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.

Electronically Filed
Jul 10 2019 04:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

UNITED AUTOMOBILE INSURANCE COMPANY'S APPENDIX
VOLUME 8
PAGES 1751–2000

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

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22	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 Stay Proceedings Pending Appellate Ruling and/or Stay Counter-Motion for Summary Judgment Pending Necessary Discovery Pursuant to N.R.C.P. 56(f)	01/16/19	5	1144–1168
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12/14/2018 at 08:30 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion for Leave to Intervene - **Held - Motion Denied**

12/10/2018 at 08:31 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion - Other (name extension) (Set Aside) - **Not Held - Continued - Party's Motion**

11/20/2018 at 08:30 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion for Leave to Intervene - **Held - Continued**

11/07/2018 at 08:31 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion for Leave (name extension) - **Not Held - Continued - Court's Motion**

08/23/2018 at 09:00 AM in Department O
Ex-Parte Proceedings (Exparte proceeding; Motion Denied) -

REGISTER OF ACTIONS

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Register of Actions (Listed in descending order)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
07/17/2018

02/11/2019 at 08:30 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion to Set Aside/Vacate Default and Default Judgment (CCP 473.5) - **Not Held - Vacated by Court**

02/05/2019 at 08:30 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion to Set Aside/Vacate Default and Default Judgment (CCP 473.5) - **Not Held - Rescheduled by Party**

01/30/2019 at 08:31 AM in Department O, Peter A. Hernandez, Presiding
(Motion to Set Aside) - **Not Held - Rescheduled by Party**

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01/17/2019 Notice (name extension) (Withdrawal of its Motion to Set Aside the Sister State Judgment)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

01/14/2019 at 09:00 AM in Department O, Peter A. Hernandez, Presiding
Ex-Parte Proceedings

01/14/2019 Opposition (name extension) (To United Insurance Company's Ex Parte Motion For a Stay)
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

01/14/2019 Minute Order ((United Automobile Insurance Company's Ex-Parte Motion To Exte...))
Filed by Clerk

01/14/2019 Ex Parte Application (name extension) (To Extend Stay of Proceedings and Enforcement of Sister State Judgment per CCP Section 1710.50)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

01/14/2019 Declaration (name extension) (of Samantha L. Barron In Support of United Auto Insurance Company's Ex Parte Motion to Extend Stay)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

12/14/2018 at 08:30 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion for Leave to Intervene - **Held - Motion Denied**

12/14/2018 Order (name extension) (Granting Second Request for Judicial Notice)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

12/14/2018 Request for Judicial Notice (Second Notice)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

12/14/2018 Minute Order ((Hearing on Motion for Leave to Intervene;))
Filed by Clerk

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12/14/2018 Order (name extension) (Ruling on the Court's Tentative Ruling)
Filed by Clerk

12/14/2018 Order Appointing Court Approved Reporter as Official Reporter Pro Tempore
Filed by Clerk

12/14/2018 Notice of Lodging (name extension) (Joint Stipulation to Continue Stay of Enforcement of Sister State Judgment)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

12/14/2018 Stipulation (name extension) - No Order (Joint Stipulation to Continue Stay of Enforcement of Sister State Judgment)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

12/10/2018 at 08:31 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion - Other (name extension) (Set Aside) - **Not Held - Continued - Party's Motion**

12/03/2018 Notice of Lodging (name extension) (re proposed sister state judgment)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

12/03/2018 Motion to Vacate (name extension) (United Automobile Insurance Company's (Proposed) notice and motion to vacate or set aside Judgment and Points and Authorities in support thereof)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

11/26/2018 Notice of Continuance
Filed by United Auto Insurance Company (Plaintiff in Intervention)

11/21/2018 Stipulation and Order (name extension) (to allow United Auto Insurance Company's to file a supplemental reply in support of its Motion to Intervene)
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

11/20/2018 at 08:30 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion for Leave to Intervene - **Held - Continued**

11/20/2018 Order Appointing Court Approved Reporter as Official Reporter Pro Tempore

11/20/2018 Minute Order ((Intervener, United Automobile Insurance Company's Motion for ...))
Filed by Clerk

11/13/2018 Reply (name extension) (rsv 180823342638)

11/07/2018 at 08:31 AM in Department O, Peter A. Hernandez, Presiding
Hearing on Motion for Leave (name extension) - **Not Held - Continued - Court's Motion**

11/07/2018 Notice of Continuance
Filed by United Auto Insurance Company (Plaintiff in Intervention)

10/31/2018 Reply (name extension) (in support of its motion to intervene RSV 180823342638)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

10/31/2018 Reply (name extension) (to pltffs opposition to to motion to intervene RSV 180823342638)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

10/31/2018 Declaration (name extension) (OF Samantha L. Barron)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

10/31/2018 Proof of Service (not Summons and Complaint) (proof)

10/31/2018 Declaration (name extension) (of Brandon Carroll RSV 180823342638)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

10/31/2018 Declaration (name extension) (OF Matthew J. Douglas rsv 180823342638)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

10/31/2018 Reply (name extension) (in support of Its Motion to Intervene)
Filed by United Auto Insurance Company (Plaintiff in Intervention)

10/25/2018 Declaration (name extension) (Of Arthur I. Willner)
Filed by GARY LEWIS (Defendant)

10/25/2018 Other - (name extension) (Appendix of Exhibits in Support of Opposition)
Filed by GARY LEWIS (Defendant)

10/25/2018 Opposition (name extension) (to united auto insurance co motion to intervene rsv 180823342638)
Filed by JAMES NALDER (Plaintiff)

10/25/2018 Other - (name extension) (APPENDIX OF OUT OF STATE AUTHORITEIS REFERENCED WITHIN PLAINTIFFS OPPOSITION TO UNTIED AUTOMOBILE INSURANCE CO. MOTIONH FOR LEAVE TO INTERVENE)
Filed by GARY LEWIS (Defendant)

10/25/2018 Opposition (name extension) (To Motion for Leave)
Filed by GARY LEWIS (Defendant)

10/11/2018 Motion for Leave (name extension) (To Intervene and Points and Authorities in support Thereof)
Filed by Brian S. Inamine, Esq (Legacy Party)

10/11/2018 Notice of Lodging (name extension) (Of (Proposed) Orders)
Filed by Brian S. Inamine, Esq (Legacy Party)

10/11/2018 Declaration (name extension) (Of Brandon Carroll in Support OF Motion for Leave)

10/11/2018 Proof of Service (not Summons and Complaint) (Re: Motion for Leave)
Filed by Brian S. Inamine, Esq (Legacy Party); United Auto Insurance Company (Plaintiff in Intervention)

10/11/2018 Request for Judicial Notice
Filed by United Auto Insurance Company (Plaintiff in Intervention)

08/24/2018 Proof of Service (not Summons and Complaint)

08/24/2018 Proof of Service (not Summons and Complaint)
Filed by Intervenor

08/23/2018 at 09:00 AM in Department O
Ex-Parte Proceedings (Exparte proceeding; Motion Denied) -

08/23/2018 Declaration

08/23/2018 Ex Parte Application

08/23/2018 Notice of Lodging

08/23/2018 Declaration

08/23/2018 Notice of Lodging

08/23/2018 Request for Judicial Notice

08/23/2018 Declaration

08/23/2018 Order Appointing Court Approved Reporter as Official Reporter Pro Tempore

08/23/2018 Notice of Lodging

08/23/2018 Declaration

08/23/2018 Ex Parte Application

08/23/2018 Declaration

08/23/2018 Order Appointing Court Approved Reporter as Official Reporter Pro Tempore
Filed by Court

08/23/2018 Opposition
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

08/23/2018 Opposition
Filed by GARY LEWIS (Defendant)

08/23/2018 Notice of Lodging
Filed by Intervenor

08/23/2018 Declaration
Filed by Intervenor

08/23/2018 Notice of Lodging
Filed by Intervenor

08/23/2018 Request for Judicial Notice
Filed by Intervenor

08/23/2018 Notice of Lodging
Filed by Intervenor

08/23/2018 Declaration
Filed by Intervenor

08/23/2018 Ex-Parte Application
Filed by Intervenor

08/23/2018 Ex-Parte Application
Filed by Intervenor

08/23/2018 Request for Judicial Notice
Filed by Intervenor

08/23/2018 Minute Order
Filed by Clerk

08/03/2018 Proof of Service (not Summons and Complaint)

08/03/2018 Proof of Service (not Summons and Complaint)
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

07/24/2018 Sister State Judgment
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

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07/24/2018 Notice
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

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07/24/2018 Judgment

07/24/2018 Notice of Entry of Judgment on Sister-State Judgment

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
TOP 07/17/2018

07/17/2018 Application for Entry of Judgment on Sister-State Judgment (Amended: 2018-07-17)
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

07/17/2018 Application for Entry of Judgment on Sister-State Judgment AMENDED

06/28/2018 Application for Entry of Judgment on Sister-State Judgment
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

06/28/2018 Civil Case Cover Sheet
Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
TOP 07/17/2018

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EXHIBIT 2

001755

Electronically Filed
2/14/2019 3:20 PM
Steven D. Grierson
CLERK OF THE COURT

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

(Court was called to order)

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

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

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

THE COURT: Okay.

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

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

MR. WINNER: Tom Winner for UAIC.

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

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

MR. WAITE: Could we hear that first.

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

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

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

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

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

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

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

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

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

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Lewis?

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

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

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

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THE COURT: Right.

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

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

MR. ARNTZ: Yes, Your Honor.

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

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

MR. CHRISTENSEN: As -- as the plaintiff.

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

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

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

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

MR. DOUGLAS: I think so.

THE COURT: I mean --

MR. DOUGLAS: I have copies for everyone else.

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

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

MR. CHRISTENSEN: Just --

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

MR. CHRISTENSEN: I just want to --

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

MR. CHRISTENSEN: Okay.

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

MR. CHRISTENSEN: Okay.

THE COURT: I'm pretty good with that.

MR. CHRISTENSEN: Before you decide. Okay.

THE COURT: I'm sorry. What?

MR. CHRISTENSEN: Before you decide.

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

MR. CHRISTENSEN: Okay.

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

MR. DOUGLAS: Sure.

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

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MR. DOUGLAS: Yeah.

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

MR. DOUGLAS: Yes.

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

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

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

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

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

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

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

MR. ARNTZ: Two points.

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

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

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

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

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

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

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

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

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

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MR. ARNTZ: Well --

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

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

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

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THE COURT: Okay. Mr. Christensen.

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

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

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conflict is he has sued his insurance company.

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

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

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

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

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

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

MR. CHRISTENSEN: Right.

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

MR. CHRISTENSEN: May I approach the bench --

THE COURT: -- different from --

MR. CHRISTENSEN: -- Your Honor?

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

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

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

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

THE COURT: -- give them --

MR. CHRISTENSEN: Do you have Mandelbaum --

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THE COURT: -- give them a copy of it.
MR. CHRISTENSEN: -- or you want another copy?
MR. DOUGLAS: I'm okay.
MR. WINNER: 1897 case? We've seen it.
THE COURT: Okay. Go ahead. I think I've got this, but I'll take it --
MR. CHRISTENSEN: I have it highlighted --
THE COURT: -- so we have it for the record.
MR. CHRISTENSEN: -- on the second page there.
THE COURT: And let me just not for the record that you did give a copy of Mandelbaum versus Gregovich, 50 P. 849.
MR. CHRISTENSEN: And that counsel for UAIC didn't want one.
THE COURT: Okay.
MR. CHRISTENSEN: But so the second page, the first highlighted paragraph says 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 the state and continuously remained absent therefrom until March 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. Notwithstanding, nearly 15 years had elapsed since the entry of the judgment, yet for purposes of the action, the judgment was not barred. For that purpose the judgment was valid.
That's the same judgment that we have in this case

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

MR. DOUGLAS: Okay.

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

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

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case.

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

MR. WINNER: Yeah, some conflicts.

THE COURT: -- get into that but --

MR. WINNER: Yes.

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

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

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

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

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

MR. WINNER: Thank you.

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

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

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

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

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

MR. ARNTZ: Sure.

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

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

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motion to withdraw.

MR. WAITE: Thank you.

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

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

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

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

THE COURT: Okay.

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

THE COURT: Another representation between parties.

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: And I'm not suggesting it.

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

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

MR. DOUGLAS: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Right.

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

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Gary Lewis against UAIC --

THE COURT: Right. In the federal case.

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

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

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

THE COURT: They look pretty close.

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

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defendant Gillman (phonetic) in state court.

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

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

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

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

MR. CHRISTENSEN: Correct.

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

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

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

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

THE COURT: -- it doesn't --

MR. CHRISTENSEN: If it's --

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

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

THE COURT: Okay. Yeah.

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

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

THE COURT: Okay.

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

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

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

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

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

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

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

THE COURT: Right.

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

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THE COURT: But, I mean --
MR. CHRISTENSEN: Dave Stephens --
THE COURT: -- I'm not suggesting --
MR. CHRISTENSEN: -- brought those --
THE COURT: -- saying who brought them.
MR. CHRISTENSEN: -- on behalf of Cheyenne.
THE COURT: I'm saying we now have it, so --
MR. CHRISTENSEN: Right. And this is -- so -- so the fact is that your statement that it would have been good if it was 2013 actually argues against the process in my view, right. The -- the fact that more time has gone by makes it more improper for them to be coming in here. This isn't something that just came out of the clear blue sky, but -- but they are kind of the interrelated things.

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

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

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

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

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

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

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

THE COURT: That's all right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And the minute order was no opposition having been

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

THE COURT: All right.

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

THE COURT: All right.

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

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

MR. DOUGLAS: Thank you, Your Honor.

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

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

THE COURT: -- need to --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And so I would point out that there is precedent.

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

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

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

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

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intent to delay any of their motions.

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

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

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

THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

As far as your motion for an evidentiary hearing for a

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

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

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

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

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

THE COURT: Okay. That's --

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

THE COURT: Okay. All right.

MR. CHRISTENSEN: So the conflicts that he has with

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UAIC are clearly there and he does not waive them.

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

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

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

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

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

MR. STEPHENS: Let me start, Your Honor.

THE COURT: Okay.

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

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

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

MR. STEPHENS: Thank you, Judge.

THE COURT: Thanks.

Do you want to add anything, Mr. Christensen?

MR. CHRISTENSEN: Just a few --

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

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

THE COURT: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. CHRISTENSEN: Correct.

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

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

THE COURT: Okay.

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

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

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

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

Do you know what --

MR. WAITE: Honeycutt.

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

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

THE COURT: It's not on appeal.

MR. CHRISTENSEN: It's not on appeal.

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

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

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

THE COURT: But -- but the question --

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

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

MR. CHRISTENSEN: Yeah.

THE COURT: -- the issue that --

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

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THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

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

MR. CHRISTENSEN: Okay.

THE COURT: All right.

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

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for --

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

MR. DOUGLAS: Okay.

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

MR. DOUGLAS: Okay.

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

MR. DOUGLAS: Okay.

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

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

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

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

THE COURT: Stay.

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

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

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

THE CLERK: Yes.

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

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

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

THE COURT: But all right.

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

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

MR. ARNTZ: No, Your Honor.

THE COURT: Okay. Thanks a lot, everybody.

MR. DOUGLAS: Thank you.

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

THE COURT: You know --

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

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

MR. STEPHENS: Thank you.

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

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

THE COURT: Okay. All right.

MR. DOUGLAS: Thank you, Your Honor.

THE COURT: Thank you all.

MR. CHRISTENSEN: Thank you, Your Honor.

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

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CERTIFICATION

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.

Julie Potter
Kingman, AZ 86402
(702) 635-0301

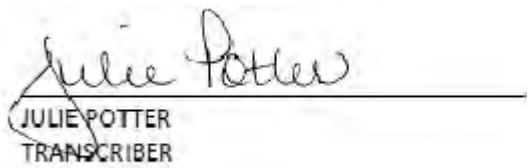

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EXHIBIT 3

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

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

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

ORDER ON MOTIONS HEARD JANUARY 9th, 2019

This matter having come on for hearing on January 9th, 2019, in Department XX, before

the Honorable Eric Johnson, on (1) Third Party Plaintiff Lewis' Motion for Relief from Orders and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3) Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C), (4) Defendant Lewis' (through Breen Arntz, Esq.) withdrawals of Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111; (5) Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111; (6) UAIC's Oral Motion to Continue Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111 pending new counsel; (7) UAIC's Motion for an Evidentiary hearing for a fraud upon the court; Plaintiff appearing through her counsel of record David Stephens, Esq. of Stephens & Bywater, and Defendant Lewis appearing through his counsel of record, Breen Arntz, Esq., Intervenor/Third Party Defendant UAIC appearing through its counsel of record, Thomas E. Winner, Esq. & Matthew J. Douglas, Esq. of the Law Firm of Atkin Winner and Sherrod, Third Party Plaintiff Lewis appearing through his counsel of record Thomas Christensen, Esq. of The Christensen Law Offices, and Third Party Defendants Randall Tindall and Resnick & Louis P.C. appearing through their Counsel of record Dan R. Waite, Esq. of Lewis Roca Rothgerber Christie, LLP, the Court having reviewed the pleadings and documents on file herein, and consideration given to hearing at oral argument, finds as follows:

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FINDINGS OF FACT

1. That the issues of law on second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504, are substantially similar and/or related to issues of law in these consolidated cases;
2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain issues of law which substantially similar and/or related to issues of law on a second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504;
3. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to a July 2007 automobile accident have been previously litigated or, could have been litigated, in her original action, Case no. 07A549111, herein;
4. This case is unusual but the Court does not find any unethical behavior by either Mr. Christensen or Mr. Arntz.

CONCLUSIONS OF LAW

1. Pursuant to N.R.C.P. 24 and N.R.S. 12.130 UAIC has a shown right and interest to intervene in these matters;
2. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to the July 2007 automobile accident are precluded as same have been previously litigated or, could

have been previously litigated in Case No. 07A549111, herein, pursuant to the factor as set forth *Five Star Capital Corp. v. Ruby, 124* Nev. 1048, 1054-55, 194 P.3d 709,713 (2008).

3. That the first claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original 2007 judgment from case no. 07A549111 is not a valid cause of action and the Court would dismiss same under the *Medina* decision, but based upon the request of Counsel for Plaintiff David Stephens, Plaintiff's first claim for relief will be stayed pending decision in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504;

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Third Party Plaintiff Lewis' Motion for Relief from Orders and Joinder in all other Motions for Relief from Orders on Order Shortening Time, as well as Plaintiff Nalder's Motion for Relief from Orders, are DENIED, for the reasons stated in the record; and,

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor's UAIC's Counter-Motion to Stay Pending Appeal is GRANTED, for ther reasons stated in the record, and Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-18-772220-C, herein, (claim 1) seeking a new judgment on her original judgment entered in case no. 07A549111 and, (claim 2) seeking Declaratory relief, respectively, are STAYED pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504; and

///

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her Complaint in case no. A-18-772220-C, herein, (claim 3) seeking general and special damages related to and arising from the July 2007 automobile accident, is DISMISSED, but ruling on the Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Lewis (through Breen Arntz, Esq.) WITHDRAWALS of Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C as well as case no. 07A549111 (filed by Randall Tindall, Esq.) are hereby WITHDRAWN;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) are all hereby STRICKEN per WITHDRAWAL by Counsel for Lewis, Breen Arntz, Esq.;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that UAIC's Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment

pursuant to N.R.C.P. 60 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) pending new counsel to be retained by UAIC, is hereby DENIED WITHOUT PREJUDICE for the reasons stated in the record;

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED UAIC's Motion for an Evidentiary hearing for a fraud upon the court is hereby DENIED WITHOUT PREJUDICE for the reasons stated in the record.

IT IS SO ORDERED.

DATED this 11 day of FEBRUARY 2019.

DISTRICT JUDGE
ERIC JOHNSON

Submitted by:

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EXHIBIT 4

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE COMPANY, RANDALL TINDALL, ESQ. and RESNICK & LOUIS, P.C., and DOES 1 through V.,

Third Party Defendants.

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

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

ORDER ON MOTIONS FOR JANUARY 23rd, 2019

This matter having been set for hearing on January 23rd, 2019, in Department XX, before

the Honorable Eric Johnson, on (1) Plaintiff Nalder's Motion for Summary Judgment and Relief from Order Pursuant to N.R.C.P. 60(b), (2) Intervenor United Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Plaintiff's Summary Judgment Pending Appeal, (3) Intervenor UAIC's Motion to Dismiss Third-Party Plaintiff Lewis's Complaint (Case No. A-18-772220-C), (4) Third-Party Plaintiff Lewis' Counter-Motion for summary judgment on his third-party complaint (case No. A-18-772220-C), (5) Intervenor UAIC's counter-motions to: (a) Strike the affidavit of Lewis for the counter-motion for summary judgment on the third-party complaint, and/or (b) Stay said counter-motion for summary judgment and other proceedings on the third party complaint pending Appellate ruling, and/or (c) Stay counter-Motion for summary judgment on the third party complaint pending discovery pursuant to N.R.C.P. 56 (f); the Court having reviewed the pleadings and documents on file herein, issued a minute order, dated January 22, 2018, which vacated the scheduled January 23, 2019 hearings on the above-noted motions and, per same minute order, the Court finds as follows:

FINDINGS OF FACT

1. That the issues of law on second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504, are substantially similar and/or related to issues of law in these consolidated cases;
2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain issues of law which substantially similar and/or related to issues of law on a second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*

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Automobile Insurance Company, case no. 70504;

3. That the claims of bad faith and other extra-contractual claims alleged by third party plaintiff Gary Lewis in his third party complaint against Intervenor UAIC, herein, in case no. A-18-772220-C, contain issues of law which substantially similar and/or related to issues of law on a second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504 .

CONCLUSIONS OF LAW

1. That based upon the hearings in this matter, on January 9th, 2019, and, order entered on same hearings by the court, the issues raised in Plaintiff Nalder's Motion for sumamry judgment are the same as those currently pending before the Nevada Supreme Court and, accordingly, Plaintiff's Motion will be stayed, in the interest of judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504;
2. That the issues raised in Third Party Plaintiff Lewis' Third party complaint, and the Motion to dismiss same third party complaint as well as the motion for summary judgment on the third party complaint, are the same as those currently pending before the Nevada Supreme Court and, accordingly, Third Party Plaintiff Lewis' third party complaint and the Motion to dismiss same third party complainat and, counter-motion for summary judgment on same third party complaint, will be stayed, in the interest of judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504.

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ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Nalder's Motion for Summary judgment and Relief from Orders pursuant to N.R.C.P. 60 (Case No. A-18-772220-C) is STAYED, pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor's UAIC's Counter-Motion to Stay Plaintiff Nalder's Motion for summary judgment and proceedings pending Appeal is GRANTED, because the court finds the issues raised in Plaintiff's Motion are the same as those currently before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504, and Plaintiff Nalder's Motion for summary judgment is STAYED pending further ruling by the Nevada Supreme Court; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor UAIC's Motion to Dismiss Third Party Plaintiff Lewis's Complaint and Third Party Plaintiff Lewis' Counter-Motion for Summary Judgment (Case No. A-18-772220-C) are STAYED pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor UAIC's Counter-Motion to Stay UAIC's Motion to Dismiss Lewis' Third Party Complaint and Third Party Plaintiff Lewis' Counter-Motion for summary judgment and proceedings (Case No. A-18-772220-C) pending Appeal is GRANTED, because the court finds the issues raised in said Motions are the same as those currently before the Nevada Supreme Court in *James Nalder,*

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Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company, case no. 70504, and Third Party Plaintiff Lewis' Motion for summary judgment and Third Party Plaintiff Lewis' Counter-Motion for summary judgment and proceedings (Case No. A-18-772220-C) are STAYED pending further ruling by the Nevada Supreme Court; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor UAIC's Counter-Motion to Strike Lewis' Affidavit for his Counter-Motion for summary Judgment on his third-party complaint as well as UAIC's Counter-motion for additional discovery pursuant to N.R.C.P. 56(f) (Case No. A-18-772220-C) are DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED this 11 day of FEBRUARY 2019.

DISTRICT JUDGE
ERIC JOHNSON

Submitted by:

ATKIN WINNER & SHERROD, LTD.

MATTHEW J. DOUGLAS, Esq.
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor UAIC

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

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

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Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

CASE NO.: 07A549111
DEPT. NO.: XX

Consolidated with
CASE NO.: A-18-772220-C
DEPT. NO.: XX

UAIC'S OPPOSITION TO 3rd PARTY PLAINTIFF LEWIS' MOTION FOR RECONSIDERATION, MOTION FOR HEARING, AND MOTION FOR RELIEF FROM ORDER

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COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Opposition to Third Party Plaintiff Lewis' Motion for Reconsideration, Motion for Hearing and Motion for Relief from Order. UAIC asks this Motion be denied because, contrary to Lewis' assertions, (1) this Court's Order of February 14, 2019 was not made "ex parte"; (2) the matter was conclusively stayed on January 9, 2019, prior to the attempted Offer of Judgment; (3) whether or not the final order on the stay was filed prior to the entry of the judgment is immaterial in this case as will be discussed herein; finally, (4) Third Party Plaintiff Lewis should have no standing to contest a ruling which relates to a stay of *Plaintiff's* case and the alleged judgment between *Plaintiff and Defendant* as he is a stranger to the judgment and ruling.

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

DATED this 15th day of MARCH, 2019.

ATKIN WINNER & SHERROD

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

AFFIDAVIT OF COUNSEL IN SUPPORT OF INTERVENOR'S OPPOSITION TO INSTANT MOTION

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 titled *Nalder* v *Lewis,* Case No. A-18-772220-C, as well as in other related cases.

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. *True and correct copies of the Ninth Circuit's Order certifying a 2nd certified question to the Nevada Supreme Court as well as the Nevada Supreme Court's Order accepting same are attached as Exhibits 'E' & 'F', respectively, to UAIC's Motion for Relief from Judgment entered 1/23/19 in Case No. A-18-772220-C, which is attached hereto as Exhibit 'A.'*

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

Plaintiff's action pending the Nevada Supreme Court's decision in case no 70504, wherein, to affiant's knowledge, this Court dismissed Plaintiff's third claim for relief, but stayed the first two claims for relief based on said appeal.

7. The next day following the 1/9/19 hearing, on January 10th, 2019, Counsel for UAIC emailed all parties a draft proposed order on the motions which UAIC had prevailed, as is customary, and asked other parties to draft their orders. Obviously, as UAIC had prevailed on its counter-Motions to stay pending appeal, same ruling was clearly noted in the proposed order. *A true and correct copy of UAIC's email of 1/10/19, with initial proposed order, is attached hereto as Exhibit 'B.'*

8. In response to the above email, on 1/10/19, Counsel for Tindall asked for a small name change to the proposed order (*a true and correct copy of Counsel for Tindall's email is attached as Exhibit 'C')* and Counsel for Third Party Plaintiff Lewis replied via email that he wanted to make changes to the findings of fact and conclusions of law, but was awaiting the transcript of the hearing to make specific changes. No mention is made in the email that Lewis objected to, disagreed with or, had any confusion with, the Court's entry of a stay on Plaintiff's action; In any event, Counsel for UAIC - in a good faith attempt to get an agreed order on the 1/9/19 hearing - responded by email that UAIC would await the proposed changes. A *true and correct copy of the response of Third Partyplaintiff Lewis and, reply of UAIC, regarding the proposed order, on 1/10/19 is attached hereto as Exhibit 'D.'*

9. Thereafter, before submitting any proposed changes to the 1/9/19 order which had already been prepared but not sent to the Court, Plaintiff served an Offer of Judgment on Defendant Lewis on January 11, 2019, in apparent contravention of the stay ordered just two days earlier; *See true and correct copy of Plaintiff's Offer of Judgment dated 1/1/19 is attached as Exhibit 'A' to UAIC's Motion for Relief from Judgment entered 1/23/19 in Case No. A-18-772220-C, which is attached hereto as Exhibit 'A.'*

10. Next, on January 15, 2019, Counsel for Third Party Plaintiff Lewis emailed his proposed changes to the order on the 1/9/19 hearing. Counsel for UAIC responded the next day that he would like to review the transcript as well to consider the proposed changes and, Lewis' counsel agreed. As can be seen, none of Counsel Lewis proposed changes to the Order for 1/9/19 mentions any objection or, disagreement, to the stay being granted as to Plaintiff's complaint. *A true and correct copy of Counsel for Lewis' 1/15/19 email with proposed changes and, UAIC's replies, is attached hereto as Exhibit 'E.'*

11. In the meantime, Counsel for Defendant Lewis accepted the 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 as Exhibits 'B' & 'C', respectively, to Exhibit 'C', hereto.*

12. After finally receiving and reviewing the transcript of the hearing, Counsel for UAIC emailed Counsel for Lewis with UAIC's responses to each of changes noting which UAIC could agree to and, which they could not and, further, noting that we needed their response that day so as to timely get the order to the Court; Moreover, that if the parties could not agree, the parties should submit separate orders. *A true and correct copy of UAIC's response email to Lewis' proposed changes to the order is attached hereto as Exhibit 'F.'*

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13. Having received no response from Counsel for Third Party Plaintiff Lewis prior to the deadline to submit UAIC's proposed order and, no other party voicing any objection to same order, UAIC submitted the revised proposed order to this court on January 24, 2019. *See copy of letter with proposed Order on 1/9/19 hearing attached hereto as Exhibit 'G.'*

14. No competing order was submitted by any other party regarding the outcome of the 1/9/19 hearing though Counsel for UAIC invited Third Party Plaintiff to do so.

15. Thereafter, Plaintiff's *other* Counsel (Counsel for Third Party Plaintiff Lewis, herein) filed same 1/22/19 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 judgment. *A copy of Plaintiff's Supplemental citation to the Ninth Circuit is attached as Exhibit 'D' to Exhibit 'A', hereto.*

16. Based upon the prejudice to Intervenor by Plaintiff's actions and, filings in the Ninth Circuit, UIAC brought its Motion for Relief from Judgment entered 1/22/19 in Case No. A-18-772220-C, on an Order Shortening time, to prevent permanent prejudice accruing to Intervenor should the Ninth Circuit issue a ruling on the basis of this improper judgment; See *Exhibit 'A.'*

17. The Order Shortening time on Intervenor's Motion for Relief from Judgment of 1/23/19, setting hearing on the Motion for February 20, 2019, was signed by this court on February 11, 2019 and, on that same date, Intervenor properly served notice of the Motion on Order Shortening time to all parties per E.D.C.R. 2.26. See *Exhibit 'A.'*

18. This was the same procedure as was used by Third Party Plaintiff in seeking his Motion on Order Shortening time to void UAIC's Interventions. UAIC did not receive any notice of Third Party Plaintiff Lewis' Motion on Order shortening time until it was e-served on the parties on December 12, 2018, yet it had been clearly been sent to the court prior, by dint of the fact the Court signed the Order shortening time on December 10, 2018 – 2 days before UAIC ever saw it. *A copy of Third Part Plaintiff's Lewis Motion for Relief from Orders on order shortening time is attached hereto (without exhibits) as Exhibit 'H.'*

19. On February 11, 2019 this Court signed the proposed Order on the 1/9/19 hearings and, as soon as UAIC received that Order - on February 15, 2019 when its runner returned it – it filed that Order. *A copy of the filed Order on the 1/9/19 hearings is attached hereto as Exhibit 'I.'*

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20. Thereafter, on about February 14, 2019, prior to the scheduled hearing date, but 5 days after service of the Motion, this Court ruled on Intervenor's Motion for Relief from Judgment of 1/23/19 and vacated the 1/23/19 Judgment entered by the Clerk of the Court. *A true and correct copy of this Court's Order of February 14, 2019 is attached hereto as Exhibit 'J.'*

Further Affiant Sayeth Naught.

Matthew J. Douglas, Esq.

Subscribed and sworn to before me
This 15th day of MARCH 2019

NOTARY PUBLIC

VICTORIA HALL
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 08-8181-1
MY APPT. EXPIRES JULY 22, 2020

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Counsel for Third Party Plaintiff takes great umbrage with this Court's ruling of February 14, 2019, however, none of his alleged grounds presented should allow him the relief he seeks. The case was clearly **stayed** prior to the attempt at judgment, the Court's ruling was **not** made "*ex parte*" and, the fact the Order was not formally signed and filed is immaterial. The case law regarding signed orders is largely concerned with judgments and/or contempt orders – of which the 2/14/19 order was neither. Moreover, *even if*, the case Lewis cites could be applied here, it also true that that case specifically notes exceptions when a party tries to use such a time period to gain "procedural or tactical advantage" – **which is what Plaintiff and Lewis clearly tried to do here**. *Div. of Child & Family Servs. v. Eighth Jud. Dist. Ct.*, 92 P. 3d 1239, 1244 (2004).

Instead, UAIC argues this presents yet further proof of Counsel for Third Party Plaintiff's orchestrations in this case as well as motives to perform an "end around" the jurisdiction of the Nevada Supreme Court. First, as Counsel for Third Party Lewis has made clear to point out several times to the parties and the Court, he only represents Mr. Lewis as a "Third Party Plaintiff" in this action. See *Exhibit '2' to Third Party Plaintiff's instant Motion, transcript of 1/9/19 hearing, at page 2, lines 8-9.* As such, as Counsel for the *Third Party Plaintiff* Lewis – UAIC argues he has no standing to contest a ruling granting UAIC relief from a judgment as

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between Plaintiff and *Defendant* Lewis - as the Third Party Plaintiff is a stranger to this ruling. Regardless of that issue, it is also true that Third Party Plaintiff Lewis' actions in this regard also clearly expose his intent to undermine the jurisdiction of the Nevada Supreme Court and gain some tactical advantage in the matters on appeal. The fact is, *as soon as the judgment on the offer of judgment was entered* in this case – Counsel for Third Party Plaintiff sought to file same in the Ninth Circuit (where he is counsel for Plaintiff Nalder) - to gain advantage in the appeal. See *Exhibit 'D' to Exhibit 'A', hereto.* This not only reveals the true intentions of Nalder and Lewis, but also completely undermines Counsel for Third Party Plaintiff's arguments in the instant motion and, to this court on 1/9/19, that the actions on appeal and, this action, are not substantially related. See *Exhibit '2' to Third Party Plaintiff's instant Motion, transcript of 1/9/19 hearing, at page 10, lines 20-25.*

Accordingly, for all of the above, UAIC asks this Court to deny the present Motion.

II.

BACKGROUND & RESPONSE TO MOVANT's STATEMENT OF FACTS

UAIC will briefly respond to Movant's "facts" as movant has attached a Motion to dismiss, in a separate action, as his purported facts (See *Exhibit '1' to Third Party Plaintiff's instant Motion).* As can be easily seen, the set of facts listed in that Motion are somewhat slanted and incorrect and, regardless, *are mostly immaterial for the present motion.* For that reason, as well as to correct inaccuracies presented by Lewis in the Motion, UAIC presents this response to Movants facts.

First, as this Court is well aware, Lewis and Nalder have appealed the decision in the Federal Court case to the Ninth Circuit and that appeal ***remains pending.*** Intervenor will not respond to each of the somewhat slanted/incorrect facts set forth in the Motion Lewis attached as Exhibit '1' to his papers nor, re-state the entire history of this matter, as a fairly thorough and *un-biased* set of the backgrounds facts is adequately set forth in the Order Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals for the Ninth Circuit,

which was filed on January 11, 2018. *True and correct copies of the Ninth Circuit's Order certifying a 2nd certified question to the Nevada Supreme Court as well as the Nevada Supreme Court's Order accepting same are attached as Exhibits 'E' & 'F', respectively, to UAIC's Motion for Relief from Judgment entered 1/23/19 in Case No. A-18-772220-C, which is attached hereto as Exhibit 'A.'* Said certified question was accepted by the Nevada Supreme Court on February 23, 2018 and reformulated to state, 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?

Id.

This issue remains pending and - is currently fully 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.) initiated this "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. It is clear that such attempts continue.

Despite this, Third Party Plaintiff Lewis continues to try and argue in the instant motion that the issues in this matter are not substantially related to those on appeal because, he claims, the expired judgment is "assumed" in the question before the Nevada Supreme Court and, therefore, the Court will not rule on the expiration or, the time for renewal – much less his claims for tolling of the expiration. This argument is simply incorrect. First, this Court has already agreed the matters on the certified question are substantially similar to those in the instant action (See *Exhibit 'I', hereto*) and, said ruling is not the subject of *this Motion.* However, because Lewis raises it yet again, UAIC is compelled to point out that this argument continues to be

undermined by Nalder and Lewis' own arguments *in* their briefs on appeal where they have made the same arguments, concerning the Mandelbaum decision and the tolling statutes, to support their argument they can continue against UAIC, as Nalder claims allow her to proceed with her action herein. See *Copy of Nalder and Lewis' Supplemental Opening brief on appeal, attached hereto as Exhibit 'K', at page 11-16 (where they argue either the Mandelbaum decision or the tolling statutes support their argument against expiration).* Accordingly, if the issues regarding Plaintiff's ability to seek a new judgment (as she claims herein) are being argued by these same parties on appeal – *how are the cases not dealing with the exact same substantive issues*? Furthermore, the argument that the cases are not related is still further undermined by Counsel for Third Party Plaintiff Lewis (or, in this case as counsel for Nalder) **when he filed notice of the now vacated judgment of 1/23/19 with the Ninth Circuit in the matters on appeal**. See *copy of Plaintiff's Supplemental citation to the Ninth Circuit is attached as Exhibit 'D' to Exhibit 'A', hereto.* Obviously, this begs the question, if a judgment in this action is unrelated to the appeal – why file it in the Ninth Circuit and argue it moots the appeal? Indeed, UAIC suggests this Court query Counsel for Third Party Plaintiff at hearing if he can guarantee the Nevada Supreme Court (or, the Ninth Circuit for that matter) will not ultimately rule on the status of the 2007 judgment, whether it is expired or, whether the claimed tolling statutes apply - as UAIC believes he will admit he cannot so guarantee – proof this cause is not only substantially similar to the matters on appeal.

Next, Lewis attempts to argue that Plaintiff's first cause of action – under which she sought the 'new judgment' on 1/22/19 - was not stayed or, that there was some uncertainty whether it was stayed. Again, this argument is also nonsense. This fact can easily be determined by looking at the last page transcript from the 1/9/19 hearing that Lewis' attached to his Motion. Specifically, the following exchange occurred between Counsel for Plaintiff, Dave Stephens, and the Court at the end of the hearing:

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

THE COURT: You know -

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

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

MR. STEPHENS: Thank you.

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

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

THE COURT: Okay. All right.

See *Copy of transcript of 1/9/19 hearing, attached as Exhibit '2' to the instant Motion, p. 62, lines 6-18.* Not to belabor the obvious, but as this Court can see, not only did Counsel for Nalder, Mr. Stephens, clearly ask for clarification if his first cause of action was stayed by the Court – but when the Court stated it was, Mr. Stephens noted he wanted to make sure it was "**clear for the order.**" *Id. (emphasis added).* Accordingly, it was because Nalder herself asked for clarification that her cause of action (for a new judgment) was stayed *yet, still proceeded to seek a judgment on it 2 days later*, that UAIC felt this was a clear attempt to thwart the order of this Court.

Furthermore, Lewis' attempt to suggest that because the Court noted a further Motion on calendar (UAIC's motion to deny/stay the prior stipulation in that action) would be held at the next hearing (1/23/19) - since the Court was running late and it was already noticed for that later date – **does not change the Court's clear stay of the action**. Indeed, the full exchange of that transaction – which was immediately prior to the one between Mr. Stephens and the court, above – went as follows:

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MR. DOUGLAS: ...We also had a countermotion to stay that affidavit. I don't know what Your Honor wants to do with that motion.

THE COURT: Stay.

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

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

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

THE CLERK: Yes.

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

See *Copy of transcript of 1/9/19 hearing, attached as Exhibit '2' to the instant Motion, p. 61, lines 5-22.* As can plainly be seen, not only did the Court merely state it would deal with that additional Motion when it was scheduled for the following hearing date, but when first asked about it – the Court specifically said "Stay." *Id.* Accordingly, the exchange supports the notion – as the court stated later – that the whole case was stayed- and, at the worst, that the Court would deal with the later issue on the date it was already set for. Regardless, nothing in that exchange undermines the Court's clear ruling thereafter the entire count one of Plaintiff's complaint is stayed.

Finally, UAIC must address claims the Court ruled on its Motion for relief from the 1/22/19 judgment "ex parte" or, that it was prior to the stay being reduced to filed written order. First, as noted from the timeline set forth in Counsel's affidavit, above, UAIC filed and served its Motion for Relief from the 1/23/19 Judgment on Order Shortening Time the same date that the

Court signed the Order Shortening time – on February 11, 2019. See *Exhibit 'A.'*[1] Accordingly, as the Court's ruling was not issued until February 14th, 2019, the Order was clearly made *after* all parties were served proper notice of the Motion and, thus, not *ex parte*. See *Exhibit 'J.'* Next, in terms of the Order not being reduced to writing, UAIC will address the legal arguments regarding this below, but would like to point out that the parties were all served a copy of the proposed order on January 10, 2019 and, thus, were aware it would order stay the action on that date – prior to the Offer of judgment being sent. See *Exhibit 'B', hereto, and Exhibit 'A' to Exhibit 'A', hereto, respectively.*

II.

ARGUMENT

A. THIRD PARTY PLAINTIFF LEWIS HAS NO STANDING TO SEEK REDRESS FOR THE COURT's 2/14/19 ORDER VACATING A JUDGMENT BETWEEN TWO OTHER PARTIES.

Once again, we have the odd circumstance of a Third Party Plaintiff (who also represents the Plaintiff and Defendant, herein, in a substantially similar action on appeal) seeking to contest a ruling made by this Court vis-à-vis three other parties – Plaintiff Nalder, Defendant Lewis and Intervenor UAIC. Quite simply, given Third Party Plaintiff is a stranger to this ruling, this Court can rule he has no standing to seek redress for the 2/14/19 ruling and, deny his motion.

As this Court is well aware, only "[a] party who is aggrieved by an appealable judgment or order" has standing to appeal. *NRAP 3A(a)*; *Estate of Hughes v. First Nat'l Bank of Nev., 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).*

Accordingly, the same test should apply for a party to seek reconsideration or, rehearing in a trial court. Here, it is clear that *Third Party Plaintiff* Lewis is not aggrieved by the Court's

[1] Importantly, this was the same procedure – *e.g.* serving a Motion on Order shortening time to all parties only after the Court signed the OST – as Third Party Plaintiff Lewis used for his motion on OST. See *Exhibit 'H.'* Moreover, it is the proper under E.D.C.R. 2.26.

2/14/19 order. That Order vacated a judgment entered between Plaintiff and *Defendant* Lewis. Third Party Plaintiff Lewis' claims, herein, are not affected by said Order. Indeed, Counsel for Third Party Plaintiff Lewis has taken great pains to explain his representation is separate and distinct from the able counsel being provided to *Defendant* Lewis.

As such, for these reasons, Third Party Plaintiff Lewis has no standing to seek redress of the Court's 2/14/19 ruling and, thus, this Motion should be denied.

B. OPPOSITION TO MOTION FOR RECONSIDERATION AND/OR RELIEF FROM FEBRUARY 14, 2019 ORDER PURSUANT TO N.R.C.P. 60(b).

1. Standard for Motion for Reconsideration or Rehearing and/or for Relief under NRCP 60(b).

According to the Eighth Judicial Court Rule ("E.D.C.R.") 2.24, Rehearing of Motions, subpart (b) provides that a party may seek reconsideration of ruling of the Court via motion within ten (10) days "after service of written notice of the order or judgment." Rule 2.24 further provides that if the motion for reconsideration is granted, "the court may make a final disposition of the cause without re-argument or may reset it for re-argument or resubmission or may make such other orders as are deemed appropriate."[2] Further, "Motions to reconsider are generally left to the discretion of the trial court. In order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision."[3]

NRCP 60(b) allows this Court to relieve a party from a final judgment due to "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied,

[2] E.D.C.R. 2.24(b).

[3] *See Bray v. Palmer*, 2012 U.S. Dist. LEXIS 43375 at 6-7, 2012 WL 1067972 (D. Nev).

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released, or discharged.." The determination of what will establish the existence of one or more specified conditions required by subdivision (b)(1) of Rule 60 is *largely discretionary.* [4]

2. Lewis' Assertion that Because the 1/9/19 Ruling was not yet Reduced to a Signed and Filed Order it Allowed the parties to "Game the System" and, Enter a Judgment During a Court Ordered Stay, is not in Accordance with Cases cited nor, Substantial Justice and, thus, the Motion Should be Denied.

In this case, Third Party Plaintiff has moved for Reconsideration and/or Relief from this Court's 1/14/19 order based **solely** on the fact that the Court's staying of Plaintiff's action was not yet entered as a signed and filed order.[5] This argument underscores the gamesmanship that has permeated the actions of Plaintiff and Third Party Plaintiff throughout these proceedings. It is wrong on the facts and the law and, quite simply, was a naked attempt to gain tactical advantage in the related matters on appeal. For these reasons, the Motion should be denied.

Once the Court orally grants a stay and enters it in the minutes, the parties may not begin violating the stay merely because the written order has not been entered. While a written order "serves valuable purposes," *Houston v. Eighth Judicial Dist. Court*, 122 Nev. 544, 553, 135 P.3d 1269, 1274 (2006), and in some cases a party cannot be required to take affirmative action going to the merits of the case, the Court must be able to rely on parties and their counsel not to take action that violates the Court's oral pronouncements while awaiting the prompt entry of the written order. *See also* RPC 3.4(c), 3.5(d). Violating an oral ruling is an act of contempt. *See id.* (holding that written contempt order must be promptly entered but verbal order is immediately enforceable).

This principle—that parties not actively frustrate the Court's oral rulings pending written entry of an order—is quite separate from the rule governing the enforceability and appealability

[4] *Ogle v Miller*, 87 Nev. 573, 491 P.2d 40 (1971).

[5] It must be noted that Movant has not pointed to any sub-part of N.R.C.P. 60(b) he relies on, but as the only possible section would be NRCP 60(b)(1), mistake, UAIC will respond as such. Should Lewis attempt to raise any other section for relief, UAIC asks this Court not to consider same as Lewis failed to articulate same in his opening brief and, thus, waived such argument..

of substantive orders (requiring the parties to pay or do something on the merits) that have not been reduced to judgment.

In support of his argument, Movant cites to the case of *Div. of Child & Fam. Servs. v. Eight Judicial Dist. Ct.,* 92 P.2d. 1239 (2004) for the broad proposition that orders "must be written, signed and filed before they become effective." Movant than string cites to four other decisions in support of this argument. However, as is often the case, when one reviews the full rulings, it is clear that this rule should not apply here and, even if it did, substantial justice requires this Court find this case falls into an exception.

First, the *Div. of Child & Fam. Servs.* Case and, the others cited by Movant, are distinguishable for the simple fact that they all dealt with either final judgments, contempt orders, or habeas corpus – **orders where the Court's final written pronouncements are of import for both appeal timing, interest accrual, civil penalties accruing, or actions to be taken by a party**. In *Div. of Child & Fam. Servs.* the Court was reviewing a District Court's ***oral* contempt order** made in relation to party's failure to comply with another ***oral* ruling of the court**. In *Rust v. Clark County Sch. Dist.,* 747 P.2d 1380 (1987), the Court reviewed whether a **notice of appeal** filed by a principal who had been terminated following oral notice of his termination, **but prior to final written administrative judgment**, was valid. In *Tener v Babcock,* 632 P.2d 1140 (1981) the Court reviewed whether an **oral writ of habeas corpus** by the judge was valid. The case of *LaGrange Constr. V Del Webb Corp.,* 435 P.2d 515 (1967) concerned **whether a judgment was valid** after it was written while the judge was on the bench, but not filed until after his term expired. Finally, in *Rae v All American Life & Cas. Co.,* 605 P. 2d 196 (1979) the Court reviewed **whether a judgment was final and appealable** when it failed to include a final judgment as to one of the parties under NRCP 54(b). Indeed, not single case cited by Movant suggests a party is free to try and rush to enter a judgment after a Court orally stays an action– but before it is reduced to a written order. Rather, all of the cases cited by Lewis deal with situations that are dissimilar to the

case at bar. The myriad of reasons why final judgments, contempt orders, and habeas corpus, all need be reduced to writing and filed to become effective have no bearing on the order to stay the matter here. That is, in our case, there was no certainty needed, to wit, to calculate when interest would begin to accrue, to calculate the time to file an appeal (or, whether the appeal was proper) or, to perform some act a court had ordered a party to undertake. As such, the cases cited by Lewis are distinguishable.

Furthermore, when one dives deeper into the ruling in *Div. of Child & Fam. Servs,* it can be shown why the broad pronouncement Lewis cites it for does not apply here. In that case, in finding that the a "court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose", the court based it on the earlier case of *Rust v Clark County Sch. District, 747 P.2d 1380 (1987). Div. of Child & Fam. Servs*, 92 P.2d 3rd at 1243. However, that same pronouncement, in *Rust,* is based on citation to two other cases, *Farnham v. Farnham,* 80 Nev. 180, 391 P.2d 26 (1964) and *Musso v. Triplett,* 78 Nev. 355, 372 P.2d 687 (1962). *Rust v. Clark County Sch. Dist.,* 747 P.2d at 1384. Interestingly though, a review of both the *Farnam* and *Musso* opinions reveal no such holding or, rule, and such language is never even stated. Rather, in *Farnham* the Court found a party to a divorce decree could not appeal *part of a judge's opinion*, only the final order. *Farnham v. Farnham,* 80 Nev. 180, 391 P.2d 26 (1964). Similarly, in *Musso* the Court found a party could not appeal a trial court's interlocutory minute order. *Musso v. Triplett,* 78 Nev. 355, 372 P.2d 687 (1962). As such, it does not appear such a broad holding - that no oral order is never enforceable before it is written, signed and filed - has ever truly been made by the Nevada Supreme Court.

Next, *even if* it is the general rule that oral orders of a District Court are not enforceable until reduced to signed order, it also true that the court's ruling in *Div. of Child & Fam. Servs.* clearly noted the potential for exceptions in unusual circumstances and, the ruling admits the Court had upheld sanctions based on oral orders. Specifically, the Court noted that it had previously

upheld sanctions based on oral orders in *Ham v. Eight Jud. Dist. Ct.,* 566 P. 2d 420 (1977). *Div. of Child & Fam. Servs.,* 92 P.3d at 1244. Moreover, in distinguishing its ruling from *Ham*, the Court stated as follows:

> ***"Ham* is distinguishable because in *Ham* the oral order did not direct the parties to take any action or dispose of substantive matters in the case. Instead, *Ham* dealt with a case management issue related to the overall administration of the proceedings. District courts have wide discretion to control the conduct of proceedings pending before them. The *Ham* order related to the district court's ability to ensure that the judicial proceedings continue with regularity and neither party gained a procedural or tactical advantage as a result of the order. To hold such oral orders unenforceable would greatly disturb the judicial system. Unlike *Ham*, the district court's oral orders in this case pertained to the parties and the merits of the underlying controversy."**

Id at 1244-45 (emphasis added). As can be seen, this portion of the holding in *Div. of Child & Fam. Servs.* not only completely distinguishes it from the case at bar, but also clearly allows for exceptions such that no party gains "procedural or tactical advantage." As this Court can plainly see, the stay order **did not go to the merits of the case or, order any party to take any action**– instead, it was a procedural order to halt proceedings while the appeal went forward and, thus, is distinguishable. Consequently, it falls squarely into a possible exception noted by the Court in *Div. of Child & Fam. Servs.* It seems obvious that the court in *Div. of Child & Fam. Servs.* did not want to create a scenario where one party tries to "**game the system**" for some "procedural or tactical advantage" after an oral order and thus, noted an exception. It is just such a tactical advantage UAIC argues Lewis and Nalder tried to gain here by seeking to quickly enter a judgment – with the Clerk under NRCP 68 – after this Court had clearly stayed the case.

Indeed, to be sure, the court in *Div. of Child & Fam. Servs.* reiterated exceptions to the "filed order rule" later in the opinion when it stated:

> **"However, nothing in this opinion precludes a court from summarily punishing a party who commits contempt in the court's immediate presence, pursuant to NRS 22.030. Additionally, oral court orders pertaining to case management issues, scheduling, administrative matters or emergencies that do**

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not allow a party to gain an advantage are valid and enforceable."

Id. at 1245 (emphasis added).

As stated above, it is undeniable the Court clearly stayed the Plaintiff's first cause of action was stayed on 1/9/19. See *Copy of transcript of 1/9/19 hearing, attached as Exhibit '2' to the instant Motion, p. 62, lines 6-18.* It is equally undeniable that UAIC provided all parties with a proposed Order on the stay on 1/10/19 and that no party - including Third Party Plaintiff Lewis- ever voiced any objections or, confusion, in regard to Plaintiff's first cause of action being stayed. See *Exhibits 'B', 'C', 'D', 'E', & 'F'.* Finally, it is unassailable that, after this Court ordered the stay – a stay which Plaintiff's counsel herself had asked the court for clarity on at the hearing 1/9/19 – Plaintiff went out an attempted to enter a judgment by serving an offer of Judgment on 1/11/19. See *Exhibits 'A', 'B' & 'C' attached to Exhibit 'A', hereto.* Accordingly, as the parties were aware of the stay, knew the order was about to be entered, but tried to "game the system" and enter a judgment before the order was filed, UAIC argues this situation clearly falls into the exception articulated by the Court above. It was done to gain tactical advantage – in this case on appeal – in contravention of the Court's order and, thus, this Motion should be denied.

It is for just this reason that the case cited by UAIC in support of its Motion for relief from the 1/23/19 judgment is completely relevant and germane to this discussion. Once again, in *Westside Charter Serv. v Gray Line Tours,* the Nevada Supreme Court examined a situation where a party had appealed a denial of an N.R.C.P. 60(b) motion to vacate a judgment and, though the District Court stayed the judgment during same appeal, one of the parties began actions which may have been affected by the outcome of the appeal. The fact that it involved an administrative action does not alter the holding *as the administrative action was an attempt to collect monies based on the appealed ruling – i.e.* to gain tactical advantage during a stay. Specifically, in affirming the stay and affirming the denial of further action, the court stated as follows:

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> **"It is also clear that the district court's stay of judgment while the case was under appeal did not allow PSC to deal with the subject matter of the judgment until a final decision had been rendered. The purpose of a stay is to preserve the *status quo ante*."**

Id. at 460, 353. As this case was stayed by this Court January 9, 2019, Plaintiff's subsequent offer of judgment is a nullity as it too did not preserve the *status quo ante*. Allowing it would have defeated the purpose of both this Court's stay and, UAIC's intervention to contest same. As noted by the Court in *Westside,* the stay prevented Plaintiff from taking any action to prosecute her case pending the resolution of appeal on the sister-case and, further order of this Court.

Indeed, consider the slippery slope that would arise should this court countenance such gamesmanship as Movant asserts should have been allowed to occur here. Going forward, any time this Court pronounced its order - a party or, counsel for a party, could quickly rush back to their office or, abode, and take an opposite or detrimental action to the court's ruling – *only to later take shelter in the argument that the order had not yet been reduced to a written & filed order.* Such a result cannot be the law and, this does not promote substantial justice. Consider if this Court ordered Counsel for Third Party Plaintiff to disgorge some property he had wrongly obtained to another party – but prior to the order being filed, Counsel for Third Party Plaintiff had his client sell the property at issue only to gleefully point out the order had not yet been reduced to a final signed and written order. It is absurd. This is not the law. This Motion should be summarily denied.

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III.

CONCLUSION

UAIC asks this Court to deny Lewis' Motion for Reconsideration, Rehearing and/or Relief for all the reasons stated herein.

DATED this 15th day of March, 2019.

ATKIN WINNER & SHERROD

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

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CERTIFICATE OF SERVICE

I certify that on this 15th day of March, 2019, the foregoing **UAIC'S OPPOSITION TO 3rd PARTY PLAINTIFF LEWIS' MOTION FOR RECONSIDERATION, MOTION FOR HEARING, AND MOTION FOR RELIEF FROM ORDER** was served on the following by:

[ ] Electronic Service pursuant to NEFR 9.[XX] Electronic Filing and Service pursuant to NEFR 9 this document for the above-entitled case was electronically served through Odyssey CM/ECF for the above-entitled case to ALL the parties on the Service List maintained on Odyssey's website for this case on the date specified.

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Counsel for Third Party Plaintiff Lewis

Victoria Hall

An employee of ATKIN WINNER & SHERROD

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EXHIBIT "A"

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Steven D. Grierson
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Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

CASE NO.: 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

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Motion for Relief from Judgment pursuant to NRCP 60(b) as well as Motion for Rehearing on the Motion to Dismiss Plaintiff's first cause of action, asking that this Court declare as void the Judgment entered on January 23, 2018, because the Judgment entered was based on a null offer of judgment made after this Court stayed the present action and/or, alternatively, for this Court to rehear Intervenor's Motion to Dismiss Plaintiff's first cause of action, which the court had stayed only because of Plaintiff's request to stay the matter to "preserve her action."

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Case Number: 07A549111

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

DATED this 8th day of FEBRUARY, 2018.

ATKIN WINNER & SHERRODD

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

ORDER SHORTENING TIME

Good cause appearing therefore, IT IS HEREBY ORDERED that the time for hearing the Motion for Relief from Judgment pursuant to NRCP 60(b) as well as Motion for Rehearing on the Motion to Dismiss Plaintiff's first cause of action on an Order Shortening Time is hereby shortened to the 20th day of February, 2019 at the hour of 8:30 a.m./p.m. or as soon as counsel may be heard in the above-entitled Department of the District Court, Clark County, Nevada.

DATED this 11 day of February, 2019

~~DISTRICT COURT JUDGE~~
ERIC JOHNSON

Submitted by,

ATKIN WINNER & SHERROD

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

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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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judgment. *A copy of Plaintiff's Supplemental citation to the Ninth Circuit is attached hereto as Exhibit 'D.'*

10. As this Court can see, contrary to the arguments by Plaintiff's Counsel at the January 9, 2019 hearing that this action had "no relation" to the issues on appeal and, in contravention of this Court's stay, Plaintiff has attempted to enter an improper judgment which is prejudicing Intervenor on appeal;

11. Based upon the prejudice to Intervenor by Plaintiff's actions and, filings in the Ninth Circuit, if these issues in this Motion are not heard on an order shortening time, permanent prejudice may accrue to Intervenor should the Ninth Circuit issue a ruling on the basis of this improper judgment;

12. Intervenor's Motions for Relief from Judgment and Motion for Rehearing for its Motion to dismiss Plaintiff's Complaint are brought for good cause and not for purposes of unnecessary delay.

Further Affiant Sayeth Naught.

Matthew J. Douglas, Esq.

Subscribed and sworn to before me
This 8th day of February 2019

NOTARY PUBLIC

VICTORIA HALL
NOTARY PUBLIC
STATE OF NEVADA
APPT. No. 08-8181-1
MY APPT. EXPIRES JULY 22, 2020

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

I.

GOOD CAUSE EXISTS FOR AN ORDER SHORTENING TIME

The grounds necessitating the present Motion to Shorten time relate to the issues regarding the "judgment" entered by Plaintiff on January 23, 2019 which Plaintiff is attempting to use to moot the issues on appeal before the Ninth Circuit. This was done ***after*** this Court specifically stayed Plaintiff's first cause of action because the matters were related to those on appeal. Indeed, this Court was inclined to dismiss Plaintiff's first cause of action – to enter a new 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

offer of judgment with the clear intent to enter a judgment on an improper claim. Now, Plaintiff has filed this "judgment" with the U.S. Court of Appeals for the Ninth Circuit and argues same moots the appeal. Accordingly, Intervenor has already been prejudiced and, further permanent prejudice may accrue it, should the Ninth Circuit make some ruling on the basis of this improper judgment. Accordingly, time is of the essence and thus an Order Shortening Time is appropriate.

LR IA 6-1 governs Orders Shortening Time states that:

> (a) A motion or stipulation to extend time must state the reasons for the extension requested and must inform the court of all previous extensions of the subject deadline the court granted.

In the present matter the reasons for the Order are set forth and this is the second such request for an Order shortening time on this case, but the first on these issues. For all of the above reasons, an Order Shortening Time is necessary and, this Motion should be granted.

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MEMORANDUM OF POINTS AND AUTHORITIES

II.

STATEMENT OF FACTS

As this Court is well aware, Lewis and Nalder have appealed the decision in the Federal Court case to the Ninth Circuit and that appeal ***remains pending.*** Intervenor will not re-state the entire history of this matter as it is adequately set forth in the Order Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals for the Ninth Circuit, which was filed on January 11, 2018. *A copy of the Order certifying the second question of law is attached hereto as Exhibit 'E.'* Said certified question was accepted by the Nevada Supreme Court on February 23, 2018 and reformulated to state, 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?**

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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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– purporting to seek a "new" judgment on the original 2008 judgment in case no. 07A549111 – because no such cause of action exists for same. However, upon pleading by Counsel for Plaintiff, David Stephens, Esq., that this court merely stay that cause of action just so he "could preserve it", this court acquiesced and granted *a stay for this count.* See *Copy of video of hearing 1/9/19, attached hereto on CD as Exhibit 'I', at 01:13:38 through -1:16:22.*

Despite this request by Counsel for Plaintiff, that he merely wanted to preserve his cause and have it stayed, **Plaintiff proceeded to actively seek to prosecute this claim** and, on January 11, 2019 served an offer of judgment on this first cause of action. *Exhibit 'A.'* Thereafter, surprisingly, Defendant Lewis accepted this offer of judgment against him, for over $5 million, and the parties quickly moved to enter same as a judgment January 22, 2019. *Exhibits 'B' & 'C', respectively.*

Moreover, despite repeated arguments by Lewis and Nalder to this court that this action had "no relation" to the matters on appeal to the Ninth Circuit and Nevada Supreme Court, Plaintiff Nalder then quickly served a supplemental citation to authority on the Ninth Circuit. *Exhibit 'D.'* As this Court can see, this supplemental citation attached the judgment entered in this matter and clearly argues same moots the issue of the 2008 judgment's expiration on appeal. As such, not only did Plaintiff and Lewis misrepresent to this Court their true intentions herein – but also did exactly as UAIC warned they would. This should not be tolerated by this Court.

II.

ARGUMENT

A. MOTION FOR RELIEF FROM JANUARY 23, 2019 JUDGMENT PURSUANT TO N.R.C.P. 60(b).

NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake {NRCP 60(b)(1)} or, due to fraud {NRCP 60(b)(3)} or, because a judgment is void {NRCP

60(b)(4)}. UAIC believes all three of these provisions apply and, ask this Court to relieve Lewis of

this amended Judgment and/or vacate same amended judgment entered by the Clerk of the Court January 23, 2019. *Exhibit 'C.'*

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.***

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

In the case at bar it is unassailable that the subject of the expiration or, ongoing validity, of the 2008 judgment in the case of *Nalder v Lewis*, 07A549111, which is consolidated herein, is at issue both in this Court in both consolidated actions and, on appeal to the Nevada Supreme Court. See *Exhibit 'F.'* Indeed, Plaintiff's first cause of action in her Complaint (for a new judgment on the 2008 judgment) is premised upon their argument that the 2008 judgment is not expired. This Court entered a stay of Plaintiff's first cause of action – seeking this new judgment – on January 9th, 2019, until the appeal is resolved.

Despite this stay, Plaintiff subsequently served an offer of judgment on this stayed cause of action on January 11, 2019 and, remarkably, Lewis accepted it! *Exhibits 'A' & 'B', respectively.* Thereafter, Plaintiff had the court enter the acceptance of the offer of judgment as a judgment on January 23, 2019. *Exhibit 'C.'* Given that this Court stayed this claim January 9, 2019, this offer must be considered a nullity. Accordingly, it follows that any acceptance of this null offer cannot be the basis for a new judgment and, accordingly the judgment should be vacated as void. At the very least, as the order on the stay had not yet been filed, it would appear the Clerk of the Court made a mistake of law when she entered the judgment on a stayed case and, as such, this serves as an alternative basis to vacate the judgment.

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It is axiomatic that after a stay has been issued a party may not thereafter seek to alter a judgment. *Westside Charter Serv. v. Gray Line Tours,* 99 Nev. 456, 664 P.2d 351 (1983). In *Westside Charter Serv. v Gray Line Tours,* the Nevada Supreme Court examined a situation where a party had appealed a denial of an N.R.C.P. 60(b) motion to vacate a judgment and, though the District Court stayed the judgment during same appeal, one of the parties began actions which may have been affected by the outcome of the appeal. In affirming the stay and affirming the denial of further action, the court stated as follows:

> **"It is also clear that the district court's stay of judgment while the case was under appeal did not allow PSC to deal with the subject matter of the judgment until a final decision had been rendered. The purpose of a stay is to preserve the *status quo ante*. It does not allow further modifications on the subject matter of the judgment. East Standard Mining Co. v. Devine, 59 Nev. 134, 81 P.2d 1068 (1938). In this case, the stay of judgment pending appeal effectively prevented any further administrative proceedings on the subject matter of the appeal while the order denying the NRCP 60(b) motion was on appeal. Thus, PSC was without jurisdiction to act when it did in regard to Westside's second application."**

Id. at 460, 353.

As this case was stayed by this Court January 9, 2019, Plaintiff's subsequent offer of judgment is a nullity as it too did not preserve the *status quo ante*. Moreover, allowing it would defeat the purpose of both this Court's stay and, UAIC's intervention to contest same. As noted by the Court in *Westside,* the stay prevented Plaintiff from taking any action to prosecute her case pending the resolution of appeal on the sister-case and, further order of this Court. Accordingly, as the judgment is based on an offer of judgment that is a nullity or, which should not have occurred, the judgment is void. At the very least, the Clerk of the Court – not knowing the stay had been entered – made a mistake of law in entering the judgment.

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

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granted, a stay. Rather than adhering to this court's stay of the action, however, Plaintiff took matters into her own hands and attempted to enter this judgment afterwards. Moreover, Mr. Christensen (Plaintiff's additional Counsel) then filed notice of this judgment with the U.S. Court of Appeals for the Ninth Circuit to argue the issues on appeal before that court (and whether her original judgment is expired) are moot because of this new judgment – this despite repeated arguments by Lewis and Nalder to this court that this action had "no relation" to the matters on appeal to the Ninth Circuit and Nevada Supreme Court. Accordingly, Plaintiff and her Counsel, as officers of the Court, are seeking to usurp this Court's authority and prevent UAIC from exercising its contractual and legal duty to defend Mr. Lewis and contest this matter by entering a judgment on a stayed case for tactical advantage on appeal. Moreover, *they did this after specifically telling this court they had no such intent*. UAIC pleads this would appear to be 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.**

For this reason, UAIC argues, alternatively, that NRCP 60(b)(3) offers further mechanism for this Court to vacate the January 23, 2019 judgment.

B. INTERVENOR'S MOTION FOR REHEARING ON ITS MOTION TO DISMISS CLAIM ONE OF PLAINTIFF'S COMPLAINT

According to the Eighth Judicial Court Rule ("E.D.C.R.") 2.24, Rehearing of Motions, subpart (b) provides that a party may seek reconsideration of ruling of the Court via motion within ten (10) days "after service of written notice of the order or judgment." Rule 2.24 further provides that if the motion for reconsideration is granted, "the court may make a final disposition of the cause without re-argument or may reset it for re-argument or resubmission or may make such other orders as are deemed appropriate."[1]

Further, "Motions to reconsider are generally left to the discretion of the trial court. In order to succeed on a motion to reconsider, a party must set forth facts or law of a strongly

[1] E.D.C.R. 2.24(b).

convincing nature to induce the court to reverse its prior decision."[2]

The Order denying UAIC's Motion to Dismiss Claim One of Plaintiff's Complaint and, instead, staying said claim, was made on January 9, 2019. To date, the order has yet to be signed by the court or filed. As such, the instant Motion is filed on or before ten days "after service of written notice of the order or judgment" as provided by E.D.C.R. 2.24(b) – as same order has not even been filed. Thus, UAIC's Motion for Reconsideration is timely and proper.

In short, Plaintiff Cheyanne Nalder's first claim for relief - requesting that the Court enter another amended judgment, adding interest accrued through April 3, 2018, on her 2008 judgment in case no. 07A549111 – is not a cause of action. That is, seeking to amend judgment is not a cause of action. Cheyenne has demonstrated that she knows how to properly petition the Court to amend a judgment, as she has already done so once. This claim was inappropriately included in the Complaint, and should be dismissed. In Opposition, Plaintiff did not advanced single case, statute or other precedent to justify this alleged cause of action. Accordingly, there was no basis to deny the Motion to dismiss this count.

Indeed, at the hearing January 9, 2019 this Court stated it agreed with the Motion to dismiss and was prepared to grant same motion and dismiss this cause of action. However, Counsel for Plaintiff arose and beseeched this court to instead stay the first cause of action such that Plaintiff could "preserve this count." See *Copy of video of hearing 1/9/19, attached hereto on CD as Exhibit 'I', at 01:13:38 through -1:16:22.* On this basis the Court stayed the matter. Now, however, Plaintiff's true intentions have become clear –she has tried to use the lack of a dismissal of her cause of action to instead enter a judgment during the stay and - use that judgment for tactical advantage on appeal. Accordingly, UAIC implores this Court to reconsider its ruling.

Specifically, because the true intent of Plaintiff has become clear - that she did not merely

[2] *See Bray v. Palmer*, 2012 U.S. Dist. LEXIS 43375 at 6-7, 2012 WL 1067972 (D. Nev).

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want to "preserve this cause of action", but instead use the delay to enter a judgment - this Court should reconsider its ruling and, grant the dismissal of count one of Plaintiff's complaint to avoid this gamesmanship.

III.

CONCLUSION

UAIC asks this Court to vacate the January 23, 2019 judgment under N.R.C.P. 60(b). Additionally, or, in the alternative, UAIC asks this Court to reconsider its stay of count one of Plaintiff's Complaint and, instead, dismiss said count.

DATED this 6th day of February, 2019.

ATKIN WINNER & SHERROD

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

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CERTIFICATE OF SERVICE

I certify that on this 11th day of February, 2019, the foregoing **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** was served on the following by: **[ ] Electronic Service pursuant to NEFR 9.[XX] Electronic Filing and Service pursuant to NEFR 9 this document for the above-entitled case was electronically served through Odyssey CM/ECF for the above-entitled case to ALL the parties on the Service List maintained on Odyssey's website for this case on the date specified.**

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

Breen Arntz, Esq.
5545 S. Mountain Vista St. Suite F
Las Vegas, NV 89120
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 LTD
A NEVADA LAW FIRM

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EXHIBIT "A"

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendants.

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

CASE NO.: 07A549111

DEPT NO.: XX

Consolidated with Case No. A-18-772220-C

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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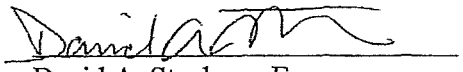
Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Cheyenne Nalder, through her attorneys, Stephens & Bywater, P.C., hereby offers to accept judgment against Gary Lewis, in the sum of five million six hundred ninety-six thousand eight hundred ten dollars and 41 cents, ($5,696,810.41), plus interest at the legal rate from September 4, 2018. This offer is inclusive of all court costs and attorney's fees incurred in this matter.

If this Offer to Accept Judgment is not accepted in writing within ten (10) days after it is made, it shall be deemed withdrawn, and cannot be given in evidence upon the trial.

If you accept this Offer to Accept Judgment and give written notice thereof within ten (10) days hereof, you may file this Offer to Accept Judgment with Proof of Service of Notice of Acceptance, and the Clerk of the above-entitled Court is thereupon authorized to enter judgment in accordance with the provisions of NRCP 68.

Dated this 11 day of January, 2019.

STEPHENS & BYWATER, P.C.



David A. Stephens, Esq.
Nevada Bar No. 00902
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Cheyenne Nalder

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EXHIBIT "B"

Electronically Filed
1/22/2019 1:10 PM
Steven D. Grierson
CLERK OF THE COURT

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 23rd 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

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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 22 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

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OFFR (CIV)
David A. Stephens, Esq.
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Facsimile: (702) 656-2776
Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

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.

CASE NO.: 07A549111

DEPT NO.: XX

Consolidated with Case No. A-18-772220-C

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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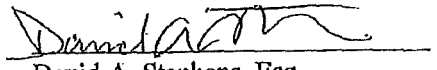
Pursuant to Rule 68 of the Nevada Rules of Civil Procedure, Cheyenne Nalder, through her attorneys, Stephens & Bywater, P.C., hereby offers to accept judgment against Gary Lewis, in the sum of five million six hundred ninety-six thousand eight hundred ten dollars and 41 cents, ($5,696,810.41), plus interest at the legal rate from September 4, 2018. This offer is inclusive of all court costs and attorney's fees incurred in this matter.

If this Offer to Accept Judgment is not accepted in writing within ten (10) days after it is made, it shall be deemed withdrawn, and cannot be given in evidence upon the trial.

If you accept this Offer to Accept Judgment and give written notice thereof within ten (10) days hereof, you may file this Offer to Accept Judgment with Proof of Service of Notice of Acceptance, and the Clerk of the above-entitled Court is thereupon authorized to enter judgment in accordance with the provisions of NRCP 68.

Dated this 11 day of January, 2019.

STEPHENS & BYWATER, P.C.



David A. Stephens, Esq.
Nevada Bar No. 00902
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Cheyenne Nalder

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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

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EXHIBIT "C"

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Steven D. Grierson
CLERK OF THE COURT

JUDG
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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 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:

Case Number: 07A549111

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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

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EXHIBIT "D"

CHRISTENSEN LAW

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

1000 S. VALLEY VIEW BLVD. LAS VEGAS, NV 89107 | www.injuryhelpnow.com | P: 702.870.1000 | F: 702.870.6152

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Exhibit 1

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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 A. BROWN
CLERK OF SUPREME COURT
BY
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.

18-908481

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.

---

[1]The Honorable Ron D. Parraguirre, Justice, is disqualified from participation in the decision of this matter.

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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.

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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

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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.

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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

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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

[2]The 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.

[3]The Nevada Justice Association was allowed to file an amicus brief in support of respondents.

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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]

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[4]Appellant 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

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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

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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

[5]Consequently, 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.

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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.

We concur:

Cherry, J.

Gibbons, J.

Pickering, J.

Hardesty, J.

Stiglich, J.

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Exhibit 2

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Steven D. Grierson
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendant.	CASE NO: ~~A549111~~ 07A549111 DEPT. NO: XXIX

AMENDED JUDGMENT

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

...

...

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IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the sum of $3,500,000.00, which consists of $65,555.37 in medical expenses, and ~~$3,434,4444.63~~ $3,434,444.63 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007, until paid in full.

DATED this 26 day of March, 2018.

District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

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

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 3

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1/22/2019 1:10 PM
Steven D. Grierson
CLERK OF THE COURT

JUDG
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.

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:

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 Clerk'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 By: C. Moreno, Deputy
DEFENDANT/RESPONDENT: Gary Lewis	CASE NUMBER: KS021378
JUDGMENT BASED ON SISTER-STATE JUDGMENT **(Code Civ. Proc., § 1710.25)**	

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

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: _____ C. 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

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
Mark J. Linderman (State Bar No. 144685) mlinderma Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.co 311 California Street San Francisco, California 94104	415-956-282. 415-956-2828	
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder		
NAME OF COURT: Superior Court of California, County of Los Angeles STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: CITY AND ZIP CODE: Pomona 91766 BRANCH NAME: Pomona Courthouse	RECEIVED JUL 18 2018 S.C. EAST DISTRICT	FILED Superior Court of California County of Los Angeles JUL 24 2018 Sherri R. Carter, Executive Officer/Clerk By _____ Deputy G. Moreno
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)

[SEAL]

(Proof of service on reverse)

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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 416.60 (minor) ☐ other:
      ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
      ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. ☐ California sheriff, marshal, or constable.
   b. ☑ Registered California process server.
   c. ☐ Employee or independent contractor of a registered California process server.
   d. ☐ Not a registered California process server.
   e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, county of registration and number:
      Jorge Rivera (Reg# 4690 Los Angeles County)
      52 Second Street, 3rd Floor
      San Francisco, California 94105
      (415) 546-6000

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

Date: 07/27/18

▶ _____
(SIGNATURE)

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

[EJ-110]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
Mark J. Linderman (State Bar No. 144685) mlinderman Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.com 311 California Street San Francisco, California 94104	415-956-28.. 415-956-2828	
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder		
NAME OF COURT: Superior Court of California, County of Los Angeles STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: CITY AND ZIP CODE: Pomona 91766 BRANCH NAME: Pomona Courthouse	RECEIVED JUL 17 2018 EAST DISTRICT	FILED Superior Court of California County of Los Angeles JUL 17 2018 Sherri R. Carter, Executive Officer/Clerk By _____ Deputy C. Moreno
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis		
APPLICATION FOR ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT ☐ AND ISSUANCE OF WRIT OF EXECUTION OR OTHER ENFORCEMENT ☐ AND ORDER FOR ISSUANCE OF WRIT OR OTHER ENFORCEMENT		CASE NUMBER KS021378

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)

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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: 7/17/18

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

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JUDG
DAVID F. SAMPSON, ESQ.,
Nevada Bar #6811
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000
Attorney for Plaintiff,
JAMES NALDER As Guardian Ad
Litem for minor, CHEYENNE NALDER

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO: A549111
DEPT. NO: VI

NOTICE OF ENTRY OF JUDGMENT

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

DATED this 5 day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: _____
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

RECEIVED
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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 ~~March~~ 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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JMT
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
DAVID F. SAMPSON, ESQ.,
Nevada Bar #6811
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
(702) 870-1000
Attorney for Plaintiff,

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER, as Guardian ad Litem for CHEYENNE NALDER, a minor. Plaintiffs, vs. GARY LEWIS, and DOES I through V, inclusive Defendants.	CASE NO: A549111 DEPT. NO: VI

JUDGMENT

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

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

DATED THIS 2 day of June, 2008.

DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

BY: _____
DAVID SAMPSON
Nevada Bar # 6811
1000 S. Valley View
Las Vegas, Nevada 89107
Attorney for Plaintiff

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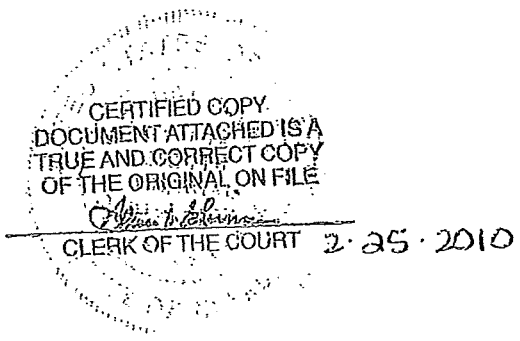

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EXHIBIT "E"

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.*

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

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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.

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

I

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

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

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

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

II

The question of law to be answered is:

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

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

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

III

A

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

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

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

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

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

B

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

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

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

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

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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

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.

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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.

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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.

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]

_____, C.J.	_____, J.
Douglas	Cherry
_____, J.	_____, J.
Gibbons	Pickering
_____, J.	_____, J.
Hardesty	Stiglich

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

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

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

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EXHIBIT "G"

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

CASE NO.: A-18-772220-C
DEPT. NO.: 19

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

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I, BRANDON CARROLL, declare:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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DATED this 12th day of December, 2018.

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

SUBSCRIBED AND SWORN to before me

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This 12th day of December 2018

NOTARY PUBLIC in and for said Miami Dade County, Florida

AMANDA M. BENITEZ
MY COMMISSION # GG 096529
EXPIRES: April 20, 2021
Bonded Thru Notary Public Underwriters

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EXHIBIT "A"
TO AFFIDAVIT

UNITED AUTOMOBILE INSURANCE COMPANY DETACH AND RETAIN THIS STATEMENT

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

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

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

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EXHIBIT "B"
TO AFFIDAVIT

STEPHENS & BYWATER, P.C.

ATTORNEYS AT LAW

David A. Stephens email: dstephens@sgblawfirm.com Gordon E. Bywater email: gbywater@sgblawfirm.com

July 17, 2018

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

RE: Cheyenne Nalder vs. Gary Lewis

Dear Tom:

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

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

I appreciate your consideration.

Sincerely,

STEPHENS & BYWATER

David A. Stephens, Esq.

DAS:mlg
enclosure

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants.

CASE NO.: A-18-772220-C

DEPT NO.: XXIX

THREE DAY NOTICE TO PLEAD

Date: n/a
Time: n/a

To: Gary Lewis, Defendant

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

Dated this 17 day of July 2018.

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

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CERTIFICATE OF MAILING

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

Gary Lewis
733 Minnesota Avenue
Glendora, CA 91740

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

M. L. Holdstein

An Employee of
Stephens Gourley & Bywater

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EXHIBIT "C"
TO AFFIDAVIT

ROGERS MASTRANGELO CARVALHO & MITCHELL

Attorneys At Law
Stephen H. Rogers
Rebecca L. Mastrangelo
Daniel E. Carvalho
Bert Mitchell*
Imran Anwar
Charles A. Michalek
Dawn L. Davis^
Harissa R. Temple
Will C. Mitchell
Kimberly C. Beal
*Of Counsel
^Also admitted in AZ

August 10, 2018

Via Email: thomasc@injuryhelpnow.com

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

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

Dear Tommy:

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

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

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

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

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

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

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

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Sincerely,

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

Dictated by Stephen Rogers, Esq.
Signed in his absence

Stephen H. Rogers, Esq.

SHR:TLHK/cm
Attachments
cc: Gary Lewis
M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 080918 3.wpd

MDSM
STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third Street
Las Vegas, Nevada 89101
Phone (702) 383-3400
Fax (702) 384-1460
Email: srogers@rmcmlaw.com
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,	CASE NO.: A-18-772220-C
Plaintiff,	DEPT. NO.: 29
vs.	
GARY LEWIS and DOES I through V, inclusive,	
Defendants.	

DEFENDANT'S MOTION TO DISMISS

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

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the foregoing **DEFENDANT'S MOTION TO DISMISS** will come on for hearing before the above-entitled Court on the ____ day of _____, 2018 at _____ a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

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POINTS AND AUTHORITIES

I.

INTRODUCTION

Cheyenne Nalder, ("Cheyenne") alleges in her Complaint that she was injured in an accident in 2007. Cheyenne was 11 years old at the time. She did not wait until she reached the age of majority to pursue her claim for damages against the alleged at-fault driver, Gary Lewis ("Lewis"). A guardian ad litem, James Nalder, was appointed to pursue her claim. He did so, filing a complaint on her behalf and obtaining a Judgment for $3.5 million. For unknown reasons, no payments other than Lewis' $15,000 auto insurance policy limit have been sought on the Judgment. It is unknown what efforts James Nalder made to enforce the Judgment, if any. What is known is that he did not renew the Judgment before it expired in 2014, while Cheyenne was still a minor.

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

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

Finally, Cheyenne seeks a declaration from the Court that the statute of limitations to enforce an Amended Judgment (and the second amended judgment she seeks in her Complaint) was tolled because she was a minor and Lewis resides in California. Declaratory relief is not appropriate in this matter because there is no justiciable controversy and the issues upon which Cheyenne requests declaratory relief are unripe. In addition, since the Amended Judgment should not have been issued. The original judgment expired in 2014 and was not subject to revival, there is nothing for Cheyenne to enforce.

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

II.

STATEMENT OF FACTS

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

Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June 3, 2008, a judgment was entered against him in the amount of $3.5 million.[1] *See* Judgment, attached hereto as Exhibit "B." James Nalder as guardian ad litem for Cheyenne was the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless it is timely renewed. As such, the Judgment expired on June 3, 2014.

On March 22, 2018, nearly 10 years after the Judgment was entered, and nearly four (4) years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-07-549111-C, which is also assigned to this Court. Her Motion did not advise the Court that the Judgment she sought to amend had expired. The Court granted Cheyenne's Ex Parte Motion and issued an Amended Judgment on March 28, 2018. See Exhibit "C." Contemporaneous with the filing of the instant motion, Lewis has filed a Motion for Relief from Judgment in Case No. A-07-549111-C, detailing the reasons this Court should void the Amended Judgment.

On April 3, 2018, one day before the statute of limitations ran for Cheyenne to file a personal injury claim (but ten years after she already obtained a judgment), she filed a Complaint alleging identical injuries from the same accident. *See* Exhibit "A," the 2007 Complaint, and the 2018 Complaint, attached as Exhibit "D." In the 2018 Complaint, she does not explain why she believes she is entitled to damages for the same injuries for which she received a judgment in 2008. *See* Exhibit "D." However, the 2018 Complaint does acknowledge that she already received a judgment against Lewis. *Id.* at p. 3, ll. 10 - 11.

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[1] Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(c).

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

III.

MOTION TO DISMISS STANDARD

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

In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint. *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev. Adv. Op. 76, 357 P.3d at 930 (2015) "'the court is not limited to the four corners of the complaint.'" Citing 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure: Civil § 1357, at 376 (3d ed.2004). The *Baxter* Court also held that a court "'may also consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document.'" *Id.*, citing *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir.2011) (internal quotation omitted). The *Baxter* Court continued "[w]hile presentation of matters outside the pleadings will convert the motion to dismiss to a motion for summary judgment, Fed.R.Civ.P. 12(d); NRCP 12(b), such conversion is not triggered by a court's 'consideration of matters incorporated by reference or integral to the claim,'" *Id.*, citing 5B Wright & Miller, supra, § 1357, at 376.

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

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IV.

ARGUMENT

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

The October 9, 2007 Complaint filed by Cheyenne's guardian ad litem, James Nalder, alleged personal injuries caused by the July 8, 2007 accident. *See* Complaint attached hereto as Exhibit "A." When Lewis did not respond to that Complaint, a Default was entered against him. On June 3, 2008, a Judgment in the amount of $3.5 million was entered against Lewis. *See* Judgment, attached hereto as Exhibit "B." Plaintiff acknowledged this in Paragraph 11 of her 2018 Complaint. Because the personal injury claims in the 2018 Complaint have already been litigated, it should be dismissed.

Cheyenne's claims should be dismissed pursuant to the doctrine of claim preclusion. In 2008, the Nevada Supreme Court set forth a three part test to be applied to determine when claim preclusion applies. *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054–55, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80 (2015) (the modification is not applicable in this case). According to the *Five Star* test, claim preclusion applies when: (1) the parties or their privies are the same; (2) the final judgment is valid; and (3) the new action is based on the same claims that were or could have been brought in the first action. Cheyenne's claims for personal injury in the instant (2018) suit clearly meet the *Five Star* factors for dismissal under the doctrine of claim preclusion.

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

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

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

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

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

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

Regarding Cheyenne's request that the Court enter another amended judgment, adding interest accrued through April 6, 2018, it is unclear why this was included in a Complaint. Seeking to amend a judgment is not a cause of action. Cheyenne has demonstrated that she knows how to properly petition the Court to amend a judgment, as she has already done so once. This claim is inappropriately included in the Complaint, and should be dismissed.

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

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

Declaratory relief is only available if: "(1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination." *Cty. of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998), citing *Knittle v. Progressive Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 724, 725 (1996). Here, declaratory relief is not available because the issue as to whether the Amended Judgment or any future amended judgment is enforceable, or whether the statute of limitations has expired, is not ripe.

The conditions under where a justiciable controversy exists were addressed by the Nevada Supreme Court in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a justiciable controversy does not exist, where damage "... is merely apprehended or feared..." *Id.* at 28-29, 189 P.2d at 366. As the Court in *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986) noted, "'the requirement of an actual controversy has been construed as requiring a concrete dispute admitting of an immediate and definite determination of the parties' rights.'" *Id.* at 526, 728 P.2d at 444. Cheyenne is concerned that any effort to enforce the Amended Judgment will be thwarted by a determination that the applicable statute of limitations bars such action is "apprehended or feared" but not existing presently, because she has not taken any action to enforce the Amended Judgment.

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

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

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

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

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V.

CONCLUSION

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

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CERTIFICATE OF SERVICE

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

David A. Stephens, Esq. Stephens, Gourley & Bywater 3636 North Rancho Drive Las Vegas, Nevada 89130 Telephone: (702) 656-2355 Facsimile: (702) 656-2776 Email: dstephens@sgblawfirm.com *Attorneys for Plaintiff*	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)

An Employee of
Rogers, Mastrangelo, Carvalho & Mitchell

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MREL
STEPHEN H. ROGERS, ESQ.
Nevada Bar No. 5755
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third Street
Las Vegas, Nevada 89101
Phone (702) 383-3400
Fax (702) 384-1460
Email: srogers@rmcmlaw.com
Attorneys for Defendant

-Item 6 page 3

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants.

CASE NO.: 07A549111

DEPT. NO.: 29

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

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

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

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POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court made a mistake of law based on incomplete/incorrect facts presented in an Ex Parte Motion to Amended Judgment, when entering the Order granting the Motion on March 28, 2018. The Judgment which Plaintiff, Cheyenne Nalder ("Cheyenne") moved to amend was entered on June 3, 2008. The judgment creditor, Cheyenne's guardian ad litem, James Nalder, did not renew the Judgment as required by Nevada law before it expired on June 3, 2104, six years after it was entered.

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

II.

STATEMENT OF FACTS

This case involves an accident which occurred on July 8, 2007. Cheyenne, who was then a minor, claimed that she suffered injuries from the accident. On October 9, 2007, Cheyenne, through her guardian ad litem, James Nalder, presumably a relative, filed a Complaint against Gary Lewis ("Lewis"). *See* Complaint attached hereto as Exhibit "A."

Lewis did not respond to the Complaint and a default was taken against him. *Id.* Eventually, a judgment was entered against him in the amount of $3.5 million. *See* Judgment, attached hereto

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as Exhibit "B." The Judgment was entered on June 3, 2008.[1] James Nalder as guardian ad litem for Cheyenne is the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires by limitation in six (6) years. As such, the Judgment expired on June 3, 2014.

On March 22, 2018, nearly 10 years after the judgment was entered, and nearly four (4) years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of Cheyenne Nalder, Individually" ("Ex Parte Motion"). Her Motion did not advise the Court that the Judgment she sought to amend had expired. Rather, it cited two statutes, NRS 11.280 and 11.300, without explaining why they were applicable to her request, and asked the Court to amend the Judgment to be in her name alone. In short, the Court was not put on notice that it was being asked to ostensibly revive an expired judgment.

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

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

III.

ARGUMENT

A. The Judgment Expired on June 3, 2014

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

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

[1] Judgments are entered when filed, not when a Notice of Entry is made. NRCP 58(C).

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

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

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

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

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

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

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

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

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

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

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

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

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

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requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe that the judgment has expired and he need take no further action to defend himself against execution.

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

Cheyenne's Ex Parte Motion next cites NRS 11.300, which provides "if, when the cause of action shall accrue against a person, the person is out of the State, the action may be commenced within the time herein limited after the person's return to the State; and if after the cause of action shall have accrued the person departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action." Cheyenne's argument that the deadline to renew the Judgment are tolled by NRS 11.300 fails because, again, renewing a judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada regarding judgments, held in *F/S Manufacturing v. Kensmore*, 798 N.W.2d 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate action to renew the judgment, the specific time period [provided to renew] cannot be tolled under [the equivalent to NRS 11.300] based on a judgment debtor's absence from the state." *Id.* at 858.

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

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

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

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

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

2. The Amended Judgment is void

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

IV.

CONCLUSION

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

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CERTIFICATE OF SERVICE

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

David A. Stephens, Esq. Stephens, Gourley & Bywater 3636 North Rancho Drive Las Vegas, Nevada 89130 Telephone: (702) 656-2355 Facsimile: (702) 656-2776 Email: dstephens@sgblawfirm.com *Attorneys for Plaintiff*	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)

An Employee of
Rogers, Mastrangelo, Carvalho & Mitchell

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EXHIBIT "D"
TO AFFIDAVIT

CHRISTENSEN LAW
www.injuryhelpnow.com

August 13, 2018

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

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

Re: Gary Lewis

Dear Stephen:

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

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

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

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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.

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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

1000 S. Valley View Blvd. Las Vegas, NV 89107 | office@injuryhelpnow.com | P: 702.870.1000 | F: 702.870.6152

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EXHIBIT "E"
TO AFFIDAVIT

ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

Attorneys At Law
Stephen H. Rogers
Rebecca L. Mastrangelo
Daniel E. Carvalho
Bert Mitchell*
Imran Anwar
Charles A. Michalek
Dawn L. Davis^
Marissa R. Temple
Will C. Mitchell
Kimberly C. Beal
*Of Counsel
^Also admitted in AZ

August 23, 2018

Via Email: thomasc@injuryhelpnow.com

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

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

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Dear Tommy:

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

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Sincerely,

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

Dictated by Stephen Rogers, Esq.
Signed in his absence

Stephen H. Rogers, Esq.

SHR/mms
cc: Gary Lewis
M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 082318.wpd

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

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EXHIBIT "F"
TO AFFIDAVIT

Carolyn Mangundayao

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

Tom:

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

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

Please contact me with any questions.

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

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ROGERS MASTRANGELO CARVALHO & MITCHELL
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

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

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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

From: Thomas Christensen [mailto:thomasc@injuryhelpnow.com]
Sent: Thursday, September 06, 2018 5:46 PM
To: Steve Rogers <srogers@rmcmlaw.com>; breenarntz@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 commmunication 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

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EXHIBIT "H"

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

STPJ (CIV)
David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendant.	Case No. A-18-772220-C Dept. No. XXIX

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STIPULATION TO ENTER JUDGMENT

Date: n/a
Time: n/a

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

1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.

2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the present.

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

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

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

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

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

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

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

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

Dated this 12 day of September, 2018

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

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

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JMT (CIV)
David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendant.	Case No. A-18-772220-C Dept. No. XXIX

JUDGMENT

Date: n/a
Time: n/a

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

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

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

DATED this _____ day of September, 2018.

_____
DISTRICT JUDGE

Submitted by:

STEPHENS & BYWATER, P.C.

_____
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

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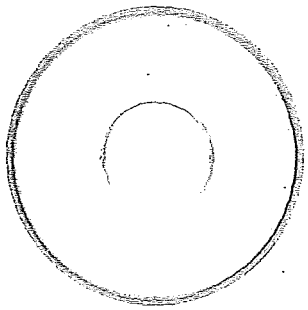
EXHIBIT "I"

ATKIN WINNER & SHERROD

Nalder

v

UAIC



Video Transcript of
January 09,2019
Hearing on Motions-Dept 20

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EXHIBIT "B"

Matthew Douglas

From: Matthew Douglas
Sent: Thursday, January 10, 2019 1:57 PM
To: David Stephens; breen@breen.com; thomasc@injuryhelpnow.com; dawnh@injuryhelpnow.com; DWaite@lrrc.com; rtindall@rlattorneys.com
Cc: Tom Winner; Victoria Hall
Subject: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19
Attachments: Proposed Order on Jan 9 2019 Hearing.pdf

All:

Please find attached our office's proposed Order on some of the Motions heard yesterday by the Court, specifically the following Motions: (1) Third Party Plaintiff Lewis' Motion for Relief from Orders and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3) Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C).

As I discussed briefly with some of you yesterday, the above-noted motions were motions my client was successful on. I have left Randall Tindall off this Order as he was allowed to withdraw – if anyone believes he should be on this order let me know so we can discuss. Otherwise, please review the proposed order and let me know if you have any comments/issues or, if you can consent to that order being submitted. While I know this case has been contentious, I have tried to accurately state the court's rulings – but let me know what you think.

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However, we still need orders on the following: (1) Randy Tindall's withdrawal Motion; (2) UAIC's Rule 60 Motion to vacate judgment; (3) UAIC's counter-Motion for evidentiary hearing and, potentially (4) the withdrawal of Tindall's Motions by Breen.

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I know Dan Waite is preparing the Order on Tindall's withdrawal and that Tom Christensen's office is preparing the Order denying UAIC's Counter-Motion for evidentiary hearing. I suggest that Dave Stephens prepare the Order on the Court mooting/denying UAIC's Rule 60 Motion and that Breen prepare an order, if necessary, regarding the withdrawals of Tindall's Motions.

Kindly let me know if anyone has any issue regarding the above and, please circulate copies of the other proposed orders mentioned. In the meantime, please let me know on the attached proposed order as soon as you can, but certainly by 1/23/19 as the order is due to court 1/24/19.

Thanks,

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

Matthew J. Douglas
Partner
1117 South Rancho Drive
Las Vegas, NV 89102
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ORDR

MATTHEW J. DOUGLAS
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ATKIN WINNER & SHERROD
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Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

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

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

ORDER ON CERTAIN MOTIONS HEARD JANUARY 9th, 2019

This matter having come on for hearing on January 9th, 2019, in Department XX, before

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the Honorable Eric Johnson, on (1) Third Party Plaintiff Lewis' Motion for Relief from Orders and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3) Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C), Plaintiff appearing through her counsel of record David Stephens, Esq. of Stephens & Bywater, and Defendant Lewis appearing through his counsel of record, Breen Arntz, Esq., Intervenor/Third Party Defendant UAIC appearing through its counsel of record, Thomas E. Winner, Esq. & Matthew J. Douglas, Esq. of the Law Firm of Atkin Winner and Sherrod, Third Party Plaintiff Lewis appearing through his counsel of record Thomas Christensen, Esq. of The Christensen Law Offices, and Third Party Defendants Randall Tindall and Resnick & Louis P.C. appearing through their Counsel of record Daniel Waite, Esq. of Lewis Roca Rothberger Christie, LLP, the Court having reviewed the pleadings and documents on file herein, and consideration given to hearing at oral argument, finds as follows:

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FINDINGS OF FACT

1. That the issues of law on second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504, are substantially similar and/or related to issues of law in these consolidated cases;
2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain issues of law which substantially similar and/or related to issues of law on a second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*

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Automobile Insurance Company, case no. 70504;

3. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to a July 2007 automobile accident have been previously litigated or, could have been litigated, in her original action, Case no. 07A549111, herein.

CONCLUSIONS OF LAW

1. Pursuant to N.R.C.P. 24 and N.R.S. 12.130 UAIC has a shown right and interest to intervene in these matters;
2. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to the July 2007 automobile accident are precluded as same have been previously litigated or, could have been previously litigated in Case No. 07A549111, herein, pursuant to the factor as set forth *Five Star Capital Corp. v. Ruby, 124* Nev. 1048, 1054-55, 194 P.3d 709,713 (2008).

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Third Party Plaintiff Lewis' Motion for Relief from Orders and Joinder in Motions for Relief from Orders on Order Shortening Time is DENIED, for the reasons stated in the record; and,

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor's UAIC's Counter-Motion to Stay Pending Appeal is GRANTED, for ther reasons stated in the record, and Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, are STAYED pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder;*

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and Gary Lewis, individually v. United Automobile Insurance Company, case no. 70504; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to and arising from the July 2007 automobile accident, is DISMISSED WITH PREJUDICE, but ruling on the Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company,* case no. 70504.

IT IS SO ORDERED.

DATED this ___ day of _____ 2019.

_____
DISTRICT JUDGE

Submitted by:

ATKIN WINNER & SHERROD, LTD.

_____
MATTHEW J. DOUGLAS, Esq.
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor UAIC

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Approved as to Form and Content:

STEPHENS & BYWATER

_____

David Stephens, Esq.
Nevada Bar No. 00902
3636 N. Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff, Cheyanne Nalder

E. BREEN ARNTZ, ESQ.

_____

E. Breen Arntz, Esq.
Nevada Bar No. 03853
5545 Mountain Vista, #E
Las Vegas, Nevada 89120
Attorney for Defendant Lewis

CHRISTENSEN LAW OFFICES

_____

Thomas Christensen, Esq.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, NV. 89107
Counsel for Third Party Plaintiff Lewis

LEWIS ROCA ROTHGERBER CHRISTIE, LLP

_____

Dan R. Waite, Esq.
Nevada Bar No. 04078
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV. 89169
Counsel for Third Party Defendants Tindall and Resnick & Louis

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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EXHIBIT "C"

From : DWaite@lrrc.com

To : mdouglas@awslawyers.com; dstephens@sgblawfirm.com; breen@breen.com; thomasc@injuryhelpnow.com; dawnh@injuryhelpnow.com; rtindall@rlattorneys.com

Sent : 1/10/2019 3:01PM

Subject : RE: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

Matthew,

Yes, I am preparing (and hope to circulate later this afternoon or tomorrow morning) a draft of the order granting Randall Tindall and Resnick & Louis s motion to withdraw. Otherwise, my only comments on your proposed order are to please change any references to Daniel Waite to Dan R. Waite and any references to the name of my firm as including Rothberger to Rothgerber. Thanks,

Dan

Dan R. Waite
Partner
702.474.2638 office
702.216.6177 fax
dwaite@lrrc.com

Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
lrrc.com

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From: Matthew Douglas [mailto:mdouglas@awslawyers.com]
Sent: Thursday, January 10, 2019 1:57 PM
To: David Stephens; breen@breen.com; thomasc@injuryhelpnow.com; dawnh@injuryhelpnow.com; Waite, Dan R.; rtindall@rlattorneys.com
Cc: Tom Winner; Victoria Hall
Subject: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

[EXTERNAL]

All:

Please find attached our office s proposed Order on some of the Motions heard yesterday by the Court, specifically the following Motions: (1) Third Party Plaintiff Lewis Motion for Relief from Orders and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United Automobile Insurance Company s (UAIC) Counter-Motion to Stay Pending Appeal, (3) Intervenor UAIC s Motion to Dismiss Plaintiff s Complaint (Case No. A-18-772220-C).

As I discussed briefly with some of you yesterday, the above-noted motions were motions my client was successful on. I have left Randall Tindall off this Order as he was allowed to withdraw if anyone believes he should be on this order let me know so we can discuss. Otherwise, please review the proposed order and let me

know if you have any comments/issues or, if you can consent to that order being submitted. While I know this case has been contentious, I have tried to accurately state the court s rulings but let me know what you think.

However, we still need orders on the following: (1) Randy Tindall s withdrawal Motion; (2) UAIC s Rule 60 Motion to vacate judgment; (3) UAIC s counter-Motion for evidentiary hearing and, potentially (4) the withdrawal of Tindall s Motions by Breen.

I know Dan Waite is preparing the Order on Tindall s withdrawal and that Tom Christensen s office is preparing the Order denying UAIC s Counter-Motion for evidentiary hearing. I suggest that Dave Stephens prepare the Order on the Court mooting/denying UAIC s Rule 60 Motion and that Breen prepare an order, if necessary, regarding the withdrawals of Tindall s Motions.

Kindly let me know if anyone has any issue regarding the above and, please circulate copies of the other proposed orders mentioned. In the meantime, please let me know on the attached proposed order as soon as you can, but certainly by 1/23/19 as the order is due to court 1/24/19.

Thanks,

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EXHIBIT "D"

From : mdouglas@awslawyers.com
To : thomasc@injuryhelpnow.com
Sent : 1/10/2019 3:30PM
Subject : RE: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

Tom

Thanks for your response and confirmation of your phone call with Tom Winner in regard to the Federal Court action.

I will await your proposed changes on the order.

Thanks,

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From: Thomas Christensen <thomasc@injuryhelpnow.com>
Sent: Thursday, January 10, 2019 3:44 PM
To: Matthew Douglas <mdouglas@awslawyers.com>
Cc: David Stephens <dstephens@sgblawfirm.com>; breen@breen.com; dawnh@injuryhelpnow.com; DWaite@lrrc.com; rtindall@rlattorneys.com; Tom Winner <twinner@awslawyers.com>; Victoria Hall <vhall@awslawyers.com>
Subject: Re: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

Matthew,

Thank you for preparing this. I would like to make some changes to the findings of fact and conclusions of law. Let me work on that and get it to you. For example, I would like to have the actual reasons stated in the order not the general statement "for the reasons stated in the record". In addition, with regard to the denial of our motions to set aside the intervention orders. I would like them separated by case since the basis are different. I have ordered a copy of the transcript in order to make them accurate but I wanted to give you a heads up. As soon as I get the transcript I will be able to give you more specific information. Thank you. Please thank Tom for his courtesy confirming no actions will be taken against Breen, Gary or me until you meet with UAIC next week in the federal case served on me yesterday at court. Tom stated that after your meeting you will at least give us each at least a reasonable time to file our responsive pleadings. Thank you again.

Tommy

On Thu, Jan 10, 2019 at 1:57 PM Matthew Douglas <mdouglas@awslawyers.com> wrote:

All:

Please find attached our office's proposed Order on some of the Motions heard yesterday by the Court, specifically the following Motions: (1) Third Party Plaintiff Lewis' Motion for Relief from Orders and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3) Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C).

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Thanks,

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EXHIBIT "E"