

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 04:15 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**UNITED AUTOMOBILE INSURANCE COMPANY'S APPENDIX
VOLUME 9
PAGES 2001-2250**

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

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From : mdouglas@awslawyers.com

To : thomasc@injuryhelpnow.com

Sent : 1/17/2019 9:50AM

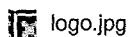
Subject : RE: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

Tommy-

Thanks for the clarification. I think, at this point, to consider your proposed changes and, discuss with my client, I would like to also review the CD for the hearing.

My office can send someone by from a copy shop to pick it up, make a copy and, return the original to you. Is this acceptable? If so, please confirm what office location the CD is at and my assistant will send someone by today.

Thanks, and, let me know,



Matthew J. Douglas

Partner

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From: Thomas Christensen <thomasc@injuryhelpnow.com>

Sent: Wednesday, January 16, 2019 11:47 AM

To: Matthew Douglas <mdouglas@awslawyers.com>

Cc: Waite, Dan R. <DWaite@lrrc.com>; David Stephens <dstephens@sblawfirm.com>; breen@breen.com; dawnh@injuryhelpnow.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,

Yes findings of fact. At this point I just have the CD no transcript. I would be happy to allow copies (I don't really know how to)

On Wed, Jan 16, 2019 at 10:33 AM Matthew Douglas <mdouglas@awslawyers.com> wrote:

Tommy-

Thank you for your suggested changes/revisions. I have 2 questions so I can consider same:

1. You mentioned last week you were awaiting the transcript of the proceedings to make your changes ☐

do you have the transcript? Can you share it with everyone so we can review to consider your revisions?

2. Paragraphs 1-9 that you proposes, below, are they supposed to be in the findings of fact section?

Let me know on both issues and, thanks,



Matthew J. Douglas

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From: Thomas Christensen <thomasc@injuryhelpnow.com>

Sent: Tuesday, January 15, 2019 5:35 PM

To: Matthew Douglas <mdouglas@awslawyers.com>

Cc: Waite, Dan R. <DWaite@lrrc.com>; David Stephens <dstephens@sgblawfirm.com>; breen@breen.com; dawnh@injuryhelpnow.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

Mat,

Below are my suggestions. I have included rulings on the remainder of the motions decided. My thought is we might as well only have one order (other than the order to withdraw submitted by Dan Waite). Oh I think the dismissal should just be a dismissal and not with prejudice. Let me know what you think. Thank you.

Tommy

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, □ 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? □ Are substantially similar to the issue in this case which is whether Nalder can bring an action on a judgment against Gary Lewis □ even though the judgment is ten years old because Gay Lewis has been absent from the State and the statute

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of limitations of 6 years has been tolled pursuant to NRS 11.300 as in Mandelbaum.

2. Pursuant to NRCP 24 and NRS 12.130 UAIC has shown a right and interest to intervene in these matters. The Court concludes as to case 07A549111 that although the case law and NRS 12.130 clearly do not allow intervention after judgment that since UAIC alleges the judgment is expired the statute and case law do not apply. The Court concludes as to case A-18-772220-C that since the Court did not sign the judgment requested by the stipulation that NRS 12.130 and the Dangberg case do not apply.

3. That Nalder and Lewis entered into and filed a settlement agreement settling all claims between them in case A-18-772220-C on September 13, 2018.

4. That Randall Tindall made an appearance on behalf of Lewis on September 26, 2018.

5. That the Court allowed intervention by way of the order entered October 19, 2018.

6. That on October 24, 2018 Judge Jones disclosed a relationship with Mr. Tindall which Lewis refused to waive and resulted in Judge Jones recusing himself.

7. Judge Jones did not void the order allowing intervention.

8. The certificate of service regarding both motions to intervene are defective on their face. In case 07A549111 no parties are listed as served. In case A-18-772220-C Mr. Lewis is not listed as being served.

9. This case is unusual but the Court does not find any unethical behavior by either Mr. Christensen or Mr. Arntz.

Defendant's Motion to Strike both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss is hereby GRANTED.

Defendant's Motion to Strike Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is GRANTED.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken.

Defendant's Motion to Dismiss is stricken.

UAIC's Motion for the Court to Deny Stipulation and Enter Judgment Between Plaintiff Lewis and/or in the Alternative to Stay Same Pending Hearing on Motion to Dismiss is GRANTED

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 in case 07A549111 is DENIED.

UAIC's motion for evidentiary hearing regarding unethical behavior is denied.

On Thu, Jan 10, 2019 at 3:34 PM Matthew Douglas <mdouglas@awslawyers.com> wrote:

Dan- Not a problem. Once I hear from the other parties I will be sure to make your changes.

 logo.jpg

Matthew J. Douglas

Partner

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From: Waite, Dan R. <DWaite@lrrc.com>

Sent: Thursday, January 10, 2019 3:02 PM

To: Matthew Douglas <mdouglas@awslawyers.com>; David Stephens <dstephens@sgblawfirm.com>; breen@breen.com; thomasc@injuryhelpnow.com; dawnh@injuryhelpnow.com; rtindall@rlattorneys.com

Cc: 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,

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

002004

Dan R. Waite
 Partner
 702.474.2638 office
 702.216.6177 fax
dwaite@lrrc.com



Lewis Roca Rothgerber Christie LLP
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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's 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's) 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.

002005

Thanks,

 logo.jpg

Matthew J. Douglas

Partner

1117 South Rancho Drive

Las Vegas, NV 89102

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mdouglas@awslawyers.com

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002006

EXHIBIT “F”

From : mdouglas@awslawyers.com

To : thomasc@injuryhelpnow.com

Sent : 1/24/2019 11:24AM

Subject : RE: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

All:


Please allow this email to serve as follow up regarding the proposed order on Motions for the 1/9/19 hearing. At that this time, I have had a chance to review the entire CD of the hearing as well as the comments made by everyone (please note I only received changes/additions from Tommy Christensen and Dan Waite and, thus, assume no one else had any substantive issues).

First, I have made Dan Waite's corrections to spellings of his name and his firm name.

Next, in terms of Mr. Christensen's changes, unfortunately, I cannot agree to many of the changes. In short, I found many of the proposed changes either not consistent with the hearing (which I listened too in detail) or, had inserted items which I believe were done solely to gain some tactical advantage and not based on the hearing or ruling. As such, I cannot accept many of these changes. I have made specific detailed notations to each such issue I cannot include below, *in red and italicized and underlined for ease of review*. Items included I have noted below in green and boldface.

That said, I did take Mr. Christensen's suggestion to include all matters in one order. Accordingly, please review the new proposed order, covering all motions (except Tindall's Withdrawal) and, let me know if it is acceptable for each of your clients. If so, I will send a runner to collect signatures. If not, please also let me know and I suggest we may need to submit separate orders. Either way, the orders are technically due today 1/24/19 as noted previously. So, please let me know by 2 p.m. today or, we will submit this order as is.

Thanks,

 logo.jpg

Matthew J. Douglas

Partner

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From: Thomas Christensen <thomasc@injuryhelpnow.com>

Sent: Tuesday, January 15, 2019 5:35 PM

To: Matthew Douglas <mdouglas@awslawyers.com>

Cc: Waite, Dan R. <DWaite@lrrc.com>; David Stephens <dstephens@sdblawnfirm.com>; breen@breen.com; dawnh@injuryhelpnow.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

Mat,

Below are my suggestions. I have included rulings on the remainder of the motions decided. My thought is we might as well only have one order (other than the order to withdraw submitted by Dan Waite). Oh I think the dismissal should just be a dismissal and not with prejudice. Let me know what you think. Thank you.

Tommy

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, ☐ 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?☐ Are substantially similar to the issue in this case which is whether Nalder can bring an action on a judgment against Gary Lewis☐ even though the judgment is ten years old because Gary Lewis has been absent from the State and the statute of limitations of 6 years has been tolled pursuant to NRS 11.300 as in Mandelbaum. The problem I have with this addition is that this finding of fact pre-supposes the statute of limitations has been tolled per Lewis☐ absence when the court never made that finding and, indeed, specifically stated several times that issue was on appeal so I cannot agree to the addition of that language as that issue remains undecided before the NV Sup. Ct. or, at least, in this case.

2. Pursuant to NRCP 24 and NRS 12.130 UAIC has shown a right and interest to intervene in these matters. The Court concludes as to case 07A549111 that although the case law and NRS 12.130 clearly do not allow intervention after judgment that since UAIC alleges the judgment is expired the statute and case law do not apply. The Court concludes as to case A-18-772220-C that since the Court did not sign the judgment requested by the stipulation that NRS 12.130 and the Dangberg case do not apply. Here, the language you seek to add language ☐ that the statute and case law does not apply☐ which is not what the court found. The Court specifically held our facts are distinguishable from the case law cited. Moreover, your insertion of the sentence that ☐ because the court did not sign the stipulation☐ ☐ is seeking to add language the court never stated.

3. That Nalder and Lewis entered into and filed a settlement agreement settling all claims between them in case A-18-772220-C on September 13, 2018. This statement is not supported by the record. A stipulation was filed after UAIC's motion to intervene had been filed

4. That Randall Tindall made an appearance on behalf of Lewis on September 26, 2018. This finding was never specifically made by the court

5. That the Court allowed intervention by way of the order entered October 19, 2018. This finding was never specifically made by the court and actually the court allowed intervention by minute order much earlier.

6. That on October 24, 2018 Judge Jones disclosed a relationship with Mr. Tindall which Lewis refused to waive and resulted in Judge Jones recusing himself. This finding was never specifically made by the court

7. Judge Jones did not void the order allowing intervention. This finding was never specifically made by the court

8. The certificate of service regarding both motions to intervene are defective on their face. In case 07A549111 no parties are listed as served. In case A-18-772220-C Mr. Lewis is not listed as being served. The court never found service defective

9. This case is unusual but the Court does not find any unethical behavior by either Mr. Christensen or Mr. Arntz. **I will add this paragraph**

Defendant's Motion to Strike both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss is hereby GRANTED. This was NOT the ruling. The court specifically allowed Mr. Arntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Arntz's motions to strike them.

Defendant's Motion to Strike Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is GRANTED. This was NOT the ruling. The court specifically allowed Mr. Arntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Arntz's motions to strike them.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken. This was NOT the ruling. The court specifically allowed Mr. Arntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Arntz's motions to strike them.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken. This was NOT the ruling. The court specifically allowed Mr. Arntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Arntz's motions to strike them.

Defendant's Motion to Dismiss is stricken. This was NOT the ruling. The court specifically allowed Mr. Arntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Arntz's motions to strike them.


UAIC's Motion for the Court to Deny Stipulation and Enter Judgment Between Plaintiff Lewis and/or in the Alternative to Stay Same Pending Hearing on Motion to Dismiss is GRANTED This was NOT the ruling. The court specifically stated at the end of the hearing, when I asked for clarification, that this Motion was set for 1/23/19

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 in case 07A549111 is DENIED. I will add that it was ☐ denied as MOOT ☐ for the reasons stated in the record.

UAIC's motion for evidentiary hearing regarding unethical behavior is denied. . I will add this paragraph, but noting it is ☐ without prejudice ☐

On Thu, Jan 10, 2019 at 3:34 PM Matthew Douglas <mdouglas@awslawyers.com> wrote:

Dan- Not a problem. Once I hear from the other parties I will be sure to make your changes.

 logo.jpg

Matthew J. Douglas

Partner

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From: Waite, Dan R. <DWaite@lrrc.com>

Sent: Thursday, January 10, 2019 3:02 PM

To: Matthew Douglas <mdouglas@awslawyers.com>; David Stephens <dstephens@sgblawfirm.com>;

breen@breen.com; thomasc@injuryhelpnow.com; dawnh@injuryhelpnow.com; rtindall@rlattorneys.com

Cc: 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,

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

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's 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,

 logo.jpg

Matthew J. Douglas

Partner

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002013

EXHIBIT “G”

TREVOR L. ATKIN
 THOMAS E. WINNER
 SUSAN M. SHERROD^{†OC}
 CHRISTINE M. BOOZE
 MATTHEW J. DOUGLAS[‡]
 JUSTIN J. ZARCONE[•]
 BRUCE W. KELLEY[•]
 OF COUNSEL (OC):
 KIMBERLY L. JOHNSON[•]
 JULIE M. SUEOKA

[†]ADMITTED TO PRACTICE IN:
 MICHIGAN • TEXAS • CALIFORNIA
[‡]NEBRASKA • ILLINOIS • IOWA

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SCOTT R. PETTIT[†]
 ~ANDREW D. SMITH
 STEVEN P. CANFIELD
 CHRISTIAN A. MILES
 BRANDON L. GATEWOOD
 KELLY M. SMITH
 ~ARIEL C. JOHNSON
 ^BUD R. HAFFER
 BLAKE A. DOERR
 RUSSELL D. CHRISTIAN
 STEVEN C. DEVNEY
 LARA L. MILLER

January 24, 2019

Via Facsimile to Courtroom 12A (Dept. 20):

The Honorable Eric Johnson
 Eighth Judicial District Court
 Regional Justice Center
 200 Lewis Avenue
 Las Vegas, NV 89155

Re: **Nalder v Lewis, Lewis v UAIC; Case No. A07A549111 consolidated with A-18-772220-C**

Your Honor:

Unfortunately, it appears the parties cannot agree to the content in the Order on all Motions heard by the Court January 9, 2019¹.

As such, please find attached UAIC's proposed order for the Order on all motions heard on January 9, 2019, pursuant to your ruling at that hearing.

Thank you for your attention. We will await the Court's determination.

Sincerely,

ATKIN WINNER & SHERROD


 Matthew J. Douglas

MJD

cc:

Counsel for all parties of record, *Via Email Only*,

Thomas Christensen at thomasc@injuryhelpnow.com & Dawn Hooker at dawnh@injuryhelpnow.com; Breen Arntz at breen@breen.com & breenarntz@mac.com; Randall Tindall at rtindall@rlattorneys.com; David Stephens at dstephens@sgblaw.com; Dan Waite (dwaite@lrrc.com)

¹ Please note this proposed order includes all motions heard that date with the exception of Randall Tindall Esq.'s and Resnick & Louis P.C.'s Motion To Withdraw as Counsel in the above-captioned actions, which has been submitted under a separate cover.

ORDR

MATTHEW J. DOUGLAS
 Nevada Bar No. 11371
 ATKIN WINNER & SHERROD
 1117 South Rancho Drive
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 Phone (702) 243-7000
 Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

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

1 the Honorable Eric Johnson, on (1) Third Party Plaintiff Lewis' Motion for Relief from Orders
2 and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United
3 Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3)
4 Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C), (4)
5 Defendant Lewis' (through Breen Arntz, Esq.) withdrawals of Defendant Lewis Motions to
6 Dismiss filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'
7 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case
8 no. 07A549111; (5) Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in
9 case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief
10 from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111;
11 (6) UAIC's Oral Motion to Continue Defendant Lewis Motions to Dismiss (through Randall
12 Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'
13 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case
14 no. 07A549111 pending new counsel; (7) UAIC's Motion for an Evidentiary hearing for a fraud
15 upon the court; Plaintiff appearing through her counsel of record David Stephens, Esq. of
16 Stephens & Bywater, and Defendant Lewis appearing through his counsel of record, Breen
17 Arntz, Esq., Intervenor/Third Party Defendant UAIC appearing through its counsel of record,
18 Thomas E. Winner, Esq. & Matthew J. Douglas, Esq. of the Law Firm of Atkin Winner and
19 Sherrod, Third Party Plaintiff Lewis appearing through his counsel of record Thomas
20 Christensen, Esq. of The Christensen Law Offices, and Third Party Defendants Randall Tindall
21 and Resnick & Louis P.C. appearing through their Counsel of record Dan R. Waite, Esq. of
22 Lewis Roca Rothgerber Christie, LLP, the Court having reviewed the pleadings and documents
23 on file herein, and consideration given to hearing at oral argument, finds as follows:
24
25
26
27
28

///

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

///

1 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
2 UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN
3 PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her
4 Complaint in case no. A-18-772220-C, herein, (claim 3) seeking general and special damages
5 related to and arising from the July 2007 automobile accident, is DISMISSED, but ruling on the
6 Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case
7 no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case
8 no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further
9 ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
10 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
11 no. 70504;
12

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

19 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that
20 Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C as well as case no.
21 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60
22 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) are
23 all hereby STRICKEN per WITHDRAWAL by Counsel for Lewis, Breen Arntz, Esq.;

24 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that UAIC's
25 Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C
26 as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment
27
28

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

4 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** UAIC's
5 Motion for an Evidentiary hearing for a fraud upon the court is hereby DENIED WITHOUR
6 PREJUDICE for the reasons stated in the record.
7

8 **IT IS SO ORDERED.**

9 **DATED** this ____ day of _____ 2019.

10
11 _____
12 DISTRICT JUDGE

13 Submitted by:

14 ATKIN WINNER & SHERROD, LTD.


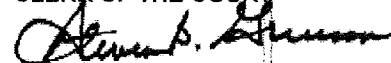
15 
16 _____
17 MATTHEW J. DOUGLAS, Esq.
18 Nevada Bar No. 11371
19 1117 South Rancho Drive
20 Las Vegas, Nevada 89102
21 *Attorneys for Intervenor UAIC*
22
23
24
25
26
27
28

EXHIBIT "H"

Electronically Filed
12/12/2018 4:47 PM
Steven D. Grierson
CLERK OF THE COURT



MOT

CHRISTENSEN LAW OFFICES
THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar 2326
1000 S. Valley View Blvd.
Las Vegas, NV 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS
and DOES I through V, inclusive
Defendants,

CASE NO: 07A549111
DEPT. NO: XX

Consolidated with 18-A-772220

UNITED AUTOMOBILE
INSURANCE COMPANY,
Intervenor.

GARY LEWIS,
Third Party Plaintiff,
vs.
UNITED AUTOMOBILE
INSURANCE COMPANY, RANDALL
TINDALL, ESQ., and RESNICK &
LOUIS, P.C. and DOES I through V,
Third Party Defendants.

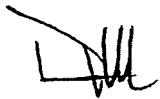
MOTION FOR RELIEF FROM ORDERS AND JOINDER IN MOTIONS FOR RELIEF
FROM ORDERS ON ORDER SHORTENING TIME

Comes now Third Party Plaintiff Gary Lewis, by and through his attorney, Thomas F. Christensen, Esq., and moves this Court for relief from the orders allowing United Automobile Insurance Company (UAIC) to intervene in both cases. This Motion is based on NRCP 60(b). Lewis also joins in motions and pleadings seeking to vacate the intervention orders filed by the various parties. UAIC filed motions to intervene in both case number 07A549111 and case

number 18-A-772220-C. Neither motion was properly served, **on the face of each pleading.**
Both motions sought intervention after trial, which is improper. This resulted in a void order
being issued by the court. This Court must vacate the Orders allowing intervention.

This Motion is made and based on the pleadings and papers herein, joinder in other
motions for relief from these orders and upon oral argument requested at the time of hearing
of this Motion.

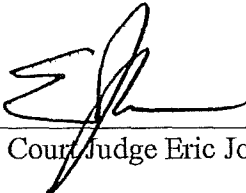
Dated this 7th day of Dec, 2018.

 #7019
CHRISTENSEN LAW OFFICES
THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar 2326
1000 S. Valley View Blvd.
Las Vegas, NV 89107
T: 702-870-1000
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ORDER SHORTENING TIME


Good cause appearing therefor, IT IS HEREBY ORDERED that the time for hearing the
Motion on Order Shortening Time is hereby shortened to the **9th day of January, 2019** at the
hour of 8:30a.m. or as soon as counsel may be heard in the above-entitled Department of the
District Court, Clark County, Nevada.

Dated this 10 day of December, 2018.


District Court Judge Eric Johnson *ss*

ERIC JOHNSON

Submitted by:

 #7019 *fw*
CHRISTENSEN LAW OFFICES
THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar 2326
1000 S. Valley View Blvd.
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AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR RELIEF FROM
ORDER FOR ORDER SHORTENING TIME

State of Nevada)
)ss:
County of Clark)

Dawn Allysa Hooker, having been first duly sworn, deposes and states:

1. I am a duly licensed and practicing attorney at Christensen Law Offices, LLC in the State of Nevada and I have personal knowledge of the facts stated herein. The following is true and accurate to the best of my knowledge and information.

2. Christensen Law Offices represents Gary Lewis in his action as Third Party Plaintiff against UAIC.

3. Nalder, Lewis and UAIC have been engaged in litigation since 2007. Nalder sued Lewis, who was insured by UAIC. UAIC did not defend Lewis and Nalder was therefore able to obtain a large judgment against Lewis in June, 2008. Nalder and Lewis thereafter sued UAIC for coverage and claims handling failures.

4. Ten years after the judgment, UAIC was erroneously granted Intervention and immediately instituted a series of Motions and arguments that have caused this litigation to become unnecessarily complex and contentious.

5. It is unclear whether the Court ruled on the counter motion filed by Lewis for relief from the intervention order because no hearing was provided. By stipulation, this counter motion is currently set for January 9th and therefore signing this order to shorten time will clarify for all parties that this motion is to be considered on that date.

6. That the instant motion seeks to have the Court consider for the first time, or in the alternative, reconsider the granting of the Intervention prior to hearing the Motions filed by

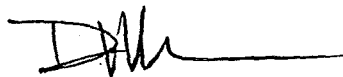
1 UAIC, which have been set for oral argument, pursuant to stipulation, to be heard on January
2 9, 2019.

3 7. In the interest of judicial economy, it makes sense that the Judge rule on the instant
4 Motion first. As can be seen from the Points & Authorities below, any actions taken by the
5 Court will be subject to being stricken by the Supreme Court by way of writ relief because
6 UAIC is not a proper party to either case. If it is not, Gary Lewis will be substantially
7 harmed because it is improper for UAIC to be in the case at this stage.
8

9 8. That Third Party Plaintiff requests that this Motion be heard, on an order shortening
10 time, so that this motion may be heard in conjunction with the other motions filed by UAIC
11 following its intervention.
12

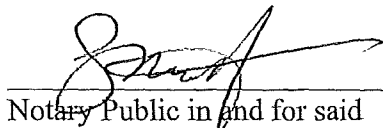
13 9. This Motion is brought for a good cause and not for purposes of unnecessary delay.

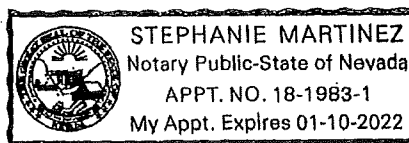
14 Further Affiant Sayeth Naught.

15 

16 Dawn Allysa Hooker, Esq.

17 Subscribed and Sworn to before me
18 This 7th day of December, 2018.

19 
20 Notary Public in and for said
21 County and State



23 **GOOD CAUSE EXISTS FOR AN ORDER SHORTENING TIME**

24 The grounds necessitating the present Motion to Shorten time relate to the timing of the
25 hearings on the Motions which have been set for January 9, 2018.

26 Pursuant to local rule 2.26, an ex parte motion to shorten time may not be granted except
27 upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the
28

1 circumstances claimed to constitute good cause and justify shortening of time. If a motion to
2 shorten time is granted, it must be served upon all parties promptly.

3 In the instant case, if the Order to shorten time is signed promptly, the adverse parties
4 will still have more than a month prior to the hearing and will not be prejudiced at all by the
5 shortening of the time. In addition, the issues presented have already been briefed numerous
6 times by the parties, but the Court has never had oral argument on these issues and decided
7 these issues. Rather than present these issues by writ to the Supreme Court, this Court
8 should hear the parties and make a decision based on the numerous briefs filed. For all of the
9 above reasons, an Order Shortening Time is necessary and this Motion should be granted.
10

11 **Memorandum of Points and Authorities for Motion for Relief from Order**

12 **I. Facts and Procedural History**

13 Nalder obtained an amendment of the judgment to her name as she reached the age of
14 majority and wanted to file an action on the judgment. Nalder moved the court to amend the
15 judgment to her name alone in case number 07A549111. Nalder then filed an action on the
16 judgment in case number 18-A-772220-C. The parties in case number 18-A-772220-C
17 entered into and filed a stipulation resolving all issues and requested that judgment be
18 issued. (See Exhibit 1). This settlement acts the same as a judgment for purposes of a
19 motion to intervene. UAIC sought intervention in both cases, but failed to properly serve the
20 parties with its motions. (See Exhibit 2--Affidavit of David Stephens, Esq. dated October 8,
21 2018.) UAIC's motion to intervene in case number 07A549111, contains **no** proof of service
22 on its face. (See Exhibit 3.) It is a blank certificate of service. This motion should never
23 even have been accepted for filing because there is no one checked as being served. It is a
24 certificate of non-service of the document.
25
26
27
28

1 Likewise, UAIC's motion to intervene in case number 18-A-772220-C, alleges proof of
2 service on August 16, 2018, to only one of the parties to the litigation. (See Exhibit 4.) This
3 motion also should never even have been accepted for filing because service on only one
4 party is defective. In addition, the only service alleged, upon Nalder through David
5 Stephens, Esq., was **impossible** as Mr. Stephens was not a "service contact" on the efilg
6 system for the case at that time. (See Exhibit 5, Odyssey File & Serve Service Contact
7 History, showing David Stephens was added to service on September 4, 2018.) Mr. Stephens
8 was not listed in Odyssey as a service contact prior to that time. Per his Affidavit, he did not
9 receive the filing or know about it until weeks later. The service affidavit was false. The lack
10 of service was brought to the attention of the UAIC attorneys, who refused to correct the
11 error **or grant additional time** to Nalder to interpose an opposition, when her attorney
12 asked. (See Exhibit 2.) Taking advantage of a lawyer in this way, by counsel for UAIC, is a
13 violation of NRPC 3.5A and results in any action by the Court being void.

16 Nalder also brought lack of service to the Court's attention when Stephens filed "late"
17 oppositions and provided courtesy copies via personal hand-delivery to the Court. (See
18 Exhibit 2, paragraph 28.) The Court, however, ignored the defective service. In fact, the
19 Court ignored the entire opposition that was filed. (See Exhibit 6- Minute Orders re:
20 Intervention.) The Court did not have a hearing on the motion.

22 The Court also ignored the law cited by Stephens, namely NRS 12.130: (a) **Before the**
23 **trial**, any person may intervene in an action or proceeding ..., and Nevada case law holding
24 that intervention after judgment or settlement is not possible. Judge Jones, who was
25 randomly assigned to both of these case numbers initially, allowed UAIC's Intervention in
26 both cases. He then ordered Mr. Stephens and Mr. Arntz to attend a hearing on October 24,
27 2018, in case number 18-A-772220. Therein, Judge Jones disclosed a relationship with
28

1 Randall Tindall, Esq., the attorney hired by UAIC for Mr. Lewis. Mr. Lewis did not waive
2 the conflict and Judge Jones recused himself from both cases at that time. He did not,
3 however, rescind the orders he signed after the conflict was apparent, but prior to his
4 disclosure of the relationship. Judge Jones was assigned to the two cases randomly, by
5 chance via the Court, not because they were consolidated actions.
6

7 The Court should strike UAIC's improperly served motions to intervene and vacate the
8 orders allowing intervention.

9 II. Argument

10 Motions to Intervene were Improperly Noticed

11 UAIC's motions to intervene in case number A549111 and 18-A-772220-C contain
12 improper proof of service on the face of each pleading. These motions should never have been
13 accepted for filing as the proof of service is defective on its face. These defective motions can
14 certainly not be the basis for an order allowing intervention. The filing of a pleading without
15 serving the pleading amounts to an ex-parte communication with the Court and a violation of
16 the due process rights of Gary Lewis. This lack of service was brought to the attention of the
17 UAIC attorneys who refused to correct the error or grant additional time to the parties to
18 interpose an opposition. Taking advantage of a lawyer in this way by counsel for UAIC is a
19 violation of NRPC 3.5A and results in any action by the Court being void. Lewis requests the
20 Court relieve him from the resulting order allowing intervention pursuant to NRCP 60 (b). The
21 motion not having been served, the order is void. It is appropriate for the court to grant Lewis
22 relief from these orders pursuant to NRCP 60 (b).
23
24

25 Nalder brought the defect in service to the Court's attention filing a "late" opposition
26 and providing courtesy copies to the Court, but the Court ignored the defective service. The
27 motions should have been denied because they were not properly served.
28

Motions to Intervene were Improperly Decided

The Court ignored the opposition filed and Nevada law. NRS 12.130 (a) governs intervention and states "Before the trial, any person may intervene in an action or proceeding..." (Emphasis added.) The Court ignored Nevada case law holding that intervention after judgment, which includes settlement, is not possible.

The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment. *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1267-68 (1993). Additionally, in *Ryan v. Landis*, 58 Nev. 253, 260, 75 P.2d 734, 735 (1938) (quoting *Henry Lee Co. v. Elevator Co.*, 42 Iowa 33 (1918)), we reiterated that: "intervention must be made before the trial commences. After the verdict all would admit it would be too late to intervene. But a **voluntary agreement of the parties stands in the place of a verdict, and, as between the parties to the record as fully and finally determines the controversy as a verdict could do.**" *Dangberg Holdings. v. Douglas Co.*, 115 Nev. 129, 139 (Nev. 1999). Emphasis added.

In *Gralnick v. Eighth Judicial Dist. Court of Nev.*, No. 72048 (Nev. App. Mar. 21, 2017) The court held that intervention and setting aside of a judgment was improper and the court granted writ relief reversing the trial court because intervention was allowed after judgment contrary to NRS 12.130.

Here, real party in interest Liberty Mutual Insurance Company moved to intervene in the underlying action after judgment was entered against real party in interest Tessea Munn. Because **"NRS 12.130 does not permit intervention subsequent to the entry of a final judgment,"** *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993), the district court was required, as a matter of law, to deny the motion to intervene. As the district court did not deny the motion to intervene, but instead, granted intervention and then improperly set aside the judgment based on Liberty Mutual's motion, *see id.* at 557, 853 P.2d at 1269 (explaining that, where an insurance company was improperly allowed to intervene, it was not a party to the lawsuit and, thus, could not move to set aside the judgment), writ relief is warranted. *See Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (explaining that whether to consider a writ petition is discretionary); *cf. Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at

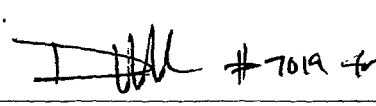
1 558-59 (explaining that writ relief may be warranted to challenge a district
2 court order denying a motion to dismiss if no factual disputes exist and the
3 district court was obligated by clear authority to dismiss the action).
4 Accordingly, we grant the petition and direct the clerk of the court to issue
5 a writ of mandamus directing the district court to vacate its orders granting
6 intervention and setting aside the judgment and to reinstate the default
7 judgment. Emphasis added.

8 As is obvious from the above cited cases UAIC intervention in both cases is improper.
9 This Court was required "as a matter of law" to deny intervention. This improper granting of
10 intervention is subject to writ relief and reversal of all subsequent actions favoring the
11 non-party. In case number number A549111 the order was after final judgment and in case
12 number 18-A-772220-C the order was after a settlement agreement had been signed and
13 filed. UAIC's Motions to intervene in both actions should be stricken and the orders
14 allowing intervention in both cases vacated. Vacating the orders allowing the improper
15 intervention will save judicial resources by resolving all motions filed by UAIC as
16 intervenor and resolve the application for writ of mandamus by vacating the improper orders
17 resulting from the non-party UAIC's motions.

18 III. Conclusion

19 Based upon the foregoing, Gary Lewis respectfully requests that the Court grant relief from
20 the order allowing intervention pursuant to NRCP 60 by striking UAIC's motion to intervene
21 and vacating the order allowing intervention in both case number 07A549111 and case number
22 18-A-772220-C.

23 DATED THIS 7th day of December, 2018.

24  #7019-6
25 CHRISTENSEN LAW OFFICES
26 THOMAS F. CHRISTENSEN, ESQ.
27 Nevada Bar 2326
28 1000 S. Valley View Blvd.
Las Vegas, NV 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2018, I served the following document: **MOTION FOR RELIEF FROM ORDERS AND JOINDER IN MOTIONS FOR RELIEF FROM ORDERS ON ORDER SHORTENING TIME.**

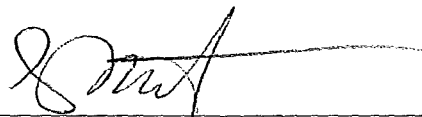
☒ VIA ELECTRONIC FILING (N.E.F.R. 9(b))

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Attorney for Cheyenne Nalder



An employee of CHRISTENSEN LAW OFFICES

EXHIBIT "I"

Electronically Filed
2/15/2019 11:17 AM
Steven D. Grierson
CLERK OF THE COURT



NEO
MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Phone (702) 243-7000
Facsimile (702) 243-7059
mdouglas@awslawyers.com

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.: XX

Consolidated with

CASE NO.: A-18-772220-C

DEPT. NO.: XX

**NOTICE OF ENTRY OF ORDER ON
MOTIONS HEARD ON JANUARY 9, 2019**

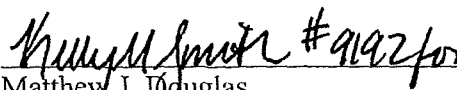
TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

1 PLEASE TAKE NOTICE that the attached **ORDER ON MOTIONS HEARD ON**
2 **JANUARY 9, 2019** was entered by the Court on the 14th day of February 2019.

3 DATED this 15th day of February 2019.

4
5 ATKIN WINNER & SHERROD

6
7  #9192 for
8 Matthew J. Douglas
9 Nevada Bar No. 11371
10 1117 South Rancho Drive
11 Las Vegas, Nevada 89102
12 Attorneys for Intervenor UNITED AUTOMOBILE
13 INSURANCE COMPANY
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ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

CERTIFICATE OF SERVICE

I certify that on this 15th day of February, the foregoing **NOTICE OF ENTRY ORDER ON MOTIONS HEARD ON JANUARY 9, 2019** was served on the following by:

[XX] BY WIZNET pursuant to NEFR 9 this document(s) 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.

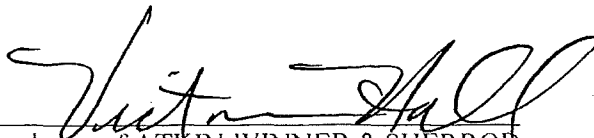
David Stephens, Esq.
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Thomas Christensen, Esq.
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Additional Attorney for Defendant Lewis

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*Counsel for Third-Party Defendants
Tindal and Resnick & Louis*


An employee of ATKIN WINNER & SHERROD

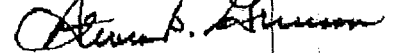
ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

Jan. 24. 2019 2:59PM

Atkin Winner & Sherrod

No. 1944 P. 3/8

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2/14/2019 3:41 PM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDER**
2 MATTHEW J. DOUGLAS
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7 Phone (702) 243-7000
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10 *Attorneys for Intervenor United Automobile Insurance Company*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CHEYANNE NALDER,

14 Plaintiff,

15 vs.

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

18 Defendants,

19 UNITED AUTOMOBILE INSURANCE
20 COMPANY,

21 Intervenor.

22 GARY LEWIS,

23 Third Party Plaintiff,

24 vs.

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

Third Party Defendants.

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

1 the Honorable Eric Johnson, on (1) Third Party Plaintiff Lewis' Motion for Relief from Orders
2 and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United
3 Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3)
4 Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C), (4)
5 Defendant Lewis' (through Breen Arntz, Esq.) withdrawals of Defendant Lewis Motions to
6 Dismiss filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'
7 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case
8 no. 07A549111; (5) Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in
9 case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief
10 from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111;
11 (6) UAIC's Oral Motion to Continue Defendant Lewis Motions to Dismiss (through Randall
12 Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'
13 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case
14 no. 07A549111 pending new counsel; (7) UAIC's Motion for an Evidentiary hearing for a fraud
15 upon the court; Plaintiff appearing through her counsel of record David Stephens, Esq. of
16 Stephens & Bywater, and Defendant Lewis appearing through his counsel of record, Breen
17 Arntz, Esq., Intervenor/Third Party Defendant UAIC appearing through its counsel of record,
18 Thomas E. Winner, Esq. & Matthew J. Douglas, Esq. of the Law Firm of Atkin Winner and
19 Sherrod, Third Party Plaintiff Lewis appearing through his counsel of record Thomas
20 Christensen, Esq. of The Christensen Law Offices, and Third Party Defendants Randall Tindall
21 and Resnick & Louis P.C. appearing through their Counsel of record Dan R. Waite, Esq. of
22 Lewis Roca Rothgerber Christie, LLP, the Court having reviewed the pleadings and documents
23 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

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A NEVADA LAW FIRM

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

- 4
5 3. That the first claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-
6 772220-C, herein, seeking a new judgment on her original 2007 judgment from case
7 no. 07A549111 is not a valid cause of action and the Court would dismiss same under
8 the *Medina* decision, but based upon the request of Counsel for Plaintiff David
9 Stephens, Plaintiff's first claim for relief will be stayed pending decision in *James*
10 *Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis,*
11 *individually v. United Automobile Insurance Company*, case no. 70504;

12
13 **ORDER**

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

18 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor's
19 UAIC's Counter-Motion to Stay Pending Appeal is GRANTED, for their reasons stated in the
20 record, and Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-
21 18-772220-C, herein, (claim 1) seeking a new judgment on her original judgment entered in case
22 no. 07A549111 and, (claim 2) seeking Declaratory relief, respectively, are STAYED pending
23 further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
24 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
25 no. 70504; and
26

27 !!!
28

1 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
2 UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN
3 PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her
4 Complaint in case no. A-18-772220-C, herein, (claim 3) seeking general and special damages
5 related to and arising from the July 2007 automobile accident, is DISMISSED, but ruling on the
6 Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case
7 no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case
8 no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further
9 ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
10 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
11 no. 70504;
12

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

19 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that
20 Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C as well as case no.
21 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60
22 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) are
23 all hereby STRICKEN per WITHDRAWAL by Counsel for Lewis, Breen Arntz, Esq.;
24

25 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that UAIC's
26 Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C
27 as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment
28

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

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

7 **IT IS SO ORDERED.**


8
9 DATED this 11 day of FEBRUARY 2019.

10
11 
12 DISTRICT JUDGE

13 ERIC JOHNSON *SS*

14 Submitted by:

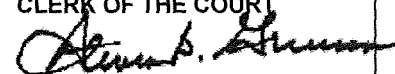
15 ATKIN WINNER & SHERROD, LTD.

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19 1117 South Rancho Drive
20 Las Vegas, Nevada 89102
21 *Attorneys for Intervenor UAIC*

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A NEVADA LAW FIRM

EXHIBIT "J"

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CLERK OF THE COURT



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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.: XX

Consolidated with

CASE NO.: A-18-772220-C

DEPT. NO.: XX.

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART MOTION FOR
RELIEF FROM JUDGMENT, ENTERED
1/23/19 IN CASE NO A-18-772220-C,
PURSUANT TO NRCF 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**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the attached **ORDER GRANTING IN PART MOTION
FOR RELIEF FROM JUDGMENT, ENTERED 1/23/19 IN CASE NO A-18-772220-C,**

1 PURSUANT TO NRCP 60 AND/OR , IN THE ALTERNATIVE, MOTION FOR
2 REHEARING ON MOTION TO DISMISS PLAINTIFF'S FIRST CAUSE OF ACTION
3 IN CASE NO A.18.772220-C ON AN ORDER SHORTENING TIME was entered by the
4 Court on the 14th day of February 2019.

5 DATED this 14th day of February 2019.

6
7 ATKIN WINNER & SHERROD

8 

9 Matthew J. Douglas
10 Nevada Bar No. 11371
11 1117 South Rancho Drive
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13 Attorneys for Intervenor UNITED AUTOMOBILE
14 INSURANCE COMPANY
15
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002045
ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

002045

CERTIFICATE OF SERVICE

I certify that on this 14th day of February, the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART 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 [XX] BY WIZNET pursuant to NEFR 9 this document(s) 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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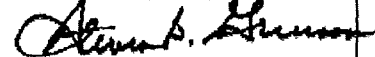
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An employee of ATKIN WINNER & SHERROD

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1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 CHEYANNE NALDER,

Case No. 07A549111

5 Plaintiff,

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

6 vs.

7 GARY LEWIS, an individual; and DOES I
through V, inclusive,

Dept. No. XX

8 Defendants,

9 UNITED AUTOMOBILE INSURANCE
10 COMPANY,

11 Intervenor,

12 GARY LEWIS,

13 Third Party Plaintiff,

14 vs.

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

17 Third Party Defendants.

**ORDER GRANTING IN PART
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**

18 INTRODUCTION

19 Intervenor United Automobile Insurance Company ("UAIC") filed its Motion for Relief
20 from Judgment, Entered 1/23/19 in Case No A-18-772220-C, Pursuant to NRCP 60 and/or, in the
21 Alternative, Motion for Rehearing on Motion to Dismiss Plaintiff's First Cause of Action in Case No
22 A-18-772220-C on an Order Shortening Time on February 11, 2019. This matter was subsequently
23 set for hearing on the 20th day of February 2019 before this Court. Having reviewed the papers and
24 pleadings on file herein and good cause appearing, this Court grants in part UAIC's Motion for

1 Relief from Judgment, Entered 1/23/19 in Case No A-18-772220-C, Pursuant to NRCP 60 and/or, in
2 the Alternative, Motion for Rehearing on Motion to Dismiss Plaintiff's First Cause of Action in Case
3 No A-18-772220-C on an Order Shortening Time for the following reasons:

4 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

5 1. Case 07A549111 was instituted on October 9, 2007 by James Nalder, acting as Guardian
6 ad Litem for Cheyenne Nalder against Gary Lewis ("Lewis") based on claims relating to a car
7 accident which occurred on July 8, 2007. It was alleged that Lewis was operating a 1996 Chevy
8 Pickup and struck Cheyenne Nalder with said vehicle. Nalder asserted a claim against Lewis for
9 negligence. Nalder requested general damages, special damages for current and future medical
10 expenses, special damages for current and future lost wages, and costs and attorney's fees associated
11 with bringing this suit. UAIC declined to hire counsel to represent Lewis in this matter, because it
12 believed that Lewis was not covered under his insurance policy given that he did not renew the
13 policy on June 30, 2007.

14 2. On December 13, 2007, James Nalder, on behalf of Cheyenne Nalder, filed a Default
15 with the Clerk of the Court based on Lewis' failure to file an Answer in this matter. An Application
16 for Default Judgment was filed on May 15, 2008. An Amended Application for Default Judgment
17 was filed on May 16, 2008. A Prove Up Hearing was conducted on May 22, 2008, at which time
18 Default Judgment was granted. A Judgment was filed on June 3, 2008, and Nalder was awarded
19 \$65,555.37 in medical expenses and \$3,434,444.63 in pain, suffering, and disfigurement for a total
20 of \$3,500,000.00 with interest thereon at the legal rate from October 9, 2007, until paid in full.

21 3. On May 22, 2009, James Nalder, on behalf of Cheyenne Nalder, and Lewis filed suit
22 against UAIC, alleging breach of contract, breach of the implied covenant of good faith and fair
23 dealing, bad faith, fraud, and violation of NRS 686A.310. The case was subsequently removed to the
24 United States District Court for the District of Nevada.

1 4. The federal court determined that Lewis' insurance coverage had lapsed and UAIC,
2 therefore, did not have the duty to defend Lewis in the 2007 suit. This decision was appealed to the
3 Ninth Circuit Court of Appeals, where it was reversed and remanded back to the lower federal court.
4 The federal court later determined that the insurance contract was ambiguous, and therefore, the
5 insurance coverage had not lapsed and UAIC had a duty to defend Lewis in 07A549111. The federal
6 court determined that no damages were to be awarded, although UAIC breached its duty to defend
7 Lewis. Both Nalder and Lewis appealed that decision to the Ninth Circuit Court of Appeals, which
8 ultimately led to the certification of the first question to the Nevada Supreme Court.

9 5. UAIC filed a Motion to Dismiss Lewis and Nalder's appeal to the Ninth Circuit for lack
10 of standing, asserting that the 2008 judgment was no longer enforceable because the judgment had
11 expired pursuant to NRS 11.190(1)(a) because no renewal pursuant to NRS 17.124 had been filed.
12 This question has also been certified to the Nevada Supreme Court for decision.

13 6. On March 22, 2018, Cheyenne Nalder ("Nalder") filed an Ex Parte Motion to Amend
14 Judgment in the Name of Cheyenne Nalder, Individually. Nalder had reached the age of majority
15 and no longer needed James Nalder to act as her Guardian ad Litem. The Amended Judgment was
16 filed on March 28, 2018.

17 7. Case A-18-772220-C was instituted on April 3, 2018, by Nalder against Lewis based on
18 claims relating to the same July 2007 car accident. Nalder asserted claims against Lewis in regards
19 to her personal injuries suffered in 2007, requesting this Court to enter another Amended Judgment
20 adding interest accrued through April 3, 2018, and declaratory relief stating that the statute of
21 limitations on her original judgment was tolled.

22 8. UAIC filed its Motion to Intervene on August 17, 2018. The Order granting UAIC's
23 Motion to Intervene was filed on October 19, 2018.

24

1 9. UAIC filed its Motion to Consolidate on Order Shortening Time on November 26, 2018.
2 This matter was subsequently set for hearing on November 28, 2018. This Court entered a Minute
3 Order granting consolidation on November 30, 2018. The cases have since been consolidated into
4 Case 07A549111. The Order Granting Intervenor's Motion to Consolidate Cases on Order
5 Shortening Time on December 27, 2018. All pending motions were transferred to Department XX of
6 the Eighth Judicial District Court.

7 10. Several motions were filed in both 07A549111 and A-18-772220-C: Defendant Lewis
8 filed a Motion to Dismiss and a Motion for Relief from Judgment pursuant to NRCP 60 in case A-
9 18-772220-C on September 26, 2018. Defendant Lewis filed an identical Motion for Relief in case
10 07A549111 on September 27, 2018. Defendant Lewis filed a Motion to Strike Defendant's Motion
11 for Relief from Judgment in case 07A549111 on October 17, 2018. Defendant Lewis also filed a
12 Motion to Strike Both Defendant's Motion for Relief from Judgment and Defendant's Motion to
13 Dismiss in case A-18-772220-C on October 17, 2018. UAIC filed a Motion from Relief from
14 Judgment Pursuant to NRCP 60 and a Motion to Dismiss Plaintiff's Complaint and Motion for Court
15 to Deny Stipulation to Enter Judgment between Plaintiff and Lewis and/or, in the Alternative, to
16 Stay Same Pending Hearing on Motion to Dismiss on in case 07A549111 on October 19, 2018.
17 Third Party Plaintiff Lewis filed a Motion for Relief from Orders and Joinder in Motions for Relief
18 from Orders on Order Shortening Time on December 12, 2018. Plaintiff Nalder filed a Motion to Set
19 Aside Order, Pursuant to NRCP 60(b) Allowing UAIC to Intervene on December 13, 2018. UAIC
20 filed an Opposition to Third Party Plaintiff Lewis' Motion for Relief from Order and Joinder in
21 Motions for Relief from Orders on Order Shortening Time as well as UAIC's Opposition to
22 Plaintiff's Motion to Set Aside Order & Opposition to Defendant Lewis' Motion for Relief from
23 Orders and Countermotion to Stay Pending Ruling on Appeal on December 31, 2018. Finally,

24

1 Randall Tindall, Esq., filed a Motion to Withdraw as Counsel on Order Shortening Time on January
2 7, 2019. All matters were subsequently set for hearing on January 9, 2019.

3 11. On January 9, 2019, the above matters were set for hearing. Nalder appeared by and
4 through her attorney David Stephens, Esq., of Stephens & Bywater. Defendant Gary Lewis
5 appeared by and through his counsel E. Breen Arntz, Esq. Third Party Plaintiff Gary Lewis also
6 appeared by an through his counsel Thomas Christensen, Esq., of Christensen Law Offices.
7 Intervenor/Third Party Defendant UAIC appeared by and through its counsel Matthew J. Douglas,
8 Esq., and Thomas E. Winner, Esq., of Atkin Winner & Sherrod. Third Party Defendants Randall
9 Tindall, Esq., and Resnick & Louis, P.C. appeared by and through their counsel Dan R. Waite,
10 Esq., of Lewis Roca Rothgerber Christie LLP.

11 The Court GRANTED the following motions: Defendant's Motion to Strike Both
12 Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss, Defendant's
13 Motion to Strike Defendant's Motion for Relief from Judgment, and Randall Tindall, Esq.'s Motion
14 to Withdraw as Counsel on Order Shortening Time. The Court GRANTED IN PART the following
15 motions: UAIC's Motion to Dismiss Plaintiff's Complaint and Motion for Court to Deny Stipulation
16 to Enter Judgment Between Plaintiff and Lewis and/or, in the Alternative, to Stay Same Pending
17 Hearing on Motion to Dismiss and UAIC's Opposition to Plaintiff's Motion to Set Aside Order &
18 Opposition to Defendant Lewis' Motion for Relief from Orders and Countermotion to Stay Pending
19 Ruling on Appeal. The Court DENIED the following motions: UAIC's Motion for Relief from
20 Judgment Pursuant to NRCP 60, Third Party Plaintiff's Motion for Relief from Orders and Joinder
21 in Motions for Relief from Orders on Order Shortening Time, and Plaintiff's Motion to Set Aside
22 Order, Pursuant to NRCP 60(b) Allowing UAIC to Intervene. The Court WITHDREW the following
23 motions: Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 and Defendant's
24 Motion to Dismiss.

1 12. Further, at the time of the hearing, the Court granted UAIC's countermotion for stay
2 pending appeal and issued a stay of the case pending the determination from the Nevada Supreme
3 Court. The Court determined that many of the motions revolved around the questions currently
4 certified to the Nevada Supreme Court, i.e., whether the 2008 Judgment has expired or whether the
5 statute of limitations was tolled. The Court further stated on the record that it had received a
6 proposed Judgment from the parties, but declined to sign it until the questions on appeal had been
7 resolved.

8 13. Nalder filed a Motion for Summary Judgment Pursuant to NRCP 60(b) on November 28,
9 2018. UAIC filed its Opposition and Countermotion to Stay Proceedings Pending Appellate Ruling
10 on December 20, 2018. UAIC filed a Motion to Dismiss Third Party Plaintiff Lewis' Third Party
11 Complaint on November 15, 2018. Lewis filed an Opposition and Countermotion for Summary
12 Judgment on November 27, 2018. UAIC filed its Opposition and Countermotion to Strike Affidavit
13 of Lewis and/or Stay Proceedings Pending Appellate Ruling and/or Stay Countermotion for
14 Summary Judgment Pursuant to NRCP 56(f). These matters were subsequently set for hearing on
15 January 23, 2019.

16 The Court issued its decision via Minute Order on January 22, 2019. The Court
17 GRANTED UAIC's requests for stay and again reiterated that the central questions involved in
18 these motions are the same as the question currently certified to the Nevada Supreme Court.

19 14. On January 22, 2019, Lewis filed a Notice of Acceptance of Offer of Judgment in Case
20 No. 18-A-772220 in Case No. 07A549111. A Judgment was then signed and filed by the Clerk of
21 the Court later that same day, although the date beside the Clerk's signature is January 23, 2019.
22 Notice of Entry of Judgment was filed on January 28, 2019.

23 15. On February 11, 2019, UAIC filed the instant Motion for Relief from Judgment, Entered
24 1/23/19 in Case No. A-18-772220-C, Pursuant to NRCP 60 and/or, in the Alternative, Motion for

1 Rehearing on Motion to Dismiss Plaintiff's First Cause of Action in Case No. A-18-772220-C on
2 an Order Shortening Time. The matter was subsequently set on calendar for February 20, 2019.

3 **CONCLUSIONS OF LAW**

4 1. According to Nevada Rule of Civil Procedure ("NRCP") 60(b),

5 [o]n motion and just terms, the court may relieve a party or its legal
6 representative from a final judgment, order, or proceeding for the
following reasons:

7 (1) mistake, inadvertence, surprise, or excusable neglect;

8 (2) newly discovered evidence that, with reasonable diligence,
could not have been discovered in time to move for a new trial under
Rule 59(b);

9 (3) fraud (whether previously called intrinsic or extrinsic),
misrepresentation, or misconduct by an opposing party;

10 (4) the judgment is void;

11 (5) the judgment has been satisfied, released, or discharged; it
is based on an earlier judgment that has been reversed or vacated; or
applying it prospectively is no longer equitable; or

12 (6) any other reason that justifies relief.

13 2. The Nevada Supreme Court has held that, once a stay has been issued, a party may not
14 seek to alter a judgment. *Westside Charter Serv. v. Gray Line Tours*, 99 Nev. 456, 664 P.2d 351
15 (1983). In *Westside*, the District Court stayed the judgment pending the appeal of the denial of an
16 NRCP 60(b) motion to vacate judgment. One of parties then began actions which may have been
17 affected by the outcome of the appeal. The Nevada Supreme Court affirmed the stay as well as the
denial of further action and stated:

18 It is also clear that the district court's stay of judgment while the case
19 was under appeal did not allow PSC to deal with the subject matter of
20 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
21 modifications to the subject matter of the judgment. *East Standard*
Mining Co. v. Devine, 59 Nev. 134, 81 P.2d 1068 (1938). In this case,
22 the stay of judgment pending appeal effectively prevented any further
administrative proceedings on the subject matter of the appeal while
23 the order denying the NRCP 60(b) motion was on appeal. Thus, PSC
was without jurisdiction to act when it did in regards to Westside's
24 second application.

1 *Id.* at 460, 664 P.2d at 353.

2 3. Here, the Court stayed the case pending the appeal currently in front of the Nevada
3 Supreme Court on January 9, 2019. This was conveyed to the parties through the Court's granting
4 of UAIC's request to stay the action pending appeal as well as the Court's comments to the parties
5 that it had received a judgment, but would not sign it until after the appeal had been decided. The
6 Court made very clear that the issues on appeal would be affected by decisions made in this case,
7 and so, in the interests of judicial economy, would be staying the matter pending appeal.

8 4. Further, the Court reiterated that the matter was to be stayed in the January 22, 2019
9 Minute Order. The Court again granted UAIC's request to stay the matter pending appeal and again
10 stated that the issues to be decided in these consolidated cases would be greatly affected by the
11 decision made by the Nevada Supreme Court.

12 5. The Judgment was filed with the Clerk of the Court on January 22, 2019, after the matter
13 had been stayed pending appeal. This was clearly a mistake or inadvertence by the Clerk's Office,
14 as contemplated by NRCP 60(b). A judgment was not to be entered during the stay of the case, and
15 so the Judgment filed January 22, 2019 in Case No. 07A549111 is void as a matter of law.
16 Separately, the Court concludes the facts set out above justifies relief in this matter and withdraws
17 the judgement.

18 ORDER

19 Based on the foregoing, UAIC's Motion for Relief from Judgment, Entered 1/23/19 in Case
20 No A-18-772220-C, Pursuant to NRCP 60 and/or, in the Alternative, Motion for Rehearing on
21 Motion to Dismiss Plaintiff's First Cause of Action in Case No A-18-772220-C on an Order
22 Shortening Time is granted in part and the Court withdraws the Judgment entered by the Clerk of the
23 Court on January 23, 2019. The Court finds that the matter was stayed at the time the Judgment was
24 entered. Therefore, the Judgment is void as a matter of law. The Court further finds the facts stated

1 in this Order justify withdrawing the judgement. The Court declines to rehear the Motion to Dismiss
2 Plaintiff's First Cause of Action in Case No. A-18-772220-C at this time.

3
4 DATED this 14 day of February, 2019.

5
6 
ERIC JOHNSON
DISTRICT COURT JUDGE

EXHIBIT “K”

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

JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF JUNE 2018
 NALDER; AND GARY LEWIS, INDIVIDUALLY

Appellants,

v.

UNITED AUTOMOBILE INSURANCE COMPANY,

Respondent.

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 AUG 02 2018 10:46 a.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

**APPELLANTS' OPENING BRIEF REGARDING SECOND CERTIFIED
 QUESTION OF LAW**

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

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I. ROUTING STATEMENT

This matter involves a question of law certified by the Ninth Circuit Court of Appeals and is, therefore, presumptively retained by the Supreme Court of Nevada pursuant to NRAP 17(a)(7).

II. JURISDICTIONAL STANDARD FOR CERTIFICATION

On December 27, 2017, the Ninth Circuit Court of Appeals asked this Court to answer a second certified question:

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

Nalder v. United Auto. Ins. Co., 878 F.3d 754 (9th Cir. 2017).

Pursuant to the second certification order, no other issues are before this Court. On February 23, 2018, this Court issued its Order Accepting Second Certified Question, but rephrased the question as permitted by the Ninth Circuit:

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?

The Supreme Court of Nevada may answer questions of law certified to it by a United States Court of Appeals when requested by the certifying court. Nev. R. App. P. 5(a). "The certifying order must include a statement of facts relevant to the

question certified in its order certifying questions to this court.” *In re Fountainbleau Las Vegas Holdings, LLC*, 127 Nev. 941, 955, 267 P.3d 786, 794 (2011) (citing Nev. R. App. 5(c)(2)). The Supreme Court of Nevada is “bound by the facts as stated in the certification order” and cannot make findings of fact in response to a certified question. *Id.* at 956, 795. Although a party to the certification case may provide an appendix to provide this Court with a better understanding of the underlying action, “this Court may not use information in the appendix to contradict the certification order.” *Id.*

In its second certification order, the Ninth Circuit provides this Court with a substantially similar factual background as in the first certification order. *Nalder*, 878 F.3d at 756-57; *see also, In re Nalder*, 824 F.3d 854, 855 (9th Cir. 2016). The Ninth Circuit also provides additional facts presumptively relevant to the narrow issue of law addressed in the second certified question. *Nalder*, 878 F.3d at 757. This Court must accept the facts as stated in the second certification order and answer the question of law so that the certifying court can then apply the law to those facts. *In re Fountainbleau*, 127 Nev. at 955-56, 267 P.3d at 794. “This approach prevents the answering court from intruding into the certifying court’s sphere by making factual findings or resolving factual disputes.” *Id.* (citing *Alexander v. Certified Master Builders*, 268 Kan. 812, 1 P.3d 899, 908 (Kan. 2000); *Puckett v. Rufenacht, Bromagen & Hertz*, 587 So. 2d 273, 277 (Miss. 1991) (“This Court is not

called upon to decide the case. Nor should we go behind the facts presented by the certifying court.”)).

Based on the foregoing, Appellants provide the following factual background relevant to this narrow question of law that this Court agrees to answer.

III. FACTUAL BACKGROUND

This matter arises from a July 8, 2007 incident in which Gary Lewis ran over Cheyanne Nalder, born April 4, 1998, who was a nine-year-old girl at the time. *Nalder*, 878 F.3d at 756. Lewis maintained an auto insurance policy with Appellee United Auto Insurance Company (“UAIC”), which was renewable on a monthly basis. *Id.* Before the subject incident, Lewis received a statement from UAIC instructing him that his renewal payment was due by June 30, 2007. *Id.* The renewal statement also instructed Lewis that he remit payment prior to the expiration of his policy “[t]o avoid lapse in coverage.” *Id.* The statement provided June 30, 2007 as the effective date of the policy. *Nalder*, 878 F.3d at 756. The statement also provided July 31, 2007 as the expiration date of the policy. *Id.* On July 10, 2007, Lewis paid UAIC to renew his auto policy. *Id.* Lewis’s policy limit at this time was \$15,000.00. *Id.*

Following the incident, Cheyanne’s father, James Nalder, extended an offer to UAIC to settle Cheyanne’s injury claim for Lewis’s policy limit of \$15,000.00. *Id.* UAIC rejected Nalder’s offer. *Id.* UAIC rejected the offer because it believed

that Lewis was not covered under his insurance policy given that he did not renew his policy by June 30, 2007. *Id.* UAIC never informed Lewis that Nalder offered to settle Cheyanne's claim. *Id.*

After UAIC rejected Nalder's offer, Nalder, on behalf of Cheyanne, filed a lawsuit against Lewis in Nevada state court on May 22, 2009. *Id.*; *see also*, 1.A.App. 0001 – 0010. Lewis failed to appear and answer the complaint. *Id.* As a result, Nalder obtained a default judgment against Lewis for \$3,500,000.00. *Id.* On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of NRS 686A.310. *Id.* Nalder filed suit after Lewis assigned to Nalder his right to "all funds necessary to satisfy the Judgment" 1 A.App. 0011.

Once UAIC removed the underlying case to federal district court, UAIC filed a motion for summary judgment as to all of Lewis and Nalder's claims alleging Lewis did not have insurance coverage on the date of the subject collision. *Nalder*, 878 F.3d at 756. The federal district court granted UAIC's summary judgment motion because it determined the insurance contract was not ambiguous as to when Lewis had to make payment to avoid a coverage lapse. *Id.* Nalder and Lewis appealed to the Ninth Circuit. *Id.* The Ninth Circuit reversed and remanded the matter because Lewis and Nalder had facts to show the renewal statement was

ambiguous regarding the date when payment was required to avoid a coverage lapse.

Id. The Ninth Circuit affirmed the district court's order as to all other claims. *Id.*

On remand, the district court concluded the renewal statement was ambiguous and therefore, Lewis was covered on the date of the incident because the court construed this ambiguity against UAIC. *Id.* The district court also determined UAIC breached its duty to defend Lewis, but did not award damages because Lewis did not incur any fees or costs in defense of the Nevada state court action. *Id.* Based on these conclusions, the district court ordered UAIC to pay the policy limit of \$15,000.00. *Id.* Both Nalder and Lewis appealed to the Ninth Circuit, which ultimately led to certification of the first question to this Court, namely whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages to the breach. *Nalder* 878 at 757.

While the first certified question was fully briefed and pending before this Court, UAIC filed a motion to dismiss Appellants' appeal with the Ninth Circuit for lack of standing. *Id.* UAIC argued Nalder's underlying \$3,500,000.00 default judgment against Lewis is not enforceable because the six-year statute of limitation to institute an action upon the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired. *Id.* As a result, UAIC contends Nalder can no longer recover damages above the \$15,000.00 policy limit for breach of the contractual duty to defend because the judgment lapsed. *Id.*

The Ninth Circuit concluded the parties failed to identify Nevada law that conclusively answers whether a plaintiff can recover consequential damages based on a default judgment that is over six years old and presumably expired. *Id.* at 758. The Ninth Circuit was also unable to determine whether expiration of the default judgment reduces the consequential damages to zero or if the damages should be calculated from the date when the suit against UAIC was initiated, which was within the six-year window. *Id.*

Notably, UAIC made three payments to Appellants on June 23, 2014; June 25, 2014; and February 5, 2015 in satisfaction of the underlying default judgment. 1 A.App. 0012 – 0015.¹ Lewis also currently resides in California. 1. A.App. 0016 – 0019.

IV. SUMMARY OF THE ARGUMENT

Appellants timely instituted an action on the judgment against UAIC within the six-year statute of limitations to enforce the judgment. Appellants' breach of contract and bad faith complaint against UAIC is an enforcement action to collect on the underlying default judgment because the judgment directly results from UAIC's breach of the contractual duty to defend and breach of the implied covenant of good faith and fair dealing. The underlying default judgment is binding on UAIC

¹ The July 1, 2014 Satisfaction of the June 3, 2014 Judgment memorializes the June 23, 2014 and June 25, 2014 payments.

because of its wrongful conduct. As a result, Appellants were not required to renew the underlying default judgment because the relevant statutes do not require a party to file an action on the judgment and renew it to secure the continued validity and enforceability of the judgment.

Alternatively, the six-year statute of limitations to pursue an action on the judgment was extended because UAIC made three separate payments on the judgment. Further, the six-year statute of limitations was tolled during the period of time that Cheyanne Nalder was a minor. Thus, the statute of limitations does not run until, at the earliest, April 4, 2022. Lewis's California residency also continues to toll the six-year statute of limitations because Appellants cannot strictly comply with the renewal statute in accordance with Nevada law.

V. ARGUMENT

UAIC requested dismissal of Appellants' appeal before the Ninth Circuit solely because Appellants allegedly failed to renew the underlying default judgment pursuant to NRS 17.214. UAIC overlooks that Nevada's statutory scheme requires a party to either file a renewal of judgment *or* file an action to enforce the judgment pursuant to NRS 11.190(1)(a). Appellants' bad faith and breach of contract complaint against UAIC constitutes an action upon the default judgment because Appellants filed suit to obtain satisfaction of the default judgment from UAIC. UAIC's breach of the contractual duty to defend is precisely the grounds upon which

Appellants seek to collect upon the default judgment against UAIC. As a result, the underlying default judgment did not expire, which means the amount of recoverable consequential damages should not be reduced.

A. Appellants' Bad Faith and Breach of Contract Claim Against UAIC is an Action on the Judgment

NRS 11.190(1)(a) states that within six years, “an action upon a judgment or decree of any Court of the United States, or of any territory within the United States, *or* the renewal thereof” must be commenced. An action filed upon a judgment is broadly defined:

An action on a judgment is an action independent of the original action in which the judgment was obtained, the main purpose of which is to obtain a new judgment which will facilitate the ultimate goal of securing satisfaction of the original cause of action.

Salinas v. Ramsey, 234 So. 3d 569, 571 (Fla. 2018); *see also*, *Fid. Nat’l Fin. Inc. v. Friedman*, 225 Ariz. 307, 310, 238 P.3d 118, 121 (Ariz. 2010).

An action on a judgment provides the judgment creditor with the opportunity, “when the limitations period has almost run on the judgment, to obtain a new judgment that will start the limitations period anew.” *Salinas*, 234 So. 2d at 571. “[A] cause of action on a judgment is different from that upon which the judgment was entered.” *Guinness PLC v. Ward*, 955 F.2d 875, 894-95 (4th Cir. 1992) (*citing Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 275, 56 S. Ct. 229, 233 (1935)).

An injury victim can institute an action on a judgment against the tortfeasor’s insurer even though the insurer was not formally a party to the proceedings that lead

to the judgment. Nevada is not a direct action state. *Hall v. Enter. Leasing Company-West*, 122 Nev. 685, 693, 137 P.3d 1104, 1109 (2006). However, Nevada “allows **actions** by third-party tort claimants against third-party liability coverage providers **only after a judgment against the tortfeasor has been obtained.**” *Id.* (emphasis added); see also, *Ohio Cas. Ins. Co. v. Time Warner Entm’t Co., L.P.*, 244 S.W. 3d 885, 888 (Tex. Ct. App. 2008) (“Generally, an injured person cannot sue the tortfeasor’s liability insurer directly until the tortfeasor’s liability has been determined by agreement or judgment.”). Generally, an injured party must first obtain a judgment against the insured before he can actually pursue any remedy against the insurer. *Western Casualty & Sur. Co. v. Evans*, 130 Ariz. 333, 336, 636 P.2d 111, 114 (Ariz. Ct. App. 1981).

A judgment, default or otherwise, is also binding against an insurer that breaches the contractual duty to defend its insured in the underlying personal injury action, irrespective of whether the insurer is a party to that action.

It is the general rule that a liability insurer who has had an opportunity to defend the underlying action brought against its insured is bound by the judgment against its insured as to all issues which were litigated in the action.

Pruyn v. Agricultural Ins. Co., 36 Cal. App. 4th 500, 515, 42 Cal. Rptr. 2d 295, 303 (Cal. Ct. App. 1995).

An insured who is abandoned by his liability insurer is free to secure the best settlement possible with the third-party injury plaintiff, including even a stipulated

judgment with a covenant not to execute. *Pruyn*, 36 Cal. App. 4th at 515, 42 Cal. Rptr. 2d at 303 (citing *Samson v. TransAmerica, Ins. Co.*, 30 Cal. 3d 220, 240, 636 P.2d 32, 45 (Cal. 1981)). This stipulated judgment, however, must be free of fraud or collusion between the third-party injury victim and the insured. *Id.*

An insurer that wrongfully refuses to defend its insured is liable on the judgment against the insured. *Gray v. Zurich Ins. Co.*, 65 Cal. 2d 263, 279, 419 P.2d 168, 179 (Cal. 1966). Here, the federal district court ruled that UAIC breached its contractual duty to defend as a matter of law. *Nalder*, 878 F.3d at 756. As a direct result of that breach of the duty to defend, Nalder secured a default judgment against Lewis. *Id.* Nalder was required under Nevada law to secure a judgment against Lewis before he could even pursue a claim against UAIC. *Hall*, 122 Nev. at 693, 137 P.3d at 1109. After fulfilling that legal prerequisite and securing an assignment, Appellants sued UAIC for breach of contract, breach of the implied covenant of good faith and fair dealing (bad faith), fraud, and breach of the Nevada Unfair Claims Practices Act. on May 22, 2009. *Nalder*, 878 F.3d at 756. Specifically, Appellants seek “payment for the excess verdict rendered against Lewis which remains unpaid in an amount in excess of \$3,500,000.00” in their Complaint. 1 A.App. 0009. The underlying default judgment was entered against Lewis because UAIC abandoned him when it failed to defend against Nalder’s third-party injury claim. UAIC’s contractual breach of the duty to defend renders the default judgment binding against

it. *Gray*, 65 Cal. 2d at 279, 419 P.2d at 179. Therefore, it is appropriate for this Court to conclude that Appellants' Complaint against UAIC is an action upon the underlying default judgment pursuant to NRS 11.190(1)(a) that was timely filed. The alleged expiration of the judgment is rendered meaningless because Nevada's statutory scheme allows a party to either file an action on the judgment or renew a judgment.

B. The Underlying Default Judgment Did Not Expire Because Appellants Were Not Required to Both Institute an Action on the Default Judgment and Renew the Default Judgment

An action on a judgment is distinguishable from the treatment of an application to renew the judgment. *Pratali v. Gates*, 4 Cal. App. 4th 632, 637, 5 Cal. Rptr. 2d 733, 736 (Cal. Ct. App. 1992). This distinction is inherently recognized in the Nevada Revised Statutes' treatment of both courses of acts. "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*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) (emphasis added). NRS 11.190(a)(1) expressly provides the option to either commence an action upon the judgement *or* a renewal of the judgment within six years of entry of the judgment. Statutes of limitations are intended to ensure pursuit of the action with reasonable diligence, to preserve

evidence and avoid surprise, and to avoid the injustice of long-dormant claims. *Petersen v. Bruen*, 106 Nev. 271, 273-74, 792 P.2d 18, 19-20 (1990).

NRS 17.214 provides the procedural steps necessary to renew a judgment before the expiration of the statute of limitations set forth in NRS 11.190(1)(a). Specifically, NRS 17.214 provides that a judgment creditor may renew a judgment that has not been paid by filing an affidavit with the clerk of the court where the judgment is entered, "...within 90 days before the date the judgment expires by limitation." NRS 11.190(a)(1) must be read together with NRS 17.214 because they relate to the same subject matter and are not in conflict with one another. *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. ___, 363 P.3d 1168, 1172 (2015). When NRS 11.190(1)(a) and NRS 17.214 are read together, they establish that a party must either file an action to enforce the judgment or renew the judgment before the 6-year statute of limitations runs. This Court expressly adopts that result in *Levin v. Frey*, 123 Nev. 399, 403, 168 P.2d. 712, 715 (2007): "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."

This Court also recognizes the well-established rule that it will not look beyond the plain language of the statute when the words "have a definite and ordinary meaning." *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). "Normal principles of statutory construction also preclude

interpreting a statute to render part of it meaningless.” *United States v. Bert*, 292 F.3d 649, 652 n.11 (9th Cir. 2002). UAIC’s apparent position is that even though Appellants filed an action upon the default judgment, they were also required to file a renewal of the default judgment. This interpretation ignores the clarity of the disjunctive “or.” UAIC’s proposed interpretation of the statute effectively renders the “or” in NRS 11.190(1)(a) meaningless. If the Nevada Legislature intended to require a judgment creditor to file an action on the judgment and renew the judgment, then the Nevada Legislature would have used the word “and.” However, the Nevada Legislature uniquely understood that a party was only required to proceed with one course of action to ensure the validity of a judgment. This understanding is reflected in the permissive language of NRS 17.214(1), which states that a judgment creditor “*may* renew a judgment which has not been paid”

Based on the unambiguous language of both NRS 11.190(1)(a) and NRS 17.214, the underlying default judgment did not expire in this matter. Appellants timely commenced their breach of contract and bad faith action upon the default judgment against UAIC, upon which the judgment is binding, before the six-year statute of limitations expired. As a result, the value of the consequential damages that stem from UAIC’s breach of its contractual duty to defend remains at \$3,500,000.00 plus any post-judgment interest that has accrued.

...

C. The Six-Year Statute of Limitations to Pursue an Action Upon the Default Judgment or a Renewal of that Judgment was Extended and Tolloed

The underlying judgment remains collectible even in the absence of a valid action upon the default judgment or renewal of the judgment. UAIC made three undisputed payments toward the judgment to Appellants on June 23, 2014; June 25, 2014; and February 5, 2015. 1 A.App. 0012 – 0015. Pursuant to NRS 11.200, the statute of limitations “dates from the last transaction or the last item charged or the last credit given.” Further, when any payment is made, “the limitation shall commence from the time the last payment was made. *See Nev. Rev. Stat. 11.200.* Therefore, UAIC’s last payment on the judgment extended the expiration of the six-year statute of limitations to February 5, 2021.

Additionally, NRS 11.250 outlines various circumstances that prevent the running of the statute of limitations and states, in relevant part:

If a person entitled to bring an action other than for the recovery of real property be, at the time cause of action accrued, either:

1. Within the age of 18 years;
- ...

the time of such disability ***shall not*** be a part of the time limited for the commencement of the action (emphasis added).

Cheyenne Nalder was born on April 4, 1998 and was a minor when the subject incident occurred. She turned 18 years old on April 4, 2016. Therefore, the earliest date that the six-year statute of limitations runs is April 4, 2022.

Lewis's residency in California also tolls the six-year statute of limitations governing the judgment. 1 A.App. 0016 – 0019. Pursuant to NRS 11.300, the absence of Lewis from the State of Nevada tolls the statute of limitations to enforce a judgment and it remains tolled because of his absence. *See Bank of Nevada v. Friedman*, 82 Nev. 417, 421, 420 P.2d 1, 3 (1966). These tolling statutes present a Catch-22 for NRS 17.214 and the “strict compliance” interpretation from this Court. Specifically, NRS 17.214 requires a renewal to be brought within 90 days of the expiration of the statute of limitations. If that 90-day period is strictly construed, any renewal attempt by Nalder pursuant to the statute would be premature and therefore ineffective because Lewis resides outside the State of Nevada.

D. The Statute of Limitations in California on a Judgment of a Sister State is Ten Years

Lewis now resides in California. 1 A.App. 0016 – 0019. In California, an action upon a judgment must be commenced within 10 years of entry of the judgment. *See* Cal. Code Civ. P. § 337.5. Alternatively, a judgment must be renewed within 10 years of entry of the judgment. *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 372, 8 Cal. Rptr. 3d 907, 911 (Cal. Ct. App. 2004); *see also*, Cal. Code Civ. P. §§ 683.020, 683.120, 683.130. Out of an abundance of caution, Appellants have incurred the expense to renew the judgment in both Nevada and California. In spite of this action, Appellants contend that they timely instituted an action on the

default judgment or, alternatively, that the six-year limitations period has not expired.

E. Lewis Suffered Damages When He Assigned His Rights Against UAIC to Nalder and Collection of the Judgment Allows Nalder to Collect from UAIC, Regardless of the Continuing Validity of the Underlying Judgment

Nalder's ability to collect against UAIC for the full amount of damages he incurred is not controlled by his right to collect against Lewis, the original judgment debtor. *Pinto v. Allstate Ins. Co.*, 221 F.3d 394, 403-04 (2d Cir. 2000) (“[E]xchange of a general release for an assignment of a bad faith claim operates to preserve the bad faith claim”); *see also*, *Consolidated American Ins. Co. v. Mike Soper Marine Services*, 951 F.2d 186, 190-91 (9th Cir. 1991). It is not uncommon for judgment debtors to give up valuable rights and consideration to avoid execution of an adverse judgment. When a judgment debtor, like Lewis, assigns his bad faith rights in exchange for satisfaction of a judgment or stay of execution, such assignment does not relieve UAIC of its liability for the damages it caused to Lewis.

On February 28, 2010, Lewis took steps to protect himself from execution on the judgment because he gave up right to sue UAIC for bad faith to Nalder. 1 A.App. 0011. The value of this right is at least \$3,500,000.00 and likely now more because of interest. The terms of the assignment specifically state that Lewis assigns to Nalder the rights to “all funds necessary to satisfy the Judgment.” 1 A.App. 0011.

Pursuant to these terms, any and all damages recovered in the underlying action only go towards paying off the \$3,500,000.00 default judgment.

F. UAIC Admitted the Judgment was Valid Both Times the Federal District Court Disregarded the Judgment as an Item of Damage in its Rulings

If the judgment's ongoing validity is evaluated independent of the assignment or action on the judgment, then its validity should have been tested when the federal district court issued its rulings regarding Appellants' damages. The appropriate time to examine the validity of the judgment was when the federal district court disregarded the judgment when computing Appellants' damages. At that time UAIC admitted the judgment was valid. Thus, such damages include the \$3,500,000.00 underlying default judgment, irrespective of whether that judgment has since expired under the statute of limitations.

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VI. CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court conclude that a plaintiff can still seek the recovery of consequential damages stemming from a breach of the duty to defend even if the underlying judgment expires within the six-year limitations period.

DATED this 1st day of August, 2018.

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are the persons and entities as described in NRAP 26.1(a)(1), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal:

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011, Version 14.4.1, in 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and 4,227 contains words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

...

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 1st day of August, 2018.

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002082

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of August, 2018, I served the foregoing **APPELLANTS' OPENING BRIEF REGARDING SECOND CERTIFIED QUESTION OF LAW** by electronically filing and serving the document(s) listed above with the Nevada Supreme Court.

Matthew J. Douglas, Esq.
ATKIN, WINNER & SHERROD
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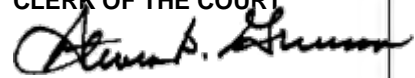
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/s/ Nicole Littlejohn
An Employee of EGLET PRINCE

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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.

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 OF ORDERS
SIGNED 2/11/19, MOTION FOR
HEARING, AND MOTION FOR RELIEF
FROM ORDERS AND UAIC's COUNTER-
MOTION TO STRIKE UNTIMELY
JOINDER BY PLAINTIFF TO SAID
MOTION**

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 of Orders signed 2/11/19, Motion for Hearing, and Motion for Relief from Orders & Counter-Motion to Strike Untimely Joinder to said Motion by Plaintiff Nalder. UAIC asks that Third Party Plaintiff's Motion be denied because it is bereft of any new evidence or law to support either reconsideration or relief under NRC 60(b) from either of the two Orders signed 2/11/19 by this Court. Further, that Plaintiff's Joinder which was served March 14, 2019, is untimely under E.D.C.R. 2.20(d).

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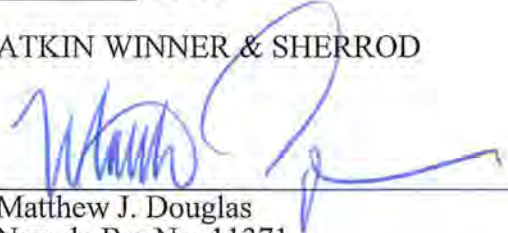
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1 ///

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

5 DATED this 18th day of March, 2019.

6 ATKIN WINNER & SHERROD

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

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

15 STATE OF NEVADA)
16) SS:
17 COUNTY OF CLARK)

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

- 19 1. I am a duly licensed and practicing attorney of the State of Nevada and I am partner of
20 the law firm of Atkin Winner & Sherrod maintaining offices at 1117 South Rancho
21 Drive, Las Vegas, Nevada 89102.
- 22 2. I represent Intervenor, UAIC, in the above-captioned action titled *Nalder v Lewis*, Case No.
23 A-18-772220-C, as well as in other related cases.
- 24 3. I have reviewed the facts and circumstances surrounding this matter and I am competent to
25 testify to those facts contained herein upon personal knowledge, or if so stated, upon my
26 best information and belief.
- 27 4. That the following is true and accurate to the best of affiant's knowledge and information.
- 28 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 'A' & 'B', respectively.

6. On January 9, 2019, hearings were held on multiple motions in the instant action.

7. 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 the other parties to draft their orders. Obviously, as UAIC had prevailed on its Counter-Motions to stay pending appeal, the 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 'C.'*

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 'D'*) 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 Party Plaintiff Lewis and, reply of UAIC, regarding the proposed order, on 1/10/19 is attached hereto as Exhibit 'E.'*

9. 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 for 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 'F.'*

10. After finally receiving and reviewing the transcript of the 1/9/19 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, Counsel for UAIC advised 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 'G.'*

11. 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 'H.'*

12. In the meantime, the parties also had hearings on several motions scheduled for January 23, 2019, however, the Court ruled on those Motions and entered a minute Order dated January 22, 2019 which was served on the parties on January 23, 2019; *A copy of the Court's Minute Order on the 1/23/19 scheduled hearings, dated 1/22/19, is attached hereto as Exhibit 'I.'*

13. Following receipt of the Court's minute order dated 1/22/19, Counsel for UAIC emailed all parties, on January 28th, 2019, a draft proposed order on the motions which UAIC had prevailed, as is customary, and asked other parties to draft their orders. *A true and correct copy of UAIC's email of 1/28/19, with initial proposed order for the 1/23/19 motions, is attached hereto as Exhibit 'J.'*

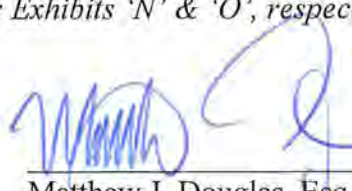
14. In response to the above email, on 1/28/19, Counsel for Tindall asked for his office to be removed from the proposed order as his client was to be dismissed (*a true and correct copy of Counsel for Tindall's email is attached as Exhibit 'K'*), however, no other counsel responded with any issues for the proposed order on the 1/23/19 motions. Accordingly, on 2/5/19, Counsel for UAIC emailed all parties a second time, explaining that if no one voiced any objection to the proposed order on the 1/23/19 motions, same would be sent to the Court as is. *A true and correct copy email from Counsel for UAIC on 2/5/19, is attached hereto as Exhibit 'L.'*

15. Having received no response from any party prior to the deadline to submit UAIC's proposed order and, no other party voicing any objection to same order, UAIC submitted the proposed order on the 1/23/19 motions to this court on February 6, 2019. *See copy of letter with proposed Order on 1/9/19 hearing attached hereto as Exhibit 'M.'*

16. No competing order was submitted by any other party regarding the outcome of the either the 1/9/19 hearing or, in regard to the order on the Court's 1/22/19 minute Order, though Counsel for UAIC invited the parties to do so.

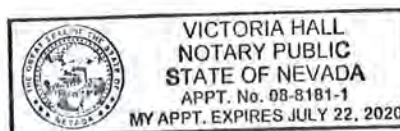
17. On February 11, 2019 this Court signed the proposed Order on both the 1/9/19 hearings and, the 1/22/19 minute order (for the 1/23/19 motions) and, as soon as UAIC received those Orders - on February 14, 2019 when its runner returned them - it filed those Orders and, next, filed Notices of entry of same orders on February 15, 2019. *A copy of the filed Orders on the 1/9/19 hearings and 1/22/19 minute order are attached hereto as Exhibits 'N' & 'O', respectively.*

Further Affiant Sayeth Naught.


Matthew J. Douglas, Esq.

Subscribed and sworn to before me
This 18th day of MARCH 2019


NOTARY PUBLIC



MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Counsel for Third Party Plaintiff takes great umbrage with this Court's orders signed 2/11/19, even alleging UAIC has misstated facts and law. Movant further asserts UAIC has misled the court. These claims are unnecessary and improper attacks and, clearly, if movant thought these allegations were true, he would file an appropriate motion for sanctions. As he has not done so, it instead exposes these attacks for what they are – an attempt to hide the fact that

his Motion is completely devoid of any new facts, evidence or law to support reconsideration and/or relief from the orders signed 2/11/19. UAIC will address each of movants alleged grievances, below, but it is clear there are simply no grounds for reconsideration of or, relief from, either of the orders. Accordingly, 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 *unbiased* 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 hereto as Exhibits 'A' & 'B', respectively*. 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

1 **not renewed and the time for doing so expired while the action against the insurer**
 2 **was pending?**

3 *Id.*

4 This issue remains pending and - is currently fully briefed before the Nevada Supreme
 5 Court. Despite the above, in what Intervenor has repeatedly argued is a clear case of forum
 6 shopping, Plaintiff retained additional Counsel (Plaintiff's Counsel herein, David Stephens, Esq.)
 7 initiated this "new" action, under case no. A-18-772220-C, in a thinly veiled attempt to have this
 8 Court rule on issues pending before the Nevada Supreme Court and "fix" their expired judgment.

9 In any event, Third Party Plaintiff Lewis continues to try and argue in the instant Motion
 10 that the issues in this matter are not substantially related to those on appeal because, he claims,
 11 the expired judgment is "assumed" in the question before the Nevada Supreme Court and,
 12 therefore, the Court will not rule on the expiration or, the time for renewal – much less his claims
 13 for tolling of the expiration. This argument is simply incorrect. First, this Court has already
 14 agreed the matters on the certified question are substantially similar to those in the instant action
 15 (See *Exhibit 'N', hereto*). However, this argument continues to be undermined by Nalder and
 16 Lewis' own arguments in their briefs on appeal where they have made the same arguments,
 17 concerning the Mandelbaum decision and the tolling statutes, to support their argument they can
 18 continue against UAIC, as Nalder claims allow her to proceed with her action herein. See Copy
 19 of Nalder and Lewis' Supplemental Opening brief on appeal, attached hereto as Exhibit 'P', at
 20 page 11-16 (where they argue either the Mandelbaum decision or the tolling statutes support
 21 their argument against expiration). Accordingly, if the issues regarding Plaintiff's ability to seek
 22 a new judgment (as Lewis claims herein) are being argued by these same parties on appeal – *how*
 23 *are the cases not dealing with the exact same substantive issues?* The Answer is that they are
 24 substantially related. Furthermore, the argument that the cases are not related is still further
 25 undermined by Counsel for Third Party Plaintiff Lewis (or, in this case as counsel for Nalder)

1 when he filed notice of the now vacated judgment of 1/23/19 with the Ninth Circuit in the
2 matters on appeal. See copy of Plaintiff's Supplemental citation to the Ninth Circuit is attached
3 as Exhibit 'Q', hereto. Obviously, this begs the question, if a judgment in this action is unrelated
4 to the appeal – *why file it in the Ninth Circuit and argue it moots the appeal?* The answer is,
5 again, they are substantially related. Indeed, UAIC suggests this Court query Counsel for Third
6 Party Plaintiff at hearing if he can guarantee the Nevada Supreme Court (or, the Ninth Circuit
7 for that matter) will not ultimately rule on the status of the 2007 judgment, whether it is expired
8 or, whether the claimed tolling statutes apply - as UAIC believes he will admit he cannot so
9 guarantee – proof this cause is not only substantially similar to the matters on appeal.

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

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

20 THE COURT: You know -

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

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

24 MR. STEPHENS: Thank you.

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

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

28 THE COURT: Okay. All right.

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

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

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

19 THE COURT: Stay.

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

25 THE COURT: It’s on calendar for next week.

26 MR. DOUGLAS: Oh, it’s on calendar next week. Okay. Is that the
27 23rd?

28 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.

II.

ARGUMENT

A. THIRD PARTY PLAINTIFF LEWIS HAS NO STANDING TO SEEK REDRESS FOR THE ANY OF THE COURT’S RULINGS, FROM THE 2 ORDERS SIGNED 2/11/19 WHICH CONCERN MOTIONS AS BETWEEN 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 rulings 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 several of the rulings in the 2 orders signed by the Court on 2/11/19, this Court can rule he has no standing to seek redress for certain portion of those rulings (*i.e.* those portions of the rulings concerning Defendant Lewis and Plaintiff Nalder) and, deny his motion, in part, on that basis.

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 several of this

Court's rulings in the 2 orders signed 2/11/19. Specifically, items numbered 2 & 3 of the 'Findings of Fact', as well as items numbered 2 & 3 in the 'Conclusions of Law', for the Order on the 1/9/19 Motions (noting the relatedness as between *Plaintiff Nalder's* 3 causes of action and those on appeal) have absolutely no bearing on *Third Party Plaintiff Lewis's* claims herein. Similarly, this Court's rulings on UAIC's Counter-Motion to Stay Claims 1 & 2 of *Plaintiff Nalder's Complaint*, as well as the ruling on UAIC's Motion to Dismiss Claim 3 of *Plaintiff's Nalder's Complaint*, again have absolutely no bearing on *Third Party Plaintiff Lewis's* claims herein.

Next, in terms of the Order on the 1/23/19 Motions, item number 1 for the 'Conclusions of Law', for the (noting the relatedness as between *Plaintiff Nalder's* causes of action and those on appeal) have absolutely no bearing on *Third Party Plaintiff Lewis's* claims herein. Further, the Order's orders staying Plaintiff's Motion for summary judgment simply does not concern Third Party Lewis or his claims.

Clearly those portions of the Orders signed 2/11/19, noted above, dealt with issues between Plaintiff and *Intervenor*. Further, those portions of the rulings do not concern Third Party Plaintiff Lewis' claims, herein.

As such, for these reasons, Third Party Plaintiff Lewis has no standing to seek redress of those portions of this Court's Orders signed 2/11/19 as noted above and, thus, those portions of the Motion should be denied.

B. OPPOSITION TO MOTION FOR RECONSIDERATION AND/OR RELIEF FROM ORDERS SIGNED FEBRUARY 11, 2019 ORDER PURSUANT TO N.R.C.P. 60(b).

For the present Motion, Third Party Plaintiff Lewis asserts several errors which, he argues, entitle him to either Reconsideration, rehearing or, relief from one or both of the Orders signed by this Court 2/11/19. In short, as movant presents *absolutely no new evidence, fact or law to suggest an error in any ruling was made* – there are simply no grounds for either

reconsideration or relief under NRCP 60(b). Moreover, it also true that any alleged issues with the Orders noted by movant can be explained or, remedied without need for reconsideration or, relief under NRCP 60(b)- as will be set forth, below. As such, the motion should be denied.

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.”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 convincing nature to induce the court to reverse its prior decision.”²

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, 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*.³

2. Response to Each of Movant’s Alleged Errors in the 2 Orders.

Movants alleged errors appear to be mere argument – without any new law or facts – but as Movant attempts to “muddy the waters” with several unsupported claims, UAIC feels

¹ E.D.C.R. 2.24(b).

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

³ *Ogle v Miller*, 87 Nev. 573, 491 P.2d 40 (1971).

1 compelled to respond to each. By the response it becomes obvious that there is no support for the
 2 Motion and, it should be denied. Of note, as Movant has failed to supply any new law or fact in
 3 his Motion nor, specified any other issues with either of the 2 Orders than those discussed below,
 4 Movant cannot correct this deficiency by arguing new/additional items in his Reply as same has
 5 been waived.⁴

6
 7 (a) The Orders were not objected to “by the parties” as Lewis claims.

8 Lewis claims *both* Orders signed by this Court 2/11/19 were “objected to” by the parties.
 9 However, as can be seen from the Affidavit of Counsel for UAIC and the attached emails
 10 attached, *supra*, that is not at all accurate. While Third Party Lewis did propose some differing
 11 language and/or items in regard to the Order on the 1/9/19 hearing – no other party (i.e. Plaintiff
 12 Nalder, Defendant Lewis or, Defendants Tindall/Resnick & Lewis) voiced any objection to the
 13 Order on the 1/9/19 hearings. Moreover, not a single party – *even Third Party Plaintiff Lewis* –
 14 voiced any issue with the Order on the 1/22/19 minute order for the motions set for 1/23/19.
 15 Finally, all parties had opportunity to submit competing orders for both, but failed to do so –
 16 further showing acquiescence with the submitted orders. Regardless, Lewis’ blanket statement
 17 that both orders were “objected to by the parties” is inaccurate. Only Third Party Plaintiff Lewis
 18 voiced objection – *and only to the Order on the 1/9/19 hearings*, yet he chose not to submit his
 19 own Order. As such, the claim is inaccurate and, in any event, offers no grounds for
 20 reconsideration, rehearing or relief under NRCP 60(b).

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⁴ See *eg* Reichardt v. Hoffman, 52 Cal. App. 4th 754 (Cal. App. 1997).

(b) The Orders were accurate reflections of the Court's rulings and were not factually inaccurate and/or contrary to "black letter law" and, moreover, movant has not presented any evidence of such errors anyway.

Movant next makes the broad claim that the 2 Orders are factually inaccurate or contrary to "black letter law." However, this accusation is not supported by any fact or law to prove same – just argument which is insufficient to support the Motion. Indeed, the Order on the motions that were set for 1/23/19 was based almost exactly on the Court's own minute Order and, as such, UAIC is at a loss how it did not accurately reflect the Court's rulings. For the Order on the 1/9/19 hearing, UAIC will address each issue separately, below. Regardless, this broad allegation is made with absolutely no support and, as such, it should be disregarded.

(c) The fact that the Court's ruling on UAIC's Motion to set aside the 2018 "Amended Judgment" in the 2007 case is not noted in the current Order on the 1/9/19 hearings was an oversight and, regardless, is not grounds for reconsideration or relief – rather, a separate Order on that Motion can be entered.

Movant's argument that the failure to include a ruling from one of the Motions heard 1/9/19 in the Order is not grounds for reconsideration, rehearing or, relief under NRCP 60(b). *UAIC does not contest the fact that the Court indeed denied its Motion to set aside the Amended Judgment in the 2007 matter because the Court felt that Amendment was of no consequence in relation to the validity of the judgment. The fact it was not included was an oversight because, when Counsel for UAIC first proposed the Order on the 1/9/19 hearings, it had assumed the party which had prevailed at the Motion (namely, Plaintiff) would prepare that order. See Affidavit of Counsel, supra, as well as Exhibit 'C', hereto.* The 1/10/19 email from UAIC specifically asked for the prevailing party to prepare an Order on UAIC's Motion to vacate the amended judgment. However, as can be seen, no party besides Third Party Plaintiff ever responded and, accordingly, when UAIC sent its Order to the court for the 1/9/19 hearing - it did not include a finding for that Motion, but it was merely an oversight. As such, all that needs to be done to rectify the issue is for the party/ies (most likely, Plaintiff as the prevailing party) to

1 submit an order on the Court's denial of that Motion. In no case does that ruling's omission from
 2 the order serve as grounds to reconsider and/or give relief under NRCP 60(b) for *any of the*
 3 *other rulings contained within that order*. This is simply an additional ruling by the Court – that
 4 the parties apparently agree on – which merely needs a separate order to be entered. Thus, this to
 5 fails to serve as a basis for Lewis' Motion and, it should be denied.

6
 7 (d) The fact the Court mentioned it would review the *Dangberg* decision again also
 8 does not support the relief Movant seeks.

9 In the only law presented by movant in his Motion, Lewis' alleges there is ground for
 10 reconsideration because the Court noted during the hearing (on 1/9/19) that it would review the
 11 holding of the *Dangberg* case again at Lewis' request. At the same time it did so, however, the
 12 Court also explained to Lewis' Counsel what it anticipated its final ruling to be. Moreover,
 13 UAIC can only assume that the Court did so review that case prior to signing the Order on the
 14 matter over a month later, on 2/11/19. In any event, this argument does not support
 15 reconsideration or relief under NRCP 60 and, thus, should be denied.

16 The portion of the 1/9/19 hearing concerning the Court reviewing *Dangberg* after already
 17 stating its ruling would be to sustain the interventions is, as follows:

18
 19 MR. CHRISTENSEN: Okay. The *Dangberg* case says just the opposite,
 20 Your Honor.

21 THE COURT: Okay.

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

28 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,...

See Exhibit '2' to Movant's Motion at p. 54, lines 10-22 (emphasis added).

1 As can be seen, though the Court did agree to review *Dangberg* again – at the same time,
2 it also clearly explained to Movant where the Court would be “ending up.” Accordingly, though
3 UAIC does not know what the Court did following the hearing, one can assume the Court did
4 review the case again, yet it did not alter its ruling on 1/9/19 and, thus, the court signed the order
5 on 2/11/19 as shown.

6
7 Further, the Court would have had sound basis to sign the Order despite *Dangberg*. As
8 cited by UAIC in its Opposition to the Motion to strike its interventions and, as argued at the
9 hearing 1/9/19, *Dangberg* is distinguishable for several reasons. First, in terms of the 2018
10 action, it is clear the only alleged “settlement agreement” was the filed stipulation for settlement
11 between Plaintiff and Defendant. However, as this Court stated at the hearing, said stipulation
12 has never been entered by the Court and, accordingly, should not serve as a basis for an alleged
13 “signed” settlement agreement for purposes of *Dangberg*. Moreover, as the alleged stipulation
14 for settlement was filed *after* UAIC filed its Motion to Intervene, it may be viewed as an attempt
15 to quickly get a judgment *before* UAIC could contest same as intervenor and, thus, *would defeat*
16 UAIC’s intervention. Further justification to distinguish it from *Dangberg*. As such, reliance on
17 the alleged stipulation for settlement here under that ruling is distinguishable.

18
19 Additionally, the *Dangberg* the case is distinguishable on the same grounds as were noted
20 in regard to N.R.S. 12.130 and other case law cited by Movant, in the prior briefings and at
21 argument 1/9/19. Namely, UAIC is not seeking to intervene “post-judgment” to re-litigate the
22 2008 judgment – which is the main reason for the general prohibition against post judgment
23 interventions. Here, UAIC is trying to prevent Plaintiff from pursuing **a new action for another**
24 **judgment against its insured**. In discussing interventions post-judgment, the *Dangberg* court
25 cited a prior decision of the Nevada Supreme Court, *Ryan v Landis*, 58 Nev. 256 (1938), in
26 confirming that the purpose of requiring interventions pre-judgment was to preserve finality of
27 verdicts or, settlements between the parties. *Id*. Accordingly, for these reasons, *Dangberg* is
28

1 distinguishable because UAIC does not seek intervention into the 2007 case (nor the 2018 case)
 2 to in any way “open up” or “re-litigate” the issues or damages set forth in the original 2008
 3 judgment.

4 As UAIC is not *attacking the award of the original judgment* or, *seeking to re-litigate any*
 5 *of the issues decided* by that judgment, the proposition noted by the court in *Dangberg* is
 6 distinguishable here. Most importantly, as stated above, the Court merely stating it would review
 7 a case again – when it had also clearly indicated its ruling, is simply not grounds for
 8 reconsideration or relief from the order.

9
 10 (e) Movants argument that “no findings” were made as to why the Court sustained
 11 UAIC’s Intervention in the 1/9/19 Order is simply inaccurate and, again, fails to
 12 serve as grounds for his relief requested anyway.

13 Lewis also makes the allegation that the Orders contain no findings as to why the Court
 14 sustained UAIC’s interventions. However, this is plainly inaccurate. The Order regarding this
 15 issue, on the 1/9/19 hearings, noted the rulings were based on the reasons stated in the record.⁵
 16 Additionally, the transcript of hearing and the briefs/cases argued by UAIC denote support for
 17 same decision. As such, besides being inaccurate, without new evidence presented, this
 18 allegation does not support Movant’s Motion either and, thus, it should be denied.

19 As can be seen from the Order on the 1/9/19 hearing, it clearly states the Court denied
 20 Lewis’ Motion to void the interventions by UAIC based on the reasons set forth in the record.
 21 *Exhibit ‘N’, hereto.* Such record included not only the briefs filed by the parties and, argued at
 22 the hearing, but also the Court’s stated ruling. Specifically, the Court stated in this regard, as
 23 follows:
 24

25 THE COURT: Let me -- let me tell you how I'm leaning on terms of
 26 your -- well, let me deal with -- with the issue relating to

27
 28 ⁵ See *Exhibit ‘N’, hereto*, at Conclusions of law finding UAIC has shown a right and interest to
 intervene and, in the Court’s ruling noting the reasons for denial of Lewis’ Motion to vacate the
 interventions was stated in the record.

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.

See Exhibit '2' to Movant's motion, p. 46, lines 12-18.

From the above excerpt the Court clearly indicated that it found no issue with UAIC's intervention in the 2018 case and, in regard to the 2007 case, while there were concerns, the Court felt the **factual scenario in our case was distinguishable from the law cited**. Indeed, UAIC furnished arguments as to why that case law was distinguishable as well as case law from the federal courts supporting intervention post-judgment in its moving papers and at argument. Namely, UAIC is not seeking to intervene "post-judgment" to re-litigate the 2008 judgment – which is the main reason for the general prohibition against post judgment interventions. Specifically, that here UAIC is trying to prevent Plaintiff from pursuing *a new action for another judgment* against its insured and not seeking to come in to attack a prior judgment.

Moreover, in its briefs, UAIC further noted that the main case advanced by Movants to void intervention, *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993), is distinguishable as *Lopez* dealt with a situation where an insurer was seeking to intervene in a case filed by its insured against an alleged tortfeasor and, not as here, where **UAIC is seeking to intervene to protect its insured from a judgment on a suit filed by a claimant.** As this Court is likely aware, the case of *Allstate Ins. Co. v Pietrosh*, 454 P.2d 106 (1969), provides generally that an insurer is bound by judgments in favor of its insured against a tortfeasor, when it fails to intervene, for purposes of any Underinsured Motorist claim made by its insured. Accordingly, the Court in *Lopez* was dealing with a completely different situation than the case at bar in that, in *Lopez*, the insurer was seeking intervention after judgment to potentially alleviate its underinsured motorist obligations on a judgment *in favor of its insured and against a tortfeasor where it had an affirmative obligation to intervene before judgment to do so.* *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993).

1 Indeed, the insurer in *Lopez* had notice of the action prior to judgment and, still failed to
 2 intervene. *Id.*

3 Finally, UAIC has also cited that, based on the factual scenario in this case, UAIC
 4 believes these circumstances offer special grounds for intervention – *even post-judgment* - and
 5 noted the federal courts have allowed post-judgment intervention when unusual circumstances
 6 are present. Federal courts have allowed insurers to intervene post-judgment. *See McDonald v.*
 7 *E.J. Lavino Co.*, 430 F. 2d 1065 (1970) (allowing a worker’s compensation carrier to intervene
 8 post-judgment in its employee-insured’s tort action against third party tortfeasor). When courts
 9 have allowed intervention by a party post-judgment it has usually required a ‘strong showing’ by
 10 the party. *McClain v. Wagner Elec. Corp.*, 550 F.2d 1115, 1120 (8th Cir. 1976). Generally, these
 11 motions have centered around an analysis of timeliness of the intervention and why it was not
 12 made sooner. Here, UAIC argues a timeliness must be in its favor as it had no duty to intervene
 13 in the 2007 action, much less notice of the amended judgment, prior to July 2018. For the 2018
 14 action, obviously, it was not even filed until 2018 and UAIC sought to intervene shortly after
 15 receiving notice of the action.

16 Federal courts examining the issue have also examined whether it prejudice the interests
 17 of the parties or, burden the court. *McDonald v. E.J. Lavino Co.*, 430 F. 2d 1065 (1970). Indeed,
 18 “it has been the traditional attitude of the federal courts to allow intervention where no one
 19 would be hurt and greater justice would be attained.” *Id.* at 1072. Here, UAIC argues just such a
 20 determination may be made here. The fact is no party will be prejudiced by UAIC’s intervention.
 21 The issue of the expired judgment 2008 judgment and, this attempt to “amend” it or “get a new
 22 judgment”, were before the Nevada Supreme Court on appeal anyway, so Plaintiff is not
 23 prejudiced. UAIC is seeking to alleviate a multi-million dollar judgment against Lewis so, *he*
 24 *will be helped, not prejudiced* by UAIC’s intervention. Finally, and most importantly, given what
 25
 26
 27
 28

1 appears to be conflicts of interest and/or potential collusive attempts to get a sham judgment,
 2 **greater justice will be attained** by allowing UAIC's intervention in these matters.

3 Accordingly, based on the above-cited case law and principles, this Court had ample
 4 grounds to allow UAIC's intervention, post-judgment. Most importantly, Movant's claim that no
 5 reasoning is stated either in the order or, record, to supports the court's decision on this issue is
 6 both incorrect and, regardless, serves as no ground for reconsideration or relief under NRC
 7 60(b) and, thus, should be denied.

8
 9 (f) Movant provides no new/additional support for his arguments that the Court's
 10 finding that the instant matters and, those on appeal, are not substantially related
 11 and, thus, again, offers no support for his Motion.

12 As with several other of the alleged errors claimed by Movant, his claim that the Court
 13 was incorrect to find the matters herein are not substantially related to those on appeal and, thus,
 14 stay these actions, is not supported by any new facts or, law. Instead, Movant simply re-argues
 15 his position. This is plainly insufficient for either reconsideration or relief under NRC 60 and,
 16 thus, should be denied.

17 Moreover, as noted above, Counsel for Lewis' own actions – in this case and, as counsel
 18 for Plaintiff on appeal – undermine his arguments anyway. That is, Nalder and Lewis' own
 19 arguments in their briefs on appeal where they have made the same arguments, concerning the
 20 Mandelbaum decision and the tolling statutes, to support their argument they can continue
 21 against UAIC, as Nalder claims allow her to proceed with her action herein. See Copy of Nalder
 22 and Lewis' Supplemental Opening brief on appeal, attached hereto as Exhibit 'P', at page 11-16
 23 (where they argue either the Mandelbaum decision or the tolling statutes support their argument
 24 against expiration). Accordingly, if the issues regarding Plaintiff's ability to seek a new
 25 judgment (as Lewis claims herein) are being argued by these same parties on appeal – *how are*
 26 *the cases not dealing with the exact same substantive issues?* The Answer is that they are
 27
 28

1 substantially related. Furthermore, the argument that the cases are not related is still further
 2 undermined by Counsel for Third Party Plaintiff Lewis (or, in this case as counsel for Nalder)
 3 **when he filed notice of the now vacated judgment of 1/23/19 with the Ninth Circuit in the**
 4 **matters on appeal. *See copy of Plaintiff's Supplemental citation to the Ninth Circuit is attached***
 5 ***as Exhibit 'Q', hereto.*** Obviously, this begs the question, if a judgment in this action is unrelated
 6 to the appeal – *why file it in the Ninth Circuit and argue it moots the appeal?* The answer is,
 7 again, they are substantially related.
 8

9 In sum, Movant has presented no new evidence or law to support reconsideration or, relief
 10 under NRCP 60(b) and, as such, there is no ground to support his motion on this score.
 11 Furthermore, based on the clear double speak of Movant, regarding the relatedness of these
 12 actions, according to when it suits his purposes - illuminates the fallacy of his argument.
 13

14 (g) The argument that UAIC took advantage of counsel in contravention of R.P.C. 3.5A is baseless and also serves as no support for the Motion.
 15

16 Movants have also made the argument that because UAIC “has taken advantage of
 17 counsel in encouraging the court to enter improper orders” and, that this also should serve as
 18 grounds for reconsideration or, relief, because Counsel violated R.P.C. 3.5A – without ever
 19 explaining how UAIC violated this rule. This argument is baseless. First, to suggest UAIC has
 20 caused the Court to do something or, not, is likely affording UAIC too much credit. This Court
 21 can surely make its own decisions and likely nothing UAIC could do would change this fact.
 22 Secondly, and more importantly, R.P.C. 3.5 has absolutely no application here.
 23

24 R.P.C. 3.5A states:

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

[Added; effective May 1, 2006.]

As this Court can plainly see – no portion of R.P.C. 3.5A was violated. At no time did
 Counsel for UAIC take a default or dismissal against any party, much less Movant's client,

Lewis, without first inquiring on their intent to proceed. Indeed, UAIC does not even have a claim in these matters from which to take such a default or dismissal as it is only an Intervenor and Third Party Defendant with no cause of action it is prosecuting.

Accordingly, this argument is completely spurious as well and cannot support his motion.

III.

COUNTER-MOTION TO STRIKE JOINDER TO INSTANT MOTION BY PLAINTIFF

For a joinder to any Motion, it is clear a non-moving party must file such a Joinder “within 5 days” of service of such a motion. In this case, Plaintiff Nalder’s joinder, served March 14, 2309, is clearly late and, thus, should be stricken.

E.D.C.R. 2.20(d) which governs joinders to Motions states, as follows:

(d) Within 5 days after service of the motion, a nonmoving party may file written joinder thereto, together with a memorandum of points and authorities and any supporting affidavits. If the motion becomes moot or is withdrawn by the movant, the joinder becomes its own stand-alone motion and the court shall consider its points and authorities in conjunction with those in the motion.

Here, the present Motion for Reconsideration of this Court’s Orders of 2/11/19 was foiled by Third Party Plaintiff Lewis on March 4, 2019. Accordingly, by counting judicial days, any joinder would have been due to be *filed* by March 11, 2019. However, Plaintiff Nalder’s joinder does not even appear to have been filed. Rather, Nalder served a written notice of joinder by mail on March 14, 2019. *A copy of the joinder served, but not filed, by Nalder is attached hereto as Exhibit ‘R.’* As this joinder was apparently not filed at all under the rule it is improper and must be stricken. Moreover, *even if* this Court might consider a timely *served* joinder - it is also clear that Plaintiff’s joinder is untimely on this basis as well.

UAIC is prejudiced by the late service of this alleged joinder. Accordingly, for failure to adhere to the rules, Plaintiff’s joinder must be stricken.

IV.

CONCLUSION

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

DATED this 18th day of MARCH, 2019.

ATKIN WINNER & SHERROD

/S/ Matthew J. Douglas

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

CERTIFICATE OF SERVICE

I certify that on this 18th day of March, 2019, the foregoing **UAIC'S OPPOSITION TO 3rd PARTY PLAINTIFF LEWIS' MOTION FOR RECONSIDERATION OF ORDERS SIGNED 2/11/19, MOTION FOR HEARING, AND MOTION FOR RELIEF FROM ORDERS AND COUNTER-MOTION TO STRIKE UNTIMELY JOINDER BY PLAINTIFF TO SAID MOTION** was served on the following by: ☐ Electronic Service pursuant to NEFR 9. ☒ 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



An employee of ATKIN WINNER & SHERROD

EXHIBIT “A”

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

v.

UNITED AUTOMOBILE
INSURANCE COMPANY,
Defendant-Appellee.

No. 13-17441

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

ORDER CERTIFYING
QUESTION TO THE
NEVADA SUPREME
COURT

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

Argued and Submitted January 6, 2016
San Francisco, California

Filed December 27, 2017

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

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

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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.

NALDER V. UNITED AUTO INS. CO.

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

I

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

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

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

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

II

The question of law to be answered is:

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

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

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

III

A

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

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

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

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

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

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

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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

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

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

IV

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

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

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

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

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

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

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

V

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

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

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

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

IT IS SO ORDERED.

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

Diarmuid F. O’Scaannlain
Circuit Judge

EXHIBIT “B”

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 70504

FILED

FEB 23 2018

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

**ORDER ACCEPTING SECOND CERTIFIED QUESTION AND
DIRECTING SUPPLEMENTAL BRIEFING**

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

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

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

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

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

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

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

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

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

It is so ORDERED.¹

Douglas, C.J.
Douglas

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Cherry, J.
Cherry

Pickering, J.
Pickering

Stiglich, J.
Stiglich

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

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

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

002122

002122

EXHIBIT “C”

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.

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,

ATKIN WINNER & SHERROD
 A NEVADA LAW FIRM

Matthew J. Douglas
Partner
 1117 South Rancho Drive
 Las Vegas, NV 89102
 PHONE (702) 243-7000 | FAX (702) 243-7059
mdouglas@awslawyers.com
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ORDR

MATTHEW J. DOUGLAS
 Nevada Bar No. 11371
 ATKIN WINNER & SHERROD
 1117 South Rancho Drive
 Las Vegas, Nevada 89102
 Phone (702) 243-7000
 Facsimile (702) 243-7059
mdouglas@awslawyers.com

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

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:

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.

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 their 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*;

1 *and Gary Lewis, individually v. United Automobile Insurance Company, case no. 70504; and*

2 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
 3 UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN
 4 PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her
 5 Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to
 6 and arising from the July 2007 automobile accident, is DISMISSED WITH PREJUDICE, but
 7 ruling on the Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her
 8 Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment,
 9 entered in case no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED
 10 pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on*
 11

12 *behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
 13 *Company, case no. 70504.*
 14

15 **IT IS SO ORDERED.**

16 **DATED** this ____ day of _____ 2019.

17
 18 _____
 19 DISTRICT JUDGE

20 Submitted by:

21 ATKIN WINNER & SHERROD, LTD.

22
 23 _____
 24 MATTHEW J. DOUGLAS, Esq.
 25 Nevada Bar No. 11371
 26 1117 South Rancho Drive
 27 Las Vegas, Nevada 89102
 28 *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

EXHIBIT “D”

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

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's 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's) 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

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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,

 logo.jpg

Matthew J. Douglas

Partner

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Las Vegas, NV 89102

PHONE (702) 243-7000 | FAX (702) 243-7059

mdouglas@awslawyers.com

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EXHIBIT “E”

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,

 logo.jpg

Matthew J. Douglas

Partner

1117 South Rancho Drive

Las Vegas, NV 89102

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mdouglas@awslawyers.com

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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

002134

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's 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's) 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.

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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,

 logo.jpg

Matthew J. Douglas

Partner

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--

EXHIBIT “F”

From : mdouglas@awslawyers.com

To : thomasc@injuryhelpnow.com

Sent : 1/17/2019 9:50AM


Subject : RE: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

Tommy-

Thanks for the clarification. I think, at this point, to consider your proposed changes and, discuss with my client, I would like to also review the CD for the hearing.

My office can send someone by from a copy shop to pick it up, make a copy and, return the original to you. Is this acceptable? If so, please confirm what office location the CD is at and my assistant will send someone by today.

Thanks, and, let me know,

 logo.jpg

Matthew J. Douglas

Partner

1117 South Rancho Drive

Las Vegas, NV 89102

PHONE (702) 243-7000 | FAX (702) 243-7059

mdouglas@awslawyers.com

www.awslawyers.com

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From: Thomas Christensen <thomasc@injuryhelpnow.com>

Sent: Wednesday, January 16, 2019 11:47 AM

To: Matthew Douglas <mdouglas@awslawyers.com>

Cc: Waite, Dan R. <DWaite@lrrc.com>; David Stephens <dstephens@sblawfirm.com>; breen@breen.com; dawnh@injuryhelpnow.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,

Yes findings of fact. At this point I just have the CD no transcript. I would be happy to allow copies (I don't really know how to)

On Wed, Jan 16, 2019 at 10:33 AM Matthew Douglas <mdouglas@awslawyers.com> wrote:

Tommy-


Thank you for your suggested changes/revisions. I have 2 questions so I can consider same:

1. You mentioned last week you were awaiting the transcript of the proceedings to make your changes ☐

do you have the transcript? Can you share it with everyone so we can review to consider your revisions?

2. Paragraphs 1-9 that you proposes, below, are they supposed to be in the findings of fact section?

Let me know on both issues and, thanks,

 logo.jpg

Matthew J. Douglas
Partner
 1117 South Rancho Drive
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 PHONE (702) 243-7000 | FAX (702) 243-7059
mdouglas@awslawyers.com
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From: Thomas Christensen <thomasc@injuryhelpnow.com>

Sent: Tuesday, January 15, 2019 5:35 PM

To: Matthew Douglas <mdouglas@awslawyers.com>

Cc: Waite, Dan R. <DWaite@lrrc.com>; David Stephens <dstephens@sgblawfirm.com>; breen@breen.com; dawnh@injuryhelpnow.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

Mat,

Below are my suggestions. I have included rulings on the remainder of the motions decided. My thought is we might as well only have one order (other than the order to withdraw submitted by Dan Waite). Oh I think the dismissal should just be a dismissal and not with prejudice. Let me know what you think. Thank you.

Tommy

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, □ 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? □ Are substantially similar to the issue in this case which is whether Nalder can bring an action on a judgment against Gary Lewis □ even though the judgment is ten years old because Gary Lewis has been absent from the State and the statute

of limitations of 6 years has been tolled pursuant to NRS 11.300 as in Mandelbaum.

2. Pursuant to NRCp 24 and NRS 12.130 UAIC has shown a right and interest to intervene in these matters. The Court concludes as to case 07A549111 that although the case law and NRS 12.130 clearly do not allow intervention after judgment that since UAIC alleges the judgment is expired the statute and case law do not apply. The Court concludes as to case A-18-772220-C that since the Court did not sign the judgment requested by the stipulation that NRS 12.130 and the Dangberg case do not apply.

3. That Nalder and Lewis entered into and filed a settlement agreement settling all claims between them in case A-18-772220-C on September 13, 2018.

4. That Randall Tindall made an appearance on behalf of Lewis on September 26, 2018.

5. That the Court allowed intervention by way of the order entered October 19, 2018.

6. That on October 24, 2018 Judge Jones disclosed a relationship with Mr. Tindall which Lewis refused to waive and resulted in Judge Jones recusing himself.

7. Judge Jones did not void the order allowing intervention.

8. The certificate of service regarding both motions to intervene are defective on their face. In case 07A549111 no parties are listed as served. In case A-18-772220-C Mr. Lewis is not listed as being served.

9. This case is unusual but the Court does not find any unethical behavior by either Mr. Christensen or Mr. Arntz.

Defendant's Motion to Strike both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss is hereby GRANTED.

Defendant's Motion to Strike Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is GRANTED.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken.

Defendant's Motion to Dismiss is stricken.

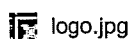
UAIC's Motion for the Court to Deny Stipulation and Enter Judgment Between Plaintiff Lewis and/or in the Alternative to Stay Same Pending Hearing on Motion to Dismiss is GRANTED

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 in case 07A549111 is DENIED.

UAIC's motion for evidentiary hearing regarding unethical behavior is denied.

On Thu, Jan 10, 2019 at 3:34 PM Matthew Douglas <mdouglas@awslawyers.com> wrote:

Dan- Not a problem. Once I hear from the other parties I will be sure to make your changes.



Matthew J. Douglas

Partner

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From: Waite, Dan R. <DWaite@lrrc.com>

Sent: Thursday, January 10, 2019 3:02 PM

To: Matthew Douglas <mdouglas@awslawyers.com>; David Stephens <dstephens@sblawfirm.com>; breen@breen.com; thomasc@injuryhelpnow.com; dawnh@injuryhelpnow.com; rtindall@rlattorneys.com

Cc: 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,

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

002140

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

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's 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's) 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.

002141

Thanks,

 logo.jpg

Matthew J. Douglas

Partner

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002142

EXHIBIT “G”

From : mdouglas@awslawyers.com

To : thomasc@injuryhelpnow.com

Sent : 1/24/2019 11:24AM

Subject : RE: Nalder v Lewis; 07A549111 & A-18-772220-C; Proposed Order on Certain Motions from 1/9/19

All:


Please allow this email to serve as follow up regarding the proposed order on Motions for the 1/9/19 hearing. At that this time, I have had a chance to review the entire CD of the hearing as well as the comments made by everyone (please note I only received changes/additions from Tommy Christensen and Dan Waite and, thus, assume no one else had any substantive issues).

First, I have made Dan Waite's corrections to spellings of his name and his firm name.

Next, in terms of Mr. Christensen's changes, unfortunately, I cannot agree to many of the changes. In short, I found many of the proposed changes either not consistent with the hearing (which I listened too in detail) or, had inserted items which I believe were done solely to gain some tactical advantage and not based on the hearing or ruling. As such, I cannot accept many of these changes. I have made specific detailed notations to each such issue I cannot include below, *in red and italicized and underlined for ease of review*. Items included I have noted below in green and boldface.

That said, I did take Mr. Christensen's suggestion to include all matters in one order. Accordingly, please review the new proposed order, covering all motions (except Tindall's Withdrawal) and, let me know if it is acceptable for each of your clients. If so, I will send a runner to collect signatures. If not, please also let me know and I suggest we may need to submit separate orders. Either way, the orders are technically due today 1/24/19 as noted previously. So, please let me know by 2 p.m. today or, we will submit this order as is.

Thanks,

 logo.jpg

Matthew J. Douglas

Partner

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From: Thomas Christensen <thomasc@injuryhelpnow.com>

Sent: Tuesday, January 15, 2019 5:35 PM

To: Matthew Douglas <mdouglas@awslawyers.com>

Cc: Waite, Dan R. <DWaite@lrrc.com>; David Stephens <dstephens@sgblawfirm.com>; breen@breen.com; dawnh@injuryhelpnow.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

Mat,

Below are my suggestions. I have included rulings on the remainder of the motions decided. My thought is we might as well only have one order (other than the order to withdraw submitted by Dan Waite). Oh I think the dismissal should just be a dismissal and not with prejudice. Let me know what you think. Thank you.

Tommy

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, ☐ 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? ☐ Are substantially similar to the issue in this case which is whether Nalder can bring an action on a judgment against Gary Lewis ☐ even though the judgment is ten years old because Gary Lewis has been absent from the State and the statute of limitations of 6 years has been tolled pursuant to NRS 11.300 as in Mandelbaum. The problem I have with this addition is that this finding of fact pre-supposes the statute of limitations has been tolled per Lewis ☐ absence when the court never made that finding and, indeed, specifically stated several times that issue was on appeal so I cannot agree to the addition of that language as that issue remains undecided before the NV Sup. Ct. or, at least, in this case.

2. Pursuant to NRCP 24 and NRS 12.130 UAIC has shown a right and interest to intervene in these matters. The Court concludes as to case 07A549111 that although the case law and NRS 12.130 clearly do not allow intervention after judgment that since UAIC alleges the judgment is expired the statute and case law do not apply. The Court concludes as to case A-18-772220-C that since the Court did not sign the judgment requested by the stipulation that NRS 12.130 and the Dangberg case do not apply. Here, the language you seek to add language ☐ that the statute and case law does not apply ☐ which is not what the court found. The Court specifically held our facts are distinguishable from the case law cited. Moreover, your insertion of the sentence that ☐ because the court did not sign the stipulation ☐ ☐ is seeking to add language the court never stated.

002145

3. That Nalder and Lewis entered into and filed a settlement agreement settling all claims between them in case A-18-772220-C on September 13, 2018. This statement is not supported by the record. A stipulation was filed after UAIC's motion to intervene had been filed

4. That Randall Tindall made an appearance on behalf of Lewis on September 26, 2018. This finding was never specifically made by the court

5. That the Court allowed intervention by way of the order entered October 19, 2018. This finding was never specifically made by the court and actually the court allowed intervention by minute order much earlier.

6. That on October 24, 2018 Judge Jones disclosed a relationship with Mr. Tindall which Lewis refused to waive and resulted in Judge Jones recusing himself. This finding was never specifically made by the court

7. Judge Jones did not void the order allowing intervention. This finding was never specifically made by the court

8. The certificate of service regarding both motions to intervene are defective on their face. In case 07A549111 no parties are listed as served. In case A-18-772220-C Mr. Lewis is not listed as being served. The court never found service defective

9. This case is unusual but the Court does not find any unethical behavior by either Mr. Christensen or Mr. Arntz. I will add this paragraph

Defendant's Motion to Strike both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss is hereby GRANTED. This was NOT the ruling. The court specifically allowed Mr. Arntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Arntz's motions to strike them.

Defendant's Motion to Strike Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is GRANTED. This was NOT the ruling. The court specifically allowed Mr. Arntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Arntz's motions to strike them.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken. This was NOT the ruling. The court specifically allowed Mr. Artntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Artntz's motions to strike them.

Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 is stricken. This was NOT the ruling. The court specifically allowed Mr. Artntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Artntz's motions to strike them.

Defendant's Motion to Dismiss is stricken. This was NOT the ruling. The court specifically allowed Mr. Artntz's withdrawals of Tindall's Motions filed for Lewis and, thus MOOTED Mr. Artntz's motions to strike them.


UAIC's Motion for the Court to Deny Stipulation and Enter Judgment Between Plaintiff Lewis and/or in the Alternative to Stay Same Pending Hearing on Motion to Dismiss is GRANTED This was NOT the ruling. The court specifically stated at the end of the hearing, when I asked for clarification, that this Motion was set for 1/23/19

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 in case 07A549111 is DENIED. I will add that it was ☐ denied as MOOT ☐ for the reasons stated in the record.

UAIC's motion for evidentiary hearing regarding unethical behavior is denied. . I will add this paragraph, but noting it is ☐ without prejudice ☐

On Thu, Jan 10, 2019 at 3:34 PM Matthew Douglas <mdouglas@awslawyers.com> wrote:

Dan- Not a problem. Once I hear from the other parties I will be sure to make your changes.

 logo.jpg

Matthew J. Douglas

Partner

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From: Waite, Dan R. <DWaite@lrrc.com>

Sent: Thursday, January 10, 2019 3:02 PM

To: Matthew Douglas <mdouglas@awslawyers.com>; David Stephens <dstephens@sgblawfirm.com>;

breen@breen.com; thomasc@injuryhelpnow.com; dawnh@injuryhelpnow.com; rtindall@rlattorneys.com

Cc: 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,

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

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's 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.


002148

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,

 logo.jpg

Matthew J. Douglas
Partner
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002149

EXHIBIT “H”

TREVOR L. ATKIN
 THOMAS F. WINNER
 SUSAN M. SHERROD†^{OC}
 CHRISTINE M. BOOZE
 MATTHEW J. DOUGLAS⁴
 JUSTIN J. ZARCONI^o
 BRUCE W. KELLEY^o
 OF COUNSEL (oc):
 KIMBERLY L. JOHNSON^o
 JULIE M. SUEOKA

ATKIN WINNER & SHERROD

A NEVADA LAW FIRM LTD

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SCOTT R. PETITTT
 ~ANDREW D. SMITH
 STEVEN P. CANFIELD
 CHRISTIAN A. MILES
 BRANDON L. GATEWOOD
 KELLY M. SMITH
 ~ARIEL C. JOHNSON
 ^BUD R. HAFFER
 BLAKE A. DOERR
 RUSSELL D. CHRISTIAN
 STEVEN C. DEVNEY
 LARA L. MILLER

LICENSED TO PRACTICE IN:
 *ALABAMA * ARIZONA * CALIFORNIA
 *FLORIDA * ILLINOIS * IOWA

January 24, 2019

Via Facsimile to Courtroom 12A (Dept. 20):

The Honorable Eric Johnson
 Eighth Judicial District Court
 Regional Justice Center
 200 Lewis Avenue
 Las Vegas, NV 89155

Re: **Nalder v Lewis, Lewis v UAIC; Case No. A07A549111 consolidated with A-18-772220-C**

Your Honor:


Unfortunately, it appears the parties cannot agree to the content in the Order on all Motions heard by the Court January 9, 2019¹.

As such, please find attached UAIC's proposed order for the Order on all motions heard on January 9, 2019, pursuant to your ruling at that hearing.

Thank you for your attention. We will await the Court's determination.

Sincerely,

ATKIN WINNER & SHERROD



Matthew J. Douglas

MJD

cc:

Counsel for all parties of record, *Via Email Only*,
 Thomas Christensen at thomasc@injuryhelpnow.com & Dawn Hooker at dawnh@injuryhelpnow.com; Breen Arntz at breen@breen.com & breenarntz@mac.com;
 Randall Tindall at rtindall@rlattorneys.com; David Stephens at dstephens@sgblaw.com; Dan Waite (dwaite@lrrc.com)

¹ Please note this proposed order includes all motions heard that date with the exception of Randall Tindall Esq.'s and Resnick & Louis P.C.'s Motion To Withdraw as Counsel in the above-captioned actions, which has been submitted under a separate cover.

ORDR

MATTHEW J. DOUGLAS
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 ATKIN WINNER & SHERROD
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 Phone (702) 243-7000
 Facsimile (702) 243-7059
mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT**CLARK COUNTY, NEVADA**

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
 inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
 COMPANY,

Intervenor.

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

1 the Honorable Eric Johnson, on (1) Third Party Plaintiff Lewis' Motion for Relief from Orders
2 and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United
3 Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3)
4 Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C), (4)
5 Defendant Lewis' (through Breen Arntz, Esq.) withdrawals of Defendant Lewis Motions to
6 Dismiss filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'
7 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case
8 no. 07A549111; (5) Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in
9 case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief
10 from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111;

12 (6) UAIC's Oral Motion to Continue Defendant Lewis Motions to Dismiss (through Randall
13 Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'
14 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case
15 no. 07A549111 pending new counsel; (7) UAIC's Motion for an Evidentiary hearing for a fraud
16 upon the court; Plaintiff appearing through her counsel of record David Stephens, Esq. of
17 Stephens & Bywater, and Defendant Lewis appearing through his counsel of record, Breen
18 Arntz, Esq., Intervenor/Third Party Defendant UAIC appearing through its counsel of record,
19 Thomas E. Winner, Esq. & Matthew J. Douglas, Esq. of the Law Firm of Atkin Winner and
20 Sherrod, Third Party Plaintiff Lewis appearing through his counsel of record Thomas
21 Christensen, Esq. of The Christensen Law Offices, and Third Party Defendants Randall Tindall
22 and Resnick & Louis P.C. appearing through their Counsel of record Dan R. Waite, Esq. of
23 Lewis Roca Rothgerber Christie, LLP, the Court having reviewed the pleadings and documents
24 on file herein, and consideration given to hearing at oral argument, finds as follows:

25
26
27 ///
28

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

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

- 4 3. That the first claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-
 5 772220-C, herein, seeking a new judgment on her original 2007 judgment from case
 6 no. 07A549111 is not a valid cause of action and the Court would dismiss same under
 7 the *Medina* decision, but based upon the request of Counsel for Plaintiff David
 8 Stephens, Plaintiff's first claim for relief will be stayed pending decision in *James*
 9 *Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis,*
 10 *individually v. United Automobile Insurance Company*, case no. 70504;
 11

12 **ORDER**

13 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Third Party Plaintiff
 14 Lewis' Motion for Relief from Orders and Joinder in all other Motions for Relief from Orders on
 15 Order Shortening Time, as well as Plaintiff Nalder's Motion for Relief from Orders, are
 16 DENIED, for the reasons stated in the record; and,
 17

18 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor's
 19 UAIC's Counter-Motion to Stay Pending Appeal is GRANTED, for ther reasons stated in the
 20 record, and Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-
 21 18-772220-C, herein, (claim 1) seeking a new judgment on her original judgment entered in case
 22 no. 07A549111 and, (claim 2) seeking Declaratory relief, respectively, are STAYED pending
 23 further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
 24 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
 25 no. 70504; and
 26

27 ///

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

12
13 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that
14 Defendant Lewis (through Breen Arntz, Esq.) WITHDRAWALS of Defendant Lewis' Motions
15 to Dismiss filed in case No. A-18-772220-C as well as case no. 07A549111 and Defendants
16 Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C
17 as well as case no. 07A549111 (filed by Randall Tindall, Esq.) are hereby WITHDRAWN;

18 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that
19 Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C as well as case no.
20 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60
21 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) are
22 all hereby STRICKEN per WITHDRAWAL by Counsel for Lewis, Breen Arntz, Esq.;

23 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that UAIC's
24 Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C
25 as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment
26
27
28

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

4 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** UAIC's
5 Motion for an Evidentiary hearing for a fraud upon the court is hereby DENIED WITHOUR
6 PREJUDICE for the reasons stated in the record.
7

8 **IT IS SO ORDERED.**

9 **DATED** this ___ day of _____ 2019.

10
11 _____
DISTRICT JUDGE

12 Submitted by:

13 ATKIN WINNER & SHERROD, LTD.

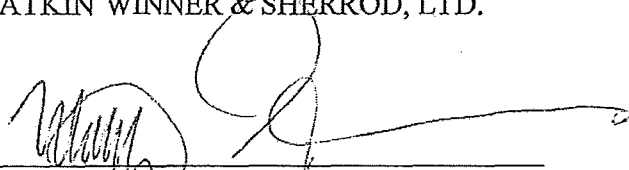
14
15 
16 _____
17 MATTHEW J. DOUGLAS, Esq.
18 Nevada Bar No. 11371
19 1117 South Rancho Drive
20 Las Vegas, Nevada 89102
21 *Attorneys for Intervenor UAIC*
22
23
24
25
26
27
28

EXHIBIT “I”

07A549111

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto

COURT MINUTES

January 22, 2019

07A549111 James Nalder
vs
Gary Lewis

January 22, 2019 07:15 AM Minute Order

HEARD BY: Johnson, Eric COURTROOM: RJC Courtroom 12A

COURT CLERK: Skinner, Linda

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Plaintiff Cheyenne Nalder filed a Motion for Summary Judgment and Relief from Order Pursuant to NRCP 60(b) on November 28, 2018. Defendant UAIC filed its Opposition and Countermotion to Stay Proceedings Pending Appellate Ruling on December 20, 2018. Defendant UAIC filed a Motion to Dismiss Third Party Plaintiff Lewis' Third Party Complaint on November 15, 2018. Defendant Gary Lewis filed an Opposition and Countermotion for Summary Judgment on November 27, 2018. UAIC filed its Opposition and Countermotion to Strike Affidavit of Lewis and/or Stay Proceedings Pending Appellate Ruling and/or Stay Countermotion for Summary Judgment Pursuant to NRCP 56(f). These matters were subsequently scheduled for hearing on January 23, 2019.

After considering the pleadings and argument of counsel, the Court GRANTS UAIC's Countermotion to Stay Proceedings Pending Appellate Ruling and STAYS Plaintiff's Motion for Summary Judgment and Relief from Order Pursuant to NRCP 60(b). Based on the hearing set on January 9, 2019, the Court finds that the issues raised in the Plaintiff's Motion are the same as those which are currently before the Nevada Supreme Court. Therefore, in the interest of judicial economy, the Court stays Plaintiff's motion until a decision has been issued by the Nevada Supreme Court.

After considering the pleadings and argument of counsel, the Court GRANTS UAIC's Countermotion to Stay Proceedings Pending Appellate Ruling and STAYS UAIC's Motion to Dismiss Third Party Plaintiff Lewis' Third Party Complaint and STAYS Defendant Lewis' Countermotion for Summary Judgment. Further, the Court DENIES UAIC's Countermotion to Strike Affidavit of Lewis and DENIES UAIC's Countermotion for Summary Judgment Pursuant to NRCP 56(f). The Court finds that, while it believes that the ruling in the Federal Court is a final judgment and the Court would be inclined to agree that the same issues have been dealt with in the Federal case. So, in the interest of judicial economy, the Court stays ruling on the Motion to Dismiss and the Countermotion for Summary Judgment pending a decision from the Ninth Circuit Court of Appeals regarding the bad faith claim.

The Court hereby VACATES the January 23, 2019 hearing. Counsel for UAIC is directed to prepare a proposed order and to circulate it to opposing counsel for approval as to form and content before submitting it to chambers for signature.

Law Clerk to notify the parties.

EXHIBIT “J”

Matthew Douglas

From: Matthew Douglas
Sent: Monday, January 28, 2019 2:02 PM
To: Tommy Christensen; Waite, Dan R.; David Stephens; BREEN ARNTZ
Cc: thomasc@injuryhelpnow.com; breen@breen.com; 'Breen Arntz' (breenarntz@mac.com); Dawn Hooker (dawnh@injuryhelpnow.com); Tom Winner; Victoria Hall
Subject: RE: Nalder v. Lewis: proposed Order on Motions 1-23-19
Attachments: Nalder - Proposed Order for 1-23-19 hearings.pdf; Minute Order 1-23-19 hearings.pdf

All-

Please find attached a first proposed draft for the orders from the Motions that were set for 1-23-19 on the above-captioned matter. This order was prepared per the Court's minute order entered on those hearings. I have also attached a copy of the minute order for your review.

In terms of the withdrawal of the NRCP 11 motions for sanctions, that were also originally set for that date, I have not included them herein as they were not part of the minute order and understand they may be part of a separate stipulation between the parties involved. If this is incorrect and you all want those withdrawals noted, I can add them.

In the meantime, please review this proposed order and let me know if you have any issues. If not, please sign on your signature line and return the signed page to my office. I believe this order should be to the court by 2/6/19.

Thanks,

ATKIN WINNER & SHERROD
 A NEVADA LAW FIRM

Matthew J. Douglas
Partner
 1117 South Rancho Drive
 Las Vegas, NV 89102
 PHONE (702) 243-7000 | FAX (702) 243-7059
mdouglas@awslawyers.com
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ORDER

MATTHEW J. DOUGLAS
 Nevada Bar No. 11371
 ATKIN WINNER & SHERROD
 1117 South Rancho Drive
 Las Vegas, Nevada 89102
 Phone (702) 243-7000
 Facsimile (702) 243-7059
mdouglas@awslawyers.com

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 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*

1 *Automobile Insurance Company*, case no. 70504;

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

8
9 **CONCLUSIONS OF LAW**

- 10 1. That based upon the hearings in this matter, on January 9th, 2019, and, order entered
11 on same hearings by the court, the issues raised in Plaintiff Nalder's Motion for
12 sumamry judgment are the same as those currently pending before the Nevada
13 Supreme Court and, accordingly, Plaintiff's Motion will be stayed, in the interest of
14 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
15 *Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
16 *Company*, case no. 70504;
- 17 2. That the issues raised in Third Party Plaintiff Lewis' Third party complaint, and the
18 Motion to dismiss same third party complaint as well as the motion for summary
19 judgment on the third party complaint, are the same as those currently pending before
20 the Nevada Supreme Court and, accordingly, Third Party Plaintiff Lewis' third party
21 complaint and the Motion to dismiss same third party complainat and, counter-motion
22 for summary judgment on same third party complaint, will be stayed, in the interest of
23 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
24 *Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
25 *Company*, case no. 70504.
26
27
28

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,*

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

6
7 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
8 UAIC's Counter-Motion to Strike Lewis' Affidavit for his Counter-Motion for summary
9 Judgment on his third-party complaint as well as UAIC's Counter-motion for additional
10 discovery pursuant to N.R.C.P. 56(f) (Case No. A-18-772220-C) are DENIED WITHOUT
11 PREJUDICE.

12 **IT IS SO ORDERED.**

13
14 **DATED** this ____ day of _____ 2019.

15
16
17 _____
DISTRICT JUDGE

18 Submitted by:
19 ATKIN WINNER & SHERROD, LTD.
20

21
22 _____
MATTHEW J. DOUGLAS, Esq.
23 Nevada Bar No. 11371
1117 South Rancho Drive
24 Las Vegas, Nevada 89102
Attorneys for Intervenor UAIC

25
26 ///

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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

EXHIBIT “K”


From : mdouglas@awslawyers.com
 To : DWaite@lrrc.com; tomchristensen@gmail.com; dstephens@sgblawfirm.com;
 breenarntz@me.com
 Sent : 1/29/2019 9:42AM
 Subject : RE: Nalder v. Lewis: proposed Order on Motions 1-23-19

Thanks Dan-

Based on that dismissal, unless someone else has issue with it, I have removed your firm from the signature page. □ Accordingly, please find a revised order on the 1-23-19 motions attached.

Please let me know if anyone has any issue with this new version and, if not please sign and return your signed copy to me by mail or scanned email copy. Please remember the order should be to the Court by 2/6/19.

Thanks,

 logo.jpg

Matthew J. Douglas
Partner
 1117 South Rancho Drive
 Las Vegas, NV 89102
 PHONE (702) 243-7000 | FAX (702) 243-7059
mdouglas@awslawyers.com
www.awslawyers.com

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From: Waite, Dan R. <DWaite@lrrc.com>
Sent: Tuesday, January 29, 2019 7:47 AM
To: Matthew Douglas <mdouglas@awslawyers.com>; Tommy Christensen <tomchristensen@gmail.com>; David Stephens <dstephens@sgblawfirm.com>; BREEN ARNTZ <breenarntz@me.com>
Cc: thomasc@injuryhelpnow.com; breen@breen.com; 'Breen Arntz' (breenarntz@mac.com) <breenarntz@mac.com>; Dawn Hooker (dawnh@injuryhelpnow.com) <dawnh@injuryhelpnow.com>; Tom Winner <twinner@awslawyers.com>; Victoria Hall <vhall@awslawyers.com>
Subject: RE: Nalder v. Lewis: proposed Order on Motions 1-23-19

Matt,

I□m thinking since I□m (my clients are) out of the case now, there□s no need for me to review, approve, or sign?? BTW, you are correct about the Rule 11 motions (and my clients□ motion to dismiss that was scheduled for hearing tomorrow); those were vacated in the Stip and Order that was e-served yesterday. 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

From: Matthew Douglas [<mailto:mdouglas@awslawyers.com>]
Sent: Monday, January 28, 2019 2:02 PM
To: Tommy Christensen; Waite, Dan R.; David Stephens; BREEN ARNTZ
Cc: thomasc@injuryhelpnow.com; breen@breen.com; 'Breen Arntz' (breenarntz@mac.com); Dawn Hooker (dawnh@injuryhelpnow.com); Tom Winner; Victoria Hall
Subject: RE: Nalder v. Lewis: proposed Order on Motions 1-23-19

[EXTERNAL]


All-

Please find attached a first proposed draft for the orders from the Motions that were set for 1-23-19 on the above-captioned matter. This order was prepared per the Court's minute order entered on those hearings. I have also attached a copy of the minute order for your review.

In terms of the withdrawal of the NRCP 11 motions for sanctions, that were also originally set for that date, I have not included them herein as they were not part of the minute order and understand they may be part of a separate stipulation between the parties involved. If this is incorrect and you all want those withdrawals noted, I can add them.

In the meantime, please review this proposed order and let me know if you have any issues. If not, please sign on your signature line and return the signed page to my office. I believe this order should be to the court by 2/6/19.

Thanks,

 logo.jpg

Matthew J. Douglas
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mdouglas@awslawyers.com
www.awslawyers.com

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EXHIBIT “L”

From : mdouglas@awslawyers.com

To : DWaite@lrrc.com; tomchristensen@gmail.com; dstephens@sgblawfirm.com;
breenarntz@me.com

Sent : 2/05/2019 11:03AM


Subject : RE: Nalder v. Lewis: proposed Order on Motions 1-23-19

All:

Just following up on my email of last week with the proposed order from the minute order on the 1-23-19 Motions. I have only heard from Dan Waite thus far and have removed him from the signature list as requested.

I am attaching another copy of the proposed order hereto. As it is due to the Court tomorrow, if I do not hear anything by close of business today I will assume its fine and send over as is. If you have issues/concerns, please let me know by close of business today. If it is ok, kindly sign and email your scanned signed copy and I will send to the court.

Thanks,

 logo.jpg

Matthew J. Douglas

Partner

1117 South Rancho Drive

Las Vegas, NV 89102

PHONE (702) 243-7000 | FAX (702) 243-7059

mdouglas@awslawyers.com

www.awslawyers.com

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From: Waite, Dan R. <DWaite@lrrc.com>

Sent: Tuesday, January 29, 2019 7:47 AM

To: Matthew Douglas <mdouglas@awslawyers.com>; Tommy Christensen <tomchristensen@gmail.com>; David Stephens <dstephens@sgblawfirm.com>; BREEN ARNTZ <breenarntz@me.com>

Cc: thomasc@injuryhelpnow.com; breen@breen.com; 'Breen Arntz' (breenarntz@mac.com)

<breenarntz@mac.com>; Dawn Hooker (dawnh@injuryhelpnow.com) <dawnh@injuryhelpnow.com>; Tom Winner <twinner@awslawyers.com>; Victoria Hall <vhall@awslawyers.com>

Subject: RE: Nalder v. Lewis: proposed Order on Motions 1-23-19

Matt,

I am thinking since I am (my clients are) out of the case now, there's no need for me to review, approve, or sign?? BTW, you are correct about the Rule 11 motions (and my clients' motion to dismiss that was scheduled for hearing tomorrow); those were vacated in the Stip and Order that was e-served yesterday. Thanks,

Dan

Dan R. Waite

Partner

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From: Matthew Douglas [<mailto:mdouglas@awslawyers.com>]
Sent: Monday, January 28, 2019 2:02 PM
To: Tommy Christensen; Waite, Dan R.; David Stephens; BREEN ARNTZ
Cc: thomasc@injuryhelpnow.com; breen@breen.com; 'Breen Arntz' (breenarntz@mac.com); Dawn Hooker (dawnh@injuryhelpnow.com); Tom Winner; Victoria Hall
Subject: RE: Nalder v. Lewis: proposed Order on Motions 1-23-19

[EXTERNAL]


All-

Please find attached a first proposed draft for the orders from the Motions that were set for 1-23-19 on the above-captioned matter. This order was prepared per the Court's minute order entered on those hearings. I have also attached a copy of the minute order for your review.

In terms of the withdrawal of the NRCP 11 motions for sanctions, that were also originally set for that date, I have not included them herein as they were not part of the minute order and understand they may be part of a separate stipulation between the parties involved. If this is incorrect and you all want those withdrawals noted, I can add them.

In the meantime, please review this proposed order and let me know if you have any issues. If not, please sign on your signature line and return the signed page to my office. I believe this order should be to the court by 2/6/19.

Thanks,

 logo.jpg

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CONFIDENTIALITY NOTICE: THIS EMAIL TRANSMISSION IS ATTORNEY CLIENT, ATTORNEY WORK PRODUCT, DISSEMINATED AND/OR PROVIDED IN CONTEMPLATION OF POTENTIAL OR FUTURE LITIGATION, AND/OR CONFIDENTIAL INFORMATION THAT IS INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL(S) OR ENTITY(IES) NAMED ABOVE. IF YOU ARE NOT AN INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE DELETE THIS TRANSMISSION AND IMMEDIATELY NOTIFY THE SENDER OF THIS ERROR.

This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you

ORDR

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mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

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 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*

1 *Automobile Insurance Company*, case no. 70504;

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

8
9 **CONCLUSIONS OF LAW**

- 10 1. That based upon the hearings in this matter, on January 9th, 2019, and, order entered
11 on same hearings by the court, the issues raised in Plaintiff Nalder's Motion for
12 sumamry judgment are the same as those currently pending before the Nevada
13 Supreme Court and, accordingly, Plaintiff's Motion will be stayed, in the interest of
14 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
15 *Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
16 *Company*, case no. 70504;
- 17
18 2. That the issues raised in Third Party Plaintiff Lewis' Third party complaint, and the
19 Motion to dismiss same third party complaint as well as the motion for summary
20 judgment on the third party complaint, are the same as those currently pending before
21 the Nevada Supreme Court and, accordingly, Third Party Plaintiff Lewis' third party
22 complaint and the Motion to dismiss same third party complainat and, counter-motion
23 for summary judgment on same third party complaint, will be stayed, in the interest of
24 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
25 *Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
26 *Company*, case no. 70504.
27
28

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,*

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

6
 7 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
 8 UAIC's Counter-Motion to Strike Lewis' Affidavit for his Counter-Motion for summary
 9 Judgment on his third-party complaint as well as UAIC's Counter-motion for additional
 10 discovery pursuant to N.R.C.P. 56(f) (Case No. A-18-772220-C) are DENIED WITHOUT
 11 PREJUDICE.

12 **IT IS SO ORDERED.**

13
 14 **DATED** this ____ day of _____ 2019.

15
 16
 17 _____
 DISTRICT JUDGE

18 Submitted by:

19 ATKIN WINNER & SHERROD, LTD.
 20
 21

22 _____
 MATTHEW J. DOUGLAS, Esq.
 23 Nevada Bar No. 11371
 1117 South Rancho Drive
 24 Las Vegas, Nevada 89102
 25 *Attorneys for Intervenor UAIC*

26 ///

27 ///

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Approved as to Form and Content:

STEPHENS & BYWATER

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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

Revised Order on 1-23-19 Motions

EXHIBIT “M”

TREVOR L. ATKIN
 THOMAS E. WINNER
 SUSAN M. SHERROD†OC
 CHRISTINE M. BOOZE
 MATTHEW J. DOUGLAS†
 JUSTIN J. ZARCONO
 BRUCE W. KELLEYO
 OF COUNSEL (OC):
 KIMBERLY L. JOHNSONO
 JULIE M. SUEOKA

LICENSED TO PRACTICE IN:
 * MICHIGAN * UTAH * CALIFORNIA
 * NEBRASKA * ILLINOIS * IOWA

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SCOTT R. PETTIT
 ~ANDREW D. SMITH
 STEVEN P. CANFIELD
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 BRANDON L. GATEWOOD
 KELLY M. SMITH
 ~ARIEL C. JOHNSON
 ^BUD R. HAFER
 BLAKE A. DOERR
 RUSSELL D. CHRISTIAN
 STEVEN C. DEVNEY
 LARA L. MILLER

February 6, 2019

Via Facsimile to Courtroom 12A (Dept. 20):

The Honorable Eric Johnson
 Eighth Judicial District Court
 Regional Justice Center
 200 Lewis Avenue
 Las Vegas, NV 89155

Re: **Nalder v Lewis, Lewis v UAIC; Case No. A07A549111 consolidated with
 A-18-772220-C**

Your Honor:

Please review the attached proposed Order on the motions of the January 23, 2019 hearing for the above referenced matter. All counsel has had an opportunity to review the Order and have made no objections.

As such, it is requested that the court consider UAIC's proposed order for the Order on all motions heard on January 23, 2019, pursuant to your ruling at that hearing.

Thank you for your attention. We will await the Court's determination.

Sincerely,

ATKIN WINNER & SHERROD



Matthew J. Douglas

MJD

cc:

Counsel for all parties of record, *Via Email Only*,
 Thomas Christensen at thomasc@injuryhelpnow.com & Dawn Hooker at dawnh@injuryhelpnow.com; Breen Arntz at breen@breen.com & breenarntz@mac.com; Randall Tindall at rtindall@rlattorneys.com; David Stephens at dstephens@sghlaw.com; Dan Waite (dwaite@lrrc.com)

ORDR

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mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

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 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*

1 *Automobile Insurance Company*, case no. 70504;

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

8
9 CONCLUSIONS OF LAW

- 10 1. That based upon the hearings in this matter, on January 9th, 2019, and, order entered
11 on same hearings by the court, the issues raised in Plaintiff Nalder's Motion for
12 summary judgment are the same as those currently pending before the Nevada
13 Supreme Court and, accordingly, Plaintiff's Motion will be stayed, in the interest of
14 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
15 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
16 *Company*, case no. 70504;
- 17 2. That the issues raised in Third Party Plaintiff Lewis' Third party complaint, and the
18 Motion to dismiss same third party complaint as well as the motion for summary
19 judgment on the third party complaint, are the same as those currently pending before
20 the Nevada Supreme Court and, accordingly, Third Party Plaintiff Lewis' third party
21 complaint and the Motion to dismiss same third party complaint and, counter-motion
22 for summary judgment on same third party complaint, will be stayed, in the interest of
23 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*
24 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
25 *Company*, case no. 70504.
26
27
28

ORDER

1
2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff Nalder's
3 Motion for Summary judgment and Relief from Orders pursuant to N.R.C.P. 60 (Case No. A-18-
4 772220-C) is STAYED, pending further ruling by the Nevada Supreme Court in *James Nalder,*
5 *Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*
6 *Automobile Insurance Company*, case no. 70504; and

7
8 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor's
9 UAIC's Counter-Motion to Stay Plaintiff Nalder's Motion for summary judgment and
10 proceedings pending Appeal is GRANTED, because the court finds the issues raised in
11 Plaintiff's Motion are the same as those currently before the Nevada Supreme Court in *James*
12 *Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v.*
13 *United Automobile Insurance Company*, case no. 70504, and Plaintiff Nalder's Motion for
14 summary judgment is STAYED pending further ruling by the Nevada Supreme Court; and

15
16 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
17 UAIC's Motion to Dismiss Third Party Plaintiff Lewis's Complaint and Third Party Plaintiff
18 Lewis' Counter-Motion for Summary Judgment (Case No. A-18-772220-C) are STAYED
19 pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on*
20 *behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance*
21 *Company*, case no. 70504; and

22
23 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
24 UAIC's Counter-Motion to Stay UAIC's Motion to Dismiss Lewis' Third Party Complaint and
25 Third Party Plaintiff Lewis' Counter-Motion for summary judgment and proceedings (Case No.
26 A-18-772220-C) pending Appeal is GRANTED, because the court finds the issues raised in said
27 Motions are the same as those currently before the Nevada Supreme Court in *James Nalder,*
28

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

6
7 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
8 UAIC's Counter-Motion to Strike Lewis' Affidavit for his Counter-Motion for summary
9 Judgment on his third-party complaint as well as UAIC's Counter-motion for additional
10 discovery pursuant to N.R.C.P. 56(f) (Case No. A-18-772220-C) are DENIED WITHOUT
11 PREJUDICE.

12 **IT IS SO ORDERED.**

13
14 **DATED** this ____ day of _____ 2019.

15
16
17 _____
DISTRICT JUDGE

18 Submitted by:

19 ATKIN WINNER & SHERROD, LTD.

20
21 _____
MATTHEW J. DOUGLAS, Esq.
22 Nevada Bar No. 11371
23 1117 South Rancho Drive
24 Las Vegas, Nevada 89102
Attorneys for Intervenor UAIC

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

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

EXHIBIT “N”

Electronically Filed
2/15/2019 11:17 AM
Steven D. Grierson
CLERK OF THE COURT



1 NEO
2 MATTHEW J. DOUGLAS
3 Nevada Bar No. 11371
4 ATKIN WINNER & SHERROD
5 1117 South Rancho Drive
6 Las Vegas, Nevada 89102
7 Phone (702) 243-7000
8 Facsimile (702) 243-7059
9 mdouglas@awslawyers.com

10 *Attorneys for Intervenor United Automobile Insurance Company*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CHEYANNE NALDER,

14 Plaintiff,

15 vs.

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

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

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

18 Defendants,

19 UNITED AUTOMOBILE INSURANCE
20 COMPANY,

21 Intervenor.

22 GARY LEWIS,

23 Third Party Plaintiff,

24 vs.

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

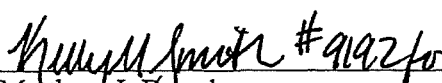
Third Party Defendants.

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that the attached ORDER ON MOTIONS HEARD ON
2 JANUARY 9, 2019 was entered by the Court on the 14th day of February 2019.

3 DATED this 15th day of February 2019.

4
5 ATKIN WINNER & SHERROD

6
7  #9192 for
8 Matthew J. Douglas
9 Nevada Bar No. 11371
10 1117 South Rancho Drive
11 Las Vegas, Nevada 89102
12 Attorneys for Intervenor UNITED AUTOMOBILE
13 INSURANCE COMPANY
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002189
ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

002189

1 **CERTIFICATE OF SERVICE**

2 I certify that on this 15th day of February, the foregoing **NOTICE OF ENTRY ORDER**
 3 **ON MOTIONS HEARD ON JANUARY 9, 2019** was served on the following by:
 4 **[XX] BY WIZNET** pursuant to NEFR 9 this document(s) was electronically served
 5 through Odyssey CM/ECF for the above-entitled case to all the parties on the Service List
 6 maintained on Odyssey's website for this case on the date specified.

7 David Stephens, Esq.
 8 STEPHENS & BYWATER, P.C.
 9 3636 North Rancho Drive
 10 Las Vegas, NV 89130
 11 *Attorney for Plaintiff*


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

12 Breen Arntz, Esq.
 13 5545 S. Mountain Vista St. Suite F
 14 Las Vegas, NV 89120
 15 *Additional Attorney for Defendant Lewis*

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

16 Daniel Polsenberg, Esq.
 17 LEWIS ROCA ROTHGERBER
 18 CHRISTIE, LLP
 19 3993 Howard Hughes Pkwy., Suite 600
 20 Las Vegas, NV. 89169
 21 *Counsel for Third-Party Defendants*
 22 *Tindal and Resnick & Louis*

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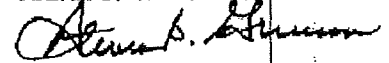

 An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD
 A NEVADA LAW FIRM

Jan. 24. 2019 2:59PM Atkin Winner & Sherrod

No. 1944 P. 3/8

Electronically Filed
2/14/2019 3:41 PM
Steven D. Grierson
CLERK OF THE COURT



1 ORDER
2 MATTHEW J. DOUGLAS
3 Nevada Bar No. 11371
4 ATKIN WINNER & SHERROD
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7 Phone (702) 243-7000
8 Facsimile (702) 243-7059
9 mdouglas@awslawyers.com

10 *Attorneys for Intervenor United Automobile Insurance Company*

11 EIGHTH JUDICIAL DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 CHEYANNE NALDER,

14 Plaintiff,

15 vs.

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

18 Defendants,

19 UNITED AUTOMOBILE INSURANCE
20 COMPANY,

21 Intervenor.

22 GARY LEWIS,

23 Third Party Plaintiff,

24 vs.

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

Third Party Defendants.

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

Consolidated with
CASE NO.: A-18-77220-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

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

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

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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

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

- 4
5 3. That the first claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-
6 772220-C, herein, seeking a new judgment on her original 2007 judgment from case
7 no. 07A549111 is not a valid cause of action and the Court would dismiss same under
8 the *Medina* decision, but based upon the request of Counsel for Plaintiff David
9 Stephens, Plaintiff's first claim for relief will be stayed pending decision in *James*
10 *Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis,*
11 *individually v. United Automobile Insurance Company*, case no. 70504;
12

13 **ORDER**

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

18 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor's
19 UAIC's Counter-Motion to Stay Pending Appeal is GRANTED, for their reasons stated in the
20 record, and Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-
21 18-772220-C, herein, (claim 1) seeking a new judgment on her original judgment entered in case
22 no. 07A549111 and, (claim 2) seeking Declaratory relief, respectively, are STAYED pending
23 further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
24 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
25 no. 70504; and
26

27 *///*
28

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1 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED Intervenor
2 UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN
3 PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her
4 Complaint in case no. A-18-772220-C, herein, (claim 3) seeking general and special damages
5 related to and arising from the July 2007 automobile accident, is DISMISSED, but ruling on the
6 Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case
7 no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case
8 no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further
9 ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
10 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
11 no. 70504;
12

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

19 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that
20 Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C as well as case no.
21 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60
22 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) are
23 all hereby STRICKEN per WITHDRAWAL by Counsel for Lewis, Breen Arntz, Esq.;
24

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that UAIC's
26 Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C
27 as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment
28

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

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

8 IT IS SO ORDERED.

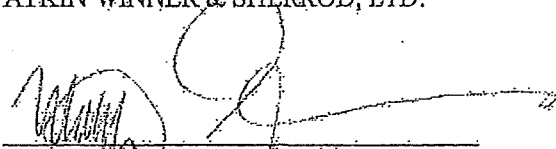
9 DATED this 14 day of FEBRUARY 2019.

11 
DISTRICT JUDGE

12 ERIC JOHNSON 

13 Submitted by:

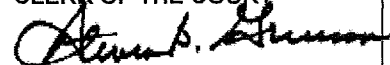
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EXHIBIT "O"

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CLERK OF THE COURT



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10 *Attorneys for Intervenor United Automobile Insurance Company*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 CHEYANNE NALDER,

14 Plaintiff,

15 vs.

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

18 Defendants,

19 UNITED AUTOMOBILE INSURANCE
20 COMPANY,

21 Intervenor.

22 GARY LEWIS,

23 Third Party Plaintiff,

24 vs.

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

Third Party Defendants.

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

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

**NOTICE OF ENTRY OF ORDER ON
MOTIONS HEARD ON JANUARY 23, 2019**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that the attached **ORDER ON MOTIONS HEARD ON**
2 **JANUARY 23, 2019** was entered by the Court on the 14th day of February 2019.

3 DATED this 15th day of February 2019.

4
5 ATKIN WINNER & SHERROD

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7 Matthew J. Douglas #9192 for
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12 Attorneys for Intervenor UNITED AUTOMOBILE
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1 **CERTIFICATE OF SERVICE**

2 I certify that on this 15th day of February, the foregoing **NOTICE OF ENTRY ORDER**
 3 **ON MOTIONS HEARD ON JANUARY 23, 2019** was served on the following by:
 4 **[XX] BY WIZNET** pursuant to NEFR 9 this document(s) was electronically served
 5 through Odyssey CM/ECF for the above-entitled case to all the parties on the Service List
 6 maintained on Odyssey's website for this case on the date specified.

7 David Stephens, Esq.
 8 STEPHENS & BYWATER, P.C.
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 9 Las Vegas, NV 89130
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 11 5545 S. Mountain Vista St. Suite F
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 Carissa Christensen, Esq.
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14 Daniel Polsenberg, Esq.
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 17 *Tindal and Resnick & Louis*

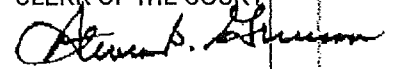
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 19 An employee of ATKIN WINNER & SHERROD

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Feb. 6. 2019 11:09AM

Atkin Winner & Sherrod

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11 EIGHTH JUDICIAL DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 CHEYANNE NALDER,

14 Plaintiff,

15 vs.

16 GARY LEWIS and DOES 1 through V,
 17 inclusive,

18 Defendants,

19 UNITED AUTOMOBILE INSURANCE
 20 COMPANY,

21 Intervenor.

22 GARY LEWIS,

23 Third Party Plaintiff,

24 vs.

25 UNITED AUTOMOBILE INSURANCE
 26 COMPANY, RANDALL TINDALL, ESQ.
 27 and RESNICK & LOUIS, P.C., and DOES 1
 28 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

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

FINDINGS OF FACT

- 17 1. That the issues of law on second certified question before the Nevada Supreme Court
18 in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis,*
19 *individually v. United Automobile Insurance Company*, case no. 70504, are
20 substantially similar and/or related to issues of law in these consolidated cases;
21
- 22 2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case
23 no. A-18-772220-C, herein, seeking a new judgment on her original judgment,
24 entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain
25 issues of law which substantially similar and/or related to issues of law on a second
26 certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad*
27 *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 Lcwis' 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.

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,*

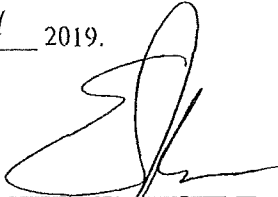
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1 *Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*
2 *Automobile Insurance Company, case no. 70504, and Third Party Plaintiff Lewis' Motion for*
3 *summary judgment and Third Party Plaintiff Lewis' Counter-Motion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

6
7 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
8 UAIC's Counter-Motion to Strike Lewis' Affidavit for his Counter-Motion for summary
9 Judgment on his third-party complaint as well as UAIC's Counter-motion for additional
10 discovery pursuant to N.R.C.P. 56(f) (Case No. A-18-772220-C) are DENIED WITHOUT
11 PREJUDICE.

12 **IT IS SO ORDERED.**


13
14 DATED this 11 day of FEBRUARY 2019.

15
16
17 
DISTRICT JUDGE

ERIC JOHNSON JS

18 Submitted by:

19 ATKIN WINNER & SHERROD, LTD.

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

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

EXHIBIT “P”

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

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

Electronically Filed
 August 20, 2018 8:46 a.m.
 Elizabeth A. Brown
 Clerk of Supreme Court

v.

UNITED AUTOMOBILE INSURANCE COMPANY,
 Respondent.

**APPELLANTS' OPENING BRIEF REGARDING SECOND CERTIFIED
 QUESTION OF LAW**

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

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20	NRS 686A.310.....	4
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I. ROUTING STATEMENT

This matter involves a question of law certified by the Ninth Circuit Court of Appeals and is, therefore, presumptively retained by the Supreme Court of Nevada pursuant to NRAP 17(a)(7).

II. JURISDICTIONAL STANDARD FOR CERTIFICATION

On December 27, 2017, the Ninth Circuit Court of Appeals asked this Court to answer a second certified question:

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

Nalder v. United Auto. Ins. Co., 878 F.3d 754 (9th Cir. 2017).

Pursuant to the second certification order, no other issues are before this Court. On February 23, 2018, this Court issued its Order Accepting Second Certified Question, but rephrased the question as permitted by the Ninth Circuit:

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?

The Supreme Court of Nevada may answer questions of law certified to it by a United States Court of Appeals when requested by the certifying court. Nev. R. App. P. 5(a). "The certifying order must include a statement of facts relevant to the

question certified in its order certifying questions to this court.” *In re Fountainbleau Las Vegas Holdings, LLC*, 127 Nev. 941, 955, 267 P.3d 786, 794 (2011) (citing Nev. R. App. 5(c)(2)). The Supreme Court of Nevada is “bound by the facts as stated in the certification order” and cannot make findings of fact in response to a certified question. *Id.* at 956, 795. Although a party to the certification case may provide an appendix to provide this Court with a better understanding of the underlying action, “this Court may not use information in the appendix to contradict the certification order.” *Id.*

In its second certification order, the Ninth Circuit provides this Court with a substantially similar factual background as in the first certification order. *Nalder*, 878 F.3d at 756-57; *see also, In re Nalder*, 824 F.3d 854, 855 (9th Cir. 2016). The Ninth Circuit also provides additional facts presumptively relevant to the narrow issue of law addressed in the second certified question. *Nalder*, 878 F.3d at 757. This Court must accept the facts as stated in the second certification order and answer the question of law so that the certifying court can then apply the law to those facts. *In re Fountainbleau*, 127 Nev. at 955-56, 267 P.3d at 794. “This approach prevents the answering court from intruding into the certifying court’s sphere by making factual findings or resolving factual disputes.” *Id.* (citing *Alexander v. Certified Master Builders*, 268 Kan. 812, 1 P.3d 899, 908 (Kan. 2000); *Puckett v. Rufenacht, Bromagen & Hertz*, 587 So. 2d 273, 277 (Miss. 1991) (“This Court is not

called upon to decide the case. Nor should we go behind the facts presented by the certifying court.”)).

Based on the foregoing, Appellants provide the following factual background relevant to this narrow question of law that this Court agrees to answer.

III. FACTUAL BACKGROUND

This matter arises from a July 8, 2007 incident in which Gary Lewis ran over Cheyanne Nalder, born April 4, 1998, who was a nine-year-old girl at the time. *Nalder*, 878 F.3d at 756. Lewis maintained an auto insurance policy with Appellee United Auto Insurance Company (“UAIC”), which was renewable on a monthly basis. *Id.* Before the subject incident, Lewis received a statement from UAIC instructing him that his renewal payment was due by June 30, 2007. *Id.* The renewal statement also instructed Lewis that he remit payment prior to the expiration of his policy “[t]o avoid lapse in coverage.” *Id.* The statement provided June 30, 2007 as the effective date of the policy. *Nalder*, 878 F.3d at 756. The statement also provided July 31, 2007 as the expiration date of the policy. *Id.* On July 10, 2007, Lewis paid UAIC to renew his auto policy. *Id.* Lewis’s policy limit at this time was \$15,000.00. *Id.*

Following the incident, Cheyanne’s father, James Nalder, extended an offer to UAIC to settle Cheyanne’s injury claim for Lewis’s policy limit of \$15,000.00. *Id.* UAIC rejected Nalder’s offer. *Id.* UAIC rejected the offer because it believed

that Lewis was not covered under his insurance policy given that he did not renew his policy by June 30, 2007. *Id.* UAIC never informed Lewis that Nalder offered to settle Cheyanne's claim. *Id.*

After UAIC rejected Nalder's offer, Nalder, on behalf of Cheyanne, filed a lawsuit against Lewis in Nevada state court on May 22, 2009. *Id.*; *see also*, 1.A.App. 0001 – 0010. Lewis failed to appear and answer the complaint. *Id.* As a result, Nalder obtained a default judgment against Lewis for \$3,500,000.00. *Id.* On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of NRS 686A.310. *Id.* Nalder filed suit after Lewis assigned to Nalder his right to "all funds necessary to satisfy the Judgment" 1 A.App. 0011.

Once UAIC removed the underlying case to federal district court, UAIC filed a motion for summary judgment as to all of Lewis and Nalder's claims alleging Lewis did not have insurance coverage on the date of the subject collision. *Nalder*, 878 F.3d at 756. The federal district court granted UAIC's summary judgment motion because it determined the insurance contract was not ambiguous as to when Lewis had to make payment to avoid a coverage lapse. *Id.* Nalder and Lewis appealed to the Ninth Circuit. *Id.* The Ninth Circuit reversed and remanded the matter because Lewis and Nalder had facts to show the renewal statement was

ambiguous regarding the date when payment was required to avoid a coverage lapse.

Id. The Ninth Circuit affirmed the district court's order as to all other claims. *Id.*

On remand, the district court concluded the renewal statement was ambiguous and therefore, Lewis was covered on the date of the incident because the court construed this ambiguity against UAIC. *Id.* The district court also determined UAIC breached its duty to defend Lewis, but did not award damages because Lewis did not incur any fees or costs in defense of the Nevada state court action. *Id.* Based on these conclusions, the district court ordered UAIC to pay the policy limit of \$15,000.00. *Id.* Both Nalder and Lewis appealed to the Ninth Circuit, which ultimately led to certification of the first question to this Court, namely whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages to the breach. *Nalder* 878 at 757.

While the first certified question was fully briefed and pending before this Court, UAIC filed a motion to dismiss Appellants' appeal with the Ninth Circuit for lack of standing. *Id.* UAIC argued Nalder's underlying \$3,500,000.00 default judgment against Lewis is not enforceable because the six-year statute of limitation to institute an action upon the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired. *Id.* As a result, UAIC contends Nalder can no longer recover damages above the \$15,000.00 policy limit for breach of the contractual duty to defend because the judgment lapsed. *Id.*

The Ninth Circuit concluded the parties failed to identify Nevada law that conclusively answers whether a plaintiff can recover consequential damages based on a default judgment that is over six years old and presumably expired. *Id.* at 758. The Ninth Circuit was also unable to determine whether expiration of the default judgment reduces the consequential damages to zero or if the damages should be calculated from the date when the suit against UAIC was initiated, which was within the six-year window. *Id.*

Notably, UAIC made three payments to Appellants on June 23, 2014; June 25, 2014; and February 5, 2015 in satisfaction of the underlying default judgment.

1 A.App. 0012 – 0015.¹ Lewis also currently resides in California. 1. A.App. 0016 – 0019.

IV. SUMMARY OF THE ARGUMENT

Appellants timely instituted an action on the judgment against UAIC within the six-year statute of limitations to enforce the judgment. Appellants' breach of contract and bad faith complaint against UAIC is an enforcement action to collect on the underlying default judgment because the judgment directly results from UAIC's breach of the contractual duty to defend and breach of the implied covenant of good faith and fair dealing. The underlying default judgment is binding on UAIC

¹ The July 1, 2014 Satisfaction of the June 3, 2014 Judgment memorializes the June 23, 2014 and June 25, 2014 payments.

because of its wrongful conduct. As a result, Appellants were not required to renew the underlying default judgment because the relevant statutes do not require a party to file an action on the judgment and renew it to secure the continued validity and enforceability of the judgment.

Alternatively, the six-year statute of limitations to pursue an action on the judgment was extended because UAIC made three separate payments on the judgment. Further, the six-year statute of limitations was tolled during the period of time that Cheyanne Nalder was a minor. Thus, the statute of limitations does not run until, at the earliest, April 4, 2022. Lewis's California residency also continues to toll the six-year statute of limitations because Appellants cannot strictly comply with the renewal statute in accordance with Nevada law.

V. ARGUMENT

UAIC requested dismissal of Appellants' appeal before the Ninth Circuit solely because Appellants allegedly failed to renew the underlying default judgment pursuant to NRS 17.214. UAIC overlooks that Nevada's statutory scheme requires a party to either file a renewal of judgment *or* file an action to enforce the judgment pursuant to NRS 11.190(1)(a). Appellants' bad faith and breach of contract complaint against UAIC constitutes an action upon the default judgment because Appellants filed suit to obtain satisfaction of the default judgment from UAIC. UAIC's breach of the contractual duty to defend is precisely the grounds upon which

Appellants seek to collect upon the default judgment against UAIC. As a result, the underlying default judgment did not expire, which means the amount of recoverable consequential damages should not be reduced.

A. Appellants' Bad Faith and Breach of Contract Claim Against UAIC is an Action on the Judgment

NRS 11.190(1)(a) states that within six years, “an action upon a judgment or decree of any Court of the United States, or of any territory within the United States, *or* the renewal thereof” must be commenced. An action filed upon a judgment is broadly defined:

An action on a judgment is an action independent of the original action in which the judgment was obtained, the main purpose of which is to obtain a new judgment which will facilitate the ultimate goal of securing satisfaction of the original cause of action.

Salinas v. Ramsey, 234 So. 3d 569, 571 (Fla. 2018); *see also, Fid. Nat'l Fin. Inc. v. Friedman*, 225 Ariz. 307, 310, 238 P.3d 118, 121 (Ariz. 2010).

An action on a judgment provides the judgment creditor with the opportunity, “when the limitations period has almost run on the judgment, to obtain a new judgment that will start the limitations period anew.” *Salinas*, 234 So. 2d at 571. “[A] cause of action on a judgment is different from that upon which the judgment was entered.” *Guinness PLC v. Ward*, 955 F.2d 875, 894-95 (4th Cir. 1992) (*citing Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 275, 56 S. Ct. 229, 233 (1935)).

An injury victim can institute an action on a judgment against the tortfeasor’s insurer even though the insurer was not formally a party to the proceedings that lead

to the judgment. Nevada is not a direct action state. *Hall v. Enter. Leasing Company-West*, 122 Nev. 685, 693, 137 P.3d 1104, 1109 (2006). However, Nevada “allows **actions** by third-party tort claimants against third-party liability coverage providers **only after a judgment against the tortfeasor has been obtained.**” *Id.* (emphasis added); see also, *Ohio Cas. Ins. Co. v. Time Warner Entm’t Co., L.P.*, 244 S.W. 3d 885, 888 (Tex. Ct. App. 2008) (“Generally, an injured person cannot sue the tortfeasor’s liability insurer directly until the tortfeasor’s liability has been determined by agreement or judgment.”). Generally, an injured party must first obtain a judgment against the insured before he can actually pursue any remedy against the insurer. *Western Casualty & Sur. Co. v. Evans*, 130 Ariz. 333, 336, 636 P.2d 111, 114 (Ariz. Ct. App. 1981).

A judgment, default or otherwise, is also binding against an insurer that breaches the contractual duty to defend its insured in the underlying personal injury action, irrespective of whether the insurer is a party to that action.

It is the general rule that a liability insurer who has had an opportunity to defend the underlying action brought against its insured is bound by the judgment against its insured as to all issues which were litigated in the action.

Pruyn v. Agricultural Ins. Co., 36 Cal. App. 4th 500, 515, 42 Cal. Rptr. 2d 295, 303 (Cal. Ct. App. 1995).

An insured who is abandoned by his liability insurer is free to secure the best settlement possible with the third-party injury plaintiff, including even a stipulated

judgment with a covenant not to execute. *Pruyn*, 36 Cal. App. 4th at 515, 42 Cal. Rptr. 2d at 303 (citing *Samson v. TransAmerica, Ins. Co.*, 30 Cal. 3d 220, 240, 636 P.2d 32, 45 (Cal. 1981)). This stipulated judgment, however, must be free of fraud or collusion between the third-party injury victim and the insured. *Id.*

An insurer that wrongfully refuses to defend its insured is liable on the judgment against the insured. *Gray v. Zurich Ins. Co.*, 65 Cal. 2d 263, 279, 419 P.2d 168, 179 (Cal. 1966). Here, the federal district court ruled that UAIC breached its contractual duty to defend as a matter of law. *Nalder*, 878 F.3d at 756. As a direct result of that breach of the duty to defend, Nalder secured a default judgment against Lewis. *Id.* Nalder was required under Nevada law to secure a judgment against Lewis before he could even pursue a claim against UAIC. *Hall*, 122 Nev. at 693, 137 P.3d at 1109. After fulfilling that legal prerequisite and securing an assignment, Appellants sued UAIC for breach of contract, breach of the implied covenant of good faith and fair dealing (bad faith), fraud, and breach of the Nevada Unfair Claims Practices Act. on May 22, 2009. *Nalder*, 878 F.3d at 756. Specifically, Appellants seek “payment for the excess verdict rendered against Lewis which remains unpaid in an amount in excess of \$3,500,000.00” in their Complaint. 1 A.App. 0009. The underlying default judgment was entered against Lewis because UAIC abandoned him when it failed to defend against Nalder’s third-party injury claim. UAIC’s contractual breach of the duty to defend renders the default judgment binding against

it. *Gray*, 65 Cal. 2d at 279, 419 P.2d at 179. Therefore, it is appropriate for this Court to conclude that Appellants' Complaint against UAIC is an action upon the underlying default judgment pursuant to NRS 11.190(1)(a) that was timely filed. The alleged expiration of the judgment is rendered meaningless because Nevada's statutory scheme allows a party to either file an action on the judgment or renew a judgment.

B. The Underlying Default Judgment Did Not Expire Because Appellants Were Not Required to Both Institute an Action on the Default Judgment and Renew the Default Judgment

An action on a judgment is distinguishable from the treatment of an application to renew the judgment. *Pratali v. Gates*, 4 Cal. App. 4th 632, 637, 5 Cal. Rptr. 2d 733, 736 (Cal. Ct. App. 1992). This distinction is inherently recognized in the Nevada Revised Statutes' treatment of both courses of acts. "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*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) (emphasis added). NRS 11.190(a)(1) expressly provides the option to either commence an action upon the judgement *or* a renewal of the judgment within six years of entry of the judgment. Statutes of limitations are intended to ensure pursuit of the action with reasonable diligence, to preserve

evidence and avoid surprise, and to avoid the injustice of long-dormant claims.

Petersen v. Bruen, 106 Nev. 271, 273-74, 792 P.2d 18, 19-20 (1990).

NRS 17.214 provides the procedural steps necessary to renew a judgment before the expiration of the statute of limitations set forth in NRS 11.190(1)(a). Specifically, NRS 17.214 provides that a judgment creditor may renew a judgment that has not been paid by filing an affidavit with the clerk of the court where the judgment is entered, "...within 90 days before the date the judgment expires by limitation." NRS 11.190(a)(1) must be read together with NRS 17.214 because they

relate to the same subject matter and are not in conflict with one another. *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. ___, 363 P.3d 1168, 1172 (2015). When NRS 11.190(1)(a) and NRS 17.214 are read together, they establish that a party must either file an action to enforce the judgment or renew the judgment before the 6-year statute of limitations runs. This Court expressly adopts that result in *Levin v. Frey*, 123 Nev. 399, 403, 168 P.2d. 712, 715 (2007): "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."

This Court also recognizes the well-established rule that it will not look beyond the plain language of the statute when the words "have a definite and ordinary meaning." *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). "Normal principles of statutory construction also preclude

interpreting a statute to render part of it meaningless.” *United States v. Bert*, 292 F.3d 649, 652 n.11 (9th Cir. 2002). UAIC’s apparent position is that even though Appellants filed an action upon the default judgment, they were also required to file a renewal of the default judgment. This interpretation ignores the clarity of the disjunctive “or.” UAIC’s proposed interpretation of the statute effectively renders the “or” in NRS 11.190(1)(a) meaningless. If the Nevada Legislature intended to require a judgment creditor to file an action on the judgment and renew the judgment, then the Nevada Legislature would have used the word “and.” However, the Nevada Legislature uniquely understood that a party was only required to proceed with one course of action to ensure the validity of a judgment. This understanding is reflected in the permissive language of NRS 17.214(1), which states that a judgment creditor “*may* renew a judgment which has not been paid”

Based on the unambiguous language of both NRS 11.190(1)(a) and NRS 17.214, the underlying default judgment did not expire in this matter. Appellants timely commenced their breach of contract and bad faith action upon the default judgment against UAIC, upon which the judgment is binding, before the six-year statute of limitations expired. As a result, the value of the consequential damages that stem from UAIC’s breach of its contractual duty to defend remains at \$3,500,000.00 plus any post-judgment interest that has accrued.

...

C. The Six-Year Statute of Limitations to Pursue an Action Upon the Default Judgment or a Renewal of that Judgment was Extended and Tolled

The underlying judgment remains collectible even in the absence of a valid action upon the default judgment or renewal of the judgment. UAIC made three undisputed payments toward the judgment to Appellants on June 23, 2014; June 25, 2014; and February 5, 2015. 1 A.App. 0012 – 0015. Pursuant to NRS 11.200, the statute of limitations “dates from the last transaction or the last item charged or the last credit given.” Further, when any payment is made, “the limitation shall commence from the time the last payment was made. *See Nev. Rev. Stat. 11.200.* Therefore, UAIC’s last payment on the judgment extended the expiration of the six-year statute of limitations to February 5, 2021.

Additionally, NRS 11.250 outlines various circumstances that prevent the running of the statute of limitations and states, in relevant part:

If a person entitled to bring an action other than for the recovery of real property be, at the time cause of action accrued, either:

1. Within the age of 18 years;

...

the time of such disability ***shall not*** be a part of the time limited for the commencement of the action (emphasis added).

Cheyenne Nalder was born on April 4, 1998 and was a minor when the subject incident occurred. She turned 18 years old on April 4, 2016. Therefore, the earliest date that the six-year statute of limitations runs is April 4, 2022.

Lewis's residency in California also tolls the six-year statute of limitations governing the judgment. 1 A.App. 0016 – 0019. Pursuant to NRS 11.300, the absence of Lewis from the State of Nevada tolls the statute of limitations to enforce a judgment and it remains tolled because of his absence. *See Bank of Nevada v. Friedman*, 82 Nev. 417, 421, 420 P.2d 1, 3 (1966). These tolling statutes present a Catch-22 for NRS 17.214 and the “strict compliance” interpretation from this Court. Specifically, NRS 17.214 requires a renewal to be brought within 90 days of the expiration of the statute of limitations. If that 90-day period is strictly construed, any renewal attempt by Nalder pursuant to the statute would be premature and therefore ineffective because Lewis resides outside the State of Nevada.

D. The Statute of Limitations in California on a Judgment of a Sister State is Ten Years

Lewis now resides in California. 1 A.App. 0016 – 0019. In California, an action upon a judgment must be commenced within 10 years of entry of the judgment. *See* Cal. Code Civ. P. § 337.5. Alternatively, a judgment must be renewed within 10 years of entry of the judgment. *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 372, 8 Cal. Rptr. 3d 907, 911 (Cal. Ct. App. 2004); *see also*, Cal. Code Civ. P. §§ 683.020, 683.120, 683.130. Out of an abundance of caution, Appellants have incurred the expense to renew the judgment in both Nevada and California. In spite of this action, Appellants contend that they timely instituted an action on the

default judgment or, alternatively, that the six-year limitations period has not expired.

E. Lewis Suffered Damages When He Assigned His Rights Against UAIC to Nalder and Collection of the Judgment Allows Nalder to Collect from UAIC, Regardless of the Continuing Validity of the Underlying Judgment

Nalder's ability to collect against UAIC for the full amount of damages he incurred is not controlled by his right to collect against Lewis, the original judgment debtor. *Pinto v. Allstate Ins. Co.*, 221 F.3d 394, 403-04 (2d Cir. 2000) ("[E]xchange of a general release for an assignment of a bad faith claim operates to preserve the bad faith claim"); *see also*, *Consolidated American Ins. Co. v. Mike Soper Marine Services*, 951 F.2d 186, 190-91 (9th Cir. 1991). It is not uncommon for judgment debtors to give up valuable rights and consideration to avoid execution of an adverse judgment. When a judgment debtor, like Lewis, assigns his bad faith rights in exchange for satisfaction of a judgment or stay of execution, such assignment does not relieve UAIC of its liability for the damages it caused to Lewis.

On February 28, 2010, Lewis took steps to protect himself from execution on the judgment because he gave up right to sue UAIC for bad faith to Nalder. 1 A.App. 0011. The value of this right is at least \$3,500,000.00 and likely now more because of interest. The terms of the assignment specifically state that Lewis assigns to Nalder the rights to "all funds necessary to satisfy the Judgment." 1 A.App. 0011.

Pursuant to these terms, any and all damages recovered in the underlying action only go towards paying off the \$3,500,000.00 default judgment.

F. UAIC Admitted the Judgment was Valid Both Times the Federal District Court Disregarded the Judgment as an Item of Damage in its Rulings

If the judgment's ongoing validity is evaluated independent of the assignment or action on the judgment, then its validity should have been tested when the federal district court issued its rulings regarding Appellants' damages. The appropriate time to examine the validity of the judgment was when the federal district court disregarded the judgment when computing Appellants' damages. At that time UAIC admitted the judgment was valid. Thus, such damages include the \$3,500,000.00 underlying default judgment, irrespective of whether that judgment has since expired under the statute of limitations.

VI. CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court conclude that a plaintiff can still seek the recovery of consequential damages stemming from a breach of the duty to defend even if the underlying judgment expires within the six-year limitations period.

DATED this 1st day of August, 2018.

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are the persons and entities as described in NRAP 26.1(a)(1), and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal:

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Kevin T. Strong, Esq. – EGLET PRINCE

Thomas Christensen, Esq. – CHRISTENSEN LAW OFFICES, LLC

Richard Christensen, Esq. – CHRISTENSEN LAW OFFICES, LLC

DATED this 1st day of August, 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011, Version 14.4.1, in 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and 4,227 contains words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

...

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 1st day of August, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of August, 2018, I served the foregoing **APPELLANTS' OPENING BRIEF REGARDING SECOND CERTIFIED QUESTION OF LAW** by electronically filing and serving the document(s) listed above with the Nevada Supreme Court.

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An Employee of EGLET PRINCE

EXHIBIT “Q”



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

Exhibit 1

134 Nev., Advance Opinion 100
IN THE SUPREME COURT OF THE STATE OF NEVADA

CENTURY SURETY COMPANY,
 Appellant,
 vs.
 DANA ANDREW, AS LEGAL
 GUARDIAN ON BEHALF OF RYAN T.
 PRETNER; AND RYAN T. PRETNER,
 Respondents.

No. 73756

FILED

DEC 13 2018

ELIZABETH BROWN
 CLERK OF THE SUPREME COURT
 BY *[Signature]*
 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.

Matthew L. Sharp, Ltd., and Matthew L. Sharp, Reno,
for Amicus Curiae Nevada Justice Association.

BEFORE THE COURT EN BANC.¹

OPINION

By the Court, DOUGLAS, C.J.:

An insurance policy generally contains an insurer's contractual duty to defend its insured in any lawsuits that involve claims covered under the umbrella of the insurance policy. In response to a certified question submitted by the United States District Court for the District of Nevada, we consider "[w]hether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred by the insured in mounting a defense, or [whether] the insurer [is] liable for all losses consequential to the insurer's breach." We conclude that an insurer's liability where it breaches its contractual duty to defend is not capped at the policy limits plus the insured's defense costs, and instead, an insurer may be liable for any consequential damages caused by its breach. We further conclude that good-faith determinations are irrelevant for determining damages upon a breach of this duty.

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

FACTS AND PROCEDURAL HISTORY

Respondents Ryan T. Pretner and Dana Andrew (as legal guardian of Pretner) initiated a personal injury action in state court after a truck owned and driven by Michael Vasquez struck Pretner, causing significant brain injuries. Vasquez used the truck for personal use, as well as for his mobile auto detailing business, Blue Streak Auto Detailing, LLC (Blue Streak). At the time of the accident, Vasquez was covered under a personal auto liability insurance policy issued by Progressive Casualty Insurance Company (Progressive), and Blue Streak was insured under a commercial liability policy issued by appellant Century Surety Company. The Progressive policy had a \$100,000 policy limit, whereas appellant's policy had a policy limit of \$1 million.

Upon receiving the accident report, appellant conducted an investigation and concluded that Vasquez was not driving in the course and scope of his employment with Blue Streak at the time of the accident, and that the accident was not covered under its insurance policy. Appellant rejected respondents' demand to settle the claim within the policy limit. Subsequently, respondents sued Vasquez and Blue Streak in state district court, alleging that Vasquez was driving in the course and scope of his employment with Blue Streak at the time of the accident. Respondents notified appellant of the suit, but appellant refused to defend Blue Streak. Vasquez and Blue Streak defaulted in the state court action and the notice of the default was forwarded to appellant. Appellant maintained that the claim was not covered under its insurance policy.

Respondents, Vasquez, and Blue Streak entered into a settlement agreement whereby respondents agreed not to execute on any judgment against Vasquez and Blue Streak, and Blue Streak assigned its

rights against appellant to respondents. In addition, Progressive agreed to tender Vasquez's \$100,000 policy limit. Respondents then filed an unchallenged application for entry of default judgment in state district court. Following a hearing, the district court entered a default judgment against Vasquez and Blue Streak for \$18,050,183. The default judgment's factual findings, deemed admitted by default, stated that "Vasquez negligently injured Pretner, that Vasquez was working in the course and scope of his employment with Blue Streak at the time, and that consequently Blue Streak was also liable." As an assignee of Blue Streak, respondents filed suit in state district court against appellant for breach of contract, breach of the implied covenant of good faith and fair dealing, and unfair claims practices, and appellant removed the case to the federal district court.

The federal court found that appellant did not act in bad faith, but it did breach its duty to defend Blue Streak. Initially, the federal court concluded that appellant's liability for a breach of the duty to defend was capped at the policy limit plus any cost incurred by Blue Streak in mounting a defense because appellant did not act in bad faith. The federal court stated that it was undisputed that Blue Streak did not incur any defense cost because it defaulted in the underlying negligence suit. However, after respondents filed a motion for reconsideration, the federal court concluded that Blue Streak was entitled to recover consequential damages that exceeded the policy limit for appellant's breach of the duty to defend, and that the default judgment was a reasonably foreseeable result of the breach of the duty to defend. Additionally, the federal court concluded that bad faith was not required to impose liability on the insurer in excess of the policy limit. Nevertheless, the federal court entered an order staying the

proceedings until resolution of the aforementioned certified question by this court.

DISCUSSION

Appellant argues that the liability of an insurer that breaches its contractual duty to defend, but has not acted in bad faith, is generally capped at the policy limits and any cost incurred in mounting a defense.² Conversely, respondents argue that an insurer that breaches its duty to defend should be liable for all consequential damages, which may include a judgment against the insured that is in excess of the policy limits.³

In Nevada, insurance policies are treated like other contracts, and thus, legal principles applicable to contracts generally are applicable to insurance policies. *See Century Sur. Co. v. Casino W., Inc.*, 130 Nev. 395, 398, 329 P.3d 614, 616 (2014); *United Nat'l Ins. Co. v. Frontier Ins. Co., Inc.*, 120 Nev. 678, 684, 99 P.3d 1153, 1156-57 (2004); *Farmers Ins. Exch. v. Neal*, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003). The general rule in a breach of contract case is that the injured party may be awarded expectancy damages, which are determined by the method set forth in the Restatement (Second) of Contracts § 347 (Am. Law Inst. 1981). *Rd. & Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 128 Nev. 384, 392, 284 P.3d 377, 382 (2012). The

²The Federation of Defense & Corporate Counsel, Complex Insurance Claims Litigation Association, American Insurance Association, and Property Casualty Insurers Association of America were allowed to file amicus briefs in support of appellant.

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

Restatement (Second) of Contracts § 347 provides, in pertinent part, as follows:

[T]he injured party has a right to damages based on his expectation interest as measured by

(a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus

(b) *any other loss, including incidental or consequential loss, caused by the breach*, less

(c) any cost or other loss that he has avoided by not having to perform.

(Emphasis added.)

An insurance policy creates two contractual duties between the insurer and the insured: the duty to indemnify and the duty to defend. *Allstate Ins. Co. v. Miller*, 125 Nev. 300, 309, 212 P.3d 318, 324 (2009). "The duty to indemnify arises when an insured becomes legally obligated to pay damages in the underlying action that gives rise to a claim under the policy." *United Nat'l*, 120 Nev. at 686, 99 P.3d at 1157 (internal quotation marks omitted). On the other hand, "[a]n insurer . . . bears a duty to defend its insured whenever it ascertains facts which give rise to the potential of liability under the policy." *Id.* at 687, 99 P.3d at 1158 (alteration in original) (internal quotation marks omitted).

Courts have uniformly held the duty to defend to be "separate from," 1 Barry R. Ostrager & Thomas R. Newman, *Handbook on Insurance Coverage Disputes* §5.02[a], at 327 (17th ed. 2015) (internal quotation marks omitted), and "broader than the duty to indemnify," *Pension Tr. Fund for Operating Eng'rs v. Fed. Ins. Co.*, 307 F.3d 944, 949 (9th Cir. 2002). The duty to indemnify provides those insured financial protection against judgments, while the duty to defend protects those insured from the action

itself. “The duty to defend is a valuable service paid for by the insured and one of the principal benefits of the liability insurance policy.” *Woo v. Fireman’s Fund Ins. Co.*, 164 P.3d 454, 459-60 (Wash. 2007). The insured pays a premium for the expectation that the insurer will abide by its duty to defend when such a duty arises. In Nevada, that duty arises “if facts [in a lawsuit] are alleged which if proved would give rise to the duty to indemnify,” which then “the insurer *must* defend.” *Rockwood Ins. Co. v. Federated Capital Corp.*, 694 F. Supp. 772, 776 (D. Nev. 1988) (emphasis added); *see also United Nat’l*, 120 Nev. at 687, 99 P.3d at 1158 (“Determining whether an insurer owes a duty to defend is achieved by comparing the allegations of the complaint with the terms of the policy.”).⁴

⁴Appellant correctly notes that we have previously held that this duty is not absolute. In the case appellant cites, *United National*, we held that “[t]here is no duty to defend [w]here there is no *potential* for coverage.” 120 Nev. at 686, 99 P.3d at 1158 (second alteration in original) (internal quotation marks omitted). We take this opportunity to clarify that where there is potential for coverage based on “comparing the allegations of the complaint with the terms of the policy,” an insurer does have a duty to defend. *Id.* at 687, 99 P.3d at 1158. In this instance, as a general rule, facts outside of the complaint cannot justify an insurer’s refusal to defend its insured. Restatement of Liability Insurance § 13 cmt. c (Am. Law Inst., Proposed Final Draft No. 2, 2018) (“The general rule is that insurers may not use facts outside the complaint as the basis for refusing to defend. . . .”). Nonetheless, the insurer can always agree to defend the insured with the limiting condition that it does not waive any right to later deny coverage based on the terms of the insurance policy under a reservation of rights. *See Woo*, 164 P.3d at 460 (“Although the insurer must bear the expense of defending the insured, by doing so under a reservation of rights . . . the insurer avoids breaching its duty to defend and incurring the potentially greater expense of defending itself from a claim of breach.”). Accordingly, facts outside the complaint may be used in an action brought by the insurer seeking to terminate its duty to defend its insured in an action whereby the insurer is defending under a reservation of rights. Restatement of Liability

In a case where the duty to defend does in fact arise, and the insurer breaches that duty, the insurer is at least liable for the insured's reasonable costs in mounting a defense in the underlying action. See *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 345, 255 P.3d 268, 278 (2011) (providing that a breach of the duty to defend "may give rise to damages in the form of reimbursement of the defense costs the indemnitee was thereby forced to incur in defending against claims encompassed by the indemnity provision" (internal quotation marks omitted)). Several other states have considered an insurer's liability for a breach of its duty to defend, and while no court would disagree that the insurer is liable for the insured's defense cost, courts have taken two different views when considering whether the insurer may be liable for an entire judgment that exceeds the policy limits in the underlying action.

The majority view is that "[w]here there is no opportunity to compromise the claim and the only wrongful act of the insurer is the refusal to defend, the liability of the insurer is ordinarily limited to the amount of the policy plus attorneys' fees and costs." *Comunale v. Traders & Gen. Ins. Co.*, 328 P.2d 198, 201 (Cal. 1958); see also *Emp'rs Nat'l Ins. Corp. v. Zurich Am. Ins. Co. of Ill.*, 792 F.2d 517, 520 (5th Cir. 1986) (providing that imposing excess liability upon the insurer arose as a result of the insurer's

Insurance § 13 cmt. c (Am. Law Inst., Proposed Final Draft No. 2, 2018) ("Only in a declaratory-judgment action filed while the insurer is defending, or in a coverage action that takes place after the insurer fulfilled the duty to defend, may the insurer use facts outside the complaint as the basis for avoiding coverage.").

refusal to entertain a settlement offer within the policy limit and not solely because the insurer refused to defend); *George R. Winchell, Inc. v. Norris*, 633 P.2d 1174, 1177 (Kan. Ct. App. 1981) (“Absent a settlement offer, the plain refusal to defend has no causal connection with the amount of the judgment in excess of the policy limits.”). In *Winchell*, the court explained the theory behind the majority view, reasoning that when an insurer refuses a settlement offer, unlike a refusal to defend, “the insurer is causing a discernible injury to the insured” and “the injury to the insured is traceable to the insurer’s breach.” 633 P.2d at 1777. “A refusal to defend, in itself, can be compensated for by paying the costs incurred in the insured’s defense.” *Id.* In sum, “[a]n [insurer] is liable to the limits of its

policy plus attorney fees, expenses and other damages where it refuses to defend an insured who is in fact covered,” and “[t]his is true even though the [insurer] acts in good faith and has reasonable ground[s] to believe there is no coverage under the policy.” *Allen v. Bryers*, 512 S.W.3d 17, 38-39 (Mo. 2016) (first and fifth alteration in original) (internal quotation marks omitted), *cert. denied by Atain Specialty Ins. Co. v. Allen*, ___ U.S. ___, 138 S. Ct. 212 (2017).

The minority view is that damages for a breach of the duty to defend are not automatically limited to the amount of the policy; instead, the damages awarded depend on the facts of each case. *See Burgraff v. Menard, Inc.*, 875 N.W.2d 596, 608 (Wis. 2016). The objective is to have the insurer “pay damages necessary to put the insured in the same position he would have been in had the insurance company fulfilled the insurance contract.” *Id.* (internal quotation marks omitted). Thus, “[a] party aggrieved by an insurer’s breach of its duty to defend is entitled to recover all damages naturally flowing from the breach.” *Id.* (internal quotation

marks omitted). Damages that may naturally flow from an insurer's breach include:

- (1) the amount of the judgment or settlement against the insured plus interest [even in excess of the policy limits]; (2) costs and attorney fees incurred by the insured in defending the suit; and (3) any additional costs that the insured can show naturally resulted from the breach.

Newhouse v. Citizens Sec. Mut. Ins. Co., 501 N.W.2d 1, 6 (Wis. 1993).

For instance, in *Delatorre v. Safeway Insurance Co.*, the insurer breached its duty to defend by failing to ensure that retained counsel continued defending the insured after answering the complaint, which ultimately led to a default judgment against the insured exceeding the policy limits. 989 N.E.2d 268, 274 (Ill. App. Ct. 2013). The court found that the entry of default judgment directly flowed from the insurer's breach, and thus, the insurer was liable for the portion that exceeded the policy limit. *Id.* at 276. The court reasoned that a default judgment "could have been averted altogether had [the insurer] seen to it that its insured was actually defended as contractually required." *Id.*

On the other hand, in *Hamlin Inc. v. Hartford Accident & Indemnity Co.*, the court considered whether the insured had as good of a defense as it would have had had the insurer provided counsel. 86 F.3d 93, 95 (7th Cir. 1996). The court observed that although the "insurer did not pay the entire bill for [the insured's] defense," the insured is not "some hapless individual who could not afford a good defense unless his insurer or insurers picked up the full tab." *Id.* Moreover, the court noted that the insured could not have expected to do better with the firm it hired, which "was in fact its own choice, and not a coerced choice, that is, not a choice to

which it turned only because the obstinacy of the [insurers] made it unable to 'afford' an even better firm (if there is one)." *Id.* Therefore, because the entire judgment was not consequential to the insurer's breach of its duty to defend, the insured was not entitled to the entire amount of the judgment awarded against it in the underlying lawsuit.. *Id.*

We conclude that the minority view is the better approach. Unlike the minority view, the majority view places an artificial limit to the insurer's liability within the policy limits for a breach of its duty to defend. That limit is based on the insurer's duty to indemnify but "[a] duty to defend limited to and coextensive with the duty to indemnify would be essentially meaningless; insureds pay a premium for what is partly litigation insurance

designed to protect . . . the insured from the expense of defending suits brought against him." *Capitol Envtl. Servs., Inc. v. N. River Ins. Co.*, 536 F. Supp. 2d 633, 640 (E.D. Va. 2008) (internal quotation marks omitted). Even the *Comunale* court recognized that "[t]here is an important difference between the liability of an insurer who performs its obligations and that of an insurer who breaches its contract." 328 P.2d at 201. Indeed, the insurance policy limits "only the amount the insurer may have to pay in the performance of the contract as compensation to a third person for personal injuries caused by the insured; they do not restrict the damages recoverable by the insured for a breach of contract by the insurer." *Id.*

The obligation of the insurer to defend its insured is purely contractual and a refusal to defend is considered a breach of contract. Consistent with general contract principles, the minority view provides that the insured may be entitled to consequential damages resulting from the insurer's breach of its contractual duty to defend. *See* Restatement

of Liability Insurance § 48 (Am. Law Inst., Proposed Final Draft No. 2, 2018). Consequential damages “should be such as may fairly and reasonably be considered as arising naturally, or were reasonably contemplated by both parties at the time they made the contract.” *Hornwood v. Smith’s Food King No. 1*, 105 Nev. 188, 190, 772 P.2d 1284, 1286 (1989) (internal quotation marks omitted). The determination of the insurer’s liability depends on the unique facts of each case and is one that is left to the jury’s determination. See *Khan v. Landmark Am. Ins. Co.*, 757 S.E.2d 151, 155 (Ga. Ct. App. 2014) (“[W]hether the full amount of the judgment was recoverable was a jury question that depended upon what damages were found to flow from the breach of the contractual duty to defend.”).⁵

The right to recover consequential damages sustained as a result of an insurer’s breach of the duty to defend does not require proof of bad faith. As the Supreme Court of Michigan explained:

The duty to defend . . . arises solely from the language of the insurance contract. A breach of that duty can be determined objectively, without reference to the good or bad faith of the insurer. If the insurer had an obligation to defend and failed to fulfill that obligation, then, like any other party who fails to perform its contractual obligations, it becomes liable for all foreseeable damages flowing from the breach.

Stockdale v. Jamison, 330 N.W.2d 389, 392 (Mich. 1982). In other words, an insurer’s breach of its duty to defend can be determined objectively by

⁵Consequently, we reject appellant’s argument that, as a matter of law, damages in excess of the policy limits can never be recovered as a consequence to an insurer’s breach of its duty to defend.

comparing the facts alleged in the complaint with the insurance policy. Thus, even in the absence of bad faith, the insurer may be liable for a judgment that exceeds the policy limits if the judgment is consequential to the insurer's breach. An insurer that refuses to tender a defense for "its insured takes the risk not only that it may eventually be forced to pay the insured's legal expenses but also that it may end up having to pay for a loss that it did not insure against." *Hamlin*, 86 F.3d at 94. Accordingly, the insurer refuses to defend at its own peril. However, we are not saying that an entire judgment is automatically a consequence of an insurer's breach of its duty to defend; rather, the insured is tasked with showing that the breach caused the excess judgment and "is obligated to take all reasonable means to protect himself and mitigate his damages." *Thomas v. W. World Ins. Co.*, 343 So. 2d 1298, 1303 (Fla. Dist. Ct. App. 1977); see also *Conner v. S. Nev. Paving, Inc.*, 103 Nev. 353, 355, 741 P.2d 800, 801 (1987) ("As a general rule, a party cannot recover damages for loss that he could have avoided by reasonable efforts.").

CONCLUSION

In answering the certified question, we conclude that an insured may recover any damages consequential to the insurer's breach of its duty to defend. As a result, an insurer's liability for the breach of the duty to defend is not capped at the policy limits; even in the absence of bad faith.

Douglas, C.J.
Douglas

We concur:

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich