

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 18 2021 03:05 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 81710

CHEYENNE NALDER

Appellant,

vs.

GARY LEWIS; and UNITED AUTOMOBILE INSURANCE
COMPANY,

Respondents.

ON APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

District Court Case No. 07A549111

**CHEYENNE NALDER'S APPENDIX
VOLUME 1-Part 1**

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1 COMP
2 DAVID F. SAMPSON, ESQ.,
3 Nevada Bar #6811
4 THOMAS CHRISTENSEN, ESQ.,
5 Nevada Bar #2326
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,
10 JAMES NALDER As Guardian Ad
11 Litem for minor, CHEYENNE NALDER

FILED

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Carol Ann
CLERK OF THE COURT

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 JAMES NALDER, individually)
15 and as Guardian ad Litem for)
16 CHEYENNE NALDER, a minor.)

17 Plaintiffs,)
18)

19 vs.)

CASE NO: A549111
DEPT. NO: VI

20 GARY LEWIS, and DOES I)
21 through V, inclusive ROES I)
22 through V)

23 Defendants.)
24)

25 COMPLAINT

26 COMES NOW the Plaintiff, JAMES NALDER as Guardian Ad Litem for CHEYENNE
27 NALDER, a minor, by and through Plaintiff's attorney, DAVID F. SAMPSON, ESQ., of
28 CHRISTENSEN LAW OFFICES, LLC, and for a cause of action against the Defendants, and
each of them, alleges as follows:

1. Upon information and belief, that at all times relevant to this action, the Defendant,
GARY LEWIS, was a resident of Las Vegas, Nevada.
2. That Plaintiffs, JAMES NALDER, individually and as Guardian Ad Litem for
CHEYENNE NALDER, a minor, (hereinafter referred to as Plaintiffs) were at the time of the
accident residents of the County of Clark, State of Nevada.





1 3. That the true names or capacities, whether individual, corporate, associate or otherwise, of
2 Defendants named as DOES I through V, inclusive, are unknown to Plaintiff, who therefore
3 sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon
4 alleges that each of the Defendants designated herein as DOE is responsible in some manner
5 for the events and happenings referred to and caused damages proximately to Plaintiff as herein
6 alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the true
7 names and capacities of DOES I through V, when the same have been ascertained, and to join
8 such Defendants in this action.
9

10
11 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of a
12 certain 1996 Chevy Pickup (hereinafter referred to as "Defendant" vehicle") at all time relevant
13 to this action.

14 5. On the 8th day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's
15 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder
16 was playing on private property; that Defendant, did carelessly and negligently operate
17 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder and that as a direct and
18 proximate result of the aforesaid negligence of Defendant, Gary Lewis, and each of the
19 Defendants, Plaintiff, Cheyenne Nalder sustained the grievous and serious personal injuries and
20 damages as hereinafter more particularly alleged.
21

22
23 6. At the time of the accident herein complained of, and immediately prior thereto,
24 Defendant, Gary Lewis in breaching a duty owed to the Plaintiffs, was negligent and careless,
25 inter alia, in the following particulars:

26 A. In failing to keep Defendant's vehicle under proper control;

27 B. In operating Defendant's vehicle without due caution for the rights of the Plaintiff;
28



1 C. In failing to keep a proper lookout for plaintiffs

2 D. The Defendant violated certain Nevada revised statutes and Clark County Ordinances,
3 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
4 trial.
5

6 7. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
7 and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained a
8 broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and
9 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
10 some of the same is chronic and may be permanent and disabling, all to her damage in an
11 amount in excess of \$10,000.00.
12

13 8. By reason of the premises, and as a direct and proximate result of the aforesaid negligence
14 and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has been
15 caused to expend monies for medical and miscellaneous expenses as of this time in excess of
16 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses
17 and miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and
18 leave of Court will be requested to include said additional damages when the same have been
19 fully determined.
20

21 9. Prior to the injuries complained of herein, Plaintiff, Cheyenne Nalder, was an able-bodied
22 male, capable of being gainfully employed and capable of engaging in all other activities for
23 which Plaintiff was otherwise suited. By reason of the premises, and as a direct and proximate
24 result of the negligence of the said Defendants, and each of them, Plaintiff, Cheyenne Nalder,
25 was caused to be disabled and limited and restricted in her occupations and activities, and/or
26 diminution of Plaintiff's earning capacity and future loss of wages, all to her damage in a sum
27
28



1 not yet presently ascertainable, the allegations of which Plaintiff prays leave of Court to insert
2 herein when the same shall be fully determined.

3 10. Plaintiff has been required to retain the law firm of CHRISTENSEN LAW OFFICES,
4 LLC to prosecute this action, and is entitled to a reasonable attorney's fee.

5 CLAIM FOR RELIEF:

- 6
- 7 1. General damages in an amount in excess of \$10,000.00;
- 8 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus
9 future medical expenses and the miscellaneous expenses incidental thereto in a presently
10 unascertainable amount;
- 11 3. Special damages for loss of wages in an amount not yet ascertained and/or diminution of
12 Plaintiff's earning capacity, plus possible future loss of earnings and/or diminution of Plaintiff's
13 earning capacity in a presently unascertainable amount;
- 14 4. Costs of this suit;
- 15 5. Attorney's fees; and
- 16 6. For such other and further relief as to the Court may seem just and proper in the
17 premises.

18 DATED this 1st day of Oct, 2007.

19 CHRISTENSEN LAW OFFICES, LLC

20 BY: _____

21 DAVID F. SAMPSON, ESQ.,
22 Nevada Bar #2326
23 THOMAS CHRISTENSEN, ESQ.,
24 Nevada Bar #2326
25 1000 S. Valley View Blvd.
26 Las Vegas, Nevada 89107
27 Attorney for Plaintiff
28

1 JMT
2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326
4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,

CRaf
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 JAMES NALDER,)
10 as Guardian ad Litem for)
11 CHEYENNE NALDER, a minor.)
12)
13 Plaintiffs,)
14)
15 vs.)
16)
17 GARY LEWIS, and DOES I)
18 through V, inclusive)
19)
20 Defendants.)
21)

CASE NO: A549111
DEPT. NO: VI

22 JUDGMENT

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

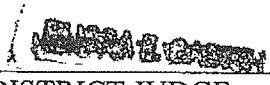
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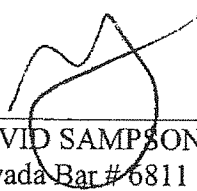
...

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

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 DISTRICT JUDGE

10
11
12 Submitted by:
13 CHRISTENSEN LAW OFFICES, LLC.

14
15
16 BY: 
17 DAVID SAMPSON
18 Nevada Bar #6811
19 1000 S. Valley View
20 Las Vegas, Nevada 89107
21 Attorney for Plaintiff
22
23
24
25
26
27
28

1 **JUDG**

2 DAVID F. SAMPSON, ESQ.,

3 Nevada Bar #6811

4 THOMAS CHRISTENSEN, ESQ.,

5 Nevada Bar #2326

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,

10 JAMES NALDER As Guardian Ad

11 Litem for minor, CHEYENNE NALDER

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JAMES NALDER, individually)

13 and as Guardian ad Litem for)

14 CHEYENNE NALDER, a minor.)

15 Plaintiffs,)

16 vs.)

CASE NO: A549111

DEPT. NO: VI

17 GARY LEWIS, and DOES I)

18 through V, inclusive ROES I)

19 through V)

20 Defendants.)

21 **NOTICE OF ENTRY OF JUDGMENT**

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

25 DATED this 5 day of June, 2008.

26 CHRISTENSEN LAW OFFICES, LLC

27 By: _____

28 DAVID F. SAMPSON, ESQ.

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorneys for Plaintiff

FILED

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CLERK OF COURT

1
2
3 **CERTIFICATE OF SERVICE**

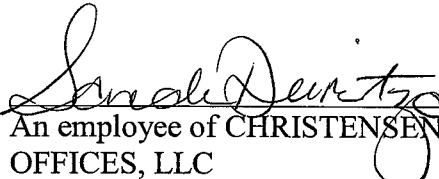
4 Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW
5 OFFICES, LLC., and that on this 5th June day of ~~March~~, 2008, I served a copy of the
6 foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:
7

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

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

14 ☐ Hand Delivery—By hand-delivery to the addresses listed below.
15

16 Gary Lewis
17 5049 Spencer St. #D
Las Vegas, NV 89119

18 
19 An employee of CHRISTENSEN LAW
20 OFFICES, LLC
21
22
23
24
25
26
27
28

1 **JMT**
2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326
4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,

CRaf
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JAMES NALDER,)
10 as Guardian ad Litem for)
11 CHEYENNE NALDER, a minor.)
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13 Plaintiffs,)
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15 vs.)
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17 GARY LEWIS, and DOES I)
18 through V, inclusive)
19)
20 Defendants.)
21).

CASE NO: A549111
DEPT. NO: VI

JUDGMENT

22 In this action the Defendant, GARY LEWIS, having been regularly served with the
23 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the
24 legal time for answering having expired, and no answer or demurrer having been filed, the
25 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according
26 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as
27 follows:
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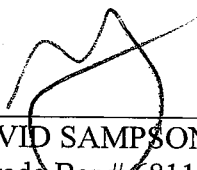
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2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,
4 until paid in full.

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 _____
10 DISTRICT JUDGE

11
12
13 Submitted by:
14 CHRISTENSEN LAW OFFICES, LLC.

15
16 BY: 
17 DAVID SAMPSON
18 Nevada Bar #6811
19 1000 S. Valley View
20 Las Vegas, Nevada 89107
21 Attorney for Plaintiff
22
23
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25
26
27
28



1 MTN
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & BYWATER
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
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9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

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DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendants.

07-A-549111
CASE NO.: A549111
DEPT NO.: XXIX

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

Date: N/A

Time: N/A

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

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

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendants.

07-A-549111
CASE NO.: A549111

DEPT NO.: XXIX

14 EX PARTE MOTION TO AMEND JUDGMENT IN THE NAME OF
15 CHEYENNE NALDER, INDIVIDUALLY
16

17 Date: N/A

18 Time: N/A

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

26
27
28 / / / /

Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

Dated this 19 day of March, 2018.

STEPHENS GOURLEY & BYWATER

Dennis A. A.

David A. Stephens, Esq.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT “1”

1 JMT
2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326
4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,

CRF
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JAMES NALDER,)
10 as Guardian ad Litem for)
11 CHEYENNE NALDER, a minor.)

11 Plaintiffs,)
12)

13 vs.)

CASE NO: A549111

DEPT. NO: VI

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

16 Defendants.)
17)

JUDGMENT

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

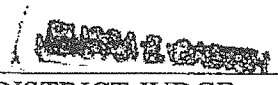
26 ...

27 ...

28 ...

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

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 DISTRICT JUDGE

10
11
12 Submitted by:
13 CHRISTENSEN LAW OFFICES, LLC.


14
15
16 BY: 
17 DAVID SAMPSON
18 Nevada Bar #6811
19 1000 S. Valley View
20 Las Vegas, Nevada 89107
21 Attorney for Plaintiff
22
23
24
25
26
27
28

EXHIBIT “2”

1 **JMT**

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 *Attorney for Cheyenne Nalder*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

CASE NO: A549111

DEPT. NO: XXIX

19 **AMENDED JUDGMENT**

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

25 ...

26 ...

27 ...


28 ...

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

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

10 _____
District Judge
11

12 Submitted by:
STEPHENS GOURLEY & BYWATER
13

14 
15 DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
16 STEPHENS GOURLEY & BYWATER
3636 North Rancho Dr
17 Las Vegas, Nevada 89130
Attorneys for Plaintiff
18
19
20
21
22
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27
28



1 **JMT**
2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbgllawfirm.com
11 Attorney for Cheyenne Nalder

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

11
12 CHEYENNE NALDER,
13
14 Plaintiff,
15
16 vs.
17
18 GARY LEWIS,
19
20 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

21 **AMENDED JUDGMENT**

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26 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:
27
28

...

...

...

...

1 JMT

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 Attorney for Cheyenne Nalder

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

19 CASE NO: A549111

20 DEPT. NO: XXIX

21 AMENDED JUDGMENT

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

27 ...

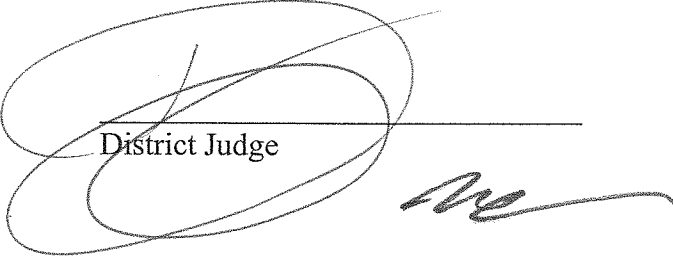
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1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *mc*
2 ~~\$3,500,000.00~~ *\$3,434,444.63*
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~
4 in pain, suffering, and disfigurement,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

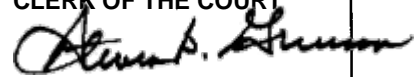
6 DATED this *26* day of March, 2018.

7
8
9
10 
11 District Judge

12 Submitted by:
13 STEPHENS GOURLEY & BYWATER

14 

15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
21
22
23
24
25
26
27
28



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

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.
14

Case No. 07A549111

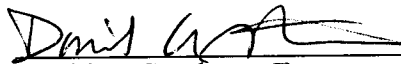
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26th day of March, 2018, the Honorable David
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

20 STEPHENS & BYWATER



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

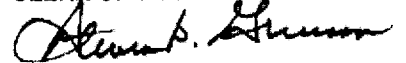
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,
and that on the 15th day of May, 2018, I served a true copy of the foregoing **NOTICE OF**
ENTRY OF AMENDED JUDGMENT, by depositing the same in a sealed envelope upon
which first class postage was fully prepaid, and addressed as follows:

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


An employee of Stephens & Bywater



1 **JMT**

2 **DAVID A. STEPHENS, ESQ.**

3 Nevada Bar No. 00902

4 **STEPHENS GOURLEY & BYWATER**

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 Attorney for Cheyenne Nalder

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 **CHEYENNE NALDER,**

15 Plaintiff,

16 vs.

17 **GARY LEWIS,**

18 Defendant.

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

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24 application of said Plaintiff, Judgment is hereby entered against said Defendant as follows:

25 ...

26 ...

27 ...

28 ...

1 **JMT**

2 **DAVID A. STEPHENS, ESQ.**

3 Nevada Bar No. 00902

4 **STEPHENS GOURLEY & BYWATER**

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbglawfirm.com

11 *Attorney for Cheyenne Nalder*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

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21 and having failed to appear and answer the Plaintiff's complaint filed herein, the legal time for
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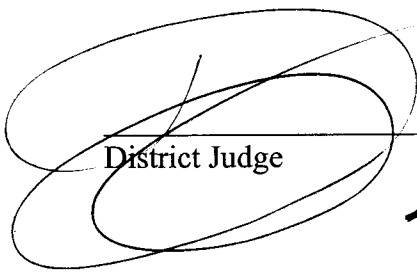
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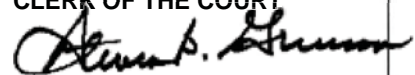
1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the *me*
2 ~~\$3,500,000.00~~ **\$3,434,444.63**
3 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and ~~\$3,434,444.63~~
4 in pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9,
5 2007, until paid in full.

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

7
8
9
10  District Judge *me*

11 Submitted by:
12 STEPHENS GOURLEY & BYWATER

13
14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
21
22
23
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25
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27
28



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 Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: 07A549111


DEPT. NO.: 29

UAIC'S MOTION TO INTERVENE

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby submits this Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached hereto, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this 17th day of August, 2018.

ATKIN WINNER & SHERROD



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

NOTICE OF MOTION

TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Intervene for hearing before the above-entitled Court on the **19th** day of **September**, 2018, at the hour of _____m. in the forenoon of said date, or as soon thereafter as counsel can be heard.

DATED this **17th** day of **AUGUST**, 2018.

ATKIN WINNER & SHERROD


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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR INTERVENTION

I.

Introduction & Factual Background

This action was originally filed back in 2007 in regard to an automobile accident that occurred in July 2007 between Nalder and Lewis. Proposed Intervenor will not re-state the entire history as it is adequately set forth in Order Certifying a Second Question to the Nevada Supreme Court by United States Court of Appeals for the Ninth Circuit, which was filed on January 11, 2018. *A copy of the Order certifying the second question of law is attached hereto as Exhibit 'A.'* Rather, the salient points are that Plaintiff's "amended judgment", entered recently in 2018, is premised on an original judgment which had been entered against Gary Lewis on

1 August 26, 2008. After obtaining the judgment, Counsel for Plaintiff¹ then filed an action against
2 Mr. Lewis' insurer, United Automobile Insurance Company ("UAIC"), Proposed Intervenor
3 herein. Despite the prohibition against direct actions against an insurer, Plaintiff failed to obtain
4 an assignment prior to filing that action against UAIC and, only later, during the litigation
5 obtained an assignment from Lewis.

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

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

22 On February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified
23 question and ordered Appellants to file their Opening brief within 30 days, or by March 26,
24 2018. *A copy of the Order accepting the second certified question is attached hereto as Exhibit*
25 *'B.'* In accepting the certified question, the Nevada Supreme Court rephrased the question as
26 follows:
27

28

¹ At that time, in 2008, Ms. Nalder was a minor so the judgment was entered in favor of her
through her Guardian Ad Litem and, father, James Nalder.

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

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

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

Furthermore, Plaintiff then initiated a "new" action, under case no. A-18-772220-C² in a thinly veiled attempt to have this Court rule on issues pending before the Nevada Supreme Court and "fix" their expired judgment. This intent appears clearly evidenced by paragraph five (5) of Plaintiff's prayer for relief herein which states Plaintiff is seeking this Court to make "a declaration that the statute of limitations on the judgment on the judgment is still tolled as a result of Defendant's continued absence from the state." *A copy of Plaintiff's Complaint for that action is attached hereto as Exhibit 'E.'* Plaintiff then apparently served Lewis and, on July 17, 2018, sent a letter to UAIC's counsel with a copy of a "three Day notice to Plead", and, as such, threatening default of Lewis on this "new" action. *A copy of Plaintiff's letter and three day notice is attached hereto as Exhibit 'F.'*

² This case is also pending before this Court and UAIC has filed a Motion to intervene in that action as well and same is pending before this Court.

Upon learning of this “amended judgment” and “new” action and, given the United States District Court’s ruling that Gary Lewis is an insured under an *implied* UAIC policy for the loss belying these judgments and, present action, UAIC immediately sought to engage counsel to appear on Lewis’ behalf in the present action. *A copy of the Judgment of the U.S. District Court finding coverage and implying an insurance policy is attached hereto as Exhibit ‘G.’* Following retained defense Counsel’s attempts to communicate with Mr. Lewis to defend him in this action and, potentially, vacate this improper amendment to an expired judgment – retained defense counsel was sent a letter by Tommy Christensen, Esq. – the Counsel for Plaintiff judgment-creditor in the above-referenced action and appeal – stating in no uncertain terms that Counsel could not communicate with Mr. Lewis, nor appear and defend him in this action and take action to get relief from this amended judgment. *A copy of Tommy Christensen’s letter of August 13, 2018 is attached hereto as Exhibit ‘H.’*

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

II.

ARGUMENT

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

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

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

The named Defendant LEWIS has been found to be an insured per the United States District

1 Court Order under an implied policy of insurance with UAIC policy at the time of the accident
2 underlying the judgments for which Plaintiff seeks relief or, may seek relief, in the present
3 action. *Exhibit 'G.'* When UAIC became informed of the amended judgment herein and
4 attempted to retain counsel to defend LEWIS, UAIC was informed by Counsel for Plaintiff that
5 he would not allow retained defense counsel to file any motion to defend LEWIS or vacate the
6 amended judgment. *Exhibit "H."* Without the ability of retained defense counsel to appear and
7 mount a defense on LEWIS' behalf, it is apparent that UAIC cannot provide him an effective
8 defense in regards to this "amended" judgment. As long as UAIC is obligated to provide such a
9 defense, and to potentially pay any judgment against LEWIS or pay fees resulting from
10 enforcement of said judgment, UAIC's interests are clearly at stake in this action. Therefore,
11 pursuant to NRCP 24(a)(2), UAIC should be allowed to intervene in this action.

12
13 Intervention is governed by NRCP 24 and NRS 12.130. Although strikingly similar,
14 NRCP 24 requires "timely application" to intervene whereas NRS 12.130 merely requires
15 intervention at the district court level. *Stephens v. First National Bank*, 64 Nev. 292, 182 P.2d
16 146 (1947). NRS 12.130(1)(c), however, specifically provides that intervention may be made as
17 provided by the Nevada Rules of Civil Procedure. As such, given this mandate, the procedural
18 rule will be specifically addressed in the instant Motion.

19
20 NRCP 24(a)(2) imposes four (4) requirements for the intervention of right: (1) the
21 application must be timely; (2) it must show an interest in the subject matter of the action; (3) it
22 must show that the protection of the interest may be impaired by the disposition of the action;
23 and (4) it must show that the interest is not adequately represented by an existing party. *State*
24 *Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 888 P.2d 911 (1995).³

25
26
27 ³ The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be
28 permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2)
when the applicant claims an interest relating to the property or transaction which is the subject of the
action and he is so situated that the disposition of the action may as a practical matter impair or impede
his ability to protect that interest, unless the applicant's interest is adequately represented by existing

1 When determining the timeliness of an application for intervention, it is not the length of
2 the delay by the intervenor that is of primary importance, per se, but the extent of prejudice to the
3 rights of existing parties resulting from the delay. *Lawler v. Ginochio*, 94 Nev. 623, 584 P.2d 667
4 (1978). This determination is, of course, within the sound discretion of the court. *Id.* Here, this
5 amended judgment was just sought via *Ex parte* Motion in March 2018 and the amended
6 judgment was only filed with Notice of Entry on May 18, 2018 and, accordingly, the six (6)
7 month deadline to seek relief from same judgment under N.R.C.P. 60 has not expired. Moreover,
8 Plaintiff has taken no further action to enforce this amended judgment and the matter has had no
9 dispositive rulings; as such, UAIC'S intervention in the instant matter should be considered
10 timely and no prejudice shall accrue to Plaintiff.

12 Furthermore, as outlined above, it is clear that UAIC's Petition meets the other three
13 requirements for intervention as of right based upon the clear fact that UAIC has a significant
14 interest in the action as the insurer for LEWIS under the aforementioned U.S. District Court Order.
15 By dint of this fact UAIC could potentially be responsible for any damages LEWIS is found
16 liable for – including the instant amended judgment. This substantial interest serves to satisfy the
17 two remaining requirements as protection of the interest will be impaired by disposition of this
18 amended judgment entered against LEWIS - without his ability to seek to vacate it on his own -
19 would necessarily impair UAIC. Finally, that as there is currently no defendant defending this
20 cause – UAIC's interest is not sufficiently protected.

23 Moreover, it also true that these very issues - the validity of the 2008 judgment against
24 Lewis – are also at issue in a case involving UAIC before the Nevada Supreme Court, as set for
25 above. The fact that Plaintiff has now sought to have this Court amend same 2008 judgment in a
26 thinly veiled attempt to cure the expiration of the 2008 judgment not only would appear to

27 _____ (Cont.)
28 parties.

1 infringe upon issues before the Nevada Supreme Court and, Ninth Circuit, but also may directly
2 affect UAIC's interests, adding further good cause to show UAIC is an interested third party
3 whom should be allowed to intervene.

4 The final requirement under N.R.C.P. 24(c) is that the Motion to intervene "shall be
5 accompanied by a pleading setting forth the claim or defense for which intervention is sought.
6 Accordingly, *attached hereto as Exhibit "I"*, is a copy of UAIC's proposed responsive pleading
7 to this action, a Motion for Relief from the Judgment pursuant to N.R.C.P. 60.
8

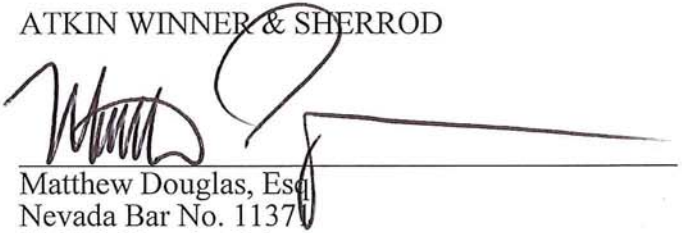
9 **III.**

10 **CONCLUSION**

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

13 DATED this 17th day of August, 2018.

14
15 ATKIN WINNER & SHERROD

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

1
2 CERTIFICATE OF SERVICE

3 I certify that on this 17th day of August, 2018, the foregoing MOTION TO
4 INTERVENE was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☐
5 Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐
6 ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a
7 sealed envelope with first class postage prepaid, addressed as follows:

8 PLAINTIFFS' COUNSEL

9 David A. Stephens, Esq.
10 STEPHENS, GOURLEY & BYWATER
11 3636 N. Rancho Dr.
12 Las Vegas, Nevada 89130

13 
14 _____
15 An employee of ATKIN WINNER & SHERROD
16
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EXHIBIT “A”

FILED

JAN 11 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 70504

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

No. 13-17441

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

v.

UNITED AUTOMOBILE
INSURANCE COMPANY,
Defendant-Appellee.

ORDER CERTIFYING
QUESTION TO THE
NEVADA SUPREME
COURT

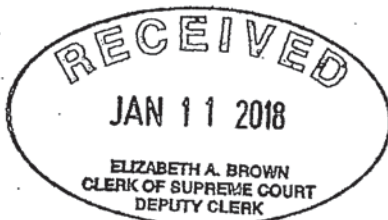
Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

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.



18-01192

SUMMARY**

Certified Question to Nevada Supreme Court

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

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

ORDER

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

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

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

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

I

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

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

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

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

II

The question of law to be answered is:

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

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

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

III

A

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

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

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

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

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

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

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

B

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

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

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

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

IV

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

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

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

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

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

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

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

V

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

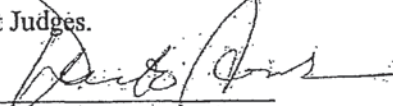
governing the question[] certified . . . shall be res judicata as to the parties." Nev. R. App. P. 5(h).

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

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

IT IS SO ORDERED.

Respectfully submitted, Djarmuid F. O'Scannlain and
William A. Fletcher, Circuit Judges.



Djarmuid F. O'Scannlain
Circuit Judge

EXHIBIT “B”

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 70504

FILED

FEB 23 2018

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

*ORDER ACCEPTING SECOND CERTIFIED QUESTION AND
DIRECTING SUPPLEMENTAL BRIEFING*

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

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

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

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

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

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

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

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

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

It is so ORDERED.¹

Douglas, C.J.
Douglas

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Cherry, J.
Cherry

Pickering, J.
Pickering

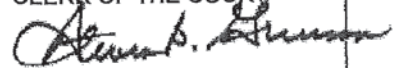
Stiglich, J.
Stiglich

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

EXHIBIT “C”



1 MTN
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & BYWATER
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
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8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

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DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendants.

07-A-549111
CASE NO.: ~~A549111~~

DEPT NO.: XXIX

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

Date: N/A

Time: N/A


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

/ / / /

1 Therefore, Cheyenne Nalder hereby moves this court to enter the judgment in her name of
2 \$3,500,000.00, with interest thereon at the legal rate from October 9, 2007, until paid in full.

3 Dated this 19 day of March, 2018.

4 STEPHENS GOURLEY & BYWATER

6
7 

8 David A. Stephens, Esq.
9 Nevada Bar No. 00902
10 3636 North Rancho Drive
11 Las Vegas, Nevada 89130
12 Attorneys for Plaintiff
13
14
15
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EXHIBIT “1”

1 JMT
2 THOMAS CHRISTENSEN, ESQ.,
3 Nevada Bar #2326
4 DAVID F. SAMPSON, ESQ.,
5 Nevada Bar #6811
6 1000 S. Valley View Blvd.
7 Las Vegas, Nevada 89107
8 (702) 870-1000
9 Attorney for Plaintiff,

Clark
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,)

vs.)

CASE NO: A549111
DEPT. NO: VI

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

Defendants.)

JUDGMENT

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81710

CHEYENNE NALDER

Appellant,

vs.

GARY LEWIS; and UNITED AUTOMOBILE INSURANCE
COMPANY,

Respondents.

ON APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

District Court Case No. 07A549111

**CHEYENNE NALDER'S APPENDIX
VOLUME 1-Part 2**

David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens Law Offices
3636 N. Rancho Drive
Las Vegas, NV 89130
Telephone: 702-656-2355
Facsimile: 702-656-2776
Email: dstephens@davidstephenslaw.com

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

5
6 DATED THIS 2 day of June, 2008.

7
8 
9 DISTRICT JUDGE

10
11
12 Submitted by:
13 CHRISTENSEN LAW OFFICES, LLC.

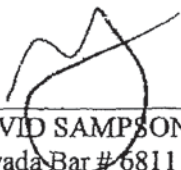
14
15 BY: 
16 DAVID SAMPSON
17 Nevada Bar # 6811
18 1000 S. Valley View
19 Las Vegas, Nevada 89107
20 Attorney for Plaintiff
21
22
23
24
25
26
27
28

EXHIBIT “2”

1 **JMT**

2 DAVID A. STEPHENS, ESQ.
3 Nevada Bar No. 00902
4 STEPHENS GOURLEY & BYWATER
5 3636 North Rancho Dr
6 Las Vegas, Nevada 89130
7 Attorneys for Plaintiff
8 T: (702) 656-2355
9 F: (702) 656-2776
10 E: dstephens@sbglawfirm.com
11 Attorney for Cheyenne Nalder

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11
12 CHEYENNE NALDER,

13 Plaintiff,

14 vs.

15 GARY LEWIS,

16 Defendant.

CASE NO: A549111
DEPT. NO: XXIX

17 **AMENDED JUDGMENT**

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

24 ...

25 ...

26 ...

27 ...

28 ...

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

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

10 _____
District Judge
11

12 Submitted by:
STEPHENS GOURLEY & BYWATER
13

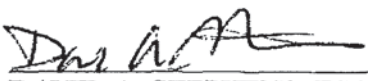
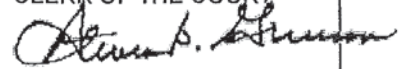
14 
DAVID A. STEPHENS, ESQ.
15 Nevada Bar No. 00902
16 STEPHENS GOURLEY & BYWATER
3636 North Rancho Dr
17 Las Vegas, Nevada 89130
Attorneys for Plaintiff
18
19
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28

EXHIBIT “D”



1 **NOE**
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 Stephens & Bywater
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 CHEYENNE NALDER,
10
11 Plaintiff,
12
13 vs.
14
15 GARY LEWIS
16
17 Defendant.

Case No. 07A549111


Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

16 NOTICE IS HEREBY GIVEN that on the 26th day of March, 2018, the Honorable David
17 M. Jones entered an **AMENDED JUDGMENT**, which was thereafter filed on March 28, 2018, in
18 the above entitled matter, a copy of which is attached to this Notice.

19 Dated this 17 day of May, 2018.

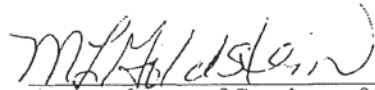
20 STEPHENS & BYWATER

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

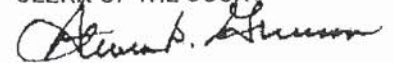
CERTIFICATE OF MAILING

I hereby certify that I am an employee of the law office of STEPHENS & BYWATER,
and that on the 18th day of May, 2018, I served a true copy of the foregoing **NOTICE OF**
ENTRY OF AMENDED JUDGMENT, by depositing the same in a sealed envelope upon
which first class postage was fully prepaid, and addressed as follows:

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



An employee of Stephens & Bywater



JMT
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
3636 North Rancho Dr
Las Vegas, Nevada 89130
Attorneys for Plaintiff
T: (702) 656-2355
F: (702) 656-2776
E: dstephens@sbglawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

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

AMENDED JUDGMENT

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

...

...

...

...

1 **JMT**

2 DAVID A. STEPHENS, ESQ.

3 Nevada Bar No. 00902

4 STEPHENS GOURLEY & BYWATER

5 3636 North Rancho Dr

6 Las Vegas, Nevada 89130

7 Attorneys for Plaintiff

8 T: (702) 656-2355

9 F: (702) 656-2776

10 E: dstephens@sbgllawfirm.com

11 Attorney for Cheyenne Nalder

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 CHEYENNE NALDER,

15 Plaintiff,

16 vs.

17 GARY LEWIS,

18 Defendant.

07A549111
CASE NO: A549111
DEPT. NO: XXIX

19 **AMENDED JUDGMENT**

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

25 ...

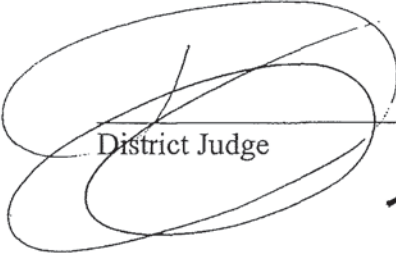
26 ...

27 ...

28 ...

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

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

7
8
9
10  District Judge
11 *mc*

12 Submitted by:
13 STEPHENS GOURLEY & BYWATER

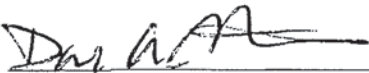
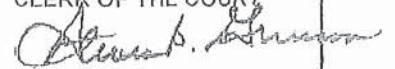
14 
15 DAVID A. STEPHENS, ESQ.
16 Nevada Bar No. 00902
17 STEPHENS GOURLEY & BYWATER
18 3636 North Rancho Dr
19 Las Vegas, Nevada 89130
20 Attorneys for Plaintiff
21
22
23
24
25
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28

EXHIBIT “E”



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

6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

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

14 Defendants.

CASE NO.: A-549+H A-18-772220-C

DEPT NO.: XXIX Department 29

15 **COMPLAINT**

16 Date: n/a
17 Time: n/a

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

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

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

27 3. That the true names or capacities, whether individual, corporate, associate or
28 otherwise, of Defendants names as DOES I through V, inclusive, are unknown to Plaintiff, who

1 therefore sues said Defendant by such fictitious names. Plaintiff is informed and believes and
2 thereon alleges that each of the Defendants designated herein as DOE is responsible in some
3 manner for the events and happenings referred to and caused damages proximately to Plaintiff as
4 herein alleged, and that Plaintiff will ask leave of this Court to amend this Complaint to insert the
5 true names and capacities of DOES I through V, when the names have been ascertained, and to join
6 such Defendants in this action.

7 4. Upon information and belief, Defendant, Gary Lewis, was the owner and operator of
8 a certain 1996 Chevy Pickup (hereafter referred as "Defendant vehicle") at all times relevant to this
9 action.

10 5. On the 8th day of July, 2007, Defendant, Gary Lewis, was operating the Defendant's
11 vehicle on private property located in Lincoln County, Nevada; that Plaintiff, Cheyenne Nalder,
12 was playing on the private property; that Defendant, did carelessly and negligently operate
13 Defendant's vehicle so to strike the Plaintiff, Cheyenne Nalder, and that as a direct and proximate
14 result of the aforesaid negligence of Defendant, Gary Lewis, and each of the Defendants, Plaintiff,
15 Cheyenne Nalder, sustained the grievous and serious personal injuries and damages as hereinafter
16 more particularly alleged.

17 6. At the time of the accident herein complained of, and immediately prior thereto,
18 Defendant, Gary Lewis, in breaching a duty owed to Plaintiffs, was negligent and careless, inter
19 alia, in the following particulars:

20 A. In failing to keep Defendant's vehicle under proper control;
21 B. In operating Defendant's vehicle without due care for the rights of the Plaintiff;
22 C. In failing to keep a proper lookout for plaintiffs
23 D. The Defendant violated certain Nevada Revised Statutes and Clark County Ordinances,
24 and the Plaintiff will pray leave of Court to insert the exact statutes or ordinances at the time of
25 trial.

26 7. By reason of the premises, and as a direct and proximate result of the aforesaid
27 negligence and carelessness of Defendants, and each of them, Plaintiff, Cheyenne Nalder, sustained
28 a broken leg and was otherwise injured in and about her neck, back, legs, arms, organs, and

1 systems, and was otherwise injured and caused to suffer great pain of body and mind, and all or
2 some of the same is chronic and may be permanent and disabling, all to her damage in an amount in
3 excess of \$10,000.00

4 8. By reason of the premises, and as a direct and proximate result of the aforesaid
5 negligence and carelessness of the Defendants, and each of them, Plaintiff, Cheyenne Nalder, has
6 been caused to expend monies for medical and miscellaneous expenses as of this time in excess of
7 \$41,851.89, and will in the future be caused to expend additional monies for medical expenses and
8 miscellaneous expenses incidental thereto, in a sum not yet presently ascertainable, and leave of
9 Court will be requested to include said additional damages when the same have been fully
10 determined.

11 9. Prior to the injuries complained of herein, Plaintiff, Cheyenne Nalder, was an able-
12 bodied female, capable of being gainfully employed and capable of engaging in all other activities
13 for which Plaintiff was otherwise suited. By reason of the premises, and as a direct and proximate
14 result of the negligence of the said Defendants, and each of them, Plaintiff, Cheyenne Nalder, was
15 caused to be disabled and limited and restricted in her occupations and activities, and/or suffered a
16 diminution of Plaintiff's earning capacity and future loss of wages, all to her damage in a sum not
17 yet presently ascertainable, the allegations of which Plaintiff prays leave of Court to insert here
18 when the same shall be fully determined.

19 10. That James Nalder as guardian ad litem for Plaintiff, Cheyenne Nalder, obtained
20 judgment against Gary Lewis.

21 11. That the judgment is to bear interest at the legal rate from October 9, 2007 until paid in
22 full.

23 12. That during Cheyenne Nalder's minority which ended on April 4, 2016 all statutes of
24 limitations were tolled.

25 13. That during Gary Lewis' absence from the state of Nevada all statutes of limitations
26 have been tolled and remain tolled.

27 14. That the only payment made on the judgment was \$15,000.00 paid by Lewis's insurer
28 on February 5, 2015. This payment extends any statute of limitation.

1 15. After reaching the age of majority an amended judgment was entered in Cheyenne
2 Nalder's name.

3 16. Plaintiff, in the alternative, now brings this action on the judgment to obtain a judgment
4 against Gary Lewis including the full damages assessed in the original judgment plus interest and
5 minus the one payment made.

6 17. In the alternative Plaintiff requests declaratory relief regarding when the statutes of
7 limitations on the judgments expire.

8 18. Plaintiff has been required to retain the law firm of STEPHENS & BYWATER to
9 prosecute this action, and is entitled to a reasonable attorney's fee.

10 CLAIM FOR RELIEF;

11 1. General damages in an amount in excess of \$10,000.00;

12 2. Special damages for medical and miscellaneous expenses in excess of \$41,851.89, plus
13 future medical expenses and the miscellaneous expenses incidental thereto in a presently
14 unascertainable amount;

15 3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of
16 Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's
17 earning capacity in a presently unascertainable amount;

18 4. Judgment in the amount of \$3,500,000 plus interest through April 3, 2018 of
19 \$2,112,669.52 minus \$15,000.00 paid for a total judgment of \$5,597,669.52.

20 5. A declaration that the statute of limitations on the judgment is still tolled as a result of
21 the Defendant's continued absence from the state.

22 4. Costs of this suit;

23 5. Attorney's fees; and

24 ///

26 ///

28 ///

1 6. For such other and further relief as to the Court may seem just and proper in the
2 premises.

3 DATED this 3rd day of April, 2018.

4
5 STEPHENS GOURLEY & BYWATER

6
7 /s David A. Stephens
8 David A. Stephens, Esq.
9 Nevada Bar No. 00902
10 3636 North Rancho Drive
11 Las Vegas, Nevada 89130
12 Attorneys for Plaintiff
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EXHIBIT “F”

STEPHENS & BYWATER, P.C.
ATTORNEYS AT LAW

David A. Stephens email: dstephens@sgblawfirm.com

Gordon E. Bywater email: gbywater@sgblawfirm.com

July 17, 2018

VIA REGULAR U.S. MAIL

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

RE: Cheyenne Nalder vs. Gary Lewis

Dear Tom:

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

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

I appreciate your consideration.

Sincerely,

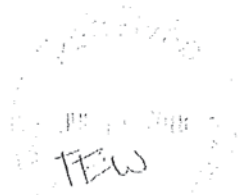
STEPHENS & BYWATER



David A. Stephens, Esq.

DAS:mlg
enclosure

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



APP0075



1 TDNP (CIV)
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 STEPHENS, GOURLEY & BYWATER
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sgblawfirm.com
10 Attorney for Cheyenne Nalder

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DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: A-18-772220-C

DEPT NO.: XXIX

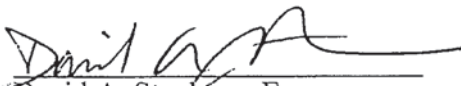
THREE DAY NOTICE TO PLEAD

Date: n/a
Time: n/a

To: Gary Lewis, Defendant

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

Dated this 17 day of July 2018.



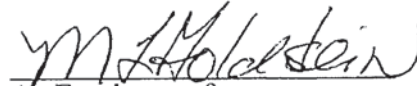
David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that service of this THREE DAY NOTICE TO PLEAD was made this 7th day of July, 2018, by depositing a copy thereof in the U.S. Mail, first class postage prepaid, addressed to:

Gary Lewis
733 Minnesota Avenue
Glendora, CA 91740

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



An Employee of
Stephens Gourley & Bywater

EXHIBIT “G”

UNITED STATES DISTRICT COURT

DISTRICT OF

Nevada

Nalder et al.,

Plaintiffs,

V.

United Automobile Insurance Company,

Defendant.

JUDGMENT IN A CIVIL CASE

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

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

☐ **Notice of Acceptance with Offer of Judgment.** A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED

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

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

October 30, 2013

Date



/s/ Lance S. Wilson

Clerk

/s/ Summer Rivera

(By) Deputy Clerk

EXHIBIT “H”



CHRISTENSEN LAW
www.injuryhelpnow.com

August 13, 2018

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

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

Re: Gary Lewis

Dear Stephen:

I am in receipt of your letter dated Friday, August 10, 2018. I was disappointed that you have chosen to disregard my request that you communicate with me and not directly with my client. You say you have "been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions." Would you be so kind as to provide me with all communications written or verbal or notes of communications you have had with UAIC, their attorneys and/or Mr. Lewis from your first contact regarding this matter to the present?

Please confirm that UAIC seeks now to honor the insurance contract with Mr. Lewis and provide a defense for him and pay any judgment that may result? This is the first indication I am aware of where UAIC seeks to defend Mr. Lewis. I repeat, please do not take any actions, including requesting more time or filing anything on behalf of Mr. Lewis without first getting authority from Mr. Lewis through me. Please only communicate through this office with Mr. Lewis. If you have already filed something or requested an extension without written authority from Mr. Lewis, he requests that you immediately reverse that action. Please also only communicate with UAIC that any attempt by them to hire any other attorneys to take action on behalf of Mr. Lewis must include notice to those attorneys that they must first get Mr. Lewis' consent through my office before taking any action including requesting extensions of time or filing any pleadings on his behalf.

Regarding your statement that Mr. Lewis would not be any worse off if you should lose your motions. That is not correct. We agree that the validity of the judgment is unimportant at this stage of the claims handling case. UAIC, however, is arguing that Mr. Lewis' claims handling case should be dismissed because they claim the judgment is not valid. If you interpose an insufficient improper defense that delays the inevitable entry of judgment against Mr. Lewis and the Ninth Circuit dismisses the appeal then Mr. Lewis will have a judgment against him and no claim against UAIC. In addition, you will cause additional damages and expense to both parties for which, ultimately, Mr. Lewis would be responsible.



CHRISTENSEN LAW
www.injuryhelpnow.com

Could you be mistaken about your statement that "the original judgment expired and cannot be revived?" I will ask your comment on just one legal concept -- Mr. Lewis' absence from the state. There are others but this one is sufficient on its own. There are three statutes applicable to this narrow issue: NRS 11.190; NRS 11.300 and NRS 17.214.

NRS 11.190 Periods of limitation. ... actions .. may only be commenced as follows:

1. Within 6 years:

(a) ... an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

NRS 11.300 Absence from State suspends running of statute. If, ... after the cause of action shall have accrued the person (defendant) departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action.

NRS 17.214 Filing and contents of affidavit; recording affidavit; notice to judgment debtor; successive affidavits.

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

(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation.

These statutes make it clear that both an action on the judgment or an optional renewal is still available through today because Mr. Lewis has been in California since late 2008. If you have case law from Nevada contrary to the clear language of these statutes please share it with me so that I may review it and discuss it with my client.

Your prompt attention is appreciated. Mr. Lewis does not wish you to file any motions until and unless he is convinced that they will benefit Mr. Lewis -- not harm him and benefit UAIC. Mr. Lewis would like all your communications to go through my office. He does not wish to have you copy him on correspondence with my office. Please do not communicate directly with Mr. Lewis.

Very truly yours,

Tommy Christensen
CHRISTENSEN LAW OFFICE, LLC

EXHIBIT “I”

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

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

**UAIC'S MOTION FOR RELIEF FROM
JUDGMENT PURSUANT TO NRCP 60**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby brings its Motion for Relief from Judgment Pursuant to NRCP 60(b), asking that this Court declare as void the Amended Judgment entered on March 28, 2018, because the underlying Judgment expired on 2014 and is not capable of being revived.

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

4 DATED this ____ day of _____, 2018.

5 ATKIN WINNER & SHERROD

6
7
8 Matthew J. Douglas
9 Nevada Bar No. 11371
10 1117 South Rancho Drive
11 Las Vegas, Nevada 89102
12 *Attorneys for Intervenor UAIC*

13 **NOTICE OF MOTION**

14 TO: ANY AND ALL PARTIES AND THEIR COUNSEL OF RECORD:
15 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring
16 the foregoing **MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** for
17 hearing before the above-entitled Department XXIX on the ____ day of _____, 2018,
18 at the hour of _____.m. in the forenoon of said date, or as soon thereafter as counsel can be
19 heard.

20 DATED this ____ day of _____, 2018.

21 ATKIN WINNER & SHERROD

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court made a mistake of law based on incomplete/incorrect facts presented in and Ex Parte Motion to Amended Judgment, when entering the Oder granting the Motion on March 28, 2018. The judgment which Plaintiff, Cheyenne Nalder ("Cheyenne") moved to amend was entered on June 3, 2008. The judgment creditor, Cheyenne's guardian ad litem, James Nalder, did not renew the Judgment as required By Nevada Law before it expired on June 3, 2014, six (6) years after it was entered.

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

II.

STATEMENT OF FACTS

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

Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June 3, 2008.¹ a judgment was entered against him in the amount of \$3.5 million. See Judgment

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

1 attached hereto as Exhibit "B". James Nalder as guardian ad litem for Cheyenne was the
2 judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless
3 it is timely renewed. As such, the Judgment expired on June 3, 2014.

4 On March 22, 2018 nearly 10 years after the Judgment was entered, and nearly four (4)
5 years after it expired, Cheyenne filed an "Ex Parte Motion to Amend Judgment in the Name of
6 Cheyenne Nalder, Individually" ("Ex Parte Motion") in her personal injury case, Case No. A-
7 07-54911-C. Her Motion did not advise the Court that the Judgment she sought to amend had
8 expired. Rather, it cited two statutes, NRS 11280 and 11.300, without explaining why they were
9 applicable to her request, and asked the Court to amend the Judgment to be in her name alone. In
10 short, the Court was not put on notice that it was being asked to ostensibly revive an expired
11 judgment.
12

13 With an incomplete account of the issues presented, the Court granted Cheyenne's Ex
14 Parte Motion and issued an Amended Judgment on March 28, 2018. *See* Exhibit "C."
15

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

19 III.

20 ARGUMENT

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

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

27 NRS 17.214(1)(a) sets forth the procedure that must ne followed to renew a judgment. A
28 document titled "Affidavit of Renewal" containing specific information outlined in the statute

1 must be filed with the clerk of the court where the judgment is filed within 90 days before the
2 date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5,
3 2014. No such Affidavit of Renewal was filed by James Nalder, the judgement creditor.
4 Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if
5 the original judgment was recorded, and the judgment debtor must be served. No evidence of
6 recordation (if such was required) or service on Lewis is present in the record.
7

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

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

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

18 The introduction to NRS 11.090, the statute of limitation law, states that it applies to:
19 "...actions other than those from the recovery of real property, unless further limited by specific
20 statute..." The list which follows includes various causes of action for which suit can be brought.
21 Nowhere in the list is renewing a judgment defined as or analogized to a cause of action.
22

23 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six
24 year "catch all" provision of NRS 11.090(1)(a). *Leven* at 403, 168 P.3d at 715 ("An action on a
25 judgment or its renewal must be commenced within six years under NRS 11.190 (1) (a); thus a
26 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS
27 17.214, provides for any tolling of the time period to renew a judgment.
28

///

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

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

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

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

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

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

1 the certainty NRS 17.214 was enacted to promote - the reliability of the title to real property.

2 If tolling of deadlines to amend judgments were sanctioned, title to real property owned
3 by anyone who had ever been a judgment debtor would be clouded, as a title examiner would not
4 know whether a judgment issued more than six years prior had expired pursuant to statute, or was
5 still valid, or could be revived when a real party in interest who was a minor reached the age of
6 majority. As the court held in *Leven*, one of the primary reasons for the need to strictly comply
7 with NRS 17.214's recordation requirement is to "procure reliability of the title searches for both
8 creditors and debtors since any lien on real property created when a judgment is recorded
9 continues upon that judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance
10 with the notice requirement of NRS 17.124 is important to preserve the due process rights of the
11 judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a
12 Judgment, he may believe that the judgment has expired and he need take no further action to
13 defend himself against execution.
14
15

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

17 Cheyenne's Ex Parte Motion next cites NRS 11.3000, which provides "If, when the cause
18 of action shall accrue against a person, the person is out of State, the action may be commenced
19 within the time herein limited after the person's return to the State; and if after the cause of
20 action shall have accrued the person departs from the State, the time of the absence shall not be
21 part of the time prescribed for the commencement of the action." Cheyenne's argument that the
22 deadline to renew the Judgment are tolled by NRS 11.300 fails because, again renewing a
23 judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar
24 statutes to Nevada regarding judgments, held in *F/S Manufacturing v Kensmore*, 789 N.W.2d
25 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate
26 action to renew the judgment, the specific time period[provided to renew] cannot be tolled under
27 [the equivalent to NRS 11.300] based on a judgment debtor's absence for the state." *Id.* At 858.
28

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

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

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

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

15 Because the Ex Parte Motion was ex parte, it was not served on Lewis nor did he have an
16 opportunity to make the Court aware that the Judgment had already expired on its own terms,
17 and that Cheyenne's position that the deadline to renew the judgment was tolled was inapt. The
18 Ex Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not
19 been properly renewed. Had the court been fully apprised of the facts, it likely would not have
20 granted the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, and
21 the Notice of Entry not filed until May 18, 2018, a motion to set aside the amended judgment on
22 the basis of mistake is timely as it is made within six months of the entry of the judgment.
23 Accordingly, this Motion is timely and this Court should rectify the mistake and void the
24 Amended Judgment in accordance with NRCP 60(b)(1).
25

27 ///

28 ///

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

CONCLUSION

DATED this _____ day of _____, 2018.

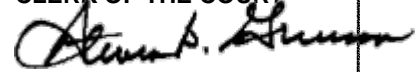
Matthew Douglas, Esq.
Nevada Bar No. 11371
1117 S. Rancho Drive
Las Vegas, Nevada 89102
Attorneys for UAIC

1 **CERTIFICATE OF SERVICE**

2 I certify that on this ____ day of August, 2018, the foregoing **UAIC'S MOTION FOR**
3 **RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served on the following by
4 ☒ [**X**] Electronic Service pursuant to NEFR 9 ☐ [] Electronic Filing and Service pursuant to NEFR 9
5 ☐ [] hand delivery ☐ [] overnight delivery ☐ [] fax ☐ [] fax and mail ☐ [] mailing by depositing with the
6 U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid,
7 addressed as follows:

8 David A. Stephens, Esq.
9 STEPHENS, GOURLEY & BYWATER
10 3636 N. Rancho Drive
11 Las Vegas, Nevada 89130
12 *Counsel for Plaintiff*

13 _____
14 An employee of ATKIN WINNER & SHERROD
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OPPS (CIV)
David A. Stephens, Esq.
Nevada Bar No. 00902
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@sdblawnfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendants.

CASE NO.: 07A549111

DEPT NO.: XXIX

PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE

Date: 9/19/2018
Time: Chambers

Cheyenne Nalder, through her attorney, David A. Stephens, Esq., opposes the Motion to Intervene filed by United Automobile Insurance Company, as follows:

POINTS AND AUTHORITIES

I. INTRODUCTION

Initially, Counsel for Plaintiff apologizes for the lateness filing of this opposition to the motion to intervene. Counsel first learned of this motion to intervene on September 10, 2018. Counsel then contacted Matthew Douglas, Esq., by email requesting an extension of time to respond to the motion in that he had never received the motion to intervene.¹

Mr. Douglas responded by stating that the motion to intervene was served by mail on August 17, 2018. Counsel for Plaintiff indicated that it had not been received. Mr. Douglas then indicated

¹ Counsel for Plaintiff does not mean to imply, by this statement, that counsel for UAIC did not serve the motion properly. He can only represent that he did not receive the motion. He does not know the reason why it was not received.

1 that he needed to know the grounds for opposing the motion before he could agree to an extension.
2 Thus, it became easier to do the research and file the opposition late, than do the research on the
3 possible grounds to get an extension of time to file an opposition. Thus, this opposition is being
4 filed late.

5 II. FACTS

6 On the 8th day of July, 2007, Defendant, Gary Lewis, ("Lewis"), ran over Cheyenne Nalder,
7 ("Cheyenne"), while he was driving his vehicle on private property located in Lincoln County,
8 Nevada.²

9 Cheyenne was a minor at the time of the accident.

10 Gary Lewis carelessly and negligently drove his car such that it struck Cheyenne Nalder.

11 This accident caused serious injuries to Cheyenne.

12 Following the accident, Cheyenne, with her father as guardian ad litem, filed suit against
13 Lewis. Lewis did not respond to the suit. Therefore, on June 3, 2008, Cheyenne obtained a default
14 judgment against Lewis for \$3,500,00.00. A notice of entry of this judgment was filed on August
15 26, 2008.

16 When the lawsuit was filed, and at the time the judgment was entered on June 3, 2008,
17 Cheyenne was represented by Christensen Law Offices.³

18 None of that judgment has ever been paid, with the exception of \$15,000.00, which was
19 later paid by United Auto Insurance Company, ("UAIC"), following a suit filed against UAIC,
20 which was alleged to be the insurer for Lewis at the time of the accident, for bad faith, failure to
21 defend, and other claims for relief.

22 In 2018, Cheyenne, due to the fact she had reached the age of majority, filed a motion to
23 amend the judgment to make herself the plaintiff, rather than her father, who had been her guardian
24

25 ² These statements of facts are based upon allegations in the pleadings filed in this matter, and
26 the statements made in the motion to intervene.

27 ³ It is counsel's understanding that Cheyenne is still represented by Tom Christensen, Esq.,
28 and also by Dennis Prince, Esq., in the litigation and pending appeals involving UAIC's duty to defend
Lewis and any related claims.

1 ad litem.

2 The amended judgment was signed by this Court and filed on March 28, 2018. On May 18,
3 2018, a notice of entry of judgment was served on Mr. Lewis.

4 Until it filed this motion to intervene, UAIC had never appeared in this lawsuit. Now it
5 seeks to intervene.

6 III. UAIC IS NOT ENTITLED TO INTERVENE IN THIS MATTER

7 It is too late for UAIC to file a motion to intervene.

8 A party cannot intervene into a matter where a judgment is final.

9 "We conclude that once the district court dismissed this case with prejudice, it lost
10 all jurisdiction concerning that judgment, except to alter, set aside, or vacate its
11 judgment in conformity with the Nevada Rules of Civil Procedure."

12 *SFPP, LP v. District Court*, 123 Nev. 608, 173 P.3d 715, (2007).

13 While the *SFPP* case involved a dismissal of the case, rather than judgment in the case, the
14 analysis still applies. Here, there is a judgment which disposes of all issues in the case. It is too late
15 to intervene. That final judgment disposed of all issues in the case.

16 "To avoid any confusion regarding this matter, we clarify that a final judgment is one
17 that disposes of all the issues presented in the case, and leaves nothing for the future
18 consideration of the court, except for post-judgment issues such as attorney's fees
19 and costs. A post-judgment order awarding attorney's fees and/or costs may be
20 appealed as a special order made after final judgment, pursuant to NRAP 3A(b)(2).

21 *See Smith v. Crown Financial Services*, 111 Nev. 277, 280 n. 2, 890 P.2d 769, 771 n.
22 2 (1995)."

23 *Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416, 417 (2000).

24 Thus, this Court lacks the jurisdiction to even consider a motion to intervene after the entry
25 of a final judgment, which has occurred.

26 Additionally, the Nevada Supreme Court has held, "The plain language of NRS 12.130 does
27 not permit intervention subsequent to the entry of a final judgment." *Lopez v. Merit Insurance Co.*,
28 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993). Thus, the language of the statute on intervention

1 has been held to not permit intervention after the entry of a final judgment.

2 Because final judgment has been entered in this case, the court lacks jurisdiction to consider
3 a motion to intervene. Additionally, it has been held that the statute on intervention does not allow
4 a post judgment intervention in a case.

5 For these reasons it is respectfully requested that this Court deny the motion to intervene.

6 Dated this 14 day of September, 2018.

7
8 STEPHENS & BYWATER, P.C.

9 

10 David A. Stephens, Esq.
11 Nevada Bar No. 00902
12 3636 North Rancho Drive
13 Las Vegas, Nevada 89130
14 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2018, I served the following document: **PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

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

☐ VIA ELECTRONIC SERVICE (N.E.F.R. 9)

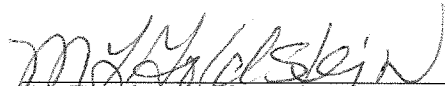
☒ BY MAIL: by placing the documents(s) listed above in a sealed envelope, postage prepaid in the U. S. Mail at Las Vegas, Nevada, addressed as set forth below:

Matthew J. Douglas, Esq.
Atkin Winner & Sherrod
117 S. Rancho Drive
Las Vegas, NV 89102

☒ BY FAX: by transmitting the document(s) listed above via telefacsimile to the fax number(s) set forth below. A printed transmission record is attached to the file copy of this document(s).

Matthew J. Douglas, Esq., 702-243-7059

☐ BY HAND DELIVER: by delivering the document(s) listed above to the person(s) at the address(es) set forth below.


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6
7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 CHEYENNE NALDER,
10
11 Plaintiff,
12 vs.
13 GARY LEWIS,

CASE NO.: 07A549111
DEPT NO.: XXIX

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECM
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IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81710

CHEYENNE NALDER

Appellant,

vs.

GARY LEWIS; and UNITED AUTOMOBILE INSURANCE
COMPANY,

Respondents.

ON APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

District Court Case No. 07A549111

**CHEYENNE NALDER'S APPENDIX
VOLUME 1-Part 3**

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.


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

**UAIC'S REPLY IN SUPPORT OF ITS
MOTION TO INTERVENE**

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby submits this Reply in support of its Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached to its initial Motion, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this 10 day of SEPTEMBER, 2018.

ATKIN WINNER & SHERROD


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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
REPLY IN SUPPORT OF MOTION FOR INTERVENTION

I.

Response to Plaintiff's Fact Section

UAIC notes that it has set forth the factual background in regards to this matter in its initial motion and refers the Court to same. However, UAIC must also briefly respond to Plaintiff's fact section.

Plaintiff notes that the original judgment in this case was filed August 26, 2008. What Plaintiff fails to mention, however, is that, thereafter, Plaintiff failed to renew this 2008 judgment against Lewis pursuant to Nevada law. Specifically, as this Court is aware, under N.R.S. 11.190(1)(a) the limitation for action to execute on such a judgment would be six (6) years, unless renewed under N.R.S. 17.214. Accordingly, the date to renew said judgment would have been, by the latest, August 26, 2014. This was never done and, as such, **Plaintiff's judgment in this matter expired as a matter of law in 2014.** Accordingly, Plaintiff's *ex parte* attempts to amend this judgment without advising the Court of same was improper.

Additionally, Plaintiff agrees she filed suit against UAIC alleging bad faith for failure to defend Lewis, but fails to note that two United States District court judges found and, the Ninth Circuit for the U.S. Court of Appeals has affirmed, **that UAIC committed no bad faith in the handling of Plaintiff's claims against Lewis.** However, the Court also found, in late 2013, that UAIC had a duty to defend Lewis. Initially, in late 2013, there was no active need to defend Lewis as, this suit had gone to judgment and, the time to vacate this judgment under N.R.C.P. 60 had passed. Only after the completely opaque attempt to try an 'end around' the expiration of this judgment and, the jurisdiction of the Nevada Supreme Court and Ninth Circuit, by Plaintiff's amendment of the judgment here, did a 'new' controversy arise for which UAIC believes its duty to defend has again been triggered. Of course, as set forth in UAIC's initial Motion, its initial

attempt to retain counsel for Mr. Lewis to defend him and seek relief from this alleged ‘amended judgment’ has been thwarted by Plaintiff’s own counsel who claims he also represents Lewis and has attempted to forbid any action on his behalf.

Indeed, UAIC must note that Plaintiff’s counsel admits in his response that Mr. Christensen continues to represent his client on this original judgment and in the ongoing Appellate matters. Accordingly, for Plaintiff’s co-counsel in this case, Mr. Stephens, to allege he was merely seeking to amend the judgment for Cheyenne upon reaching majority, while ignoring Mr. Christensen’s continued representation of her and, apparently, the judgment-debtor, Mr. Lewis – as well as the ongoing appellate matters – stretches the bounds of reality. As will be set forth in detail below, we see an attempt of fraud upon the court which should not be countenanced.

II.

ARGUMENT

It is clear from Plaintiff’s Opposition that it is late and, as such, this Court may disregard it and grant UAIC’s Motion. Alternatively, should this Court consider the merits of the Opposition it is also clear that Plaintiff does not dare dispute that UAIC has properly followed the procedure for intervention pursuant to NRCP 24(a)(2) nor, that UAIC does not have an interest which will negatively impacted should its intervention be denied as it is not adequately represented herein. Rather, the Plaintiff’s sole argument appears to be a technical one – that as judgment has been entered, UAIC can no longer intervene. However, UAIC will note that the cases cited by Plaintiff are distinguishable and, more importantly, what Plaintiff is attempting is a fraud upon the court which should overcome the normal prohibition against such an intervention. Accordingly, UAIC asks this Court to grant its Motion to intervene. Alternatively, that this Court may vacate or set aside the Amended Judgment on its own Motion.

///

1 **A. Plaintiff's Opposition is clearly late and, as such, should be stricken or disregarded.**

2 As this Court knows, E.D.C.R. 2.20(e) requires any Opposition to be a Motion to be filed
3 within 10 days of service. Here, as the present Motion was filed and served August 16, 2018,
4 allowing 3 days for mailing, the Opposition was due no later than September 4, 2018. As the
5 present Opposition was filed on September 14, 2018 it is technically late and this Court may
6 disregard it and grant UAIC's Motion.
7

8 E.D.C.R. 2.20(e) states, as follows:

9 (e) Within 10 days after the service of the motion, and 5 days after service of any joinder to
10 the motion, the opposing party must serve and file written notice of nonopposition or opposition
11 thereto, together with a memorandum of points and authorities and supporting affidavits, if any,
12 stating facts showing why the motion and/or joinder should be denied. **Failure of the opposing
13 party to serve and file written opposition may be construed as an admission that the motion
14 and/or joinder is meritorious and a consent to granting the same.** (emphasis added).

15 As this Court can see, Plaintiff's Opposition is clearly late pursuant to rule. Moreover,
16 Plaintiff, while alleging she did not receive the Motion, makes no argument that it was not
17 properly served. As such, this Court can exercise its discretion and choose to disregard this
18 Opposition.

19 Given the lateness of the Opposition and lack of valid excuse justifying same, UAIC asks
20 this Court to disregard the late Opposition and instead construe the failure to timely file an
21 Opposition as an admission the Motion is meritorious and grant same.

22 **B. Alternatively, Plaintiff's Opposition that UAIC is not Entitled to Intervene is Based**
23 **on Distinguishable Case Law and, in any event, this Court should Exercise its**
24 **Equitable Authority and Allow said Intervention Based upon Fraud Upon the**
25 **Court.**

26 For her Opposition, Plaintiff essentially makes one argument – that as this case involves a
27 recently amended judgment which Plaintiff argues is “final” and, thus, UAIC is “too late” to
28 intervene. However, some of the cases cited are distinguishable and, additionally, UAIC argues
29 this involves a ‘fraud upon the court’ and, as such, this Court may exercise its discretion and
30 allow this Intervention or, vacate the Amended Judgment on the Court's own Motion.

1 First, Plaintiff cites to the case of *SFPP, LP v District Court*, 123 Nev. 608 (2007) for the
2 proposition that, generally, a court loses jurisdiction of a case after entry of a final judgment.
3 However, as Plaintiff's own brief notes, the Court in *SFPP* clearly noted an exception to this rule
4 when a party seeks "to alter, set aside, or vacate its judgment in conformity with the Nevada
5 Rules of Civil Procedure." *Id.* Here, UAIC has sought this intervention so as to file just such a
6 Motion, under NRCP 60, and seek relief from a final judgment. *Attached to UAIC's Initial*
7 *Motion, as Exhibit "I", is a copy of UAIC's proposed responsive pleading to this action, a*
8 *Motion for Relief from the Judgment pursuant to N.R.C.P. 60.* As UAIC seeks a Motion for relief
9 from judgment under Rule 60, it falls into the exception outlined by the Court in *SPFF* and,
10 accordingly, that case serves as no bar to UAIC's Motion.

12 Similarly, Plaintiff relies upon *Lee v GNLV Corp.*, 116 Nev. 424 (2000), for the general
13 proposition that a final judgment is one that disposes of all the issues in this case. In so ruling,
14 the court in *Lee* was explaining that the Respondent's motion to dismiss the appeal, which the
15 Appellant therein had filed on the judgment, because a post-judgment motion (regarding costs
16 was still pending) was not well taken because the post-judgment proceeding on fees did delay
17 enforcement of the judgment. Accordingly, the rule set forth in *Lee* only concerns the
18 appealability of a final order has absolutely nothing to do with the separate concerns of a Rule 60
19 Motion for Relief from judgment. As such, like the *SPFF* case discussion above, the present
20 matter is distinguishable because UAIC seeks to intervene to file a timely and good faith Motion,
21 under NRCP 60, seeking relief from a final judgment. As such, the *Lee* case also serves as no bar
22 to Plaintiff's Motion.

25 Finally, Plaintiff relies on *Lopez v Merit Ins. Co.*, 109 Nev. 553 (1993), for its main
26 argument that NRS 12.130 does not permit entry intervention subsequent to entry of a final
27 judgment. First, UAIC would like to point out that this case is distinguishable from the
28 standpoint that *Lopez* dealt with a situation where an insurer was seeking to intervene in a case

1 filed by its insured against an alleged tortfeasor and, not as here, where UAIC is seeking to
2 intervene to protect its insured from a judgment on a suit filed by a claimant. As this Court
3 is likely aware, the case of *Allstate Ins. Co. v Pietrosh*, 454 P.2d 106 (1969), provides generally
4 that an insurer is bound by judgments in favor of its insured against a torfeasor, when it fails to
5 intervene, for purposes of any Underinsured Motorist claim made by its insured. Accordingly,
6 the Court in *Lopez* was dealing with a completely different situation than the case at bar in that,
7 in *Lopez*, the insurer was seeking intervention after judgment to potentially alleviate its
8 Underinsured motorist obligations on a judgment *in favor of its insured and against a tortfeasor*
9 where it had an affirmative obligation to intervene before judgment to do so.

11 Quite simply, that is not the situation here. UAIC *not Plaintiff's insurer* and, more
12 importantly, *UAIC had no such opportunity to intervene prior to entry of this 'amended*
13 *judgment.* ' As discussed in UAIC's initial Motion, Plaintiff failed to renew the original, 2008,
14 judgment in this case pursuant to Nevada law. Specifically, as this Court is aware, under N.R.S.
15 11.190(1)(a) the limitation for action to execute on such a judgment would be six (6) years,
16 unless renewed under N.R.S. 17.214. Upon realizing the judgment had never been timely
17 renewed, UAIC filed a Motion to Dismiss the Appeal for Lack of Standing with the Ninth
18 Circuit (in the sister litigation on appeal, which is also set forth in UAIC's initial Motion) on
19 March 14, 2017. Thereafter, on February 23, 2018 the Nevada Supreme Court issued an order
20 accepting this second certified question and ordered Appellants to file their Opening brief within
21 30 days, or by March 26, 2018. *A copy of the Order accepting the second certified question was*
22 *attached as Exhibit 'B' to UAIC's initial Motion.* In accepting the certified question, the Nevada
23 Supreme Court rephrased the question as follows:

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

On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC has yet to file its Response Brief and, accordingly, the above-quoted question and, issue, remains pending before the Nevada Supreme Court. Despite the above, in what appears to be a clear case of forum shopping, Plaintiff retained additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on March 22, 2018 seeking to "amend" the 2008 expired judgment to be in the name of Cheyenne Nalder individually. *A copy of the Ex Parte Motion is attached to UAIC's initial Motion as Exhibit 'C.'* Thereafter, this Court, obviously not having been informed of the above-noted Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of entry on May 18, 2018. *A copy of the filed Amended Judgment is attached to UAIC's initial Motion as Exhibit 'D.'* Upon learning of this "amended judgment" and "new" action (the sister case A-18-772220-C), on July 19, 2018¹, and, given the prior United States District Court's ruling that Gary Lewis is an insured under an implied UAIC policy for the loss belying these judgments, UAIC immediately sought to engage counsel to appear on Lewis' behalf in the present action. *A copy of the Judgment of the U.S. District Court finding coverage and implying an insurance policy is attached to UAIC's initial Motion as Exhibit 'G.'* Following retained defense Counsel's attempts to communicate with Mr. Lewis to defend him in this action and, potentially, vacate this improper amendment to an expired judgment – retained defense counsel was sent a letter by Tommy Christensen, Esq. – the other Counsel for Plaintiff judgment-creditor herein and in the above-referenced appeal – stating in no uncertain terms that Counsel could not communicate with Mr. Lewis, nor appear and defend him in this action and take action to get relief from this amended judgment. *A copy of Tommy Christensen's letter of August 13, 2018 is attached to UAIC's initial Motion as Exhibit 'H.'*

¹ UAIC was only informed of this alleged 'amended judgment' when it received a 3 day notice of intent to take default against Gary Lewis in the 'new' action filed by Nalder on the amended judgment on July 19, 2018.

1 In this way, the case at bar is simply not analogous to *Lopez* as UAIC simply never had a
2 duty to intervene prior to this amended judgment, much less ability to do so. That is, the original
3 2008 judgment was expired and only by Plaintiff's improper attempt to file this 'amended
4 judgment' earlier this year did a need to intervene arise. Moreover, UAIC never even knew of
5 these surreptitious actions on the expired judgment until July 2018 and, thus, intervening prior to
6 that date would have been an impossibility. Accordingly, given the circumstances – Plaintiff
7 attempting to improperly amend an expired judgment while such issues were on appeal in
8 another matter – this Court should use its equitable and discretionary authority to allow such
9 intervention here even if technically 'after judgment.'

11 Additionally, UACI argues that the circumstances set forth above also offer additional
12 reasons to allow UAIC's intervention in this circumstance. That is, the clear conflict of interest
13 and attempts at perpetrating a fraud upon the court by Plaintiff. As noted above, Plaintiff is
14 represented by Mr. Christensen. Mr. Christensen also purports to be counsel for Lewis and has
15 informed UAIC's first retained counsel for Lewis that he may not appear and attempt to vacate
16 this judgment. Now, after learning of this and trying to intervene itself to protect Lewis and, its
17 own interests, UAIC is told by Plaintiff it cannot intervene. So, per Plaintiff, UAIC's retained
18 defense counsel cannot move to vacate this amended judgment and – UAIC cannot either. This is
19 clearly an attempt at a fraud upon the court solely to benefit Plaintiff and her counsel - and same
20 should not be tolerated.²

23 In *NC-DSH, Inc. v Garner*, 125 Nev. 647 (2009) the Nevada Supreme Court set forth the
24 definition of a fraud upon the Court in considering motion for relief from judgment under NRCP
25 60. In *NC-DSH, Inc.* the lawyer for a plaintiff's malpractice case forged settlement documents
26 and disappeared with the settlement funds. *Id.* In allowing the Plaintiff's Rule 60 motion to set
27 aside the dismissal (and settlement) the Court set forth the following definition for such a fraud,
28

as follows:

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

Id at 654.

In the case at bar it seems clear that Plaintiff’s counsel (Mr. Christensen) is attempting just such a fraud. That is, besides the original judgment being expired and, the effect of its expiration on appeal before both the Nevada Supreme Court and the U.S. Court of Appeals for the Ninth Circuit, Plaintiff still attempted this ‘amendment of judgment’. Moreover, Mr. Christensen (Plaintiff’s additional Counsel) represents **both the judgment-creditor and judgment-debtor**. Further, in his role as counsel for Plaintiff and Defendant, Mr. Christensen is attempting, as an officer of the court, to prevent UAIC from exercising its contractual and legal duty to defend Mr. Lewis and vacate this farce of a judgment by telling UAIC’s first retained counsel to not file the motion for relief from this judgment. Additionally, Plaintiff is now seeking to deny UAIC a chance to intervene. UAIC pleads this clearly a **fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases**. In other words, Mr. Christensen, Counsel for Plaintiff, is seeking on the one hand to enforce an invalid judgment and, with the other, prevent anyone from contesting it – **by representing both sides. This is the definition of a conflict of interest.** After all, Plaintiff’s is attempting to improperly “fix” an expired multi-million judgment, while at the same time Counsel for Plaintiff is also claiming to represent the judgment-debtor (Lewis) and arising retained counsel not to vacate the amended judgment. How could this possibly benefit Mr. Lewis? Is having a multi-million dollar judgment against him which had expired be resurrected by an improper amendment of the judgment to his benefit? Is preventing anyone

(Cont.)

² Indeed, perhaps this should be reported to the State bar.

1 from vacating or setting aside this improper amended judgment to his benefit? In short, it does
2 not – **it only benefits Plaintiff and her counsel**. UAIC argues this is clear fraud and collusive
3 conduct and, at the very least, the Court should therefore exercise its equitable power and allow
4 UAIC’s intervention and, thereafter, hold an evidentiary hearing on this fraud.

5
6 Should this Court decline to allow UAIC to intervene, UAIC further pleads, in the
7 alternative, that this Court vacate the 2018 “amended judgment” on its own Motion given the
8 clear fraud that appears to have been perpetrated and is set forth herein. As this Court is aware,
9 District Courts have the inherent power to set aside judgments procured by extrinsic fraud. *Lauer*
10 *v District Court*, 62 Nev. 78, 140 P.2d 953. In the case at bar the potential extrinsic fraud
11 abounds. Besides the inherent conflict of interest of Plaintiff’s Counsel, it also true that Plaintiff
12 failed to advise this court that 1) the 2008 judgment had expired and, 2) that the issue over the
13 effect of same expired judgment was before both the Nevada Supreme Court and the U.S. Court
14 of Appeals for the Ninth Circuit when it filed its *ex parte* Motion to amend this judgment.
15 Extrinsic fraud is usually found when conduct prevents a real trial on the issues or, prevents the
16 losing party from having a fair opportunity of presenting his/her defenses. *Murphy v Murphy*, 65
17 Nev. 264 (1948). The Court may vacate or set aside a judgment under Rule 60 on its own
18 Motion. *A-Mark Coin Co. v. Estate of Redfield*, 94 Nev. 495 (1978).
19

20
21 Given the fairly egregious attempt to prevent UAIC from vacating the improper attempt
22 to amend an expired judgment, when such judgment was procured without notice, while these
23 issues were on appeal and, with Plaintiff’s counsel representing both sides – UAIC pleads with
24 this Court to exercise its own discretion and authority to vacate the amended judgment based on
25 all of the above.

26 ///
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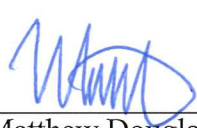
III.

CONCLUSION

Based on the foregoing, UAIC asks this Court grant it leave to intervene in this matter to protect its interests and LEWIS'. Alternatively, that this court exercise its inherent authority and discretion to vacate or set aside the improperly obtained amended judgment for the reasons set forth above.

DATED this 18th day of September, 2018.

ATKIN WINNER & SHERROD


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Attorneys for UAIC

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CERTIFICATE OF SERVICE

I certify that on this 18th day of September, 2018, the foregoing **UAIC's REPLY IN SUPPORT OF MOTION TO INTERVENE** was served on the following by ☒ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☒ fax ☒ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

PLAINTIFFS' COUNSEL

David A. Stephens, Esq.
STEPHENS, GOURLEY & BYWATER
3636 N. Rancho Dr.
Las Vegas, Nevada 89130



An employee of ATKIN WINNER & SHERROD

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81710

CHEYENNE NALDER

Appellant,

vs.

GARY LEWIS; and UNITED AUTOMOBILE INSURANCE
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Las Vegas, NV 89130
Telephone: 702-656-2355
Facsimile: 702-656-2776
Email: dstephens@davidstephenslaw.com

07A549111

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

September 19, 2018

07A549111 James Nalder
 vs
 Gary Lewis

September 19, 2018 3:00 AM Motion to Intervene

HEARD BY: Jones, David M **COURTROOM:** Chambers

COURT CLERK: Haly Pannullo

RECORDER: Melissa Murphy-Delgado

JOURNAL ENTRIES

- There being no opposition, COURT ORDERED, Motion GRANTED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Haly Pannullo, to all registered parties for Odyssey File & Serve *hvp/9/26/18*

PRINT DATE: 09/26/2018

Page 1 of 1

Minutes Date: September 19, 2018

APP0112

Steven D. Grierson

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

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

B
James
CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

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

ORDER

Intervenor UNITED AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene came on for hearing on the Chambers Calendar before the Honorable Judge David Jones, on September 19, 2018, and upon review of and consideration of the proceedings and circumstances of this matter, the papers and pleadings on file, and for good cause appearing, ~~and the Court's minute order stating there being no Opposition.~~

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1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Intervenor UNITED
2 AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene is GRANTED;

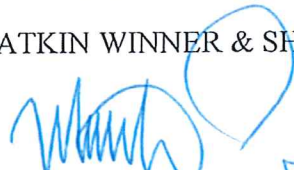
3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Intervenor
4 UNITED AUTOMOBILE INSURANCE COMPANY'S shall file its responsive pleading within
5 seven (7) days from the date of entry of this Order.

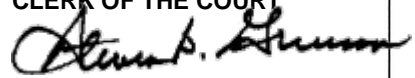
6 DATED this 11 day of October 2018

7
8 
DISTRICT COURT JUDGE

9 Submitted by:

10 ATKIN WINNER & SHERROD

11 
12 _____
13 Matthew J. Douglas
14 Nevada Bar No.11371
15 1117 South Rancho Drive
16 Las Vegas, Nevada 89102
17 Attorneys for Intervenor UNITED
18 AUTOMOBILE INSURANCE COMPANY
19
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mdouglas@awslawyers.com
Attorneys for Intervenor United Automobile Ins. Co.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER,
Plaintiff,

vs.

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

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

**NOTICE OF ENTRY OF ORDER ON
INTERVENOR UNITED AUTOMOBILE
INSURANCE COMPANY'S MOTION TO
INTERVENE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that the attached **ORDER ON INTERVENOR
UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was
entered by the Court on the 19th day of October, 2018.

DATED this 19th day of October, 2018.

ATKIN WINNER & SHERROD



Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor United Automobile Ins. Co.

CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2018, the foregoing **NOTICE OF ENTRY OF ORDER ON INTERVENOR UNITED AUTOMOBILE INSURANCE COMPANY'S MOTION TO INTERVENE** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 - to all counsel on the service list ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☒ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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

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


An employee of ATKIN WINNER & SHERROD

Steven D. Grierson

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Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

B
James
CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

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

ORDER

Intervenor UNITED AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene came on for hearing on the Chambers Calendar before the Honorable Judge David Jones, on September 19, 2018, and upon review of and consideration of the proceedings and circumstances of this matter, the papers and pleadings on file, and for good cause appearing, ~~and the Court's minute order stating there being no Opposition.~~

//

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1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Intervenor UNITED
2 AUTOMOBILE INSURANCE COMPANY'S Motion to Intervene is GRANTED;

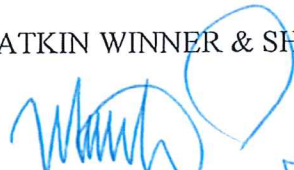
3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Intervenor
4 UNITED AUTOMOBILE INSURANCE COMPANY'S shall file its responsive pleading within
5 seven (7) days from the date of entry of this Order.

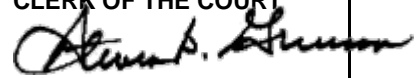
6 DATED this 11 day of October 2018

7
8 
DISTRICT COURT JUDGE

9 Submitted by:

10 ATKIN WINNER & SHERROD

11 
12 _____
13 Matthew J. Douglas
14 Nevada Bar No.11371
15 1117 South Rancho Drive
16 Las Vegas, Nevada 89102
17 Attorneys for Intervenor UNITED
18 AUTOMOBILE INSURANCE COMPANY
19
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Email: dstephens@sdblwfir.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE 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. 18-A-772220-C

PLAINTIFF'S MOTION TO SET ASIDE ORDER, PURSUANT TO NRCP
60(b), ALLOWING UAIC TO INTERVENE

Date:

Time:

1 Plaintiff Cheyenne Nalder, by and through her attorney, David A. Stephens, Esq.,
2 and moves this Court for an order setting aside the Court's order allowing United
3 Automobile Insurance Company to intervene in this matter. This Motion is made and
4 based upon the Points and Authorities and Exhibits attached to this Motion and such
5 argument as may be made at the time of the hearing on this matter.
6
7

8 Dated this 12th day of December, 2018.
9

10 /s/ David A Stephens

11 DAVID A. STEPHENS, ESQ.

12 Nevada Bar No. 00902

13 Stephens & Bywater, P.C.

14 3636 N. Rancho Drive

15 Las Vegas, Nevada 89130

16 Attorney for Plaintiff
17
18
19

20 **NOTICE OF MOTION**

21 TO: Gary Lewis, Defendant; and,
22

23 TO: E. Breen Arntz, Esq., attorney for Defendant;
24

25 TO: Randall Tindall, Esq., attorney for Defendant;
26

27 TO: Thomas F. Christensen, Esq., attorney for Third Party Plaintiff
28

TO: United Automobile Insurance Company, Intervenor; and,
28

1 TO: Matthew J. Douglas, Esq., attorney for Intervenor:

2 YOU WILL PLEASE TAKE NOTICE that on the 23rd day of
3
4 January, 2019, at 8:30 a.m., the undersigned will bring the
5 foregoing **PLAINTIFF'S MOTION TO SET ASIDE ORDER, PURSUANT TO**
6 **NRCP 60(b), ALLOWING UAIC TO INTERVENE** on for hearing before the above-
7 entitled District Court.
8

9 DATED: December 13th, 2018.
10

11 /s/David A Stephens_____
12 DAVID A. STEPHENS, ESQ.
13 Nevada Bar No. 00902
14 Stephens & Bywater, P.C.
15 3636 N. Rancho Drive
16 Las Vegas, Nevada 89130
17 Attorney for Plaintiff

18
19 **POINTS AND AUTHORITIES**

20 **I. STATEMENT OF FACTS**

- 21
22 1. Cheyenne Nalder, ("Cheyenne"), was injured in a car accident on July 8, 2007.
23
24 2. Cheyenne was a minor at the time of the accident.
25
26 3. Gary Lewis, ("Lewis"), negligently and careless drove his car such that it
27 struck Cheyenne.
28 4. The accident caused serious injuries to Cheyenne.

1 5. Cheyenne’s father, as her guardian in litem, filed suit, (“Original Suit”), against
2 Lewis. (See Case No. 07A549111).
3

4 6. Neither UAIC nor Lewis responded to the Original Suit.

5 7. On June 3, 2008, Cheyenne obtained a default judgment against Lewis in the
6 Original Suit in the sum of \$3,500.000.00.
7

8 8. Notice of entry of this judgment was filed and served on August 26, 2008.

9 9. None of that judgment has ever been paid, with the exception of \$15,000.00
10 which was paid by UAIC following a suit filed by Lewis and Cheyenne against UAIC
11 for bad faith, and other relief.
12

13 10. UAIC paid the \$15,000.00 to Cheyenne in three separate payments. The last
14 payment of which was made on March 5, 2015.
15

16 11. On March 22, 2018, Cheyenne, due to the fact that she had reached the age
17 of majority, filed a motion to amend the judgment in the Original Suit to make herself
18 the Plaintiff, in place of her father who had been her Guardian ad Litem.
19

20 12. The amended judgment was signed and filed in the Original Suit on March
21 28, 2018.
22

23 13. On May 18, 2018, a Notice of Entry of Judgment was served on Lewis.
24

25 14. In 2018, Cheyenne filed a new lawsuit, (“2018 Suit”), (See, Case No. A-18-
26 772220.-C), in order to enforce the judgment and alternatively seek declaratory relief
27 that the judgment in the Original Suit is still valid and enforceable.
28

1 15. The 2018 Suit was resolved by stipulation of Cheyenne and Lewis signed on
2
3 September 12, 2018, and filed with this Court on September 13, 2018. (See Exhibit 1
4 attached to this Motion.)

5 16. UAIC, through its attorney, Matthew Douglas, Esq., filed motions to
6
7 intervene in the Original Suit and the 2018 Suit on or about August 15, 2018.

8 17. Cheyenne's attorney did not receive a copy of either motion. When he
9
10 learned of these motions on or about September 9, 2018, he contacted Matthew Douglas,
11 Esq., about getting an extension of time to respond in that he had not received either
12 motion. (See Declaration of David A. Stephens, Esq., attached as Exhibit 3 to this
13 Motion.)
14

15 18. The certificates of service on both motions were incomplete. The certificate
16
17 of service on the motion to intervene in the Original Case was not completed. The
18 certificate of service in the 2018 Case stated it was served on Cheyenne/s counsel by e-
19 service even though he was not then registered for e-service. (See Exhibit 2 attached
20 to this Motion.)
21

22 19. In spite of these errors in UAIC's own documents, UAIC did not agree to
23
24 extend additional time to respond. (See Declaration of David A. Stephens, Esq.,
25 attached as Exhibit 3 to this Motion.)
26
27
28

1 20. With little time to do so, Cheyenne's attorney filed an opposition to both
2 motions and delivered them to the Court's box on September 18, 2018. (See
3 Declaration of David A. Stephens, Esq., attached as Exhibit 3 to this Motion.)
4

5 21. Department 29 granted both motions to intervene.¹
6

7 22. The orders were noticed to Cheyenne's attorney on October 19, 2018.
8

9 **III. MOTION TO SET ASIDE UNDER NRCP 60(b)**

10 Cheyenne requests relief from the orders allowing UAIC to intervene in both
11 cases which were signed on October 19, 2018. Cheyenne requests relief pursuant to
12 NRCP 60(b). As is set forth below, UAIC's motions to intervene were improperly
13 noticed, both on the face of the pleading (not even saying the defendant was served),
14 and also the certificate of service is false (claiming to serve Cheyenne's attorney who
15 was not on the service list).
16
17

18 UAIC, rather than correcting the problem with service and notice, pushed
19 forward for the hearing to get an order. This failure to move the hearing or correct
20 the service issue forced Cheyenne's attorney to file a quick opposition without a full
21 opportunity to brief the issue.
22

23 NRCP 60(b) states:
24

25 "On motion and upon such terms as are just, the court may relieve
26

27 ¹ The minute order on the motions did not even mention the oppositions filed by
28 Cheyenne.

1 a party or his legal representative from a final judgment, order, or
2 proceeding for the following reasons: (1) mistake, inadvertence,
3 surprise, or excusable neglect; (2) . . . or other misconduct of an adverse
4 party which would have theretofore justified a court in sustaining a
5 collateral attack upon the judgment; (3) the judgment is void; . . . The
6 motion shall be made within a reasonable time, and for reasons (1) and
7 (2) not more than six months after the judgment, order, or proceeding
8 was entered or taken. A motion under this subdivision (b) does not affect
9 the finality of a judgment or suspend its operation. This rule does not
10 limit the power of a court to entertain an independent action to relieve a
11 party from a judgment, order, or proceeding, or to set aside a judgment
12 for fraud upon the court. . . .”

13 The orders allowing UAIC to intervene in both cases were entered due to
14 mistake, inadvertence, surprise, or excusable neglect.

15 Most of the Nevada case law interpreting NRCP 60(b) has arisen in efforts to
16 set aside default judgments. That law states that a Court has broad discretion in
17 vacating a default judgment under NRCP 60(b)(1). *Stoecklein v. Johnson Electric,*
18 *Inc.*, 109 Nev. 268, 271 849 P.2d 305 (1993). Courts evaluate several factors to
19 decide whether to vacate a default judgment. *Id.* 1- Whether the defendant promptly
20 applied to remove the judgment. *Id.* 2- Whether the defendant is only attempting to
21 delay the proceedings. *Id.* 3- Whether the defendant knew of the procedural
22 requirements. *Id.* 4- Whether the defendant is acting in good faith. *Id.* 5- Whether
23 the defendant has a meritorious defense. *Id.*

24 While the case law analyzing the setting aside of default judgments does not fit
25 exactly in setting aside other orders. It is still useful analysis.

1 **A. Prompt Application to Remove the Judgment**

2 NRCP 60 requires the movant to file the motion no more than six months after
3
4 the order was entered against him. This motion was filed about two months after the
5 entry of the orders allowing UAIC to intervene. The application is prompt.
6

7 **B. Delaying the Proceedings**

8 Cheyenne does not want to delay these proceedings. As to the 2007 case, she
9 maintains that that case is over. A judgment has been entered.
10

11 **C. Knowledge of the Procedural Requirements**

12 This particular factor does not really apply to this motion. Cheyenne has been
13 represented by counsel. This motion does not involve an error that something did not
14 get done on time or at all. Rather, it involves an error that the wrong decision was
15 made under Nevada law.
16
17

18 **D. Good Faith**

19 Cheyenne has acted in good faith. She moved to amend her judgment so she
20 was the named plaintiff and then filed an action, in her name, to enforce the
21 judgment.
22
23

24 **E. INTERVENTION IN 2007 CASE**

25 The granting of UAIC's motion to intervene in the 2007 case is a clear abuse
26 of discretion and contrary to the statutory and case law of Nevada.
27
28

1 “[T]he plain language of NRS 12.130 does not permit intervention
2 subsequent to the entry of a final judgment. *Lopez v. Merit Ins. Co.*, 109
3 Nev. 553, 556, 853 P.2d 1266, 1267-68 (1993). Additionally, in *Ryan v.*
4 *Landis*, 58 Nev. 253, 260, 75 P.2d 734, 735 (1938) (quoting *Henry Lee*
5 *Co. v. Elevator Co.*, 42 Iowa 33 (1918)), we reiterated that:
6 ‘intervention must be made before the trial commences. After the
7 verdict all would admit it would be too late to intervene. But a voluntary
8 agreement of the parties stands in the place of a verdict, and, as between
9 the parties to the record as fully and finally determines the controversy
10 as a verdict could do.’”

11 *Dangberg Holdings Nevada v. Douglas County*, 115 Nev. 129, 139, 978 P.2d 311,
12 317 (1999).

13 In *Gralnick v. Eighth Judicial District Court*, No. 72048 (Nev. App. Mar. 21,
14 2017), which is factually very similar to this case, the Nevada Court of Appeals held that
15 allowing intervention by an insurance company and then setting aside of a judgment on
16 the motion of the insurance company was improper. Thus the Nevada Court of Appeals
17 granted writ relief which reversed the trial court because intervention was allowed after
18 judgment contrary to NRS 12.130. The Court stated:

19 “Here, real party in interest Liberty Mutual Insurance Company moved to
20 intervene in the underlying action after judgment was entered against real
21 party in interest Tessea Munn. Because ‘NRS 12.130 does not permit
22 intervention subsequent to the entry of a final judgment,’ *Lopez v. Merit*
23 *Ins. Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993), the district court
24 was required, as a matter of law, to deny the motion to intervene.

25 “As the district court did not deny the motion to intervene, but
26 instead, granted intervention and then improperly set aside the judgment
27 based on Liberty Mutual's motion, *see id.* at 557, 853 P.2d at 1269
28 (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

1 aside the judgment), writ relief is warranted. *See Smith v. Eighth Judicial*
2 *Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991)”

3 *Gralnick* at p. 2.

4 The Nevada Supreme Court noted in *A-Mark Coin v Estate of Redfield*, 94 Nev.
5 495, 582 P.2d 359 (1978), that the probate court had authority under NRCp 60(b) to set
6 aside an order, *sua sponte*, that was entered by mistake.

7 In the 2007 case the court allowed UAIC to intervene after a final judgment was
8 entered. That is contrary to Nevada law and the Court should correct this mistake and
9 set aside the order allowing UAIC to intervene in the 2007 case.

10 **E. INTERVENTION IN 2007 AND 2018 CASE**

11 In addition UAIC’s motion to intervene should have been denied in both cases
12 because UAIC waived its right to direct the defense and its right to intervene when it
13 refused to defend Lewis and failed to indemnify him.

14 UAIC claimed to have a direct and immediate interest in those cases sufficient to
15 warrant intervention. However the California Court of Appeals in *Hinton v. Beck*, 176
16 Cal.App.4th 1378 (Cal. Ct. App. 2009) held just the opposite: “Grange, having denied
17 coverage and having refused to defend the action on behalf of its insured, did not have
18 a direct and immediate interest to warrant intervention in the litigation.” *Id.* at 1380.

19 The *Hinton* court went on to note that an insurance company which denies
20 coverage and refuses to defend, except on a reservation of rights, has only a
21

1 “consequential interest,” which does not justify intervention into the suit between the
2 plaintiff and it alleged insured. *Id.* at 1383.
3

4 In this case UAIC denied coverage and never even offered to defend on a
5 reservation of rights. It has no right to intervene into these cases.
6

7 In addition, UAIC’s proposed defense is not supported by Nevada statutes or case
8 law. UAIC misstates Nevada’s statute of limitations and tolling statutes. UAIC
9 misstates Nevada case law regarding actions on a judgment to obtain a new judgment
10 and its relationship to the optional and additional process to renew a judgment by
11 affidavit.
12

13 Thus, UAIC should not have been allowed to intervene into the 2007 or 2018
14 cases. Allowing such intervention is an abuse of discretion and has delayed this
15 matter and costs the Plaintiff time and attorney’s fees in moving this matter forward.
16
17

18 For these reasons the Court should set aside the order allowing UAIC to
19 intervene, and strike and disregard all pleadings filed by UAIC.
20

21 Dated this 13th day of December, 2018.

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

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2018, I served the following document: **PLAINTIFF’S MOTION TO SET ASIDE ORDER, PURSUANT TO NRCP 60(b), ALLOWING UAIC TO INTERVENE**

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

Randall Tindall, Esq.

E. Breen Arntz, Esq.

Matthew J. Douglas, Esq.

Thomas F. Christensen, Esq.

☐ BY MAIL: by placing the documents(s) listed above in a sealed envelope, postage prepaid in the U.S. Mail at Las Vegas, Nevada, addressed as set forth below:

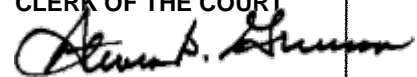
☐ BY FAX: by transmitting the document(s) listed above via telefacsimile to the fax number(s) set forth below. A printed transmission record is attached to the file by copy of this document(s).

☐ BY HAND DELIVERY: by delivering the document(s) listed above to the person(s) at the address(es) set forth below.

_____/s/David A Stephens_____
An Employee of Stephens & Bywater, P.C.

EXHIBIT 1

EXHIBIT 1



1 STPJ (CIV)
2 David A. Stephens, Esq.
3 Nevada Bar No. 00902
4 Stephens & Bywater
5 3636 North Rancho Drive
6 Las Vegas, Nevada 89130
7 Telephone: (702) 656-2355
8 Facsimile: (702) 656-2776
9 Email: dstephens@sdblawnfirm.com
10 Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

STIPULATION TO ENTER JUDGMENT

Date: n/a
Time: n/a

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

1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.
2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the present.
3. Gary Lewis has been a resident and subject to service of process in California from 2010 to the present.
4. Plaintiff obtained a judgment against GARY LEWIS which was entered on August 26, 2008. Because the statute of limitations on the 2008 judgment had been tolled as a result of GARY LEWIS' absence from the State of Nevada pursuant to NRS 11.300, Plaintiff obtained an amended judgment that was entered on May 18, 2018.
5. Plaintiff filed an action on the judgment under *Mandlebaum v. Gregovich*, 50 P. 849, 851

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

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

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

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

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

13 Dated this 12 day of September, 2018

14 

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

14 

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

JMT (CIV)
David A. Stephens, Esq.
Nevada Bar No. 00902
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Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,)	
)	
Plaintiff,)	Case No. A-18-772220-C
)	
vs.)	Dept. No. XXIX
)	
GARY LEWIS,)	
)	
Defendant.)	

JUDGMENT

Date: n/a
Time: n/a

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

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

///

///

///

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

4 DATED this _____ day of September, 2018.

5

6

7

DISTRICT JUDGE

8

9 Submitted by:

10 STEPHENS & BYWATER, P.C.

11

12

DAVID A. STEPHENS, ESQ.

Nevada Bar No. 00902

13 3636 North Rancho Drive

Las Vegas, Nevada 89130

14 Attorneys for Plaintiff

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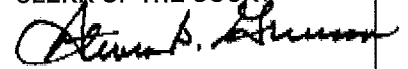
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EXHIBIT 2

EXHIBIT 2



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 Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: A-18-772220-C
DEPT. NO.: 29

UAIC'S MOTION TO INTERVENE

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby submits this Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached hereto, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this 16 day of August, 2018.

ATKIN WINNER & SHERROD



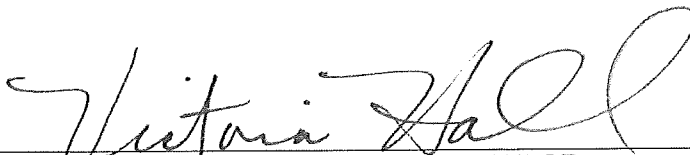
Matthew J. Douglas
Nevada Bar No. 11371
1117 South Rancho Drive
Las Vegas, Nevada 89102
Attorneys for Intervenor

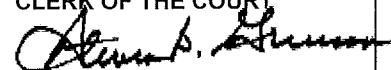
CERTIFICATE OF SERVICE

I certify that on this 16th day of August, 2018, the foregoing **MOTION TO INTERVENE** was served on the following by ☒ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

PLAINTIFFS' COUNSEL

David A. Stephens, Esq.
STEPHENS, GOURLEY & BYWATER
3636 N. Rancho Dr.
Las Vegas, Nevada 89130


An employee of ATKIN WINNER & SHERROD



MATTHEW J. DOUGLAS
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mdouglas@awslawyers.com

Attorneys for Proposed Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

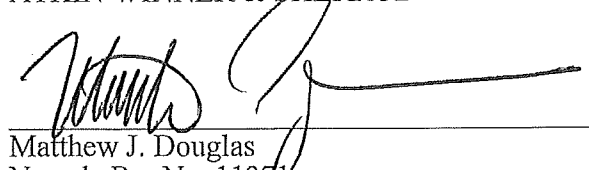
CASE NO.: 07A549111
DEPT. NO.: 29

UAIC'S MOTION TO INTERVENE

COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby submits this Motion to Intervene in the present action, pursuant to the attached Memorandum of Points and Authorities, all exhibits attached hereto, all papers and pleadings on file with this Court and such argument this Court may entertain at the time of hearing.

DATED this 17th day of August, 2018.

ATKIN WINNER & SHERROD



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

CERTIFICATE OF SERVICE

I certify that on this 17th day of August, 2018, the foregoing MOTION TO INTERVENE was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☐ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☐ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

PLAINTIFFS' COUNSEL

David A. Stephens, Esq.
STEPHENS, GOURLEY & BYWATER
3636 N. Rancho Dr.
Las Vegas, Nevada 89130

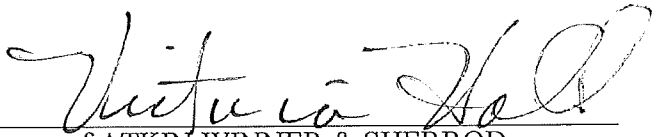

An employee of ATKIN WINNER & SHERROD

EXHIBIT 3

EXHIBIT 3

**AFFIDAVIT IN SUPPORT OF
PLAINTIFF'S MOTION TO SET ASIDE ORDER**

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

David A. Stephens, Esq., being first duly sworn, deposes and says:

1. I am the attorney for Plaintiff Cheyenne Nalder, ("Cheyenne"), in this matter.

2. I am licensed to practice law before all Courts of the State of Nevada.

3. I make this affidavit based upon facts within my own knowledge, and I can so testify in a court of law, save and except as those facts alleged upon information and belief, and as to those facts I believe them to be true.

4. On August 15, 2018, Matthew Douglas, Esq., filed a Motion to Intervene in the Original Suit for UAIC. At about the same time, Mr. Douglas also filed a motion to intervene on behalf of UAIC in the 2018 Suit.

5. In September, 2018, while preparing to submit a default in the 2018 Lawsuit, I first learned of the UAIC motions to intervene in both suits.

6. I never received the Motions to Intervene and only discovered that the Motions even existed after the date for filing a response to that motion had passed, assuming the Motions had been served on me.

7. On September 11, 2018, I emailed Mr. Douglas indicating that I had not been served with either motion to intervene and requesting that he serve the motions on me and continue the hearing on both motions.

8. On September 11, 2018, Mr. Douglas emailed me and indicated that he had served both motions on me. He stated that he had served the motion in this case by mail and by eservice in the 2018 Lawsuit. He also stated he needed me to provide the basis for my opposition to both motions before he could consider my request for a continuance.

9. Mr. Douglas did not provide me a copy of either motion to intervene, so I obtained a copy of each motion from the court clerk.

10. The certificates of service on both motions to intervene do not indicate that they were served on me.

1 11. The certificate of service on the Motion to Intervene filed in this case states that the
2 motion was mailed, but it does not indicate to whom it was mailed. Also, the check box for service
3 by mailing is not checked.

4 12. The certificate of service on the motion to intervene in the 2018 Lawsuit, stated that the
5 motion was served electronically. Again, it does not specifically indicate it was electronically served
6 on me or my office.

7 13. When a pleading is served electronically through the District Court electronic filing
8 system, a notice of service is generated and emailed to the parties served with the pleading attached
9 for download. Mr. Douglas should have received such a notice for his eservice in the 2018 Lawsuit.
10 That notice indicates which parties were served electronically.

11 14. I have checked my email during this time period and I did not receive a notice of service
12 of the motion to intervene in the 2018 Lawsuit.

13 15. I believe that if Mr. Douglas checks his email for this notice of service he will find that
14 I was not served UAIC's motion to intervene in the 2018 Lawsuit. I have not found a way to get this
15 notice of service myself, or I would check it myself.

16 16. Additionally, I could not have been electronically served the motion to intervene in the
17 2018 Lawsuit because I did not register for electronic service in the 2018 lawsuit until September 4,
18 2018.

19 17. On September 12, 2018, I emailed Mr. Douglas indicating I could have an opposition
20 filed within one week, and then he could have the time he needed to file a reply.

21 18. On September 13, 2018, Mr. Douglas responded, by email, and stated again that he
22 needed to know the basis of my opposition to the motions before he could consider granting an
23 extension of time to respond to them.

24 19. I emailed Mr. Douglas on September 14, 2018, indicating that I would have to research
25 to see if there were grounds to oppose the motions to intervene and indicated that as to this case, that
26 I thought the motion had been filed too late for intervention to be allowed under Nevada law.

27 20. I filed an Opposition to the Motion to Intervene filed by UAIC in this case on
28 September 17, 2018. I received a filed stamped copy of the Opposition early in the morning of

1 September 18, 2018.

2 21. I filed an Opposition to the Motion to Intervene filed by UAIC in the 2018 Lawsuit on
3 September 17, 2018. I received a filed stamped copy of the Opposition early in the morning of
4 September 18, 2018.

5 22. I personally dropped both of the Oppositions to the Motions to Intervene in this Court's
6 box on September 18, 2018. I do not know the exact time, but I know it was before 10:00 a.m. because
7 I had a 10:00 a.m. appearance before the Discovery Commissioner and I dropped the papers into the
8 Court's box prior to that appearance.


9 23. I subsequently received a minute order from the Court indicating that the motion to
10 intervene in this case had been granted because no opposition had been filed.

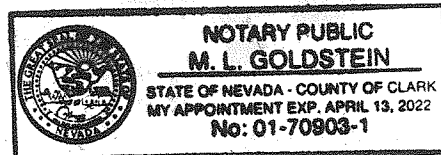
11 24. Exhibit 2 attached to the Motion is true and correct copies of the certificates of service
12 on the Motion to Intervene filed by UAIC.

13 Dated this 13 day of December, 2018.

14 
15 David A. Stephens, Esq.

16 Subscribed and Sworn to before me
17 this 13th day of October, 2018.

18 
19 Notary Public in and for
20 said County and State



IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81710

CHEYENNE NALDER

Appellant,

vs.

GARY LEWIS; and UNITED AUTOMOBILE INSURANCE
COMPANY,

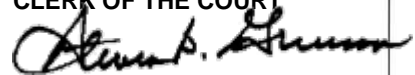
Respondents.

ON APPEAL FROM
THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

District Court Case No. 07A549111

**CHEYENNE NALDER'S APPENDIX
VOLUME 1-Part 5**

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mdouglas@awslawyers.com

Attorneys for Intervenor/Third Party Defendant United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

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

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

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

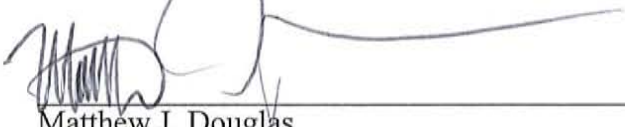
COMES NOW, UNITED AUTOMOBILE INSURANCE COMPANY (hereinafter referred to as "UAIC"), by and through its attorney of record, ATKIN WINNER & SHERROD and hereby files its Opposition to Defendant/Third Party Plaintiff Gary Lewis' Motion for Relief from Order and Joinder in Motions for Relief from Orders on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

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

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

10 DATED this 27th day of DECEMBER, 2018.

11 ATKIN WINNER & SHERROD

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

20 **AFFIDAVIT OF COUNSEL IN SUPPORT OF UAIC's**
21 **OPPOSITION TO MOTIONS FOR RELIEF FROM ORDERS ALLOWING UAIC's**
22 **INTERVENTION & COUNTER-MOTION FOR STAY**

23 STATE OF NEVADA)
24) SS:
25 COUNTY OF CLARK)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. The order allowing intervention in the 2007 matter was not signed by the Court until October 11, 2018 and same was not received by my office until October 19, 2018⁹ when it was filed with a notice of entry. *A copy of the Order is attached hereto as Exhibit 'S'*; Importantly, the Court's final order struck the line stating that the minute order stated no opposition had been filed;

37. The order allowing intervention in the 2018 matter was not signed by the Court until October 11, 2018 and same was not received by my office until October 19, 2018⁹ when it was filed with a notice of entry. *A copy of the Order is attached hereto as Exhibit 'T'*;

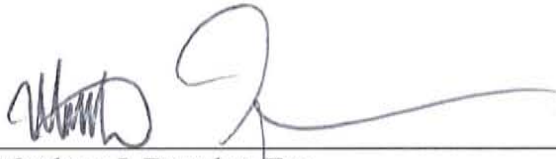
38. UAIC currently has pending a counter-motion for evidentiary hearing regarding an alleged fraud upon the Court, involving the actions and, conflicts of interest, primarily surrounding Nalder and Lewis' Counsel, Tom Christensen, which is set for hearing January 9, 2018; In the present Motion for relief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

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

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


Further Affiant Sayeth Naught.

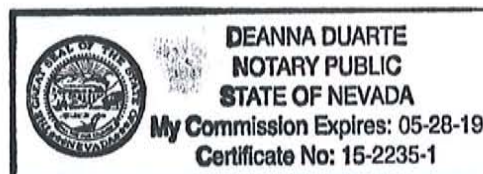
DATED this 27th day of December, 2018.


Matthew J. Douglas, Esq.

SUBSCRIBED AND SWORN to before me

This 27th day of December 2018


NOTARY PUBLIC in and for said
Clark County, Nevada



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

I.

INTRODUCTION

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

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

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

20 Moreover, it cannot be understated that Mr. Christensen also represents Nalder in the
21 original action, Case No. 07A549111. See Exhibit ‘I’ to Exhibit ‘A’ of Exhibit ‘K’, herein, copy
22 of the original 2008 judgment entered. Accordingly, as is more fully set forth in Intervenor’s
23 Counter-Motion for evidentiary hearing for a fraud upon the Court (currently set before this
24 Court for also hearing on January 9, 2018), Mr. Christensen has a clear conflict as he
25 representing both the judgment-debtor and, the judgement creditor, in these actions. It is
26 surely for this reason that Mr. Christensen is advancing this Motion, seeking to vacate UAIC’s
27 intervention and avoid hearing on UAIC’s Motion for Evidentiary hearing as, now that the cases
28

1 have been consolidated, his naked conflict of interest is exposed for all to clearly behold¹. As
2 such, this Court must consider any of Mr. Christensen's arguments in light of this clear conflict
3 of interest. The fact is, Mr. Christensen **has orchestrated these proceedings in a fairly obvious**
4 **attempt to "fix" or, cover up, his error in failing to renew Nalder's 2008 judgment,** which is
5 currently before the Nevada Supreme Court on a certified question. *See Copy of the order*
6 *certifying the question whether Nalder's judgment is expired, attached hereto as Exhibit 'W'*
7 *and, Copy of Order of Nevada Supreme Court accepting same question, attached hereto as*
8 *Exhibit 'X.'* Because all of these matters are just so intertwined UAIC seeks not only a stay, but
9 also asks this Court to hear the Motions filed first *in time* at the hearing on January 9, 2018.
10 Specifically, that UAIC's Motions to vacate the 2018 judgment, dismiss and, Motion for
11 evidentiary hearing are heard before this later filed motion for relief from orders such that these
12 issues may be examined and a record made **as same is necessary to highlight these clear**
13 **attempts to forum shop and foment litigation and, likely, perpetrate a fraud upon the court.**
14

15
16 Accordingly, UAIC requests the 3 pending Motions for relief from the Orders allowing
17 UAIC to intervene be stayed or, deferred, pending appeal discovery and/or, alternatively, all 3
18 Motions be denied for the reasons set forth herein as they were properly served and granted.

19 II.

20 FACTS AND BACKGROUND

21 This action was originally filed back in 2007 in regard to an automobile accident that
22 occurred in July 2007 between Nalder and Lewis. UIAC will not re-state the entire history as it is
23 adequately set forth in Order Certifying a Second Question to the Nevada Supreme Court by
24

25
26 ¹ Thus far, to avoid being so exposed, Mr. Christensen has, to wit, filed a third party action
27 against retained defense counsel for Mr. Lewis, reported attorneys in this case to the State bar and, then,
28 announced such confidential matters in open court, made allegations in his third party complaint against
the former Judge hearing this case (David Jones) as well as members of the Nevada Bar Counsel, asked
judge Jones to recuse himself and, retained counsel for Lewis in this matter (Arntz) and forbade anyone
from communicating with Lewis. *See Lewis' 3rd Party Complaint and Counter-Motion for Summary
Judgment filed in this matter, attached hereto as Exhibits 'U' and 'V', respectively.*

United States Court of Appeals for the Ninth Circuit, which was filed on January 11, 2018. See Exhibit 'W.' Rather, the salient points are that Plaintiff's "amended judgment", entered recently in 2018, is premised on an original judgment which had been entered against Gary Lewis on August 26, 2008. After obtaining the judgment, Counsel for Plaintiff² then filed an action against Mr. Lewis' insurer, United Automobile Insurance Company ("UAIC"), Intervenor herein.

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

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

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

² At that time, in 2008, Ms. Nalder was a minor so the judgment was entered in favor of her through her Guardian Ad Litem and, father, James Nalder.

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

3 *Exhibit 'W.'*

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

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

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

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

22 Furthermore, Plaintiff then initiated a "new" action, under case no. A-18-772220-C in a
23 thinly veiled attempt to have this Court rule on issues pending before the Nevada Supreme Court
24 and "fix" their expired judgment. *Id.* This intent appears clearly evidenced by paragraph five (5)
25 of Plaintiff's prayer for relief herein which states Plaintiff is seeking this Court to make "a
26 declaration that the statute of limitations on the judgment on the judgment is still tolled as a
27 result of Defendant's continued absence from the state." Plaintiff then apparently served Lewis
28

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

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

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

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

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

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

7
8 Further, as stated above, UAIC pleads this Court to hear the Counter-Motion for
9 Evidentiary hearing, prior to these motions to have a full record of these events, and/or to stay
10 these matters.

11 **III.**
12 **ARGUMENT**

13 **A. COUNTER-MOTION TO STAY PROCEEDINGS PENDING APPELLATE**
14 **RULING.**

15 UAIC counter-moves this Court to stay all proceedings in this matter and/or, third party
16 plaintiff's Motion for Relief from orders³ due to the intertwined and inter-related issues now on
17 appeal, which could substantially affect this litigation. The stay may be granted within this
18 Court's discretion and under N.R.A.P. 8 (a)(1)(A).

19
20 In the case at bar it is unassailable that the subject of the expiration or, ongoing validity,
21 of the 2008 judgment in the case of *Nalder v Lewis*, 07A549111, which is consolidated herein, is
22 at issue both in this Court in both consolidated actions and, on appeal to the Nevada Supreme
23 Court. See Exhibits 'W' & 'X.' As stated above, the issue of whether the 2008 expired or, is
24 tolled per case law and statutes argued by Plaintiff and Lewis, is squarely before the Nevada
25 Supreme Court. It is further uncontroverted Plaintiff and Lewis have raised the issues herein. See
26 Exhibits 'W' & 'X.' Indeed, the plaintiff's complaint in the 2018 case, third party plaintiff
27

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴ E.D.C.R. 2.24(b).

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

⁶ See *Exhibits ‘S’ & ‘T.’*

procedural requirements, and (d) good faith.⁸

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

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

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

(Cont.)

⁷ *Ogle v Miller*, 87 Nev. 573, 491 P.2d 40 (1971).

⁸ *Id.*

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

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

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

1 anything, movants' actions herein have been in anything but "good faith." As explained
2 throughout, knowing their judgment had expired and, that the issue was likely fatal in their
3 appeal, Nalder and her cohorts tried to fix the judgment though an improper *ex parte*
4 amendment. Then, in what UAIC argues was a blatant attempt to perpetrate a fraud upon the
5 court, Tom Christensen, Counsel for Nalder and Lewis attempted to (1) prevent UAIC's retained
6 defense counsel from defending these improper actions, (2) has sought to exclude UAIC from
7 protecting itself and its insured, and (3) referred Lewis to counsel Breen Arntz, Esq. *who then*
8 *tried to have a 'stipulated judgment' entered while UAIC was trying to intervene*. This is not
9 good faith. Instead, *per Tom Christensen*, he can represent both sides of this case and, then, have
10 a stipulated sham judgment entered and, no one can contest it – even those whose interest may
11 be affected. UAIC urges that, on this final prong alone – given all the shenanigans by Nalder and
12 Lewis – there has not been a showing of good faith in bringing these motions – actually the
13 opposite would appear to be true and, thus, the Court should deny these motions.
14

15
16 For all of the above, movants cannot meet their burden for relief from orders allowing
17 UAIC's intervention per *Ogle* and, thus, the Court should deny the Motions.

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

20 Overall, all of the movants arguments regarding defects in service of both UAIC's
21 Motions to intervene are incorrect or, red-herrings, as *both motions were mailed* to the only
22 counsel of record, David Stephens (counsel for Nalder) and, *both Motions were fully briefed*.
23 Moreover, at the very least, if this Court considers all the arguments raised by the movants
24 herein, than any issues regarding service of the original motion are moot. Accordingly, for the
25 reasons set forth herein, UAIC asks the court to deny the movants motion for any allegations of
26 insufficient notice.
27

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12
13 (c) The argument that UAIC failed to grant an extension is a red-herring as the Motion
14 was fully briefed and, UAIC never actually refused the extension anyway and, in no
15 way did counsel violate R.P.C. 3.5A.

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

26
27 As can be seen from Counsel’s affidavit, *herein*, and copies of the email chain between
28 UAIC’s Counsel and Mr. Stephens, it is clear that as soon as Stephens requested the extension

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

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

Rule 3.5A. Relations With Opposing Counsel. When a lawyer knows or reasonably should know the identity of a lawyer representing an opposing party, he or she should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's 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 Mr. Stephens client, Nalder. Accordingly, this argument is completely spurious as well and cannot support his motion.

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

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

intervention now, same would also moot these arguments.

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

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

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

The movants' main argument to have this Court void UAIC's intervention, particularly in regard to the 2007 action⁹, is that – as judgment had been entered (in 2008) – UAIC should not be allowed to intervene under both the language of N.R.S. 12.130 and prior case law prohibiting an insurer from intervening post-judgment. While movants argument is *generally* correct, UAIC believes that both the intent of the statute and, the case law movants' rely on, is distinguishable from the case at bar. Specifically, UAIC has not sought intervention to *substantively attack the initial judgment entered in 2008*. Moreover, UAIC is not intervening in a case it had notice of, but failed to intervene earlier to protect its rights – here, UAIC had no notice Plaintiff took improper action to attempt to amend her expired judgment in March 2018. Indeed, Federal case law exists allowing a non-party intervention, post judgment and, UAIC begs this Court to

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

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

3 In fact, UAIC poses the question this way:

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

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

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

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

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

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

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

4
5 The argument that the intent of this section of N.R.S. 12.130 was to insure finality of
6 judgments was directly cited by the Nevada Supreme Court in *Lopez v Merit Ins. Co.*, 109 Nev.
7 553 (1993) where the court re-stated a prior ruling, in *Ryan v Landis*, 58 Nev. 256 (1938), where
8 the court stated:

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

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

15 In the case at bar, UAIC does not seek intervention into the 2007 case (nor the 2018 case
16 for that matter) to in any way “open up” or “re-litigate” the issues or damages set forth in the
17 original 2008 judgment. Rather, as set forth herein, UAIC believes the 2008 judgment expired
18 and was improperly “amended” and, merely seeks to have this Court review same “amended
19 judgment” and vacate same. UAIC is not asking this court to vacate the *original judgment or to*
20 *re-litigate the action underlying it.* As such, in no way is UAIC attacking the award of the
21 original judgment or, seeking to re-litigate any of the issues decided by that judgment.
22 Accordingly, UAIC’s intervention does not violate the intent of N.R.S. 12.130 and, thus, the
23 portion of the statute requiring intervention before trial should not apply here.
24

25
26 (ii) *The case law cited by movants preventing insurers from intervening post-*
27 *judgment is distinguishable here.*

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

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

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

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

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

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

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

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

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

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

See Exhibit 'X.'

On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC just filed Response Brief and, accordingly, the above-quoted question and, issue, remains pending before the Nevada Supreme Court. See Exhibit 'B' and Affidavit of Counsel for UAIC, herein. Despite the above, in what appears to be a clear case of forum shopping, Nalder retained additional Counsel (Plaintiff's Counsel herein) who filed an *ex parte* Motion before this Court on March 22, 2018 seeking to "amend" the 2008 expired judgment to be in the name of Cheyenne Nalder individually. *Id.* Thereafter, this Court, obviously not having been informed of the above-noted Nevada Supreme Court case, entered the amended judgment and same was filed with a notice of entry on May 18, 2018. *Id.* Upon learning of this "amended judgment" and "new" action (the sister case A-18-772220-C), on July 19, 2018¹⁰, and, given the prior United States District Court's ruling that Gary Lewis is an insured under an *implied* UAIC policy for the loss belying these judgments, UAIC immediately sought to engage counsel to appear on Lewis' behalf in the present action. *Id.* Following retained defense Counsel's attempts to communicate with Mr. Lewis to defend him in this action and, potentially, vacate this improper amendment to an expired judgment – retained defense counsel was sent a letter by Tommy Christensen, Esq. –

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

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

4 In this way, the case at bar is simply not analogous to *Lopez* as UAIC simply **never had**
5 **a duty to intervene prior to this amended judgment, much less ability (e.g. notice) to do so.**
6 That is, the original 2008 judgment was expired and only by Plaintiff's improper attempt to file
7 this 'amended judgment' earlier this year *did a need to intervene arise*. Moreover, UAIC never
8 even knew of these surreptitious actions on the expired judgment until July 2018 and, thus,
9 intervening prior to the date it did would have been an impossibility. Furthermore, UAIC's
10 intervention was only needed due to the interference by Nalder's counsel, Tom Christensen,
11 claiming to also represent its insured, who was preventing retained defense counsel from taking
12 necessary actions to defend Lewis from this improperly amended judgment. Further, UAIC is in
13 **no way seeking to intervene to attack the original judgment (in 2008) nor, re-litigate its**
14 **issues.** Finally, UAIC is not seeking to just relieve itself of a judgment that may be enforced
15 against it (as the insurer in *Lopez* was), but instead to relieve its insured of an improperly
16 amended judgment.
17

18 Accordingly, given the circumstances – the *Lopez* case and its progeny are
19 distinguishable for a myriad of reasons. UAIC is not seeking to attack the judgment, UAIC is not
20 the uninsured motorist carrier with a duty to intervene pre-judgment, UAIC had no notice of the
21 "amended judgment" and, not least important, Plaintiff's counsel Tom Christensen necessitated
22 UAIC's intervention by his interference which is potentially both unethical and collusive. For all
23 of the above, the cases cited by movants should not be a bar to UAIC's intervention here.
24

25
26 (iii) *This Court's equitable powers permit it to allow UAIC's intervention in*
27 *the 2007 action given the potential unethical conduct of the parties and*
28 *public policy considerations.*

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

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

16
17
18 First, as stated in UAIC's Counter-Motion for Evidentiary hearing (which UAIC
19 incorporates herein), in *NC-DSH, Inc. v Garner*, 125 Nev. 647 (2009) the Nevada Supreme
20 Court set forth the definition of a fraud upon the Court in considering motion for relief from
21 judgment under NRCP 60. In *NC-DSH, Inc.* the lawyer for a plaintiff's malpractice case forged
22 settlement documents and disappeared with the settlement funds. *Id.* In allowing the Plaintiff's
23 Rule 60 motion to set aside the dismissal (and settlement) the Court set forth the following
24 definition for such a fraud, as follows:
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27
28 ¹¹ UAIC has filed a counter-Motion for evidentiary hearing on these issues which is set before the
Court on the same day as the instant Motion. UAIC asks this Court to hear this motion for evidentiary
hearing first, such that a full record of these issues can be made prior to ruling on this motion.
Alternatively, UAIC asks this Court to consider them, herein.