individually. Thereafter, 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.

Upon learning of these machinations in July 2018, UAIC immediately attempted to retain counsel for Lewis to defend him in order to relieve him of the amended judgment and - dismiss the new action. *See Affidavit of Brandon Carroll for UAIC and, exhibits thereto, attached as Exhibit 'G.'* However, Counsel for Nalder and Lewis, Mr. Christensen refused to allow communication with Lewis and forbade any filings on his behalf. *Id.* Upon learning of this interference, UAIC moved to intervene to protect Lewis and UAIC's interests in the consolidated cases herein. *Id.* However, while the Motion to intervene was pending Counsel for Nalder and Lewis arranged for additional counsel for Lewis to appear, Breen Arntz, Esq., and he and new counsel for Nalder, Stephens, attempted to enter a stipulated judgment as between Lewis and Nalder. *See copy of the proposed stipulated judgment is attached hereto as Exhibit 'H.'*

This stipulation was not entered by the Court and, thereafter, on January 9th, 2019, this matter came before the court for hearings on motions which included Intervenor's Motion to Dismiss Plaintiff's Complaint as well as its Counter-Motion to Stay proceedings, both in case no. A-18-772220-C. At that hearing the Court was inclined to dismiss Plaintiff's first claim for relief

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1 – purporting to seek a “new” judgment on the original 2008 judgment in case no. 07A549111 –
 2 because no such cause of action exists for same. However, upon pleading by Counsel for
 3 Plaintiff, David Stephens, Esq., that this court merely stay that cause of action just so he “could
 4 preserve it”, this court acquiesced and granted *a stay for this court*. See Copy of video of hearing
 5 1/9/19, attached hereto on CD as Exhibit ‘T’, at 01:13:38 through -1:16:22.

7 Despite this request by Counsel for Plaintiff, that he merely wanted to preserve his cause
 8 and have it stayed, **Plaintiff proceeded to actively seek to prosecute this claim** and, on January
 9 11, 2019 served an offer of judgment on this first cause of action. *Exhibit ‘A.’* Thereafter,
 10 surprisingly, Defendant Lewis accepted this offer of judgment against him, for over \$5 million,
 11 and the parties quickly moved to enter same as a judgment January 22, 2019. *Exhibits ‘B’ & ‘C’,*
 12 *respectively.*

14 Moreover, despite repeated arguments by Lewis and Nalder to this court that this action
 15 had “no relation” to the matters on appeal to the Ninth Circuit and Nevada Supreme Court,
 16 Plaintiff Nalder then quickly served a supplemental citation to authority on the Ninth Circuit.
 17 *Exhibit ‘D.’* As this Court can see, this supplemental citation attached the judgment entered in
 18 this matter and clearly argues same moots the issue of the 2008 judgment’s expiration on appeal.
 19 As such, not only did Plaintiff and Lewis misrepresent to this Court their true intentions herein –
 20 but also did exactly as UAIC warned they would. This should not be tolerated by this Court.

22 **II.**

23 **ARGUMENT**

24 **A. MOTION FOR RELIEF FROM JANUARY 23, 2019 JUDGMENT PURSUANT TO**
 25 **N.R.C.P. 60(b).**

26 NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake
 27 {NRCP 60(b)(1)} or, due to fraud {NRCP 60(b)(3)} or, because a judgment is void {NRCP
 28

1 60(b)(4)}. UAIC believes all three of these provisions apply and, ask this Court to relieve Lewis
 2 of
 3 this amended Judgment and/or vacate same amended judgment entered by the Clerk of the Court
 4 January 23, 2019. *Exhibit 'C.'*

5
 6 ***1. The Judgment Entered was based on an offer of judgment made on a claim that was
 stayed and, thus, the judgment is void and/or was due to mistake.***

7 NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake
 8 {NRCP 60(b)(1)} or because a judgment is void {NRCP 60(b)(4)}. Both of these provisions
 9 apply.
 10

11 In the case at bar it is unassailable that the subject of the expiration or, ongoing validity,
 12 of the 2008 judgment in the case of *Nalder v Lewis*, 07A549111, which is consolidated herein, is
 13 at issue both in this Court in both consolidated actions and, on appeal to the Nevada Supreme
 14 Court. See Exhibit 'F.' Indeed, Plaintiff's first cause of action in her Complaint (for a new
 15 judgment on the 2008 judgment) is premised upon their argument that the 2008 judgment is not
 16 expired. This Court entered a stay of Plaintiff's first cause of action – seeking this new judgment
 17 – on January 9th, 2019, until the appeal is resolved.
 18

19 Despite this stay, Plaintiff subsequently served an offer of judgment on this stayed cause
 20 of action on January 11, 2019 and, remarkably, Lewis accepted it! *Exhibits 'A' & 'B',*
 21 *respectively.* Thereafter, Plaintiff had the court enter the acceptance of the offer of judgment as a
 22 judgment on January 23, 2019. *Exhibit 'C.'* Given that this Court stayed this claim January 9,
 23 2019, this offer must be considered a nullity. Accordingly, it follows that any acceptance of this
 24 null offer cannot be the basis for a new judgment and, accordingly the judgment should be
 25 vacated as void. At the very least, as the order on the stay had not yet been filed, it would appear
 26 the Clerk of the Court made a mistake of law when she entered the judgment on a stayed case
 27 and, as such, this serves as an alternative basis to vacate the judgment.
 28

1 It is axiomatic that after a stay has been issued a party may not thereafter seek to alter a
 2 judgment. *Westside Charter Serv. v. Gray Line Tours*, 99 Nev. 456, 664 P.2d 351 (1983). In
 3 *Westside Charter Serv. v. Gray Line Tours*, the Nevada Supreme Court examined a situation
 4 where a party had appealed a denial of an N.R.C.P. 60(b) motion to vacate a judgment and,
 5 though the District Court stayed the judgment during same appeal, one of the parties began
 6 actions which may have been affected by the outcome of the appeal. In affirming the stay and
 7 affirming the denial of further action, the court stated as follows:

9 **“It is also clear that the district court's stay of judgment while the case**
 10 **was under appeal did not allow PSC to deal with the subject matter of the**
 11 **judgment until a final decision had been rendered. The purpose of a stay is to**
 12 **preserve the *status quo ante*. It does not allow further modifications on the**
 13 **subject matter of the judgment. East Standard Mining Co. v. Devine, 59 Nev.**
 14 **134, 81 P.2d 1068 (1938). In this case, the stay of judgment pending appeal**
 15 **effectively prevented any further administrative proceedings on the subject**
 16 **matter of the appeal while the order denying the NRCP 60(b) motion was on**
 17 **appeal. Thus, PSC was without jurisdiction to act when it did in regard to**
 18 **Westside's second application.”**

19 *Id.* at 460, 353.

20 As this case was stayed by this Court January 9, 2019, Plaintiff's subsequent offer of
 21 judgment is a nullity as it too did not preserve the *status quo ante*. Moreover, allowing it would
 22 defeat the purpose of both this Court's stay and, UAIC's intervention to contest same. As noted
 23 by the Court in *Westside*, the stay prevented Plaintiff from taking any action to prosecute her
 24 case pending the resolution of appeal on the sister-case and, further order of this Court.
 25 Accordingly, as the judgment is based on an offer of judgment that is a nullity or, which should
 26 not have occurred, the judgment is void. At the very least, the Clerk of the Court – not knowing
 27 the stay had been entered – made a mistake of law in entering the judgment.

28 As such, UAIC asks this Court to exercise its discretionary authority and vacate the
 January 23, 2019 judgment under NRCP 60(b)(1) and /or (b)(4) to accomplish the purpose of its
 stay order until a decision is rendered in the Nevada Supreme Court.

3. *The Judgment may be vacated for a possible fraud upon the court.*

NRCP 60(b)(3) allows this Court to relieve a party from a final judgment due to fraud. UAIC believes this provision may apply as well.

It is uncontroverted that Plaintiff's first cause of action was merely stayed and, not dismissed, because Plaintiff's Counsel stated in open court on January 9, 2019 that he merely wanted to "preserve this cause of action." Despite this innocent claim, Plaintiff's actions showed other intent as, just 2 days later, counsel served an offer of judgment on this claim. It is this offer of judgment that formed the basis of the January 23, 2019 judgment. Plaintiff knew the case was stayed, *indeed asked for the stay to avoid dismissal*, but nevertheless proceeded to enter a judgment in this case after the stay was granted, which she then used to argue the issues on appeal were moot to the Ninth Circuit – despite arguing to the court that this action had “no relation” to the matters on appeal to the Ninth Circuit and Nevada Supreme Court - UAIC respectfully again argues this may have been an attempt to perpetrate a fraud upon the court.

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:

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

Id at 654.

In the case at bar, it seems clear that Plaintiff Nalder is attempting just such a fraud. Facing a potential dismissal by this court of her claim, Plaintiff instead requested and, was

1 granted, a stay. Rather than adhering to this court’s stay of the action, however, Plaintiff took
 2 matters into her own hands and attempted to enter this judgment afterwards. Moreover, Mr.
 3 Christensen (Plaintiff’s additional Counsel) then filed notice of this judgment with the U.S.
 4 Court of Appeals for the Ninth Circuit to argue the issues on appeal before that court (and
 5 whether her original judgment is expired) are moot because of this new judgment – this despite
 6 repeated arguments by Lewis and Nalder to this court that this action had “no relation” to the
 7 matters on appeal to the Ninth Circuit and Nevada Supreme Court. Accordingly, Plaintiff and her
 8 Counsel, as officers of the Court, are seeking to usurp this Court’s authority and prevent UAIC
 9 from exercising its contractual and legal duty to defend Mr. Lewis and contest this matter by
 10 entering a judgment on a stayed case for tactical advantage on appeal. Moreover, *they did this*
 11 *after specifically telling this court they had no such intent.* UAIC pleads this would appear to be
 12 a fraud perpetrated by officers of the court so that the judicial machinery cannot perform
 13 in the usual manner its impartial task of adjudging cases.

14
 15
 16 For this reason, UAIC argues, alternatively, that NRCP 60(b)(3) offers further
 17 mechanism for this Court to vacate the January 23, 2019 judgment.

18 **B. INTERVENOR’S MOTION FOR REHEARING ON ITS MOTION TO DISMISS**
 19 **CLAIM ONE OF PLAINTIFF’S COMPLAINT.**

20 According to the Eighth Judicial Court Rule (“E.D.C.R.”) 2.24, Rehearing of Motions,
 21 subpart (b) provides that a party may seek reconsideration of ruling of the Court via motion
 22 within ten (10) days “after service of written notice of the order or judgment.” Rule 2.24 further
 23 provides that if the motion for reconsideration is granted, “the court may make a final disposition
 24 of the cause without re-argument or may reset it for re-argument or resubmission or may make
 25 such other orders as are deemed appropriate.”¹

26 Further, “Motions to reconsider are generally left to the discretion of the trial court. In
 27 order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly
 28

¹ E.D.C.R. 2.24(b).

1 convincing nature to induce the court to reverse its prior decision.”²

2 The Order denying UAIC’s Motion to Dismiss Claim One of Plaintiff’s Complaint and,
3 instead, staying said claim, was made on January 9, 2019. To date, the order has yet to be signed
4 by the court or filed. As such, the instant Motion is filed on or before ten days “after service of
5 written notice of the order or judgment” as provided by E.D.C.R. 2.24(b) – as same order has not
6 even been filed. Thus, UAIC’s Motion for Reconsideration is timely and proper.

7 In short, Plaintiff Cheyanne Nalder’s first claim for relief - requesting that the Court enter
8 another amended judgment, adding interest accrued through April 3, 2018, on her 2008 judgment
9 in case no. 07A549111 – is not a cause of action. That is, seeking to amend judgment is not a
10 cause of action. Cheyanne has demonstrated that she knows how to properly petition the Court to
11 amend a judgment, as she has already done so once. This claim was inappropriately included in
12 the Complaint, and should be dismissed. In Opposition, Plaintiff did not advanced single case,
13 statute or other precedent to justify this alleged cause of action. Accordingly, there was no basis
14 to deny the Motion to dismiss this count.

15
16 Indeed, at the hearing January 9, 2019 this Court stated it agreed with the Motion to
17 dismiss and was prepared to grant same motion and dismiss this cause of action. However,
18 Counsel for Plaintiff arose and beseeched this court to instead stay the first cause of action such
19 that Plaintiff could “preserve this count.” See Copy of video of hearing 1/9/19, attached hereto
20 on CD as Exhibit T, at 01:13:38 through -1:16:22. On this basis the Court stayed the matter.
21 Now, however, Plaintiff’s true intentions have become clear –she has tried to use the lack of a
22 dismissal of her cause of action to instead enter a judgment during the stay and - use that
23 judgment for tactical advantage on appeal. Accordingly, UAIC implores this Court to reconsider
24 its ruling.
25

26 Specifically, because the true intent of Plaintiff has become clear - that she did not merely
27
28

² See *Bray v. Palmer*, 2012 U.S. Dist. LEXIS 43375 at 6-7, 2012 WL 1067972 (D. Nev).

1 want to "preserve this cause of action", but instead use the delay to enter a judgment - this Court
2 should reconsider its ruling and, grant the dismissal of count one of Plaintiff's complaint to avoid
3 this gamesmanship.

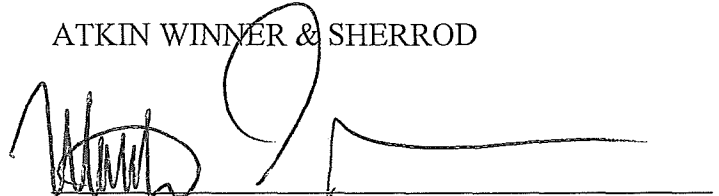
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5 **III.**

6 **CONCLUSION**

7 UAIC asks this Court to vacate the January 23, 2019 judgment under N.R.C.P. 60(b).
8 Additionally, or, in the alternative, UAIC asks this Court to reconsider its stay of count one of
9 Plaintiff's Complaint and, instead, dismiss said count.

10 DATED this 09 day of February, 2019.

11
12 ATKIN WINNER & SHERROD

13
14 

15 Matthew Douglas, Esq.
16 Nevada Bar No. 11371
17 1117 S. Rancho Drive
18 Las Vegas, Nevada 89102
19 *Attorneys for UAIC*

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ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

CERTIFICATE OF SERVICE

1
 2 I certify that on this 11th day of February, 2019, the foregoing **UAIC'S MOTION FOR**
 3 **RELIEF FROM JUDGMENT, ENTERED 1/23/19 IN CASE NO A-18-772220-C,**
 4 **PURSUANT TO NRCP 60 AND/OR, IN THE ALTERNATIVE, MOTION FOR**
 5 **REHEARING ON MOTION TO DISMISS PLAINTIFF'S FIRST CAUSE OF ACTION**
 6 **IN CASE NO A-18-772220-C ON AN ORDER SHORTENING TIME** was served on the
 7 following by: [] **Electronic Service pursuant to NEFR 9.** [**XX**] **Electronic Filing and Service**
 8 **pursuant to NEFR 9** this document for the above-entitled case was electronically served
 9 **through Odyssey CM/ECF for the above-entitled case to ALL the parties on the Service**
 10 **List maintained on Odyssey's website for this case on the date specified.**

11 David Stephens, Esq.
 12 STEPHENS & BYWATER, P.C.
 13 3636 North Rancho Drive
 14 Las Vegas, NV 89130
Attorney for Plaintiff

15 Breen Arntz, Esq.
 16 5545 S. Mountain Vista St. Suite F
 17 Las Vegas, NV 89120
Attorney for Defendant Lewis

18 Thomas Christensen, Esq.
 19 CHRISTENSEN LAW OFFICES
 20 1000 S. Valley View Blvd.
 Las Vegas, NV. 89107
Counsel for Third Party Plaintiff Lewis

21
 22
 23 
 24 _____
 An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD LLP
 A NEVADA LAW FIRM

EXHIBIT “A”

1 OFFR (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.: XX

11 vs.

Consolidated with Case No.
 A-18-772220-C

12 GARY LEWIS,

13 Defendants.

14 UNITED AUTOMOBILE INSURANCE
 COMPANY,

15 Intervenor.

16 GARY LEWIS,

17 Third Party Plaintiff,

18 vs.

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

22 Third Party Defendants.

23 **PLAINTIFF'S OFFER TO ACCEPT JUDGMENT AGAINST**
 24 **GARY LEWIS**

25 Date: n/a

26 Time: n/a

27 TO: Gary Lewis, Defendant;

28 TO: E. Breen, Arntz, Esq., attorney for Defendant:

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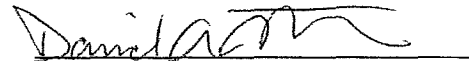
1 Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Cheyenne Nalder, through
 2 her attorneys, Stephens & Bywater, P.C., hereby offers to accept judgment against Gary Lewis, in
 3 the sum of five million six hundred ninety-six thousand eight hundred ten dollars and 41 cents,
 4 (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. This offer is inclusive of
 5 all court costs and attorney's fees incurred in this matter.
 6

7 If this Offer to Accept Judgment is not accepted in writing within ten (10) days after it is
 8 made, it shall be deemed withdrawn, and cannot be given in evidence upon the trial.
 9

10 If you accept this Offer to Accept Judgment and give written notice thereof within ten
 11 (10) days hereof, you may file this Offer to Accept Judgment with Proof of Service of Notice of
 12 Acceptance, and the Clerk of the above-entitled Court is thereupon authorized to enter judgment
 13 in accordance with the provisions of NRCP 68.
 14

15 Dated this 11 day of January, 2019.

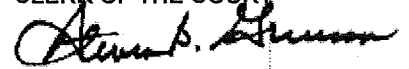
16 STEPHENS & BYWATER, P.C.

17 

18 David A. Stephens, Esq.
 19 Nevada Bar No. 00902
 20 3636 N. Rancho Drive
 21 Las Vegas, NV 89130
 22 Attorney for Cheyenne Nalder
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EXHIBIT “B”

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Steven D. Grierson
CLERK OF THE COURT



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NAO
E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
T: (702) 384-8000
F: (702) 446-8164
breen@breen.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES NALDER,
Plaintiff,

vs.
GARY LEWIS and DOES I through V,
inclusive

Defendants,

CASE NO: 07A549111
DEPT. NO: XX
Consolidated with
CASE NO: 18-A-772220

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.

NOTICE OF ACCEPTANCE OF OFFER OF JUDGMENT IN CASE NO 18-A-772220

TO: Cheyenne Nalder;

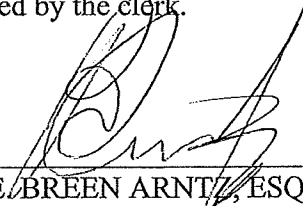
TO: David A. Stephens, Esq., attorney for Plaintiff;

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COMES NOW the Defendant, Gary Lewis, by and through his attorney E. BREEN ARNTZ, ESQ., and hereby gives formal notice of acceptance of Plaintiff's Offer of Judgment in case 18-A-772220, a copy of which is attached hereto as Exhibit "1", in the sum of five million, six hundred ninety- six thousand eight hundred ten dollars and forty-one cents, (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. All court costs and attorney's fees are included in the above amount and none shall be added by the clerk.

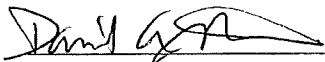
Dated this 22nd day of January, 2019.


E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
T: (702) 384-8000
breen@breen.com

CERTIFICATE OF SERVICE

Receipt of a copy of this NOTICE OF ACCEPTANCE OF OFFER OF JUDGMENT

IN CASE 18-A-772220 is hereby acknowledged this 22nd day of January, 2019.


David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens, Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

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EXHIBIT 1

1 OFFR (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
 8 Facsimile: (702) 656-2776
 9 Email: dstephens@sdblwfir.com
 10 Attorney for Cheyenne Nalder

DISTRICT COURT
 CLARK COUNTY, NEVADA

CHEYENNE NALDER,

CASE NO.: 07A549111

Plaintiff,

DEPT NO.: XX

vs.

Consolidated with Case No.
 A-18-772220-C

GARY LEWIS,

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.

PLAINTIFF'S OFFER TO ACCEPT JUDGMENT AGAINST
 GARY LEWIS

Date: n/a

Time: n/a

TO: Gary Lewis, Defendant;

TO: E. Breen, Arntz, Esq., attorney for Defendant;

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1 Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Cheyenne Nalder, through
 2 her attorneys, Stephens & Bywater, P.C., hereby offers to accept judgment against Gary Lewis, in
 3 the sum of five million six hundred ninety-six thousand eight hundred ten dollars and 41 cents,
 4 (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. This offer is inclusive of
 5 all court costs and attorney's fees incurred in this matter.
 6

7 If this Offer to Accept Judgment is not accepted in writing within ten (10) days after it is
 8 made, it shall be deemed withdrawn, and cannot be given in evidence upon the trial.
 9

10 If you accept this Offer to Accept Judgment and give written notice thereof within ten
 11 (10) days hereof, you may file this Offer to Accept Judgment with Proof of Service of Notice of
 12 Acceptance, and the Clerk of the above-entitled Court is thereupon authorized to enter judgment
 13 in accordance with the provisions of NRCP 68.
 14

15 Dated this 11 day of January, 2019.

16 STEPHENS & BYWATER, P.C.

17
 18 
 19 _____
 20 David A. Stephens, Esq.
 21 Nevada Bar No. 00902
 22 3636 N. Rancho Drive
 23 Las Vegas, NV 89130
 24 Attorney for Cheyenne Nalder
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 26
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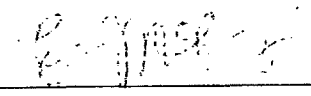
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RECEIPT OF COPY

Receipt of this PLAINTIFF'S OFFER TO ACCEPT JUDGMENT AGAINST GARY

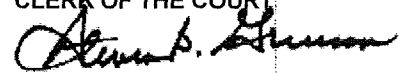
LEWIS is hereby acknowledged this 11 day of January, 2019.



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

EXHIBIT “C”

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Steven D. Grierson
CLERK OF THE COURT



JUDG

E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
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Las Vegas, Nevada 89120
T: (702) 384-8000
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breen@breen.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES NALDER,
Plaintiff,

vs.
GARY LEWIS and DOES I through V,
inclusive

Defendants,

CASE NO: 07A549111
DEPT. NO: XX
Consolidated with
CASE NO: 18-A-772220

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.

JUDGMENT PURSUANT TO NRCP 68 IN CASE NO 18-A-772220

It appearing from the Notice of Acceptance of Offer of Judgment in the above-entitled matter that Cheyenne Nalder has accepted the Offer of Judgment served by Gary Lewis pursuant to NRCP 68, therefore, Judgment shall be entered as follows:

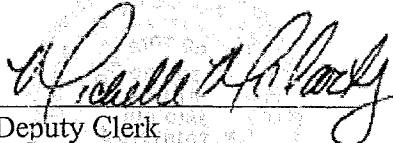
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Judgment is hereby entered in favor of Plaintiff, Cheyenne Nalder, and against Defendant, Gary Lewis, in the sum of five million six hundred ninety-six thousand eight hundred ten dollars and forty-one cents, (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. All court costs and attorney's fees are included in this Judgment.

Dated this ____ day of January, 2019.

STEVEN D. GRIERSON
CLERK OF THE COURT


Deputy Clerk
07A549111 1/23/2019

Michelle McCarthy

Submitted by:


E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
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Las Vegas, Nevada 89120
T: (702) 384-8000
breen@breen.com

EXHIBIT “D”



Molly C. Dwyer, Clerk of the Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103
Electronically Filed and Served

January 29, 2019

Re: James Nalder et al v. United Automobile Insurance Co., Case No. 13-17441
Appellants' Citation of Supplemental Authority Pursuant to Rule 28(j)

Pursuant to Fed.R.App.P.28(j), Appellants provide an additional citation of supplemental authority relevant to the issues presented for consideration by the court. This matter is currently submitted to the Nevada Supreme Court on two certified questions. The first and main certified question is directly and completely resolved. The second question is rendered moot because the default judgment is identified as just one of the possible consequential damages an insurer will be liable for as a result of the breach of the duty to defend. In addition, recently entered judgments against Lewis are attached which demonstrate the inapplicability of the second certified question.

Century Surety Company v. Andrew, 134 Nev. Advance Opinion 100, filed on December 13, 2008 and the judgments entered in Nevada and California support Appellants' arguments set forth in Appellants' Opening Brief pp. 9-13 and in Appellants' Reply Brief pp. 2-4. Appellants' Response To Appellee's Motion To Dismiss For Lack Of Standing pp. 6-8.

In *Andrew*, the Nevada Supreme Court settled the law in Nevada on this issue by stating "...an insurer's liability where it breaches its contractual duty to defend is ... for any consequential damages caused by its breach." All three judgments are recent judgments against Gary Lewis for the injuries to Ms. Nalder.

Attached are Exhibits: 1. *Century Surety Company v. Andrew*, 134 Nev. Advance Opinion 100, filed on December 13, 2018. 2. The Nevada Amended Judgment filed March 28, 2018. 3. The Nevada judgment in case No. 18-A-772220 filed January 22, 2019 in 07A549111(consolidated with 18-A-772220. 4. The California sister state judgment filed July 24, 2018.

Respectfully Submitted,

Thomas Christensen
Attorney for Appellants

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Exhibit 1

134 Nev., Advance Opinion 100
IN THE SUPREME COURT OF THE STATE OF NEVADA

CENTURY SURETY COMPANY,
Appellant,
vs.
DANA ANDREW, AS LEGAL
GUARDIAN ON BEHALF OF RYAN T.
PRETNER; AND RYAN T. PRETNER,
Respondents.

No. 73756

FILED
DEC 13 2018
ELIZABETH L. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth L. Brown*
CHIEF DEPUTY CLERK

Certified question pursuant to NRAP 5 concerning insurer's liability for breach of its duty to defend. United States District Court for the District of Nevada; Andrew P. Gordon, Judge.

Question answered.

Gass Weber Mullins, LLC, and James Ric Gass and Michael S. Yellin, Milwaukee, Wisconsin; Christian, Kravitz, Dichter, Johnson & Sluga and Martin J. Kravitz, Las Vegas; Cozen O'Connor and Maria L. Cousineau, Los Angeles, California,
for Appellant.

Eglet Prince and Dennis M. Prince, Las Vegas,
for Respondents.

Lewis Roca Rothgerber Christie LLP and J. Christopher Jorgensen and Daniel F. Polsenberg, Las Vegas,
for Amicus Curiae Federation of Defense & Corporate Counsel.

Lewis Roca Rothgerber Christie LLP and Joel D. Henriod and Daniel F. Polsenberg, Las Vegas; Crowell & Moring LLP and Laura Anne Foggan, Washington, D.C.,
for Amici Curiae Complex Insurance Claims Litigation Association, American Insurance Association, and Property Casualty Insurers Association of America.

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Matthew L. Sharp, Ltd., and Matthew L. Sharp, Reno,
for Amicus Curiae Nevada Justice Association.

BEFORE THE COURT EN BANC.¹

OPINION

By the Court, DOUGLAS, C.J.:

An insurance policy generally contains an insurer's contractual duty to defend its insured in any lawsuits that involve claims covered under the umbrella of the insurance policy. In response to a certified question submitted by the United States District Court for the District of Nevada, we consider "[w]hether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred by the insured in mounting a defense, or [whether] the insurer [is] liable for all losses consequential to the insurer's breach." We conclude that an insurer's liability where it breaches its contractual duty to defend is not capped at the policy limits plus the insured's defense costs, and instead, an insurer may be liable for any consequential damages caused by its breach. We further conclude that good-faith determinations are irrelevant for determining damages upon a breach of this duty.

¹The Honorable Ron D. Parraguirre, Justice, is disqualified from participation in the decision of this matter.

FACTS AND PROCEDURAL HISTORY

Respondents Ryan T. Pretner and Dana Andrew (as legal guardian of Pretner) initiated a personal injury action in state court after a truck owned and driven by Michael Vasquez struck Pretner, causing significant brain injuries. Vasquez used the truck for personal use, as well as for his mobile auto detailing business, Blue Streak Auto Detailing, LLC (Blue Streak). At the time of the accident, Vasquez was covered under a personal auto liability insurance policy issued by Progressive Casualty Insurance Company (Progressive), and Blue Streak was insured under a commercial liability policy issued by appellant Century Surety Company. The Progressive policy had a \$100,000 policy limit, whereas appellant's policy had a policy limit of \$1 million.

Upon receiving the accident report, appellant conducted an investigation and concluded that Vasquez was not driving in the course and scope of his employment with Blue Streak at the time of the accident, and that the accident was not covered under its insurance policy. Appellant rejected respondents' demand to settle the claim within the policy limit. Subsequently, respondents sued Vasquez and Blue Streak in state district court, alleging that Vasquez was driving in the course and scope of his employment with Blue Streak at the time of the accident. Respondents notified appellant of the suit, but appellant refused to defend Blue Streak. Vasquez and Blue Streak defaulted in the state court action and the notice of the default was forwarded to appellant. Appellant maintained that the claim was not covered under its insurance policy.

Respondents, Vasquez, and Blue Streak entered into a settlement agreement whereby respondents agreed not to execute on any judgment against Vasquez and Blue Streak, and Blue Streak assigned its

rights against appellant to respondents. In addition, Progressive agreed to tender Vasquez's \$100,000 policy limit. Respondents then filed an unchallenged application for entry of default judgment in state district court. Following a hearing, the district court entered a default judgment against Vasquez and Blue Streak for \$18,050,183. The default judgment's factual findings, deemed admitted by default, stated that "Vasquez negligently injured Pretner, that Vasquez was working in the course and scope of his employment with Blue Streak at the time, and that consequently Blue Streak was also liable." As an assignee of Blue Streak, respondents filed suit in state district court against appellant for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair claims practices, and appellant removed the case to the federal district court.

The federal court found that appellant did not act in bad faith, but it did breach its duty to defend Blue Streak. Initially, the federal court concluded that appellant's liability for a breach of the duty to defend was capped at the policy limit plus any cost incurred by Blue Streak in mounting a defense because appellant did not act in bad faith. The federal court stated that it was undisputed that Blue Streak did not incur any defense cost because it defaulted in the underlying negligence suit. However, after respondents filed a motion for reconsideration, the federal court concluded that Blue Streak was entitled to recover consequential damages that exceeded the policy limit for appellant's breach of the duty to defend, and that the default judgment was a reasonably foreseeable result of the breach of the duty to defend. Additionally, the federal court concluded that bad faith was not required to impose liability on the insurer in excess of the policy limit. Nevertheless, the federal court entered an order staying the

proceedings until resolution of the aforementioned certified question by this court.

DISCUSSION

Appellant argues that the liability of an insurer that breaches its contractual duty to defend, but has not acted in bad faith, is generally capped at the policy limits and any cost incurred in mounting a defense.² Conversely, respondents argue that an insurer that breaches its duty to defend should be liable for all consequential damages, which may include a judgment against the insured that is in excess of the policy limits.³

In Nevada, insurance policies are treated like other contracts, and thus, legal principles applicable to contracts generally are applicable to insurance policies. *See Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395, 398, 329 P.3d 614, 616 (2014); *United Nat'l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684, 99 P.3d 1153, 1156-57 (2004); *Farmers Ins. Exch. v. Neal*, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003). The general rule in a breach of contract case is that the injured party may be awarded expectancy damages, which are determined by the method set forth in the Restatement (Second) of Contracts § 347 (Am. Law Inst. 1981). *Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 392, 284 P.3d 377, 382 (2012). The

²The Federation of Defense & Corporate Counsel, Complex Insurance Claims Litigation Association, American Insurance Association, and Property Casualty Insurers Association of America were allowed to file amicus briefs in support of appellant.

³The Nevada Justice Association was allowed to file an amicus brief in support of respondents.

Restatement (Second) of Contracts § 347 provides, in pertinent part, as follows:

[T]he injured party has a right to damages based on his expectation interest as measured by

(a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus

(b) any other loss, including incidental or consequential loss, caused by the breach, less

(c) any cost or other loss that he has avoided by not having to perform.

(Emphasis added.)

An insurance policy creates two contractual duties between the insurer and the insured: the duty to indemnify and the duty to defend. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 309, 212 P.3d 318, 324 (2009). "The duty to indemnify arises when an insured becomes legally obligated to pay damages in the underlying action that gives rise to a claim under the policy." *United Nat'l*, 120 Nev. at 686, 99 P.3d at 1157 (internal quotation marks omitted). On the other hand, "[a]n insurer . . . bears a duty to defend its insured whenever it ascertains facts which give rise to the potential of liability under the policy." *Id.* at 687, 99 P.3d at 1158 (alteration in original) (internal quotation marks omitted).

Courts have uniformly held the duty to defend to be "separate from," 1 Barry R. Ostrager & Thomas R. Newman, *Handbook on Insurance Coverage Disputes* §5.02[a], at 327 (17th ed. 2015) (internal quotation marks omitted), and "broader than the duty to indemnify," *Pension Tr. Fund for Operating Eng'rs v. Fed. Ins. Co.*, 307 F.3d 944, 949 (9th Cir. 2002). The duty to indemnify provides those insured financial protection against judgments, while the duty to defend protects those insured from the action

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itself. “The duty to defend is a valuable service paid for by the insured and one of the principal benefits of the liability insurance policy.” *Woo v. Fireman’s Fund Ins. Co.*, 164 P.3d 454, 459-60 (Wash. 2007). The insured pays a premium for the expectation that the insurer will abide by its duty to defend when such a duty arises. In Nevada, that duty arises “if facts [in a lawsuit] are alleged which if proved would give rise to the duty to indemnify,” which then “the insurer *must* defend.” *Rockwood Ins. Co. v. Federated Capital Corp.*, 694 F. Supp. 772, 776 (D. Nev. 1988) (emphasis added); *see also United Nat’l*, 120 Nev. at 687, 99 P.3d at 1158 (“Determining whether an insurer owes a duty to defend is achieved by comparing the allegations of the complaint with the terms of the policy.”).⁴

⁴Appellant correctly notes that we have previously held that this duty is not absolute: In the case appellant cites, *United National*, we held that “[t]here is no duty to defend [w]here there is no *potential* for coverage.” 120 Nev. at 686, 99 P.3d at 1158 (second alteration in original) (internal quotation marks omitted). We take this opportunity to clarify that where there is potential for coverage based on “comparing the allegations of the complaint with the terms of the policy,” an insurer does have a duty to defend. *Id.* at 687, 99 P.3d at 1158. In this instance, as a general rule, facts outside of the complaint cannot justify an insurer’s refusal to defend its insured. Restatement of Liability Insurance § 13 cmt. c (Am. Law Inst., Proposed Final Draft No. 2, 2018) (“The general rule is that insurers may not use facts outside the complaint as the basis for refusing to defend. . . .”). Nonetheless, the insurer can always agree to defend the insured with the limiting condition that it does not waive any right to later deny coverage based on the terms of the insurance policy under a reservation of rights. *See Woo*, 164 P.3d at 460 (“Although the insurer must bear the expense of defending the insured, by doing so under a reservation of rights . . . the insurer avoids breaching its duty to defend and incurring the potentially greater expense of defending itself from a claim of breach.”). Accordingly, facts outside the complaint may be used in an action brought by the insurer seeking to terminate its duty to defend its insured in an action whereby the insurer is defending under a reservation of rights. Restatement of Liability

In a case where the duty to defend does in fact arise, and the insurer breaches that duty, the insurer is at least liable for the insured's reasonable costs in mounting a defense in the underlying action. See *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 345, 255 P.3d 268, 278 (2011) (providing that a breach of the duty to defend "may give rise to damages in the form of reimbursement of the defense costs the indemnitee was thereby forced to incur in defending against claims encompassed by the indemnity provision" (internal quotation marks omitted)). Several other states have considered an insurer's liability for a breach of its duty to defend, and while no court would disagree that the insurer is liable for the insured's defense cost, courts have taken two different views when considering whether the insurer may be liable for an entire judgment that exceeds the policy limits in the underlying action.

The majority view is that "[w]here there is no opportunity to compromise the claim and the only wrongful act of the insurer is the refusal to defend, the liability of the insurer is ordinarily limited to the amount of the policy plus attorneys' fees and costs." *Comunale v. Traders & Gen. Ins. Co.*, 328 P.2d 198, 201 (Cal. 1958); see also *Emp'rs Nat'l Ins. Corp. v. Zurich Am. Ins. Co. of Ill.*, 792 F.2d 517, 520 (5th Cir. 1986) (providing that imposing excess liability upon the insurer arose as a result of the insurer's

Insurance § 13 cmt. c (Am. Law Inst., Proposed Final Draft No. 2, 2018) ("Only in a declaratory-judgment action filed while the insurer is defending, or in a coverage action that takes place after the insurer fulfilled the duty to defend, may the insurer use facts outside the complaint as the basis for avoiding coverage.").

refusal to entertain a settlement offer within the policy limit and not solely because the insurer refused to defend); *George R. Winchell, Inc. v. Norris*, 633 P.2d 1174, 1177 (Kan. Ct. App. 1981) (“Absent a settlement offer, the plain refusal to defend has no causal connection with the amount of the judgment in excess of the policy limits.”). In *Winchell*, the court explained the theory behind the majority view, reasoning that when an insurer refuses a settlement offer, unlike a refusal to defend, “the insurer is causing a discernible injury to the insured” and “the injury to the insured is traceable to the insurer’s breach.” 633 P.2d at 1777. “A refusal to defend, in itself, can be compensated for by paying the costs incurred in the insured’s defense.” *Id.* In sum, “[a]n [insurer] is liable to the limits of its policy plus attorney fees, expenses and other damages where it refuses to defend an insured who is in fact covered,” and “[t]his is true even though the [insurer] acts in good faith and has reasonable ground[s] to believe there is no coverage under the policy.” *Allen v. Bryers*, 512 S.W.3d 17, 38-39 (Mo. 2016) (first and fifth alteration in original) (internal quotation marks omitted), *cert. denied by Atain Specialty Ins. Co. v. Allen*, ___ U.S. ___, 138 S. Ct. 212 (2017).

The minority view is that damages for a breach of the duty to defend are not automatically limited to the amount of the policy; instead, the damages awarded depend on the facts of each case. *See Burgraff v. Menard, Inc.*, 875 N.W.2d 596, 608 (Wis. 2016). The objective is to have the insurer “pay damages necessary to put the insured in the same position he would have been in had the insurance company fulfilled the insurance contract.” *Id.* (internal quotation marks omitted). Thus, “[a] party aggrieved by an insurer’s breach of its duty to defend is entitled to recover all damages naturally flowing from the breach.” *Id.* (internal quotation

marks omitted). Damages that may naturally flow from an insurer's breach include:

- (1) the amount of the judgment or settlement against the insured plus interest [even in excess of the policy limits];
- (2) costs and attorney fees incurred by the insured in defending the suit; and
- (3) any additional costs that the insured can show naturally resulted from the breach.

Newhouse v. Citizens Sec. Mut. Ins. Co., 501 N.W.2d 1, 6 (Wis. 1993).

For instance, in *Delatorre v. Safeway Insurance Co.*, the insurer breached its duty to defend by failing to ensure that retained counsel continued defending the insured after answering the complaint, which ultimately led to a default judgment against the insured exceeding the policy limits. 989 N.E.2d 268, 274 (Ill. App. Ct. 2013). The court found that the entry of default judgment directly flowed from the insurer's breach, and thus, the insurer was liable for the portion that exceeded the policy limit. *Id.* at 276. The court reasoned that a default judgment "could have been averted altogether had [the insurer] seen to it that its insured was actually defended as contractually required." *Id.*

On the other hand, in *Hamlin Inc. v. Hartford Accident & Indemnity Co.*, the court considered whether the insured had as good of a defense as it would have had had the insurer provided counsel. 86 F.3d 93, 95 (7th Cir. 1996). The court observed that although the "insurer did not pay the entire bill for [the insured's] defense," the insured is not "some hapless individual who could not afford a good defense unless his insurer or insurers picked up the full tab." *Id.* Moreover, the court noted that the insured could not have expected to do better with the firm it hired, which "was in fact its own choice, and not a coerced choice, that is, not a choice to

which it turned only because the obstinacy of the [insurers] made it unable to 'afford' an even better firm (if there is one)." *Id.* Therefore, because the entire judgment was not consequential to the insurer's breach of its duty to defend, the insured was not entitled to the entire amount of the judgment awarded against it in the underlying lawsuit. *Id.*

We conclude that the minority view is the better approach. Unlike the minority view, the majority view places an artificial limit to the insurer's liability within the policy limits for a breach of its duty to defend. That limit is based on the insurer's duty to indemnify but "[a] duty to defend limited to and coextensive with the duty to indemnify would be essentially meaningless; insureds pay a premium for what is partly litigation insurance designed to protect . . . the insured from the expense of defending suits brought against him." *Capitol Envtl. Servs., Inc. v. N. River Ins. Co.*, 536 F. Supp. 2d 633, 640 (E.D. Va. 2008) (internal quotation marks omitted). Even the *Comunale* court recognized that "[t]here is an important difference between the liability of an insurer who performs its obligations and that of an insurer who breaches its contract." 328 P.2d at 201. Indeed, the insurance policy limits "only the amount the insurer may have to pay in the performance of the contract as compensation to a third person for personal injuries caused by the insured; they do not restrict the damages recoverable by the insured for a breach of contract by the insurer." *Id.*

The obligation of the insurer to defend its insured is purely contractual and a refusal to defend is considered a breach of contract. Consistent with general contract principles, the minority view provides that the insured may be entitled to consequential damages resulting from the insurer's breach of its contractual duty to defend. *See* Restatement

of Liability Insurance § 48 (Am. Law Inst., Proposed Final Draft No. 2, 2018). Consequential damages “should be such as may fairly and reasonably be considered as arising naturally, or were reasonably contemplated by both parties at the time they made the contract.” *Hornwood v. Smith’s Food King No. 1*, 105 Nev. 188, 190, 772 P.2d 1284, 1286 (1989) (internal quotation marks omitted). The determination of the insurer’s liability depends on the unique facts of each case and is one that is left to the jury’s determination. See *Khan v. Landmark Am. Ins. Co.*, 757 S.E.2d 151, 155 (Ga. Ct. App. 2014) (“[W]hether the full amount of the judgment was recoverable was a jury question that depended upon what damages were found to flow from the breach of the contractual duty to defend.”).⁵

The right to recover consequential damages sustained as a result of an insurer’s breach of the duty to defend does not require proof of bad faith. As the Supreme Court of Michigan explained:

The duty to defend . . . arises solely from the language of the insurance contract. A breach of that duty can be determined objectively, without reference to the good or bad faith of the insurer. If the insurer had an obligation to defend and failed to fulfill that obligation, then, like any other party who fails to perform its contractual obligations, it becomes liable for all foreseeable damages flowing from the breach.

Stockdale v. Jamison, 330 N.W.2d 389, 392 (Mich. 1982). In other words, an insurer’s breach of its duty to defend can be determined objectively by

⁵Consequently, we reject appellant’s argument that, as a matter of law, damages in excess of the policy limits can never be recovered as a consequence to an insurer’s breach of its duty to defend.

comparing the facts alleged in the complaint with the insurance policy. Thus, even in the absence of bad faith, the insurer may be liable for a judgment that exceeds the policy limits if the judgment is consequential to the insurer's breach. An insurer that refuses to tender a defense for "its insured takes the risk not only that it may eventually be forced to pay the insured's legal expenses but also that it may end up having to pay for a loss that it did not insure against." *Hamlin*, 86 F.3d at 94. Accordingly, the insurer refuses to defend at its own peril. However, we are not saying that an entire judgment is automatically a consequence of an insurer's breach of its duty to defend; rather, the insured is tasked with showing that the breach caused the excess judgment and "is obligated to take all reasonable means to protect himself and mitigate his damages." *Thomas v. W. World Ins. Co.*, 343 So. 2d 1298, 1303 (Fla. Dist. Ct. App. 1977); see also *Conner v. S. Nev. Paving, Inc.*, 103 Nev. 353, 355, 741 P.2d 800, 801 (1987) ("As a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts.").

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CONCLUSION

In answering the certified question, we conclude that an insured may recover any damages consequential to the insurer's breach of its duty to defend. As a result, an insurer's liability for the breach of the duty to defend is not capped at the policy limits, even in the absence of bad faith.

Douglas, C.J.
Douglas

We concur:

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

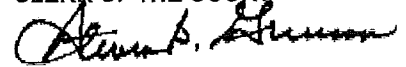
Stiglich, J.
Stiglich

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Exhibit 2

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CLERK OF THE COURT



1 **JMT**

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbgllawfirm.com

11 *Attorney for Cheyenne Nalder*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

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

22 **AMENDED JUDGMENT**

23 In this action the Defendant, Gary Lewis, having been regularly served with the Summons
24 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
25 answering having expired, and no answer or demurrer having been filed, the Default of said
26 Defendant, GARY LEWIS, in the premises, having been duly entered according to law; upon
27 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:
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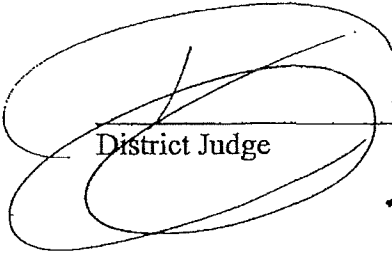
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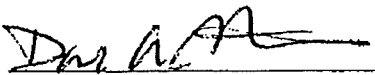
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1 **IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT** in the *mc*
 2 **sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63**
 3 **in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,**
 4 **2007, until paid in full.**

5
6 DATED this *26* day of March, 2018.

7
8
9
10 
 District Judge *mc*

11 Submitted by:
12 STEPHENS GOURLEY & BYWATER

13
14 
 15 DAVID A. STEPHENS, ESQ.
 Nevada Bar No. 00902
 16 STEPHENS GOURLEY & BYWATER
 3636 North Rancho Dr
 17 Las Vegas, Nevada 89130
 Attorneys for Plaintiff

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TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE


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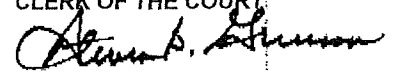
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Exhibit 3

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JUDG
E. BREEN ARNTZ, ESQ.
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Las Vegas, Nevada 89120
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES NALDER,
Plaintiff,
vs.
GARY LEWIS and DOES I through V,
inclusive
Defendants,

CASE NO: 07A549111
DEPT. NO: XX
Consolidated with
CASE NO: 18-A-772220

UNITED AUTOMOBILE INSURANCE
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Intervenor.

GARY LEWIS,
Third Party Plaintiff,
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ESQ., and RESNICK & LOUIS, P.C.
And DOES I through V,
Third Party Defendants.

JUDGMENT PURSUANT TO NRCP 68 IN CASE NO 18-A-772220

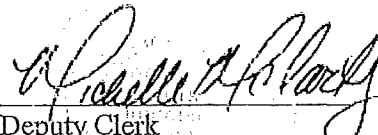
It appearing from the Notice of Acceptance of Offer of Judgment in the above-entitled matter that Cheyenne Nalder has accepted the Offer of Judgment served by Gary Lewis pursuant to NRCP 68, therefore, Judgment shall be entered as follows:

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Judgment is hereby entered in favor of Plaintiff, Cheyenne Nalder, and against Defendant, Gary Lewis, in the sum of five million six hundred ninety-six thousand eight hundred ten dollars and forty-one cents, (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. All court costs and attorney's fees are included in this Judgment.

Dated this _____ day of January, 2019.

STEVEN D. GRIERSON
CLERK OF THE COURT

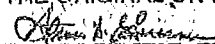

Deputy Clerk
07A549111 1/23/2019

Michelle McCarthy

Submitted by:


E. BREEN ARNTZ, ESQ.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
T: (702) 384-8000
breen@breen.com

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

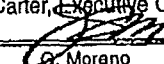

CLERK OF THE COURT

JAN 23 2019

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Exhibit 4

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

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

BY FAX

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

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


and against defendant/judgment debtor

Gary Lewis

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

SHERRI R. CARTER, Executive Officer/Clerk

Dated: JUL 24 2018

By: 
G. MORENO
Deputy Clerk

CERTIFICATE OF MAILING

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

SHERRI R. CARTER, Executive Officer/Clerk

Dated: _____

By: _____
Deputy Clerk

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

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

Code Civ. Proc., § 1710.25

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Mark J. Linderman (State Bar No. 144685) mlinderman@rjo.co Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.co 311 California Street San Francisco, California 94104		TELEPHONE NO.: 415-956-2822 415-956-2828	FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles JUL 24 2018 Sherri R. Carter, Executive Officer/Clerk By <u>G. Moreno</u> Deputy
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder		RECEIVED JUL 17 2018 EAST DISTRICT	
NAME OF COURT: Superior Court of California, County of Los Angeles STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: CITY AND ZIP CODE: Pomona 91766 BRANCH NAME: Pomona Courthouse			
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis			
NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT		CASE NUMBER: KS021378	

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

BY FAX

2. YOU ARE NOTIFIED

a. Upon application of the judgment creditor, a judgment against you has been entered in this court as follows:
 (1) Judgment creditor (name): James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

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

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

- (1) Sister state (name): Nevada
- (2) Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada
200 Lewis Ave, Las Vegas, NV, 89155
- (3) Judgment entered in sister state on (date): June 2, 2008
- (4) Title of case and case number (specify): Nalder v. Lewis, Case No. A549111

3. A sister-state judgment has been entered against you in a California court. Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final.
 This court may order that a writ of execution or other enforcement may issue. Your wages, money, and property could be taken without further warning from the court.
 If enforcement procedures have already been issued, the property levied on will not be distributed until 30 days after you are served with this notice.

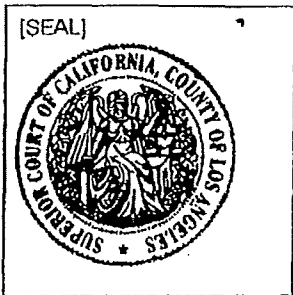
Date: JUL 24 2018

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

4. NOTICE TO THE PERSON SERVED: You are served
- a. as an individual judgment debtor.
 - b. under the fictitious name of (specify):
 - c. on behalf of (specify):

- Under:
- CCP 416.10 (corporation)
 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - other:
 - CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (individual)

(Proof of service on reverse)



Form Approved by the Judicial Council of California EJ 110 (Rev. July 1 1983)

NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT

CCP 1710.30, 1710.40 1710.45

14:29:38 2018-07-17

PROOF OF SERVICE

(Use separate proof of service for each person served)

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

a. on judgment debtor (name): GARY LEWIS

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

c. by delivery at home at business

(1) date: 07/26/18

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

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

d. by mailing

(1) date:

(2) place:

2. Manner of service (check proper box):

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

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

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

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

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

f. Other (specify code section):

Additional page is attached.

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

a. as an individual judgment debtor.

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

c. on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

CCP 416.60 (minor)

CCP 416.70 (conservatee)

CCP 416.90 (individual)

other:

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

5. Fee for service: \$

6. Person serving:

a. California sheriff, marshal, or constable.

b. Registered California process server.

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

d. Not a registered California process server.

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

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

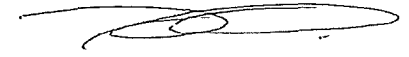
Jorge Rivera (Reg# 4690 Los Angeles County)
52 Second Street, 3rd Floor
San Francisco, California 94105
(415) 546-6000

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

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: 07/27/18

Date:





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

Amended.

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

BY FAX

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

(Continued on reverse)

Amended

SHORT TITLE: Nalder v. Lewis	CASE NUMBER: KS021378
------------------------------	--------------------------

6. Judgment creditor also applies for issuance of a writ of execution or enforcement by other means before service of notice of entry of judgment as follows:
- a. Under CCP 1710.45(b).
- b. A court order is requested under CCP 1710.45(c). Facts showing that great or irreparable injury will result to judgment creditor if issuance of the writ or enforcement by other means is delayed are set forth as follows:

continued in attachment 6b.

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


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

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

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

Date: 7/17/12

Joshua M. Deitz
(TYPE OR PRINT NAME)


(SIGNATURE OF JUDGMENT CREDITOR OR ATTORNEY)

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EXHIBIT A

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ORIGINAL

FILED

AUG 26 11 00 AM '08

CLERK OF THE COURT

1 **JUDG**
 2 DAVID F. SAMPSON, ESQ.,
 Nevada Bar #6811
 3 THOMAS CHRISTENSEN, ESQ.,
 Nevada Bar #2326
 4 1000 S. Valley View Blvd.
 Las Vegas, Nevada 89107
 5 (702) 870-1000
 6 Attorney for Plaintiff,
 JAMES NALDER As Guardian Ad
 7 Litem for minor, CHEYENNE NALDER

8 DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A549111
 DEPT. NO: VI

NOTICE OF ENTRY OF JUDGMENT

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

21 DATED this 5th day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: [Signature]
 DAVID F. SAMPSON, ESQ.,
 Nevada Bar #6811
 THOMAS CHRISTENSEN, ESQ.,
 Nevada Bar #2326
 1000 S. Valley View Blvd.
 Las Vegas, Nevada 89107
 Attorneys for Plaintiff

CLERK OF THE COURT

RECEIVED
AUG 26 2008

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CERTIFICATE OF SERVICE

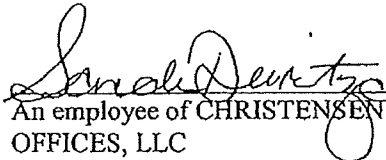
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC., and that on this 5th day of June, 2008, I served a copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

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

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

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

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


An employee of CHRISTENSEN LAW
OFFICES, LLC

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1 JMT
 2 THOMAS CHRISTENSEN, ESQ.,
 Nevada Bar #2326
 3 DAVID F. SAMPSON, ESQ.,
 Nevada Bar #6811
 4 1000 S. Valley View Blvd.
 Las Vegas, Nevada 89107
 5 (702) 870-1000
 6 Attorney for Plaintiff,

Cliff Shaw
 CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

7 DISTRICT COURT
 8 CLARK COUNTY, NEVADA

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

CASE NO: A549111
 DEPT. NO: VI

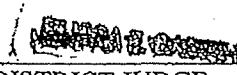
17 JUDGMENT

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 19 In this action the Defendant, GARY LEWIS, having been regularly served with the
 20 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
 21 legal time for answering having expired, and no answer or demurrer having been filed, the
 22 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
 23 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
 24 follows:
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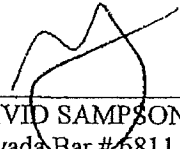
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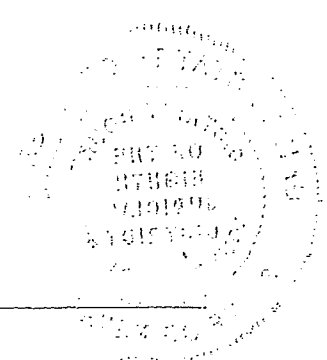
1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5
6 DATED THIS 2 day of June, 2008.

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9 _____
10 DISTRICT JUDGE

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

14
15 BY: 
16 _____
17 DAVID SAMPSON
18 Nevada Bar # 6811
19 1000 S. Valley View
20 Las Vegas, Nevada 89107
21 Attorney for Plaintiff



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CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE
[Signature]
CLERK OF THE COURT 2-25-2010

EXHIBIT “E”

FOR PUBLICATION

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

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

v.

UNITED AUTOMOBILE
INSURANCE COMPANY,
Defendant-Appellee.

No. 13-17441

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

ORDER CERTIFYING
QUESTION TO THE
NEVADA SUPREME
COURT

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

Argued and Submitted January 6, 2016
San Francisco, California

Filed December 27, 2017

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

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

2 NALDER V. UNITED AUTO INS. CO.

SUMMARY**

Certified Question to Nevada Supreme Court

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

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

ORDER

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

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

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

NALDER V. UNITED AUTO INS. CO. 3

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

I

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

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

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

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

II

The question of law to be answered is:

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

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4 NALDER V. UNITED AUTO INS. CO.

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

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

III

A

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

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

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

NALDER V. UNITED AUTO INS. CO.

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

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

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

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6 NALDER V. UNITED AUTO INS. CO.

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

B

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

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

NALDER V. UNITED AUTO INS. CO.

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

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

IV

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

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

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

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

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

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

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

V

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

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

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

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

IT IS SO ORDERED.

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

Diarmuid F. O’Scannlain
Circuit Judge

EXHIBIT “F”

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 70504

FILED

FEB 23 2018

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

*ORDER ACCEPTING SECOND CERTIFIED QUESTION AND
 DIRECTING SUPPLEMENTAL BRIEFING*

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

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

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

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