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 6

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"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'. See *Exhibit 'B' & Exhibits 'W' & 'X.'* Moreover, Mr. Christensen (Plaintiff's additional Counsel) represents **both the judgment-creditor and judgment-debtor**. *Id.* 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. See *Exhibit 'B.'* 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 Nalder, 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.*** Indeed, Lewis, through Counsel appointed by Christensen (Breen Arntz) tried to stipulate to a judgment in the 2018 case while UAIC's intervention was pending. See *Exhibit 'B' & 'I.'* It seems that this is all an attempt to cover up Mr. Christensen's failure to renew the 2008 judgment and, "fix" this expired multi-million judgment. Despite arguments to the contrary, this does not benefit Mr. Lewis - **it only benefits Plaintiff and her counsel**. UAIC argues this is clear fraud and collusive conduct and, at the very

least, the Court should therefore exercise its equitable power and allow UAIC's intervention and/or, alternatively, first hold an evidentiary hearing on this fraud.

Moreover, based on the above-stated conduct, UAIC believes these circumstances offer further grounds for intervention and notes federal courts have allowed post-judgment intervention when unusual circumstances are present. Indeed, federal courts have allowed insurers to intervene post-judgment. See *McDonald v. E.J. Lavino Co.*, 430 F. 2d 1065 (1970) (allowing a worker's compensation carrier to intervene post-judgment in its employee-insured's tort action against third party tortfeasor). When courts have allowed intervention by a party post-judgment it has usually required a 'strong showing' by the party. *McClain v. Wagner Elec. Corp.,* 550 F.2d 1115, 1120 (8th Cir. 1976). Generally, these motions have centered around an analysis of timeliness of the intervention and why it was not made sooner. Here, UAIC argues a timeliness must be in its favor as it had no duty to intervene in the 2007 action, much less notice, of the amended judgment prior to July 2018.

Further, federal courts examining the issue have also examined whether it prejudice the interests of the parties or, burden the court. *McDonald v. E.J. Lavino Co.*, 430 F. 2d 1065 (1970). Indeed, "it has been the traditional attitude of the federal courts to allow intervention where no one would be hurt and greater justice would be attained." *Id.* at 1072. Here, UAIC argues just such a determination may be made here. The fact is no party will be prejudiced by UAIC's intervention. The issue of the expired judgment 2008 judgment and, this attempt to "amend" it were on appeal anyway, so Plaintiff is not prejudiced. UAIC is seeking to alleviate a multi-million dollar judgment against Lewis so, *he will be helped, not prejudiced* by UAIC's intervention. Finally, and most importantly, given what appears to be clear conflicts and, potential collusive attempts at a fraud upon the court, **greater justice will be attained** by allowing UAIC's intervention in the 2007 matter. Accordingly, based on the above-cited case law and principles, this Court may allow UAIC's intervention, post-judgment.

Alternatively, UAIC argues that the facts set forth herein are plain and offer grounds for this court to sanction Plaintiff and/or third party plaintiff Lewis. In *Bahena v Goodyear Tire & Rubber Co.,* 126 Nev. 243 (2010), the court specifically reiterated that this court has the **inherent equitable power to dismiss actions or enter defaults for "abusive litigation practices."** In that case, the court's decision to impose "non case concluding sanctions" against Goodyear for abusive discovery practices was upheld. *Id.* In the case at bar, UAIC argues that Plaintiff and third party plaintiff Lewis' actions and likely collusive conduct is sufficient to warrant hearing and imposition of sanctions which, in this case, should be vacating the 2018 amended judgment.

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

Given the fairly egregious attempt to prevent UAIC from having retained defense counsel vacate the improper attempt to amend an expired judgment, when such judgment was procured without notice, while these issues were on appeal and, with Plaintiff's counsel representing both

sides – UAIC pleads with this Court to exercise its own discretion and authority and allow UAIC's intervention in the 2007 case and/or to vacate the amended judgment under its equitable authority to do so based on all of the above.

5. UAIC's breach of the duty to defend in 2007, should have no effect on its ability to intervene in and, defend, the new 2018 matter, where no judgment has been entered and where it was filed/initiated later only after UAIC's duty to defend was found.

It appears that movants' additional argument is that, as UAIC breached the policy *in 2007,* when it initially refused to defend Lewis *in regard to the original 2007 action*, it cannot intervene or defend him now in the new 2018 action (or, the 2007 action) as it has relinquished the right to control the defense. Movants rely on a California citation for this proposition. In short, the theory being advanced is distinguishable from the case at bar for 2 simple reasons: UAIC had no policy in effect for Lewis (and, therefore, duty to defend) until October 2013 and, second, these ***are both new actions*** and, thus UAIC never breached the duty to defend these "new" actions. Accordingly, this argument fails to serve as grounds to deny UAIC's interventions herein..

It is axiomatic that a policy a liability insurance comes with a duty to defend and, that same duty is broader than the duty to indemnify.[12] *United Nat'l Ins. Co. v. Frontier Ins. Co.,* 120 Nev. 678 (2004). It is further well-settled in Nevada that when an insurer retains defense counsel to defend its insured, same counsel represents **both** the insurer and insured and has duties to both. *Nev. Yellow Cab Corp. v Eight Jud. Dist. Court of Nev.,* 123 Nev. 44 (2007). Such dual representation is allowed as long as no actual conflict exists. *Id.*

Accordingly, under the above noted case law, UAIC has a duty to defend the newly filed 2018 action on Lewis' behalf – and attempt to relieve Lewis from the "amended judgment" in

the 2007 action. There is nothing improper in this regard. The fact remains UAIC's duty to defend was only established, at law, in 2013 and, thus, UAIC is trying to comply with same here. See *Exhibit 'B.'* The issues surrounding the amending of the 2008 judgment and, new suit filed, *only arose this year* and, thus, UAIC's duty to defend these new judgments and claims only arose now. By seeking to stand by its duty to defend Lewis and, seeking to relieve him of an expired multi-million dollar judgment - which UAIC believes was improperly attempted to be revived- UAIC was only acting on a duty to defend that was only found by the Court in 2013 as stated in the Affidavit of Brandon Carroll (*Exhibit 'B'*). Moreover, these issues are partially before the Nevada Supreme Court. See *Exhibit 'X.'*

The case cited by movants in support of these arguments, *Hinton v. Beck*, 176 Cal. App. 4th 1378 (Ca. Ct. of App. 2009), is both non-binding on this court and, easily distinguishable. In that case the Court prevented an insurer from intervening in a personal injury case, while it was still being litigated, after it failed to defend. *Id.* Here, the matter UAIC allegedly failed to defend was litigated back *in 2008* and the judgment entered then. UAIC has not tried to intervene in that *original* matter, nor challenge the *original default judgment entered in 2008*. Rather, only after a court found a duty to defend and, then, after UAIC learned of an improper attempt to revive the expired 2008 judgment through amendment and, that a *new action had been filed*, did UAIC seek to intervene. Accordingly, these factors distinguish this matter from the *Hinton* case and, defeat movants argument on this point.

In the case at bar, the federal district court case, in the matter on appeal, the court there has implied an insurance policy between Lewis and UAIC for the time of the July 2007 loss. See *Exhibit 'B.'* The right of an insurer to control the defense has been recognized by the Nevada Supreme Court in *Allstate v Miller*, 125 Nev. 300, 212 P.3d 318 (NV. 2009).

(Cont.)

[12] Thus, UAIC would have a duty to defend even if policy limits have been tendered, which they have been here.

As can be seen from the above-cited principles and, implied contract, UAIC had a duty to defend Lewis beginning only on October 30, 2013. As discussed above, this implied duty was not triggered until UAIC was made aware of the new "amendment" of the expired judgment and, the new action thereupon, herein, when Nalder gave notice she was going to default Lewis. See *Exhibit 'B', including attachments thereto.* Given these events, UAIC felt it needed to defend its insured and did so, despite counsel for third party Lewis' interference because of his conflicted dual representation of the creditor and debtor, eventually retaining Randy Tindall, Esq. to file necessary motions to vacate the "amended" judgment and dismiss the new action. *Id.* This was reasonable and proper under the circumstances. Lewis has yet to articulate how this will/has harmed him. Accordingly, at the very least UAIC's actions were reasonable and timely under statute and case law. Most importantly, there has been no judgment entered in the 2018 case and UAIC can meet the criteria for intervention, so movants motion should be denied in regard to both interventions- but certainly in regard to the 2018 action.

6. UAIC intervention in both the 2007 and 2018 matters complied with the factors for such intervention.

As can be seen, movants do not dare argue that UAIC did not meet the criteria for intervention under N.R.C.P. 24. Accordingly, this Court should take this omission *as an admission* movants' acknowledge UAIC's intervention is proper under this rule.

UAIC sought to intervene under N.R.C.P. 24. NRCP 24(a)(2) imposes four (4) requirements for the intervention of right: (1) the application must be timely; (2) it must show an interest in the subject matter of the action; (3) it must show that the protection of the interest may be impaired by the disposition of the action; and (4) it must show that the interest is not adequately represented by an existing party. *State Indus. Ins. Sys. v. Eighth Judicial Dist. Court*, 111 Nev. 28, 888 P.2d 911 (1995). [13]

[13] The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be

In arguing the Motion UAIC argued, alternatively, that it had an interest that may be impaired *not only in protecting Lewis*, but because "UAIC could potentially be responsible for any damages Lewis is found liable for – including the instant amended judgment." As this Court can plainly see, if UAIC did not have such an interest to protect – both for itself and, its insured Lewis - the judgment-creditor would likely not being engaged in such machinations to prevent same.

The fact is, UAIC's intervention was done as a necessity to protect both Lewis and UAIC due to Lewis' counsel's conflicted machinations. To allow these motions to void the interventions now would be to undermine the issues of the validity of an expired judgment – the exact issue Nalder has sought to forum shop away from the Nevada Supreme Court – and reward this behavior. Thus, the motions should be denied.

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(Cont.)
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 parties.

V.

CONCLUSION

Based upon the foregoing, Defendants UNITED AUTOMOBILE INSURANCE COMPANY respectfully requests that this Court deny movants' motions seeking relief from the orders allowing UAIC's Intervention in both actions, consolidated herein. Additionally, UAIC asks for a stay of all matters in both actions pending the appeal. Alternatively, UAIC asks for an evidentiary hearing for a fraud upon the court and/or for the court to vacate the 2008 amended judgment on its own motion.

DATED this 31 day of December, 2018.

ATKIN WINNER & SHERROD

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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

CERTIFICATE OF SERVICE

I certify that on this 31 day of December, 2018, the foregoing **UAIC'S OPPOSITION TO THIRD PARTY PLAINTIFF LEWIS' MOTION FOR RELIEF FROM ORDERS ON ORDER SHORTENING TIME AND, ALL JOINDERS THERETO** was served on the following by [ ] Electronic Service pursuant to NEFR 9 [X] Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [ ] mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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

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

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

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

Daniel Polsenberg, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV. 89169
Counsel for third party defendants Tindal and Resnick & Louis

An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT "A"

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

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Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants.

CASE NO.: A-18-772220-C

DEPT NO.: XXIX

THREE DAY NOTICE TO PLEAD

Date: n/a
Time: n/a

To: Gary Lewis, Defendant

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

Dated this 17 day of July 2018.

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

CERTIFICATE OF MAILING

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

Gary Lewis
733 Minnesota Avenue
Glendora, CA 91740

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

M L Holdstein

An Employee of
Stephens Gourley & Bywater

EXHIBIT "B"

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

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

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

I, BRANDON CARROLL, declare:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 12th day of December, 2018.

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

SUBSCRIBED AND SWORN to before me

This 12th day of December 2018

NOTARY PUBLIC in and for said Miami Dade County, Florida

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

EXHIBIT "A"
TO AFFIDAVIT

UNITED AUTOMOBILE INSURANCE COMPANY DETACH AND RETAIN THIS STATEMENT

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

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

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

EXHIBIT "B"
TO AFFIDAVIT

STEPHENS & 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

JUL 19 2018 TEW

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

THREE DAY NOTICE TO PLEAD

Date: n/a
Time: n/a

To: Gary Lewis, Defendant

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

Dated this 17 day of July 2018.

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

CERTIFICATE OF MAILING

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

Gary Lewis
733 Minnesota Avenue
Glendora, CA 91740

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

M L Holdstein

An Employee of
Stephens Gourley & Bywater

EXHIBIT "C"
TO AFFIDAVIT

ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

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

August 10, 2018

Via Email: thomasc@injuryhelpnow.com

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

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

Dear Tommy:

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

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

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

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

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

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

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

Sincerely,

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

Dictated by Stephen Rogers, Esq.
Signed in his absence

Stephen H. Rogers, Esq.

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

DEFENDANT'S MOTION TO DISMISS

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

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

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POINTS AND AUTHORITIES

I.

INTRODUCTION

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

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

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

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

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

II.

STATEMENT OF FACTS

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

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

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

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

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

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

III.

MOTION TO DISMISS STANDARD

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

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

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

IV.

ARGUMENT

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

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

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

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

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

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

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

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

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

Regarding Cheyenne's request that the Court enter another amended judgment, adding interest accrued through April 5, 2018, it is unclear why this was included in a Complaint. Seeking to amend a judgment is not a cause of action. Cheyenne has demonstrated that she knows how to properly petition the Court to amend a judgment, as she has already done so once. This claim is inappropriately included in the Complaint, and should be dismissed.

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

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

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

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

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

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

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

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

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V.

CONCLUSION

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

CERTIFICATE OF SERVICE

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

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

An Employee of
Rogers, Mastrangelo, Carvalho & Mitchell

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

~ Tab 6 page 3

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants.

CASE NO.: 07A549111

DEPT. NO.: 29

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

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

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

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POINTS AND AUTHORITIES

I.

INTRODUCTION

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

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

II.

STATEMENT OF FACTS

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

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

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

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

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

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

III.

ARGUMENT

A. The Judgment Expired on June 3, 2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The Amended Judgment is void

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

IV.

CONCLUSION

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

DATED this ____ day of August, 2018.

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

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

CERTIFICATE OF SERVICE

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

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

An Employee of
Rogers, Mastrangelo, Carvalho & Mitchell

EXHIBIT "D"
TO AFFIDAVIT

CHRISTENSEN LAW
www.injuryhelpnow.com

August 13, 2018

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

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

Re: Gary Lewis

Dear Stephen:

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

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

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

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

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

1. Within 6 years:

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

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

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

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

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

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

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

Very truly yours,

Tommy Christensen
CHRISTENSEN LAW OFFICE, LLC

EXHIBIT "E"
TO AFFIDAVIT

ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

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

August 23, 2018

Via Email: thomasc@injuryhelpnow.com

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

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

Dear Tommy:

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

Sincerely,

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

Dictated by Stephen Rogers, Esq.
Signed in his absence

Stephen H. Rogers, Esq.

SHR/mms
cc: Gary Lewis
M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 082318.wpd

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

EXHIBIT "F"
TO AFFIDAVIT

Carolyn Mangundayao

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

Tom:

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

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

Please contact me with any questions.

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

RM CM | ROGERS MASTRANGELO CARVALHO & MITCHELL
Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third Street
Las Vegas, Nevada 89101
Telephone: (702) 383-3400
Facsimile: (702) 384-1460
Email: srogers@rmcmlaw.com

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

See attached.

Thank you.

ROGERS MASTRANGELO CARVALHO & MITCHELL

Carolyn Mangundayao
Legal Assistant to Stephen H. Rogers, Esq., Bert O. Mitchell, Esq. & William C. Mitchell, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third Street
Las Vegas, Nevada 89101
Telephone: (702) 383-3400
Facsimile: (702) 384-1460
Email: cmangundayao@rmcmlaw.com

From: Thomas Christensen [mailto:thomasc@injuryhelpnow.com]
Sent: Thursday, September 06, 2018 5:46 PM
To: Steve Rogers <srogers@rmcmlaw.com>; breenarntz@me.com
Cc: Carolyn Mangundayao <cmangundayao@rmcmlaw.com>; Reception <receptionist@injuryhelpnow.com>
Subject: Gary Lewis

Stephen,

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

Tommy Christensen

Christensen Law Offices

EXHIBIT "C"

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS and DOES I through V, inclusive, Defendants, UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor.	CASE NO.: 07A549111 DEPT NO.: XX CASE NO.: A-18-772220-C DEPT. NO.: XX AFFIDAVIT OF VICTORIA HALL IN SUPPORT OF UAIC'S OPPOSITIONS TO THE MOTIONS FOR RELIEF FROM ORDERS AND JOINDERS IN MOTIONS FOR RELIEF FROM ORDERS ON ORDER SHORTENING TIME

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

I, VICTORIA HALL, being duly sworn, on oath, deposes and says:

1. That I am an employee of the law firm, Atkin Winner & Sherrod.
2. That I am the legal assistant to Matthew J. Douglas, Esq.
3. I am familiar with the matters set forth in this affidavit and same are based upon my own personal knowledge of filing documents with the court in this case and contacting the Clerk of the Court, and if called as a witness, I could and would competently testify to the facts stated herein.
4. I make this declaration in support of UAIC's Opposition to the Motions for Relief from Order and Joinders in Motions for Relief from Orders, on an Order Shortening Time;

5. On August 16th, 2018 I electronically filed and served UAIC's Motion to Intervene on the Odyssey e-File NV web site in case no. A-18-772220-C matter in accordance with the usual and customary practice of electronically serving pleadings in said Court;

6. That I served UAIC's Motion to Intervene in case no. A-18-772220-C electronically, as indicated on the certificate of service I prepared with same filing, and then submitting it in the Odyssey system to serve all parties of record;

7. That, from my review of the Court docket at the time I served UAIC's Motion to Intervene in case no. A-18-772220-C the only party that had filed any pleading or made an appearance was counsel for Plaintiff David Stephens, Esq.;

8. That on August 17th, 2018 I electronically filed and served UAIC's Motion to Intervene in case no. 07A549111 on the Odyssey e-File NV in accordance with the usual and customary practice of electronically serving pleadings in said Court;

9. That, from my review of the Court docket at the time I served UAIC's Motion to Intervene in case no. 07A549111 the only party that had filed any pleading or made an appearance in 2018 was counsel for Plaintiff David Stephens, Esq.;

10. It was unknown to me at the time of filing the above noted Motions to Intervene, that David Stephens, Esq. had, for some unknown reason, failed to add his firm to the electronic service list for these matters on Odyssey;

11. That I have since contacted the Clerk of the Court for the Eighth Judicial District who confirmed that all attorneys filing pleadings in the said court must be registered for electronic service and, add themselves to the electronic service on Odyssey and, serve electronically;

12. I also mailed "Filed", stamped, copies of the both the Motions to intervene, in case no. A-18-772220-C and in case no. 07A549111, with Notices of the Motion indicating that the hearing of the Motions were to be held "IN CHAMBERS", from our office at 1117 S. Rancho, Las Vegas,. NV. 89183, by regular U.S. mail, to Plaintiff's counsel David A. Stephens, Esq. at STEPHENS, GOURLEY &

BYWATER 3636 North Rancho Drive Las Vegas, NV 89130 on August 17, 2018, the same address for said counsel noted on my certificate of service;

13. The copies of both of UAIC's Motions to Intervene, in both cases, that I mailed to Plaintiff's counsel David Stephens, Esq. on August 17th, 2018, were not returned by the post office;

14. That although I served both Motions to Intervene, in both cases, by mailing a copy of said Motions to Counsel David Stephens, Esq. at the address listed on my certificate of service, on August 17th, 2018, as an oversight I failed to check the appropriate box on the certificate of service for the Motion filed in case no. A-18-772220-C indicating service was made by both electronic service and U.S. mail and, instead only checked the box that the motion was served via electronic service;

15. That although I served both Motions to Intervene, in both cases, by mailing a copy of said Motions to Counsel David Stephens, Esq. at the address listed on my certificate of service, on August 17th, 2018, as an oversight, I failed to check any appropriate box on the certificate of service for the Motion filed in case no. 07A549111, indicating service was made by both electronic service and U.S. mail and, instead failed to check any box;

16. Further Affiant sayeth naught;

DATED this 20th day of December, 2018.

Victoria Hall
VICTORIA HALL

Subscribed and sworn to before me
This 20th day of December 2018

Deanna Duarte
NOTARY PUBLIC

DEANNA DUARTE
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 05-28-19
Certificate No: 15-2235-1

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT "D"

From : dstephens@sgblawfirm.com
To : mdouglas@awslawyers.com
Sent : 9/14/2018 9:08AM
Subject : RE: Cheyenne Nalder v. Gary Lewis

Dear Matt,

If I had an answer to your question I would just file an opposition. I am researching to see if there is a basis for opposing either motion.

Off the top of my head, I think your motion is too late as to the 2007 lawsuit.

Thanks,

David A. Stephens, Esq.
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-2355
Facsimile: (702) 656-2776
mailto:dstephens@sgblawfirm.com

From: Matthew Douglas [mailto:mdouglas@awslawyers.com]
Sent: Thursday, September 13, 2018 12:02 PM
To: David Stephens
Cc: Tom Winner
Subject: RE: Cheyenne Nalder v. Gary Lewis

David-

Thanks for the email and further explanation. However, you have not responded to my question posed in my initial response to you earlier this week.

Specifically, in order to assess your request *can you kindly articulate what □response□ or, opposition, you have or, would like to file, in regard to the 2 Motions to intervene*? In other words what is the nature of you planned objection or, opposition, to these two essentially ministerial motions?

Kindly let me know so I can consider your request. Thanks,

Matthew J. Douglas

logo.jpg

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

From: David Stephens <dstephens@sgblawfirm.com>
Sent: Wednesday, September 12, 2018 5:23 PM
To: Matthew Douglas <mdouglas@awslawyers.com>
Subject: RE: Cheyenne Nalder v. Gary Lewis

Dear Matt,

Thanks for the courtesy.

I hope you did not think I was accusing you of not practicing properly. I have worked on cases against Trevor and Tom and they have always followed the rules and been professionals. I believe that you would do the same working for them. All I know is that I did not receive them. Whether they got lost in the Ethernet and mail or we mishandled them I do not know.

I can have an opposition filed within one week from today if that works for you. If you need time to file a reply you could calculate that from then.

If my suggestion does not work, let me know what you think works.

I appreciate your courtesy.

Sincerely,

David A. Stephens, Esq.
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-2355
Facsimile: (702) 656-2776
mailto:dstephens@sgblawfirm.com

From: Matthew Douglas [mailto:mdouglas@awslawyers.com]
Sent: Tuesday, September 11, 2018 6:28 PM
To: David Stephens
Cc: Victoria Hall; Tom Winner
Subject: RE: Cheyenne Nalder v. Gary Lewis

David-

I was in deposition today so I am just getting a chance to respond to your email. In any event, my assistant tells me we properly e-served the Motion to Intervene in the □new□ case A-18-772220-C, pursuant to court rules and, further, as to the original case, case no. 07A549111, mailed the notice and Motion to intervene to you as it is an old case not on e-filing. So, you should have received proper notice for both.

Regardless, in order to assess your request can you kindly articulate what □response□ or, opposition, you have or, would like to file, in regard to the 2 Motions to intervene?

Thanks,

logo.jpg

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

From: David Stephens <dstephens@sgblawfirm.com>
Sent: Tuesday, September 11, 2018 10:51 AM
To: Matthew Douglas <mdouglas@awslawyers.com>
Subject: Cheyenne Nalder v. Gary Lewis

Dear Matthew:

As I was recently checking on the status of a default against Mr. Lewis, I learned that you had filed a motion to intervene in the case on behalf of United Automobile Insurance Company on August 16, 2018. That motion to intervene has never been served upon me. Thus, I have not had the opportunity to respond to that motion to intervene.

I am writing to request that you continue the motion to intervene and serve me a copy so that I can file an appropriate and timely response with the court.

That finding made me curious and I checked the other case filed by James Nalder against Gary Lewis in which I am the attorney of record for Cheyenne Nalder, now that she has reached the age of majority, I found that you filed a motion to intervene in that case on August 17, 2018.

I have not been served a copy of that motion and I am writing to request that you continue the hearing of that motion and serve me a copy so that I can file an appropriate and timely response with the court.

I appreciate your consideration and look forward to hearing from you promptly as to this request.

Sincerely,

David A. Stephens, Esq.
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-2355
Facsimile: (702) 656-2776
mailto:dstephens@sgblawfirm.com

EXHIBIT "E"

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@sgblawfirm.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.

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

II. FACTS

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

Cheyenne was a minor at the time of the accident.

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

This accident caused serious injuries to Cheyenne.

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

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

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

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

---

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

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

ad litem.

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

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

III. UAIC IS NOT ENTITLED TO INTERVENE IN THIS MATTER

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

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

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

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

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

> "To avoid any confusion regarding this matter, we clarify that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs. A post-judgment order awarding attorney's fees and/or costs may be appealed as a special order made after final judgment, pursuant to NRAP 3A(b)(2). *See Smith v. Crown Financial Services*, 111 Nev. 277, 280 n. 2, 890 P.2d 769, 771 n. 2 (1995)."

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

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

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

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

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

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

Dated this 14 day of September, 2018.

STEPHENS & BYWATER, P.C.

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

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.

An Employee of Stephens & Bywater

EXHIBIT "F"

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Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

Cheyenne was a minor at the time of the accident.

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

This accident caused serious injuries to Cheyenne.

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

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

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

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

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

Dated this 21 day of September, 2018.

STEPHENS & BYWATER, P.C.

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

CERTIFICATE OF SERVICE

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

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An Employee of Stephens & Bywater

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Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

CASE NO.: 07A549111

DEPT NO.: XXIX

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EXHIBIT "G"

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Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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[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. It may have been because he was not yet registered for eservice when the motion was filed.

Mr. Douglas responded by stating that the motion to intervene was eserved on August 16, 2018 on Counsel's email.[2] Counsel for Plaintiff indicated that it had not been received. Mr. Douglas then indicated that he needed to know the grounds for opposing the motion before he could agree to an extension. Thus, it became easier to do the research and file an opposition than do the research on the grounds for the opposition than to get an extension of time to file an opposition. Thus, this opposition is being filed late.

Additionally, the motion to intervene was never served on Mr. Lewis or his attorneys, which would be required in that he is a party and has not been defaulted. (See proof of service on Motion to Intervene).

II. FACTS

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

Cheyenne was a minor at the time of the accident.

The negligence of Gary Lewis was the cause of the accident.

Cheyenne suffered serious injuries due to this accident.

On June 3, 2008, Cheyenne, with her father as her guardian ad litem, obtained a default judgment against Lewis for $3,500,00.00.

At the time the judgment was entered Cheyenne was represented by Christensen Law Offices.[3]

None of that judgment has ever been paid, with the exception of $15,000.00, which was later paid by United Auto Insurance Company, ("UAIC"), as a result of a suit filed against UAIC, which was alleged to be the insurer for Lewis at the time of the accident, for bad faith,

---

[2] Mr. Stephens is not sure when he set up eservice on him in this matter, but he believes that it was in early September, 2018, which was after the date the motion was filed and eserved.

[3] It is counsel's understanding that Cheyenne is represented by Tom Christensen, Esq., and Dennis Prince, Esq., in the litigation and pending appeals involving UAIC.

failure to defend, and other claims for relief.

Out of an abundance of caution, upon learning that UAIC was maintaining that her judgment against Lewis had expired, Cheyenne filed this suit through Stephens & Bywater, P.C.

By filing this suit, Cheyenne is not seeking a double recovery, which would be impossible because she has never recovered anything, except the $15,000.00 payment from UAIC. Cheyenne will credit that payment against any judgment she receives in this suit.

III. UAIC SHOULD NOT BE ALLOWED TO INTERVENE IN THIS MATTER

NRCP 24 states:

> **(a) Intervention of Right**. Upon timely application anyone shall be 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 the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
>
> **(b) Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.
>
> **(c) Procedure**. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute

gives a right to intervene.

UAIC does not argue for permissive intervention under NRCP 24(b), so the opposition will focus on NRCP 24(a).

A. UAIC HAS NO INTEREST TO PROTECT

UAIC does not point to any statute that gives it an unconditional right to intervene.

Thus, to intervene, UAIC must claim "an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest." (NRCP 24(a)(2)).

What is the interest that UAIC seeks to protect? That interest is ill-defined, at best.

UAIC does not have a direct interest in the claims at issue. Neither it nor its employees were involved in the accident. Thus, it has no direct liability for the accident.

It did not defend Lewis when Cheyenne initially filed suit against him in 2007 following the accident. UAIC denied that Lewis was covered by a UAIC policy at the time of the accident. When the US District Court found that there may have been coverage due to an ambiguity, UAIC still did not move to reopen the case in order to attempt to set aside the default judgment Cheyenne obtained against Lewis in 2008. It simply tendered the $15,000.00 policy limits to Cheyenne. Having paid Cheyenne the policy limits of the insurance policy which insured Lewis, UAIC has no risk under the insurance policy itself.

What UAIC appears to be worried about is some contingent and unliquidated liability, based on allegations of breach of the duty to defend or tort liability arising out of that same failure to defend in the original suit filed in 2007. Those issues are being litigated in US District Court and the Ninth Circuit. They are not plead in this matter. If UAIC is not willing to pay any judgment that might be awarded in this matter, then UAIC has no interest to protect in this suit and it should not be allowed to intervene. If intervention is allowed, then UAIC must consent to be liable for any judgment ultimately entered in this action.

B. ANY CLAIMED UAIC INTERESTS ARE ADEQUATELY REPRESENTED

UAIC has misread or misconstrued the language of Exhibit H[4], attached to the moving papers. UAIC argues that in Exhibit H, Mr. Christensen prohibits UAIC from appearing in this matter. However, that is not what Exhibit H states. In Exhibit H, Mr. Christensen advises Mr. Rogers that Lewis does not want Mr. Rogers to take positions that are frivolous, not well supported, and might result in increased damages against Mr. Lewis unless UAIC is willing to be responsible for those increased damages and for any judgment ultimately entered against Mr. Lewis. This request makes sense. Why should Lewis consent to carte blanche representation by UAIC if the only person benefitting from the representation is UAIC, and UAIC's approach may cause greater harm to Lewis if UAIC's position is found to be frivolous? If Lewis is an insured of UAIC, it must put his interests equal to its own interests. There is no exhibit attached to the motion which explains why UAIC representing Lewis benefits Lewis. If there was such a communication, Plaintiff believes that it would have been attached to the motion to intervene. Apparently, rather than explaining to Lewis how the UAIC representation could benefit him and getting consent to represent him, UAIC has decided to just attempt to intervene.

III. CHEYENNE IS RENEWING THE JUDGMENT IN THE ONLY WAY THAT IS CURRENTLY AVAILABLE

UAIC implies that there is some perfidy on the part of Cheyenne in filing this suit. However, nothing could be further from the truth. Statutes of limitation wait for no man, or woman, or for that matter appellate court decisions. Due to Cheyenne reaching the age of majority she has a risk that certain statutes of limitation may expire. She has every right to file suit to protect the loss of a right due to the running of any applicable statutes of limitation. She is not required to sit on her hands and

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[4] While the privilege is not Cheyenne's to claim, this letter appears to be a confidential communication between Tom Christensen, Esq., and Stephen Rogers, Esq., who were both representing Mr. Lewis at the time the letter was written, discussing the best litigation strategy for Mr. Lewis as to this lawsuit. Thus, it should be privileged from disclosure unless Mr. Lewis has consented to such disclosure. See NRS 49.095.

patiently await for an appellate decision which may not be issued before statutes run.

In the alternative, Cheyenne is renewing her judgment in the only way that is currently available to her an action on the judgment pursuant to *Mandlebaum v. Gregovich*, 50 P. 849, 24 Nev. 154 (Nev. 1897). This is the only avenue clearly available to renew because NRS 17.214, the judgment renewal statute, allows for renewal "within 90 days before the date the judgment expires by limitation." The six-year statute of limitations on the judgment was tolled by three separate tolling statutes and is still tolled today by NRS 11.300 because Mr. Lewis has been continually absent from the State of Nevada and not capable of service of process in the state since at least 2010. Thus a renewal under NRS 17.214 would be unnecessary, and even worse it could be invalid because it is too early.

As Plaintiff understands it, the issue certified to the Nevada Supreme Court, and accepted by them, is whether consequential damages based on a judgment that was not renewed are recoverable against an insurance carrier. That issue is much more narrow than the issues in this case. One of the issues plead in this case is whether the statute of limitation on the judgment was even running such that she needed to renew the judgment. If the judgment did not have to be renewed because the six-year statute was not running, or was tolled, then the issue certified to the Nevada Supreme Court is actually moot because the judgment is still valid. At minimum that issue is not before the Nevada Supreme Court.

IV. UAIC'S MOTION IS NOT TIMELY

It is difficult to see what interest UAIC has that needs protection in this lawsuit that is not adequately represented by Lewis. Apparently, UAIC, at some point prior to March 14, 2017, (the date UAIC filed to dismiss the Nalder & Lewis v. UAIC federal court lawsuit), came to the flawed conclusion that the statute of limitations on the Nalder judgment against Lewis had expired. UAIC did not attempt to test that hypothesis for the benefit of Lewis by filing a declaratory relief action on his behalf or attempting to intervene to assert the statute of limitations as a defense on Lewis' behalf. UAIC instead filed a motion to dismiss the Nalder & Lewis federal lawsuit against

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 2

David A. Stephens, Esq.
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UAIC which had been pending for nearly eight years had two judgments entered, two appeals argued and one certified question to the Nevada Supreme Court. Waiting to "protect" Lewis for over a year is not timely.

For these reasons the motion to intervene must be denied.

Dated this 17th day of September, 2018

s/ David A Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2018, I served the following document: **PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

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

☐ 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:

E. Breen Arntz, Esq.
5545 Mountain Vista, Suite E
Las Vegas, NV 89120
Attorney for Gary Lewis

■ 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).

E. Breen Arntz, Esq., 702-446-8164

☐ BY HAND DELIVER: 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

EXHIBIT "H"

OPPM
E. Breen Arntz
Nevada Bar #3853
5545 S. Mountain Vista Street, Suite F
Las Vegas, NV 89120
breen@breen.com

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendant.	Case No. A-18-772220-C Dept. No. XXIX Date: 9/19/2018 Time: 3am Chambers

DEFENDANT'S OPPOSITION TO MOTION TO INTERVENE AND JOINDER TO PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE

Gary Lewis, through his attorney, E. Breen Arntz, Esq., opposes the Motion to Intervene filed by United Automobile Insurance Company (UAIC). UAIC's Motion should be denied because it was not served on Defendant, UAIC has no interest to be protected, any alleged interest is adequately protected by Lewis' counsel, is not timely, and UAIC's statute of limitations defense is frivolous. Defendant joins in the opposition filed by David A. Stephens, Esq., counsel for Cheyenne Nalder.

I. FACTS

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

Cheyenne was a minor at the time of the accident.

The negligence of Gary Lewis was the cause of the accident.

Cheyenne suffered serious injuries due to this accident.

On June 3, 2008, Cheyenne, with her father as her guardian ad litem, obtained a default judgment against Lewis for $3,500,000.00.

At the time the judgment was entered Cheyenne was represented by Christensen Law Offices. It is counsel's understanding that Cheyenne Lewis are still represented by Thomas Christensen, Esq., and Dennis Prince, Esq., in the litigation and pending appeals involving UAIC.

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

UAIC never approached Lewis with the idea that the judgment had expired. UAIC never gathered any facts regarding Lewis' absence from the State of Nevada since 2010. UAIC never gathered any facts regarding Lewis not being subject to service of process in the State of Nevada since 2010 to the present. UAIC never attempted to defend Lewis and have the statute of limitations on the judgment declared expired. Upon learning that UAIC was maintaining that Nalder's judgment against Lewis had expired, Cheyenne filed this suit through Stephens & Bywater, P.C.

UAIC attempted to mislead various defense counsel to interpose a frivolous defense on behalf of Gary Lewis without his knowledge or consent. UAIC misused information obtained from Mr. Lewis to attempt to intervene in this action without notifying Mr. Lewis.

II. UAIC SHOULD NOT BE ALLOWED TO INTERVENE IN THIS MATTER

NRCP 24 states:

(a) Intervention of Right. Upon timely application anyone shall be 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 the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

UAIC does not argue for permissive intervention under NRCP 24(b), so the opposition will focus on NRCP 24(a).

UAIC does not point to any statute that gives it an unconditional right to intervene.

III. UAIC HAS NO INTEREST TO PROTECT

Thus, to intervene, UAIC must claim "an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest." (NRCP 24(a)(2)). UAIC does not have an interest in the claims at issue. Neither it nor its employees

were involved in the accident. Thus, it has no direct liability for the accident. In addition, UAIC has paid their policy limits and contend that they are not liable for any other payments to or on behalf of Lewis.

UAIC did not defend Lewis when Cheyenne Nalder initially filed suit against him in 2007 following the accident. UAIC denied that Lewis was covered by a UAIC policy at the time of the accident. When the Federal District Court found there was coverage, UAIC still did not move to set aside the default judgment Cheyenne obtained against Lewis in 2008. It simply tendered the $15,000.00 policy limits to Cheyenne.

What UAIC appears to be worried about is some contingent and unliquidated liability, based on allegations of breach of the duty to defend or tort liability arising out of that same failure to defend in the original suit filed in 2007. If UAIC is not willing to pay any part of any judgment that might be awarded against Lewis, then UAIC has no interest to protect in this suit and it should not be allowed to intervene. If intervention is allowed, then UAIC has consented to be liable for any judgment against Lewis ultimately entered in this action.

IV. ANY CLAIMED UAIC INTERESTS ARE ADEQUATELY REPRESENTED

UAIC has misread or misconstrued the language of Exhibit H[1], attached to the moving papers. UAIC argues that in Exhibit H, Mr. Christensen prohibits UAIC from appearing in this matter. However, that is not what Exhibit H states. In Exhibit H, Mr. Christensen advises Mr. Rogers that Lewis does not want Mr. Rogers to take positions that are frivolous, not well supported, and might result in increased damages against Mr. Lewis unless UAIC is willing to be responsible for those increased damages and for any judgment ultimately entered against Mr. Lewis. This request makes sense. Why should Lewis consent to cart blanch representation by

[1] This letter is a confidential communication between Tom Christensen, Esq., and Stephen Rogers, Esq., who were both representing Mr. Lewis at the time, discussing the best litigation strategy for Mr. Lewis as to this lawsuit. Thus, it is privileged from disclosure and Mr. Lewis objects to its disclosure and suggests this indicates that UAIC is using its "duty to defend" to harm Mr. Lewis. See NRS 49.095.

UAIC if the only person benefiting from the representation is UAIC, and the approach may cause greater harm to Lewis if UAIC's position is found to be frivolous? There is no exhibit attached to the motion which explains why UAIC representing Lewis in this suit is a benefit to Lewis. There is no exhibit attached to the motion which explains why the statute of limitations on the judgment is not tolled by Mr. Lewis' absence from the State of Nevada. This is because no such letter exists. Rather than showing Mr. Lewis how the representation could benefit him and getting consent to represent him, UAIC has decided to just attempt to intervene.

V. UAIC'S STATUTE OF LIMITATIONS DEFENSE IS FRIVOLOUS

UAIC claims the statute of limitations on judgments is the only statute of limitations that is not tolled by the various tolling statutes. This defense is frivolous. UAIC implies that there is some perfidy on the part of Cheyenne in filing this suit. However, nothing could be further from the truth. Statutes of limitation wait for no man, or woman, or for that matter appellate court decisions. Due to Cheyenne reaching the age of majority she has a risk that certain statutes of limitation may expire. She has every right to file suit to protect the loss of a right due to the running of any applicable statutes of limitation. She is not required to sit on her hands and patiently await for an appellate decision which may not be issued before statutes run.

In the alternative, Cheyenne is renewing her judgment in the only way that is currently available to her -- an action on the judgment pursuant to *Mandlebaum v. Gregovich*, 50 P. 849, 24 Nev. 154 (Nev. 1897). This is the only avenue clearly available to renew because NRS 17.214 the renewal statute allows for renewal "within 90 days before the date the judgment expires by limitation." The 6 year statute of limitations on the judgment was tolled by three separate tolling statutes and is still tolled today by NRS 11.300. This is because Mr. Lewis has been continually absent from the state of Nevada and not capable of service of process in the state since at least 2010 through the present. Thus a renewal under NRS 17.214 would be unnecessary or may be invalid because

it is too early. No such time frame applies to an action on a judgment which Cheyenne brought in the alternative.

VI. UAIC'S MOTION IS NOT TIMELY

It is difficult to see what interest UAIC has that needs protection in this lawsuit that is not adequately represented by Lewis. Apparently, UAIC at some point prior to March 14, 2017 (the date UAIC filed to dismiss the Nalder & Lewis v. UAIC federal court lawsuit) came to the flawed conclusion that the statute of limitations on the Nalder judgment against Lewis had expired. UAIC did not attempt to test that hypothesis for the benefit of Lewis by asking Lewis if he would like to file a declaratory relief action or attempt to invalidate the judgment as a result of the expiration of the statute of limitations. UAIC instead filed a motion to dismiss the Nalder & Lewis federal lawsuit against UAIC which had been pending for nearly eight years had two judgments entered, two appeals argued, one reversal, and one certified question to the Nevada Supreme Court. This would have left Lewis with a valid judgment and no claim against UAIC for abandoning their insured. Waiting to "protect" Lewis for over a year is not timely. Maintaining a frivolous defense does not protect Lewis either.

VII. CONCLUSION

Based upon the foregoing, UAIC's motion to intervene should be denied.

Dated this 21 day of September, 2018

/s/ E. Breen Arntz

E. Breen Arntz
Nevada Bar #3853
5545 S. Mountain Vista Street, Suite F
Las Vegas, NV 89120
breen@breen.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September, 2018, I served the following document: **DEFENDANT'S OPPOSITION TO MOTION TO INTERVENE & JOINDER TO PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE**

____ VIA ELECTRONIC FILING;

__X__ VIA ELECTRONIC SERVICE

____ 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

David A. Stephens
3636 North Rancho Drive
Las Vegas, NV 89130

_____ 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
David A. Stephens, Esq., 702-656-2776

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

/s/ Breen Arntz
Employee of Breen Arntz, Esq.

EXHIBIT "I"

STPJ (CIV)
David A. Stephens, Esq.
Nevada Bar No. 00902
Stephens & Bywater
3636 North Rancho Drive
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Telephone: (702) 656-2355
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Email: dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

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

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

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

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

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

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

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

Dated this 12 day of September, 2018

David A. Stephens, Esq.
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Stephens & Bywater
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

E. Breen Arntz, Esq.
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Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

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

JUDGMENT

Date: n/a
Time: n/a

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

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

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

DATED this _____ day of September, 2018.

_____
DISTRICT JUDGE

Submitted by:

STEPHENS & BYWATER, P.C.

_____
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorneys for Plaintiff

EXHIBIT "J"

MATTHEW J. DOUGLAS
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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 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 18 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.

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

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

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

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

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

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

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

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

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

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

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

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

Quite simply, that is not the situation here. UAIC *not Plaintiff's insurer* and, more importantly, *UAIC had no such opportunity to intervene prior to entry of this 'amended judgment.'* As discussed in UAIC's initial Motion, Plaintiff failed to renew the original, 2008, judgment in this case 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 (in the sister litigation on appeal, which is also set forth in UAIC's initial Motion) on March 14, 2017. Thereafter, on February 23, 2018 the Nevada Supreme Court issued an order accepting this second certified question and ordered Appellants to file their Opening brief within 30 days, or by March 26, 2018. *A copy of the Order accepting the second certified question was attached as Exhibit 'B' to UAIC's initial Motion.* In accepting the certified question, the Nevada Supreme Court rephrased the question as follows:

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

On August 2, Plaintiff (Appellant therein) filed her Opening Brief on this question and, UAIC has 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, 2018[1], 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.

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

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

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

as follows:

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

Id at 654.

In the case at bar it seems clear that Plaintiff'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.

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

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

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

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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 19th day of SEPTEMBER, 2018.

ATKIN WINNER & SHERROD

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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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 [X] Electronic Service pursuant to NEFR 9 [X] Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [ ] fax [X] 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
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Las Vegas, Nevada 89130

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EXHIBIT "K"

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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.: A-18-772220-C 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 it 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 18 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 MOTION FOR INTERVENTION

I.

Response to Plaintiff's Introduction & Fact Section

UAIC must note, in response to Plaintiff's 'Introduction', that Plaintiff's suggestion UAIC's Motion is improper because they failed to serve Lewis or his attorneys is amusing. As set forth in UAIC's initial Motion UAIC had tried to retain counsel for Mr. Lewis, but said counsel was quickly advised by Counsel for Plaintiff he could not speak with Mr. Lewis nor, file any Motions on his behalf in regard to this suit. Apparently, Plaintiff wants to simply default Plaintiff (as she has already done apparently) and have no one contest her spurious claims. Accordingly, for Plaintiff to now suggest UAIC is improper for having failed to notify Lewis or his attorneys is the height of hypocrisy and, thus, same should disregarded by this Court. Regardless, now that Plaintiff has defaulted Lewis it would appear this argument is irrelevant anyway, should it have had any validity to begin with.

In terms of 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 an original default judgment was obtained on June 3, 2008 by Plaintiff's father, James Nalder, as Guardian *ad litem*. Plaintiff also notes that "at that time" she was represented by Christensen Law Offices but, then, in a footnote, admits Plaintiff is still currently represented by Mr. Christensen "in the pending appeals involving UAIC" – an admission that that Mr. Christensen still represents this Plaintiff. Further, Plaintiff fails to mention, that the judgment in the original 2007 matter was filed August 26, 2008 and, 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 that 2008 judgment in the sister case herein, 07A549111, without advising the Court of same was improper.

Indeed, Plaintiff offers a stunning admission in stating "upon learning UAIC was maintaining her judgment against Lewis had expired, Cheyenne filed this suit." First, Plaintiff has at least now finally admitted her true motivation for seeking to improperly amend the 2008 judgment and file this action. That is, she clearly knew the judgment was expired and, that this was at issue in the pending appeals, yet she still attempted this 'end around' the jurisdiction of both U.S. Court of Appeals for the Ninth Circuit and the Nevada Supreme Court as noted in UAIC's initial Motion. Moreover, this admission also directly undercuts the statements by Plaintiff's counsel in her Opposition to UAIC's Motion to Intervene in the sister case 07A549111. In that Opposition, *attached hereto as Exhibit 'A' at page 2 lines 22-23,* Plaintiff innocently claims she amended the judgment because she "reached the age of majority" with no mention made of the knowing she had an expired judgment. As this Court knows, the same omission occurred in her *ex parte* Motion to amend the 2008 judgment which underlies this action. *See attached as Exhibit "B", copy of Ex Parte Motion to amend.*

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 2008 judgment and filing of the present action, did 'new' controversies 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.***

Finally, Plaintiff's argument in the end of her fact section claiming she is not seeking double recovery is an obvious attempt to fool this Court and cover up her true intentions. Not only is this statement untrue **per Plaintiff's own pleadings in this case** it is also completely irrelevant to the issues before this Court on the Motion to Intervene. As this Court can see, Plaintiff's complaint herein not only seeks to have this Court "bless" her improper attempts to amend the expired 2008 judgment, but also seek new damages on the 2007 accident. Specifically, Plaintiff's 'Claims for relief' seeks not only the original 2008 judgment plus interest, but also :

> **"2. Special damages for medical and miscellaneous expenses in excess of $41,851.89, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;**
> **3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's earning capacity in a presently unascertainable amount; "**

A copy of Plaintiff's Complaint is attached hereto as Exhibit 'E.' UAIC will leave it for this Court to draw its own conclusions, but that sure looks like attempts to recover additional monetary damages on the original 2007 loss against Lewis despite a judgment having already been entered against him on those same claims. This is clearly an attempt at double recovery. UAIC only points all of the above out to show the clear attempts to fool or mislead this Court. Attempts that UAIC now believes are a pattern, as will be set forth below. Regardless, these issues are simply not germane to the Motion to intervene. **Rather, it is just such issues which**

justify allowing UAIC to intervene so these issues can be fully and fairly litigated once UAIC is in the case.

Finally, as Plaintiff's counsel admits in his response that Mr. Christensen continues to represent his client on the original judgment underlying all these actions and in the ongoing Appellate matters. Accordingly, for Plaintiff's co-counsel in this case, Mr. Stephens, to ignore Mr. Christensen's continued representation of her and, the judgment-debtor/Defendant in this matter, Mr. Lewis – *as well as the ongoing appellate matters* – stretches the bounds of reality and as they appear to be a genuine conflict of interest. As will be set forth in detail below, we see a pattern and 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 dispute that UAIC has properly followed the procedure for intervention pursuant to NRCP 24(a)(2). Rather, the Plaintiff makes a litany of arguments **which are unsupported by any case law or other authority** and, quite frankly, are completely baseless or speculative and another attempt to mislead this Court. This Court should not be swayed by such arguments. The fact is, UAIC clearly has an interest to protect, is not adequately represented and the Motion to intervene is timely. Finally, Plaintiff's arguments concerning her needs to amend the judgment are irrelevant for consideration of this Motion. UAIC will note the defects in Plaintiff's claimed arguments and, more importantly, show that what Plaintiff is attempting is a fraud upon the court which should overcome the normal prohibition against such an intervention.

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

As this Court knows, E.D.C.R. 2.20(e) requires any Opposition to be a Motion to be filed

within 10 days of service. Here, as the present Motion was filed and served August 17, 2018, allowing 3 days for mailing, the Opposition was due no later than September 4, 2018. As the present Opposition was filed on September 17, 2018 it is technically late and this Court may disregard it and grant UAIC's Motion.

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

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

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

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

B. 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, has its own interests to protect, is not adequately represented in this action and, its Motion is timely.

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.

Intervention is governed by NRCP 24 and NRS 12.130. Although strikingly similar, NRCP 24 requires "timely application" to intervene whereas NRS 12.130 merely requires

intervention at the district court level. *Stephens v. First National Bank*, 64 Nev. 292, 182 P.2d 146 (1947). NRS 12.130(1)(c), however, specifically provides that intervention may be made as provided by the Nevada Rules of Civil Procedure.

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

1. UAIC has interests to protect both on its own behalf and on behalf of its insured, Gary Lewis.

The named Defendant LEWIS has been found to be an insured per the United States District Court Order under an implied policy of insurance with UAIC policy at the time of the accident underlying the judgments./losses for which Plaintiff seeks relief in the present action. *Exhibit 'G" to UAIC's initial Motion.* When UAIC became informed of the present action and attempted to retain counsel to defend LEWIS, UAIC was informed by Counsel for Plaintiff that he would not allow retained defense counsel to file any motion to defend LEWIS or vacate the amended judgment. *Exhibit "H" to UAIC's Initial Motion.* Without the ability of retained defense counsel to appear and mount a defense on LEWIS' behalf, it is apparent that UAIC cannot provide him an effective defense. As long as UAIC is obligated to provide such a defense, and to potentially pay any judgment against LEWIS, UAIC's interests are clearly at stake in this action. Moreover, besides protecting its insured LEWIS from a "new" action

[1] The Rule specifically reads: (a) Intervention of Right. Upon timely application anyone shall be 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 parties.

seeking to improperly revive an expired judgment, it is also true that this matter seeks to litigate issues that may directly affect UAIC by dint of the Plaintiff's seeking declaratory relief in her action on issues which may have bearing on the pending appeal involving Plaintiff and UAIC (as noted in UAIC's initial Motion. Despite what appear to be clear interests UAIC needs to protect, Plaintiff makes some irrelevant and baseless arguments and, thus this Court should disregard same.

First, in terms of defending Lewis, Plaintiff seems to argue that because UAIC did not defend him in the original action nor, set aside the 2008 judgment after the District Court found a duty to defend, it should somehow be precluded from intervening here. This argument is irrelevant and, not supported by the record. That is, what UAIC did or, did not do in the original action is not relevant for the examination of whether it has an issue to protect in this case. More importantly, however, two Federal District Court judges and the U.S. Court of Appeals for the Ninth Circuit have found **that UAIC committed no bad faith when they failed to defend Lewis in 2007 action, because they had a reasonably belief no policy was in effect for him**. However, given the U.S. District Court's order, in late 2013, finding an implied policy of insurance, as UAIC has now been put on notice of a duty to defend, it is trying to comply with said duty to defend Lewis, but Plaintiff's co-counsel, Mr. Christensen has thwarted this attempt thus far – leaving UAIC no choice but to intervene to protect Lewis. Finally, the argument that UAIC did not move to vacate the 2008 judgment, after the policy coverage was implied in 2013 is baseless because the 6-month timeframe to challenge the judgment on Rule 60 had long since passed.

Next, Plaintiff's argument that, as UAIC has paid $15,000 policy limit it has "no risk" under the insurance policy itself is also baseless. As noted above, as a policy has been implied as in force by the Courts, UAIC has a duty to defend. As this Court well knows, the duty to defend is broader than the duty to indemnify. *Allstate Ins. Co. v. Miller , 125 Nev. 300*. Accordingly, and

separate and apart from the "contingent or unliquidated liability" at issue in the pending appeal between Plaintiff and UAIC, it is likely that, should Plaintiff obtain some new judgment against Lewis in this case, Plaintiff will claim UAIC breached its duty to defend and/or owes on the new judgment. To suggest Plaintiff would do otherwise is preposterous. This is especially true where, as here, Plaintiff is seeking new damages against Lewis. Specifically, Plaintiff's 'Claims for relief' seeks not only the original 2008 judgment plus interest, but also :

> **"2. Special damages for medical and miscellaneous expenses in excess of $41,851.89, plus future medical expenses and the miscellaneous expenses incidental thereto in a presently unascertainable amount;**
> **3. Special damages for loss of wages in an amount not yet ascertained an/or diminution of Plaintiff's earning capacity, plus possible future loss of earning and/or diminution of Plaintiff's earning capacity in a presently unascertainable amount;"**

A copy of Plaintiff's Complaint is attached hereto as Exhibit 'E.' Accordingly, for Plaintiff to seek new damages against UAIC's insured, but then claim UAIC has no interest or, no exposure, if it does not defend these claims should be summarily disregarded as pure fancy.

Finally, Plaintiff alleges that UAIC's interest to protect is "ill-defined" and then makes the completely absurd argument that, as UAIC was 'not involved in the loss", it has no "direct liability. First, this is ridiculous because, as noted above, UAIC may have liability under a theory of breach of the duty to defend this action under *Miller* as set forth above. More importantly, however, Plaintiff also omits the "claims for relief" she makes in her complaint which go directly to issues that may affect UAIC in the pending appeals with Plaintiff. Specifically, Plaintiff's 'Claims for relief' seeks not only the original 2008 judgment plus interest and, new damages, but also :

> **"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."**

A copy of Plaintiff's Complaint is attached hereto as Exhibit 'E.' Accordingly, for Plaintiff claim UAIC has no interest to protect herein while at the same time seeking this Court for a

judicial determination of the validity of her attempts to improperly resurrect an expired judgment – **an issue now pending on appeal as between Plaintiff and UAIC** – is contradictory and such argument should also be summarily disregarded as pure fancy. More importantly, however, it is understandable why Plaintiff would omit the true nature of her action – because this claim for relief also clearly demonstrates UAIC's independent interest to protect.

Accordingly, as this Court can see, besides not being based in any known precedent or rule, Plaintiff's arguments that UAIC has no interest to protect are baseless. UAIC has in an interest in both protecting its insured from additional damages, but also protecting itself from potential damages and rulings which could infringe or, impact, its Appellate case.

2. UAIC's Interests are not Adequately Represented in this Suit.

Plaintiff's second argument, that UAIC's interests are adequately protected is quite unbelievable given the background of this case and the arguments set forth in section (1), herein. The facts is, as there is currently no defendant defending this cause, UAIC's interest is not sufficiently protected. Indeed, UAIC understands that Plaintiff may have already taken a default against Mr. Lewis. Such action undermines Plaintiff's arguments that UAIC's interests are adequately protected. Regardless, UAIC will respond, briefly to Plaintiff's arguments, but incorporates its arguments set forth in section one, above, as if they were set forth herein and, accordingly, asks this Court to find UAIC has an interest to protect.

For her argument, Plaintiff claims UAIC has misconstrued her co-counsel, Tommy Christensen's letter and actually tries to argue that *Exhibit 'H',* to the original Motion, does not preclude UAIC from having it initial chosen retained defense counsel, Steve Rogers, Esq.,to and defend Lewis appear. This is curious because because the letter from Mr. Christensen states the following:

"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."

Exhibit "H" to UAIC's initial Motion. As such, despite Plaintiff's sly attempts to 'unwind' Mr. Christensen's statements, I think this Court can agree that a reasonable interpretation of this statement is that the initial retained defense counsel cannot speak to Mr. Lewis nor, file any response in this action. Indeed, this is just how Mr. Steve Rogers, Esq., the Counsel UAIC initially tried to retain, perceived these statements as he wrote letters to both Mr. Christen and, Mr. Stephens, informing them that due to Mr. Christensen's refusal to let him speak to his client, Lewis, he could not represent him. *See copies of letters from Steve Rogers, Esq., attached hereto as Exhibit 'C.'* Accordingly, if the initial Counsel retained by UAIC to represent Lewis believes his representation is impossible based on Mr. Christensen's letters, the Court can take judicial notice of this and, at the very least, it reasonable to understand why UAIC believes its defense has been frustrated by Plaintiff.

Additionally, in terms of Plaintiff's esoteric musings about how UAIC's defense may or may not harm Lewis, UAIC would respond to Plaintiff with these questions : *How could not allowing UAIC to intervene and defend this action possibly benefit Mr. Lewis? Is having a multi-million dollar judgment against him which had expired be resurrected by a potential judicial declaration in this action be to his benefit? Is having the potential for additional damages to be assessed against Lewis for the 2007 loss to his benefit? Is preventing anyone from vacating or setting aside this improper amended judgment to his benefit?* Plaintiff certainly has not sought to protect Mr. Lewis in seeking default against him.

For all of the above, it is clear UAIC's interests, much less Mr. Lewis', are not adequately protected in this matter and, thus, UAIC satisfies this element and should be allowed to intervene.

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3. UAIC's Motion is Timely.

Plaintiff apparently tries to allege that UAIC's Motion is not timely because of some imagined duty on behalf of UAIC to file a declaratory judgment on the issue of the expiration of the original 2008 judgment. First, this argument is non-sensical because there is no affirmative duty, that UAIC is aware of, to file such a declaratory action. That is, the judgment expired by operation of law. Filing a declaratory action in such a circumstance is not required and, is impractical. Next, even assuming, *arguendo*, that UAIC should have filed such a declaratory action, it is still irrelevant to the Motion here. Instead the question is whether *UAIC's Motion to intervene in this action timely* and the answer is clearly yes.

When determining the timeliness of an application for intervention, it is not the length of the delay by the intervenor that is of primary importance, per se, but the extent of prejudice to the rights of existing parties resulting from the delay. *Lawler v. Ginochio*, 94 Nev. 623, 584 P.2d 667 (1978). This determination is, of course, within the sound discretion of the court. *Id.* Here, this matter is newly filed, LEWIS was only recently served, and, although Plaintiff recently claims to have taken default, no discovery has progressed, **and the matter has had no dispositive rulings made nor, trial date set**; as such, UAIC'S intervention in the instant matter will not delay the trial proceedings and, thus, should be considered timely.

Accordingly, as set forth herein, UAIC's Motion meets all the requirements for N.R.C.P. 24(c) and is timely, so the Motion should be granted.

4. Plaintiff's arguments regarding her reasons for attempting this improper renewal of the expired judgment are irrelevant to the present Motion except insofar as they are germane to the issues at stake herein – which UAIC believes further supports its Motion.

In an obvious attempt to try and justify its clear attempt to improperly revive an expired judgment, Plaintiff includes a section in her Opposition attempting to explain her actions. That is Plaintiff claims she was merely trying to amend the judgment because she reached majority or

because Lewis was out of state. First, these issues are simply not germane to the Motion at bar. That is, the issues Plaintiff is arguing are the among the claims at issue in this case and ones for which UAIC has sought to intervene and be heard on. Accordingly, this court need not address the merits of Plaintiff's action now (though it is telling Plaintiff already feels the need to "explain" her actions). Rather, this Court only need address *if UAIC may be granted Leave to intervene so as to contest these very issues.* Accordingly, the fact that Plaintiff not only admits she has improperly attempted to "renew" her expired judgment, but also argues case law and issues directly at issue in the pending appeal between Plaintiff and UAIC only serves to underscore UAIC's interest in this matter and, Plaintiff's attempts to fool this Court and attempt an 'end around' the jurisdiction of the Appellate Courts.

Specifically, Plaintiff argues that she is "renewing her judgment in the only way... available to her... pursuant to *Mandelbaum v Gregovich,* 50 P. 849, 24 Nev. 154 (1897)." This is telling because this is already the same argument she has made to the U.S. Court of Appeals for the Ninth Circuit and, which, is also before the Nevada Supreme Court. For the Court's convenience, please find attached, *as Exhibit "D", hereto*, a copy of the Ninth Circuit decision on the Motion to dismiss in the sister case *Nalder v UAIC*, 878 F3d. 754, 2017 U.S. App. LEXIS 26850. On page 3-4 this Court can observe where the Court notes that Plaintiff made this same argument (arguing *Mandlebaum)* in response to the Motion to dismiss and, moreover, the Court was unable to resolve the question of law and, thus, certified the question to the Nevada Supreme Court – *where it is currently pending.*

As such, besides offering concrete admission of UAIC's interest in this case, Plaintiff also proves she is attempting to circumvent the Nevada Supreme Court's jurisdiction on this issue and, forum shop with this Court. This should not be countenanced and, in any event, certainly, falls in favor of UAIC's Motion to Intervene being granted.

/ / /

C. UAIC also asks this Court to consider, based on all of the above, that there has been an attempt at a fraud upon the Court and hold an evidentiary hearing on this issue.

UAIC argues that the circumstances set forth not only offer additional grounds to allow UAIC to intervene, but also show clear conflict of interest and attempts at perpetrating a fraud upon the court by Plaintiff. As noted above, Plaintiff is represented by Mr. Christensen. Mr. Christensen also purports to be counsel for Lewis and has informed UAIC's first retained counsel for Lewis that he may not appear and attempt to defend this action. Now, after learning of this and trying to intervene itself to protect Lewis and, its own interests, UAIC is told by Plaintiff it cannot intervene. So, per Plaintiff, UAIC's retained defense counsel cannot defend this case and – *UAIC cannot either*. This is clearly an attempt at a fraud upon the court solely to benefit Plaintiff and her counsel - and same should not be tolerated.[2]

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

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

Id at 654.

In the case at bar it seems clear that Plaintiff'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

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

the Ninth Circuit, Plaintiff still attempted this 'amendment of judgment' and, then, filed this new action. Moreover, Mr. Christensen (Plaintiff's additional Counsel) represents **both the Plaintiff/judgment-creditor and Defendant/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 defend this farce of lawsuit by telling UAIC's first retained counsel to not to appear or file anything to defend Lewis. 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 from vacating or setting aside this improper amended judgment to his benefit? In short, it does not – **it only benefits Plaintiff and her counsel**. UAIC argues this is clear fraud and collusive conduct and, at the very least, the Court should therefore exercise its equitable power and allow UAIC's intervention and, thereafter, hold an evidentiary hearing on this fraud.

///

///

III.

CONCLUSION

Based on the foregoing, UAIC asks this Court grant it leave to intervene in this matter to protect its own interests and LEWIS'. Alternatively, that this court exercise its inherent authority and discretion and hold an evidentiary hearing on the fraud attempted for the reasons set forth above.

DATED this 19th day of SEPTEMBER, 2018.

ATKIN WINNER & SHERROD

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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

CERTIFICATE OF SERVICE

I certify that on this 19th day of September, 2018, the foregoing **MOTION TO INTERVENE** was served on the following by [ ] Electronic Service pursuant to NEFR 9 [X] 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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT "A"

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@sgblawfirm.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.

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

II. FACTS

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

Cheyenne was a minor at the time of the accident.

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

This accident caused serious injuries to Cheyenne.

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

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

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

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

---

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

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

ad litem.

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

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

III. UAIC IS NOT ENTITLED TO INTERVENE IN THIS MATTER

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

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

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

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

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

> "To avoid any confusion regarding this matter, we clarify that a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs. A post-judgment order awarding attorney's fees and/or costs may be appealed as a special order made after final judgment, pursuant to NRAP 3A(b)(2). *See Smith v. Crown Financial Services*, 111 Nev. 277, 280 n. 2, 890 P.2d 769, 771 n. 2 (1995)."

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

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

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

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

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

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

Dated this 14 day of September, 2018.

STEPHENS & BYWATER, P.C.

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

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.

An Employee of Stephens & Bywater

EXHIBIT "B"

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendants.	CASE NO.: ~~A549111~~ 07-A-549111 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.

/ / / /

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

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

EXHIBIT "1"

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

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

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

JUDGMENT

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

. . .

. . .

. . .

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

DATED THIS 2 day of ~~May~~ June, 2008.

DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

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

EXHIBIT "2"

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.	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:

...

...

...

...

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

DATED this _____ day of March, 2018.

District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

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

EXHIBIT "C"

ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

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

August 23, 2018

Via Email: thomasc@injuryhelpnow.com

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

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

Dear Tommy:

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

Sincerely,

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

Dictated by Stephen Rogers, Esq.
Signed in his absence

Stephen H. Rogers, Esq.

SHR/mms
cc: Gary Lewis
M:\Rogers\Lewis adv. Nalder\Correspondence\Tommy Christensen letter 082318.wpd

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

ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

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

August 23, 2018

David A. Stephens, Esq.
Stephens, Gourley & Bywater
3636 North Rancho Drive
Las Vegas, Nevada 89130

Re: Gary Lewis adv. Cheyenne Nalder
Case No.: A-18-772220-C

Dear Mr. Stephens:

Thank you for your professional courtesy in agreeing to extend the deadline to file a responsive pleading. Mr. Christensen advises that he represents Gary Lewis, that I may not file any motions contesting the amended judgment or the current Complaint, and that I may not speak with Mr. Lewis. As Mr. Lewis will not communicate with me, I will not be able to represent him.

Again, thank you for your professional courtesy. Please contact me with any questions.

Sincerely,

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

Dictated by Stephen Rogers, Esq.
Signed in his absence

Stephen H. Rogers, Esq.

SHR/mms
cc: Tommy Christensen, Esq.
M:\Rogers\Lewis adv. Nalder\Correspondence\Stephens ltr 082318.wpd

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

EXHIBIT "D"

Nalder v. United Auto. Ins. Co.

United States Court of Appeals for the Ninth Circuit

January 6, 2016, Argued and Submitted, San Francisco, California; December 27, 2017, Filed

No. 13-17441

Reporter
878 F.3d 754 *; 2017 U.S. App. LEXIS 26850 **; 2017 WL 6601776

JAMES NALDER, Guardian Ad Litem on behalf of Cheyanne Nalder; GARY LEWIS, individually, Plaintiffs-Appellants, v. UNITED AUTOMOBILE INSURANCE COMPANY, Defendant-Appellee.

Prior History: [**1] Appeal from the United States District Court for the District of Nevada. D.C. No. 2:09-cv-01348-RCJ-GWF. Robert Clive Jones, District Judge, Presiding.

Nalder v. United Auto. Ins. Co., 2014 U.S. Dist. LEXIS 75561 (D. Nev., June 3, 2014)

Core Terms

damages, renewal, default judgment, expiration, certified question, district court, insured, consequential damages, summary judgment, limitations, coverage, six-year, lapse

Case Summary

Overview
HOLDINGS: [1]-Neither side could have pointed to Nevada law that definitively answered the question of whether plaintiffs could have still recovered consequential damages based on the default judgment when six years passed during the pendency of the suit. Neither side squarely addressed whether the expiration of the judgment in fact reduced the consequential damages for the insurer's breach of the duty to defend. The court certified a question of law to the Nevada Supreme Court because it appeared that there was 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.

Outcome
Question certified. Further proceedings stayed.

Summary:

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?

Counsel: For JAMES NALDER, Guardian Ad Litem on behalf of Cheyanne Nalder, GARY LEWIS, individually, Plaintiffs - Appellants: Thomas Christensen, Esquire, Attorney, Christensen Law Offices, LLC, Las Vegas, NV; Dennis M. Prince, Attorney, Eglet Prince, Las Vegas, NV.

For UNITED AUTOMOBILE INSURANCE COMPANY, Defendant - Appellee: Matthew J. Douglas, Attorney, Susan M. Sherrod, Esquire, Attorney, Thomas E. Winner, Esquire, Attorney, Atkin Winner & Sherrod, Las Vegas, NV.

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

Opinion by: Diarmuid F. O'Scannlain

Opinion

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

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

[*755] ORDER CERTIFYING QUESTION TO THE NEVADA SUPREME COURT

ORDER

Pursuant [**2] 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 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 [**3] 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 [*756] 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 [**4] 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 [**5] 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 **[**6]** Lewis claim on appeal that they should have been awarded consequential **[*757]** 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. **[**7]**

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 **[**8]** 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 **[**9]** default **[*758]** 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, 24 Nev. 154, 50 P. 849, 851 (Nev. 1897)*; *see also Leven v. Frey, 123 Nev. 399, 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 **[**10]** 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 **[**11]** 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, Diarmuid F. O'Scannlain and William A. Fletcher, Circuit Judges.

Diarmuid F. O'Scannlain

Circuit Judge

End of Document

MATTHEW J. DOUGLAS
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mdouglas@awslawyers.com
Attorneys for Intervenor United Automobile Ins. Co.

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.: 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.

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

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 [**X**] Electronic Filing and Service pursuant to NEFR 9 - to all counsel on the service list [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [**X**] 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
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An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT "L"

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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.: A-18-772220-C DEPT. NO.: 29 **UAIC'S REPLY TO LEWIS' OPPOSITION 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 to Defendant Lewis' Opposition in support of it 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 18 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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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

UAIC received notice late today that, apparently, the carousel keeps turning in the ongoing collusive/fraudulent acts between Plaintiff and, now, potentially, 'new' counsel for Defendant Lewis or, Lewis himself, as Lewis filed an Opposition to UAIC's Motion to intervene.

UAIC notes that this pleading has apparently yet to be accepted by the Court, but in case it is UAIC files this Reply out of an abundance of caution.

In short, the Opposition by Defendant is unsigned and, thus, as an initial matter, UAIC asks this Court not to consider same pursuant to Rule 11.

Should this court consider Lewis' Reply, UAIC further notes the pleading appears to be a *nearly exact carbon copy of Plaintiff's Opposition* and, accordingly, UAIC asks this Court to consider its Reply to Plaintiff's Opposition in reply to this pleading. Namely, that the Reply is late and none of the arguments made are based on case law or other authority and do not defeat UAIC's interest or, right to intervene.

The only 'new' item UAIC could find in this pleading was the second to last sentence that was inserted which argues that, if UAIC is successful on the certified question it would "leave Lewis with a valid judgment against him and, no claim against UAIC." In response, UAIC strongly disagrees. UAIC has argued the 2008 judgment expired (and obviously Plaintiff tacitly agrees or she would not have tried these machinations currently pending) and therefore, should UAIC prevail on the certified question – **there simply would be no valid judgment against Lewis as it is expired.**

Moreover, UAIC must also add that this pleading is curious for several other reasons, which UAIC hopes will further alert this court to the fraud that is being attempted. Namely, *why does the Defendant and, purported party opponent to Plaintiff in this case, file the exact same*

opposition as Plaintiff has? UAIC poses that it is because they are not opponents, but obviously in collusion. It is also curious that Lewis' counsel obviously felt it more important to oppose UAIC's right to intervene (and its attempt to seek and prevent further damages against him) *rather than first answering the complaint, despite Plaintiff admitting he has sought default of Mr. Lewis*. In short, Defendant again argues this is clear additional evidence of the fraud attempted to be perpetrated on this Court and UAIC again asks it intervention be granted and, then, this Court hold an evidentiary hearing on these issues.

III.

CONCLUSION

Based on the foregoing, UAIC asks this Court grant it leave to intervene in this matter to protect its own interests and LEWIS'. Alternatively, that this court exercise its inherent authority and discretion and hold an evidentiary hearing on the fraud attempted for the reasons set forth above.

DATED this 19th day of SEPTEMBER 2018.

ATKIN WINNER & SHERROD

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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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A NEVADA LAW FIRM

CERTIFICATE OF SERVICE

I certify that on this 13th day of September, 2018, the foregoing **REPLY TO DEFENDANT'S OPPOSITION MOTION TO INTERVENE** was served on the following by [ ] Electronic Service pursuant to NEFR 9 [X] Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [X] fax [ ] fax and mail [ ] mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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VIA fax to (702) 656-2776

DEFENDANT'S COUNSEL
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VIA fax to: (702) 446-8164

An employee of ATKIN WINNER & SHERROD

EXHIBIT "M"

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*

EXHIBIT "N"

RANDALL TINDALL
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RESNICK & LOUIS, P.C.
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER, individually and as Guardian ad Litem for CHEYENNE NALDER, a minor, Plaintiff, vs. GARY LEWIS and DOES I through V, inclusive, ROES I through V, Defendants.	CASE NO.: A549111 DEPT. NO.: 6

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

Defendant, Gary Lewis, by and through his counsel Randall Tindall brings his Motion for Relief from Judgment Pursuant to NRCP 60, asking that this Court declare as void the Amended Judgment entered on March 28, 2018, because the underlying Judgment expired in 2014 and is not capable of being revived.

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

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the foregoing **DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** will come on for hearing before the above-entitled Court on the ____ day of October 31, 2018 at 9:00 a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

POINTS AND AUTHORITIES

I.

INTRODUCTION

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

The Amended Judgment ostensibly revived the expired Judgment, despite the fact that Cheyenne presented this Court with no legal support for such revival. Cheyenne's Motion proposes that tolling provisions applicable to causes of action are also applicable to the deadlines

to renew judgments. However, none of the authority cited in her Motion supports misappropriating tolling provisions applicable to certain causes of action to extend the time to renew a judgment, nor does any other authority. Pursuant to NRCP 60, the Court should declare that the Amended Judgment is void and that the original Judgment has expired, and therefore is not enforceable.

II.

STATEMENT OF FACTS

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

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

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

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

amend the Judgment to be in her name alone. In short, the Court was not put on notice that it was being asked to ostensibly revive an expired judgment.

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

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

III.

ARGUMENT

A. The Judgment Expired on June 3, 2014

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

NRS 17.214(1)(a) sets forth the procedure that must be followed to renew a judgment. A document tiled "Affidavit of Renewal" containing specific information outlined in the statute must be filed with the clerk of court where the judgment is filed within 90 days before the date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No such Affidavit of Renewal was filed by James Nalder, the judgment creditor. Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment was recorded, and the judgment debtor must be served. No evidence of recordation (if such was required) or service on Lewis is present in the record.

The Nevada Supreme Court, in *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007), held that judgment creditors must strictly comply with the procedure set forth in NRS 17.214 in order

to validly renew a judgment. *Id.* at 405-408, 168 P.3d 717-719. There is no question that neither Cheyenne nor her guardian ad litem did so. Therefore the Judgment expired.

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

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

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

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

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

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

> Legal disability prevents running of statute. **NRS 11.260 and 11.270 shall not apply to minors or others under any legal disability to sue at the time when**

the right of action first accrues, but all such persons may commence an action at any time within 1 year after the removal of the disability.

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

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

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

If tolling of deadlines to amend judgments were sanctioned, title to real property owned by anyone who had ever been a judgment debtor would be clouded, as a title examiner would not know whether a judgment issued more than six years prior had expired pursuant to statute, or was still valid, or could be revived when a real party in interest who was a minor reached the age of majority. As the Court held in *Leven*, one of the primary reasons for the need to strictly comply with NRS 17.214's recordation requirement is to "procure reliability of title searches for

both creditors and debtors since any lien on real property created when a judgment is recorded continues upon that judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance with the notice requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe that the judgment has expired and he need take no further action to defend himself against execution.

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

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

In addition, applying Cheyenne's argument that the time to renew a judgment was tolled because of the judgment debtor's absence from Nevada would have a similarly negative impact on the ability for property owners to obtain clear title to their property. Nothing on a judgment would reflect whether a judgment debtor was outside of the state and a facially expired judgment was still valid. Therefore, essentially, a responsible title examiner would have to list any judgment that had ever been entered against a property owner on the title insurance policy,

because he could not be sure that judgments older than six years for which no affidavit of renewal had been filed were expired or the expiration was tolled.

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

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

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

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

2. The Amended Judgment is void

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

IV.

CONCLUSION

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

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

CERTIFICATE OF SERVICE

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

David A. Stephens, Esq. Stephens, Gourley & Bywater 3636 North Rancho Drive Las Vegas, Nevada 89130	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)
Thomas Christensen, Esq. Christensen Law Firm 1000 S. Valley View Blvd. Las Vegas, Nevada 89107	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)

Lyla B. Mill

An Employee of
Resnick & Louis, P.C.

EXHIBIT "O"

ELECTRONICALLY SERVED
9/26/2018 4:51 PM

DISTRICT COURT
CLARK COUNTY, NEVADA

Negligence - Auto | **COURT MINUTES** | **September 19, 2018**

A-18-772220-C Cheyenne Nalder, Plaintiff(s)
vs.
Gary Lewis, Defendant(s)

September 19, 2018 **3:00 AM** **UAIC's Motion to Intervene**

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

COURT CLERK: Haly Pannullo

RECORDER: Melissa Murphy-Delgado

JOURNAL ENTRIES

- Court noted this matter was previously handled and the Motion was 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*

EXHIBIT "P"

MDSM
RANDALL TINDALL
Nevada Bar No. 6522
RESNICK & LOUIS, P.C.
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Las Vegas, Nevada 89148
Attorneys for Defendant

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.: 29

DEFENDANT'S MOTION TO DISMISS

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

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This Motion is made and based upon NRCP 12(b)(5), the papers and pleadings on file herein, the Points and Authorities attached hereto, and such oral argument as the Court may permit.

DATED this 26th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO DISMISS will come on for hearing before the above-entitled Court on the ____ day of October 31, 2018 at 9:00 a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

DATED this 26th day of September, 2018

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

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POINTS AND AUTHORITIES

I.

INTRODUCTION

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

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

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

Finally, Cheyenne seeks a declaration from the Court that the statute of limitations to enforce an Amended Judgment (and the second amended judgment she seeks in her Complaint) was tolled because she was a minor and Lewis resides in California. Declaratory relief is not

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

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

II.

STATEMENT OF FACTS

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

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

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

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

filing of the instant motion, Lewis has filed a Motion for Relief from Judgment in Case No. A-07-549111-C, detailing the reasons the Court should void the Amended Judgment.

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

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

III.

MOTION TO DISMISS STANDARD

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

In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint. *Id.* As the Nevada Supreme Court held in *Baxter v. Dignity Health*, 131 Nev. Adv. Op. 76, 357 P.3d at 930 (2015) "'the court is not limited to the four corners of the complaint.'" Citing 5B Charles Alan Wright & Arthur Miller, Federal Practice & Procedure: Civil § 1357, at 376 (3d ed.2004). The *Baxter* Court also held that a court "'may also consider unattached

evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document.'" *Id.*, citing *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir.2011) (internal quotation omitted). The *Baxter* Court continued "[w]hile presentation of matters outside the pleadings will convert the motion to dismiss to a motion for summary judgment, Fed.R.Civ.P. 12(d); NRCP 12(b), such conversion is not triggered by a court's 'consideration of matters incorporated by reference or integral to the claim,'" *Id.*, citing 5B Wright & Miller, supra, § 1357, at 376.

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

IV.

ARGUMENT

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

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

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

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

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

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

As the *Five Star* Court noted, public policy supports claims preclusion in situations such as this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a), noting that "the purposes of claim preclusion are 'based largely on the ground that fairness to the defendant, and sound judicial administration, require that at some point litigation over the particular controversy come to an end' and that such reasoning may apply 'even though the substantive issues have not been tried . . .'" *Id.* at 1058, 194 P.3d at 715. These policy reasons are

applicable here. Lewis is entitled to finality. A Judgment was already entered against him. Renewing the Judgment was not Lewis' responsibility – that was the responsibility of Cheyenne's guardian ad litem, James Nalder. Lewis should not be exposed to judgment being entered against him a second time due to Nalder's failure to act.

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

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

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

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

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

Declaratory relief is only available if: "(1) a justiciable controversy exists between persons with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the controversy, and (3) the issue is ripe for judicial determination." *Cty. of Clark, ex rel. Univ. Med. Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998), citing *Knittle v.*

Progressive Casualty Ins. Co., 112 Nev. 8, 10, 908 P.2d 724, 725 (1996). Here, declaratory relief is not available because the issue as to whether the Amended Judgment or any future amended judgment is enforceable, or whether the statute of limitations has expired, is not ripe.

The conditions under where a justiciable controversy exists were addressed by the Nevada Supreme Court in *Kress v. Corey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a justiciable controversy does not exist, where damage " . . . is merely apprehended or feared. . . " *Id.* at 28-29, 189 P.2d at 365. As the Court in *Doe v. Bryan*, 102 Nev. 523. 728 P.2d 443 (1986) noted, "'the requirement of an actual controversy has been construed as requiring a concrete dispute admitting of an immediate and definite determination of the parties' rights.'" *Id.* at 526, 728 P.2d at 444. Cheyenne's concern that any effort to enforce the Amended Judgment will be thwarted by a determination that the applicable statute of limitations bars such action is "apprehended or feared" but not existing presently, because she has not taken any action to enforce the Amended Judgment. Likewise, there is no "concrete dispute" that the statute of limitations would bar an attempt by Cheyenne to collect on the Amended Judgment because she has not tried. Unless and until Cheyenne actually tried to enforce the Amended Judgment, there is no "immediate" need for a "definite" determination of the parties' rights. Therefore, there is no justiciable controversy regarding Cheyenne's ability to seek to enforce the Amended Judgment at this time.

"'Ripeness focuses on the timing of the action rather than on the party bringing the action . . . The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review.'" *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1224, 1230-31 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003)).

Cheyenne could seek to have a court address her statute of limitations concerns in an action to execute on the Amended Judgment. There is no need for such a determination at this time.

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

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

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V.

CONCLUSION

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

DATED this 26th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

CERTIFICATE OF SERVICE

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

David A. Stephens, Esq. Stephens, Gourley & Bywater 3636 North Rancho Drive Las Vegas, Nevada 89130	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)
Thomas Christensen, Esq. Christensen Law Firm 1000 S. Valley View Blvd. Las Vegas, Nevada 89107	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)

Lyia M. Bell

An Employee of
Resnick & Louis, P.C.

EXHIBIT "Q"

From : dstephens@sgblawfirm.com
To : mdouglas@awslawyers.com
Sent : 10/03/2018 8:46AM
Subject : RE: Nalder v Lewis; Case No. 07A549111

Matt,

Thanks for the change.

David A. Stephens, Esq.
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-2355
Facsimile: (702) 656-2776
mailto:dstephens@sgblawfirm.com

From: Matthew Douglas [mailto:mdouglas@awslawyers.com]
Sent: Tuesday, October 02, 2018 5:55 PM
To: 'David Stephens'
Cc: Victoria Hall
Subject: RE: Nalder v Lewis; Case No. 07A549111

Mssr. Stephens-

I have revised the draft Order to reflect, in the pre-amble, that the Court noted there was "no opposition" in its minute order. The minute Order did not state no opposition was "filed", only that there was no opposition. So, it may be the Court did not consider a late filed Opposition.

Regardless, I assume this change will suffice as I believe it preserves the potential for the argument you indicate you may raise, below. I will be in Mediation tomorrow so, if there is still any issue I need to know this evening before 7 p.m. – otherwise this revised Order shall go to court tomorrow.

Thanks,

Matt Douglas

From: David Stephens [mailto:dstephens@sgblawfirm.com]
Sent: Tuesday, October 02, 2018 4:56 PM
To: Matthew Douglas <mdouglas@awslawyers.com>
Subject: RE: Nalder v Lewis; Case No. 07A549111

Dear Matt,

I would like the order to include a finding that the motion was unopposed. I did in fact file an opposition and I dropped it in the Judge□s box. Thus, if I decide to do a motion for rehearing, I would like the finding to reflect that the judge thought the motion was unopposed.

Thanks,

David A. Stephens, Esq.
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-2355
Facsimile: (702) 656-2776
mailto:dstephens@sgblawfirm.com

From: Matthew Douglas [mailto:mdouglas@awslawyers.com]
Sent: Thursday, September 27, 2018 1:50 PM
To: David Stephens
Cc: Victoria Hall
Subject: Nalder v Lewis; Case No. 07A549111

Mssr. Stephens,

As you are probably aware, the court entered a minute order granting my client, UAIC, Motion to intervene in the above-titled action. *A copy of the minute order is attached hereto.*

Accordingly, I have also *attached a proposed Order on my Motion to Intervene*. Please kindly review and let me know if you have any issues or would like to discuss.

In any event, as I note the attached minute Order is dated 9/19/18, the order would be due to the court within 10 judicial days or, by 10/3/18. **As such, if I do not hear anything prior to close of business on 10/2/18 I will send the Order over, as is.**

Thanks,

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

 logo.jpg

www.awslawyers.com

EXHIBIT "R"

From : dstephens@sgblawfirm.com
To : mdouglas@awslawyers.com
Sent : 10/03/2018 8:46AM
Subject : RE: Nalder v Lewis; Case No. A-18-772220-C

Matt,

Thanks,

David A. Stephens, Esq.
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-2355
Facsimile: (702) 656-2776
mailto:dstephens@sgblawfirm.com

From: Matthew Douglas [mailto:mdouglas@awslawyers.com]
Sent: Tuesday, October 02, 2018 5:57 PM
To: 'David Stephens'; 'breen@breen.com'; 'Breen Arntz'
Cc: Victoria Hall
Subject: RE: Nalder v Lewis; Case No. A-18-772220-C

Mssr. Stephens-

Thank you for replying. No need to sign the Order at this point. Based on your response we will send the proposed order to Court tomorrow.

Thanks,

Matt Douglas

From: David Stephens [mailto:dstephens@sgblawfirm.com]
Sent: Tuesday, October 02, 2018 4:58 PM
To: Matthew Douglas <mdouglas@awslawyers.com>
Subject: RE: Nalder v Lewis; Case No. A-18-772220-C

Dear Matt,

I am less likely to file a motion for rehearing in this matter in that intervention in an ongoing case is harder to stop. Thus, I can sign off on this order.

Let me know how you would like me to get it to you.

Thanks,

David A. Stephens, Esq.
Stephens Gourley & Bywater
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-2355
Facsimile: (702) 656-2776
mailto:dstephens@sgblawfirm.com

From: Matthew Douglas [mailto:mdouglas@awslawyers.com]
Sent: Thursday, September 27, 2018 1:48 PM
To: David Stephens; 'Breen Arntz'; breen@breen.com
Cc: Victoria Hall
Subject: Nalder v Lewis; Case No. A-18-772220-C

Mssr.□s Stephens & Arntz,

As you are probably aware, the court entered a minute order granting my client, UAIC, Motion to intervene in the above-titled action. *A copy of the minute order is attached hereto.*

Accordingly, I have also *attached a proposed Order on my Motion to Intervene*. Please kindly review and let me know if you have any issues or would like to discuss.

In any event, as I note the attached minute Order is dated 9/19/18, the order would be due to the court within 10 judicial days or, by 10/3/18. **As such, if I do not hear anything prior to close of business on 10/2/18 I will send the Order over, as is.**

Thanks,

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

EXHIBIT "S"

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 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.

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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 [**X**] Electronic Filing and Service pursuant to NEFR 9 - to all counsel on the service list [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [**X**] 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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

MATTHEW J. DOUGLAS
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mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

~~CHEYANNE~~ James 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,~~ IS

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

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

DATED this 11 day of October 2018

DISTRICT COURT JUDGE

Submitted by:

ATKIN WINNER & SHERROD

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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT "T"

MATTHEW J. DOUGLAS
Nevada Bar No. 11371
ATKIN WINNER & SHERROD
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mdouglas@awslawyers.com
Attorneys for Intervenor United Automobile Ins. Co.

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.: 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.

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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 [**X**] Electronic Filing and Service pursuant to NEFR 9 - to all counsel on the service list [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [**X**] 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

Breen Arntz, Esq.
5545 S. Mountain Vista St. Suite F
Las Vegas, NV 89120

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mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants.

CASE NO.: A-18-772220-C
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,

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

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

DATED this 11 day of October 2018

DISTRICT COURT JUDGE

Submitted by:

ATKIN WINNER & SHERROD

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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT "U"

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

DISTRICT COURT

CLARK COUNTY, NEVADA

Cheyenne Nalder Plaintiff, vs. Gary Lewis, Defendant.	CASE NO. A-18-772220-C DEPT NO. XXIX
United Automobile Insurance Company, Intervenor,	
Gary Lewis, Third Party Plaintiff, vs. United Automobile Insurance Company, Randall Tindall, Esq. and Resnick & Louis, P.C, and DOES I through V, Third Party Defendants.	

THIRD PARTY COMPLAINT

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

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

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

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

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

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

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

6. This incident occurred on private property.

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

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

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

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

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

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

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

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

15. UAIC never filed a declaratory relief action.

16. UAIC rejected Nalder's offer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

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

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

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

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

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

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

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

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

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

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

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

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

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

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

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

distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,0000.

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

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

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

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

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

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

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

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

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

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

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

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Attorney's fees; and

6. Costs of suit;

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

DATED THIS 24 day of October, 2018.

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Third-party Plaintiff

CERTIFICATE OF SERVICE

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

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

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EXHIBIT "V"

OPPS

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

OPPOSITION TO UAIC'S MOTION TO DISMISS AND COUNTERMOTION FOR SUMMARY JUDGMENT

Defendant, Gary Lewis, by and through his counsel, Thomas Christensen, Esq., hereby presents his brief in Opposition to UAIC's Motion To Dismiss. UAIC brings a motion to dismiss plaintiffs entire complaint because the same claims were brought in 2009 but the majority of the failures and fraud giving rise to the 2018 claims handling case occurred in the last six months

and continue to occur. Third Party Plaintiff, Gary Lewis, brings this Countermotion for Summary Judgment pursuant to NRCP 56.

This opposition and countermotion are made and based upon the papers and pleadings on file herein, the Points and Authorities attached hereto and any oral argument that may be permitted by the Court.

CHRISTENSEN LAW OFFICES

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Attorney for Third Party Plaintiff

POINTS AND AUTHORITIES

I. OPPOSITION TO UAIC'S MOTION

A. UAIC's Motion must be treated as a Motion for Summary Judgment and be Denied.

UAIC has attached thirteen exhibits to its motion. UAIC misstates how its numerous exhibits comply with the exception in Baxter by stating "while Intervenor/Third Party Defendant's Motion to Dismiss does rely on certain documents which were not attached to the Complaint, those documents are either incorporated by reference (the Judgment and Amended Judgment) or integral to the claim (the Complaint in the 2007 cases)." (See *UAIC's Motion to Dismiss Lewis' complaint at page 8 lines 24-27.)* This is simply not true. Probably the reason it is not true and must be disregarded is that it is a poor adaptation from the Motion to Dismiss that UAIC already filed against Nalder, where UAIC makes the same statement: "While Intervenor's Motion to Dismiss does rely on certain documents which were not attached to the Complaint, those documents are either incorporated by reference (the Judgment and Amended Judgment) or

integral to the claim (the Complaint in the 2007 case)." *(See UAIC's Motion to Dismiss Nalder's Complaint, at page 7 lines 6-8.)* The three documents are not incorporated into Lewis' complaint, nor is the Complaint in the 2007 case integral to Lewis' claims, to say nothing of the other ten exhibits.

B. All of UAIC's (and their surrogate, Randall Tindall's) filings in this case and in case number 07A549111, filed in 2007, are based on the same defense that NRS 11.190 is not tolled by NRS 11.300. This defense lacks any legal authority and may be frivolous.

UAIC claims the statute of limitations on the judgment in case no. 07A549111 (obtained in 2008) has expired. UAIC made this same false claim, improperly, for the first time in the Ninth Circuit in the middle of an appeal. The truth is that Gary Lewis left the State of Nevada, continuously resided outside the State of Nevada and was not subject to service of process in Nevada from December 2008 until the present. Lewis' absence from the state of Nevada tolls the statute of limitations. The 2008 judgment, that was amended appropriately, is still valid. See *Mandelbaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) (See Exhibit 1). (Plaintiff in *Mandelbaum* obtained a judgment and then brought an action on that judgment 15 years later because the statute of limitations was tolled as a result of the defendant's absence from the State of Nevada). Mr. Lewis understands this black letter law in Nevada and does not wish a frivolous defense put forward on his behalf. UAIC now admits, at page 11 of its brief filed with the Nevada Supreme Court that "The second method is via the bringing of an independent action on the original judgment ..." (See Exhibit 2.) This action on a judgment brought by Nalder is timely and the statute of limitations defense is not supported by Nevada law.

C. Claim Preclusion does NOT Apply

The claims are not the same. The majority of the claims in Mr. Lewis' 2018 complaint are a result of UAIC's failure to deal in good faith **after** August 2018, in connection with the two actions in the Nevada State courts. These actions were obviously not part of the litigation filed in

2009, that went to judgment in 2013, and is currently on appeal. The first line of Lewis' 2018 complaint states: "... for acts and omissions committed by them and each of them, as a result of the finding of coverage on October 30, 2013 (the date of the judgment currently on appeal) and more particularly states as follows:" One wonders if UAIC read both complaints before making the allegation at page 10 that "A review of the 2009 Complaint (Exhibit 'C') and the 2018 Third Party Complaint (Exhibit 'M') reveal that the statutory and common law bad faith claims are essentially identical."

The motion of UAIC is not supported factually or in law and obviously not researched, but merely cut and pasted from its similar, improperly filed Motion to Dismiss Cheyenne Nalder's lawsuit. UAIC argues in the motion to dismiss Lewis' complaint: "Cheyenne's claims for personal injury in the instant (2018) suit clearly meet the five star factors for dismissal under the doctrine of claim preclusion." (*See Motion, page 9 line 23.*) Also, on that same page, UAIC states a three-part test, then only lists parts (2) and (3). Any motion based on this type of incomplete, jumbled nonsense must be denied.

The parties are not the same. The parties in the federal suit were James Nalder and Gary Lewis v. UAIC. The parties in the present complaint are Gary Lewis v. UAIC, Randall Tindall and RESNICK & LOUIS, P.C. Many of the allegations involve improper claims handling and lack of good faith in the handling of the litigation like failure to provide Cumis counsel and the conspiracy with Randall Tindall, who was not even involved until 2018.

The judgment in federal court is on appeal and is not final. UAIC has cited no case law holding that a judgment on appeal is final for purposes of claim preclusion. It is not Lewis' burden to do the research, it is UAIC's responsibility to properly research motions before bringing them. To fail to cite any law supporting this allegation requires the court to deny the motion and UAIC cannot remedy this failure in its reply because Lewis will not be able to

respond. Certainly, Lewis expects that the finding by the Federal District Court that UAIC's failure to defend, failure to use it's policy limits to protect the insured, failure to communicate settlement offers to the insured and failure to file a declaratory relief action are breaches of the covenant of good faith and fair dealing; or, are at least issues of fact that should have been sent to a jury, not decided by the Federal District Court on summary judgment. When the Ninth Circuit reverses the trial court the judgement will be vacated and the case will again go back for trial.

The causes of action are not the same. As stated earlier, the preamble to the entire 2018 complaint states it is regarding actions and inactions as a result of the judgment entered against UAIC in 2013. The specific allegations of the 2018 complaint, Exhibit M to UAIC's motion, contain over a hundred paragraphs describing actions in detail, most of which occurred in the last three months. The 2009 complaint has around twenty such allegations, all referencing action and inaction occurring before 2009. Of course, there are going to be general allegations that overlap because that is the nature of a cause of action. All causes of action against insurance companies are going to allege that there are statutes that control the insurance companies conduct and that the insurance company breached those statutes. The specific actions and nature of the breach changes. The list of the ways UAIC breached the different duties has five examples in the 2009 complaint and nine in the 2018 complaint. As stated above, although the wording might be the same ie. UAIC failed to investigate. The investigation complained of is after 2013 in the 2018 complaint and before 2009 in the 2009 complaint--- these are distinct and different causes of action and claim preclusion does not apply. The 2018 complaint has additional claims resulting from the conspiracy between UAIC and Tindall. Obviously these claims did not exist in 2009 and are new and different claims.

II BACKGROUND LAW ON INSURANCE CLAIMS HANDLING LITIGATION AND VERDICTS ABOVE POLICY LIMITS

A. General Principles of Insurance : Insurance is a social device for reducing risk. By combining a sufficient number of similar or homogeneous exposure units - like homes, lives, or cars - losses are predictable, not individually, but collectively. People value their lives, health, and property, so they are able to buy insurance to soften the financial impact of losses and accidents. Insurance is intended to provide peace of mind and good service and to fulfill financial requirements of the varied beneficiaries.

B. Role of Insurance Companies: Insurance companies receive Certificates of Authority to sell policies in states where they are licensed. Insurance is imbued with the concept of public trust, presuming that insurers will conduct their activities legally and with a high degree of good faith and fair dealing. Insurers are often said to have "special" or "fiduciary-like" duties to insureds, and they must accomplish the purposes of the insurance policy, rather than attempting to prevent insureds from obtaining the benefits purchased.

By statute, regulation, commercial practice, and common law requirements, insurers must adopt and implement systems, instructions, and guidelines for the prompt investigation and settlement of claims. In the broad sense, insurance indemnifies, or makes whole, an insured to soften the financial consequences of an insured event. Sometimes this involves both first-party and third-party coverages. When payment for a covered claim is delayed or withheld, the insured suffers the very financial consequences insurance is bought to avoid. This is especially true in the case of loss of funds, where the insured is relying on the insurer's best efforts to make insurance payments properly. An adjuster's job, accordingly, is to facilitate use of the insurance contract by addressing and resolving claims following notice of the event. Insurers should ensure their practices don't undercut the public's confidence in the insurance mechanism.

C. Claims-Handling Standards: Claims-handling standards are fundamental to delivery of the insurance contract promises. Insurance adjusters commonly know and understand these principles. Knowing and following the underlying precepts of claims work is crucial to fair claim practices. For example, an insurer:

1. Must treat its insured's interests with equal regard as it does its own interests, without turning the claims handling into an adversarial or competitive process.
2. Must assist the insured with the claim to achieve the purpose of the coverage.
3. Must disclose all benefits, coverages, and time limits that may apply to the claim.
4. Must review and analyze the insured's submissions.
5. Must conduct a full, fair, and prompt investigation of the claim at its own expense, keeping the insured on equal footing with disclosure of the facts.
6. Must fairly and promptly evaluate and resolve the claim, making payments or defending in accordance with applicable law and policy language.
7. Must not deny a claim or any part of a claim based upon insufficient information, speculation, or biased information.
8. Must give a written explanation of any full or partial claim denial, pointing to the facts and policy provisions supporting the denial.
9. Must not engage in stonewalling or economic coercion leading to unwanted litigation that shows the unreasonableness of the company's assessments of coverage.
10. Must not misrepresent facts or policy provisions or make self-serving coverage interpretations that subvert the intent of the coverage.
11. Must continue to defend the insured until final resolution.
12. Must relieve the insured of a verdict above the policy limits at the earliest opportunity.

As a minimum standard, Nevada claim handlers should also adhere to state requirements and the unfair claim practices standards outlined in NRS 686A.310.

D. CLAIMS HANDLING LITIGATION

In general, there are a few different areas of litigation that involve failure by an insurance company to fulfill the promises of this important product. All of these actions, regardless of the parties involved, however, are founded in the general principle of contract law that in every contract, especially policies of insurance, there is an implied covenant of good faith and fair dealing that neither party will do anything which will injure the right of the other to receive the benefits of the agreement. *Comunale v. Traders & General Insurance Company*, 50 Cal.2d 654, 328 P.2d 198, 68 A.L.R.2d 883. If the alleged failure to act in good faith is claimed by a first-party insured or a third-party beneficiary, the standards may vary between the states. Most courts have held, however, that an insurance company always fails to act in good faith whenever it breaches its duty to settle by failing adequately to consider the interest of the insured. Windt, Allan D., 1 Insurance Claims & Disputes 5th, Section 5:13 (Updated March, 2009).

Within the area of first-party failure to deal in good faith, there are essentially three standards which other courts have imposed on liability insurers in determining whether the insurer has met its duty to the insured. Those standards involve strict liability, negligence and failure to act in good faith. Shamblin v. Nationwide Mutual Insurance Company, 396 S.E.2d 766(W.Va. 1990), *citing*, *Schwartz, Statutory Strict Liability for an Insurer's Failure to settle: A Balanced Plan for an Unresolved Problem*, 1975 Duke L.J. 901; *Annotation, Liability Insurer's Negligence for Bad Faith in Conducting Defense as Ground of Liability to Insured*, 34 A.L.R.3d 533 (1970 & Supp. 1989).

The courts which have applied the strict liability standard have held that an insurer who fails to settle within policy limits does so at its own risk, and although its position may not have been entirely groundless, if the denial is ***later found to be wrongful***, it is liable for the full amount which will compensate the insured for all the detriment caused by the insurer's breach of the express and implied obligations of the contract. Id., citing, *Crisci v. Security Ins. Co.*, 66 Cal2d 425, 58 Cal.Rptr. 13, 426 P.2d 173 (1967); *Rova Farms Resort, Inc. v. Investors Insurance Co.*, 65 N.J. 474, 323 A.2d 495 (1974). Many commentators have suggested that the relationship of the insurer and the insured when the insurer passes up an opportunity to settle within policy limits and a verdict above the policy limit results should give rise to strict liability on the insurer for the entire verdict. 22 AZSLJ 349.

The *Crisci* Court recognized that the insured's expectation of protection provides a basis for imposing strict liability in failure to settle cases because it will always be in the insured's best interest to settle within the policy limits when there is any danger, however slight, of a judgment above those limits. Crisci v. Security Insurance Company of New Haven, Conn. 426 P.2d 173, 66 Cal.2d 425, 58 Cal. Rptr. 13, (1967). And that there is more than a small amount of elementary justice in a rule that would require that, in this situation, where the insurer's and insured's interests necessarily conflict, the insurer, which may reap the benefits of its determination not to settle, should also suffer the detriments of its decision. *Id.*

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

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

> When I buy insurance, I buy protection from untoward events. I do not object to an insurance company's vigorous defense of a claim, including going to jury trial and exhausting every appeal. Furthermore, as a policyholder, I will diligently assist my insurer to vindicate its rights and protect its reserves. However, I draw the line when the insurer decides that in the process of protecting its reserves, it will play "you bet *my* house." The insurance company can bet as much of its own money as it wants, and it can bet its own money at any odds that it wants, but it cannot bet one single penny of my money even when the odds are ten million to one in its favor!

Id. at 780.

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

> The only permissible consideration in evaluating the reasonableness of the settlement offer becomes whether, in light of the victim's injuries and the probable liability of the insured, the ultimate judgment is likely to exceed the amount of the settlement offer. Such factors as the limits imposed by the policy, a desire to reduce the amount of future settlements, or a belief that the policy does not provide coverage, should **not** affect a decision as to whether the settlement offer is a reasonable one.(Emphasis added.)

Johansen v. California State Automobile Association Inter-Insurance Bureau, 15 Cal.3d 9, 123 Cal.Rptr. 288, 538 P.2d 744, (1975). Moreover, in deciding whether or not to compromise the claim, the insurer must conduct itself as though it alone were liable for the entire amount of the judgment. *Id.*, *citing Crisci.*

Other states make no distinction on what standard to apply when dealing with a first-party claim as opposed to a third-party claim. Arizona has found no legal distinction between the duty or standard of good faith owed by an insurance company when dealing with the different types of claims. Instances of first and third-party failures merely involve different breaches of the same overall duty of good faith. Trus Joist Corp. v. Safeco Ins. Co. of America, 735 P.2d 125 (1986). They have also made clear that the tort of failure to act in good faith does not rise to the level of a traditional tort in the sense that the insurer must know with substantial certainty that its actions

will bring particular harm to the insured. *Id., citing* Restatement (Second) of Torts Section 8A, comment B (1956).

Most states apply this sort of standard when evaluating first-party rights against insurance companies. Utah has implemented a reasonableness standard wherein it determined that actions against insurance carriers for failure to resolve a claim in a commercially reasonable manner center on the question of whether the insurance carrier acted reasonably. Campbell v. State Farm, 840 P.2d 130 (Utah App. 1992). In Campbell, State Farm paid the entire verdict against the insured above the policy limits. State Farm was still liable for millions of dollars for the delay in paying the verdict above the policy. Under Oregon law, a liability insurer must exercise good faith and due care in the settlement and defense of claims on behalf of its insured. Baton v. Transamerica Insurance Company, 584 F.2d 907 (1978), *citing, Radcliffe v. Franklin National Insurance Co.,* 208 Or. 1, 298 P.2d 1002 (1956).

In Nevada, the question of which standard to apply when a verdict is more than the policy was answered in *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009). The court held that an insurance company breaches the covenant of good faith and fair dealing if it fails to inform the insured of opportunities to settle and that the duty to defend includes the duty to inform the insured of settlement opportunities and to treat the insured's interest equal to the insurer's interest. Nevada has long recognized that there is a special relationship between the insurer and the insured. *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998), *citing, Ainsworth v. Combined Ins. Co.* 104 Nev. 587, 763 P.2d 673 (1988).

Nevada has also established similar standards that apply in other types of failure to act in good faith situations. In *Pemberton v. Farmers Insurance Exchange*, 109 Nev. 789, 858 P.2d 380 (1993), the Nevada Supreme Court established standards to apply when an action is brought related to the lack or good faith in the denial of first-party benefits under uninsured or

underinsured coverage. There, the court noted that numerous appellate court decisions affirm that an insurer's failure to deal fairly and in good faith with an insured's UM claim is actionable. *Id.* at 794 (citations omitted) The *Pemberton* Court ultimately held that an insured may institute an action for breach of the duty of good faith and fair dealing against his or her own insurer once the insured has established "legal entitlement" and conduct not based on reason and logic by the insurer concerning its obligations to the insureds. *Id.* at 797.

Perhaps most instructional in Nevada, however, on the standard to be applied when dealing with negative effects resulting from an insurer's failure to settle a claim is *Landow v. Medical Ins. Exchange*, 892 F.Supp. 239 (D.Nev. 1995). The Court's ruling is enlightening because although it does not involve a verdict above the policy limit, it does involve a first-party insured bringing a claim for stress and damage to his reputation related to ongoing litigation that could have exposed him to a verdict but was concluded prior to a verdict. The underlying plaintiffs in *Landow* sought damages above Landow's policy limit after previously offering to settle for that limit. Landow requested that his insurance company pay the limit and accept the plaintiff's offer to end the case, but the insurance company refused and forced litigation. The *Landow* Court, following the rationale of California courts in above limit verdict situations accepted that, "the litmus test ... is whether the insurer, in determining whether to settle a claim, gave as much consideration to the welfare of its insured as it gave to its own interests," citing, *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal.3d. 809, 818, 169 Cal.Rptr. 691, 620 P.2d 141 (1979). Ultimately, the Landow Court decided that the insurer has a duty to consider injury to the insured, such as emotional distress and injury to business goodwill that proximately flow from its failure to settle. *Id.* at 241.

III. LEWIS' COUNTERMOTION FOR SUMMARY JUDGMENT

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

and fair dealing and is liable for the damages which were proximately caused by UAIC's breach, on the basis that the pleadings and documents on file show there is no genuine issue as to any material of fact and that Gary Lewis is entitled to judgment as a matter of law on this issue.

A. Standard for Granting Summary Judgment

Summary judgment is appropriate when a review of the record in the light most favorable to the nonmoving party reveals no genuine issues of material fact and judgment is warranted as a matter of law. *Butler v. Bogdanovich,* 101 Nev. 449, 451 (1985). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, admissions and affidavits on file, show there exists no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *Bird v. Casa Royale*, 97 Nev. 67, 624 P.2d 17 (1981); *Montgomery v. Ponderosa Construction, Inc.*, 101 Nev. 416, 705 P.2d 652 (1985). Additionally, "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Wood v. Safeway*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). As such, "The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Id,* citing *Bulbman Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992). Finally, N.R.C.P. Rule 56(c) states Summary Judgment "may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

The evidence, even viewed in the light most favorable to UAIC, indicates GARY LEWIS is entitled to judgment as a matter of law on the issue of liability.

B. UAIC IS LIABLE FOR ANY JUDGMENT ENTERED AGAINST LEWIS IN THIS ACTION.

No reasonable interpretation of the facts could be construed by a finder of fact as placing liability anywhere but on UAIC for any judgment against Lewis in this case. In order to gain

intervention UAIC admitted: "As long as UAIC is obligated to ... pay any judgment against LEWIS, UAIC's interests are clearly at stake in this action." Based on this admission alone, Lewis is entitled to judgment against UAIC. It must pay any judgment Nalder obtains against Lewis.

C. UAIC BREACHED THE COVENANT OF GOOD FAITH AND FAIR DEALING.

After the Ninth Circuit Court ruled against it finding UAIC had breached its duty to defend, UAIC paid its policy limit to relieve UAIC of the judgment entered against it, but UAIC did not attempt to relieve Gary Lewis of the judgment in case no. 07A549111. UAIC, which only recently hired Randall Tindall to "defend" Gary Lewis, did nothing to defend Gary Lewis in 2007, 2008, 2009, 2010, 2011, 2012 and 2013. UAIC also did not defend Gary Lewis or immediately attempt to set aside the judgment against him when the federal court found that UAIC had breached its duty to defend Gary Lewis in 2013. Then, UAIC did nothing to defend Lewis in 2013, 2014, 2015, 2016 and 2017. In 2018, UAIC claims to be defending Lewis. It is not. UAIC is putting its own interests above those of Mr. Lewis and causing harm in this litigation. As a result of both that initial failure and the continuing failures, Mr. Lewis will have a large judgment against him. UAIC waived its right to direct the defense and its right to intervene when it refused to defend Lewis and failed to indemnify him. The court in *Hinton v. Beck*, 176 Cal. App. 4th 1378 (Cal. Ct. App. 2009) has held: "Grange [the insurance company], having denied coverage and having refused to defend the action on behalf of its insured, did not have a direct and immediate interest to warrant intervention in the litigation."

Randall Tindall, Esq. now claims to be representing Gary Lewis based on a right that arises from that same policy of insurance. The same policy that UAIC breached in 2007. UAIC has already exhausted its policy limits because it paid the full policy amount (after the adverse finding from the Court). Although UAIC admits in this action that it will be liable for any

judgment entered against Mr. Lewis, it has not paid anything over the $15,000 policy limit it was ordered to pay by the Federal District Court. It has not pursued negotiations to relieve Lewis of the judgment. It has not investigated ways to relieve Lewis of the judgment. These actions are a breach of the duty of good faith and fair dealing. See *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009)

Mr. Tindall admits he has **NEVER** talked to Mr. Lewis, nor anyone on his behalf prior to filing pleadings on behalf of Mr. Lewis. He attaches to his Opposition, a copy of a page from the breached insurance policy, but he fails to explain to the Court that UAIC has already breached it. UAIC and Tindall fail to inform the Court that Mr. Lewis requested that if UAIC hired anyone to defend Lewis in this action that UAIC "must include notice to those attorneys that they must first get Mr. Lewis' consent before taking any action ... on his behalf." By disregarding this reasonable request UAIC has breached the duty of good faith and fair dealing. See *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998) (USAA disregarded reasonable request by the insured and harrassed the insured) UAIC and Randall Tindall have no right to interpose a defense at all in the instant case, much less a frivolous defense that is not in the best interest of Mr. Lewis and is against his wishes. This is UAIC conspiring with Tindall to advance UAIC's interests, at the expense of Lewis. Putting its interests ahead of the insured's interests is a breach of the covenant of good faith and fair dealing. See *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009)

UAIC has not yet paid any amount of the judgment, with the exception of the $15,000 it was ordered to pay after Mr. Lewis brought an action against it. UAIC's intervention in this case is improper and Mr. Tindall's involvement, under the guise of a long-since breached insurance contract, is also improper. On the other hand, if Mr. Tindall and UAIC are allowed to reopen the ministerial amendment that has been entered in case no. 07A549111, these cases would go

forward and will probably result in an **increased judgment against Mr. Lewis** because of the conspiracy and actions taken by Mr. Tindall and UAIC.

UAIC argued that the issue is before the Nevada Supreme Court. This is also a falsehood. The issue before the Nevada Supreme Court is UAIC's responsibility for the judgment, not Gary Lewis'. UAIC and its co-conspirator in this action, Mr. Tindall, have made false claims to gain intervention and then filed fraudulent and frivolous pleadings that increase the cost of litigation. In fact, these are only a ruse designed to have the Court distracted from the very simple issue in the case at bar: whether the 2008 judgment is valid.

It is clear under *Mandelbaum* that the judgment is valid. (See Exhibit 1.) No contrary case law exists. The "defense" by UAIC and/or its co-conspirator, Mr. Tindall, is frivolous and the risk is all Mr. Lewis'. He will end up with an even larger judgment and has already incurred attorney fees that, so far, UAIC refuses to pay. Failure to pay for Cumis counsel is a breach of the duty of good faith and fair dealing. See *State Farm Mut. Auto. Ins. Co. v. Hansen*, 357 P.3d 338 (Nev. 2015) "Nevada law requires an insurer to provide independent counsel for its insured when a conflict of interest arises between the insurer and the insured." Lewis brought this action against UAIC so that whatever the outcome of Nalder's 2018 action against Lewis, responsibility will be shifted from Mr. Lewis to UAIC. Mr. Lewis complaint against UAIC seeks indemnity from UAIC for any judgment entered in the Nalder action. In order to gain intervention in this action, UAIC admitted: "As long as UAIC is obligated to ... pay any judgment against LEWIS, UAIC's interests are clearly at stake in this action." Lewis is entitled to judgment against UAIC that they must pay any judgment Nalder obtains against Lewis.

Additionally, UAIC states "Mr. Tom Christensen, Counsel for Plaintiff, who claimed to represent Mr. Lewis (through assignment) and refused retained counsel from speaking with Mr. Lewis." Again, this is not factual. Mr. Lewis has requested that contact and communication be

made through his attorney, Thomas Christensen, who is representing him against UAIC. This is because Mr. Lewis understands that Mr. Tindall has a conflict because he represents both Mr. Lewis and UAIC and their interests are not aligned. Mr. Lewis has now sued Mr. Tindall once and UAIC twice. Mr. Lewis has not waived that conflict. The disregarding of the requests by the insured for communication through his attorney is yet another new breach of the covenant of good faith and fair dealing. See *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998) (USAA disregarded reasonable request by the insured and harrassed the insured)

Mr. Lewis does not want frivolous pleadings filed on his behalf. (See Exhibit 3, Affidavit of Gary Lewis). Mr. Christensen made this clear in the letter of August 13, 2018, which was attached to the motion but misquoted by UAIC. The letter actually welcomes UAIC to provide a basis for the proposed defense. It states, "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." UAIC has not provided any Nevada law in response to this request. Nor is there any such case law in their exhaustive and voluminous briefs. That is because the only on point case law in Nevada, for over 100 years running, is *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897). It clearly supports the validity of a judgment when tolling statutes apply:

> The averments of the complaint and the undisputed facts are that, at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. **Notwithstanding nearly fifteen years had elapsed since the entry of the judgment**, yet, for the purposes of action, the judgment was not barred — for that purpose **the judgment was valid.** *Id., Mandlebaum at 851(emphasis added).*

Further the Nevada Supreme Court has held that the tolling statute applies if the defendant is not subject to service of process in the State of Nevada. See *Bank of Nevada v. Friedman*, 82 Nev. 417, 420 P.2d 1 (Nev. 1966). Also the Nevada Supreme Court in *Los Angeles Airways v. Est. of Hughes*, 99 Nev. 166, 168 (Nev. 1983)

> We recognize that in recent years, the continued viability of the tolling statute has been called into question in light of the enactment of statutes making it possible to obtain jurisdiction over defendants residing outside this state. Indeed, in granting summary judgment the district court expressed the view that the enactment of NRS 14.065, the so-called "long-arm" statute, rendered the tolling statute virtually inapplicable. Nevertheless, we note that in the number of years since the enactment of NRS 14.065 and similar provisions, the legislature has not repealed the tolling provision, and we are reluctant to do so by judicial declaration. *See* Duke University v. Chestnut, 221 S.E.2d 895 (N.C.Ct.App. 1976). *Los Angeles Airways v. Est. of Hughes*, 99 Nev. 166, 168 (Nev. 1983)

Rather than comply with these reasonable requests, UAIC conspired with Tindall to file a fraudulent pleading, putting its interest above the policyholder, Mr. Lewis. In these pleadings UAIC argues that renewal is the only method. Now, UAIC admits in its pleading filed with the Nevada Supreme Court that a "second method is via bringing of an independent action on the original judgment..." (See Exhibit 2, UAIC's appellate brief, at page 11.) Filing frivolous pleadings alleging just the opposite and against the wishes of the insured is improper. This is a new breach of the covenant of good faith and fair dealing.

UAIC refuses to provide Cumis counsel for Mr. Lewis and makes false allegations against Mr. Lewis' counsel. E. Breen Arntz was retained by Lewis when Mr. Rogers was hired by UAIC. Mr. Lewis asked that UAIC pay Mr. Arntz pursuant to CUMIS. Mr. Tindall was retained after Mr. Rogers and Mr. Arntz. Prior to UAIC hiring Tindall, Mr. Lewis asked UAIC that if other counsel was retained, that they contact him through his attorney in his claim against UAIC, Mr. Christensen. David Stephens is the only counsel who has represented Cheyenne Nalder in this case. He was retained after Cheyenne Nalder reached majority. Mr. Christensen represents

neither Gary Lewis as a defendant nor Cheyenne Nalder as the plaintiff in the instant case. Failure to retain or listen to Cumis counsel is a new breach of the duty of good faith and fair dealing. See *Powers v. USAA,* 114 Nev. 690, 962 P.2d 596 (1998).

D. ANY JUDGMENT ENTERED AGAINST LEWIS IS THE MINIMUM DAMAGES.

Damages for an insurer's breach of the covenant of good faith and fair dealing are dictated by case law. In such cases, by refusing to defend, or effect a settlement, the amount of the judgment is the prescribed measure of harm in the subsequent case against the insurer. *See Besel v. Viking Ins. Co. of Wisconsin*, 146 Wn.2d 730, 735, 49 P.3d 887, 890 (2002) (holding that courts have "long recognized if an insurer acts in bad faith… an insured can recover from the insurer the amount of a judgment rendered against the insured"); *Bird v. Best Plumbing Group, LLC,* 175 Wn.2d 756, 770, 287 P.3d 551 (2012) (holding that the amount of the judgment "is added to any other damages found by the jury"); *Miller v. Kenny,* 180 Wn. App. 772, 782, 801, 325 P.3d 278 (2014) (holding that the amount of the "judgment sets a floor, not a ceiling, on the damages a jury may award." Thus where a plaintiff prevails on his claim for breach of the covenant of good faith and fair dealing the "value of the judgment" is the least amount that should be awarded, and the only remaining question related to damages on Plaintiff's claims is for the "jury to make a factual determination of [the] insured's bad faith damages *other than* and *in addition to*" the underlying judgment. *Miller,* 180 Wn. App. at 801 (emphasis in original) This is the law in Nevada. *Allstate Insurance Co. v. Miller*, 125 Nev. 300, 212 P.3d 318 (2009) (underlying judgment against insured $703,619.88,verdict against insurer $1,079,784.88)

CONCLUSION

UAIC's motion to dismiss should be denied. Partial summary judgment should issue in favor of Lewis and against UAIC for breach of the covenant of good faith and fair dealing, and fraud, with a finding that the minimum damages are the amount of any judgment entered in this

case against Lewis together with attorney fees and costs. The only issues left for trial would be additional compensatory damages and punitive damages.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC and that on this 27th day of Nov., 2018, I served a copy of the foregoing **OPPOSITION TO MOTION TO DISMISS AND COUNTERMOTION FOR SUMMARY JUDGMENT** as follows:

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

XX E-Served through the Court's e-service system.

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EXHIBIT 1

No. 1514.
Supreme Court of Nevada

Mandlebaum v. Gregovich

50 P. 849 (Nev. 1897)

Decided October 1st, 1897

The facts sufficiently appear in the opinion.

By the Court, MASSEY, J.:

The respondents instituted this suit against the appellant upon a judgment obtained in the Second Judicial District of the State of Nevada, on the fifth day of June, 1882, for the sum of $70462, with costs and interest. From a judgment in favor of the respondents, and an order denying appellant's motion for a new trial, this appeal has been taken.

It appears that the respondent, Mandlebaum, commenced an action against the appellant in said court on the 21st day of August, 1881; that on the 5th day of June, 1882, judgment was entered against the appellant upon an agreed statement of facts; that at the time said judgment was entered the appellant was absent from the State of Nevada, and so continued until about the 16th day of March, 1897; that after the rendition of said judgment, and some time in 1882, Mandlebaum duly sold and assigned to Coffin, one of the respondents in this action, one-half interest in said judgment; that this action was commenced within a few days after the return of the appellant to the state, and that no part of said judgment has been paid.

Upon these undisputed facts the appellant asks this court to reverse the judgment of the district court, and assigns as *158 reasons therefor: *First,* a misjoinder of parties plaintiff, and, *second,* that it is not shown by the complaint or record that a necessity exists for the bringing of the action.

Considering the questions in the order stated, we must hold that Coffin, the respondent, was a proper party plaintiff to the action. Our civil practice act provides that every action shall be prosecuted in the name of the real party in interest, and that all persons having an interest in the subject matter of the action, and in obtaining the relief demanded may be joined as plaintiffs, except when otherwise provided. (Gen. Stats, secs. 3026, 3034.)

The exceptions to the statutory rule above cited arise in actions by executors, administrators, trustees, married women, etc., and in such exceptions are specified in the other sections of the same act. The averment of the complaint and the undisputed fact are that the respondent, Coffin, held and owned by assignment a one-half interest in the judgment, the subject matter of the action. In the language of the statute he "had an interest in the subject of the action and in obtaining the relief demanded," and was therefore properly joined as a party plaintiff. (*McBeth* v. *VanSickle,* 6 Nev. 134; *Ricord* v. *C. P. R. R. Co.,* 15 Nev. 167.)

The determination of the second contention of appellant necessarily involves the consideration of our statutory provisions relating to the limitation of actions and to the right of a judgment creditor to the enforcement or execution of the judgment. The appellant argues that "If the respondents have the right to bring this action, they must first show as a condition precedent for bringing the same, a necessity for so doing. They must show that they cannot by the issuance of an execution recover the amount of the judgment.

They must show that they have exhausted their remedy, for, if the appellant had or has property within the State of Nevada out of which the judgment could be realized, it was the duty of respondents to have subjected that property to the payment of the debt."

Under the provisions of section 3644 of the General Statutes, the right of action upon a judgment of any court of the United States, or of any state or territory within the United States, is barred unless commenced within six years *159 after the right of action accrued. Section 3651 of the same act creates an exception to the above rule by providing that when a cause of action shall accrue against one out of the state, such action may be commenced within the time limited by the act after his return to the state.

The averments of the complaint and the undisputed facts are that, at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. Notwithstanding nearly fifteen years had elapsed since the entry of the judgment, yet, for the purposes of action, the judgment was not barred — for that purpose the judgment was valid. Such being the fact, is it necessary, as appellant contends, that the complaint and record must show that a good cause exists therefor — that the right of action upon judgments exists in those cases only where a necessity is shown therefor?

Counsel have cited in support of this contention the case of *Solen* v. *V. T. R. R. Co.,* reported in 15 Nev. 312, but we do not consider that case as decisive of this point. That was an action upon a judgment which did not call for any interest. The judgment creditor had paid to the clerk of the district court the amount of the judgment and costs, without interest, in discharge thereof, and claimed there was no balance due thereon. The court was divided in its opinion in determining the case. The opinion was by Justice Hawley and held that under the rule announced in *Hastings* v. *Johnson,* 1 Nev. 617, that when the judgment of the court was silent as regards the collection of interest, the party is not entitled to interest. Under this rule the judgment of the lower court was affirmed. Justice Leonard, in a concurring opinion, stated that while he regarded the rule in *Hastings* v. *Johnson* as wrong, it must be regarded as settled law, and therefore gave his assent to the affirmance of the judgment. He then proceeds to discuss at great length the rule for which counsel contend in the case at bar, that the right of action upon judgments exists in those cases only where a necessity is shown therefor, and he concludes that all actions "upon judgments, except for good cause, are vexatious, oppressive *160 and useless." Chief Justice Beatty, in the dissenting opinion, argues that the rule announced in *Hastings* v. *Johnson, supra,* and reannounced by Justice Hawley in the opinion affirming the judgment of *Solen* v. *V. T. R. R. Co, supra,* to the effect that where a judgment is silent as regards interest, the judgment creditor is not entitled to any interest, was wrong, and dissents from the conclusions of Justice Leonard to the effect that the right of action upon judgments exists in those cases only where a necessity is shown therefor. Hence, the only question decided by the court in the case of *Solen* v. *V. T. R. R. Co.* was the one relating to the right to interest upon judgments which were silent as to that matter. The question argued by counsel in the case at bar remains open and unsettled so far as the decisions of this court are concerned. Under the provisions of our statute in force at the time of the entry of the judgment against appellant in 1882, it was the right of the respondent Mandlebaum at any time within five years after the entry thereof to have a writ of execution for the enforcement of the same. (Gen. Stats, sec. 3233.)

This section was subsequently amended by extending the time in which the writ might be issued to six years. (Stats. 1889, p. 26.)

This statutory rule simply extends the time given under the common law, which limited the right to a year

and a day after the entry of the judgment, and we are unable to find any other statutory provision in any manner limiting or restricting this right. Neither have we been able to find any statutory provision in any manner restricting or limiting the right of action upon judgments as given by the common law. In the absence of statutory restrictions of the common law right of action upon judgments, then the common law rule must prevail, and the question be determined by such rule only. The inquiry then is, what right of action upon judgments is given by the common law? We must adopt the view expressed by Chief Justice Beatty in *Solen* v. *V. T. R. R. Co.* and hold that an action on a judgment would lie as a matter of course at common law; that while there may be some conflict in the decisions of this country upon this point, the decided weight of authority is in support of the rule. As early as 1858, the Supreme Court of *161 California, in the case of *Ames* v. *Hoy,* so held, and answering the same line of argument used by counsel for appellant in the case at bar, say: "The chief argument is that there is no necessity for a right of action on a judgment, inasmuch as execution can be issued to enforce the judgment already obtained, and no better or higher right or advantage is given to the subsequent judgment. But this is not true in fact, as in many cases it may be of advantage to obtain another judgment in order to save or prolong the lien; and in this case, the advantage of having record evidence of the judgment is sufficiently perceptible. The argument that the defendant may be vexed by repeated judgments on the same cause of action, is answered by the suggestion that an effectual remedy to the party against this annoyance is the payment of the debt." (*Ames* v. *Hoy,* 12 Cal. 11.)

Considering the provisions of our statutes under which a judgment is made a lien upon the real property of the judgment debtor for a term of two years after the judgment has been docketed, we can well say that it may be an advantage to obtain another judgment in order to save or prolong such lien. The Supreme Court of Indiana, in later cases than the one cited in the opinion of Chief Justice Beatty, say that the law is well settled that 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. (*Hansford et al.* v. *Van Auken, Administrator,* 79 Ind. 160; *Palmer* v. *Glover,* 73 Ind. 529.)

In the absence of direct legislation restricting or limiting the common law rule of the right of action upon judgments, there are found within our statutes provisions from which the court is authorized in holding, as a matter of inference, that no change in that rule was intended, otherwise some legislative restriction or limitation of the right under the common law rule would have been included in the statute other than the one barring the action if not commenced within six years after the right accrued. In other words, the legislature gave to the judgment creditor the right of action at any time within six years after such right accrued without other limitations.

*162 Furthermore, the statutory law preserved that right as against the judgment debtor who might be out of the state, by allowing such action to be commenced within the time limited after his return to the state, which might be, as in this case, long after the right of execution had been barred.

We must therefore hold, that under the common law rule, which prevails in this state, that the right of action upon an unsatisfied judgment is a matter of course, and that it is not necessary to aver in the complaint, or show by the record, that other good cause exists therefor.

We are also of the opinion that the contention of the respondents that the complaint and record show that a good cause does exist for the bringing of the action, from the facts that the complaint and record disclose, that at the time the action was commenced the statutory right of execution had been barred by more than nine years time, while the statute of limitations had only been running two days. The respondents held a

judgment, which is the highest evidence of indebtedness, without any right to enforce the same, and that right could be obtained by an action prosecuted to final judgment.

The judgment will therefore be affirmed.

EXHIBIT 2

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

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

v.

UNITED AUTOMOBILE INSURANCE COMPANY,
Respondent.

RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF TO SECOND CERTIFIED QUESTION

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

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ARGUMENT

I. Appellants Can No Longer Continue to Seek Consequential Damages in the Amount of the Default Judgment Obtained Against Mr. Lewis for UAIC's Breach of the Duty to Defend Because the Default Judgment Expired Due to Appellants' Failure to Renew the Judgment Pursuant to the Terms of NRS 17.214, and Appellants Have Not Otherwise Brought an Action on the Default Judgment.

Nevada's statute of limitations, NRS 11.190(1)(a), provides that "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" must be commenced within six years. Accordingly, there exist only two methods by which the self-executing expiration of a judgment six years following its issuance may be prevented. One method is renewal of the original judgment by the judgment creditor pursuant to the terms of NRS 17.214. The second method is via the bringing of an independent action on the original judgment, which allows a judgment creditor the opportunity, "when the limitations period has almost run on the judgment, to obtain a new judgment that will start the limitations period anew." *Salinas v. Ramsey*, 234 So. 3d 569, 571 (Fla. 2018).

Outside of renewing the original judgment or obtaining a wholly new judgment restarting the limitations period, however, a judgment in Nevada automatically expires by operation of law six years following its issuance pursuant to the terms of NRS 11.190. *Cf.* NRS 21.010 ("[T]he party in whose favor judgment is given may, at any time before the judgment expires, obtain the issuance of a writ

EXHIBIT 3

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF Los Angeles)

AFFIDAVIT OF GARY LEWIS

Comes now Cross-claimant/Third-party Plaintiff, GARY LEWIS, first being duly sworn deposes and says:

1. I, Gary Lewis was, at all times relevant to the injury to Cheyenne Nalder, a resident of the County of Clark, State of Nevada. I then moved my residence to California in December of 2008 and have had no presence for purposes of service of process in Nevada since that date.

2. I retained attorney, Thomas Christensen, Esq. to file a Cross-Claim/Third party complaint against United Automobile Insurance Co., Randall Tindall, Esq., and Resnick & Louis, P.C., for acts and omissions committed by them and each of them, as a result of the finding of coverage on October 30, 2013.

3. United Automobile Insurance Company, hereinafter referred to as "UAIC", was my insurance company.

4. Randall Tindall, hereinafter referred to as "Tindall," is an attorney licensed and practicing in the State of Nevada.

5. Resnick & Louis, P.C. was and is a law firm, which employed Tindall and which was and is doing business in the State of Nevada.

6. I requested that UAIC or any attorneys they hired to defend me in these two state court actions communicate through my current attorney in my claim against UAIC in Federal Court, Mr. Thomas Christensen.

7. I ran over Cheyenne Nalder (born April 4, 1998), a nine-year-old girl at the time, on July 8, 2007.

8. This incident occurred on private property.

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

10. Before the subject incident, I received a statement from UAIC instructing me that my renewal payment was due by June 30, 2007.

11. The renewal statement also instructed me that I remit payment prior to the expiration of my policy "[t]o avoid lapse in coverage."

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

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

14. On July 10, 2007, I paid UAIC to renew my auto policy. My policy limit at this time was $15,000.00.

15. I wanted UAIC to pay these limits to offset the damage I did and to protect me from greater damages.

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

17. UAIC never informed me that Nalder offered to settle Cheyenne's claim.

18. UAIC never filed a declaratory relief action.

19. UAIC rejected Nalder's offer.

20. UAIC rejected the offer without doing a proper investigation and claimed that I was not covered under my insurance policy and that I did not renew my policy by June 30, 2007.

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

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

23. I thought UAIC would defend me but they failed to appear and answer the complaint. As a result, Nalder obtained a default judgment against me for $3,500,000.00.

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

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

26. I assigned to Nalder my right to "all funds necessary to satisfy the Judgment." I retained the rest of my claims against UAIC. I left the state of Nevada and located in California in December of 2008. Neither I nor anyone on my behalf has been subject to service of process in Nevada since January 7, 2009.

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

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

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

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

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

32. The district court also granted summary judgment in favor of UAIC on my bad faith allegations even though there were questions of fact regarding the reasonableness of UAIC's actions and their failure to defend me or communicate offers of settlement to me were sufficient to sustain a bad faith claim under Miller v. Allstate. Nalder and I appealed this erroneous decision.

33. At this time I had already suffered damages as a result of the judgment entered against me.

34. I continued to suffer damages as a result of the entry of this judgment that UAIC has refused to remedy.

35. The district court ordered UAIC to pay the policy limit of $15,000.00.

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

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

38. UAIC has admitted that their duty to defend has still not been discharged.

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

40. Our second appeal to the Ninth Circuit, ultimately led to certification of the first question to the Nevada Supreme Court, namely, whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages to the breach.

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

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

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

44. This failure to investigate the factual basis for the validity of the judgment against me caused me additional damages.

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

46. This was not something brought up in the trial court, but only in the appellate court for the first time. My understanding is that the Ninth Circuit is not a trial court that takes evidence.

47. This action could leave me with a valid judgment against me and no cause of action against UAIC.

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

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

50. The Ninth Circuit concluded the parties failed to identify Nevada law that conclusively answers whether a plaintiff can recover consequential damages based on a judgment that is over six years old and possibly expired. I must wonder whether the Ninth Circuit judges read the *Mandlebaum v. Gregovich*, 24 Nev. 154, 50 P. 849, (1897) case.

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

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

53. Even though Nalder believed the law is clear that UAIC is bound by the judgment, regardless of its continued validity against me, and took action in Nevada and California to insure and demonstrate the continued validity of the underlying judgment against me. Before the actions of UAIC questioning the validity of the judgment, as part of my assignment of a portion of my claim against UAIC Nalder's only efforts to collect the judgment had been directed at UAIC and not me. Thus UAIC's improper investigation and refusal to withdraw a fraudulent affidavit caused me and continue to cause me injury and damage.

54. These Nevada and California state court actions are further harming me and Nalder but were undertaken to demonstrate that UAIC has again tried to escape responsibility

by making misrepresentations to the Federal and State Courts and putting their interests ahead of mine.

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

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

57. This was done appropriately by demonstrating to the court that the judgment was still within the applicable statute of limitations. I have read the *Mandlebaum v. Gregovich*, 24 Nev. 154, 50 P. 849, (1897) case. It is exactly my situation and it provides: "The averments of the complaint and the undisputed facts are that, at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. Notwithstanding nearly fifteen years had elapsed since the entry of the judgment, yet, for the purposes of action, the judgment was not barred — for that purpose **the judgment was valid.**" *Id., Mandlebaum at 851.*

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

59. Nalder also retained California counsel, who filed a judgment in California, which has a ten year statute of limitations regarding actions on a judgment. Nalder maintains that all of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the judgment; but out of an abundance of caution and to maintain the judgment against me, she brought them to demonstrate the actual way this issue should have been litigated in the State Court of Nevada, not at the tail end of an appeal by a fraudulent affidavit of counsel for UAIC.

60. UAIC did not discuss with me any proposed defense, nor did it coordinate it with my counsel Thomas Christensen, Esq.

61. UAIC hired attorney Stephen Rogers, Esq. to represent me, misinforming him of the factual and legal basis of the representation. This resulted in a number of improper contacts with me. These contacts were made in spite of my requests to discuss any matters related to my claims against UAIC with my attorney handling my action against UAIC Thomas Christensen.

62. Thomas Christensen explained the nature of the conflict and my concern regarding a frivolous defense put forth on my behalf. I fear that if the state court judge is fooled into an improper ruling that then has to be appealed in order to get the correct law applied damage could occur to me during the pendency of the appeal.

63. Regardless of potential greater damage should the trial court be fooled these actions by UAIC and Tindall are causing immediate damages of continued litigation, litigation costs and fees and damage to my contractual relationship with Cheyenne Nalder.

64. UAIC's strategy of trickery, delay and misrepresentation was designed to benefit UAIC but harm me.

65. In order to evaluate the benefits and burdens to me and the likelihood of success of the course of action proposed by UAIC and the defense attorneys hired by UAIC, I asked through my attorney Thomas Christensen that UAIC and their attorneys communicate to

Thomas Christensen regarding the proposed course of action and what research supported it. It was requested that this communication go through Thomas Christensen's office because that was my desire, in order to receive counsel prior to embarking on a course of action.

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

67. Stephen Rogers, Esq. never provided any Nevada law or assurances that UAIC will be responsible if their proposed defense fails or documents or communications regarding my representation.

68. Instead, UAIC obtained my confidential client communications and then misstated the content of these communications to the Court. That is why I sought Cumis counsel. The conflict of having UAIC as a co-client with any attorney representing me is a conflict I am unwilling to waive. This was for UAIC's benefit and again harmed me.

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

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

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

72. I was concerned about Steve Rogers representing me but taking direction from UAIC who is a defendant in my lawsuit in federal court against them. I therefore hired additional CUMIS counsel E. Breen Arntz. I requested Steve Rogers have UAIC pay Mr. Arntz because of the conflict in Rogers representing both me and UAIC.

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

74. These actions by UAIC and counsel on its behalf are harmful to me and benefit UAIC and not me.

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

76. I do not understand why the court granted UAIC's Motion to Intervene after judgment since it is contrary to NRS 12.130, which states: Intervention: Right to intervention; procedure, determination and costs; exception. 1. Except as otherwise provided in subsection 2: (a) **Before the trial** ...

77. These actions by State Actor David Jones ignore my rights to due process and the law and constitution of the United States and Nevada. The court does the bidding of UAIC and clothes defense counsel in the color of state law in violation of 42 USCA section 1983.

78. David Stephens representing Nalder and E. Breen Arntz representing me worked out a settlement of the action and signed a stipulation. This stipulation was filed and submitted to the court with a judgment prior to the "hearing" on UAIC's improperly served and groundless motions to intervene.

79. I was completely aware of the settlement entered into by E. Breen Arntz. I authorized that action because the defense put forward by UAIC is frivolous. I do not want to incur greater fees and expenses in a battle that I will most likely loose. I also don't want to create the situation where Nalder will have even greater damages against me than the judgment.

From all the information I have gathered from UAIC the judgment against me is valid. I don't want a frivolous defense that will ultimately fail. I don't want to take that risk.

80. Instead of signing the judgment and ending the litigation as I had requested, the court asked for a wet signed stipulation as a method of delaying signing the stipulated judgment.

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

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

83. Randall Tindall, Esq. fraudulently filed unauthorized pleadings on my behalf on September 26, 2018 and on September 27, 2018.

84. UAIC hired Tindall to further its strategy to defeat Nalder and my claims. Tindall agreed to the representation despite his knowledge and understanding that this strategy amounted to fraud and required him to act against the best interests of his "client" me.

85. Tindall mischaracterized the law and filed documents designed to mislead the Court and benefit UAIC, to the detriment of me.

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

87. I was not consulted and I did not consent to the representation.

88. I did not authorize the filings by Randall Tindall, Esq.

89. I and my attorneys, Thomas Christensen, Esq. and E. Breen Arntz, Esq., have requested that Tindall withdraw the pleadings filed fraudulently by Tindall.

90. Tindall has refused to comply and continues to violate ethical rules regarding his claimed representation of me.

91. I filed a bar complaint against Tindall, but State Actors Daniel Hooge and Phil Pattee dismissed the complaint claiming they do not enforce the ethical rules if there is litigation pending. This makes no sense to me. Why won't the bar protect the public from these unethical fraudulent practices by Tindall?

92. With this affidavit I am appealing the dismissal of my bar complaint against Randall Tindall.

93. With this affidavit I am requesting an investigation of Daniel Hooge and Phil Pattee regarding the dismissal of my bar complaint.

94. Following Mr. Tindall's involvement the court signed an order granting intervention while still failing to sign the judgment resolving the case.

95. I later discovered Judge Jones and Mr. Tindall had a business relationship while working together at another insurance company.

96. Although Judge Jones removed himself from these cases he did not rescind the orders he issued after Mr. Tindall's involvement in the case. These orders are tainted by Mr. Tindall's prior involvement.

97. UAIC and Tindall, and each of the state actors, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming me.

98. I sustained damage resulting from defendants' acts in incurring attorney fees, litigation costs, loss of claims, delay of claims, and as more fully set forth below.

99. UAIC and Tindall acting under color of state law deprived me of rights, privileges, and immunities secured by the Constitution or laws of the United States.

100. I have duly performed all the conditions, provisions and terms of the agreements or policies of insurance with UAIC relating to the claim against me, have furnished and delivered to UAIC full and complete particulars of said loss and have fully complied with all the

provisions of said policies or agreements relating to the giving of notice as to said loss, and have duly given all other notices required to be given by me under the terms of such policies or agreements.

101. That I had to sue UAIC in order to get protection under the policy. That UAIC, and each of them, after being compelled to pay the policy limit and found to have failed to defend me, now fraudulently claim to be defending me when in fact UAIC is continuing to delay investigating and processing the claim; not responding promptly to requests for settlement; doing a one-sided investigation, and have compelled me to hire counsel to defend myself from Nalder, Tindall and UAIC. All of the above are unfair claims settlement practices as defined in N.R.S. 686A.310 and I have been damaged.

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

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

104. The actions of UAIC and Tindall, and each of them, in this matter have been fraudulent, malicious, oppressive and in conscious disregard of my rights.

105. It seems to me that the above mentioned parties have communicated with each other and conspired together to harm me.

106. During the litigation and investigation of the claim, UAIC, and Tindall, threatened, intimidated and harassed me and my counsel.

107. The investigation conducted by UAIC, and Tindall, was done for the purpose of denying coverage and not to objectively investigate the facts.

108. UAIC and Tindall, failed to adopt and implement reasonable standards for the prompt investigation and processing of claims.

109. UAIC and Tindall, failed to affirm or deny coverage of the claim within a reasonable time after proof of loss requirements were completed and submitted by me.

110. UAIC and Tindall, failed to effectuate a prompt, fair and equitable settlement of the claim after my liability became reasonably clear.

111. UAIC and Tindall, failed to promptly provide to me a reasonable explanation of the basis in the Policy, with respect to the facts of the Nalder claim and the applicable law, for the delay in the claim or for an offer to settle or compromise the claim.

112. Because of the improper conduct of UAIC and Randall Tindall, I was forced to hire an attorney.

113. I have suffered damages as a result of the delayed investigation, defense and payment on the claim.

114. I have suffered anxiety, worry, mental and emotional distress as a result of the conduct of UAIC and Tindall.

115. The conduct of UAIC and Tindall, was oppressive and malicious and done in conscious disregard of my rights.

116. UAIC and Tindall, breached the contract existing between me and UAIC, breached the covenant of good faith and fair dealing, acted unreasonably and with knowledge that there was no reasonable basis for their conduct, violated NRS 686A.310 and were negligent by their actions set forth above which include but are not limited to: Unreasonable conduct in investigating the loss; Unreasonable failure to affirm or deny coverage for the loss; Unreasonable delay in making payment on the loss; Failure to make a prompt, fair and equitable settlement for the loss; Unreasonably compelling me to retain an attorney before affording

coverage or making payment on the loss; Failing to defend me; Fraudulent and frivolous litigation tactics; Filing false and fraudulent pleadings; Conspiring with others to file false and fraudulent pleadings;

117. As a proximate result of the aforementioned, I have suffered and will continue to suffer in the future damages as a result of the fraudulent litigation tactics and delayed payment on the judgment.

118. As a further proximate result of the aforementioned, I have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses.

119. As a further proximate result of the aforementioned, I was compelled to retain legal counsel to prosecute this claim, and UAIC and Tindall, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.

120. The conduct of UAIC and Tindall, was oppressive and malicious and done in conscious disregard of my rights.

121. The aforementioned actions of UAIC and Tindall, constitute extreme and outrageous conduct and were performed with the intent or reasonable knowledge or reckless disregard that such actions would cause severe emotional harm and distress to me.

122. As a proximate result of the aforementioned intentional infliction of emotional distress, I have suffered severe and extreme anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses.

123. As a further proximate result of the aforementioned intentional infliction of emotional distress, I was compelled to retain legal counsel to prosecute this claim, and UAIC and Tindall, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.

124. Randall Tindall breached the duty of care by failing to communicate with me, failing to follow my reasonable requests for settlement, case strategy and communication.

125. That breach caused harm to me including but not limited to anxiety, emotional distress, delay, enhanced damages against me.

126. I was damaged by all of the above as a result of the breach by Randall Tindall.

127. I request that E. Breen Arntz and/or Randall Tindall withdraw the fraudulent, unauthorized, frivolous, improperly filed motions filed by Randall Tindall in both CASE NO. A-18-772220-C and CASE NO. 07A549111. I want the settlement worked out with my knowledge and consent signed by the court.

FURTHER AFFIANT SAYETH NAUGHT.

GARY LEWIS

SUBSCRIBED and SWORN to before me this 26th day of November, 2018.

Notary Public in and for said County and State.

SEAN H. HOUSTON
Notary Public – California
Los Angeles County
Commission # 2218583
My Comm. Expires Oct 16, 2021

EXHIBIT "W"

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,* v. UNITED AUTOMOBILE INSURANCE COMPANY, *Defendant-Appellee.*	No. 13-17441 D.C. No. 2:09-cv-01348-RCJ-GWF ORDER CERTIFYING QUESTION TO THE NEVADA SUPREME COURT

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

Argued and Submitted January 6, 2016
San Francisco, California

Filed December 27, 2017

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

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

18-01663

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

Diarmuid F. O'Scannlain
Circuit Judge

EXHIBIT "X"

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 70504

FILED

FEB 23 2018

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

ORDER ACCEPTING SECOND CERTIFIED QUESTION AND DIRECTING SUPPLEMENTAL BRIEFING

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

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

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

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

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

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

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

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

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

It is so ORDERED.[1]

_____, C.J.
Douglas

_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Pickering

_____, J.
Hardesty

_____, J.
Stiglich

---

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

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

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

EXHIBIT "Y"

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

UNITED STATES DISTRICT COURT

DISTRICT OF Nevada

Nalder et al.,

Plaintiffs,

V.

United Automobile Insurance Company,

Defendant.

JUDGMENT IN A CIVIL CASE

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

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

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

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

IT IS ORDERED AND ADJUDGED

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

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

October 30, 2013

Date

/s/ Lance S. Wilson

Clerk

/s/ Summer Rivera

(By) Deputy Clerk

ORDR
MATTHEW J. DOUGLAS
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mdouglas@awslawyers.com

Attorneys for Intervenor United Automobile Insurance Company

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

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

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

ORDER ON MOTIONS HEARD JANUARY 9th, 2019

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

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

///

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

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

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

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

ORDER

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

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

///

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

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

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

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

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

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

IT IS SO ORDERED.

DATED this 11 day of FEBRUARY 2019.

DISTRICT JUDGE
ERIC JOHNSON

Submitted by:

ATKIN WINNER & SHERROD, LTD.

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

ATKIN WINNER & SHERROD
A NEVADA LAW FIRM

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 3

David A. Stephens, Esq.
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IN THE SUPREME COURT OF THE STATE OF NEVADA

CHEYENNE NALDER, an individual, and GARY LEWIS
Petitioners and Real Parties in Interest

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK THE HONORABLE DAVID JONES AND ERIC JOHNSON, DISTRICT COURT JUDGES,

Respondents,

And
UNITED AUTOMOBILE INSURANCE COMPANY,

Respondent.

Supreme Court No. _____

District Court Case No. 07A549111
Consolidated with 18-A-772220
DEPT. NO: XX

PETITION FOR WRIT OF MANDAMUS

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breen@breen.com
Attorney for defendant Gary Lewis

INTRODUCTION

Petitioners, CHEYENNE NALDER and GARY LEWIS ("Petitioners") by and through their attorneys of record, DAVID A. STEPHENS, ESQ., E. BREEN ARNTZ, ESQ., respectively, hereby petition for a Writ of Mandamus, pursuant to NRS §34.160 – 34.310 and NRAP 21, directing the Eighth Judicial District Court of the State of Nevada ("District Court") or Respondent court to:

Vacate its October 19, 2018 orders; wherein, the District Court granted leave to intervene after Judgment had already been entered in these actions. This Petition is supported by the attached Memorandum of Points and Authorities, the accompanying Appendix, all papers filed with the District Court in this matter, and argument by counsel that the Court may entertain.

DATED this 7th day of February, 2019.

S/David A Stephens
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Attorney for defendant Gary Lewis

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AFFIDAVIT OF DAVID A. STEPHENS, ESQ. IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

DAVID A. STEPHENS, ESQ., being first duly sworn, deposes and says:

1. That I am an attorney at law duly licensed to practice in the State of Nevada, with my office being located at 3636 North Rancho Drive, Las Vegas, Nevada 89130 and I represent the Petitioner, Cheyenne Nalder.
2. That the following narrative of facts and procedural history are based on my own personal knowledge, or are based on my belief and understanding as counsel. Petitioners personally are not personally giving this Affidavit because the salient issues involved in this Petition are issues of law and procedure.
3. Pursuant to NRS § 34.160, Petitioners request relief in the form of a Writ of Mandamus directing the Respondent Court to: Vacate its October 19, 2018 Order, wherein the District Court Granted leave to UAIC to intervene after Judgment had already been entered. (See Ex. 6). Further, all pleadings filed by UAIC in the Nalder v. Lewis litigation should be stricken and Orders entered at UAIC's request be voided.

4. Pursuant to NRS § 34.160, Petitioners further request relief in the form of a Writ of Mandamus directing the Respondent Court to: Vacate its October 19, 2018 Order wherein the District Court Granted leave to UAIC to intervene after settlement had already been filed. (See Ex. 7). Further, all pleadings filed by UAIC should be stricken and Orders entered at UAIC's request be voided.
5. That a Writ review is necessary because as Petitioner contends and believes there are no disputed factual issues existing regarding the fact that intervention was not granted until after judgment was entered, and there are no legal issues as intervention is **never** permitted after judgment is entered in any action. Petitioners do not have a plain, speedy and adequate remedy in the ordinary course of law.
6. That Judgment was entered on August 26, 2008 in favor of James Nalder as guardian ad litem of Cheyanne Nalder and against Gary Lewis. (See Ex. 1.)
7. That an Amended Judgment was entered on March 28, 2018 in favor of Cheyenne Nalder and against Gary Lewis. (See Ex. 2.)
8. That a complaint was filed in Case No 18-A-772220 and the main claim was an action on the August 26, 2008 judgment pursuant to *Mandelbaum v. Gregovich*, 24 Nev. 154, 50 P. 849 (1897).

9. That the parties resolved the dispute and signed and filed a stipulation settling the case of 18-A-772220 on September 13, 2018. (See Ex. 4).

10. That United Automobile Insurance Company, who was not a party at the time, or at any time prior to judgment being entered, filed defectively noticed motions to intervene in both actions. (See Ex. 3.)

11. That service of both motions was defective on the face of the certificates of service. (See Ex. 3).

12. That I was not served with either of UAIC's Motions to Intervene, as detailed in my Opposition and subsequent Motion to Set Aside. (See Ex. 5.)

13. That on October 19, 2019, subsequent to the entry of the final judgment and settlement in these respective matters, the lower court granted UAIC's motions. (See Ex. 6 & 7.)

14. This Petition is made and based upon the Memorandum of Points and Authorities attached below and the exhibits contained in the concurrently filed appendix.

15. Attached as **Exhibit 1** to Petitioner's Appendix is a true and correct copy of the Notice of Entry of Judgment in favor of James Nalder (August 26, 2008).

16. Attached as **Exhibit 2** to Petitioner's Appendix is a true and correct copy of the Amended Judgment in favor of Cheyenne Nalder (March 28, 2018).

17. Attached as **Exhibit 3** to Petitioner's Appendix is a true and correct copy of UAIC's Motions to Intervene (August 16, 2018 & August 17, 2018).

18. Attached as **Exhibit 4** to Petitioner's Appendix is a true and correct copy of the signed and filed Stipulation settling the case of 18-A-772220 (September 13, 2018).

19. Attached as **Exhibit 5** to Petitioner's Appendix is a true and correct copy of my Opposition (October 8, 2019) and subsequent Motion to Set Aside (December 13, 2018).

20. Attached as **Exhibit 6** to Petitioner's Appendix is a true and correct copy of the Order filed granting Intervention in Case 07A549111 (October 19, 2019).

21. Attached as **Exhibit 7** to Petitioner's Appendix is a true and correct copy of the Order filed granting Intervention in Case A-18-772220-C (October 19, 2019).

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///

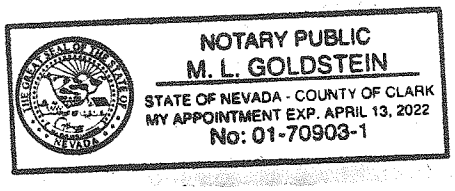
22. Attached as **Exhibit 8** to Petitioner's Appendix is a true and correct copy of UAIC's motion to consolidate on Order Shortening Time (sans exhibits) (November 26, 2018)

FURTHER AFFIANT SAYETH NAUGHT.

DAVID A. STEPHENS, ESQ.

Subscribed and sworn to before me
this 7th day of January, 2019.

NOTARY PUBLIC, in and for said County and State



AFFIDAVIT OF E. BREEN ARNTZ, ESQ. IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

E. BREEN ARNTZ, ESQ., being first duly sworn, deposes and says:

1. That I am an attorney at law duly licensed to practice in the State of Nevada, with my office being located at and I represent the Petitioner, Gary Lewis, who resides in California.
2. That the following narrative of facts and procedural history are based on my own personal knowledge, or are based on my belief and understanding as counsel. Petitioners personally are not personally giving this Affidavit because the salient issues involved in this Petition are issues of law and procedure.
3. Pursuant to NRS § 34.160, Petitioners request relief in the form of a Writ of Mandamus directing the Respondent Court to:Vacate its October 19, 2018 Order, wherein the District Court Granted leave to UAIC to intervene after Judgment had already been entered in this action. (See Ex. 6). Further, all pleadings filed by UAIC in the Nalder v. Lewis

litigation should be stricken and Orders entered at UAIC's request be voided.

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6. That Judgment was entered on August 26, 2008 in favor of James Nalder as guardian ad litem of Cheyanne Nalder and against Gary Lewis. See Ex. 1.
7. That, an Amended Judgment was entered on March 28, 2018 in favor of Cheyenne Nalder and against Gary Lewis. See Ex. 2.

8. That a complaint was filed in Case No 18-A-772220 and the main claim was an action on the August 26, 2008 judgment pursuant to *Mandelbaum v. Gregovich*, 24 Nev. 154, 50 P. 849 (1897) .

9. That the parties resolved the dispute and signed and filed a stipulation settling the case of 18-A-772220 on September 13, 2018. See Ex. 4.

10. That United Automobile Insurance Company, who was not a party at the time, or at any time prior to judgment being entered, filed defectively noticed motions to intervene in both actions. *See* Ex 3.

11. That neither I nor my client nor any other attorney on his behalf was served with either of UAIC's Motions to Intervene.

12. That on October 19, 2019, even though subsequent to the entry of the final judgment and filing of the settlement in these respective matters, the lower court granted UAIC's motions. See Ex. 6 & Ex. 7.

13. This Petition is made and based upon the Memorandum of Points and Authorities attached below and the exhibits contained in the concurrently filed appendix.

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20. Attached as **Exhibit 7** to Petitioner's Appendix is a true and correct copy of the Order filed granting Intervention in Case A-18-772220-C (October 19, 2019).

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21. Attached as **Exhibit 8** to Petitioner's Appendix is a true and correct copy of UAIC's motion to consolidate on Order Shortening Time (sans exhibits) (November 26, 2018)

FURTHER AFFIANT SAYETH NAUGHT.

E. Breen Arntz, Esq.

STEPHANIE MARTINEZ
Notary Public-State of Nevada
APPT. NO. 18-1983-1
My Appt. Expires 01-10-2022

Subscribed and sworn to before me
this 6 day of February, 2019.

NOTARY PUBLIC, in and for said
County and State

II. STATEMENT OF RELIEF SOUGHT

Petitioners request that this Honorable Court: Issue a Writ of Mandamus requiring the District Court to vacate its prior order allowing UAIC to intervene subsequent to judgment being entered in this action, and enter an order denying the said motion as NRS 12.130 does not permit intervention subsequent to trial or settlement or the entry of a judgment in any action.

Petitioners further request that this Honorable Court: Issue a Writ of Mandamus directing the District Court to strike any and all Pleadings filed in the Nalder v. Lewis actions by UAIC after the granting of its Intervention.

III. STATEMENT OF RELEVANT FACTS

A. Relevant Procedural Facts

On June 3, 2008, the lower court signed the final judgment in this action in favor of Petitioner, CHEYENNE NALDER, (a minor) through her guardian ad litem James Nalder and against the sole Defendant in that action, GARY LEWIS. (Ex. 1.) Notice of Entry of that Judgment was filed on August 26, 2008. (Ex 1.) This final judgment resolved this dispute as to the parties involved. On March 22, 2018, Petitioner Cheyenne Nalder filed her Ex Parte

Motion to Amend the Judgment to reflect her own name because she was no longer a minor. The Amended Judgment was thereafter filed on March 28, 2018. See, Ex. 2.

More than 10 years after the original, final judgment in this case was filed, United Automobile Insurance Company, filed a Motion to Intervene. See, Ex. 3. The Motions, based on the certificates of "service," were not served on any of the parties, but was ultimately opposed by Cheyenne Nalder's counsel. The Opposition and Motion to Aside later filed detailed not only the procedural defects of UAIC's Motion, but also included the very clear and well settled case law that does not allow for intervention after a final judgment or settlement. See Ex. 5. Even though the Nevada Supreme Court has clearly and consistently held that "in all cases" intervention must be before judgment is entered and that intervention is **never** permitted after judgment is entered or settlement reached, the lower Court, without hearing oral argument, allowed UAIC to Intervene. The Order was filed and entered on October 19, 2018. See, Ex. 6 & 7. Since its intervention, UAIC has made several strategic filings which complicate this previously resolved matter, including a Motion to Consolidate this action with another action. See Ex. 8. This action was, many

years ago, resolved, yet now is consolidated with a new action that involves different facts and issues of law. This Writ is therefore necessary.

IV. STATEMENT OF THE LAW

A. Writ of Mandamus Authority

NRAP 21 sets forth the procedural rules required to qualify for a Writ of Mandamus. Rule 21(b) sets forth the general requirements of a Writ Petition. Writ Petitions require a statement of: (a) the relief sought; (b) the issues presented; (c) the facts necessary to understand the issues presented by the petition; and (d) the reasons why the writ should issue, including points and legal authorities.

Mandamus is an extraordinary remedy, and the decisions as to whether a petition will be entertained lies within the discretion of the Supreme Court. *Poulos v. Eighth Judicial Dist. Court of State of Nev. In and For Clark County*, 98 Nev. 272, 652 P.2d 1177 (1974). Mandamus should not be used unless the usual and ordinary remedies fail to provide a plain, speedy, and adequate remedy, and without it there would be a failure of justice. *See*, *Stromberg v. Second Jud. Dist. Ct. ex rel. County of Washoe*, 125 Nev. 1, 200 P.3d 509, 511 (2009). This Court "will exercise [its] discretion to consider writ petitions despite the existence of an otherwise adequate legal remedy when an important issue of law needs

clarification, and this court's review would serve considerations of public policy, sound judicial economy, and administration." *City of N. Las Vegas v. Eighth Judicial Dist. Court ex. Rel. County of Clark*, 122 Nev. 1197, 1204, 147 P.3d 1109, 1114 (2006).

V. ARGUMENT

a. Intervention was Improper.

Intervention was unknown at common law and is creature of statute. *Geis v. Geis*, 125 Neb. 394, 250 N.W. 252 (1933). In Nevada, NRS 12.130 permits a party to intervene under certain circumstances. The statute, in its entirety, reads as follows:

> **NRS 12.130 Intervention: Right to intervention; procedure, determination and costs; exception.**
>
> 1. Except as otherwise provided in subsection 2:
>
> (a) **Before the trial,** any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both.
>
> (b) An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant.

(c) Intervention is made as provided by the Nevada Rules of Civil Procedure.

(d) The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained, the party intervening shall pay all costs incurred by the intervention.

2. The provisions of this section do not apply to intervention in an action or proceeding by the Legislature pursuant to NRS 218F.720. (Emphasis added.)

As the Court can see, NRS 12.130 specifically states "before the trial any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." The Nevada Supreme Court has previously held "***The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment***." *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993) (emphasis added).

In *Lopez*, Plaintiffs, Eric and Erwin Lopez, sued Defendant Leone for injuries stemming from a motor vehicle crash. Eric and Erwin agreed to accept Leone's policy limits in exchange for a covenant not to execute. Eric and Erwin then brought suit against Leone for purposes of having a judgment entered to collect applicable UM/UIM coverage from Merit Insurance. Eric and Erwin notified Merit about the action. The district court allowed Eric and Erwin to "prove up"

their damages in a hearing, and subsequently entered default judgments in favor of Eric and Erwin in excess of $100,000.00 each. "No appeal was taken from these judgments, and they became final." *Id.* at 1267. Subsequent to the entry of judgment in *Lopez*, Merit Insurance sought to have the judgments set aside. As the Court noted:

> Facing potential liability arising out of these judgments on its uninsured/underinsured motorist policy with Eric and Erwin's mother, Merit, on October 28, 1991, filed a "Motion To Set Aside Default Judgments And To Intervene." The district court granted both motions, finding that Eric and Erwin "did not give proper notice of the action and its trial to MERIT INSURANCE COMPANY. *Id*.

The Supreme Court reversed the lower court, holding that intervention cannot be had **under any circumstances** after judgment has been entered in an action. The Court explained its position as follows:

> NRS 12.130(1) provides that "***before the trial***, any person may intervene in an action or proceeding, who has an interest in the matter in litigation, in the success of either of the parties, or an interest against both." NRS 12.130(2) further provides that an intervenor may join the plaintiff "in claiming what is sought," or may join the defendant "in resisting the claims of the plaintiff." ***The plain language of NRS 12.130 clearly indicates that intervention is appropriate only during ongoing litigation***, where the intervenor has an opportunity to protect or pursue an interest which will otherwise be infringed. ***The plain language of NRS***

> ***12.130 does not permit intervention subsequent to the entry of a final judgment.***
>
> *Id.* at 1267-1268 (emphasis added).

The decision in *Lopez* reiterated the long standing prohibition against intervention post judgment. Dating all the way back to 1938, the Nevada Supreme Court has held that ***intervention cannot be had after a final judgment is entered***. *See, Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734. (1938). In *Ryan* the Court adopted the holding from a California decision a decade before which held that "***in all cases [intervention] must be made before trial***." *Id.* (citing *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928). The Nevada Supreme Court has subsequently confirmed "In refusing to allow intervention subsequent to the entry of a final judgment, ***this court has not distinguished between judgments entered following trial and judgments entered by default or by agreement of the parties."*** *Lopez v. Merit Insurance Co.*, 853 P.2d 1266, 1268 (1993) (emphasis added).

In *Dangberg Holdings. v. Douglas Co.*, 115 Nev. 129, 139 (Nev. 1999) the Supreme Court further clarified that intervention after judgment, **which includes settlement**, is not possible.

> **The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment.** Lopez v. Merit Ins. Co., 109 Nev. 553, 556, 853 P.2d 1266, 1267-68 (1993). Additionally, in Ryan v. Landis, 58 Nev. 253, 260, 75 P.2d 734, 735 (1938)

> (quoting *Henry Lee Co. v. Elevator Co.*, 42 Iowa 33 (1918)), we reiterated that: "intervention must be made before the trial commences. After the verdict all would admit it would be too late to intervene. But **a voluntary agreement of the parties stands in the place of a verdict, and, as between the parties to the record as fully and finally determines the controversy as a verdict could do."** *Dangberg Holdings. v. Douglas Co.*, 115 Nev. 129, 139 (Nev. 1999). Emphasis added.

The Court has subsequently reiterated that NRS 12.130 does not permit intervention subsequent to the entry of a final judgment and that "***[i]n all cases***" intervention can only be granted before judgment is entered. *Id*.

Indeed, the Nevada Supreme Court has detailed its reasoning as to why NRS 12.130 does not permit intervention subsequent to the entry of final judgment and why intervention must "in all cases" be made before judgment is entered. The Court has explained, "It is not the intention of the statute that one not a party to the record shall be allowed to interpose and open up and renew a controversy which has been settled between the parties to the record, either by verdict or voluntary agreement. *Ryan v. Landis*, 58 Nev. 253, 260, 75 P.2d 734, 735. (1938) (quoting *Henry Lee & Co. v. Cass County Mill & Elevator Co.*, 42 Iowa 33 (1875).

In 1956, in the case of *Eckerson v. Rudy*, the Court not only recognized the long standing line of authority from the Nevada Supreme Court mandating that intervention cannot be had after judgment has been entered, but also noted that such a holding is supported by public policy. In that action, the appellant claimed that a default judgment was improperly entered, and that the appellant should have been allowed to intervene to set the default judgment aside. The Court held, "This they may not do by intervention where the controversy is ended and settled to the satisfaction of the parties litigant." *Eckerson v. Rudy*, 72 Nev. 97, 295 P.2d 399, 400 (1956).

In 1968, in the case of *McLaney v. Fortune Operating Co.*, the Nevada Supreme Court reversed the lower court's decision to allow intervention after judgment had been entered. The opinion states "The lower court allowed [appellants] to intervene . . . after judgment. ***The motion to intervene came too late and should have been denied***." *McLaney v. Fortune Operating Co.*, 84 Nev. 491, 499, 444 P.2d 505, 510 (1968).

In 1993, in *Lopez v. Merit Insurance Co.*, 853 P.2d 1266 (1993), the Nevada Supreme Court again confirmed its long held position that "in all cases" intervention cannot be granted after the entry of judgment. The Court detailed the long and consistent line of authority upholding NRS 12.130, which does not allow

intervention after judgment has been entered. The Court discussed case after case where appellants, over the course of several decades, had asked district courts to allow them to intervene for myriad reasons. Without exception, every time a district court judge found that intervention could not be had after judgment had been entered the district court judge's decision was upheld. Without exception, every time a district court judge allowed intervention after judgment was entered the district court judge's decision was reversed. ***In the instant Writ, Petitioners seek nothing other than to be treated the same way every other litigant who has presented this issue to the Court has been treated since 1938.***

In the instant action, a final judgment was entered on August 26, 2008. That judgment had remained on the docket that way for the better part of ten years. In 2018, the judgment creditor, (who had recently reached the age of majority), petitioned the Court to Amend the judgment to reflect her own name. ***Subsequent*** to final judgment being entered, and ***subsequent*** to the Amended final judgment being entered, UAIC was allowed to intervene in this matter. There is no dispute that the motion to intervene was granted subsequent to final judgment being entered. There is no dispute that Nevada authority holds that NRS 12.130 ***does not permit*** intervention subsequent to the entry of a final judgment, or that "in all

cases" intervention is not allowed after judgment. Intervention can never be (and has never been) permitted after a final judgment has been entered, and should not have been permitted by the lower court in this action.

It is not disputed that in case number 18-A-772220 the parties to the litigation entered into a written settlement agreement filed in the action (Ex. 4) and the Court below still allowed intervention contrary to the long line of cases.

The lower court's orders allowing UAIC to intervene subsequent to final judgment or settlement being entered flies in the face of almost a century of clear and consistent holdings from the Nevada Supreme Court which have, in the most broad terms possible ("in all cases") unequivocally held that intervention cannot be allowed for any reason after judgment has been entered. UAIC's concerns, just like the concerns raised by Merit Insurance about not being properly notified in *Lopez*, do not change the fact that intervention can never be (and never has been) allowed after judgment has been entered. UAIC cannot identify, and the lower court did not identify, a single case in all of Nevada's jurisprudence where intervention has ever been allowed subsequent to judgment being entered. The lower court's order should be vacated as it violated the core principles of *stare*

decisis which required that UAIC's motions for intervention subsequent to the entry of final judgment or settlement be denied.

b. Procedural Due Process was Denied to Petitioners.

The United States Constitution as well as the Constitution of the State of Nevada guarantee that a person must receive due process before the government may deprive him of his property. See, U.S Const. amend. XIV, § 1 ("nor shall any State deprive any person of life, liberty, or property, without due process of law"); Nev. Const. art. 1, § 8(5) ("No person shall be deprived of life, liberty, or property, without due process of law."). This Court has recognized that procedural due process "requires notice and an opportunity to be heard." *Maiola v. State*, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004); see also *Browning v. Dixon*, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998).

The requirements of procedural due process apply to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. *Board of Regents v. Roth*, 408 U.S. 564, 569–71 (1972). UAIC's failure on the face of both pleadings to properly serve them renders them void as a violation of due process requiring the voiding of the orders allowing intervention.

VI. CONCLUSION AND RELIEF SOUGHT

As a result of the foregoing, Petitioners pray for this Honorable Court to grant relief via a Writ of Mandamus directing the District Court to vacate its order allowing UAIC to intervene subsequent to final judgment, and enter an order denying said motion in case no 07A549111. Further, Petitioners seek direction to the lower Court that any filings proffered by UAIC in case 07A549111 be stricken from the record and any Orders issued at UAIC's request be stricken as void in Case 07A549111.

Further, Petitioners seek a Writ of Mandamus directing the District Court to vacate its order allowing UAIC to intervene subsequent to settlement, and enter an order denying said motion in case no 18-A-772220. Petitioners likewise seek direction to the lower Court that any filings proffered by UAIC in case 18-A-772220, not related to the third-party complaint, be stricken from the record and any Orders issued at UAIC's request, not related to the third-party complaint be stricken as void in case 18-A-772220.

Dated: 2/6/19

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NRAP 26.1 DISCLOSURE STATEMENT

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

E. Breen Arntz, Esq., Attorney for Defendant Gary Lewsi

David A. Stephens, Esq., Stephens & Bywater, P.C., Attorneys for Cheynne Nalder

Thomas F. Christensen, Esq., Christensen Law Offices, Attorneys for Third Party Plaintiff Gary Lewis

DATED this 6th day of February, 2019.

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Attorney for Defendant Gary Lewis

ROUTING STATEMENT

This matter is not retained by the Supreme Court under NRAP 17(a) nor is it presumptively assigned to the Court of Appeals pursuant to NRAP 17(b). Petitioners believe the Supreme Court should retain this writ because it relates to a matter that is currently pending before the Supreme Court pursuant to NRAP 17(a)(6). The Supreme Court has accepted two certified questions from the Ninth Circuit Court of Appeals in Supreme Court Case No. 70504. Intervenor misrepresented the issues the Supreme Court is deciding in Case No. 70504 in order to influence the trial court regarding the simple issues of a common law action on a judgment pursuant to *Mandelbaum v. Gregovich*, 24 Nev. 154, 50 P. 849 (1897). In addition, the judgment amount is over $3,000,000.

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the above and foregoing brief and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purposes. I further certify that this brief complies with all applicable Nevada Rules of appellate procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the records. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of appellate Procedure.

DATED this 6th day of February, 2019.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1) and NRAP 25(c)(1), I hereby certify that I am an employee of Stephens and Bywater and that on the 7th day of February, 2019, I caused the foregoing **PETITION FOR WRIT OF MANDAMUS** to be served as follows:

[X] personal, including deliver of the copy to a clerk or other responsible person at the office of counsel; and/or

[ ] by mail; and/or

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Eighth judicial District Court
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Regional Justice Center, Courtroom 3B
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Respondent Judge

The Honorable Eric Johnson
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Case No. 78085

In the Supreme Court of Nevada

CHEYANNE NALDER, and GARY LEWIS,

Petitioners,

vs.

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

Respondents,

and

UNITED AUTOMOBILE INSURANCE COMPANY,

Real Party in Interest.

District Court Case Nos.
A549111 & A772220

UNITED AUTOMOBILE INSURANCE COMPANY'S ANSWER

With Supporting Points and Authorities

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NRAP 26.1 DISCLOSURE

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

Real party in interest United Automobile Insurance Company (UAIC) is a privately held limited-liability company. No publicly traded company owns more than 10% of its stock.

UAIC is represented by Thomas E. Winner and Matthew J. Douglas at Atkin Winner & Sherrod, and by Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith at Lewis Roca Rothgerber Christie, LLP.

Dated this 10th day of July, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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INTRODUCTION

To petitioners Cheyanne Nalder and Gary Lewis, a decade-old judgment against Lewis has untold power. Although the judgment expired without its renewal under NRS 17.214, that has not stopped them from seeking (1) to amend it; (2) to beget a new action and a new (or renewed) judgment; and (3) to brandish it to prevent Lewis's insurer, United Automobile Insurance Company (UAIC), from intervening in either action or consolidating the two. Now they have asked for this Court's extraordinary intervention to keep the district court from making the very determinations about the judgment's expiration that would confirm that intervention and consolidation are justified.

The effect of an expired judgment on a district court's discretion in matters of intervention or consolidation might be an interesting issue, but it poorly and prematurely teed up in this petition. This Court should deny the petition.

ROUTING STATEMENT

Although UAIC disagrees with petitioner's characterizations about the record, UAIC agrees that it makes sense for the Supreme

Court to retain the petition because of its familiarity with the issues in the certified question, Docket No. 70504.

ISSUES PRESENTED

1. In an action purporting to renew a judgment, does a district court have discretion to let the defendant's insurer intervene before the trial or judgment in the action?

2. An expired judgment is a void judgment, *Leven v. Frey*, 123 Nev. 399, 410, 168 P.3d 712, 719 (2007), and a void judgment may be vacated under NRCP 60(b)(4) at any time, including by the court on its own motion, *Rawson v. Ninth Judicial Dist. Court*, 133 Nev., Adv. Op. 44, 396 P.3d 842, 848 & n.4 (2017). When a plaintiff seeks to revive an expired judgment against an insured, does a district court have discretion to let the insurer intervene to contest the expired judgment's validity, especially when the insured refuses to do so?

3. If *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734 (1938) holds otherwise, should that case be reconsidered or overruled?

STATEMENT OF FACTS

A. The Accident

Cheyenne Nalder alleges that on July 8, 2007 Gary Lewis negligently struck her with his car. (1 R. App. 2.)[1]

B. The 2007 Lawsuit

On October 9, 2007, Nalder through her guardian ad litem filed suit against Lewis. (1 R. App. 1.) Lewis did not answer, and eight months later the district court entered a default judgment for $3.5 million. (1 R. App. 5, 6–7.)

C. The Bad-Faith Action Against UAIC

Nalder then sued Lewis's former insurer, UAIC, in federal court, based on an assignment of Lewis's rights to a claim for bad faith. (1 R. App. 231–32; 11 R. App. 2531.)

1. Due to an Ambiguity, the Accident Is Deemed Covered

The federal court initially granted UAIC summary judgment because at the time of the accident, Lewis had let his policy lapse. (1 R.

[1] "R. App." refers to real party in interest UAIC's appendix.

App, 87, 99, 231–32.) The Ninth Circuit found an ambiguity in the renewal statement, however (1 R. App. 104, 11 R. App. 2547), and on remand the district court construed the ambiguity against UAIC to imply a policy covering the 2007 accident. (1 R. App. 110, 232.)

UAIC paid Nalder the $15,000 policy limits and $90,000 for her attorney's fees.

2. The Judgment Against Lewis Expires

Nalder appealed, however, because she considered the entire $3.5 million default judgment a consequential damage of UAIC's failure to defend, even though UAIC had acted in good faith. (1 R. App. 110.)

Pending that appeal, Nalder let that default judgment expire without renewing it under NRS 17.214. (1 R. App. 15.)

3. This Court Accepts Certified Questions on the Availability of Consequential Damages

The Ninth Circuit certified to this Court two questions: first, whether an insurer who mistakenly but in good faith denies coverage can be liable for consequential damages beyond the payment of policy limits and the costs of defense; and second, whether the expiration of the judgment without renewal cuts off the right to seek, in an action

against the insurer, consequential damages based on that judgment. (2 R. App. 257, 268.)

D. Nalder "Amends" the Expired Judgment in the 2007 Suit

Shortly after this Court accepted the second certified question, Nalder moved *ex parte* to "amend" the expired 2008 judgment to be in her own name rather than that of her guardian ad litem. (1 R. App. 62, 71, 74; 2 R. App. 273, 282; P. (Dkt. 78085) App. 6–7;[2] 5 R. App. 1108 (describing the amendment as "an amendment of the expired judgment").)[3]

[2] "P. (Dkt. #) App." refers to the petitioners' appendix in the indicated docket.

[3] Coverage counsel initially moved on Lewis's behalf to vacate the amended judgment. (1 R. App. 26–28; 4 R. App. 841, 852) After the district court in a minute order granted UAIC permission to intervene (4 R. App. 839, 10 R. App. 2313) but before the entry of a written order (4 R. App. 874), Lewis, through another attorney, alleged that coverage counsel had not conferred with Lewis about the motion and moved to strike it. (1 R. App. 26–28.) Two days later, the district court entered its written order granting UAIC permission to intervene (1 R. App. 31), and UAIC was able to file its own motion to vacate the judgment (1 R. App. 35). Both Nalder and Lewis opposed the motion. (1 R. App. 78, 134.)

E. Nalder Brings a New Action Testing the Validity of the Expired Judgment

A few days later, on April 3, 2018, Nalder filed a new complaint against Lewis as a purported "action on the judgment," seeking a new $3.5 million judgment (minus $15,000 plus interest) and a declaration that the six-year limitation for bringing such an action had not expired. (10 R. App. 2284–88.)

F. UAIC Intervenes in the Pending Actions and Moves to Consolidate Them

To contest Nalder's new effort to revive the expired 2008 default judgment against its insured, UAIC moved to intervene in both actions and moved for their consolidation. (P. (Dkt. 78085) App. 8; 10 App. 2083; 1 R. App. 227; P. (Dkt. 78085) App. 213; 11 R. App. 2610.) The motion to intervene was properly served both by mail and by electronic service (3 R. App. 732–74), and the motion to consolidate was properly e-served (11 R. App. 2624); Nalder and Lewis opposed both motions. (1 R. App. 8, 2 R. App. 310, 3 R. App. 741, 4 R. App. 754, 763, 10 R. App. 2308, 2329, 11 R. App. 2685, 2743.) Seeking to create a judgment in the 2018 action, Nalder and Lewis submitted a stipulated judgment against

Lewis for the full amount requested in Nalder's complaint. (3 R. App. 595, 4 R. App. 771.)

The district court granted intervention in both cases (1 R. App 31, 10 R. App. 2450),[4] and the judge in the lower-numbered 2007 case ordered the related cases consolidated (P. (Dkt. 78243) App. 2). The district court did not enter judgment on Nalder's and Lewis's stipulation. (5 R. App. 1133–34.)

G. While the Case is Stayed, Nalder and Lewis Try to Create a Judgment in the 2018 Action

On January 9, 2019, the district court orally dismissed part of Nalder's 2018 complaint and stayed the remaining proceedings. (5 R. App. 1129, 1141–42.) The district court gave no indication that the order staying proceedings was anything other than immediate; in fact, the district court made it clear that it was refusing to sign Nalder's and

[4] At the time, both cases were pending before Judge David Jones in Department 29. On October 24, 2018, a week after UAIC's intervention, Judge Jones disclosed his prior work with Lewis's then-coverage counsel, Randy Tindall. (1 R. App. 76–77.) Upon objection by Nalder's counsel and a request to refer Tindall to the state bar, Judge Jones voluntarily recused himself. (1 R. App. 76–77.) (The claim against Tindall was later dismissed. (5 R. App. 1169.)) The 2007 case was eventually reassigned to Judge Eric Johnson in Department 20, who granted consolidation. (11 R. App. 2626.)

Lewis's proposed judgment. (5 R. App. 1132–33, 7 R. App. 1664–66.) And again in a minute order on January 22, 2019, the district court granted a stay pending this Court's resolution of the certified questions. (7 R. App. 1664–66, 9 R. App. 2159.)

Yet that same day, Nalder and Lewis worked to evade the stay before a written order memorializing the then-in-effect stay could be entered (6 R. App. 1311, 1316–18[5]): Nalder served and Lewis accepted an offer of judgment for over $5 million, and they submitted the judgment to the clerk for entry. (5 R. App. 1194, 1197, 1201.) As the notice of acceptance and the clerk's entry of judgment were filed at the same minute (5 R. App. 1194, 1201), neither UAIC nor the district judge had advance notice of this judgment. UAIC moved to vacate the judgment. (5 R. App. 1176, 8 R. App. 1853.) Based on the mistake or inadvertence in the clerk's entering judgment while the case was stayed, the district court vacated the judgment. (7 R. App. 1656, 1666–67.)

[5] *See also* 9 R. App. 2002–04 (counsel's comments on the draft order, including the denial of Nalder's and Lewis's stipulation and the granting of the stay).

Nalder and Lewis complained that in vacating the judgment the district court violated their due process, and they asked the court to reinstate the judgment on grounds that the oral ruling and minute order could not restrain the parties until the entry of a written order staying the case. (6 R. App. 1328, 1487; 10 R. App 2272.) The district court denied the motions, noting that it had stayed the matter at the previous hearing, that the judgment entered by the clerk was void, and that vacating merely "put us back to where I thought I clearly had indicated I wanted us to be" at the time the district court stayed the case. (10 R. App. 2283; 7 R. App. 1656, 1666–67; 10 App. 2286–87.)

SUMMARY OF THE ARGUMENT

United Automobile Insurance Company timely intervened. In the 2018 action, intervention was timely because that case—seeking to revive an expired judgment from 2008—has not proceeded to trial or judgment.

And in the underlying 2007 action, intervention is likewise appropriate because (1) that case is consolidated with the 2018 action in which UAIC's intervention is proper, (2) UAIC intervened not to reopen what the parties did in 2008 but to prevent Nalder from reopening that

expired judgment, (3) to the extent Nalder raises doubts about the 2008 judgment's expiration, the district court has not ruled on that mixed question of law and fact, so the objection to intervention is premature.

If a wooden reading of *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734 (1938) would prevent intervention in these circumstances, that case should be reconsidered or overruled.

ARGUMENT

Standard of review: Intervention may be as of right or permissive. Determining whether a party has met the requirements to intervene as of right "is within the district court's discretion." *Hairr v. First Judicial Dist. Court*, 132 Nev., Adv. Op. 16, 368 P.3d 1198, 1201 (2016) (quoting *Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006)). And "[a] district court's ruling on permissive intervention is subject to 'particularly deferential' review." *Id.*, 132 Nev., Adv. Op. 16, 368 P.3d at 1202 (quoting *United States v. City of New York*, 198 F.3d 360, 367 (2d Cir. 1999)). This is true even on the question of timeliness. *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668 (1978).

I.

INTERVENTION IS SUBSTANTIVELY PROPER

Apart from the question of timeliness, there is little dispute that the district court acted within its discretion to allow intervention, whether as of right or for permissive intervention.

A. Intervention Gives Voice to Unrepresented Positions and Protects the Integrity of the Judicial Process

Intervention is an essential tool for protecting the integrity of the judicial process and ensuring that Courts resolve legal issues correctly. Rule 24 offers two paths to intervention: The district court *must* let a party intervene when a statute confers such a right or

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

NRCP 24(a); *Am. Home Assurance Co.*, 122 Nev. at 1238, 147 P.3d at 1126.[6]

[6] UAIC refers to the rules in effect as of the time of intervention in 2018.

But even without such an interest, the district court may allow intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." NRCP 24(b)(2). In exercising discretion, the court should consider whether intervention will "unduly delay or prejudice the adjudication of the rights of the original parties." NRCP 24(b). Of course, a case may take longer to resolve whenever a proposed intervenor demands "anything adversely to both the plaintiff and the defendant," but that kind of "prejudice" is baked into the statutory right of intervention itself. NRS 12.130(1)(b); *see also St. Charles Tower, Inc. v. County of Franklin*, No. 4:09-CV-987-DJS, 2010 WL 743594, at *6–7 (E.D. Mo. Feb. 25, 2010) ("[P]rejudice that results from the mere fact that a proposed intervenor opposes one's position and may be unwilling to settle always exists when a party with an adverse interest seeks intervention." (quoting *United States v. Union Elec. Co.*, 64 F.3d 1152, 1159 (8th Cir. 1995))). The question is whether the delay in *moving* for intervention causes undue harm. *Lawler*, 94 Nev. at 626, 584 P.2d at 669; *St. Charles Tower*, 2010 WL 743594, at *6–7 (citing *Union Elec. Co.*, 64 F.3d at 1159).

B. The District Court Had Discretion to Allow UAIC's Intervention

The district court had good cause to allow UAIC's intervention here. UAIC had a right to intervene based on its interest in preventing an expired judgment from being enforced or revived against its insured—for which Nalder expressly seeks to hold UAIC liable in the bad-faith lawsuit. NRCP 24(a). And given Lewis's refusal to cooperate in UAIC's defense—going so far as to collaborate with Nalder in trying to get a multimillion-dollar judgment entered against himself, and to prevent UAIC from protecting Lewis against such a judgment—there is no question that the original parties left UAIC's interest inadequately represented. NRCP 24(a). Had Lewis cooperated in the defense, UAIC arguably would not have needed to intervene; his refusal made intervention essential. *Cf. Hairr*, 132 Nev., Adv. Op. 16, 368 P.3d at 1201–02 (upholding denial of intervention where "petitioners and the State have the same ultimate objective" and petitioners could not "point to any arguments that the State was refusing to make"). Plus, the question of the judgment's expiration without renewal in the bad-faith lawsuit (now pending before this Court as a certified question) dovetails the main question in the 2007 litigation: whether the judgment can be amended

or revived after its expiration. In fact, to have refused intervention in these circumstances would have been an abuse of discretion.

II.

UAIC'S INTERVENTION IN THE 2018 ACTION, IN WHICH THERE IS NO JUDGMENT, WAS TIMELY

The real issue, then, is timing.

Half of Nalder's and Lewis's petition fails on its own terms. They tether their petition to the statement in *Lopez v. Merit Insurance Co.*, 109 Nev. 553, 556, 853 P.2d 1266, 1268 (1993) that "NRS 12.130 does not permit intervention subsequent to the entry of a final judgment." But there is no judgment—final or otherwise—in the 2018 action. (5 R. App. 1132–33.)

They point to the statement that "a voluntary agreement of the parties stands in the place of a verdict" (Pet'n 23–24 (citing *Dangberg Holdings v. Douglas County*, 115 Nev. 129, 978 P.2d 311 (1999)), neglecting that what counts is not the mere agreement, but "*judgment* . . . by agreement." *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734, 735–36 (1938) (emphasis added). *Estate of Lomastro ex rel. Lomastro v. Am. Family Ins. Grp.*, 124 Nev. 1060, 1071 n.29, 195 P.3d 339, 347 n.29

(2008) (describing *Lopez* as holding that "intervention after *entry of judgment* on a settlement agreement was not timely" (emphasis added)). In *Eckerson v. C.E. Rudy, Inc.*, for example, it was important in denying intervention that the parties had not only settled, but that "[b]y the time the application for intervention was made a default judgment had been entered." 72 Nev. 97, 98–99, 295 P.2d 399, 399–400 (1956).

Here, in contrast, UAIC timely sought intervention before Nalder and Lewis submitted their proposed judgment. The district court did not enter judgment on that settlement. So even on the notion that a judgment cuts off all rights of intervention, the district court properly let UAIC intervene in the 2018 action.

And as discussed immediately below, that categorical view about the timing of intervention misreads the rule, the statute, and the case law.

III.

UAIC'S INTERVENTION IN THE 2007 ACTION, WHICH NALDER IS TRYING TO REVIVE, WAS TIMELY

The petition's objection to UAIC's intervention in the 2007 action is equally unfounded. First, because UAIC's intervention in the 2018 action was timely and that action has been consolidated with the 2007 action, kicking UAIC out of the consolidated action would have been untenable. Second, UAIC's intervention in the 2007 action was itself timely because UAIC is not seeking a new or different judgment; UAIC is just preventing Nalder from transforming the old, expired judgment into a valid one. No case forbids intervention in this circumstance, and other jurisdictions approve it. Third, even if the validity of the 2008 judgment were enough to prevent intervention, that mixed question of law and fact has not been resolved, making this petition premature. And fourth, if Nalder and Lewis are correct that this Court's cases forbid intervention even to point out a judgment's voidness due to expiration—an issue that could be raised by nonparty *amici* or the court on its own motion—those cases should be reconsidered or overruled.

A. The 2007 Action Is Consolidated with the 2018 Action, in which UAIC Properly Intervened

Because UAIC properly intervened in the 2018 action, it is a proper party to this action, which has now been consolidated with the 2007 action. Nalder and Lewis assume that a party must justify intervening in each of a consolidated action's constituent cases before intervention in any one of those cases will be honored for the consolidated action. There is no basis for that assumption. As set forth in the answer to the petition in Docket No. 78243, consolidation was proper. So UAIC's demonstrated right to intervene in the 2018 action renders them a proper party to this now-consolidated action.

B. Intervention Properly Attaches to Nalder's Pending Quest to Revive an Expired Judgment

1. What Cuts Off Intervention Is the Absence of a Pending Issue, Not a Judgment

This Court's "cases generally reflect that intervention is timely if the procedural posture of the action allows the intervenor to protect its interest." *Estate of Lomastro*, 124 Nev. at 1071 n.29, 195 P.3d at 347 n.29. So while an intervenor "must take the action as he finds it," *Ryan*, 58 Nev. 253, 75 P.2d at 736, if a "matter[] would otherwise be subject to reconsideration," the intervenor can raise that issue just as

well as any party. *Estate of Lomastro*, 124 Nev. at 1068 n.10, 195 P.3d at 345 n.10 (quoting *Arizona v. California*, 460 U.S. 605, 615 (1983)).

The entry of a judgment does not, in itself, cut off the right to intervene. Although this Court has occasionally denounced as untimely attempts to intervene to reopen a final judgment—"where the controversy already is ended and settled to the satisfaction of the parties litigant"— "it would more accurately be said that there was no pending action to which the intervention might attach." *Eckerson*, 72 Nev. at 98–99, 295 P.2d at 399–400, *quoted in Lopez*, 109 Nev. at 556, 853 P.2d at 1268.

a. USUALLY, AN INTERVENOR IS PRECLUDED ONLY FROM MOST CHALLENGES TO A FACIALLY VALID JUDGMENT

"No intervention after a final judgment" is a decent rule of thumb, for in most cases only a *party* to a judgment can appeal that judgment or challenge it in the district court. *See Anthony S. Noonan IRA, LLC v. Bank of New York Mellon*, No. 71365, 429 P.3d 294 (Nev. Oct. 12, 2018) (unpublished table disposition) (citing *Lopez*, 109 Nev. at 556–57, 853 P.2d at 1268–69). That includes most motions under Rule 60(b). *Id.* And in many cases, such as when an insured is pursuing tort claims

that will require the insurer to pay out uninsured-motorist benefits, the need for intervention becomes clear well before the judgment. *See Lopez*, 109 Nev. at 556–57, 853 P.2d at 1268–69.

b. AN EXPIRED JUDGMENT IS NOT A JUDGMENT

Not so with a judgment that, without facing a threat of being reopened or relitigated, simply expires by its own terms. In contrast with a judgment that appears valid on its face, after the time for enforcing a judgment has passed without renewal, "a judgment no longer exists to be renewed." *Kroop & Kurland, P.A. v. Lambros*, 703 A.2d 1287, 1293 (Md. Ct. Spec. App. 1998) (citations omitted). The expired judgment is void. *Leven v. Frey*, 123 Nev. 399, 410, 168 P.3d 712, 719 (2007). And that can be raised not just on direct appeal from proceedings to enforce that judgment, but as a collateral attack in the underlying case. *Rawson v. Ninth Judicial Dist. Court*, 133 Nev., Adv. Op. 44, 396 P.3d 842, 848 & n.4 (2017); NRCP 60(b)(4). Not only can the *parties* mount such an attack, but the court on its own motion can, too. *A-Mark Coin Co., Inc. v. Redfield's Estate*, 94 Nev. 495, 498, 582 P.2d 359, 361 (1978). The burden for establishing renewal rests with the party asserting its continued validity. *Leven*, 123 Nev. at 405, 168 P.3d at 717. "Either a

judgment is void or it is valid. Determining which it is may well present a difficult question, but when that question is resolved, the court must act accordingly." 11 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 2862 (3d ed.). In a real sense, when the parties take action to revive and expired judgment, they are no longer operating "*after* a final judgment."

Other jurisdictions have held that an interested party such as an insurer can bring a Rule 60(b) motion to vacate certain judgments against its insureds—even without the insured's consent. *Crawford v. Gipson*, 642 P.2d 248, 249–50 (Okla. 1982) (citing *Kollmeyer v. Willis*, 408 S.W.2d 370 (Mo. Ct. App. 1966)). Particularly when the *plaintiff* undertakes to enforce a void judgment, "any interested person[] may show such nullity." *Gumina v. Dupas*, 159 So. 2d 377, 379 (La. Ct. App. 1964).

Ryan v. Landis, 58 Nev. 253, 75 P.2d 734 (1938) is not to the contrary. There, this Court rejected intervention as "a proper remedy to vacate a judgment alleged to be void," *id.*, 58 Nev. 253, 75 P.2d at 735–36, relying on the Washington Supreme Court's decision in *Seattle & N. Ry. Co. v. Bowman*, 102 P. 27 (Wash. 1909). That case, however, makes

clear that it is not talking about a motion under modern Rule 60(b)(4); far from it, the proposed intervenors in *Bowman* who claimed defective service did not directly attack the judgment in the trial court but came up with that theory only on appeal:

> As the judgment is regular upon its face and recites due and personal service, it would seem that the validity of such service and the question whether the person upon whom it had been made was an authorized officer of the defendant *could only be questioned in a proceeding directly attacking the judgment, properly instituted by motion or petition* . . . .

102 P. at 28–29 (emphasis added). The problem was not that such a motion was unavailable to the proposed intervenors, but that they elected not to use it.

But even supposing that good reasons exist for denying a third party the right to challenge as void a judgment that is "regular upon its face," there is no reason to bar intervention that merely points out a judgment's facial invalidity due to expiration. As the court could so conclude on its own, or with the help of *amici*, so should an intervenor be able to make that same point. *Cf.*, *e.g.*, *United States v. Windsor*, 570 U.S. 744, 755 (2013) (*amicus* appointed to argue that the Court lacks jurisdiction, a position not taken by either party).

2. Nalder's Attempt to Revive an Expired Judgment Creates a New, Pending Issue in the 2007 Case

Here, the district court appreciated the difference between intervening in a case after a valid, final judgment and intervening in new litigation to revive an expired judgment:

> But I do see, you know, a distinction between that case, those cases, and what we have here, which is you now have essentially the prospect of new litigation, which is that 2018 case, on—to enforce that 2007 judgment.
>
> And that new litigation creates new issues, which is whether that judgment has expired . . . or has been renewed. And I think definitely UAIC . . . has an interest in that and meets the elements necessary to intervene.

(5 R. App. 1132–33.) UAIC is not challenging or seeking to reopen the 2007 judgment, even in the sense discussed in *Ryan v. Landis*. Those issues were long ago decided, and but for Nalder's harried reaction to this Court's certified question, that case would have stayed closed. Rather, it is Nalder who is attempting to resuscitate a decade-old judgment without timely renewing it under NRS 17.214. (5 R. App. 1109–10 (describing this case as "litigation to declare that judgment a valid or continuing, renewed or whatever, judgment").) That new controversy has not gone to trial or otherwise to judgment, and while that dispute hinges in part on what to make of a document called "judgment" in the

docket from 2008, UAIC's intervention in this present, pending dispute is timely.

C. The Undeveloped Record Underscores the Impropriety of Writ Relief

Nalder and Lewis are not just wrong in their legal position. They are also bringing this challenge in the wrong form: a premature petition for extraordinary relief rather than an appeal in the ordinary course. Because the status of the 2008 judgment is uncertain, and Nalder and Lewis swear that nothing this Court does will resolve it, this Court cannot prejudge the validity of the 2008 judgment to bar intervention.

1. Orders Granting Intervention Are Appealable, and this Court Should Not Hear the Petition

When a district court has *denied* intervention, the party seeking intervention cannot appeal, so "a mandamus petition is an appropriate method to seek review of such an order." *Hairr*, 132 Nev., Adv. Op. 16, 368 P.3d at 1200 (citing *Am. Home Assurance Co.*, 122 Nev. at 1234, 147 P.3d at 1124).

In contrast, a party contesting an order *granting* intervention can do so on appeal. *See Lopez*, 109 Nev. at 554, 853 P.2d at 1266. This

Court should abstain from hearing the petition now and allow the district court to more fully develop the issues.

2. This Court Should Not Grant Mandamus in the Face of Legal and Factual Uncertainty

"Mandamus is an important escape hatch from the final judgment rule, but such relief must be issued sparingly and thoughtfully due to its disruptive nature. Advisory mandamus, like any form of interlocutory review, carries the significant negative risks of delaying the ultimate resolution of the dispute and undermining the 'mutual respect that generally and necessarily marks the relationship between . . . trial and appellate courts.'" *Archon Corp. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 101, 407 P.3d 702, 709 (2017) (quoting *Bauman v. U.S. Dist. Court*, 557 F.2d 650, 653 (9th Cir. 1977)).

3. Further Findings Are Necessary to Resolve the Threshold Question of Renewal or Expiration

Here, even assuming for a moment Nalder's and Lewis's position that a final judgment precludes intervention, it is far too early to say whether there *is* such a judgment. Integral to their argument against intervention is the assumption that they will prevail in her new claim about renewal, proving a final judgment in the 2007 action. But the

case is stayed pending this Court's resolution of the certified questions (6 R. App. 1311, 1316–18), and even then, Lewis and Nalder repeatedly assert that this Court is "NOT deciding if the judgment is expired." (*E.g.*, 6 R. App. 1330, 1489; 10 R. App. 2277.) The district court will eventually consider this Court's decision, any decision from the Ninth Circuit, and its own factfinding to decide whether the 2008 judgment is valid. The district court's decision may provide grounds for the district court to reconsider the intervention question or for an appeal.

For now, though, that remains uncertain. Simply assuming that they win on this crucial question is an abuse of the extraordinary writ procedure.

D. Preventing Intervention Would Produce Waste and Absurd Results

Ignoring the circumstances that call for intervention in a case such as this—where a party is attempting to revive a facially invalid judgment—would produce tremendous waste and perverse results.

1. Denying Intervention Would Waste this Court's Resources

That UAIC has intervened to participate in the consolidated case below, rather than to appeal to this Court, highlights an absurd consequence of Nalder's and Lewis's petition. By their logic, this Court's work would triple: this Court would grant their petition, then UAIC would file its own petition challenging a judgment affecting its interests without its joinder, then the district court would join UAIC as a party, and finally, after a final judgment, the losing party could appeal.

Something similar happened in the two-part saga of *Gladys Baker Olsen Family Trust ex rel. Olsen v. Olsen*. In part one, the district court entered a judgment invading the assets of a nonparty trust, removing the nonparty trustee, and taking other adverse actions. 109 Nev. 838, 839, 858 P.2d 385, 385 (1993) (*Olsen I*). The trust moved to intervene after the judgment, but "only for purposes of appealing" the order. *Id.* This Court vacated the intervention order, noting that the district court could not grant intervention solely to confer party status for standing to appeal. *Id.* at 841–42, 858 P.2d at 386–87. Without being a proper party, the trust lacked standing to appeal the order, so this Court dismissed the appeal without prejudice to file a writ petition instead. *Id.*

In part two, this Court heard and granted the petition heard the trust's writ petition challenge to the order of June 2, 1993. *Gladys Baker Olsen Family Trust ex rel. Olsen v. Eighth Judicial Dist. Court*, 110 Nev. 548, 874 P.2d 778 (1994) (*Olsen II*). This Court held that "joinder rather than knowledge of a lawsuit and opportunity to intervene is the method by which potential parties are subjected to the jurisdiction of the court." *Id.* at 553, 874 P.2d at 781. The trust was an indispensable party to a judgment regarding trust property, and "failure to join an indispensable party may be raised by the appellate court sua sponte." *Id.* at 554, 874 at 782 (citing *Schwob v. Hemsath*, 98 Nev. 293, 646 P.2d 1212 (1982)). This Court vacated the order as void and remanded for the trust to be . . . joined as a party. *Id.*

It cannot be that every time a court fails to join an indispensable party to a judgment—rendering the judgment void—the party and the district court are powerless to remedy that defect and instead must petition this Court for extraordinary relief. Rather, the problem in *Olsen* was that the district court tried to confer *only* appellate standing, without actually joining the trust to any proceedings in the district court. By contrast, the recognition that the judgment was void—something,

again, the district court could decide *sua sponte*—freed the court to join the trust as a party to the district-court proceedings.

Here, too, it would be absurd to deny UAIC intervention now, only to have to vacate the judgment affecting UAIC's rights on the basis that UAIC was an indispensable party who ought to have been joined. Instead, the district court properly exercised its discretion to join UAIC, not merely to appeal a judgment between other parties, but to participate as an indispensable party in Nalder's pending efforts to revive a judgment that on its face appeared expired.

2. Denying Intervention Would Spur Collusive Settlements

A basic principle of intervention is that an intervening party cannot "be prejudiced by not doing an act that they had no right to do" before the intervention. *State ex rel. Moore v. Fourth Judicial Dist. Court*, 77 Nev. 357, 361, 364 P.2d 1073, 1075–76 (1961).

Yet to deny intervention in these circumstances would also create a disastrous template for collusive settlements in preparation for a claim against an insurer. The defendant could refuse to cooperate with the insurer, stipulate to an exorbitant judgment, then prevent the insurer from coming in to vacate the judgment on behalf of the insured.

3. Denying Intervention Would Give UAIC Fewer Rights than an Amicus

As discussed, where the court has power to act on its own motion, anyone could appear *amicus* to assist the court's resolution. Indeed, this Court has approved of "allowing a proposed intervenor to file an amicus brief" where doing so "is an adequate alternative to permissive intervention." *See, e.g.*, *Hairr*, 132 Nev., Adv. Op. 16, 368 P.3d at 1203 (quoting *McHenry v. Comm'r*, 677 F.3d 214, 227 (4th Cir. 2012)). And *amici* can appear at any stage of litigation, including rehearing on appeal. *E.g.*, *Powers v. United Services Auto. Ass'n*, 115 Nev. 38, 40–41, 979 P.2d 1286, 1287–88 (1999); *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 608, 245 P.3d 1182, 1184 (2010). In such a circumstance, it makes no sense to bar a party whose interests are adversely affected from intervening to make the same arguments. *Id.* (recognizing that amicus briefing may be inadequate when the proposed intervenor's interests are not represented by the original parties).

E. If *Ryan v. Landis* Is Read to Prevent Intervention, It Should Be Overruled

The rule UAIC proposes—that an intervenor may appear after judgment when (1) the judgment appears void on its face, (2) the original parties raise new issues regarding the validity of the facially void judgment, (3) the dispute does not reopen or relitigate any issue in the original judgment, and (4) the court or *amici* could raise the same arguments, without the original parties' acquiescence—does no violence to the principles that thread through the case law from *Ryan* to *Eckerman* to *Lopez* to *Lomastro*. It remains true that "[a]n intervener must take the action as he finds it": the intervenor cannot make arguments regarding previously decided issues that, under NRCP 60(b) or NRAP 3A only a party could make. *Ryan*, 58 Nev. 253, 75 P.2d at 736. And these limitations preserve the "simplicity, clarity and certainty" of a jurisdiction rule that nonetheless does not force absurd, and duplicative, writ petitions or appeals. *See Olsen I*, 109 Nev. 838, 841, 858 P.2d 385, 387 (1993). It would simply bring Nevada into the mainstream of jurisdictions interpreting Rule 24. *See McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1071 (5th Cir. 1970) (describing limits on intervention after judg-

ment, including that the intervention not reopen or relitigate the original lawsuit); *see generally* 7C WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 1916 & n.23 (3d ed.) (listing cases in nearly every circuit allowing intervention in limited circumstances after a final judgment);.[7]

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[7] *SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 458–461 (1940); *Flynt v. Lombardi*, 782 F.3d 963 (8th Cir. 2015); *Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712 F.3d 1349 (9th Cir. 2013); *United States v. City of Detroit*, 712 F.3d 925 (6th Cir. 2013); *In re Lease Oil Antitrust Litig.*, 570 F.3d 244 (5th Cir. 2009*); Tweedle v. State Farm Fire & Cas. Co.*, 527 F.3d 664 (8th Cir. 2008); *Alstom Caribe, Inc. v. Geo. P. Reintjes Co.*, 484 F.3d 106 (1st Cir. 2007); *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091 (10th Cir. 2005); *Acree v. Republic of Iraq*, 370 F.3d 41, 50 (D.C. 2004); *Tocher v. City of Santa Ana*, 219 F.3d 1040 (9th Cir. 2000); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772 (3d Cir. 1994); *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391 (9th Cir. 1992); *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470 (9th Cir. 1992); *Ceres Gulf v. Cooper*, 957 F.2d 1199 (5th Cir. 1992); *Officers for Justice v. Civil Serv. Comm'n*, 934 F.2d 1092 (9th Cir. 1991); *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424 (10th Cir. 1990); *United States v. Yonkers Bd. of Educ.*, 902 F.2d 213 (2d Cir. 1990); *Grubbs v. Norris*, 870 F.2d 343 (6th Cir. 1989); *Bank of Am. Nat'l Trust & Savs. Ass'n v. Hotel Rittenhouse Assocs.*, 844 F.2d 1050 (3d Cir. 1988); *Fiandaca v. Cunningham*, 827 F.2d 825 (1st Cir. 1987); *Hill v. W. Elec. Co.*, 672 F.2d 381, 387 (4th Cir. 1982); *Brown v. Eckerd Drugs, Inc.*, 663 F.2d 1268, 1278 (4th Cir. 1981), *vacated on other grounds*, 457 U.S. 1128 (1982); *Howse v. S/V "Canada Goose I",* 641 F.2d 317 (5th Cir. 1981); *Fleming v. Citizens For Albemarle, Inc.*, 577 F.2d 236 (4th Cir. 1978); *McDonald*, 430 F.2d 1065 (reversing denial of insurer's motion to intervene); *Shy v. Navistar Int'l Corp.*, 291 F.R.D. 128 (S.D. Ohio 2013); *Nextel Commc'ns of Mid-Atlantic, Inc. v. Town of*

Hanson, 311 F. Supp. 2d 142 (D. Mass 2004); *S. Pac. Co. v. City of Portland*, 221 F.R.D. 637 (D. Or. 2004); *Van Etten v. Bridgestone/Firestone, Inc.*, 117 F. Supp. 2d 1375 (S.D. Ga. 2000), *vacated on other grounds sub nom. Chi. Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001); *Smith v. Bd. of Election Comm'rs*, 586 F. Supp. 309 (N.D. Ill. 1984); *Wilson v. Sw. Airlines Co.*, 98 F.R.D. 725 (N.D. Tex. 1983); *In re Franklin Nat'l Bank Secs. Litig.*, 92 F.R.D. 468 (E.D.N.Y. 1981); *Armstrong v. Bd. of Sch. Dirs.*, 471 F. Supp. 827, 846 (E.D. Wis. 1979); *New York State ex rel. New York County v. United States*, 65 F.R.D. 10 (D.D.C. 1974); *EEOC v. Am. Tel. & Tel. Co.*, 365 F. Supp. 1105 (E.D. Pa. 1973), *aff'd*, 506 F.2d 735 (3d Cir. 1974); *Winders v. People*, 45 N.E.3d 289, 293 (Ill. App. Ct. 2015); *R.D.B. v. A.C.*, 27 So. 3d 1283, 1286 (Ala. Civ. App. 2009); *Olver v. Fowler*, 168 P.3d 348, 352–53 (Wash. 2007); *Ex parte Caremark RX, Inc.*, 956 So. 2d 1117, 1129 (Ala. 2006); *City of Chicago v. Ramirez*, 852 N.E.2d 312, 322 (Ill. Ct. App. 2006); *Johnson Turf & Golf Mgmt., Inc. v. City of Beverly*, 802 N.E.2d 597, 600 (Mass. App. Ct. 2004); *Jenkins v. City of Coll. Park*, 840 A.2d 139, 146 (Md. 2003); *Taylor v. Abernethy*, 560 S.E.2d 233, 236 (N.C. Ct. App. 2002); *Wichman v. Benner*, 948 P.2d 484, 488 (Alaska 1997); *Humana Health Plans, Inc. v. Durant*, 650 So. 2d 203, 204 (Fla. Dist. Ct. App. 1995); *Cruz Mgmt. Co., Inc. v. Thomas*, 633 N.E.2d 390, 393 (Mass. 1994); *Blue Cross/Blue Shield of R.I. v. Flam ex rel. Strauss*, 509 N.W.2d 393, 396 (Minn. Ct. App. 1993) (reversing denial of insurer's motion to intervene to vacate judgment against insured); *Weimer v. Ypparila*, 504 N.W.2d 333, 336 (S.D. 1993); *Rosenbalm v. Commercial Bank of Middlesboro*, 838 S.W.2d 423, 427 (Ky. Ct. App. 1992); *Bouhl v. Gross*, 478 N.E.2d 620, 624 (Ill. App. Ct. 1985) *Petition of City of Shawnee*, 687 P.2d 603, 612 (Kan. 1984) ("The trial court not only had jurisdiction to grant the motion to intervene, but also authority to grant relief from the final judgment . . . ."); *Salvatierra v. Nat'l Indem. Co.*, 648 P.2d 131, 135 (Ariz. Ct. App. 1982); *Vicendese v. J-Fad, Inc.*, 389 A.2d 1021, 1024 (N.J. Super. Ct. 1978); *Elwell v. Vt. Commc'ns Mktg. Grp., Inc.*, 349 A.2d 218, 220 (Vt. 1975) (""While there is some authority for the proposition that intervention after final judgment is untimely, we feel that the better view is that intervention may be permitted even after final judgment where those already parties are not prejudiced, and

But if *Ryan* and its progeny are read to bar *every* intervention in a case whose docket includes a document labeled "judgment," this Court should reconsider those cases today.

1. The Washington Authority on which Ryan *Relied Has Been Discarded*

Stare decisis is at its weakest when the cases relied upon to create a rigid rule have themselves been discarded. *In re Estate of Sarge*, 134 Nev., Adv. Op. 105, 432 P.3d 718, 722 (2018) (overruling *Mallin v. Farmers Ins. Exch.*, 106 Nev. 606, 797 P.2d 978 (1990), which had relied on now-overruled federal cases).

Here, as discussed, *Ryan* rejected "the proposition that intervention is a proper remedy to vacate a judgment alleged to be void" based on a Washington Supreme Court case, though that case did not actually

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that where there is real potential for harm to the intervenor intervention should be denied as untimely only in extreme circumstances."); *E. Constr. Co. v. Cole*, 217 N.W.2d 108, 110 (Mich. Ct. App. 1974); *Wags Transp. Sys., Inc. v. City of Miami Beach*, 88 So. 2d 751, 752 (Fla. 1956); *Zeitinger v. Hargadine-McKittrick Dry Goods Co.*, 250 S.W. 913, 916 (Mo. 1923); *Sizemore v. Dill*, 220 P. 352, 355 (Okla. 1923); *Casey v. Ohio State Nurses Ass'n*, 114 N.E.2d 866, 867–68 (Ohio Ct. App. 1951); *Brown v. Brown*, 98 N.W. 718, 721 (Neb. 1904).

categorically bar such a remedy. *See Ryan*, 58 Nev. 253, 75 P.2d at 735–36 (citing *Seattle & N. Ry. Co. v. Bowman*, 102 P. 27 (Wash. 1909)).

But even if it did, Washington has abandoned such a categorical approach, holding now intervention is permitted after judgment upon a "strong showing" of the factors. *Olver v. Fowler*, 168 P.3d 348, 352–53 (Wash. 2007); *compare also Safely v. Caldwell*, 42 P. 766 (Mont. 1895) (cited in *Ryan* and prohibiting intervention after default judgment), *with In re Marriage of Glass*, 697 P.2d 96, 99 (Mont. 1985) ("motions to intervene made after judgment are not per se untimely").

2. Under Ryan*'s Strict Reading, NRS 12.130 Would Be Unconstitutional*

Cases such as *Ryan v. Landis* often invoke NRS 12.130's reference to intervention "[b]efore the trial" as a limitation on the time for intervention. It is not. The Legislature was simply respecting the separation of powers, enacting a substantive standard for intervention ("an interest in the matter in litigation") and allocating costs, NRS 12.130(1), but not treading on the judiciary's exclusive power to "manage the litigation process" and "provide finality." *See Berkson v. LePome*, 126 Nev. 492, 501, 245 P.3d 560, 566 (2010) (invalidating NRS 11.340, a statute

allowing plaintiffs to refile claims after their reversal on appeal, for violating separation of powers).

The Legislature can "sanction the exercise of inherent powers by the courts," but it cannot "limit or destroy" them. *Lindauer v. Allen*, 85 Nev. 430, 434, 456 P.2d 851, 854 (1969). Thus, a statute that attempted to limit the preclusive effect of a judgment was unconstitutional for interfering with a "judicial function." *State Farm Mut. Auto. Ins. Co. v. Christensen*, 88 Nev. 160, 162–63, 494 P.2d 552, 553 (1972). If possible, however, this Court reads statutes so as not to impinge on the judiciary's rulemaking, adjudicative, and other incidental powers. *Borger v. Eighth Judicial Dist. Court*, 120 Nev. 1021, 1029–30, 102 P.3d 600, 606 (2004). In *Borger*, for example, because the expert-affidavit requirement for medical-malpractice claims "contains no explicit prohibition against amendments [of defective affidavits], and because legislative changes in the substantive law may not unduly impinge upon the ability of the judiciary to manage litigation," this Court held that district courts retained their discretion to allow amendments. *Id.* "Retention of this discretion . . . is consistent with well-recognized notions of separation of legislative and judicial powers." *Id.*

Thus, the Nebraska Supreme Court held that a statute allowing intervention "before the trial commences" could not restrict the judiciary from allowing intervention after judgment:

> [H]owever that section may affect the right of a party to intervene, we are satisfied that it was not intended, and should not be permitted, to require a court to pursue an erroneous theory to a worthless decree, nor to curtail, in any degree, its power to do complete justice, so long as it retains jurisdiction of the cause and the parties.

Brown v. Brown, 98 N.W. 718, 721 (Neb. 1904).

Here, too, this Court should read NRS 12.130 to avoid an unconstitutional infringement on judicial power. The Legislature cannot *force* the judiciary to accept intervention after a final judgment; that is why the statute only addresses intervention "[b]efore the trial." At the same time, though, the Legislature cannot *restrict* the judiciary's rulemaking authority or *ad hoc* decisionmaking to permit intervention in limited circumstances after a final judgment; the statute simply does not address it. The court remains free to apply its own rules of civil procedure, as the federal courts and many state courts have, to govern post-judgment intervention. The district courts retain jurisdiction after judgment over some matters, including to declare a judgment void. So

to read NRS 12.130 as categorically barring intervention after the trial would render the statute unconstitutional for infringing on the judiciary's exclusive power.

IV.

NALDER AND LEWIS WERE ACCORDED DUE PROCESS THROUGH PROPER, TIMELY SERVICE

Nalder and Lewis do not articulate any due process violation. They claim to have been improperly served (Pet'n 28), but substantial evidence shows that they were properly served (3 R. App. 732–74, 11 R. App. 2609) and indeed opposed the motions. (1 R. App. 8, 2 R. App. 310, 3 R. App. 741, 4 R. App. 754, 763, 10 R. App. 2293, 2314, 11 R. App. 2670, 2728.) Any error, moreover, would have been harmless because Nalder and Lewis had repeated opportunities to be heard on reconsideration. (2 R. App. 310 (countermotion to set aside intervention order); 6 R. App. 1328 (motion for reconsideration); 6 R. App. 1487 (motion for reconsideration); 10 R. App. 2272 (joinder in motion for reconsideration).) Regardless, this Court is ill-equipped to decide that fact question in the first instance. *See Beazer Homes Holding Corp. v. Eighth Judicial Dist. Court*, 128 Nev. 723, 736, 291 P.3d 128, 137 (2012) ("The district court

is in the best position to analyze the facts and circumstances of this case . . . .").

CONCLUSION

For the foregoing reasons, this Court should deny the petition.

Dated this 10th day of July, 2019.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting, typeface, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2016 with a proportionally spaced typeface in 14-point, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, except as exempted by NRAP 32(a)(7)(C), it contains 7869 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 10th day of July, 2019.

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CERTIFICATE OF SERVICE

I certify that on July 10, 2019, I submitted the foregoing ANSWER for filing *via* the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

CHEYENNE NALDER, an individual, and GARY LEWIS

Petitioners,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK THE HONORABLE DAVID JONES AND ERIC JOHNSON, DISTRICT COURT JUDGES,

Respondents,

And
UNITED AUTOMOBILE INSURANCE COMPANY,

Real Party in Interest.

Supreme Court No. 78085

District Court Case No. 07A549111
Consolidated with 18-A-772220
DEPT. NO: XX

REPLY TO ANSWER TO PETITION FOR WRIT OF MANDAMUS

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

In order to justify intervention, UAIC attacks the validity of the 2018 judgment in the 2007 case and the settlement reached in the 2018 case prior to its intervention. UAIC argues for an exception or to overrule the clear Nevada case law and statutory scheme against intervention after settlement or judgment.[1] UAIC attempts to close this circular reasoned loop by conflating the two methods for extending the effect of a judgment available to judgment creditors in Nevada. UAIC hopes this Court will disregard the effect of the statutory tolling scheme applicable to both methods.

The two methods are the common law action on a judgment discussed at length in *Mandlebaum v. Gregovich*, 24 Nev. 154, (Nev. 1897) (which is and always has been the basis of the actions below) and statutory judgment renewal pursuant to NRS 17.214 (which is not a part of the actions below). This is the same order the two methods are listed in the Statute of Limitations in NRS 11.190. UAIC's failure to distinguish or even discuss the *Mandlebaum* case acts as an admission that this writ for relief is well grounded and **must** be granted.

To compound matters for UAIC, it also admits in its briefing before this Court

[1] UAIC wants an exception to the black letter law in Nevada on intervention to protect its interests that were forfeited by it when it breached its duty to defend years ago.

in Case No. 70504, on the second certified question, that the very action brought by Nalder below is appropriate and timely:

> "And in order to continue to serve as evidence for their consequential damages claim, the [2008] judgment had to remain valid and enforceable, which required that the judgment be renewed pursuant to the requirements of NRS 17.214 or, **alternatively, required Mr. Nalder to bring an action on the judgment against Mr. Lewis**..."

(See UAIC response brief on second certified question, page 13.)

Though *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007), did not deal with any of the tolling statutes associated with NRS 11.190, it is consistent in approving the two methods -- the common law action on a judgment or, alternatively, renewing a judgment through NRS 17.214. "An action on a judgment or its renewal must be commenced within six years[2] under NRS 11.190(1)(a)" *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007).

In their brief before this Court UAIC goes on to state ". . . [T]his Court's decision in *Mandlebaum v. Gregovich*, 24 Nev. 154, 50 P. 849 (1897) . . . arose from an action filed by a judgment creditor and his assignee against a judgment debtor to recover on an unsatisfied prior judgment obtained by the creditor against the debtor."

---

[2] *Leven* did not involve any tolling statutes, as did *Mandlebaum*. The expiration of the statute of limitations on the 2008 judgment was tolled by NRS 11.200 and NRS 11.250 and was tolled and continues to be tolled by NRS 11.300. This tolling extends the time for both an action on the judgment and statutory renewal under NRS 17.214.

Id. at 157. This Court ultimately affirmed the new judgment entered in favor of the judgment creditor and his assignee, holding, in pertinent part, that while the statutory right of execution on the prior judgment had been barred by the passage of more than nine[3] years' time, the statute of limitations on the judgment creditor's right to file an action on the prior judgment was tolled due to the judgment debtor's absence from the state. *Id.* at 158-161." Thus, UAIC has adopted the holding in *Mandlebaum* that is directly on point regarding the continued validity of the judgment and settlement in the two cases below.

II. Facts

a. In Nevada, statute of limitations expire not judgments.

UAIC plays fast and loose with the facts. UAIC constantly refers to an "expired" judgment when referring to the judgment in the 2007 litigation entered

[3] UAIC misstates the age of the *Mandlebaum* judgment. *The Mandlebaum* judgment was 15 years old -- 5 years older than the judgment in this case. "The averments of the complaint and the undisputed facts are that, at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of the judgment creditor under the same. **Notwithstanding nearly fifteen years had elapsed** since the entry of the judgment, yet, for the purposes of action, the judgment was not barred — **for that purpose the judgment was valid.**" *Mandlebaum v. Gregovich*, 24 Nev. 154, 159 (Nev. 1897). (Emphasis added.) In the present action, it is undisputed that the judgment debtor has been absent from the state since at least 2010 and continues outside the state tolling the statute of limitations pursuant to *Mandlebaum* and NRS 11.300. Having adopted this holding, UAIC is estopped from now arguing it does not apply.

in 2018. Rather than restate the entire history of the litigation between Nalder, Lewis and UAIC, in order to correct UAIC's numerous misstatements, Nalder and Lewis refer the Court to the accurate rendition of the procedural and factual history of this litigation contained in Lewis' Writ, (Supreme Court Case No. 78243). Petitioners will only highlight the facts most relevant to this petition for writ.

b. **The 2008, 2018 and 2019 judgments are valid.**

The 2008 judgment is valid pursuant to *Mandelbaum.* At the time of intervention, and now, the 2007 case had/has a judgment dated 2018, and was/is therefore "facially" valid. The judgment never expired.[4] Even if a judgment in Nevada could or would "expire" with the expiration of the statute of limitations, the statute of limitations on this judgment was tolled by NRS 11.200 (payments on

[4] UAIC has cited **no** Nevada caselaw regarding judgments expiring. The Maryland case cited by UAIC actually holds: "Expiration of the judgment due to the passage of twelve years had to be pleaded as an affirmative limitations defense by the judgment debtor. Thus, it was possible for the judgment to be renewed, even if more than twelve years had passed since its entry, if the judgment debtor did not object to renewal, by raising limitations. See Paul V. Niemeyer Linda M. Schuett, *Maryland Rules Commentary*, 485-86 (2d ed. 1992). With the advent of Rule 2-625, that changed: Under [the new rule] a money judgment automatically expires after twelve years from its date of entry." *Kroop Kurland v. Lambros*, 118 Md. App. 651, 665 (Md. Ct. Spec. App. 1998). Thus, the *Kroop* case cited by UAIC in its brief but not contained in its table of cases is the result of a statutory scheme which does not exist in Nevada.

the judgment), NRS 11.250 (minority), and NRS 11.300 (defendant absent from the State of Nevada).

c. **Nalder retained David A. Stephens.**

After reaching the age of majority, Nalder retained David Stephens, Esq., because of the false allegations made by counsel for UAIC regarding the expiration of the judgment.

d. **Lewis retained E. Breen Arntz.**

Lewis retained E. Breen Arntz, Esq., to defend against Nalder's claims in Nevada when it became apparent that no Nevada attorney selected by UAIC would provide an ethical non-frivolous defense.

e. **David Stephens, Esq., and E. Breen Arntz, Esq., entered into and filed a stipulation resolving the 2018 litigation.**

Because the Mandelbaum case is directly on point and controlling David Stephens, Esq., and E. Breen Arntz, Esq., signed and filed a stipulation settling the 2018 litigation. The stipulation was submitted to the Honorable David Jones for his signature.

f. **UAIC directs Randall Tindall, Esq., to file pleadings on behalf of Lewis without his knowledge or consent.**

This request was in direct violation of Lewis' requests to UAIC to clear all actions with him before filing them. Randall Tindall, Esq., filed pleadings claiming to be representing Lewis in both cases without any authority from Lewis.

g. **UAIC was allowed to intervene in both actions.**

Service of both motions to intervene were defective on their face. (See P. App 5 at 166-172). The only person listed for service on either motion was David A. Stephens, Esq. No method of service was checked on the 2007 case with a 2018 judgment on file. On the 2018 case with the settlement agreement on file the electronic service was erroneously checked because David Stephens, Esq., had not yet registered for electronic service. (See P. App 5 at 166-172). Both motions were granted without a hearing, via minute order stating "no opposition having been filed" even though oppositions were filed. Both motions were granted by the same judge who later recused himself because of a relationship with UAIC's chosen defense counsel at the time of intervention was granted, Randall Tindall, Esq.

h. **The Court did not stay the entire case, either orally or in minutes at the January 9, 2019 hearing.**

Instead, the Court stated on the record it would review some of the issues

again and some would be decided at the subsequent hearing date of January 23, 2019. (5 R. App. 1141 Lines 15-22)[5] Nalder sent an offer of judgment to Lewis in anticipation of a favorable ruling at the January 23, 2019 hearing on Nalder's motion for summary judgment. Lewis was fearful that if he did not accept the offer of judgment, he would ultimately end up with a larger judgment against him. Lewis, through *Cumis/Hansen*[6] defense counsel E. Breen Arntz, Esq., forwarded the offer of judgment to UAIC for comment. However, under the Nevada Rules of Civil Procedure then in effect, neither UAIC nor the judge was required to be noticed. In fact, it is improper to notify the judge of an offer of judgment until after the case is concluded. Lewis then accepted the offer of judgment.

i. **The judgment was validly entered by the Clerk.**

The Court exceeded its jurisdiction and breached the parties' due process and constitutional rights in voiding the judgment at the ex-parte urging of UAIC, not giving any time for a response or a hearing.

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[5] Mr. Douglas: ... we could stay that or grant that. The Court: it's on calendar for next week. Mr. Douglas: Oh, it's on calendar next week. Okay. Is that the 23rd? The Clerk: Yes. Mr. Douglas: Okay. Sorry. We'll deal with it then. The Court: Well, I'll look at it and -- Mr. Douglas: we'll deal with it then. The Court: But all right.

[6] *San Diego Navy Federal Credit Union v. Cumis Insurance Society,* 162 Cal. App. 3d 358 (Cal. Ct. App. 1984); *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Ad. Op. 74, 357 P.3d 338 (2015)

III. A Writ of Mandamus is the only appropriate remedy in this case.

"A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion. *See* NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008)." *Gralnick v. Eighth Judicial Dist. Court of Nev.*, No. 72048, at *1 (Nev. App. Mar. 21, 2017).

In the face of all Nevada cases and the clear language of NRS 12.130, stating that intervention is available ***only*** before settlement or judgment, UAIC filed a Response in which UAIC claimed a Writ of Mandamus is not an appropriate remedy in this case. It asks this Court to find NRS 12.130 unconstitutional and overrule every case dealing with insurance company intervention post-judgment. UAIC hopes the Court will ignore all the tolling statutes contained in NRS chapter 11. UAIC hopes this Court will not follow the clear precedent of *Mandlebaum* and disregard the common law right to an action on a judgment.

In the 2007 action, an amended judgment was entered in May of 2018 by the District Court; and, in the 2018 case, a settlement agreement was filed and ***thereafter*** UAIC was allowed to intervene in both cases. UAIC does not dispute these facts. UAIC's response admits that UAIC never intervened in the underlying actions until

after the lower court had already entered judgment and *after* the settlement was signed and filed. (*See* Response at P. 15 and 16.)

UAIC's Response completely ignores the clear Nevada law holding that "***The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment.***" *Lopez v. Merit Insurance Co.*, 109 Nev. 553, 853 P.2d 1266, 1268 (1993). (Emphasis added). Indeed UAIC's response fails to distinguish, address, or even as much as acknowledge the Nevada Supreme Court's holding in *Lopez*. UAIC's response likewise completely ignores the clear mandate found in NRS 12.130 that intervention must be sought before trial in any action.

UAIC then attempts to convolute the clear holding in *Dangberg* that intervention is not allowed after settlement.

> "Additionally, in *Ryan v. Landis*, 58 Nev. 253, 260, 75 P.2d 734, 735 (1938) (quoting *Henry Lee Co. v. Elevator Co.*, 42 Iowa 33 (1918)), we reiterated that: ... intervention must be made before the trial commences. After the verdict all would admit it would be too late to intervene. But **a voluntary agreement of the parties stands in the place of a verdict**, and, as between the parties to the record as fully and finally determines the controversy as a verdict could do.""

Dangberg Holdings. v. Douglas Co., 115 Nev. 129, 139, 978 P.2d 311 (1999)

In *Dangberg,* there was no settlement agreement in the record and so intervention was allowed. In this case, the settlement agreement was signed and filed in the case prior to intervention. Allowing intervention was an abuse of discretion. In the 2007 action, the lower court entered Judgment in favor of Cheyenne Nalder and against the underlying Defendant Gary Lewis in May of 2018. Thereafter, UAIC moved to intervene. The lower court granted the motion to intervene **after** Judgment had been entered. The lower court's actions directly violated the Nevada Supreme Court's holding in *Lopez* that intervention cannot be permitted after judgment has been entered. *Id.* The lower court's error will not be remedied by forcing Cheyenne Nalder to continue to litigate and incur expenses and delays and possible improper rulings by the Ninth Circuit or this Court (See, Supreme Court Case No. 70504).

It would be wholly improper to force Nalder and Lewis to relitigate an action that has already been resolved to the satisfaction of the parties involved in the action. Indeed, this has been the Supreme Court's very point for the last 80 years in holding, "It is not the intention of the statute that one not a party to the record shall be allowed to interpose and open up and renew a controversy which has been settled between the parties to the record, either by verdict or voluntary agreement." *Ryan v. Landis*, 58

Nev. 253, 260, 75 P.2d 734, 735. (1938) (quoting *Henry Lee & Co. v. Cass County Mill & Elevator Co.*, 42 Iowa 33 (1875).

The Nevada Supreme Court reiterated this long held position in *Eckerson v. Rudy*, when yet another recalcitrant insurance carrier sought to intervene and set aside a judgment after it had already been entered. The Court held, "This they may not do by intervention where the controversy is ended and settled to the satisfaction of the parties litigant." *Eckerson v. Rudy*, 72 Nev. 97, 295 P.2d 399, 400 (1956). UAIC's response does not address any of this clear case law and certainly does not provide any authority indicating the Nevada Supreme Court has altered its position that "***in all cases***" intervention must be made before judgment is entered. *See*, *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734. (1938) ("***in all cases [intervention] must be made before trial.***") (citing *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928); *see also*, *Lopez v. Merit Insurance Co.*, 109 Nev. 553, 853 P.2d 1266, 1268 (1993) ("In refusing to allow intervention subsequent to the entry of a final judgment, ***this court has not distinguished between judgments entered following trial and judgments entered by default or by agreement of the parties.***") (Emphasis added).

Not only is UAIC's intervention not timely, it is substantively improper for two reasons. First, its interests are represented by counsel for Lewis. Because there are disagreements about what course of action is ethical and non-frivolous, does not

mean the interests are not represented. An insured's duty of cooperation[7] does not extend to unethical frivolous defenses. UAIC would have to show that Lewis refusal to participate in a frivolous defense was unreasonable and prejudiced UAIC. *Belz v. Clarendon America Insurance*, 158 Cal. App. 4th 615, 625 (Cal. Ct. App. 2007). Second, the United States District Court has found that UAIC breached its duty to defend.[8] Even if intervention had been timely, which it clearly is not, UAIC waived its right to direct the defense, to have cooperation from Lewis and its right to intervene when it refused to defend Lewis and failed to indemnify him. The California court in *Hinton v. Beck*, 176 Cal. App. 4th 1378 (Cal. Ct. App. 2009) has held: "Grange, having denied coverage and having refused to defend the action on behalf of its insured, did not have a direct and immediate interest to warrant intervention in the litigation."

Both actions were ended and settled to the satisfaction of the parties litigant. Yet, the lower court improperly granted both of UAIC's motions to intervene. The only proper remedy is for this Honorable Court to issue a Writ of Mandamus

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[7] Lewis owes no duty of cooperation because UAIC breached the duty to defend long ago. Lewis continues to welcome and cooperate with any ethical non-frivolous defense provided by UAIC.

[8] UAIC has not appealed that determination. The Ninth Circuit has yet to decide whether the federal district court erred in not allowing the breach of the duty to defend to go to the jury as one basis for a bad faith claim.

directing the lower court to vacate its October 19, 2018 Orders and allow both of these matters to yet again be ended and settled to the satisfaction of the parties litigant.

IV. The District Court's Order was a manifest abuse of and arbitrary and capricious exercise of discretion.

This petition included the long held position of the Nevada Supreme Court that "in all cases" intervention must be made before judgment or settlement. *Kelly v. Smith* 204 Cal. 496, 268 P. 1057 (1928); *Ryan v. Landis*, 58 Nev. 253, 75 P.2d 734. (1938); *Eckerson v. Rudy*, 72 Nev. 97, 295 P.2d 399, 400 (1956); *McLaney v. Fortune Operating Co.*, 84 Nev. 491, 499, 444 P.2d 505, 510 (1968) (holding that a post judgment motion to intervene should be denied); *Lopez v. Merit Insurance Co.*, 109 Nev. 553, 853 P.2d 1266, 1268 (1993) ("The plain language of NRS 12.130 does not permit intervention subsequent to the entry of a final judgment.")

UAIC failed to address any of the above noted authority, and did not even attempt to explain how the lower court's actions could be deemed proper in any way, given the plain language of NRS 12.130 that does not allow intervention post judgment. Indeed, the only excuse UAIC argues for is that the passage of time now allows intervention. UAIC argues that tolling statutes don't apply to judgments. UAIC argues that Nevada does not follow the common law. The lower court was

advised of the Nevada Supreme Court's holding that "in all cases" intervention must be made before judgment is entered. Yet, the lower court determined that the Supreme Court's holding applied in all cases, ***except this one.*** The lower court does not have discretion to allow a party to do what the Supreme Court has held "they may not do." See, *Eckerson v. Rudy*, 72 Nev. 97, 295 P.2d 399, 400 (1956) (in discussing post judgment intervention, holding "This they may not do by intervention where the controversy is ended and settled to the satisfaction of the parties litigant.") The lower court's action was an absolute and obvious abuse of discretion.

V. The District Court's actions were in excess of its jurisdiction.

As noted in section "II" above, the Nevada Supreme Court's clear and consistent holdings that "in all cases" intervention must be made before trial, and that intervention is not permitted after settlement or judgment, left the lower court with no authority to set aside the Judgment entered or refuse the settlement reached by the parties given UAIC did not intervene until after both actions had been concluded. UAIC's response does not identify any authority provided by the lower court to openly defy the clear precedent set forth by our Supreme Court as identified above.

VI. UAIC ARGUES FOR THE FIRST TIME ON APPEAL THAT NRS 12.130 IS UNCONSTITUTIONAL.

UAIC continues, in bad faith, to argue issues and change positions. UAIC is not attempting in good faith to change the law but rather in bad faith and purposefully misstating the record, hiding the applicable law, misstating the law, misleading the Court, increasing the costs of litigation and abusing the system. Below UAIC ignored NRS 12.130, preferring not to inform the District Court that it prevented intervention herein and now UAIC brings it forward asking the Supreme Court to find it unconstitutional. This demonstrates that UAIC's arguments below were not in good faith because it could not have been trying to change the law for it did not even acknowledge the law below.

CONCLUSION AND RELIEF SOUGHT

As a result of the foregoing, Nalder and Lewis pray for this Honorable Court to grant relief via a Writ of Mandamus directing the District Court to vacate its order

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allowing UAIC to intervene subsequent to settlement or final judgment, and enter an order denying the motions to intervene.

DATED this 26 day of August, 2019.

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Nevada Bar No. 00902
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Cheyenne Nalder

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the above and foregoing reply brief and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purposes. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the records. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 26 day of August, 2019.

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Attorney for Cheyenne Nalder

CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1) and NRAP 25(c)(1), I hereby certify that I am an employee of Stephens & Bywater, P>C., and that on the 26 day of August, 2019, I caused the foregoing **REPLY IN SUPPORT OF WRIT OF MANDAMUS** to be served as follows:

[ ] personal, including deliver of the copy to a clerk or other responsible person at the office of counsel; and/or

[X] by mail; and/or

The Honorable David Jones
Eighth judicial District Court
Department XXIX
Regional Justice Center, Courtroom 3B
200 Lewis Ave
Las Vegas, Nevada 89155
Respondent Judge

The Honorable Eric Johnson
Eighth Judicial District Court
Department XX
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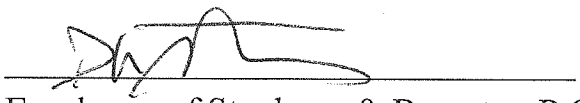

Employee of Stephens & Bywater, P.C.

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

AFFIDAVIT OF DAVID A. STEPHENS

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

1. I was, at all times relevant an attorney duly licensed to practice in the State of Nevada and that I have personal knowledge of the facts stated herein.

2. I was retained by Ms. Nalder upon her reaching the age of majority as a result of false allegations made by UAIC regarding the status of her judgment that she seeks to collect from UAIC.

3. I understood that that generally a judgment renewal would be done within 90 days of the expiration of the six year statute of limitations. However I believed, in her case, that tolling statutes apply to the time for renewal and there were at least three statutes that applied in her case. The earliest of these tolling statutes would suggest her renewal affidavit may be arguably too early not filed in a ninety day period in the year 2021.

4. Thus, rather than jumping to a renewal of her judgment that was arguably too early I believed an action on a judgment was a wiser choice. I believed that her judgment formed a valid basis for a common law action on the judgment under the Mandelbaum case that it could be filed from then and up until at least 2021 because the statute of limitations is tolled. Unlike statutory renewal the action on a judgment does not have to be brought within 90 days of expiration. I believed filing to enforce the judgment would provide her with a new judgment even though the old judgment was still valid as the statute of limitations had not run.

5. I thought that that filing to enforce the judgment would be a relatively simply straight forward process because there were no valid defenses and Mandelbaum was a case directly on point, where the judgment creditor brought an action on a judgment that was fifteen

years old and received a new judgment because the defendant did not live in the state of Nevada. In her case the judgment was ten years old and the defendant did not live in the State of Nevada for the last eight years. I could find no contrary authority.

6. I then obtained an amended judgment in the name of my adult client citing the tolling statutes in the application. I then filed my action on the judgment and served the defendant and sent a copy to UAIC. I heard from Steve Rogers. He advised me that he had been retained by UAIC to defend Mr. Lewis in this case.

7. Later, I received notice that Mr. Rogers was not going to represent Lewis and that E. Breen Arntz, Esq., would be representing him as Cumis counsel because UAIC was in litigation with Gary Lewis. Mr. Rogers did not provide any contrary authority to Mandelbaum.

8. Mr. Arntz agreed with the analysis and the clear precedent and we entered into a stipulation for a judgment to settle the matter and save everyone time, additional attorney fees, and inconvenience. I filed the stipulation and submitted it to the judge.

9. Randall Tindall, Esq., filed a motion to set aside the 2018 judgment in the 2007 ccase, and another motion to dismiss my case filed in 2018. I asked Mr. Arntz what was going on in that these actions were causing additional damages to my client. Mr. Arntz informed me that Mr. Tindal was acting solely on behalf of UAIC and without any authorization from Mr. Lewis and that his client had reported Mr. Tindal to the State Bar of Nevada. Even though Mr. Lewis was represented by both defense counsel appointed by UAIC (Tindal) and Cumis/Hansen counsel selected by Mr. Lewis (Arntz) the Court allowed UAIC to intervene and refused (by inaction without reason) to sign a judgment.

10. At the very first actual hearing in the case on January 9, 2019 the Honorable Eric Johnson dismissed one of my client's claims and stated that he would look at other claims in that I still had a pending motion for summary judgment set for January 23, 2019. He did not

orally stay any actions. I sent an offer of judgment to the Mr. Lewis's attorney because now attorney time was piling up and UAIC was abusing the judicial process to delay a decision on the merits which I was sure would be in my client's favor. UAIC had not cited any contrary authority and ignored Mandlebaum and the tolling statutes. The offer of judgment was accepted and filed with the clerk as required by the rules.

11. Judge Johnson then signed an order shortening time and then before I could even file a response and well before the hearing date Judge Johnson issued an order voiding the judgment because he alleges the action was stayed by him. I have never seen this kind of activity without giving an opportunity to be heard. I have never had a Judge refuse to sign a judgment based on a signed stipulation.

FURTHER AFFIANT SAYETH NAUGHT.

David A. Stephens, Esq.

SUBSCRIBED and SWORN to before
me this 20th day of August, 2019.

Notary Public in and for said County and State.

NOTARY PUBLIC
M. L. GOLDSTEIN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. APRIL 13, 2022
No: 01-70903-1

ORDR

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER, Plaintiff, vs. GARY LEWIS, Defendants.	Case No. 07A549111 Case No. A-18-772220-C Dept. No. XX

ORDER

On October 19, 2018, an order was entered granting Intervenor United Automobile Insurance Company's Motion to Intervene in Case No. 07A549111 by Judge David Jones. On December 27, 2018, an order was entered granting Intervenor's Motion to Consolidate Case No. A-18-772220-C and Case No. 07A549111 by Judge Eric Johnson. Cheyenne Nalder and Gary Lewis filed a petition for a writ of mandamus regarding the orders granting UAIC's intervention in Case No. A-18-772220-C and Case No. 07A549111. Additionally, Gary Lewis filed a petition for a writ of mandamus regarding the order granting consolidation of Case No. A-18-772220-C and Case No. 07A549111. On April 30, 2020, the Nevada Supreme Court entered an order finding that the district court erred in granting intervention in Case No. 07A549111 and Case No. A-18-772220-C and Case No. 07A549111 were improperly consolidated.

The Nevada Supreme Court ordered the district court to vacate its order granting UAIC leave to intervene in Case No. 07A549111 and to strike any related subsequent pleadings and orders. The Nevada Supreme Court also ordered the district court to vacate its order granting UAIC's motion to consolidate Case No. A-18-772220-C and Case No. 07A549111 and to reassign Case No. A-18-772220-C to Judge Kephart.

Accordingly, the Clerk's Office is directed to vacate the order granting UAIC leave to intervene in Case No. 07A549111 and to strike any related subsequent pleadings and orders.

Additionally, the Clerk's office is directed vacate the order granting UAIC's motion to consolidate Case No. A-18-772220-C and Case No. 07A549111, and to reassign Case No. A-18-772220-C to Judge Kephart.

DATED this 12 day of April, 2020.

ERIC JOHNSON
DISTRICT COURT JUDGE

136 Nev., Advance Opinion 24

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHEYENNE NALDER, AN INDIVIDUAL; AND GARY LEWIS, PETITIONERS AND REAL PARTIES IN INTEREST,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; THE HONORABLE DAVID M. JONES, DISTRICT JUDGE; AND THE HONORABLE ERIC JOHNSON, DISTRICT JUDGE,
Respondents,
and
UNITED AUTOMOBILE INSURANCE COMPANY,
Real Party in Interest.

No. 78085

FILED
APR 30 2020
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

GARY LEWIS,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ERIC JOHNSON, DISTRICT JUDGE,
Respondents,
and
UNITED AUTOMOBILE INSURANCE COMPANY; AND CHEYENNE NALDER,
Real Parties in Interest.

No. 78243

Consolidated original petitions for writs of mandamus challenging district court orders granting intervention, consolidation, and relief from judgment in tort actions.

Petitions granted in part and denied in part.

Christensen Law Offices, LLC, and Thomas Christensen, Las Vegas; E. Breen Arntz, Chtd., and E. Breen Arntz, Las Vegas,
for Petitioner Gary Lewis.

Stephens & Bywater, P.C., and David A. Stephens, Las Vegas,
for Petitioner/Real Party in Interest Cheyenne Nalder.

Lewis Roca Rothgerber Christie LLP and Daniel F. Polsenberg, Joel D. Henriod, J. Christopher Jorgensen, and Abraham G. Smith, Las Vegas; Winner & Sherrod and Matthew J. Douglas, Las Vegas,
for Real Party in Interest United Automobile Insurance Company.

BEFORE GIBBONS, STIGLICH and SILVER, JJ.

OPINION

By the Court, STIGLICH, J.:

These writ petitions arise from litigation involving a 2007 automobile accident where Gary Lewis struck then-minor Cheyenne Nalder. A default judgment was entered against Gary after he and his insurer, United Automobile Insurance Company (UAIC), failed to defend Cheyenne's tort action. After Cheyenne's attempt a decade later to collect on the judgment through a new action, UAIC moved to intervene in and consolidate the decade-old tort lawsuit and this new action, and the district court granted UAIC's motions. In these proceedings, we consider whether intervention and consolidation after final judgment is permissible. Because

we hold that intervention after final judgment is impermissible under NRS 12.130, we conclude that the district court erred in granting intervention in the initial action where a default judgment had been entered but properly granted intervention in the new action where a final judgment had not yet been entered. We also conclude that because an action that reached final judgment has no pending issues, the district court improperly consolidated the two cases. Finally, we conclude that the district court properly vacated a judgment erroneously entered by the district court clerk when a stay was in effect. Accordingly, we grant these petitions for extraordinary relief in part and deny in part.

FACTS

In July 2007, petitioner Gary Lewis struck then-minor petitioner/real party in interest Cheyenne Nalder with a vehicle. James Nalder, as guardian ad litem for Cheyenne, instituted an action in 2007 (Case No. 07A549111, hereinafter the 2007 case) seeking damages. In 2008, the district court entered a default judgment against Gary for approximately $3.5 million. Real party in interest UAIC did not defend the action because it believed that Gary's insurance policy at the time of the accident had expired. Subsequently, in a separate proceeding that was removed to federal court, the federal district court held that the insurance policy between UAIC and Gary had not lapsed because the insurance contract was ambiguous and, therefore, UAIC had a duty to defend Gary. The court, however, only ordered that UAIC pay James the policy limits.[1] Since 2008, James (on behalf of Cheyenne) has collected only $15,000—paid by UAIC—on the $3.5 million judgment.

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[1]James and Gary appealed that decision, which is now pending before the Ninth Circuit.

In 2018, the district court substituted Cheyenne for James in the 2007 case, given that she had reached the age of majority. Cheyenne subsequently instituted a separate action on the judgment (Case No. A-18-772220-C, hereinafter the 2018 case) or alternatively sought a declaration that the statute of limitations on the original judgment was tolled by Gary's absence from the state since at least 2010, Cheyenne's status as a minor until 2016, and UAIC's last payment in 2015. The complaint[2] sought approximately $5.6 million, including the original judgment plus interest.

UAIC moved to intervene in both the 2007 and the 2018 cases. While those motions were pending, Cheyenne and Gary stipulated to a judgment in favor of Cheyenne in the 2018 case. The district court did not approve their stipulation and granted UAIC's motions to intervene in both the 2007 and the 2018 cases. It also granted UAIC's motion to consolidate the 2007 and the 2018 cases, concluding that the two cases shared significant issues of law and fact, that consolidating the cases would promote judicial economy, and that no parties would be prejudiced. After consolidation, the 2018 case was reassigned from Judge Kephart to Judge Johnson, the judge overseeing the 2007 case.

During a hearing on the consolidated cases, the district court orally stayed the proceedings in the 2018 case pending the resolution of certified questions before this court in *Nalder v. United Automobile Insurance Co.*, Docket No. 70504. The district court subsequently granted the stay in a minute order. On the same day, Gary filed an acceptance of an offer of judgment from Cheyenne despite the stay, and the district court clerk entered the judgment the following day. The district court

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[2]Gary brought a third-party complaint against UAIC and its counsel in the 2018 case, which was later dismissed.

subsequently filed a written order granting the stay and, because of the stay, granted UAIC relief from and vacated the judgment.

Cheyenne and Gary filed this petition for a writ of mandamus in Docket No. 78085, asking this court to direct the district court to vacate the two orders granting UAIC's intervention in the 2007 and 2018 cases and to strike any subsequent pleadings from UAIC and related orders. Gary in Docket No. 78243 seeks a writ of mandamus directing the district court to vacate its order consolidating the cases, to reassign the 2018 case back to Judge Kephart, and to vacate its order granting UAIC's motion for relief from judgment. We have consolidated both petitions.

DISCUSSION

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control an arbitrary or capricious exercise of discretion. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). Whether to entertain a writ of mandamus is within this court's discretion, and the writ will not be issued if the petitioner has a plain, speedy, and adequate legal remedy. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Generally, orders granting intervention and orders granting consolidation can be challenged on appeal. *See generally, e.g., Lopez v. Merit Ins. Co.*, 109 Nev. 553, 853 P.2d 1266 (1993) (challenging intervention on appeal from final judgment); *Zupancic v. Sierra Vista Recreation, Inc.*, 97 Nev. 187, 625 P.2d 1117 (1981) (challenging consolidation on appeal from permanent injunction). Nonetheless, this court may still exercise its discretion to provide writ relief "under circumstances of urgency or strong necessity, or when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition." *Cote H. v. Eighth*

Judicial Dist. Court, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008) (internal quotation marks omitted).

Here, although we recognize that petitioners have a remedy by way of appeal, we exercise our discretion to consider these petitions because they raise important issues of law that need clarification. Namely, we clarify whether intervention is permissible in a case after final judgment has been reached. We also clarify whether consolidation of cases is proper where one case has no pending issues. Sound judicial economy and administration also militate in favor of granting this petition, as our extraordinary intervention at this time will prevent district courts from expending judicial resources on relitigating matters resolved by a final judgment and, additionally, will save petitioners the unnecessary costs of relitigation.

Intervention

Cheyenne and Gary argue that UAIC's intervention was improper in the 2007 and 2018 cases because a final judgment was reached in one and a written settlement agreement in the other. Determinations on intervention lie within the district court's discretion. *See Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667, 668 (1978). While we ordinarily defer to the district court's exercise of its discretion, "deference is not owed to legal error." *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). Because its decision rested on legal error, we do not defer here to the district court's decision to permit UAIC's intervention in the 2007 case ten years after final judgment was entered.

NRS 12.130 provides that "[*b*]*efore the trial*, any person may intervene in an action or proceeding, who has an interest in the matter *in litigation*, in the success of either of the parties, or an interest against both." (Emphases added.) In *Ryan v. Landis*, in interpreting a nearly identical

predecessor to NRS 12.130, we adopted the principle that there could be no intervention after judgment, including default judgments and judgments rendered by agreement of the parties. 58 Nev. 253, 259, 75 P.2d 734, 735 (1938). We reaffirmed that principle in *Lopez v. Merit Insurance Co.*, 109 Nev. at 556-57, 853 P.2d at 1268. In reversing a lower court's decision allowing an insurance company to intervene after judgment, we reasoned, "[t]he plain language of NRS 12.130 does not permit intervention subsequent to entry of a final judgment." *Id.* at 556, 853 P.2d at 1268. We do not intend today to disturb that well-settled principle that intervention may not follow a final judgment, nor do we intend to undermine the finality and the preclusive effect of final judgments.

The record clearly shows that a final judgment by default was entered against Gary in 2008 in the 2007 case. Intervention ten years later was therefore impermissible. We reject UAIC's argument that intervention was permissible because the 2008 final judgment expired and is thus void.[3] Nothing permits UAIC to intervene after final judgment to challenge the validity of the judgment itself.[4] *See Ryan*, 58 Nev. at 260, 75 P.2d at 736

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[3]We additionally reject UAIC's argument that consolidation of the two cases provided a basis for intervention in the 2007 case or that there was a pending issue in the 2007 case. As discussed later, consolidation was improper, as there was no pending issue in the 2007 case. We also decline to consider UAIC's arguments that public policy warrants granting intervention or that NRS 12.130 is unconstitutional, because those arguments are waived. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.").

[4]If UAIC wanted to challenge the validity of a judgment, it could have timely intervened before judgment to become a proper party to the litigation to challenge it under NRCP 60. *See* NRCP 60(b)-(c) (2005) (allowing parties

(rejecting the interveners' argument that intervention was timely because the judgment was void); *see also Eckerson v. C.E. Rudy, Inc.*, 72 Nev. 97, 98-99, 295 P.2d 399, 399 (1956) (holding that third parties attempting to intervene to challenge a default judgment could not do so after judgment had been entered and satisfied). We therefore hold that the district court acted in excess of its authority in granting UAIC's motion to intervene in the 2007 case.

Turning to the 2018 case, we determine that the district court properly granted UAIC's motion to intervene. The district court never entered judgment on the stipulation between Cheyenne and Gary. The stipulation therefore lacked the binding effect of a final judgment and did not bar intervention.[5] *Cf. Willerton v. Bassham*, 111 Nev. 10, 16, 889 P.2d 823, 826 (1995) ("Generally, a judgment entered by the court on consent of the parties after settlement or by stipulation of the parties is as valid and binding a judgment between the parties as if the matter had been fully tried, and bars a later action on the same claim or cause of action as the initial suit.").

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to move for relief from judgment). Alternatively, UAIC could have brought an equitable independent action to void the judgment. *See* NRCP 60(b) (permitting independent actions to relieve a party from judgment); *Pickett v. Comanche Const., Inc.*, 108 Nev. 422, 427, 836 P.2d 42, 45 (1992) (allowing nonparties to bring an independent action in equity if they could show that they were "directly injured or jeopardized by the judgment").

[5]We note that even if the court had approved the party's stipulation, there is no final judgment "[u]ntil a stipulation to dismiss this action is signed and filed in the trial court, or until this entire case is resolved by some other final, dispositive ruling . . . ." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994).

We reject Cheyenne and Gary's argument that their agreement is sufficient to bar intervention. Our precedent holds that it is judgment, not merely agreement, that bars intervention. *Cf. Lopez*, 109 Nev. at 556, 853 P.2d at 1268 ("[T]his court has not distinguished between judgments entered following trial and *judgments entered* . . . by agreement of the parties." (emphasis added)); *see also Ryan*, 58 Nev. at 259-60, 75 P.2d at 735 ("The principle is the same if the *judgment* is by agreement of the parties." (emphasis added)). Allowing the agreement itself to bar intervention would permit the undesirable result of allowing parties to enter into bad-faith settlements and forbidding a third party potentially liable for the costs of the judgment from intervening because settlement was reached. *Cf. United States v. Alisal Water Corp.*, 370 F.3d 915, 922 (2004) ("Intervention, however, has been granted after settlement agreements were reached in cases where the applicants had no means of knowing that the proposed settlements was contrary to their interests.").

We also clarify that to the extent that our prior opinion in *Ryan* relies on *Henry, Lee & Co. v. Cass County Mill & Elevator Co.*, 42 Iowa 33 (1875), that reliance was intended to explain why our statute does not distinguish between a judgment rendered through verdict or through agreement of the parties. *See Ryan*, 58 Nev. at 260, 75 P.2d at 735. We did not, nor do we intend today, to state that a settlement agreement on its own stands in the place of a judgment. Neither does our opinion in *Dangberg Holdings Nevada, LLC v. Douglas County*, 115 Nev. 129, 139-40, 978 P.2d 311, 317 (1999), suggest so. In *Dangberg Holdings*, we only noted that there was nothing in the record to support petitioner's assertion that there was a finalized settlement agreement barring intervention. *See id.* We hold that

it is the judgment that bars intervention, not the agreement itself reached by the parties.

Additionally, we note that UAIC timely moved to intervene when it filed its motion one month before the agreement between Cheyenne and Gary was made. The situation here is distinguishable from the situation in *Ryan*, 58 Nev. at 259, 75 P.2d at 735, where we affirmed the district court's denial of a motion for intervention filed almost a year after judgment, and in *Lopez*, 109 Nev. at 555, 853 P.2d at 1267, where we reversed the grant of a motion to intervene filed after judgment was entered. While NRS 12.130 does not explicitly state whether the filing of the motion for intervention or the granting of the motion is the relevant date in determining timeliness, NRCP 24 permits intervention based on the timeliness of the *motion*. *See* NRCP 24(a) (2005)[6] ("Upon timely application anyone shall be permitted to intervene in an action . . . ."); NRS 12.130(1)(a) ("Before the trial, any person may intervene in an action or proceeding . . . ."); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 723 (1993) ("Whenever possible, this court will interpret a rule or statute in harmony with other rules and statutes."). We consider the filing of the motion as controlling because any other interpretation would permit collusive settlements between parties one day after an absent third party

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[6]The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. to Update and Revise the Nev. Rules of Civil Procedure*, ADKT 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, Dec. 31, 2018). Any references in this opinion to the Nevada Rules of Civil Procedure apply to the rules that were in effect during the district court proceedings in this case. *See In re Study Comm. to Review the Nev. Rules of Civil Procedure*, ADKT 276 (Order Amending the Nevada Rules of Civil Procedure, July 26, 2004).

tries to intervene or permit judicial delay and bias in determining timeliness.

UAIC also met NRCP 24's requirements for intervention. NRCP 24(a)(2) permits a party to intervene as a right where the party shows that (1) it has a sufficient interest in the subject matter of the litigation, (2) its ability to protect its interest would be impaired if it does not intervene, (3) its interest is not adequately represented, and (4) its application is timely. *Am. Home Assurance Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006). UAIC has shown that it has a sufficient interest in the 2018 case, as it could potentially be liable for all or part of the judgment. Its ability to protect its interests would also be impaired without intervention because as an insurer, it would be bound to the judgment if it failed to defend. *See Allstate Ins. Co. v. Pietrosh*, 85 Nev. 310, 316, 454 P.2d 106, 111 (1969) ("[W]here the [insurance] company is given notice of the action, has the opportunity to intervene, and judgment is thereafter obtained . . . we hold that the company should be bound . . ."). UAIC's interests are not adequately represented by Gary, whose interests are adverse to UAIC's and who is represented by the same counsel as Cheyenne. Lastly, UAIC timely moved to intervene in the 2018 case. UAIC's intervention in the 2018 case was therefore proper.[7]

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[7]We reject Cheyenne and Gary's arguments that UAIC provided them with improper notice of its motions to intervene and thereby deprived them of due process. UAIC complied with NRCP 24 and NRCP 5 to provide Cheyenne with sufficient notice of UAIC's motions. *See* NRCP 5(b)(2) (permitting service by mailing a copy to the attorney or party's last known address or by electronic means); NRCP 5(b)(4) ("[F]ailure to make proof of service shall not affect the validity of the service."); NRCP 24(c) ("A person desiring to intervene shall serve a motion to intervene upon the parties as

Accordingly, we hold that the district court was required by law to deny UAIC leave to intervene in the 2007 case but did not arbitrarily and capriciously act when granting UAIC leave to intervene in the 2018 case.

Consolidation

NRCP 42(a) allows consolidation of pending actions that involve "a common question of law or fact." Like under its identical federal counterpart, a district court enjoys "broad, but not unfettered, discretion in ordering consolidation." *Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 286, 163 P.3d 462, 468 (2007). However, this rule "may be invoked only to consolidate actions already pending." *Pan Am. World Airways, Inc. v. U.S. Dist. Court*, 523 F.2d 1073, 1080 (9th Cir. 1975). We determine that the district court improperly consolidated the 2007 and 2018 cases because a recently filed action cannot be consolidated with an action that reached a final judgment.

In *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000), we clarified that "a final judgment is one that disposes of all the issues presented in the case, and leaves nothing for the future consideration of the court, except for post-judgment issues such as attorney's fees and costs." Thus, when a final judgment is reached, there necessarily is no "pending" issue left. *See Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev. 86, 91 n.2, 247 P.3d 1107, 1110 n.2 (2011) (noting that where issues remain pending in district court, there is no final judgment); *see also*

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provided in Rule 5."). While we recognize that Gary was not given prior notice of the motions to intervene, Gary had post-hearing opportunities to be heard on the issue. *See Parratt v. Taylor*, 451 U.S. 527, 543-44 (1981) (recognizing that due process rights may be adequately protected by postdeprivation remedies), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986).

Pending, *Black's Law Dictionary* (10th ed. 2014) (defining "pending" as "[r]emaining undecided; awaiting decision").

No pending issue remained in the 2007 case. A default judgment was entered against Gary in 2008 in the 2007 case, which resolved all issues in the case and held Gary liable for about $3.5 million in damages. Amending the 2008 judgment in 2018 to replace James' name with Cheyenne's was a ministerial change that did not alter the legal rights and obligations set forth in the original judgment or create any new pending issues. *See Campos-Garcia v. Johnson*, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014) (noting that an "amended judgment" that does not alter legal rights and obligations leaves the original judgment as the final, appealable judgment). While the 2007 and 2018 actions share common legal issues and facts, no issue or fact is pending in the 2007 action that permits it to be consolidated with another case.

We reiterate our goal of promoting judicial efficiency in permitting consolidation. *See Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 852, 124 P.3d 530, 541 (2005). Allowing a case that has reached final judgment to be consolidated with a newer case undermines that goal by permitting relitigation of resolved issues and requiring parties to spend unnecessary additional court costs. We hold that the district court improperly granted UAIC's motion to consolidate the 2007 and 2018 cases.[8]

Relief from judgment

Finally, we address whether the district court erred in vacating the judgment entered by the clerk pursuant to NRCP 68 after Gary filed an

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[8]Because we hold that the district court abused its discretion in granting consolidation, we do not reach Gary's due process arguments against the motion.

acceptance of Cheyenne's offer of judgment. NRCP 60(b)(1) allows the district court to relieve a party from judgment for "mistake, inadvertence, surprise, or excusable neglect." Here, the district court granted UAIC's motion for relief from the judgment because the clerk mistakenly entered judgment when the case was stayed. Reviewing the district court's decision on whether to vacate a judgment for an arbitrary and capricious exercise of discretion, *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996), we determine that the district court did not err.

Gary argues that the district court improperly voided the judgment resulting from Cheyenne and Gary's settlement because judgment was entered before the written stay was filed. While we recognize that judgment was entered before the written stay was filed, we note that it was entered *after* the district court entered a minute order granting the stay.

Generally, a "court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective." *Millen v. Eighth Judicial Dist. Court*, 122 Nev. 1245, 1251, 148 P.3d 694, 698 (2006) (quoting *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987)). These include "[d]ispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy." *State, Div. of Child & Family Servs. v. Eighth Judicial Dist. Court*, 120 Nev. 445, 455, 92 P.3d 1239, 1246 (2004). However, "[o]ral orders dealing with summary contempt, case management issues, scheduling, administrative matters or emergencies that do not allow a party to gain a procedural or tactical advantage are valid and enforceable." *Id.*

We determine that a minute order granting a stay operates like an administrative or emergency order that is valid and enforceable. A stay suspends the authority to act by operating upon the judicial proceeding itself rather than directing an actor's conduct. *Nken v. Holder*, 556 U.S. 418, 428-29 (2009). It is analogous to a judge orally disqualifying himself in *Ham v. Eighth Judicial Dist. Court*, 93 Nev. 409, 410-11, 566 P.2d 420, 421-22 (1977), which we deemed administrative because it did not direct the parties to take action, dispose of substantive matters, or give any party a procedural or tactical advantage. *State, Div. of Child & Family Servs.*, 120 Nev. at 453, 92 P.3d at 1244. A stay preserves the "*status quo ante*," and thus the parties may not modify the rights and obligations litigated in the underlying matter.[9] *Westside Charter Serv., Inc. v. Gray Line Tours of S. Nev.*, 99 Nev. 456, 460, 665 P.2d 351, 353 (1983). We hold that the district court's minute order was an effective stay and the clerk mistakenly entered Cheyenne and Gary's settlement judgment. We likewise reject Gary's argument that the district court vacating the parties' judgment, ex parte, violated due process. We note that the district court could have *sua sponte* vacated the mistakenly entered judgment without notice to the parties. *See* NRCP 60(a) ("[C]lerical mistakes in judgments . . . arising from oversight or omission may be corrected by the court at any time of its own initiative . . . and after such notice, if any, as the court orders."). In *Marble*

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[9]Gary argues that parties can settle during a stay. We need not consider that argument because he fails to cite to any supporting authority for this proposition. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that appellate courts need not consider claims that are not cogently argued or supported by relevant authority). Even assuming arguendo that parties can settle on their own during a stay, nothing permits *entry* of that settlement agreement by the court during a stay.

v. Wright, 77 Nev. 244, 248, 362 P.2d 265, 267 (1961), we distinguished a clerical error as "a mistake or omission by a clerk, counsel, judge, or printer [that] is not the result of the exercise of the judicial function" and "cannot reasonably be attributed to the exercise of judicial consideration or discretion." The clerk's entry here of the judgment was a clerical mistake that did not involve any judicial discretion. Therefore, notice was not required, Gary's due process rights were not violated, and the district court properly vacated the judgment.

CONCLUSION

We conclude that intervention after final judgment is impermissible, and the district court erred in granting intervention in the 2007 case. We also conclude that an action that reached final judgment has no pending issues, and therefore, the district court improperly consolidated the 2007 and 2018 cases. Finally, we conclude that a minute order granting a stay is effective, and the district court properly vacated the erroneously entered settlement judgment between the parties. Accordingly, we grant in part and deny in part Cheyenne and Gary's petition in Docket No. 78085 and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order granting UAIC leave to intervene in Case No. 07A549111 and to strike any related subsequent pleadings and orders. We also grant in part and deny in part Gary's petition in Docket No. 78243 and direct the clerk of this court to issue a writ of mandamus instructing the district court to vacate its order granting UAIC's motion to

consolidate Case Nos. 07A549111 and A-18-772220-C, and to reassign Case No. A-18-772220-C to Judge Kephart.[10]

_____, J.
Stiglich

We concur:

_____, J.
Gibbons

_____, J.
Silver

[10]Gary also seeks our intervention to direct the district court to strike as void any orders issued in the 2018 case by Judge Johnson regarding the third-party complaint. We decline that request because Gary has failed to demonstrate why he is seeking this relief and any allegations of conflicts of interest in the petition do not relate to Judge Johnson. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38.

NEO

Thomas Christensen, Esq.
Nevada Bar No. 2326
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T: (702) 870-1000
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courtnotices@injuryhelpnow.com
Attorney for Third Party Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER Plaintiff, GARY LEWIS, Defendant.	CASE NO. 07A549lll CASE NO. A-18-772220-C DEPT NO. XX

NOTICE OF ENTRY OF ORDER

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an ORDER TO VACATE THE ORDER GRANTING UAIC LEAVE TO INTERVENE IN CASE NO. 07A549111 AND TO STRIKE ANY RELATED SUBSEQUENT PLEADINGS AND ORDERS was entered in the above-entitled matter on the 12th day of April, 2020, a copy of which is attached hereto as Exhibit 1.

DATED THIS 19th day of June, 2020

CHRISTENSEN LAW OFFICES, LLC

BY: _____
Thomas Christensen, Esq.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC, and that on this 23rd day of June, 2020, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** as follows:

X E-Served through the Court's e-service system to all registered users for this case.

An employee of CHRISTENSEN LAW OFFICES, LLC

EXHIBIT 1

ORDR

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER, Plaintiff, vs. GARY LEWIS, Defendants.	Case No. 07A549111 Case No. A-18-772220-C Dept. No. XX

ORDER

On October 19, 2018, an order was entered granting Intervenor United Automobile Insurance Company's Motion to Intervene in Case No. 07A549111 by Judge David Jones. On December 27, 2018, an order was entered granting Intervenor's Motion to Consolidate Case No. A-18-772220-C and Case No. 07A549111 by Judge Eric Johnson. Cheyenne Nalder and Gary Lewis filed a petition for a writ of mandamus regarding the orders granting UAIC's intervention in Case No. A-18-772220-C and Case No. 07A549111. Additionally, Gary Lewis filed a petition for a writ of mandamus regarding the order granting consolidation of Case No. A-18-772220-C and Case No. 07A549111. On April 30, 2020, the Nevada Supreme Court entered an order finding that the district court erred in granting intervention in Case No. 07A549111 and Case No. A-18-772220-C and Case No. 07A549111 were improperly consolidated.

The Nevada Supreme Court ordered the district court to vacate its order granting UAIC leave to intervene in Case No. 07A549111 and to strike any related subsequent pleadings and orders. The Nevada Supreme Court also ordered the district court to vacate its order granting UAIC's motion to consolidate Case No. A-18-772220-C and Case No. 07A549111 and to reassign Case No. A-18-772220-C to Judge Kephart.

Accordingly, the Clerk's Office is directed to vacate the order granting UAIC leave to intervene in Case No. 07A549111 and to strike any related subsequent pleadings and orders.

Additionally, the Clerk's office is directed vacate the order granting UAIC's motion to consolidate Case No. A-18-772220-C and Case No. 07A549111, and to reassign Case No. A-18-772220-C to Judge Kephart.

DATED this 12 day of April, 2020.

ERIC JOHNSON
DISTRICT COURT JUDGE

RANDALL TINDALL
Nevada Bar No. 6522
RESNICK & LOUIS, P.C.
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER, individually and as Guardian ad Litem for CHEYENNE NALDER, a minor, Plaintiff, vs. GARY LEWIS and DOES I through V, inclusive, ROES I through V, Defendants.	CASE NO.: A549111 DEPT. NO.: 6

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

Defendant, Gary Lewis, by and through his counsel Randall Tindall brings his Motion for Relief from Judgment Pursuant to NRCP 60, asking that this Court declare as void the Amended Judgment entered on March 28, 2018, because the underlying Judgment expired in 2014 and is not capable of being revived.

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

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that the foregoing **DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** will come on for hearing before the above-entitled Court on the ____ day of October 31, 2018 at 9:00 a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

POINTS AND AUTHORITIES

I.

INTRODUCTION

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

The Amended Judgment ostensibly revived the expired Judgment, despite the fact that Cheyenne presented this Court with no legal support for such revival. Cheyenne's Motion proposes that tolling provisions applicable to causes of action are also applicable to the deadlines

to renew judgments. However, none of the authority cited in her Motion supports misappropriating tolling provisions applicable to certain causes of action to extend the time to renew a judgment, nor does any other authority. Pursuant to NRCP 60, the Court should declare that the Amended Judgment is void and that the original Judgment has expired, and therefore is not enforceable.

II.

STATEMENT OF FACTS

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

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

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

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

amend the Judgment to be in her name alone. In short, the Court was not put on notice that it was being asked to ostensibly revive an expired judgment.

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

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

III.

ARGUMENT

A. The Judgment Expired on June 3, 2014

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

NRS 17.214(1)(a) sets forth the procedure that must be followed to renew a judgment. A document tiled "Affidavit of Renewal" containing specific information outlined in the statute must be filed with the clerk of court where the judgment is filed within 90 days before the date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No such Affidavit of Renewal was filed by James Nalder, the judgment creditor. Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment was recorded, and the judgment debtor must be served. No evidence of recordation (if such was required) or service on Lewis is present in the record.

The Nevada Supreme Court, in *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007), held that judgment creditors must strictly comply with the procedure set forth in NRS 17.214 in order

to validly renew a judgment. *Id.* at 405-408, 168 P.3d 717-719. There is no question that neither Cheyenne nor her guardian ad litem did so. Therefore the Judgment expired.

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

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

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

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

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

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

> Legal disability prevents running of statute. **NRS 11.260 and 11.270 shall not apply to minors or others under any legal disability to sue at the time when**

> **the right of action first accrues**, but all such persons may commence an action at any time within 1 year after the removal of the disability.

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

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

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

If tolling of deadlines to amend judgments were sanctioned, title to real property owned by anyone who had ever been a judgment debtor would be clouded, as a title examiner would not know whether a judgment issued more than six years prior had expired pursuant to statute, or was still valid, or could be revived when a real party in interest who was a minor reached the age of majority. As the Court held in *Leven*, one of the primary reasons for the need to strictly comply with NRS 17.214's recordation requirement is to "procure reliability of title searches for

both creditors and debtors since any lien on real property created when a judgment is recorded continues upon that judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance with the notice requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe that the judgment has expired and he need take no further action to defend himself against execution.

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

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

In addition, applying Cheyenne's argument that the time to renew a judgment was tolled because of the judgment debtor's absence from Nevada would have a similarly negative impact on the ability for property owners to obtain clear title to their property. Nothing on a judgment would reflect whether a judgment debtor was outside of the state and a facially expired judgment was still valid. Therefore, essentially, a responsible title examiner would have to list any judgment that had ever been entered against a property owner on the title insurance policy,

because he could not be sure that judgments older than six years for which no affidavit of renewal had been filed were expired or the expiration was tolled.

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

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

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

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

2. The Amended Judgment is void

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

IV.

CONCLUSION

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

DATED this 27th day of September, 2018.

RESNICK & LOUIS, P.C.

RANDALL TINDALL
Nevada Bar No. 6522
8925 W. Russell Rd., Ste. 220
Las Vegas, Nevada 89148
Attorneys for Defendant

CERTIFICATE OF SERVICE

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

David A. Stephens, Esq. Stephens, Gourley & Bywater 3636 North Rancho Drive Las Vegas, Nevada 89130	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)
Thomas Christensen, Esq. Christensen Law Firm 1000 S. Valley View Blvd. Las Vegas, Nevada 89107	____ Via First Class, U.S. Mail, Postage Prepaid ____ Via Facsimile ____ Via Hand-Delivery __X__ Via Electronic Service Pursuant to Rule 9 of the N.E.F.C.R. (Administrative Order 14-2)

Lyle B. Mell

An Employee of
Resnick & Louis, P.C.

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CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO: A549111
DEPT. NO: VI

COMPLAINT

COMES NOW the Plaintiff, JAMES NALDER as Guardian Ad Litem for CHEYENNE NALDER, a minor, by and through Plaintiff's attorney, DAVID F. SAMPSON, ESQ., of 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.

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

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

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

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

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

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

C. In failing to keep a proper lookout for plaintiffs

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

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

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

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

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

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

CLAIM FOR RELIEF:

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

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

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

4. Costs of this suit;

5. Attorney's fees; and

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

DATED this 1st day of October, 2007.

CHRISTENSEN LAW OFFICES, LLC

BY: _____

DAVID F. SAMPSON, ESQ.,
Nevada Bar #2326
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiff

B

ORIGINAL

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

CLERK OF THE COURT

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FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

GARY LEWIS, and DOES I through V, inclusive

Defendants.

CASE NO: A549111
DEPT. NO: VI

JUDGMENT

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

...

...

...

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05-23-08A09:04 RCVD

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

DATED THIS 2 day of May, 2008.

DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

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

C

JMT
DAVID A. STEPHENS, ESQ.
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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:

...

...

...

...

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

DATED this 26 day of March, 2018.

District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
STEPHENS GOURLEY & BYWATER
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Email: dstephens@sgblawfirm.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 DEFENDANT'S MOTION TO SET ASIDE JUDGMENT

Date: 10/31/2018
Time: 9:00 a.m.

Cheyenne Nalder, through her attorney, David A. Stephens, Esq., opposes the Defendant's Motion to Set Aside the Judgment, as follows:

POINTS AND AUTHORITIES

I. INTRODUCTION

Cheyenne Nalder, ("Nalder"), by and through her attorney, David A. Stephens, Esq., opposes the Defendant's Motion for Relief from Judgment.

UAIC's motion, which was modified slightly from the attachment to its own Motion to Intervene, was filed on behalf of Gary Lewis, ("Lewis"). It should be denied because the tolling statutes, NRS 11.200, NRS 11.250 and NRS 11.300, apply to the

statute of limitations for judgments contained in the same chapter at NRS 11.190(a)(1) and extend the time for filing an action on the judgment or renewal under NRS 17.214.

Nevada has two methods for dealing with the expiration of statutes of limitation. Both methods are dependent on the expiration of the statutes of limitation and the associated tolling statutes. The statute of limitations in this matter is tolled until well past the time Nalder amended the judgment and filed an action on the judgment. The judgment never expired. The judgment does not have to be revived. This Court did not make a mistake. The amended judgment is not void. Defendant's motion must be denied.

This action was initially brought by Nalder against Lewis. This complaint was initiated because Nalder wants to maintain her judgment against Lewis. This intention is irrespective of its enforceability against UAIC. Lewis and Nalder are still involved in ongoing claims handling litigation against Lewis's insurance company, UAIC, because of its failure to defend Lewis in the original case.

Because the statute of limitations on Nalder's personal injury action was approaching, Nalder recently took action in both Nevada and California to maintain her judgment against Lewis, who resides in California, or, in the alternative, to prosecute her personal injury action against Lewis to judgment. UAIC has inserted itself into theses actions trying to assert the simple, but flawed, concept that unless a judgment renewal pursuant to NRS 17.214 is brought within six years, a judgment is no longer

valid. UAIC's motivation for bringing this argument is not made in good faith and is to avoid payment of damages arising from its claims handling failures that occurred in the first Nalder v. Lewis injury case.

UAIC argues that the tolling statutes, NRS 11.200, NRS 11.250, and NRS 11.300, do not apply to the statute of limitations for judgments contained in the same chapter at NRS 11.190(a)(1). UAIC provides no legal authority for this unreasonable position. Unfortunately for UAIC, this position is not supported in Nevada's statutory scheme, Nevada's case law, nor common sense. UAIC's position is frivolous and must be met with a firm rejection. UAIC should not be allowed to continue this waste of judicial resources.

II. Factual background of the underlying case and the insurance coverage

The underlying matter arises from an auto accident that occurred on July 8, 2007, wherein Lewis accidentally ran over Nalder. Nalder was born April 4, 1998 and was a nine-year-old girl at the time. At the time of the accident Lewis maintained an auto insurance policy with United Auto Insurance Company ("UAIC"), which was renewable on a monthly basis. Before the subject incident, Lewis received a statement from UAIC instructing him that his renewal payment was due by June 30, 2007. The renewal statement also instructed Lewis that he remit payment prior to the expiration of his policy "[t]o avoid lapse in coverage." The statement provided June 30, 2007 as the effective date of the policy. The statement also provided July 31, 2007 as the expiration

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

Following the incident, Nalder's father, James Nalder, extended an offer to UAIC to settle Nalder's injury claim for Lewis's policy limit of $15,000.00. UAIC never informed Lewis that Nalder offered to settle Cheyenne's claim. UAIC never filed a declaratory relief action. UAIC rejected Nalder's offer. UAIC rejected the offer because it believed that Lewis was not covered under his insurance policy given that he did not renew his policy by June 30, 2007.

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

UAIC was notified of the lawsuit but declined to defend Lewis or file a declaratory relief action regarding coverage. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a default judgment against Lewis for $3,500,000.00. Notice of entry of judgment was filed on August 26, 2008.

III. Factual Background of the Claims Handling Case Against UAIC

On May 22, 2009, James Nalder, on behalf of Cheyenne Nalder, and Lewis filed suit against UAIC alleging breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of NRS 686A.310. Lewis assigned to Nalder his right to "all funds necessary to satisfy the Judgment" and retaining to himself any funds recovered above the judgment. Lewis left the state of Nevada and

relocated to California prior to 2010. Neither Lewis, nor anyone on his behalf, has been subject to service of process in Nevada since 2010.

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

On remand, the U.S. District Court concluded the renewal statement was ambiguous and therefore, Lewis was covered on the date of the incident because the court construed this ambiguity against UAIC. The U.S. District Court also determined UAIC breached its duty to defend Lewis, but did not award damages because Lewis did not incur any fees or costs in defense of the Nevada state court action. Based on these conclusions, the district court ordered UAIC to pay the policy limit of $15,000.00. UAIC then made three payments on the judgment: June 23, 2014; June 25, 2014; and March 5, 2015.

Both Nalder and Lewis appealed that decision to the Ninth Circuit, which

ultimately led to the certification of the first question to the Nevada Supreme Court, namely whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages of the breach.

After the first certified question was fully briefed and pending before the Nevada Supreme Court, UAIC had the idea that the underlying judgment could only be renewed pursuant to NRS 17.214. Even though UAIC knew at this point that they owed a duty to defend Gary Lewis, they did not undertake to investigate the factual basis or the legal grounds, or discuss this idea with Lewis, or seek declaratory relief on Lewis' behalf regarding the statute of limitations on the judgment. All of these actions would have been a good faith effort to protect Lewis. Instead, UAIC filed a motion to dismiss Lewis and Nalder's appeal with the Ninth Circuit for lack of standing. This allegation had not been raised in the trial court. It was something UAIC concocted solely for its own benefit. This allegation was brought for the first time in the appellate court. If UAIC's self-serving affidavit is wrong, this action will leave Lewis with a valid judgment against him and no cause of action against UAIC.

UAIC ignored all of the tolling statutes and presented new evidence into the appeal process, arguing Nalder's underlying $3,500,000.00 judgment against Lewis is not enforceable because the six-year statute of limitation to institute an action upon the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired. The only proof that it expired was UAIC counsel's affidavit that no renewal pursuant to NRS

17.124 had been filed. As a result, UAIC contends Nalder can no longer recover damages above the $15,000.00 policy limit for breach of the contractual duty to defend because the judgment lapsed after the judgment (in the case against UAIC) was entered in the U.S. District Court. This would be similar to arguing on appeal that a plaintiff is no longer entitled to medical expenses awarded because the time to file a lawsuit to recover them expired while the case was on appeal.

Even though Nalder believes the law is clear that UAIC is bound by the judgment, regardless of its continued validity against Lewis, Nalder, in an abundance of caution, took action in Nevada and California to demonstrate the continued validity of the judgment against Lewis. These Nevada and California state court actions will demonstrate that UAIC has again tried to escape responsibility by making misrepresentations to the Federal and State Courts.

III. Factual Background of 2018 cases

Cheyenne Nalder reached the age of majority on April 4, 2016. Nalder hired David A. Stephens, Esq., to maintain her judgment. First, counsel obtained an amended judgment in Cheyenne's name as a result of her reaching the age of majority. This was done appropriately, by demonstrating to the court that the judgment, as a result of the tolling provisions, was still within the applicable statute of limitations.

Nalder then filed a separate action with three distinct claims for relief, pled in the alternative. The first claim is an action on the amended judgment which will result in

a new judgment which will have the total principal and post judgment interest reduced to judgment, so that interest would now run on the new, larger principal amount.

The second alternative claim is for declaratory relief is for a determination of when a renewal under NRS 17.214 must be filed and when the statute of limitations, which is subject to tolling provisions, will run on the judgment.

And finally, the third claim, should the Court determine that the judgment is invalid, is an action on the injury claim within the applicable statute of limitations for injury claims, that is, two years after her reaching the age of majority.

Nalder also retained California counsel, who filed a judgment in California, which has a ten-year statute of limitations regarding actions on a judgment. Nalder maintains that all of these actions are unnecessary to the questions on appeal, and most are unnecessarily early; however, out of an abundance of caution, she brings them to maintain a judgment against Lewis and to demonstrate the actual way this issue should have been litigated in the Eighth Judicial District Court of Nevada, not midway into an appeal by a self-serving affidavit of counsel for UAIC.

UAIC made representations that it would be responsible for any judgment entered in this case in order to gain intervention. UAIC also mischaracterized the position Lewis took regarding representation appointed by UAIC in order to gain intervention. Lewis made it clear that if he felt the proposed course by UAIC was not just a frivolous delay and was based on sound legal research (and not just the opinion of UAIC's counsel), that

it could be pursued. UAIC did not provide any Nevada authority for this unique reading of the chapter on statutes of limitation with their tolling provisions. UAIC instead used the confidential client communications requesting the legal basis for UAIC's position, then misstated it to the Court.

UAIC, without notice to Lewis or any attorney representing him, filed two motions to intervene which were both defective in service on the face of the pleading. (See Affidavit of David A. Stephens, Esq., attached as Exhibit 1 and Exhibits 2 and 3.) Counsel for Nalder, through diligence, discovered the filings on the court website and obtained them through the court's attorney portal. As noted in the Affidavit attached hereto as Exhibit 1, Mr. Stephens contacted Matthew Douglas, Esq., to advise that he had not been served and asked for additional time to file an opposition.[1] His requests were denied in violation of NRPC 3.5A. Oppositions were filed and courtesy copies supplied to the Court. Replies were also filed---all before the in "chambers hearing," but the Court granted the motions and cited "no opposition was filed." The granting of the

[1] See Exhibit 2 attached hereto, which includes copies of the first page of each Motion to Intervene as well as each Certificate of Service. In case number 18-772220, electronic service is marked. In case number 07A549111, no type of service is marked. Exhibit 3 is a print out of the Service Contact History from the Court's efiling system for each case. This Exhibit demonstrates that David A. Stephens, Esq., was not added to the electronic service contact list until September 4, 2018 and September 18, 2018 respectively. Filing and serving through the Court's efiling system requires affirmative clicks by the filer wherein it would have been obvious to the filer that he/she was not really serving anyone with the Motions to Intervene on August 16th and 17th, 2018.

intervention after judgment is contrary to NRS 12.130, which states that intervention will only by granted before trial:

> Intervention: Right to intervention; procedure, determination and costs; exception. 1. Except as otherwise provided in subsection 2: (a) **Before the trial** …[Emphasis added].

No order has been issued and UAIC has yet to file any pleading in intervention in this case, but, suddenly, Randall Tindall, Esq., another attorney being paid by UAIC, has filed almost an identical pleading to the pleading attached to UAIC's motion to intervene. He filed this pleading on behalf of Lewis.

IV. ARGUMENT

The validity of the judgment against UAIC is the only issue before the Ninth Circuit. The basis for the enforceability against UAIC is the nature of the action filed against UAIC, the effect of the assignment and the timing of the judgment. The continued enforceability against Lewis is not determinative. All of those arguments would result in UAIC being liable for the judgment, even if it was expired as to Lewis now. As a result, Nalder is not required to have a continuing valid judgment against Lewis.

Whether UAIC is responsible for the judgment is the issue before the Supreme Court of Nevada. Independent from that issue, Nalder has now instituted an action on the Nevada State Court judgment to demonstrate and maintain its continued validity

against Lewis.

A. The Judgment is not expired because the statute of limitation is tolled

The Nevada six-year statute of limitations to pursue an action on the judgment was tolled by the three payments UAIC made on the judgment. NRS 11.200. As a result of just that tolling statute, the Nevada statute of limitations on the judgment would not expire until March 5, 2021 six years from the last payment.

The Nevada statute of limitations was also tolled during the period of time that Nalder was a minor. NRS 11.250. She reached the age of majority on April 4, 2018. As a result, the statute of limitations does not run until April 4, 2022.

Lewis' California residency also continues to toll the six-year statute of limitations because Lewis has not been subject to service of process in the State of Nevada from 2010 to the present. NRS 11.300. The Nevada statute of limitations has not run and is still tolled to this day.

Finally, California's statute of limitations on a judgment is ten years from the date the judgment became final. There are also applicable tolling statutes in California. The Nevada judgment became final, at the earliest, August 26, 2008. Nalder obtained the sister state judgment in California prior to August 26, 2018.

Though the statute of limitations on Nalder's judgment is not even close to running, this action was taken because Nalder's tort statute of limitations was about to run. If the judgment is deemed not valid, then Nalder still wants to protect her tort

claim. Also, this action is the appropriate way to litigate and clarify the Nevada statutory scheme for actions on a judgment and judgment renewal.

The judgment remains collectible even in the absence of an action upon the judgment or renewal of the judgment for three reasons. UAIC made three undisputed payments toward the judgment on June 23, 2014; June 25, 2014; and March 5, 2015. Pursuant to "**NRS 11.200 Computation of time.** The time in NRS 11.190 shall be deemed to date from the last transaction . . . the limitation shall commence from the time the last payment was made." Further, when any payment is made, "the limitation shall commence from the time the last payment was made." Therefore, UAIC's last payment on the judgment extended the expiration of the six-year statute of limitations to March 5, 2021.

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

> "If a person entitled to bring an action other than for the recovery of real property be, at the time the cause of action accrued, either:
>
> "1. Within the age of 18 years;
>
> . . .
>
> "the time of such disability ***shall not*** be a part of the time limited for the commencement of the action."

NRS 11.250 (emphasis added).

Nalder was a minor when she obtained the judgment. She turned 18 on April 4, 2016. Therefore, the earliest that the six-year statute of limitations runs is April of 2022. This judgment was never recorded and the provisions of NRS 17.214 relating to real property have no application here.

Pursuant to NRS 11.300, the absence of Lewis from the State of Nevada tolls the statute of limitations to enforce a judgment and it remains tolled because of his absence. *See Bank of Nevada v. Friedman*, 82 Nev. 417, 421, 420 P.2d 1, 3 (1966).

UAIC submits that North Dakota is a state with similar renewal methods to Nevada. While UAIC is partially correct, the language of the renewal statute in North Dakota contains a ten year period in the body of the statute and does not refer back to the chapter on statutes of limitations and its tolling provisions as does Nevada's statute. Further, the case cited by UAIC, *F/S Manufacturing v. Kensmoe*, 798 N.W.2d 853 (N.D. 2011), supports Nalder's contentions here. (See, Exhibit 4, for a complete copy of the case decision, which is provided for the Court's convenience.) As that North Dakota Court notes:

> "Of course, it may be easier to renew a judgment by affidavit; but it by no means follows that the old judgment may not be made the basis of a new suit, and *many cases arise where it is an advantage to be able to bring suit, instead of renewing by affidavit — the case at bar being an example.* It is our conclusion that the two remedies are not inconsistent, and that a judgment creditor may either sue upon his judgment, or renew it by affidavit, *if he complies with the respective laws."*

Id. at 857, emphasis added.

> "We express no opinion, however, whether the statute of limitations for an action on a judgment was tolled during the pendency of the bankruptcy automatic stay. See N.D.C.C. §§ 28-01-15(1) (ten-year statute of limitations for an action upon a judgment), 28-01-29 ('When the commencement of an action is stayed by injunction or other order of a court, or by a statutory prohibition, the time of the continuance of the stay is not a part of the time limited for the commencement of the action.')."

Id. at 862.

These tolling statutes present a catch-22 for the use of NRS 17.214 and the "strict compliance" interpretation given by the Nevada Supreme Court. One of the terms of the statute in Nevada is that the renewal needs to be brought within 90 days of the expiration of the statute of limitations. If that 90-day period is strictly construed, any renewal attempt pursuant to NRS 17.214 by Nalder at the present time, or earlier as argued by UAIC, would be premature and therefore ineffective because it would not be filed within the 90-day window prior to expiration of the statute of limitations.

NRS 17.214 was enacted to give an optional, not "mandatory," statutory procedure in addition to the rights created at common law for an action on the judgment. UAIC claims the plain, permissive language of NRS 17.214: "A judgment creditor . . . **may** renew a judgment," (emphasis added), mandates use of NRS 17.214 as the only way to renew a judgment. This is contrary to the clear wording of the statute and the case law in Nevada. See *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) and general statutory interpretation.

UAIC cites no authority for this mandated use of NRS 17.214. The legislative history demonstrates that NRS 17.214 was adopted to give an easier way for creditors to renew judgments. This was to give an option for renewal of judgments that was easier and more certain, not make it a trap for the unwary and cut of rights of injured parties.

Where as here, the timing of the expiration is in doubt, the best way to renew the judgment is the common law method, which is only supplemented by the statutory method, not replaced.

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

Lewis now resides in California. In California, an action upon a judgment must be commenced within 10 years of entry of the judgment. *See* Cal. Code Civ. P. § 337.5. Alternatively, a judgment must be renewed within 10 years of entry of the judgment. *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 372, 8 Cal. Rptr. 3d 907, 911 (Cal. Ct. App. 2004); *see also,* Cal. Code Civ. P. §§ 683.020, 683.120, 683.130. Out of an abundance of caution, Nalder has incurred the expense to renew her judgment by filing actions in both Nevada and California. In spite of this action, Nalder contends that she timely instituted an action on the judgment or, alternatively, that the six-year limitations period has not yet expired.

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VI. The Underlying Judgment Did Not Expire As To Lewis Because Nalder Was Not Required to Institute an Action on the Judgment and Renew the Judgment

An action on a judgment is distinguishable from the treatment of an application to renew the prior judgment. *Pratali v. Gates*, 4 Cal. App. 4th 632, 637, 5 Cal. Rptr. 2d 733, 736 (Cal. Ct. App. 1992). This distinction is inherently recognized in the Nevada Revised Statutes' treatment of both courses of action. "A judgment creditor may enforce his judgment by the process of the court in which he obtained it, ***or he may elect to use the judgment as an original cause of action and bring suit thereon and prosecute such suit to final judgment***." *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) (emphasis added). NRS 11.190(a)(1) provides the option that either an action upon the judgement or a renewal of the judgment be commenced. The limitation period for judgments runs from the time the judgment becomes final. Statutes of limitations are intended to ensure pursuit of the action with reasonable diligence, to preserve evidence and avoid surprise, and to avoid the injustice of long-dormant claims. *Petersen v. Bruen*, 106 Nev. 271, 273-74, 792 P.2d 18, 19-20 (1990).

NRS 17.214 provides the procedural steps necessary to renew a judgment before the expiration of the statute of limitations set forth in NRS 11.190(1)(a). NRS 17.214 provides that a judgment creditor may renew a judgment that has not been paid by filing an affidavit with the clerk of the court where the judgment is entered, "…within 90 days before the date the judgment expires by limitation." NRS 11.190(a)(1), NRS 11.200,

NRS 11.250, NRS 11.300 must be read together with NRS 17.214 because they relate to the same subject matter and are not in conflict with one another. *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 100, 363 P.3d 1168, 1172 (2015). When these five statutes are read together, they establish that a party must either file an action on the judgment or renew the judgment under NRS 17.214 before the statute of limitations runs.

The Nevada Supreme Court expressly adopted this result in *Levin v. Frey*, 123 Nev. 399, 403, 168 P.2d. 712, 715 (2007): "An action on a judgment ***or*** its renewal must be commenced within six years under NRS 11.190(1)(a); thus a judgment expires by limitation in six years."

The Nevada Supreme Court held that the time to file a renewal under NRS 17.214 is subject to statutory and equitable tolling provisions. See *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754 (1994). The statute of limitation tolling provisions in NRS 11.200, NRS 11.250, NRS 11.300 apply to the computation of the time for filing for renewal under NRS 17.214.

The Nevada Supreme Court also recognizes the well-established rule that it will not look beyond the plain language of the statute when the words "have a definite and ordinary meaning." *Harris Associates. v. Clark County School. District*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). "Normal principles of statutory construction also preclude interpreting a statute to render part of it meaningless." *United States v. Bert*, 292 F.3d 649, 652 n.11 (9th Cir. 2002).

UAIC's apparent position is that even though Nalder filed an action upon the judgment, she was also required to file a renewal of the judgment. This interpretation ignores the clarity of the disjunctive "or". UAIC's proposed interpretation of the statute effectively renders the "or" used NRS 11.190(1)(a) meaningless. If the Nevada Legislature intended to require a judgment creditor to file an action on the judgment and renew the judgment, then the Nevada Legislature would have used the word "and". However, the Nevada Legislature uniquely understood that a party was only required to proceed with one course of action to ensure the validity of a judgment. This understanding is reflected in the permissive language of NRS 17.214(1), which states that a judgment creditor "***may*** renew a judgment which has not been paid. . . ."

Based on the unambiguous language of NRS 11.190(1)(a), NRS 11.200, NRS 11.250, NRS 11.300 and NRS 17.214, the underlying judgment did not expire in this matter. Indeed, any renewal pursuant to NRS 17.214 filed by Nalder would be premature and possibly held to be ineffective. Nalder timely commenced her action on the judgment before the statute of limitations expired. As a result, the judgment does not

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have to be renewed and any renewal under NRS 17.214 is not possible at this time. This is the reason for the declaratory relief allegation in Nalder's 2018 complaint.

VII. CONCLUSION

For the reasons set forth above, Nalder respectfully requests that this Court deny the Motion to Set Aside the Judgment brought by Gary Lewis, (without his consent).

Dated this 8th day of October, 2018.

STEPHENS & BYWATER, P.C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of October, 2018, I served the following document: **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE JUDGMENT**

■ VlA ELECTRONIC FILING; (N.E.F.R. 9(b))

Matthew J. Douglas, Esq.

Randall Tindall, Esq.

☐ 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:

☐ 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).

☐ BY HAND DELIVER: 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

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT IN SUPPORT OF OPPOSITION TO DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT

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 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. Cheyenne Nalder, ("Cheyenne"), who had reached the age of majority, asked me to file a motion to amend the judgment in this case where a judgment had previously been entered against Mr. Lewis in favor of her father, as her Guardian ad Litem.

5. On March 22, 2018. I filed an Ex Parte Motion to Amend the Judgment to change the name on the judgment to Cheyenne Nalder, individually.

6. That Motion was granted by this Court and the amended judgment was filed on March 28, 2018.

7. I filed a Notice of Entry of Judgment on this matter on May 18, 2018 and served that Notice of Entry of Judgment on Mr. Lewis at his address in California.

8. During this time I filed and served a separate lawsuit against Mr. Lewis to protect Cheyenne's claims from the possible running of the statute of limitations.

9. Since that time I have dealt with a myriad of attorneys claiming to be acting on behalf of Mr. Lewis.

10. Approximately 30 days after serving Mr. Lewis, on July 17, 2018, I filed a Three Day Notice of Intent to Take Default in the second matter. I served it on Mr. Lewis, and Tom Winner, Esq., who was representing Mr. Lewis in another matter.

11. On July 19, 2018, Matthew Douglas, Esq., who I understand to be an associate with Mr. Winner's law firm, called me regarding not filing a default against Mr. Lewis in the second case.

12. On July 24, 2018, Stephen Rogers, Esq., called me and indicated to me that he was representing Mr. Lewis, and that he needed a two-week extension of time in which to respond in the second suit I granted the two weeks request requested by Mr. Rogers.

13. Having heard nothing further, on August 8, 2018, I sent a letter to Mr. Rogers, by email, regarding whether he was representing Mr. Lewis.

14. In a letter dated August 10, 2018, Mr. Rogers indicated he had been retained to represent Mr. Lewis and sent a medical authorization for my client to sign.

15. In a letter dated August 23, 2018, Mr. Rogers indicated that he was not going to be able to represent Mr. Lewis. Based on his letter, it was my understanding that Mr. Rogers was having some discussions with respect to his representation of Mr. Lewis, with Thomas F. Christensen, Esq. who represented Mr. Lewis personally.

16. In the meantime on August 15, 2018, Matthew Douglas, Esq., representing United Automobile Insurance Company, ("UAIC"), which I understood to be Mr. Lewis' automobile insurance company at the time of the accident, filed a Motion to Intervene in this matter. At about the same time, Mr. Douglas also filed a motion to intervene on behalf of UAIC in the second suit.

17. The certificate of service on the Motion to Intervene filed in this case states that it was mailed to me the following day.

18. In September, 2018, while preparing to submit a default in the second suit, I first learned of the motions to intervene.

19. 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 Motion s had been served on me.

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

21. 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 other case. He then asked for the basis for my opposition to both motions.

22. I have never received a proof of eservice on me in the second case.

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

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

25. I emailed Mr. Douglas on September 14, 2018, indicating that I would have to research to see if there were grounds to oppose the motions to intervene and indicated that as to this case, that I thought the motion was too late.

26. I filed an Opposition to the Motion to Intervene filed by UAIC in this case on September 17, 2018. I received a filed stamped copy of the Opposition early on the morning of September 18, 2018.

27. I filed an Opposition to the Motion to Intervene filed by UAIC in the second case on September 17, 2018. I received a filed stamped copy of the Opposition early on the morning of September 18, 2018.

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

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

30. In the meantime I had been negotiating with another attorney, E. Breen Arntz, Esq. on behalf of Mr. Lewis in the second matter. Mr. Arntz and I arrived at what I thought was a stipulation which would resolve the matter. That stipulation was filed and a judgment and the stipulation were dropped in the Court's box for signature by the Court. As of today's date I have not received the signed judgment based on the stipulation from the Court.

31. Now, another attorney, claiming to represent Mr. Lewis, has filed this Motion to Set Aside the Judgment. Based on my negotiation with Mr. Arntz, I believe that these issues raised by this Motion to Set Aside the Judgment, along with the issues in the other law suit have been resolved.

32. The Stipulation for Judgment essentially stipulated that the judgment in this case is valid and stipulated to the amount of the judgment. In return Cheyenne Nalder waived her claim to court costs, and attorney's fees incurred by her in her efforts to collect this judgment.

33. Thus it appears at this time that Mr. Lewis has yet another attorney and appears to be backing out of the settlement negotiations which were signed by his prior counsel.

Dated this 8 day of October, 2018.

David A. Stephens, Esq.

Subscribed and Sworn to before me
this 8th day of October, 2018.

Notary Public in and for
said County and State

NOTARY PUBLIC
M. L. GOLDSTEIN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. APRIL 13, 2022
No: 01-70903-1

EXHIBIT 2

EXHIBIT 2

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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.: 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
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1117 South Rancho Drive
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Attorneys for Intervenor

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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 [X] Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [ ] mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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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

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Attorneys for Intervenor

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A NEVADA LAW FIRM

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CERTIFICATE OF SERVICE

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EXHIBIT 3

EXHIBIT 3

A-18-772220-C

Service Contact History

File Into Existing Case

Name	Action	Date/Time
Matthew Douglas	Attach	8/16/2018 4:50 PM PST
Victoria Hall	Attach	8/16/2018 4:50 PM PST
AWS E-Services	Attach	8/16/2018 4:50 PM PST
David A. Stephens	Attach	9/4/2018 9:00 AM PST
Randall Tindall	Attach	9/26/2018 4:39 PM PST
Lisa Bell	Attach	9/26/2018 4:40 PM PST
Shayna Ortega-Rose	Attach	9/26/2018 4:42 PM PST

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7 Total Items

1 10 items per page

APP0673

07A549111

Service Contact History

File Into Existing Case

Name	Action	Date/Time
Matthew Douglas	Attach	8/17/2018 2:51 PM PST
Victoria Hall	Attach	8/17/2018 2:51 PM PST
AWS E-Services	Attach	8/17/2018 2:51 PM PST
David A. Stephens	Attach	9/18/2018 11:30 AM PST
Randall Tindall	Attach	9/27/2018 2:09 PM PST
Lisa Bell	Attach	9/27/2018 2:09 PM PST
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1 10 items per page

EXHIBIT 4

EXHIBIT 4

No. 20100167.
Supreme Court of North Dakota

F/S Manufacturing v. Kensmoe

798 N.W.2d 853 (N.D. 2011)

Decided June 21st, 2011

VANDE WALLE, Chief Justice.

[¶ 1] Lesa Kensmoe, now known as Lesa Bergson, appealed from a district court order granting F/S Manufacturing renewal by affidavit of its 1998 judgment against her. We reverse, holding the district court erred in ordering a cancelled judgment renewed by filing an affidavit under N.D.C.C. § 28-20-21.

I

[¶ 2] On March 9, 1998, F/S Manufacturing obtained a default judgment in the amount of $450,894.78 against Kensmoe. When the action was commenced in 1995, Kensmoe was a resident of Moorhead, Minnesota. On April 4, 2008, F/S Manufacturing's judgment against Kensmoe was cancelled of record under N.D.C.C. § 28-20-35. On March 8, 2010, almost two years after the 1998 judgment was cancelled, *855 F/S Manufacturing filed an affidavit attempting to renew the judgment under N.D.C.C. § 28-20-21. After being informed the judgment could not be renewed because it had expired, F/S Manufacturing filed a motion on March 11, 2010, requesting the district court to order the clerk of court to renew the judgment by affidavit under N.D.C.C. § 28-20-21.

[¶ 3] In its motion and supporting brief, F/S Manufacturing asserted that the "statute of limitations" for renewing a judgment by affidavit was tolled because Kensmoe had been absent from North Dakota for at least five years living in Georgia or, alternatively, because Kensmoe had filed for bankruptcy in Georgia on May 5, 2003, and had purportedly been involved in bankruptcy proceedings until May 10, 2005. With its motion, F/S Manufacturing submitted evidence that the 1998 North Dakota judgment had been filed in Liberty County, Georgia, and that on March 8, 2010, a Georgia state court in Liberty County had denied Kensmoe's motion to set aside the judgment. The Georgia court order found that "the statute of limitations on the underlying North Dakota judgment . . . was tolled during the pendency of Defendant's two bankruptcy proceedings from May 5, 2003 through May 10, 2005" and held that the underlying North Dakota judgment was still valid and enforceable and F/S Manufacturing could "continue its collection efforts to enforce the judgment."

[¶ 4] On May 5, 2010, the North Dakota district court granted F/S Manufacturing's motion and ordered the clerk of court to renew the 1998 judgment. In its order, the district court stated: "This Court adopts the reasoning and rationale of the March 8, 2010, State Court of Liberty County, Georgia, order, and [F/S Manufacturing's] Brief in Support of Motion of Renewal of Judgment, as its own for the purposes of this Order."

II

[¶ 5] Kensmoe argues that F/S Manufacturing may not renew a cancelled judgment, asserting the period to renew the judgment under N.D.C.C. § 28-20-21 was not tolled. F/S Manufacturing asserts, however, the time period for renewing a judgment under

N.D.C.C. § 28-20-21 was tolled under N.D.C.C. § 28-01-32, based on Kensmoe's absence from North Dakota. F/S Manufacturing also contends that Kensmoe waived any issues regarding whether or not her prior bankruptcy proceedings tolled the "statute of limitations," because she did not raise those issues on appeal. The issues raised by the parties require interpretation of N.D.C.C. §§ 28-20-21 and 28-01-32.

> Statutory interpretation is a question of law, fully reviewable on appeal. *Kadlec [v. Greendale Twp. Bd. of Supervisors]*, 1998 ND 165, 1112, 583 N.W.2d 817. Words in a statute are given their plain, ordinary, and commonly understood meaning, unless defined by statute or unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. Statutes are construed as a whole and are harmonized to give meaning to related provisions. N.D.C.C. § 1-02-07. If the language of a statute is clear and unambiguous, "the letter of [the statute] is not to be disregarded under the pretext of pursuing its spirit." N.D.C.C. § 1-02-05. The language of a statute must be interpreted in context and according to the rules of grammar, giving meaning and effect to every word, phrase, and sentence. N.D.C.C. §§ 1-02-03 and 1-02-38(2). The primary objective in interpreting a statute is to determine the intention of the legislation. *Amerada Hess Corp. v. State ex rel. Tax Comm'r*, 2005 ND 155, ¶ 12, 704 N.W.2d 8.

Skogen v. Hemen Twp. Bd. of Twp. Supervisors, 2010 ND 92, ¶ 20, 782 N.W.2d 638. *856 We construe statutes to avoid absurd or illogical results. *County of Stutsman v. State Historical Soc'y*, 371 N.W.2d 321, 325 (N.D. 1985).

A

[¶ 6] In North Dakota the duration of a judgment is governed by N.D.C.C. § 28-20-35, which provides for cancellation of a judgment after certain time periods:

> After ten years after the entry of a judgment that has not been renewed, or after twenty years after the entry of a judgment that has been renewed, the judgment must be canceled of record.

See Investors Title Ins. Co. v. Herzig, 2011 ND 7, ¶ 11, 793 N.W.2d 371. "After the time periods set forth in the statute governing cancellation of judgments have passed, a judgment is unenforceable against the judgment debtor." *Id.* (citing *Jahner v. Jacob*, 515 N.W.2d 183, 186 (N.D. 1994)). A judgment creditor may commence a separate action to renew a judgment. *See, e.g., Union Nat'l Bank v. Ryan*, 23 N.D. 482, 483, 137 N.W. 449 Syl. 2 (1912) ("judgment creditor may renew his judgment by either affidavit or by action if he pursues the remedies provided by said sections"). North Dakota law also provides for a concurrent, simplified procedure to renew a judgment by filing an affidavit. *See* N.D.C.C. §§ 28-20-21, 28-20-22, and 28-20-23.

[¶ 7] Section 28-20-21, N.D.C.C., provides the required contents of a renewal affidavit and states, in part:

> Any judgment which in whole or in part directs the payment of money and which may be docketed in the office of the clerk of any district court in this state may be renewed by the affidavit of the judgment creditor or of the judgment creditor's personal representative, agent, attorney, or assignee at any time *within ninety days preceding the expiration often years from the first docketing of such judgment.*

(Emphasis added.) If the judgment to be renewed was rendered in this state, "the affidavit for renewal must be filed *with the clerk of court* where the judgment was first docketed. . . . *The clerk of court shall immediately enter in the judgment docket the fact of renewal,* the date of renewal, and the amount for which the judgment is renewed." N.D.C.C. § 28-20-22 (emphasis added). Section 28-20-23, N.D.C.C., provides that "[t]he entry and docketing of an affidavit of renewal of a judgment operates to continue the lien of the judgment to the

extent of the balance due" on the judgment for a period of ten years from the affidavit's docketing.

[¶ 8] This Court has said that renewal by affidavit is purely a statutory matter and the procedure must be substantially complied with, since "[t]he courts are not at liberty to say that any of the statutory requirements to perfect or continue a lien may be omitted." *Groth v. Ness*, 65 N.D. 580, 584, 260 N.W. 700, 701 (1935). "Where the Legislature has clearly prescribed what facts shall be set forth in the statement, the courts have no power to add to or subtract therefrom." *Id.* Thus, "[a]n original judgment is renewed for an additional ten years by filing an affidavit of renewal within 90 days of expiration of the original judgment." *Jahner*, 515 N.W.2d at 186 (citing N.D.C.C. §§ 28-20-21, 28-20-22, and 28-20-23). "If the judgment creditor does not file an affidavit of renewal within the original ten-year period, NDCC 28-20-35 declares that the judgment is canceled of record and is un-enforceable." *Jahner*, at 186.

[¶ 9] It is undisputed that F/S Manufacturing did not file a renewal affidavit "within ninety days preceding the expiration of ten years from the first docketing" of its 1998 judgment against Kensmoe, *857 and it is undisputed that the 1998 judgment was cancelled of record on April 4, 2008. Relying on *Ryan*, 23 N.D. 482, 137 N.W. 449, and N.D.C.C. § 28-01-32, F/S Manufacturing argues the time period provided in N.D.C.C. § 28-20-21 to renew the judgment by affidavit was tolled. Under N.D.C.C. § 28-01-32, the statute of limitations for "an action" against a person may be tolled based on that person's absence from the state:

> If any person is out of this state at the time a claim for relief accrues against that person, *an action on such claim for relief* may be commenced in this state at anytime within the term limited in this chapter for the bringing of an action on such claim for relief after the return of such person into this state. If any person departs from and resides out of this state and remains continuously absent therefrom for the space of one year or more after a claim for relief has accrued against that person, the time of that person's absence may not be taken as any part of the time limited *for the commencement of an action on such claim for relief.* The provisions of this section, however, do not apply to the foreclosure of real estate mortgages by action or otherwise and do not apply if this state's courts have jurisdiction over a person during the person's absence.

(Emphasis added.) Although F/S Manufacturing asserts that Kensmoe has been absent from the state for at least five years, that the two exceptions in N.D.C.C. § 28-01-32 do not apply, and that Kensmoe has waived any argument regarding jurisdiction, F/S Manufacturing's reliance on N.D.C.C. § 28-01-32 and *Ryan* is misplaced.

[¶ 10] *Ryan* involved an action for renewal of a domestic judgment against a judgment debtor, who had been absent from the state after judgment was entered. 23 N.D. at 484, 137 N.W. at 449. If the judgment debtor's absence was counted, the action would have been barred under the 10-year statute of limitations for an action upon a judgment in an earlier version of N.D.C.C. § 28-01-15(1); but if the debtor's absence tolled the statute of limitations, under an earlier version of N.D.C.C. § 28-01-32, the original expired judgment could serve as the basis for the action to renew. *Ryan*, at 484, 137 N.W. at 449. The *Ryan* Court held that the judgment debtor's absence from the state tolled the statute of limitation for bringing a separate action on the judgment, even though the original judgment may have expired without being renewed. *Id.* at 487, 137 N.W. at 450. More importantly, the Court specifically distinguished between a separate action to renew a judgment and the statutory renewal by affidavit, holding the legislature's adoption of statutes for renewal by affidavit neither repealed the statute tolling an action based on a person's absence, nor precluded the separate action on the judgment for renewal:

> Of course, it may be easier to renew a judgment by affidavit; but it by no means follows that the old judgment may not be made the basis of a new suit, and *many cases arise where it is an advantage to be able to bring suit, instead of renewing by affidavit — the case at bar being an example.* It is our conclusion that the two remedies are not inconsistent, and that a judgment creditor may either sue upon his judgment, or renew it by affidavit, *if he complies with the respective laws.*

Id. at 487-88, 137 N.W. at 450 (emphasis added). *See also Herzig*, 2011 ND 7, ¶ 12, 793 N.W.2d 371 (holding no tolling under *Ryan* and N.D.C.C. § 28-01-32 when there was no claim judgment debtor was absent from the state); *Jahner*, 515 N.W.2d at 186 (holding *Ryan* case inapposite because there was no allegation the judgment debtor `was absent from the *858 state to toll the statute of limitations, *nor [was it] a separate action upon the original judgment*" (emphasis added)).

[¶ 11] Here, F/S Manufacturing has not commenced a separate action for renewal on the 1998 judgment, but has instead sought to renew its judgment by filing an affidavit with the clerk of court under N.D.C.C. § 28-20-21. That statute provides the specific time period for compliance with this simplified procedure, i.e., "within ninety days preceding the expiration of ten years from the first docketing of such judgment." However, N.D.C.C. § 28-01-32, by its terms applies only to toll the time for commencing "an action" on a claim for relief. Filing an affidavit with the clerk of court to renew a judgment under N.D.C.C. § 28-20-21 is not akin to commencing an action, nor is filing an affidavit an "action upon the judgment" under N.D.C.C. § 28-01-15(1). *See* N.D.R.Civ.P. 3 ("A civil action is commenced by the service of a summons."); N.D.C.C. § 28-01-38 (an action is commenced when the summons is served on the defendant); N.D.C.C. § 32-01-01 (remedies in the courts are divided into actions and special proceedings); N.D.C.C. § 32-01-02 ("An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."); *cf. Blomdahl v. Blomdahl*, 2011 ND 78, ¶¶ 6-8, 796 N.W.2d 649 (contempt proceedings under N.D.C.C. § 14-05-25.1 held not an "action upon the judgment" under N.D.C.C. § 28-01-15(1)).

[¶ 12] Because the statutory procedure for renewal by affidavit is not a separate action to renew the judgment, the specific time period in N.D.C.C. § 28-20-21 cannot be tolled under N.D.C.C. § 28-01-32 based on a judgment debtor's absence from the state. We therefore conclude N.D.C.C. § 28-01-32 does not apply to toll the time period in which F/S Manufacturing had to renew its judgment by affidavit.

B

[¶ 13] Although F/S Manufacturing asserts Kensmoe waived any issues "regarding [whether] her bankruptcy toll[ed] the statute of limitations," the district court's order, which Kensmoe has directly challenged, explicitly adopted the Georgia state court's conclusion that "the statute of limitations on the underlying North Dakota judgment . . . was tolled during the pendency of [Kensmoe's] two bankruptcy proceedings from May 5, 2003 through May 10, 2005." Kensmoe argues on appeal that the time period to renew the judgment by affidavit under N.D.C.C. § 28-20-21 was not tolled and the "Georgia rulings should not be used in the decision of a North Dakota judgment." In her reply brief, Kensmoe also distinguishes F/S Manufacturing's reliance on *In re Lobherr*, 282 B.R. 912 (Bankr.C.D.Cal. 2002). Kensmoe's argument necessarily includes whether the district court erred in deciding the time period in N.D.C.C. § 28-20-21 was tolled by her prior bankruptcy proceedings, and we reject F/S Manufacturing's claim about waiver.

[¶ 14] We approach with caution the complexity of interpreting the Bankruptcy Code and its interplay with state law. *See, e.g., Production Credit Ass'n v. Burk*, 427 N.W.2d 108 (N.D. 1988) (holding 11 U.S.C. §

108(b)(2) applied to extend unexpired 60-day period to file notice of appeal to 60 days after order for relief, but that appeal was untimely), disagreed with by *In re Hoffinger Indus., Inc.*, 329 F.3d 948, 952-54 (8th Cir. 2003) (holding § 108(c)(2) applied to extend the deadline to file a notice of appeal in state court until at least 30 days after notice of the stay's termination *859 or expiration), and criticized by *In re Ingeniero*, No. 06-42512J11, 2007 WL 1453132, at *1 (Bankr.N.D.Cal. May 17, 2007) (stating *Burk* did not even consider § 108(c)). *But see Autoskill Inc. v. National Educ. Support Sys., Inc.*, 994 F.2d 1476, 1483 n. 3 (10th Cir. 1993) (agreeing with *Burk* that § 108(b) applies to filing of a notice of appeal); *Di Maggio v. Blache*, 466 So.2d 489, 490-91 (La.Ct.App. 1985) (holding § 108(b)(2) extended unexpired period for filing appeal, but holding appeal was untimely).

[¶ 15] In support of its position that bankruptcy tolled the time to renew by affidavit, F/S Manufacturing cites *In re Lobherr*, 282 B.R. at 916-17, for the proposition that the "statute of limitations" for renewing a judgment against a debtor is tolled during the time that the debtor is in bankruptcy. The bankruptcy court in *Lobherr*, 282 B.R. at 914-16, held that renewal of the judgment during the pendency of the debtor's bankruptcy was a "continuation of a proceeding" against the debtor under 11 U.S.C. § 362(a)(1) and thus violated the automatic stay. The court reasoned that California's statutory scheme for renewing judgments "more closely resembles a judicial action or proceeding," included in acts prohibited by the automatic stay. *Lobherr*, at 915. The court continued, "The renewal of judgment was not an action that could have been taken *ex parte*, without notice. Rather, the renewal process required service of the application for renewal on the judgment debtor, thus affording the judgment debtor the opportunity to object to the renewal." *Id.* at 916. The court also explained that:

> [11 U.S.C] § 108(c) was intended to give the state court creditor a way to keep her rights intact (including the renewal of judgments) for 30 days after notice of the termination of the automatic stay[, and therefore] [the respondent . . . was not precluded from protecting its rights to the judgment. [The judgment creditor] instead improperly renewed the judgment in accordance with the state statutory scheme, when the Bankruptcy Code specifically contained a provision for the tolling of the statute of limitations for the renewal of that judgment, preempting state law.

Lobherr, at 917.

[¶ 16] Although the statute is not cited in its brief, based on its reliance on *Lobherr*, F/S Manufacturing appears to assert 11 U.S.C. § 108(c) operated to toll the period of time for a judgment creditor to renew the North Dakota judgment by affidavit under N.D.C.C. § 28-20-21. Specifically, § 108(c) applies to the commencement or continuation of actions *that are stayed* by 11 U.S.C. §§ 362, 922, 1201, or 1301. *See 2 Collier on Bankruptcy* ¶ 108.04 (16th ed. 2010).

[¶ 17] 11 U.S.C. § 108(c) provides, in relevant part:

> (c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes *a period for commencing or continuing a civil action in a court* other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of —
>
> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

*860 [¶ 18] One commentator has discussed the scope and extension of time provided by 11 U.S.C. § 108(c), stating in part:

> [S]ection 108(c) is narrower in scope than section 108(b). It applies only to civil actions in courts on claims against the debtor, or against codebtors protected by the codebtor stay. Courts have generally held that it does apply to time periods within which a creditor must bring an action to enforce a lien before the lien expires. *It also applies to the time period to renew a judgment to maintain its enforceablility.* But it does not appear to apply to other types of acts against the debtor or codebtor that do not involve litigation, such as the filing of documents other than in court proceedings.
>
> ....
>
> Section 108(c) permits the commencement or continuation of an action until the later of two periods. The first is the end of a time period fixed by applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding or an agreement. Such time period expressly includes "any suspension of such period occurring on or after the commencement of the case." Such a suspension may result from either state or federal law.
>
> ....
>
> In some jurisdictions state law may dictate suspension of a statute of limitations when a bankruptcy or another court proceeding has stayed the initiation of an action. Such suspensions would presumably be included within the terms of section 108(c), adding the entire duration of the automatic stay to the applicable time period.
>
> However, absent such a provision in applicable nonbankruptcy law, a statute of limitations or other deadline for an action against a debtor which would have expired while an automatic stay was applicable is extended by only the second period set forth in section 108(c), 30 days after notice of the termination or expiration of the automatic stay barring the action. It is important to note that this extension continues not simply until 30 days after the termination of the stay, but until 30 days after *notice* of that termination. When a party has no such notice, the 30 days never begin to run.

2 *Collier on Bankruptcy* at ¶¶ 108.04[1]-108.04[2] (16th ed. 2010) (emphasis added).

[¶ 19] "`Technically speaking, the Bankruptcy Code does not provide that a statute of limitations is tolled during the period of bankruptcy.'" *In re Bigelow*, 393 B.R. 667, 670 n. 8 (B.A.P. 8th Cir. 2008) (quoting *C.H. Robinson Co. v. Paris Sons, Inc.*, 180 F.Supp.2d 1002, 1019 (N.D.Iowa 2001)). Further, "[section 108(c)(1) does not independently toll or suspend statutes of limitations which have not expired as of a bankruptcy petition date." *In re Bigelow*, at 670 (citing *In re Danzig*, 233 B.R. 85, 94 (B.A.P. 8th Cir. 1999)). "`The reference in § 108(c) to "suspension" of time limits clearly does not operate in itself to stop the running of a statute of limitations; rather, this language merely incorporates suspensions of deadlines that are expressly provided in other federal or state statutes.'" *Bigelow*, at 670 (quoting *Danzig*, at 94).

[¶ 20] Some courts have held, however, that the automatic stay under 11 U.S.C. § 362 does not prevent the filing of a renewal affidavit. *See, e.g., In re Smith*, 209 Ariz. 343, 101 P.3d 637, 639 (2004) (holding ministerial action of filing renewal affidavit not prohibited by automatic bankruptcy stay); *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754, 755-56 (1994) (rejecting argument that automatic stay prevented filing a renewal affidavit); *Barber v. Emporium P'ship*, 800 P.2d 795, 797 (Utah 1990) (stating action to renew a judgment *861 does not violate automatic stay provisions because a renewal is not an attempt to enforce, collect, or expand the original judgment); *In re Morton*, 866 F.2d 561, 564 (2d Cir. 1989) (concluding automatic stay

does not eliminate state-law requirement of extending a judgment lien). *But see In re Lobherr*, 282 B.R. at 917 (filing of renewal application under California law violated automatic stay).

[¶ 21] For example, in *In re Smith*, 101 P.3d at 639, answering a certified question from the bankruptcy court, the Arizona Supreme Court held under Arizona law that the time for filing a renewal affidavit is not extended when the debtor has a bankruptcy proceeding pending and an automatic stay was in effect during the 90-day renewal period. The court held that "[a] judgment creditor's inability to enforce a judgment during the initial or a subsequent statutory five-year period, whether because of bankruptcy stay or other reasons, does not extend the dead-line imposed by [Arizona law] to file a renewal affidavit." *Id.* The court held as a matter of Arizona law that "the filing of an affidavit of renewal is simply a ministerial action intended in part to alert interested parties to the existence of the judgment." *Id.* "Such a ministerial filing serves a notice function and does not seek to enforce a judgment." *Id.* The court concluded that the filing of a renewal affidavit is not prohibited by an automatic bankruptcy stay or any stay of enforcement, such as filing a supersede as bond. *Id.* The court held "the time to file an affidavit of renewal of judgment is not changed or extended by the pendency of a bankruptcy case." *Id.* at 640.

[¶ 22] In subsequent proceedings before the Ninth Circuit bankruptcy appellate panel, the court in *In re Smith*, 352 B.R. 702, 706 (B.A.P. 9th Cir. 2006), held that based on the Arizona Supreme Court's decision in *In re Smith*, 101 P.3d at 640, Arizona state law did not suspend the time to file a renewal affidavit during the pendency of the bankruptcy case. In reaching this conclusion, the court stated that "[i]n matters of state law, [the court is] compelled to defer to the interpretation given such law by the state's highest court." *In re Smith*, 352 B.R. at 706. The court reiterated that the phrase "suspension of such period" referenced in 11 U.S.C. § 108(c)(1) refers to "either state or federal nonbankruptcy law." 352 B.R. at 706. As a result, 11 U.S.C. § 108(c)(1) did not operate without regard to existing non-bankruptcy law to stop the running of any periods of limitation. *In re Smith*, 352 B.R. at 706. The court held that, absent state law suspending the time for filing the renewal affidavit, the original limitation date applied and no additional time was afforded under 11 U.S.C. § 108(c)(1). *In re Smith*, 352 B.R. at 706.

[¶ 23] However, courts have held that 11 U.S.C. § 108(c) applies to the renewal of state court judgments. *See In re Spirtos*, 221 F.3d 1079, 1080-81 (9th Cir. 2000), *In re Smith*, 352 B.R. at 705; *In re Greenberg*, 288 B.R. 612, 614-15 (Bankr.S.D.Ga. 2002); *see also 2 Collier on Bankruptcy* at ¶ 108.04[l]. Nonetheless, "[t]he time for renewing a state court judgment does not expire until the *later* of the applicable state law, or 30 days after the termination of the automatic stay." *In re Smith*, 352 B.R. at 705 (citing 11 U.S.C. § 108(c)(1)(c)(2)) (emphasis in original); *see also In re Lobherr*, 282 B.R. at 916.

[¶ 24] Here, there is no assertion that Kensmoe was involved in bankruptcy proceedings or that an automatic stay was in place at the time F/S Manufacturing was required to file an affidavit for renewal under N.D.C.C. § 28-20-21. Unlike California law, North Dakota renewal statutes provide that once a proper, timely affidavit is filed with the clerk of court, the *862 clerk is required to "immediately enter in the judgment docket the fact of renewal, the date of renewal, and the amount for which the judgment is renewed." *See* N.D.C.C. § 28-20-22. The *Lobherr* case is not controlling and does not support tolling the time period for filing an affidavit in the present case. In fact, in *Bergstrom v. Lobherr*, No. G035801, 2006 WL 2536462, at *5 (Cal.Ct.App. Sept. 5, 2006), an unpublished California court of appeals decision involving a subsequent action to enforce the prior judgment against *Lobherr*, the court said, "California law does not contain a tolling provision applicable to a judgment creditor's application to renew a judgment," and therefore, "when a judgment creditor seeks to renew a judgment,

the only applicable tolling provision is the 30-day extension authorized by section 108(c)(2)." However, in distinguishing the prior bankruptcy court proceedings, the court of appeals held the present case was an independent action to enforce the judgment, which was subject to being tolled under California law. *Id.*

[¶ 25] Thus, even if the filing of a renewal affidavit under N.D.C.C. § 28-20-21 was more than a "ministerial act," implicating 11 U.S.C. §§ 362 and 108(c), F/S Manufacturing filed the renewal affidavit well beyond 30 days after the time the parties have apparently agreed was the termination of bankruptcy proceedings, i.e., May 10, 2005. *See, e.g., In re Silva,* 215 B.R. 73, 77 (Bankr.D.Idaho 1997) (observing since 30-day extension of time provided under 11 U.S.C. § 108(c)(2) was prior in time to date judgment expired under California statute, § 108(c) had no tolling effect on the judgment, and judgment would thus expire unless validly renewed or revived under state law). F/S Manufacturing has not cited any nonbankruptcy federal or state law that either suspends or tolls the limitation period in N.D.C.C. § 28-20-21. We express no opinion, however, whether the statute of limitations for an *action* on a judgment was tolled during the pendency of the bankruptcy automatic stay. *See* N.D.C.C. §§ 28-01-15(1) (ten-year statute of limitations for an action upon a judgment), 28-01-29 ("When the commencement of an action is stayed by injunction or other order of a court, or by a statutory prohibition, the time of the continuance of the stay is not a part of the time limited for the commencement of the action.").

[¶ 26] We also note that F/S Manufacturing asserts for the first time on appeal that Kensmoe was actually involved in chapter 13 bankruptcy proceedings from May 9, 2003, until January 15, 2004, and involved in chapter 7 bankruptcy proceedings from June 20, 2004, until May 10, 2005, with over a five month gap between her two bankruptcy filings. However, none of Kensmoe's bankruptcy petitions or dispositive orders were submitted to the district court. Generally, "[a] party who claims the benefit of an exception to a statute of limitations bears the burden of showing the exception." *Kimball v. Landeis,* 2002 ND 162, ¶ 29, 652 N.W.2d 330 (citing *Motley v. United States,* 295 F.3d 820, 824 (8th Cir. 2002)); *see generally* 54 C.J.S. *Limitations of Actions* § 429 (2010) ("The burden of proving absence or non-residence in avoidance of the statute of limitations rests on the party asserting such matters."). Nonetheless, the parties do not dispute that Kensmoe was not involved in bankruptcy proceedings nor was an automatic stay in place during the 90 days before the expiration of ten years from the first docketing of the 1998 North Dakota judgment. Under our construction, F/S Manufacturing was not prevented from filing a timely renewal affidavit.

[¶ 27] F/S Manufacturing also suggests this Court must give full faith and credit to the Georgia state court order regarding the underlying North Dakota *863 judgment under *1st Summit Bank v. Samuelson,* 1998 ND 113, ¶ 36, 580 N.W.2d 132 (full faith and credit given to the foreign judgment, even if a similar judgment could not be obtained in North Dakota). In *Samuelson,* this Court held a Pennsylvania judgment was enforceable in North Dakota under the Full Faith and Credit Clause, even though the foreign judgment did not comply with North Dakota's confession-of-judgment procedure. *Id.* at ¶ 37.

[¶ 28] Our decision here, however, only concerns application of our statutory procedure for renewing a judgment by affidavit under N.D.C.C. §§ 28-20-21, 28-20-22, and 28-20-23. The Georgia court order relied upon by F/S Manufacturing does not address application of these statutes. Further, we are not being asked to recognize the judgment of a foreign state; rather, we only address whether Kensmoe's bankruptcy proceedings tolled the time period provided within our state's renewal by affidavit statutes. *Cf.* 16B Am.Jur.2d Constitutional Law § 1031 (2009) ("Full faith and credit does not mean that states must adopt the practices of other states regarding the time, manner, and mechanisms for enforcing judgments[,]" citing *Baker by Thomas v. General Motors Corp.,* 522 U.S.

222, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998); *Finstuen v. Crutcher*, 496 F.3d 1139 (10th Cir. 2007)). We reject F/S Manufacturing's suggestion that this Court is bound by the Georgia state court's order regarding the validity of the 1998 North Dakota judgment.

[¶ 29] We hold the time period to file an affidavit to renew the 1998 judgment was not tolled under North Dakota law. We therefore conclude the district court erred in ordering the clerk of court to renew F/S Manufacturing's 1998 judgment against Kensmoe.

III

[¶ 30] We have considered the parties' remaining arguments and consider them unnecessary to our decision or without merit. The district court order is reversed.

[¶ 31] CAROL RONNING KAPSNER, MARY MUEHLEN MARING, DANIEL J. CROTHERS, and DALE V. SANDSTROM, JJ., concur.

WITH
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER, Plaintiff, vs. GARY LEWIS and DOES I through V, inclusive Defendants,	CASE NO: 07A549111 DEPT. NO: XX Consolidated with CASE NO: 18-A-772220
UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor.	
GARY LEWIS, Third Party Plaintiff, vs. UNITED AUTOMOBILE INSURANCE COMPANY, RANDALL TINDALL, ESQ., and RESNICK & LOUIS, P.C. And DOES I through V, Third Party Defendants.	

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

Defendant, Gary Lewis, by and through his counsel, E. Breen Arntz, Esq., hereby withdraws Defendant's Motion for Relief from Judgment Pursuant to NRCP 60, which was filed on September 26, 2018, without consent or authorization from Gary Lewis, by Randall Tindall, Esq. This withdrawal is made and based upon the papers and pleadings on file herein, the Points

and Authorities attached hereto, and the Affidavit of Gary Lewis attached as an Exhibit 3 to Gary Lewis' Opposition to UAIC's Motion to Consolidate.

POINTS AND AUTHORITIES

Defendant, Gary Lewis, was left high and dry by his insurance company, UAIC, back in 2007 when he was sued by Cheyenne Nalder. UAIC, who has hired Tindall to defend Gary Lewis herein, did not defend Gary Lewis in 2007. As a result, Mr. Lewis has a large judgment against him. Mr. Lewis does not, therefore, have any confidence in UAIC or any action it or its attorneys purport to take on his behalf. Gary Lewis has chosen and hired Breen Arntz, Esq., the undersigned, as his *Cumis* counsel to represent him. Gary Lewis does not waive the conflict that exists with any attorney chosen and directed by UAIC.

Gary Lewis has directed withdrawal of the Motion filed by Randall Tindall, Esq. because it is not accurate or proper. Gary Lewis desires a defense that is based in sound facts and legal precedent. Therefore, the Defendant's Motion for Relief for Judgment is hereby withdrawn. It would be improper for this Court to consider any Motion that has been withdrawn by the real party in interest.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of E. BREEN ARNTZ, ESQ. and that on this 2 day of Jan, 2019, I served a copy of the foregoing **DEFENDANT'S WITHDRAWAL OF DEFENDANT'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP** as follows:

☒ E-Served through the Court's e-service system.

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

CASE NO.: 07A549111
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 snot capable of being revived.

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

DATED this 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 UAIC

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 FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** for hearing before the above-entitled Department XXIX on the 12 day of December, 2018, at the hour of 9:00 a.m. in the forenoon of said date, or as soon thereafter as counsel can be heard.

DATED this 19th day of OCTOBER, 2018.

ATKIN WINNER & SHERROD

Matthew Douglas, Esq.
Nevada Bar No. 11371
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Attorneys for Intervenor UAIC

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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."

UAIC, the putative insurer for Lewis, initially denied coverage due to a lapse in

coverage[1]. Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June 3, 2008.[2] a judgment was entered against him in the amount of $3.5 million. See Judgment attached hereto as Exhibit "B". James Nalder as guardian ad litem for Cheyenne was the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless it is timely renewed. As such, the Judgment expired on June 3, 2014.

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

With an incomplete account of the issues presented, the Court granted Cheyenne's Ex Parte Motion and issued an Amended Judgment on March 28, 2018 which was filed with a Notice of Entry on May 18, 2018. *See* Exhibit "D."

As the judgment had expired and an Amended Judgment could not be issued to revive it. UAIC brings the instant Motion pursuant to NRCP 60(b), as it has now been found to be the insurer of Lewis under an implied policy and, thus, has an interest in this matter, and seeks to avoid the Amended Judgment and declare that the original Judgment has expired.

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[1] Later, during the subsequent action against UAIC (which remains on appeal in the Ninth Circuit for the U.S. Court of Appeals and, currently, on a 2nd certified question to the Nevada Supreme Court) the Court found an ambiguity in the renewal statement for Lewis' policy and, accordingly, *implied* a policy of insurance for Lewis' $15,000 policy limits in December 2013. Importantly, the Ninth Circuit has affirmed their was no "bad faith" on the part of UAIC. Regardless, per the orders of the Federal District Court and Ninth Circuit, UAIC has now been found to be Lewis' insurer, under this implied policy.

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

III.

ARGUMENT

A. The Judgment Expired on June 3, 2014

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

NRS 17.214(1)(a) sets forth the procedure that must ne followed to renew a judgment. A document titled "Affidavit of Renewal" containing specific information outlined in the statute must be filed with the clerk of the court where the judgment is filed within 90 days before the date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No such Affidavit of Renewal was filed by James Nalder, the judgement creditor. Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment was recorded, and the judgment debtor must be served. No evidence of recordation (if such was required) or service on Lewis is present in the record.

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

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

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

The introduction to NRS 11.090, the statute of limitation law, states that it applies to:

"...actions other than those from the recovery of real property, unless further limited by specific statute..." The list which follows includes various causes of action for which suit can be brought. Nowhere in the list is renewing a judgment defined as or analogized to a cause of action.

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

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

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

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

Cheyenne's Ex Parte Motion next cites NRS 11.3000, which provides "If, when the cause of action shall accrue against a person, the person is out of State, the action may be commenced

within the time herein limited after the person's return to the State; and if after the cause of action shall have accrued the person departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action." Cheyenne's argument that the deadline to renew the Judgment are tolled by NRS 11.300 fails because, again renewing a judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada regarding judgments, held in *F/S Manufacturing v Kensmore*, 789 N.W.2d 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate action to renew the judgment, the specific time period[provided to renew] cannot be tolled under [the equivalent to NRS 11.300] based on a judgment debtor's absence for the state." *Id.* At 858.

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

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

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

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

Because the Ex Parte Motion was ex parte, it was not served on Lewis or UAIC nor did Lewis or UAIC have an opportunity to make the Court aware that the Judgment had already expired on its own terms, and that Cheyenne's position that the deadline to renew the judgment

was tolled was inapt. The Ex Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not been properly renewed. Had the court been fully apprised of the facts, it likely would not have granted the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, and the Notice of Entry not filed until May 18, 2018, a motion to set aside the amended judgment on the basis of mistake is timely as it is made within six months of the entry of the judgment. Accordingly, this Motion is timely and this Court should rectify the mistake and void the Amended Judgment in accordance with NRCP 60(b)(1).

2. *The Amended Judgment is void.*

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

IV.

CONCLUSION

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

DATED this 19th day of October, 2018.

ATKIN WINNER & SHERROD

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

CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2018, the foregoing **UAIC'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served on the following by [X] Electronic Service pursuant to NEFR 9 [ ] Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [X] mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT “A”

COM
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FILED
MAY 22 1 48 PM '09
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER, Guardian Ad Litem for minor Cheyanne Nalder, real party in interest, and GARY LEWIS, Individually;

Plaintiffs,

vs.

UNITED AUTOMOBILE INSURANCE CO, DOES I through V, and ROE CORPORATIONS I through V, inclusive

Defendants.

Case No.: A-09-590967-C
Dept No.: II

COMPLAINT

COME NOW the Plaintiffs, James Nalder, Guardian Ad Litem for minor, Cheyanne Nalder, real party in interest in this matter, and Gary Lewis, by and through their attorneys of record, DAVID SAMPSON, ESQ., of the law firm of CHRISTENSEN LAW OFFICES, LLC, and for Plaintiffs' Complaint against the Defendants, and each of them, allege as follows:

1. That Plaintiff, James Nalder, Guardian Ad Litem for minor, Cheyanne Nalder real party in interest, was at all times relevant to this action a resident of the County of Clark, State of Nevada.

2. That Plaintiff, Gary Lewis, was at all times relevant to this action a resident of the County of Clark, State of Nevada.

3. That Defendant, United Automobile Insurance Co. (hereinafter "UAI"), was at all times relevant to this action an automobile insurance company duly authorized to act as an insurer in the State of Nevada and doing business in Clark County, Nevada.

4. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants, DOES I through V and ROE CORPORATIONS I through V, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated herein as DOE or ROE CORPORATION is responsible in some manner for the events and happenings referred to and caused damages proximately to Plaintiffs as herein alleged, and that Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names and capacities of DOES I through V and ROE CORPORATIONS I through V, when the same have been ascertained, and to join such Defendants in this action.

5. That, at all times relevant hereto, Gary Lewis was the owner of a certain 1996 Chevy Silverado with vehicle identification number 1GCEC19M6TE214944 (hereinafter "Plaintiff's Vehicle").

6. That Gary Lewis had in effect on July 8, 2007, a policy of automobile insurance on the Plaintiff's Vehicle with Defendant, UAI (the "Policy"); that the Policy provides certain benefits to Cheyanne Nalder as specified in the Policy; and the Policy included liability coverage in the amount of $15,000.00/$30,000.00 per occurrence (hereinafter the "Policy Limits").

7. That Gary Lewis paid his monthly premium to UAI for the policy period of June 30, 2007 through July 31, 2007.

8. That on July 8, 2007 on Bartolo Rd in Clark County Nevada, Cheyenne Nalder was a pedestrian in a residential area, Plaintiff's vehicle being operated by Gary Lewis when Gary Lewis drove over top of Cheyanne Nalder causing serious personal injuries and damages to Cheyanne Nalder.

9. That Cheyanne Nalder made a claim to UAI for damages under the terms of the Policy due to her personal injuries.

10. That Cheyanne Nalder offered to settle his claim for personal injuries and damages against Gary Lewis within the Policy Limits, and that Defendants, and each of them, refused to settle the claim of Cheyanne Nalder against Gary Lewis within the Policy Limits and in fact denied the claim all together indicating Gary Lewis did not have coverage at the time of the accident.

11. That Plaintiff, Gary Lewis has duly performed all the conditions, provisions and terms of the Policy relating to the loss sustained by Plaintiff, Cheyanne Nalder, and has furnished and delivered to the Defendants, and each of them, full and complete particulars of said loss and have fully complied with all of the provisions of the Policy relating to the giving of notice of said loss, and have duly given all other notices required to be given by the Plaintiffs under the terms of the Policy, including paying the monthly premium.

12. That Plaintiff, Cheyanne Nalder, is a third party beneficiary under the Policy as well as a Judgment Creditor of Gary Lewis and is entitled to pursue action against the Defendants directly under Hall v. Enterprise Leasing Co., West, 122 Nev. 685, 137 P.3d 1104, 1109 (2006), as well as Denham v. Farmers Insurance Company, 213 Cal.App.3d.1061, 262 Cal.Rptr. 146 (1989).

13. That Cheyanne Nalder conveyed to UAI her willingness to settle her claim against Gary Lewis at or within the policy limits of $15,000.00 provided they were paid in a commercially reasonable manner.

14. That Cheyanne Nalder and Gary Lewis cooperated with UAI in its investigation including but not limited to providing a medical authorization to UAI on or about August 2, 2007.

15. That on or about August 6, 2007 UAI mailed to Plaintiff, Cheyanne Nalders' attorney, Christensen Law Offices, a copy of "Renewal Policy Declaration Monthly Nevada Personal Auto Policy" for Gary Lewis with a note that indicated "There was a gap in coverage".

16. That on or about October 10, 2007 UAI mailed to Plaintiff, Cheyanne Nalders' attorney, Christensen Law Offices, a letter denying coverage.

17. That on or about October 23, 2007, Plaintiff, Cheyanne Nalder provided a copy of the complaint filed against UAI's insured Gary Lewis.

18. That on or about November 1, 2007, UAI mailed to Plaintiff, Cheyanne Nalders' attorney, Christensen Law Offices, another letter denying coverage.

19. That UAI denied coverage stating Gary Lewis had a "lapse in coverage" due to non-payment of premium.

20. That UAI denied coverage for non-renewal.

21. That UAI mailed Gary Lewis a "renewal statement" on or about June 11, 2007 that indicated UAI's intention to renew Gary Lewis' policy.

22. That upon receiving the "renewal statement", which indicated UAI's intention to renew Gary Lewis' policy, Gary Lewis made his premium payment and procured insurance coverage with UAI.

23. That UAI was required under the law to provide insurance coverage under the policy Gary Lewis had with UAI for the loss suffered by Cheyenne Nalder, and was under an obligation to defend Gary Lewis and to indemnify Gary Lewis up to and including the policy limit of $15,000.00, and to settle Cheyyene's claim at or within the $15,000.00 policy limit when given an opportunity to do so.

24. That UAI never advised Lewis that Nalder was willing to settle Nalder's claim against Lewis for the sum of $15,000.00.

25. UAI did not timely evaluate the claim nor did it tender the policy limits.

26. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Nalder, was forced to seek the services of an attorney to pursue his rights under her claim against Lewis.

27. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Cheyanne Nalder, was forced to file a complaint on October 9, 2007 against Gary Lewis for her personal injuries and damages suffered in the July 8, 2007 automobile accident.

28. The filing of the complaint caused additional expense and aggravation to both Cheyanne Nalder and Gary Lewis.

29. Cheyanne Nalder procured a Judgment against Gary Lewis in the amount of $3,500,000.00.

30. UAI refused to protect Gary Lewis and provide Gary Lewis with a legal defense to the lawsuit filed against Gary Lewis by Cheyanne Nalder.

31. That Defendants, and each of them, are in breach of contract by their actions which include, but are not limited to:

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to provide coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Plaintiffs to retain an attorney before making payment on the loss.

32. As a proximate result of the aforementioned breach of contract, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500,000.00 plus continuing interest.

33. As a further proximate result of the aformentioned breach of contract, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

34. As a further proximate result of the breach of contract, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

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

36. That Defendants, and each of them, were unreasonable by refusing to cover the true value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits when they had an opportunity to do so, and wrongfully denying coverage.

37. That as a proximate result of the aforementioned breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500,000.00 plus continuing interest.

38. That as a further proximate result of the aformentioned breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

39. That as a further proximate result of the aforementioned breach of the implied covenant of good faith and fair dealing, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

40. That Defendants, and each of them, acted unreasonably and with knowledge that there was no reasonable basis for its conduct, in its actions which include but are not limited to: wrongfully refusing to cover the value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits when they had an opportunity to do so and wrongfully denying the coverage.

41. That as a proximate result of the aforementioned bad faith, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500,000.00 plus continuing interest.

42. That as a further proximate result of the aformentioned bad faith, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

43. That as a further proximate result of the aforementioned bad faith, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

44. That Defendants, and each of them, violated NRS 686A.310 by their actions, including but not limited to: wrongfully refusing to cover the value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits when they had an opportunity to do so and wrongfully denying coverage.

45. That NRS 686A.310 requires that insurance carriers conducting business in Nevada adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies, and requires that carriers effectuate the prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.

46. That UAI did not adopt and implement reasonable standards for the prompt investigation and processing of claims arising under its insurance policies, and did not effectuate the a prompt, fair and/or equitable settlement of Nalder's claim against Lewis in which liability of the insurer was very clear, and which clarity was conveyed to UAI.

47. That NAC 686A.670 requires that an insurer complete an investigation of each claim within 30 days of receiving notice of the claim, unless the investigation cannot be reasonably completed within that time.

48. That UAI received notice of Nalder's claim against Lewis, at the very latest, on or before August 6, 2007. That it was more than reasonable for UAI to complete its investigation of Nalder's claim against Lewis well within 30 days of receiving notice of the claim.

49. That UAI did not offer the applicable policy limits.

50. That UAI did failed to investigate the claim at all and denied coverage.

51. That as a proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500.000.00 plus continuing interest.

52. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

53. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

54. That the Defendants, and each of them, have been fraudulent in that they have stated that they would protect Gary Lewis in the event he was found liable in a claim. All of this was done in conscious disregard of Plaintiffs' rights and therefore Plaintiffs are entitled to punitive damages in an amount in excess of $10,000.00.

WHEREFORE, Plaintiffs, pray for judgment against Defendants, and each of them, as follows:

1. Payment for the excess verdict rendered against Lewis which remains unpaid in an amount in excess of $3,500,000.00;

2. General damages for mental and emotional distress and other incidental damages in an amount in excess of $10,000.00;

3. Attorney's fees and costs of suit incurred herein; and

4. Punitive damages in an amount in excess of $10,000.00;

///

///

///

5. For such other and further relief as this Court deems just and proper.

DATED this 17 day of April, 2009.

CHRISTENSEN LAW OFFICES, LLC.

By: _____
Thomas Christensen, Esq.
David F. Sampson, Esq.
Nevada Bar No. 6811
1000 South Valley View Blvd
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

EXHIBIT "B"

FILED

Aug 26 11 00 AM '08

CLERK OF COURT

JUDG

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

NOTICE OF ENTRY OF JUDGMENT

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

DATED this 5th day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: _____
DAVID F. SAMPSON, ESQ.
Nevada Bar #6811
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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

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

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

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

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

Sarah Dentzel

An employee of CHRISTENSEN LAW OFFICES, LLC

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

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

GARY LEWIS, and DOES I through V, inclusive

Defendants.

CASE NO: A549111
DEPT. NO: VI

JUDGMENT

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

. . .

. . .

. . .

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

DATED THIS 2 day of ~~May~~ June, 2008.

[redacted]
DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

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

EXHIBIT “C”

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendants.	CASE NO.: 07-A-~~A549111~~549111 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.

/ / / /

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

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

EXHIBIT "1"

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

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

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

JUDGMENT

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

. . .

. . .

. . .

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

DATED THIS 2 day of ~~May~~ June, 2008.

DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

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

EXHIBIT "2"

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.	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:

...

...

...

...

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

DATED this _____ day of March, 2018.

_____
District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

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

EXHIBIT "D"

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS

Defendant.

Case No. 07A549111

Dept. No. XXIX

NOTICE OF ENTRY OF AMENDED JUDGMENT

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

Dated this 17 day of May, 2018.

STEPHENS & BYWATER

David A. Stephens, Esq.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Brittany Wilson

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.

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

AMENDED JUDGMENT

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

...

...

...

...

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
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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:

...

...

...

...

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

DATED this 26 day of March, 2018.

District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

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

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 4

David A. Stephens, Esq.
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MATTHEW J. DOUGLAS
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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

JAMES NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

CASE NO.: 07A549111
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 snot capable of being revived.

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

DATED this 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 UAIC

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 FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** for hearing before the above-entitled Department XXIX on the 12 day of December, 2018, at the hour of 9:00 a.m. in the forenoon of said date, or as soon thereafter as counsel can be heard.

DATED this 19th day of OCTOBER, 2018.

ATKIN WINNER & SHERROD

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

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

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."

UAIC, the putative insurer for Lewis, initially denied coverage due to a lapse in

coverage[1]. Lewis did not respond to the Complaint and a default was taken against him. *Id.* On June 3, 2008.[2] a judgment was entered against him in the amount of $3.5 million. See Judgment attached hereto as Exhibit "B". James Nalder as guardian ad litem for Cheyenne was the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires in six (6) years, unless it is timely renewed. As such, the Judgment expired on June 3, 2014.

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

With an incomplete account of the issues presented, the Court granted Cheyenne's Ex Parte Motion and issued an Amended Judgment on March 28, 2018 which was filed with a Notice of Entry on May 18, 2018. *See* Exhibit "D."

As the judgment had expired and an Amended Judgment could not be issued to revive it. UAIC brings the instant Motion pursuant to NRCP 60(b), as it has now been found to be the insurer of Lewis under an implied policy and, thus, has an interest in this matter, and seeks to avoid the Amended Judgment and declare that the original Judgment has expired.

---

[1] Later, during the subsequent action against UAIC (which remains on appeal in the Ninth Circuit for the U.S. Court of Appeals and, currently, on a 2nd certified question to the Nevada Supreme Court) the Court found an ambiguity in the renewal statement for Lewis' policy and, accordingly, *implied* a policy of insurance for Lewis' $15,000 policy limits in December 2013. Importantly, the Ninth Circuit has affirmed their was no "bad faith" on the part of UAIC. Regardless, per the orders of the Federal District Court and Ninth Circuit, UAIC has now been found to be Lewis' insurer, under this implied policy.

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

III.

ARGUMENT

A. The Judgment Expired on June 3, 2014

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

NRS 17.214(1)(a) sets forth the procedure that must ne followed to renew a judgment. A document titled "Affidavit of Renewal" containing specific information outlined in the statute must be filed with the clerk of the court where the judgment is filed within 90 days before the date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No such Affidavit of Renewal was filed by James Nalder, the judgement creditor. Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment was recorded, and the judgment debtor must be served. No evidence of recordation (if such was required) or service on Lewis is present in the record.

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

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

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

The introduction to NRS 11.090, the statute of limitation law, states that it applies to:

"...actions other than those from the recovery of real property, unless further limited by specific statute..." The list which follows includes various causes of action for which suit can be brought. Nowhere in the list is renewing a judgment defined as or analogized to a cause of action.

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

///

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

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

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

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

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

Cheyenne's Ex Parte Motion next cites NRS 11.3000, which provides "If, when the cause of action shall accrue against a person, the person is out of State, the action may be commenced

within the time herein limited after the person's return to the State; and if after the cause of action shall have accrued the person departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action." Cheyenne's argument that the deadline to renew the Judgment are tolled by NRS 11.300 fails because, again renewing a judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada regarding judgments, held in *F/S Manufacturing v Kensmore*, 789 N.W.2d 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate action to renew the judgment, the specific time period[provided to renew] cannot be tolled under [the equivalent to NRS 11.300] based on a judgment debtor's absence for the state." *Id.* At 858.

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

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

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

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

Because the Ex Parte Motion was ex parte, it was not served on Lewis or UAIC nor did Lewis or UAIC have an opportunity to make the Court aware that the Judgment had already expired on its own terms, and that Cheyenne's position that the deadline to renew the judgment

was tolled was inapt. The Ex Parte Motion did not advise the Court that the Judgment had expired in 2014 and had not been properly renewed. Had the court been fully apprised of the facts, it likely would not have granted the Ex Parte Motion. Since the Amended Judgment was entered on March 28, 2018, and the Notice of Entry not filed until May 18, 2018, a motion to set aside the amended judgment on the basis of mistake is timely as it is made within six months of the entry of the judgment. Accordingly, this Motion is timely and this Court should rectify the mistake and void the Amended Judgment in accordance with NRCP 60(b)(1).

2. *The Amended Judgment is void.*

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

IV.

CONCLUSION

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

DATED this 19th day of October, 2018.

ATKIN WINNER & SHERROD

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

CERTIFICATE OF SERVICE

I certify that on this 19th day of October, 2018, the foregoing **UAIC'S MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served on the following by [X] Electronic Service pursuant to NEFR 9 [ ] Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [X] 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

Victoria Hall

An employee of ATKIN WINNER & SHERROD

ATKIN WINNER & SHERROD LTD
A NEVADA LAW FIRM

EXHIBIT “A”

COM
THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

FILED
MAY 22 1 48 PM '09
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES NALDER, Guardian Ad Litem for minor Cheyanne Nalder, real party in interest, and GARY LEWIS, Individually;

Plaintiffs,

vs.

UNITED AUTOMOBILE INSURANCE CO, DOES I through V, and ROE CORPORATIONS I through V, inclusive

Defendants.

Case No.: A-09-590967-C
Dept No.: II

COMPLAINT

COME NOW the Plaintiffs, James Nalder, Guardian Ad Litem for minor, Cheyanne Nalder, real party in interest in this matter, and Gary Lewis, by and through their attorneys of record, DAVID SAMPSON, ESQ., of the law firm of CHRISTENSEN LAW OFFICES, LLC, and for Plaintiffs' Complaint against the Defendants, and each of them, allege as follows:

1. That Plaintiff, James Nalder, Guardian Ad Litem for minor, Cheyanne Nalder real party in interest, was at all times relevant to this action a resident of the County of Clark, State of Nevada.

2. That Plaintiff, Gary Lewis, was at all times relevant to this action a resident of the County of Clark, State of Nevada.

3. That Defendant, United Automobile Insurance Co. (hereinafter "UAI"), was at all times relevant to this action an automobile insurance company duly authorized to act as an insurer in the State of Nevada and doing business in Clark County, Nevada.

4. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants, DOES I through V and ROE CORPORATIONS I through V, are unknown to Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the Defendants designated herein as DOE or ROE CORPORATION is responsible in some manner for the events and happenings referred to and caused damages proximately to Plaintiffs as herein alleged, and that Plaintiffs will ask leave of this Court to amend this Complaint to insert the true names and capacities of DOES I through V and ROE CORPORATIONS I through V, when the same have been ascertained, and to join such Defendants in this action.

5. That, at all times relevant hereto, Gary Lewis was the owner of a certain 1996 Chevy Silverado with vehicle identification number 1GCEC19M6TE214944 (hereinafter "Plaintiff's Vehicle").

6. That Gary Lewis had in effect on July 8, 2007, a policy of automobile insurance on the Plaintiff's Vehicle with Defendant, UAI (the "Policy"); that the Policy provides certain benefits to Cheyanne Nalder as specified in the Policy; and the Policy included liability coverage in the amount of $15,000.00/$30,000.00 per occurrence (hereinafter the "Policy Limits").

7. That Gary Lewis paid his monthly premium to UAI for the policy period of June 30, 2007 through July 31, 2007.

8. That on July 8, 2007 on Bartolo Rd in Clark County Nevada, Cheyenne Nalder was a pedestrian in a residential area, Plaintiff's vehicle being operated by Gary Lewis when Gary Lewis drove over top of Cheyanne Nalder causing serious personal injuries and damages to Cheyanne Nalder.

9. That Cheyanne Nalder made a claim to UAI for damages under the terms of the Policy due to her personal injuries.

10. That Cheyanne Nalder offered to settle his claim for personal injuries and damages against Gary Lewis within the Policy Limits, and that Defendants, and each of them, refused to settle the claim of Cheyanne Nalder against Gary Lewis within the Policy Limits and in fact denied the claim all together indicating Gary Lewis did not have coverage at the time of the accident.

11. That Plaintiff, Gary Lewis has duly performed all the conditions, provisions and terms of the Policy relating to the loss sustained by Plaintiff, Cheyanne Nalder, and has furnished and delivered to the Defendants, and each of them, full and complete particulars of said loss and have fully complied with all of the provisions of the Policy relating to the giving of notice of said loss, and have duly given all other notices required to be given by the Plaintiffs under the terms of the Policy, including paying the monthly premium.

12. That Plaintiff, Cheyanne Nalder, is a third party beneficiary under the Policy as well as a Judgment Creditor of Gary Lewis and is entitled to pursue action against the Defendants directly under Hall v. Enterprise Leasing Co., West, 122 Nev. 685, 137 P.3d 1104, 1109 (2006), as well as Denham v. Farmers Insurance Company, 213 Cal.App.3d.1061, 262 Cal.Rptr. 146 (1989).

13. That Cheyanne Nalder conveyed to UAI her willingness to settle her claim against Gary Lewis at or within the policy limits of $15,000.00 provided they were paid in a commercially reasonable manner.

14. That Cheyanne Nalder and Gary Lewis cooperated with UAI in its investigation including but not limited to providing a medical authorization to UAI on or about August 2, 2007.

15. That on or about August 6, 2007 UAI mailed to Plaintiff, Cheyanne Nalders' attorney, Christensen Law Offices, a copy of "Renewal Policy Declaration Monthly Nevada Personal Auto Policy" for Gary Lewis with a note that indicated "There was a gap in coverage".

16. That on or about October 10, 2007 UAI mailed to Plaintiff, Cheyanne Nalders' attorney, Christensen Law Offices, a letter denying coverage.

17. That on or about October 23, 2007, Plaintiff, Cheyanne Nalder provided a copy of the complaint filed against UAI's insured Gary Lewis.

18. That on or about November 1, 2007, UAI mailed to Plaintiff, Cheyanne Nalders' attorney, Christensen Law Offices, another letter denying coverage.

19. That UAI denied coverage stating Gary Lewis had a "lapse in coverage" due to non-payment of premium.

20. That UAI denied coverage for non-renewal.

21. That UAI mailed Gary Lewis a "renewal statement" on or about June 11, 2007 that indicated UAI's intention to renew Gary Lewis' policy.

22. That upon receiving the "renewal statement", which indicated UAI's intention to renew Gary Lewis' policy, Gary Lewis made his premium payment and procured insurance coverage with UAI.

23. That UAI was required under the law to provide insurance coverage under the policy Gary Lewis had with UAI for the loss suffered by Cheyenne Nalder, and was under an obligation to defend Gary Lewis and to indemnify Gary Lewis up to and including the policy limit of $15,000.00, and to settle Cheyyene's claim at or within the $15,000.00 policy limit when given an opportunity to do so.

24. That UAI never advised Lewis that Nalder was willing to settle Nalder's claim against Lewis for the sum of $15,000.00.

25. UAI did not timely evaluate the claim nor did it tender the policy limits.

26. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Nalder, was forced to seek the services of an attorney to pursue his rights under her claim against Lewis.

27. Due to the dilatory tactics and failure of UAI to protect their insured by paying the policy limits when given ample opportunity to do so, Plaintiff, Cheyanne Nalder, was forced to file a complaint on October 9, 2007 against Gary Lewis for her personal injuries and damages suffered in the July 8, 2007 automobile accident.

28. The filing of the complaint caused additional expense and aggravation to both Cheyanne Nalder and Gary Lewis.

29. Cheyanne Nalder procured a Judgment against Gary Lewis in the amount of $3,500,000.00.

30. UAI refused to protect Gary Lewis and provide Gary Lewis with a legal defense to the lawsuit filed against Gary Lewis by Cheyanne Nalder.

31. That Defendants, and each of them, are in breach of contract by their actions which include, but are not limited to:

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to provide coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Plaintiffs to retain an attorney before making payment on the loss.

32. As a proximate result of the aforementioned breach of contract, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500,000.00 plus continuing interest.

33. As a further proximate result of the aformentioned breach of contract, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

34. As a further proximate result of the breach of contract, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

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

36. That Defendants, and each of them, were unreasonable by refusing to cover the true value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits when they had an opportunity to do so, and wrongfully denying coverage.

37. That as a proximate result of the aforementioned breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500,000.00 plus continuing interest.

38. That as a further proximate result of the aformentioned breach of the implied covenant of good faith and fair dealing, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

39. That as a further proximate result of the aforementioned breach of the implied covenant of good faith and fair dealing, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

40. That Defendants, and each of them, acted unreasonably and with knowledge that there was no reasonable basis for its conduct, in its actions which include but are not limited to: wrongfully refusing to cover the value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits when they had an opportunity to do so and wrongfully denying the coverage.

41. That as a proximate result of the aforementioned bad faith, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500,000.00 plus continuing interest.

42. That as a further proximate result of the aformentioned bad faith, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

43. That as a further proximate result of the aforementioned bad faith, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

44. That Defendants, and each of them, violated NRS 686A.310 by their actions, including but not limited to: wrongfully refusing to cover the value of the claim of Cheyanne Nalder, wrongfully failing to settle within the Policy Limits when they had an opportunity to do so and wrongfully denying coverage.

45. That NRS 686A.310 requires that insurance carriers conducting business in Nevada adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies, and requires that carriers effectuate the prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.

46. That UAI did not adopt and implement reasonable standards for the prompt investigation and processing of claims arising under its insurance policies, and did not effectuate the a prompt, fair and/or equitable settlement of Nalder's claim against Lewis in which liability of the insurer was very clear, and which clarity was conveyed to UAI.

47. That NAC 686A.670 requires that an insurer complete an investigation of each claim within 30 days of receiving notice of the claim, unless the investigation cannot be reasonably completed within that time.

48. That UAI received notice of Nalder's claim against Lewis, at the very latest, on or before August 6, 2007. That it was more than reasonable for UAI to complete its investigation of Nalder's claim against Lewis well within 30 days of receiving notice of the claim.

49. That UAI did not offer the applicable policy limits.

50. That UAI did failed to investigate the claim at all and denied coverage.

51. That as a proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs have suffered and will continue to suffer in the future, damages in the amount of $3,500.000.00 plus continuing interest.

52. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs have suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,000.00.

53. That as a further proximate result of the aforementioned violation of NRS 686A.310, Plaintiffs were compelled to retain legal counsel to prosecute this claim, and Defendants, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

54. That the Defendants, and each of them, have been fraudulent in that they have stated that they would protect Gary Lewis in the event he was found liable in a claim. All of this was done in conscious disregard of Plaintiffs' rights and therefore Plaintiffs are entitled to punitive damages in an amount in excess of $10,000.00.

WHEREFORE, Plaintiffs, pray for judgment against Defendants, and each of them, as follows:

1. Payment for the excess verdict rendered against Lewis which remains unpaid in an amount in excess of $3,500,000.00;

2. General damages for mental and emotional distress and other incidental damages in an amount in excess of $10,000.00;

3. Attorney's fees and costs of suit incurred herein; and

4. Punitive damages in an amount in excess of $10,000.00;

///

///

///

5. For such other and further relief as this Court deems just and proper.

DATED this 17 day of April, 2009.

CHRISTENSEN LAW OFFICES, LLC.

By: _____
Thomas Christensen, Esq.
David F. Sampson, Esq.
Nevada Bar No. 6811
1000 South Valley View Blvd
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

EXHIBIT "B"

FILED

Aug 26 11 00 AM '08

CLERK OF COURT

JUDG

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

NOTICE OF ENTRY OF JUDGMENT

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

DATED this 5th day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: _____
DAVID F. SAMPSON, ESQ.
Nevada Bar #6811
THOMAS CHRISTENSEN, ESQ.,
Nevada Bar #2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

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

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

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

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

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

Sarah Dentzel

An employee of CHRISTENSEN LAW OFFICES, LLC

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

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

GARY LEWIS, and DOES I through V, inclusive

Defendants.

CASE NO: A549111
DEPT. NO: VI

JUDGMENT

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

. . .

. . .

. . .

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

DATED THIS 2 day of ~~May~~ June, 2008.

[redacted]
DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

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

EXHIBIT “C”

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendants.	CASE NO.: 07-A-~~A549111~~549111 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.

/ / / /

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

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

EXHIBIT "1"

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

CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA

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

JUDGMENT

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

. . .

. . .

. . .

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

DATED THIS 2 day of ~~May~~ June, 2008.

DISTRICT JUDGE

Submitted by:
CHRISTENSEN LAW OFFICES, LLC.

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

EXHIBIT "2"

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.	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:

...

...

...

...

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

DATED this _____ day of March, 2018.

_____
District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

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

EXHIBIT "D"

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

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS

Defendant.

Case No. 07A549111

Dept. No. XXIX

NOTICE OF ENTRY OF AMENDED JUDGMENT

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

Dated this 17 day of May, 2018.

STEPHENS & BYWATER

David A. Stephens, Esq.
Nevada Bar No. 00902
3636 North Rancho Drive
Las Vegas, Nevada 89130
Attorney for Brittany Wilson

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
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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.

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

AMENDED JUDGMENT

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

...

...

...

...

JMT
DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
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Las Vegas, Nevada 89130
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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:

...

...

...

...

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

DATED this 26 day of March, 2018.

District Judge

Submitted by:
STEPHENS GOURLEY & BYWATER

DAVID A. STEPHENS, ESQ.
Nevada Bar No. 00902
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Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendants.	CASE NO.: 07A549111 DEPT NO.: XX

PLAINTIFF'S OPPOSITION TO UAIC'S MOTION FOR RELIEF FROM JUDGMENT

Date: 12/12/2018
Time: 9:00 a.m.

Cheyenne Nalder, through her attorney, David A. Stephens, Esq., opposes UAIC"s Motion for Relief from Judgment, as follows:

POINTS AND AUTHORITIES

I. INTRODUCTION

United Automobile Insurance Company's, ("UAIC"), motion should be denied because the tolling statutes, NRS 11.200, NRS 11.250 and NRS 11.300, apply to the statute of limitations for judgments contained in the same chapter at NRS 11.190(a)(1) and extend the time for filing an action on the judgment or for renewal under NRS 17.214.

UAIC argues that the tolling statutes, NRS 11.200, NRS 11.250, and NRS 11.300, do not apply to the statute of limitations for judgments contained in the same chapter at NRS 11.190(a)(1). UAIC provides no legal authority for this unreasonable position. Unfortunately for UAIC, this position is not supported in Nevada's statutory scheme, case law or common sense. NRS 11.200 specifically refers to NRS 11.190. The other two statutes are part of chapter 11 and deal specifically with when the statute of limitations is tolled. UAIC's position is frivolous and must be met with a firm rejection.

II. FACTS

A. FACTS ON UNDERLYING CASE

The underlying matter arises from an auto accident that occurred on July 8, 2007, where Gary Lewis, ("Lewis"), accidentally ran over Nalder. Nalder was born April 4, 1998 and was a nine-year-old girl at the time. At the time of the accident Lewis maintained an auto insurance policy with United Auto Insurance Company ("UAIC"), which was renewable on a monthly basis.

Following the accident, Nalder's father, James Nalder, extended an offer to UAIC to settle Nalder's injury claim for Lewis's policy limit of $15,000.00. UAIC never informed Lewis that Nalder offered to settle Cheyenne's claim. UAIC never filed a declaratory relief action. UAIC rejected Nalder's offer. UAIC rejected the offer because it believed that Lewis was not covered under his insurance policy given that he did not renew his policy by June 30, 2007.

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

UAIC was notified of the lawsuit but declined to defend Lewis or file a declaratory relief action regarding coverage. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a default judgment against Lewis for $3,500,000.00. Notice of entry of judgment was filed on August 26, 2008.

Nalder recently obtained an amended judgment in this matter. She amended the judgment to get it into her name because she is not longer a minor.

Nalder wants to maintain her judgment against Lewis. This intention is irrespective of its enforceability against UAIC. Lewis and Nalder are still involved in ongoing claims handling litigation against Lewis's insurance company, UAIC, because of its failure to defend Lewis in the original case.

Because the statute of limitations on Nalder's personal injury action may have been approaching, Nalder recently took action in both Nevada and California to maintain her judgment against Lewis, who resides in California, or, in the alternative, to prosecute her personal injury action against Lewis to judgment.

Cheyenne Nalder reached the age of majority on April 4, 2016. Nalder hired David A. Stephens, Esq., to maintain her judgment. First, counsel obtained an amended judgment in this case in Cheyenne's name as a result of her reaching the age of majority. This amended judgment was obtained appropriately, by demonstrating to the Court that

the judgment, as a result of the tolling provisions, was still within the applicable statute of limitations.

Nalder then filed a separate action with three distinct claims for relief, pled in the alternative. (See Case No. A-18-8772220-C). The first claim is an action on the amended judgment which will result in a new judgment which will have the total principal and post judgment interest reduced to judgment, so that interest would now run on the new, larger principal amount.

The second alternative claim is for declaratory relief seeking a determination of when a renewal under NRS 17.214 must be filed and when the statute of limitations, which is subject to tolling provisions, will run on the judgment.

And finally, the third claim, should the Court determine that the judgment is invalid, is an action on the injury claim within the applicable statute of limitations for injury claims, that is, two years after her reaching the age of majority.

Nalder also retained California counsel, who filed a judgment in California, which has a ten-year statute of limitations regarding actions on a judgment. Nalder maintains that all of these actions are unnecessary to the questions on appeal, and most are unnecessarily early; however, out of an abundance of caution, she brings them to maintain a judgment against Lewis and to demonstrate the actual way this issue should have been litigated in the Eighth Judicial District Court of Nevada, not midway into an appeal by a self-serving affidavit of counsel for UAIC.

UAIC has inserted itself into theses actions trying to assert the simple, but flawed, concept that unless a judgment renewal pursuant to NRS 17.214 is brought within six years, a judgment is no longer valid. UAIC's motivation for bringing this argument is not in good faith and is to avoid payment of damages arising from its claims handling failures that occurred in the first Nalder v. Lewis injury case.

UAIC made representations that it would be responsible for any judgment entered in this case in order to gain intervention into this case and the case filed by Nalder in 2018.

B. CLAIMS HANDLING CASE AGAINST UAIC

On May 22, 2009, James Nalder, on behalf of Cheyenne Nalder, and Lewis filed suit against UAIC alleging breach of contract, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of NRS 686A.310. Lewis assigned to Nalder his right to "all funds necessary to satisfy the Judgment" and retaining to himself any funds recovered above the judgment. Lewis left the state of Nevada and relocated to California prior to 2010. Neither Lewis, nor anyone on his behalf, has been subject to service of process in Nevada since 2010.

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

contract was not ambiguous as to when Lewis had to make payment to avoid a coverage lapse. Nalder and Lewis appealed this decision to the Ninth Circuit. The Ninth Circuit reversed and remanded the matter because Lewis and Nalder had facts to show the renewal statement was ambiguous regarding the date when payment was required to avoid a coverage lapse.

On remand, the U.S. District Court concluded the renewal statement was ambiguous and therefore, Lewis was covered on the date of the incident because the court construed this ambiguity against UAIC. The U.S. District Court also determined UAIC breached its duty to defend Lewis, but did not award damages because Lewis did not incur any fees or costs in defense of the Nevada state court action. Based on these conclusions, the district court ordered UAIC to pay the policy limit of $15,000.00. UAIC then made three payments on the judgment: June 23, 2014; June 25, 2014; and March 5, 2015.

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

After the first certified question was fully briefed and pending before the Nevada Supreme Court, UAIC had the idea that the underlying judgment could only be renewed pursuant to NRS 17.214. Even though UAIC knew at this point that they owed a duty

to defend Gary Lewis, they did not undertake to investigate the factual basis or the legal grounds, or discuss this idea with Lewis, or seek declaratory relief on Lewis' behalf regarding the statute of limitations on the judgment. All of these actions would have been a good faith effort to protect Lewis. Instead, UAIC filed a motion to dismiss Lewis and Nalder's appeal with the Ninth Circuit for lack of standing. This allegation had not been raised in the trial court. It was something UAIC concocted solely for its own benefit. This allegation was brought for the first time in the appellate court. If UAIC's self-serving affidavit is wrong, this action will leave Lewis with a valid judgment against him and no cause of action against UAIC.

UAIC ignored all of the tolling statutes and presented new evidence into the appeal process, arguing Nalder's underlying $3,500,000.00 judgment against Lewis is not enforceable because the six-year statute of limitation to institute an action upon the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired. The only proof that it expired was UAIC counsel's affidavit that no renewal pursuant to NRS 17.124 had been filed. As a result, UAIC contends Nalder can no longer recover damages above the $15,000.00 policy limit for breach of the contractual duty to defend because the judgment lapsed after the judgment (in the case against UAIC) was entered in the U.S. District Court. This would be similar to arguing on appeal that a plaintiff is no longer entitled to medical expenses awarded because the time to file a lawsuit to recover them expired while the case was on appeal.

Even though Nalder believes the law is clear that UAIC is bound by the judgment, regardless of its continued validity against Lewis, Nalder, in an abundance of caution, took action in Nevada and California to demonstrate the continued validity of the judgment against Lewis. These Nevada and California state court actions will demonstrate that UAIC has again tried to escape responsibility by making misrepresentations to the Federal and State Courts.

IV. ARGUMENT

UAIC seeks to set aside the amended judgment based on NRCP 60(b) arguing it the judgment was void prior to the court amending it.

NRCP 60(b)(3), which allows the court to relieve a party from a final judgment if it is void, "is normally invoked . . . in a case where the court entering the challenged judgment was itself disqualified from acting, [citation omitted], or did not have jurisdiction over the parties, [citation omitted], or of the subject matter of the litigation." *Misty Management Corp. v. First Judicial District Court*, 83 Nev. 180, 426 P.2d 728, 729 (1967).

None of those grounds apply unless, UAIC is arguing that if the judgment was not timely renewed it was disqualified from acting. UAIC provides no support for that position.

However, assuming, *arguendo*, that position is correct, UAIC still fails establish that the judgment had to be renewed or even that the time for renewal had expired.

A. The Judgment is not expired because the statute of limitation is tolled

The Nevada six-year statute of limitations for bringing an action on a judgment is provided for in NRS 11.190(1)(a). That time period has either not expired, or it has been tolled.

i. The six-year time period was tolled by the three payments UAIC made on the judgment.

NRS 11.200, states:

> "The time in NRS 11.190 shall be deemed to date from the last transaction or the last item charged or last credit given; and whenever any payment on principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note or other evidence of indebtedness if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made."

NRS 11.200 is specifically made applicable to the statues of limitation set forth in NRS 11.190

UAIC made its last payment on the judgment on March 5, 2015. Thus, as a result of this statute, the six-year statute to file suit to enforce the judgment began running on March 6, 2016 and would not expire until March 6, 2021, which is six years from the last payment.

ii. The Nevada statute of limitations to bring an action on a judgment was also tolled during the period of time that Nalder was a minor.

NRS 11.250 states:

> "If a person entitled to bring an action other than for the recovery of real property be, at the time the cause of action accrued, either:
>
> 1. Within the age of 18 years;
>
> * * *

"the time of such disability shall not be a part of the time limited for the commencement of the action."

Nalder reached the age of majority on April 4, 2016. The statute of limitation to enforce a judgment was tolled until she reached the age of 18. As a result, the statute of limitations to file an action to enforce the judgment does not run until April 4, 2022.

iii. Lewis' residency in California since 2010 tolls the statute of limitations.

Pursuant to NRS 11.300, the absence of Lewis from the State of Nevada tolls the statute of limitations to enforce a judgment and it remains tolled because of his absence. *See Bank of Nevada v. Friedman*, 82 Nev. 417, 421, 420 P.2d 1, 3 (1966).

Pursuant to NRS 11.300, Lewis' California residency also tolls the six-year statute of limitations to enforce a judgment because Lewis has not been subject to service of process in the State of Nevada from 2010 to the present.

iv. The time to renew the judgment has not run

NRS 17.214 provides that the renewal must be brought within 90 days of the expiration of the statute of limitations. If that 90-day period is strictly construed, any renewal attempt pursuant to NRS 17.214 by Nalder at the present time, or earlier as argued by UAIC, would be premature and therefore ineffective because it would not be filed within the 90-day window prior to expiration of the statute of limitations.

v. The renewal statute is optional, rather than mandatory

NRS 17.214 was enacted to give an optional, not "mandatory," statutory procedure in addition to the rights created at common law for an action on the judgment. UAIC claims the plain, permissive language of NRS 17.214: "A judgment creditor . . . **may** renew a judgment," (emphasis added), mandates use of NRS 17.214 as the only way to renew a judgment. This is contrary to the clear wording of the statute and the case law in Nevada. See *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) and general statutory interpretation.

UAIC cites no authority for this mandated use of NRS 17.214. The legislative history demonstrates that NRS 17.214 was adopted to give an easier way for creditors to renew judgments. This was to give an option for renewal of judgments that was easier and more certain, not make it a trap for the unwary and cut of rights of injured parties.

UAIC cites *Leven v. Frey*, 123 Nev. 399, 168 P.3d 712 (2007), for the proposition that judgment renewal is mandatory. However, that is not what the case held. It held that strict compliance with the statue was necessary to renew a judgment. That is not the

same as holding that a judgment must be renewed by this statutory process. *Id.*, 168 P.3d at 719. The issue of enforcing a judgment by a suit was never considered by the Nevada Supreme Court in the *Leven* case.

Mandlebaum v. Gregovich, 24 Nev. 154, 161, 50 P. 849, 851 (1897), specifically allowed a judgment creditor to file a suit to enforce a judgment fifteen years after it was entered. The Nevada Supreme Court stated:

> "The averments of the complaint and the undisputed facts are that at the time of the rendition and entry of the judgment in 1882, the appellant was out of the state, and continuously remained absent therefrom until March, 1897, thereby preserving the judgment and all right of action of the judgment creditor under the same. Notwithstanding nearly fifteen years had elapsed since the entry of the judgment, yet, for the purpose of action, the judgment was not barred - for that purpose the judgment was valid."

Id.

Where as here, the timing of the expiration is in doubt, the best way to renew the judgment is the common law method, which is only supplemented by the statutory method, not replaced.

Though the statute of limitations on Nalder's judgment is not even close to running, this action was taken because Nalder's tort statute of limitations was about to run. If the judgment is deemed not valid, then Nalder still wants to protect her tort

claim. Also, this action is the appropriate way to litigate and clarify the Nevada statutory scheme for actions on a judgment and judgment renewal.

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

Lewis now resides in California. In California, an action upon a judgment must be commenced within 10 years of entry of the judgment. *See* Cal. Code Civ. P. § 337.5. Alternatively, a judgment must be renewed within 10 years of entry of the judgment. *Kertesz v. Ostrovsky*, 115 Cal. App. 4th 369, 372, 8 Cal. Rptr. 3d 907, 911 (Cal. Ct. App. 2004); *see also,* Cal. Code Civ. P. §§ 683.020, 683.120, 683.130. Out of an abundance of caution, Nalder has incurred the expense to renew her judgment by filing actions in both Nevada and California. In spite of this action, Nalder contends that she timely instituted an action on the judgment or, alternatively, that the six-year limitations period has not yet expired.

C. The Underlying Judgment Did Not Expire As To Lewis Because Nalder Was Not Required to Institute an Action on the Judgment and Renew the Judgment

An action on a judgment is distinguishable from the treatment of an application to renew the prior judgment. *Pratali v. Gates*, 4 Cal. App. 4th 632, 637, 5 Cal. Rptr. 2d 733, 736 (Cal. Ct. App. 1992). This distinction is inherently recognized in the Nevada Revised Statutes' treatment of both courses of action. "A judgment creditor may enforce his judgment by the process of the court in which he obtained it, ***or he may elect to use***

the judgment as an original cause of action and bring suit thereon and prosecute such suit to final judgment." *Mandlebaum v. Gregovich*, 24 Nev. 154, 161, 50 P. 849, 851 (1897) (emphasis added). NRS 11.190(a)(1) provides the option that either an action upon the judgement or a renewal of the judgment be commenced. The limitation period for judgments runs from the time the judgment becomes final. Statutes of limitations are intended to ensure pursuit of the action with reasonable diligence, to preserve evidence and avoid surprise, and to avoid the injustice of long-dormant claims. *Petersen v. Bruen*, 106 Nev. 271, 273-74, 792 P.2d 18, 19-20 (1990).

NRS 17.214 provides the procedural steps necessary to renew a judgment before the expiration of the statute of limitations set forth in NRS 11.190(1)(a). NRS 17.214 provides that a judgment creditor may renew a judgment that has not been paid by filing an affidavit with the clerk of the court where the judgment is entered, "…within 90 days before the date the judgment expires by limitation." NRS 11.190(a)(1), NRS 11.200, NRS 11.250, NRS 11.300 must be read together with NRS 17.214 because they relate to the same subject matter and are not in conflict with one another. *Piroozi v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 100, 363 P.3d 1168, 1172 (2015). When these five statutes are read together, they establish that a party must either file an action on the judgment or renew the judgment under NRS 17.214 before the statute of limitations runs.

The Nevada Supreme Court expressly adopted this result in *Levin v. Frey*, 123 Nev. 399, 403, 168 P.2d. 712, 715 (2007): "An action on a judgment ***or*** its renewal must

be commenced within six years under NRS 11.190(1)(a); thus a judgment expires by limitation in six years."

The Nevada Supreme Court held that the time to file a renewal under NRS 17.214 is subject to statutory and equitable tolling provisions. See *O'Lane v. Spinney*, 110 Nev. 496, 874 P.2d 754 (1994). The statute of limitation tolling provisions in NRS 11.200, NRS 11.250, NRS 11.300 apply to the computation of the time for filing for renewal under NRS 17.214.

The Nevada Supreme Court also recognizes the well-established rule that it will not look beyond the plain language of the statute when the words "have a definite and ordinary meaning." *Harris Associates. v. Clark County School. District*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003). "Normal principles of statutory construction also preclude interpreting a statute to render part of it meaningless." *United States v. Bert*, 292 F.3d 649, 652 n.11 (9th Cir. 2002).

UAIC's apparent position is that even though Nalder filed an action upon the judgment, she was also required to file a renewal of the judgment. This interpretation ignores the clarity of the disjunctive "or". UAIC's proposed interpretation of the statute effectively renders the "or" used NRS 11.190(1)(a) meaningless. If the Nevada Legislature intended to require a judgment creditor to file an action on the judgment and renew the judgment, then the Nevada Legislature would have used the word "and". However, the Nevada Legislature uniquely understood that a party was only required to

proceed with one course of action to ensure the validity of a judgment. This understanding is reflected in the permissive language of NRS 17.214(1), which states that a judgment creditor "***may*** renew a judgment which has not been paid. . . ."

Based on the unambiguous language of NRS 11.190(1)(a), NRS 11.200, NRS 11.250, NRS 11.300 and NRS 17.214, the underlying judgment did not expire in this matter. Indeed, any renewal pursuant to NRS 17.214 filed by Nalder would be premature and possibly held to be ineffective. Nalder timely commenced her action on the judgment before the statute of limitations expired. As a result, the judgment does not have to be renewed and any renewal under NRS 17.214 is not possible at this time. This is the reason for the declaratory relief allegation in Nalder's 2018 complaint.

VII. CONCLUSION

Nevada has two methods for dealing with the expiration of statutes of limitation. Both methods are dependent on the expiration of the statutes of limitation and the associated tolling statutes. The statute of limitations in this matter is tolled until well past the time Cheyenne Nalder, ("Nalder"), amended the judgment and filed an action on the judgment. The initial judgment never expired. The judgment does not have to be revived. This Court did not make a mistake. The amended judgment is not void. UAIC's motion must be denied.

For the reasons set forth above, Nalder respectfully requests that this Court deny the Motion to Set Aside the Judgment brought by Gary Lewis, (without his consent).

Dated this 29th day of October, 2018.

STEPHENS & BYWATER, P.C.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of October, 2018, I served the following document: **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE JUDGMENT**

■ VlA ELECTRONIC FILING; (N.E.F.R. 9(b))

Matthew J. Douglas, Esq.

Randall Tindall, Esq.

E. Breen Arntz, Esq.

☐ 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:

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V, inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE COMPANY,

Intervenor.

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

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

UAIC'S REPLY IN SUPPORT OF ITS 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 submits its Reply in support of 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 snot capable of being revived.

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

DATED this 2nd day of JANUARY, 2019.

ATKIN WINNER & SHERROD

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

At the outset, UAIC would like to point out to the Court two important issues in reply to Plaintiff's Opposition to this Motion. First, *despite 17 pages of argument*, nowhere in Plaintiff's Opposition does she dare suggest the original judgment herein, filed June 3, 2008, was ever timely renewed pursuant to N.R.S. 17.214. Accordingly, it is uncontroverted the judgment entered June 3, 2008 was not timely renewed per statute and, thus, expired. (See *Exhibit B to UAIC initial Motion).* The second issue is, despite Plaintiff's multitude of "kitchen sink" type arguments to try and "fix" this clear expiration of judgment, none of her arguments overcomes this clear fact.

Plaintiff's main arguments[1] to try and overcome her expired judgment are essentially these: (1) The judgment was tolled by 2 statutes of limitations relating to Plaintiff's minority and/or Lewis' residence out of state; (2) Plaintiff complied with the N.R.S. 17.214 by filing an action against UAIC; (3) that the judgment was tolled by UAIC's payment of policy limits in

2015 in regard to the Federal Court's judgment in the case filed against UAIC.

The fact that Cheyanne was a minor when the cause of action giving rise to the default judgment accrued does not serve to extend or toll the deadline to renew the default judgment because the default judgment was not issued to Cheyanne, but rather Mr. Nalder, who was not a minor at the time the default judgment expired and so did not have a legal disability that would toll the six-year statute of limitations to renew the default judgment.

Additionally, Mr. Lewis' alleged absence from the State of Nevada also did not serve to toll the deadline for renewal of the default judgment under NRS 11.300 because renewal of a judgment is not a separate cause of action. Moreover, Mr. Lewis' alleged absence from the State of Nevada did not impede Mr. Nalder from attempting to either execute the default judgment, comply with the requirements for renewal under NRS 17.214, or bring an action on the judgment against Mr. Lewis because Mr. Nalder and his counsel Mr. Christensen (who, notably, also represents Mr. Lewis in the underlying proceedings and other related proceedings) were well aware of Mr. Lewis' location in California and assuredly would have had no difficulty serving Mr. Lewis with process in California. NRS 11.300 does not apply when the absent defendant is otherwise subject to service of process.

Next, the underlying action Plaintiff filed against UAIC (now on appeal) was not an action to collect on the default judgment because UAIC was not a judgment debtor thereon. In fact, prior to commencing the Federal Court action against UAIC (on appeal), Plaintiff did not hold any judgment against UAIC on which they could bring an action. Instead, Plaintiff sought to have a judgment entered against UAIC for the first time in the action on appeal. The default judgment *in this matter* instead served merely as evidence for Plaintiff's claims of damage allegedly caused by UAIC's breach of the duty to defend. And in order to continue to serve as

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[1] UAIC acknowledges Plaintiff makes other arguments and, UAIC will reply to each, but UAIC believes those other arguments do not deserve mention here.

evidence for their consequential damages claim, this default judgment had to remain valid and enforceable, which required that the judgment be renewed pursuant to the requirements of NRS 17.214 or, alternatively, required Mr. Nalder to bring an action on the judgment against Mr. Lewis—neither of which were done by Plaintiff.

Finally, UAIC's satisfaction of the judgment (in the case on appeal) could not serve to extend the life of the 2008 default judgment – which had been previously entered in a wholly separate proceeding of which UAIC was not even a party.

II.

RESPONSE TO PLAINTIFF's "FACTS" SECTIONS

For her Opposition, Plaintiff Nalder refers to some of the pertinent facts in regard to the Motion at bar, but also adds in completely extraneous facts (*e.g.* claims handling) and resorts to pure argument to support her untenable position in regard to the expired judgment and, regarding her subsequent filed action, Case no. A-18-772220-C (which is not even relevant to this Motion and, is itself the subject of a separate Motion to dismiss before this Court). Accordingly, UAIC must respond to these, herein.

First, on *page 3 of her brief, lines 10-23*, Plaintiff attempts to explain her position in "amending" this expired judgment by suggesting her "intent", in amending the judgment, was "irrespective of [the judgment's] enforceability against UAIC." Besides being conclusory argument, this statement is an admission by Plaintiff that she knew full well her action in amending the judgment was an attempt to litigate issues already before the Nevada Supreme Court.[2] That is, by claiming the amended judgment was sought "irrespective" of the original judgment's enforceability against UAIC, *Plaintiff is admitting that she knew the issue of the*

[2] Although the Court is likely aware, UAIC notes that Plaintiff filed an action, via assignment of Lewis' claims, against UAIC which has been pending in the Federal District court, U.S. Court of Appeals for the Ninth Circuit and, now, the Nevada Supreme Court **for nearly 10 years**. A sufficient history of this case is attached hereto in to Order Certifying the 2nd certified question to the Nevada Supreme Court

enforceability of the judgment was on appeal. Moreover, Plaintiff's statement that she merely amended the judgment to "get it in her own name" is a red-herring. She had already sued UAIC, with an assignment on the judgment, through her guardian ad litem (her father) and, as such, same guardian could take any other enforcement actions she needed in regard in regard to the judgment so, the "need" to put the judgment in her name is irrelevant. In short, it must be seen for what it was – *an attempt to resuscitate an expired judgment*. Similarly, her claims that she needed to suddenly institute a new action against Lewis in California is pure fancy. Plaintiff's own counsel in the Appellate matter against UAIC (Thomas Christensen) also, represents Lewis, on his third-party Complaint[3], in the case consolidated with this one, Case No. A-18-772220-C, and has answered discovery on his behalf citing his California address as far back as 2010.[4] Indeed, in his final supplemental disclosures, pursuant to F.R.C.P. 26, in the Federal Court action (on appeal), Mr. Christensen disclosed *his offices as the contact for Gary Lewis.*[5] Accordingly, as Plaintiff's own counsel was the contact for Lewis, was representing him and knew his California address since at least 2010 - nothing prevented Plaintiff from executing on the judgment in any way she saw fit against Lewis in California at any time and, thus, this argument is also a red herring.

Next, *on page 4, lines 4-28*, of the fact section of the opposition, Plaintiff launches into full argument by noting her 3 claims as to why her new action, consolidated herein, under Case No. A-18-772220-C, is not precluded by the prior action on appeal. First, each such "argument" is circular in nature or, just plain incorrect. Regardless, the fact is these arguments are absolutely

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and, the Nevada Supreme Court's Order accepting same certified question. See Order of Ninth Circuit and Nevada Supreme Court, attached hereto as Exhibits 'E' & 'F', respectively.

[3] See *Copy of Lewis' 3rd Party Complaint filed by Thomas Christensen, attached hereto as Exhibit 'G.'*

[4] See *Copy of Lewis' Answers to interrogatories in the Federal Court action attached hereto as Exhibit 'H.'*

[5] See *Copy of NAlder & Lewis' 12th supplement to FRCP 26 disclosures, attached hereto as Exhibit 'I.'*

irrelevant to the Motion at bar and, instead relate to the consolidated action and a separate Motion to dismiss filed by UAIC and, thus, should be disregarded by the Court.

On *page 5, lines 1-11*, Plaintiff makes the completely incorrect argument that UAIC's "motivation" here is "not in good faith" as it is "to avoid paying damages arising from claims handling failures" in regard to the original judgment entered herein. First, two Federal District Court judges have already ruled UAIC **did not act in bad faith** in regard to the original judgment entered herein. Indeed, the judgment order in the case on Appeal specifically granted summary judgment in UAIC's favor on all extra-contractual claims for "bad faith."[6] Although that order is technically on appeal – the only issues that remain are (1) whether the original judgment here is expired; and, (2) if the judgment is not expired can Plaintiff recover the default judgment as a consequential damage. Regardless, the fact is that judgment order in the case on appeal also found UAIC has/had a duty to defend Lewis in regard to the July 2007 loss underlying this action. Accordingly, by intervening here and advancing a motion to vacate an improper attempt to amend an expired judgment against its insured – UAIC's actions must be found to be in "good faith" by trying to relieve its insured of same.

Finally, *at pps. 5-8*, Plaintiff's lengthy history of 'claims handling' is irrelevant to the issues in this motion, but moreover, show an attempt to re-litigate these issues that have already been decided in the original case. See *Exhibit 'E' & 'F', hereto.* It would appear Plaintiff states same in attempt to argue issues already before the Nevada Supreme Court. Regardless, not only are these arguments incorrect, but they also serve to underscore the inappropriateness of this argument as these issues are before the Nevada Supreme Court. *Id.* Moreover, Plaintiff's argument concerning the sufficiency of the proof made by UAIC to show the original judgment expired – **but makes no showing that she (or her Guardian Ad Litem) did comply with N.R.S. 17.124**. The reason for this is simple, Plaintiff did not comply and the judgment expired

and this argument must be ignored as irrelevant to the Motion at bar.

III.

ARGUMENT

For her Opposition, Plaintiff incorrectly argues that UAIC has only moved for this court to vacate the judgment under N.R.C.P. 60(b)(3), for the judgment being "void." First, as can be seen from the initial Motion, UAIC has actually argued this Court can relieve a party from this amended judgment due to mistake, under NRCP 60(b)(1) or, because a judgment is void under NRCP 60(b)(4). UAIC continues to argue that both of these provisions apply. Moreover, Plaintiff's suggestion that UAIC provides no support that the judgment is void "unless they are arguing its expired" is confusing – *as that is exactly what UAIC has argued* – **that her original judgment was void and could not be amended.**

Further, as can be seen, N.R.C.P. 60(b)(3) *actually relates to the Court's power to relieve a party from judgment due to fraud (whether intrinsic or extrinsic).*[7] Accordingly, this appears to be an interesting Freudian slip by Plaintiff as UAIC argued has noted in other briefs before this court – it believes this Court can find such fraud here given other information that has come to light. As such, N.R.C.P. 60(b)(3) gives this Court another basis to set aside this amended judgment. Further, as also argued by UAIC in other briefs herein, District Courts have the inherent power to set aside judgments procured by extrinsic fraud. *Lauer v District Court,* 62 Nev. 78, 140 P.2d 953.

In short, UAIC believes all of the above noted basis under Rule 60 or, the *Lauer* case, offer ample grounds for this Court to vacate the amended judgment as will be discussed below. Moreover, none of Plaintiff's arguments in opposition to this Motion prevent such action by the Court and, thus, the Motion should be granted and the 2018 "Amended judgment", herein,

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[6] See *Copy of 10/30/13 Judgment Order in the Federal Action, attached hereto as Exhibit 'J.'*

should be vacated.

The district court has wide discretion in such matters and, barring an abuse of discretion, its determination will not be disturbed. *Union Petrochemical Corp. v. Scott*, 96 Nev. 337, 609 P.2d 323 (1980). While equitable relief from a judgment is generally given only to the parties to the action or those in privity, relief may be granted to one who is not a party to the judgment if he demonstrates that he is directly injured or jeopardized by the judgment. *Pickett v. Comanche Constr., Inc.*, 108 Nev. 422, 836 P.2d 42 (1992). Given the issues on appeal, UAIC pleads it will be directly injured here should this court not set aside this amended judgment.

A. The Court made an Error of Law, Likely Based on Mistake of Fact, When it Granted the Ex Parte Motion to Amend Judgment or, Alternatively, the Judgment was Void as it has Expired or, Further in the Alternative, the Judgment was based upon a Fraud and, thus, the Amended Judgment should be Set Aside.

NRCP 60(b) allows this Court to relieve a party from a final judgment due to mistake {NRCP 60(b)(1)} or, due to fraud {NRCP 60(b)(3)} or, because a judgment is void {NRCP 60(b)(4)}. UAIC believes all 3 of these provisions apply and, ask this Court to relieve Lewis of this amended Judgment and/or vacate same amended judgment entered March 28, 2018. *Exhibit D to the Initial Motion.*

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

It must be noted that, in her Opposition, Plaintiff completely failed to address this basis to grant the Motion and, thus, this Court can assume Plaintiff has no response to this argument and, grant the Motion.

As noted in the original Motion, because the Motion to amend this judgment was done *Ex Parte*, it was not served on Lewis or UAIC nor did Lewis or Plaintiff inform UAIC. Accordingly, UAIC (on its own or, on behalf of Lewis) did not have an opportunity to make the Court aware that the Judgment had already expired on its own terms, and that Cheyenne's

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[7] It appears this error may stem from the Court relying on the sub-parts to Rule 60 as they existed

position that the deadline to renew the judgment was tolled was inapt. Furthermore, the *Ex Parte* Motion did not advise the Court that the Judgment had expired in 2014 and had not been properly renewed. Moreover, the Plaintiff failed to advise this Court that these very issues were on appeal before the Nevada Supreme Court. UAIC contends that, had the court been fully apprised of these facts, it likely would not have granted the *Ex Parte* Motion.

As such, UAIC asks this Court to rectify the mistake and void the Amended Judgment in accordance with NRCP 60(b)(1).

2. The Amended Judgment is void.

As is clearly demonstrated in the Initial Motion, the original 2008 Judgment expired and, it was not renewed. Accordingly, there is simply 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 clearly timely. The Amended Judgment is void as based on an expired original judgment and, pursuant to NRCP 60(b)(4), this Court should declare it void and unenforceable.

The case Plaintiff relies on, *Misty Mgmt. Corp. v. First Judicial Dist. Court,* 83 Nev. 180, 426 P.2d 728 (1967), supports UAIC's argument. As stated by Plaintiff, the Court there held this provision is invoked when the court that entered the judgment was "disqualified from acting." Here, UAIC has put forth a demonstration that the original 2008 judgment expired and was not timely renewed. Plaintiff does not dispute this fact (rather, she makes tolling arguments which will be addressed below). Accordingly, as the original judgment expired in 2014, the original judgment was void when Plaintiff filed her *Ex parte* Motion for the "amended Judgment." As the judgment Plaintiff sought to amend was void, the Court here was 'disqualified from acting."

As such, UAIC argues this Court can vacate the Amended judgment as it was based upon

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in 1967, when the *Misty Mgmt. Corp.* case they rely on was published.

a void original judgment pursuant to N.R.C.P.(b)(4).[8]

3. The Amended Judgment is based upon a fraud upon the Court.

Additionally, UAIC argues that the circumstances set forth above also offer grounds for this Court to hold a hearing on attempt to perpetrate a fraud upon the court and, thus vacate the amended judgment under N.R.C.P. 60(b)(3). Specifically, the clear conflict of interest by Plaintiff's counsel and, the evidence of collusion. This is based on new facts which were not all known at the time this Motion was initially filed.

As noted above, Plaintiff is represented by Mr. Christensen in the matter against UAIC now on appeal. Mr. Christensen also purports to be counsel for Lewis and has informed UAIC's first retained counsel for Lewis that he may not appear and attempt to vacate this judgment. See *Correspondence and emails from Tom Christensen to Steve Rogers, Esq., attached hereto as Exhibit 'K.'* Then, after counsel retained by UAIC for Lewis files a Motion for Relief from this 'amended judgment', Counsel secured by Mr. Christensen for Lewis, Mr. Arntz[9], files a Motion to Strike claiming Lewis does not want this multi-million dollar judgment vacated. So, per Plaintiff, UAIC's retained defense counsel cannot move to vacate this amended judgment and her counsel has actively interfered with UAIC's duty to defend its insured and vacate the amended judgment – *all for the sole benefit of Plaintiff and her counsel*. This is clearly an attempt at a fraud upon the court solely to benefit Plaintiff and her counsel - and same should not

[8] It must be noted that, should Plaintiff argue UAIC cannot seek to vacate the Judgment as it is the insurance carrier, UAIC would point out that, besides other reasons to allow same (*e.g.* fraud upon the Court and direct injury to UAIC) it is also true that the case Plaintiff may rely on, *Lopez v Merit,* only noted that a carrier should not be considered a party under rule that allows the district court to relieve party from a final judgment, order, or proceeding upon a showing of mistake, inadvertence, surprise, or excusable neglect. *Lopez v. Merit Ins. Co.*, 109 Nev. 553, 853 P.2d 1266 (1993). Accordingly, for the requested relief under Rule 60 for a void judgment or, fraud, this holding would not be a bar. Indeed, as a further distinguishing factor, UAIC is not contesting the original 2008 judgment or, its amount.

[9] UAIC directs this Court to the email from Tom Christensen, dated 9/6/18, *attached as part of Exhibit 'K'*, explaining to Steve Rogers, Esq. that "we" would like Breen Arntz, Esq. to represent Lewis.

be tolerated.

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

> **"The most widely accepted definition, which we adopt, holds that the concept embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases ... and relief should be denied in the absence of such conduct.**
>
> *Id* at 654.

In the case at bar it seems clear that Plaintiff'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 in these consolidated actions**. 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, Counsel secured for Lewis by Plaintiff has now moved to *strike the Motion of UAIC's retained counsel for Lewis seeking relief from this judgment*. 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 advising 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 from vacating or setting aside this improper amended judgment to his benefit? In short, it does not – **it only benefits Plaintiff and her counsel**. UAIC argues this is clear fraud and collusive conduct and, accordingly, the Court should therefore exercise its equitable power and vacate the amended judgment based on this fraud.

B. Further in the alternative, This Court may exercise is Equitable Authority and vacate the Amended Judgment on the Court's own Motion.

UAIC further pleads, in the alternative, that this Court vacate the 2018 "amended judgment" on its own Motion given the clear fraud that appears to have been perpetrated and is set forth above.

As this Court is aware, District Courts have the inherent power to set aside judgments procured by extrinsic fraud. *Lauer v District Court,* 62 Nev. 78, 140 P.2d 953. In the case at bar the potential extrinsic fraud abounds. Besides the inherent conflict of interest of Plaintiff's Counsel, it also true that Plaintiff failed to advise this court that 1) the 2008 judgment had expired and, 2) that the issue over the effect of same expired judgment was before both the Nevada Supreme Court and the U.S. Court of Appeals for the Ninth Circuit when it filed its *ex parte* Motion to amend this judgment. Extrinsic fraud is usually found when conduct prevents a real trial on the issues or, prevents the losing party from having a fair opportunity of presenting his/her defenses. *Murphy v Murphy,* 65 Nev. 264 (1948). The Court may vacate or set aside a

judgment under Rule 60 on its own Motion. *A-Mark Coin Co. v. Estate of Redfield,* 94 Nev. 495 (1978).

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

C. Plaintiff's Arguments that the Original Judgment is not Expired are and, Serve as No Bar to the Instant Motion.

1. The Judgment Expired on June 3, 2014

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

NRS 17.214(1)(a) sets forth the procedure that must ne followed to renew a judgment. A document titled "Affidavit of Renewal" containing specific information outlined in the statute must be filed with the clerk of the court where the judgment is filed within 90 days before the date the judgment expires. Here, the Affidavit of Renewal was required to be filed by March 5, 2014. No such Affidavit of Renewal was filed by James Nalder, the judgement creditor. Cheyenne was still a minor on March 5, 2014. The Affidavit of Renewal must also be recorded if the original judgment was recorded, and the judgment debtor must be served. No evidence of recordation (if such was required) or service on Lewis is present in the record.

The Nevada Supreme Court, in *Leven v Frey,* 123 Nev.399,168 P.3d 712 (2007), held that judgment creditors must strictly comply with the procedure set forth in NRS 17.214 in order to validly renew a judgment. *Id.* At 405-408, 168 P.3d 717-719. There is no question that neither

Cheyenne nor her guardian ad litem did so. Therefore the Judgment expired.

1. *Payments by UAIC on a judgment entered against it, in a separate action, do not toll the expiration of the 2008 judgment entered against Lewis.*

Contrary to Plaintiff's assertion, the payments made by UAIC in 2015 were not "payments on [this] judgment." *Plaintiff's Opposition, p. 9, line 24.* Instead, the payments made by UAIC went toward satisfaction of the judgment entered by the district court in the action against UAIC, now on appeal. And because the action against UAIC was not an action upon the original default judgment here[10] but in a separate action under assignment against UAIC, *UAIC did not acknowledge the validity of the original default judgment by satisfying the judgment entered against it by the district court.* As such, UAIC's satisfaction of the judgment against it in a separate action could not serve to extend the life of this default judgment previously entered in a wholly separate proceeding of which UAIC was not even a party.

Instead, UAIC's satisfaction of the underlying judgment against it merely reflected its acknowledgment that an implied insurance policy existed that afforded coverage for Mr. Lewis' accident, as the Federal district court ultimately concluded, and that the underlying judgment reflected an obligation on its part to pay the policy limits of Mr. Lewis' policy. *See Milwaukee County v. M. E. White Co.*, 296 U.S. 268, 275 (1935). This in no way can be considered an acknowledgment of the default judgment's continuing validity, especially given UAIC's continued opposition to Plaintiff's efforts in the herein and on appeal to collect on the excess judgment. Accordingly, the payments were not made on this judgment and, this argument serves

[10] An action upon a judgment is one that seeks to collect upon a debt owed. *See, e.g., Fid. Nat'l Fin. Inc. v. Friedman*, 225 Ariz. 307, 310, 238 P.3d 118, 121 (2010) ("Our post-statehood case law confirms that every judgment continues to give rise to an 'action to enforce it, called an action upon a judgment.' . . . As was true at common law, *the defendant in an action on the judgment under our statutory scheme is generally the judgment debtor*, and the amount sought is the outstanding liability on the original judgment. The judgment debtor cannot deny the binding force of the judgment, but can assert such defenses as satisfaction or partial payment. If indebtedness remains on the original judgment, the action results in a new judgment in the amount owed.") (internal citations omitted and emphasis added). Appellants' action against UAIC, however, was not an action to collect on the default judgment, as UAIC was not a judgment debtor thereon.

as no bar to the Motion.

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

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

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

The Nevada Supreme Court has held that actions to enforce a judgment fall under the six year "catch all" provision of NRS 11.090(1)(a). *Leven* at 403, 168 P.3d at 715 ("An action on a judgment or its renewal must be commenced within six years under NRS 11.190 (1) (a); thus a judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS 17.214, provides for any tolling of the time period to renew a judgment.

a. <u>The deadline to renew the Judgment was not tolled by Cheyenne's minority</u>

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.

NRS 11.250 clearly speaks in terms of "bring[ing]" a cause of action, the "accru[al]" of a cause of action, and "commencement" of a cause of action, all of which do not apply to the renewal of a default judgment resulting from a cause of action that has already been brought. Renewal of a default judgment in order to prevent its expiration does not constitute a cause of action. *See F/S Manufacturing v. Kensmore*, 798 N.W.2d 853, 858 (N.D. 2011) ("Because the statutory procedure for renewal by affidavit is not a separate action to renew the judgment, the specific time period [provided to renew] cannot be tolled under [the equivalent to NRS 11.300] based on a judgment debtor's absence from the state.").

On March 5, 2014, the deadline to file the Affidavit of Renewal, Cheyenne was still a minor. The judgment creditor was her guardian ad litem James Nalder. It was James Nalder, not Cheyenne, who had the responsibility to file the Affidavit of Renewal by the March 5, 2014 deadline. The fact that Cheyenne, the real party in interest was a minor is not legally relevant.

As Cheyenne was not the judgment creditor at any time prior to the date of the issuance of the Amended Judgment, anyone looking at the Judgment would believe that it expired on June 4, 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were given credence, either the judgment never expired, because she was the real party in interest and was a minor at the time, the Judgment would have otherwise expired, or the judgment did expire but was revived upon her reaching the age of majority. To adopt this proposition would frustrate the certainty NRS 17.214 was enacted to promote - the reliability of the title to real property.

If tolling of deadlines to amend judgments were sanctioned, title to real property owned

by anyone who had ever been a judgment debtor would be clouded, as a title examiner would not know whether a judgment issued more that six years prior had expired pursuant to statute, or was still valid, or could be revived when a real party in interest who was a minor reached the age of majority. As the court held in *Leven,* one of the primary reasons for the need to strictly comply with NRS 17.214's recordation requirement is to "procure reliability of the title searches for both creditors and debtors since any lien on real property created when a judgment is recorded continues upon that judgment's proper renewal." *Id.* At 408-409, 168 P.3d 712, 719. Compliance with the notice requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe that the judgment has expired and he need take no further action to defend himself against execution.

b. Lewis' residency in California did not toll the deadline to renew the Judgment

Cheyenne's Ex Parte Motion next cites NRS 11.3000, which provides "If, when the cause of action shall accrue against a person, the person is out of State, the action may be commenced within the time herein limited after the person's return to the State; and if after the cause of action shall have accrued the person departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action." Cheyenne's argument that the deadline to renew the Judgment are tolled by NRS 11.300 fails because, again renewing a judgment is not a cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada regarding judgments, held in *F/S Manufacturing v Kensmore*, 789 N.W.2d 853 (N.D. 2011), "Because the statutory procedure for renewal by affidavit is not a separate action to renew the judgment, the specific time period[provided to renew] cannot be tolled under [the equivalent to NRS 11.300] based on a judgment debtor's absence for the state." *Id.* At 858.

Furthermore, Mr. Lewis' alleged absence from the State of Nevada did not impede Mr. Nalder from attempting to execute the default judgment or comply with the requirements for

renewal under NRS 17.214, as Mr. Nalder and his counsel Mr. Christensen (who, notably, also represents Mr. Lewis in the underlying proceedings and other related proceedings) were well aware of Mr. Lewis' location in California and assuredly would have had no difficulty serving Mr. Lewis with process in California. For example, as early as March of 2010, Mr. Lewis' executed verified answers to interrogatories through Mr. Christensen's office that provided his address in California. *See* D.E. 16-17699, 87, 95, 165-166; D.E. 16-17698, 0082. Thus, as early as four years before the expiration of the default judgment, Mr. Nalder and his counsel were well aware of Mr. Lewis' location in California and fully capable of taking the necessary steps to prevent expiration of the default judgment under the requirements of NRS 11.190 and NRS 17.214.

In addition, applying Cheyenne's argument that the time to renew a judgment was tolled because of the judgment debtor's absence from Nevada would have a similarly negative impact on the ability for property owners to obtain clear title to their property. Nothing on a judgment would reflect whether a judgment debtor was outside of the state and a facially expired judgment was still valid. Therefore, essentially, a responsible title examiner would have to list any judgment that had ever been entered against a property owner on the title insurance policy, because he could not be sure the judgments older that six years for which no affidavit of renewal had been filed were expired or the expiration was tolled.

3. The Time to Renew the Judgment has run.

Inexplicably, Plaintiff also argues that the time to renew the judgment, under N.R.S. 17.214, has not run because the statute "provides that renewal must be brought within 90 days of expiration of the statute." Although unclear, it appears Plaintiff is suggesting she has until 90 days prior to the expiration of her *original statute of limitations on her injury claim* (i.e. 2 years after she reaches majority) to renew the judgment. Besides being ridiculous because she has already brought said injury claims, it is also the case that this argument is based on a complete

mis-statement of the statute and, thus, must be dismissed.

The pertinent sections of N.R.S. 17.214 are, as follows:

> NRS 17.214 Filing and contents of affidavit; recording affidavit of renewal; notice to judgment debtor.
>
> 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. The affidavit must specify:
>
> ***
>
> 4. Successive affidavits for renewal may be filed within 90 days before the preceding renewal of the judgment expires by limitation.

Under the plain reading of this statute, it is clear that in both places the statute references the 90 day time frame, *it is in relation to the date of the expiration of the judgment*. Nowhere does the statute even mention any statute of limitations. Obviously, the 90 day time frame in paragraph 1(a) clearly states that an affidavit to renew the judgment must be filed *within 90 days before the judgment expires by limitation.* As such, this refers to the 90 day period before expiration of a judgment under N.R.S. 11.190, or 6 years from June 2008, which has clearly passed here. Next, under paragraph 4, the statute further notes that *successive renewals* must also be filed *within 90 days before the receding judgment expires by limitation*. Again, this is referencing the next successive 6 year period under N.R.S. 11.190.

Accordingly, in this case, as this 90 day period prior to expiration of the June 2008 judgment passed some time back in 2014, the judgment has clearly expired and cannot be revived.

4. The Renewal statute is Mandatory – unless the party would like to allow his/her judgment to expire.

Here too, Plaintiff's argument is somewhat baffling. Despite the clear limitation of 6 years under N.R.S. 11.190, Plaintiff suggests that because N.R.S. 17.214 states a creditor "may"

renew his/her judgment, this process is not mandatory. This argument also should be dismissed.

It is clear N.R.S. 11.190 provides a 6 year statute of limitations for enforcement of judgments. It is also absolutely clear that, a party *may* renew a judgment under the procedures set forth in N.R.S. 17.214. However, the use of "may" in paragraph 1 of 17.214 is not there to suggest failing to renew under 17.214 will have no effect and the judgment and it will remain valid beyond 6 years. Instead, it is merely stating that a creditor has the option to renew a judgment – however, if he/she fails to do so, the judgment still expires.

As this Court held in *Leven v. Frey*, 168 P.3d 712 (Nev. 2007), one of the primary reasons for the need to strictly comply with NRS 17.214's recordation requirement is to "procure reliability of title searches for both creditors and debtors since any lien on real property created when a judgment is recorded continues upon that judgment's proper renewal." *Id.* at 719. Compliance with the notice requirement of NRS 17.214 is important to preserve the due process rights of the judgment debtor. *Id.* If a judgment debtor is not provided with notice of the renewal of a judgment, he may believe that the judgment has expired and he need take no further action to defend himself against execution. To accept Plaintiff's argument would defeat this purpose as there would never be any finality to a judgment.

Finally, any reliance by Plaintiff on the Court's holding in *Mandlebaum* that the judgment creditor's and assignee's action was timely brought because the statute of limitations was tolled due to the judgment debtor's absence from the State of Nevada, is misplaced because, as discussed above, the action against UAIC on appeal is not an action on the judgment sufficient to satisfy the requirements of NRS 11.190. Furthermore, the Nevada Supreme Court has more recently held that NRS 11.300 "does not apply when the absent defendant is otherwise subject to service of process." *Simmons v. Trivelpiece*, 98 Nev. 167, 168, 643 P.2d 1219, 1220 (1982). As discussed above, Mr. Nalder and his counsel Mr. Christensen were not prevented from pursuing an action on the judgment against Mr. Lewis due to his absence from the State of Nevada

because they were well aware of his location in California and assuredly would have had no difficulty serving Mr. Lewis with process in California, pursuant to NRCP 4(e)(2) for example. *See, e.g., Simmons*, 98 Nev. at 168, 643 P.2d at 1219.

Accordingly, for all of the above, this argument also cannot save Plaintiff.

5. *The California Statute of limitations on Sister State Judgments cannot Save Plaintiff as it is Irrelevant, Inapplicable and Immaterial.*

First, the statute of limitations for bringing an action on a judgment or renewing a judgment in California is irrelevant to this Court's determination of the Nevada default judgment's continuing viability under Nevada law. Second, because the Nevada default judgment was expired as a matter of Nevada law at the time Mr. Nalder domesticated it in California, *the resulting California Judgment based on a Sister-State Judgment rendered against Mr. Lewis is also invalid. See* Cal Code Civ Proc § 1710.40 ("A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment[.]").

The above argument by UAIC would appear to confirmed by the decision in *Friedson v Cambridge Enters.*, 2010 LEXIS 116 (NV. 2010). In *Friedson* the creditor had obtained a judgment, in California, in 1997 which was domesticated in Nevada the same year. In 2005 the creditor attempted to amend the judgment to name add a party as an alter ego of the debtor. Thereafter, the District Court granted the debtor's motion to dismiss all enforcement actions on the ground that the 6 year limitation on actions on a judgment had expired. The Supreme Court affirmed, despite the fact that the original judgment in California had yet to expire and, further, stated the creditor could no longer renew the now expired sister state judgment in Nevada. *Friedson v Cambridge Enters.*, 2010 LEXIS 116 (NV. 2010).

Accordingly, because the Judgment based on a Sister-State Judgment obtained by Mr. Nalder against Mr. Lewis in California is invalid, the statute of limitations on such judgments in

California is, again, irrelevant, inapplicable, and immaterial.

6. Plaintiff failed to file an action on the Original Judgment nor, Renew the original judgment and, thus, this also cannot save Plaintiff.

For her final argument, although not entirely clear, it appears Plaintiff first claims that she had the choice, under N.R.S. 11.190 to *either* file an action on the original 2008 judgment or, to file a timely renewal under N.R.S. 17.214. UAIC agrees and, this is not disputed. What is also undisputed, however, is Plaintiff failed to do either. Next, it appears Plaintiff may also be actually be making the strained argument that she could either file an action on the judgment *or,* that she has until 90 days prior to expiration of the latest limitation under N.R.S. 11.200, N.R.S. 11.250 or N.R.S. 11.300. *Plaintiff's Opposition p. 14, lines 12-25.* Quite simply, this argument is a complete mis-statement of the statutes and, should be disregarded by this Court.

First, it is clear Plaintiff failed to file an action on the original default judgment within 6 years of June 2008, when it was entered. An action upon a judgment is one that seeks to collect upon a debt owed. *See, e.g., Fid. Nat'l Fin. Inc. v. Friedman*, 225 Ariz. 307, 310, 238 P.3d 118, 121 (2010) ("Our post-statehood case law confirms that every judgment continues to give rise to an 'action to enforce it, called an action upon a judgment.' . . . As was true at common law, *the defendant in an action on the judgment under our statutory scheme is generally the judgment debtor*, and the amount sought is the outstanding liability on the original judgment. The judgment debtor cannot deny the binding force of the judgment, but can assert such defenses as satisfaction or partial payment. If indebtedness remains on the original judgment, the action results in a new judgment in the amount owed.") (internal citations omitted and emphasis added). As such, Plaintiff's action against UAIC, was not an action to collect on the default judgment, as UAIC was not a judgment debtor thereon. As Plaintiff has presented no action filed on the judgment before June 2014, she has not met this option to satisfy N.R.S. 11.190.

Accordingly, in a last ditch attempt to save her clearly expired judgment, Plaintiff makes the convoluted argument that this court do "back flips" to reach an untenable reading of N.R.S. 17.214 to equate the language noting "expiration of judgment" in that statute with separate statutes of limitations in N.R.S. 11.200, N.R.S. 11.250 or N.R.S. 11.300. Quite simply, as noted, above this argument is incorrect.

Notably, the case relied on by Plaintiff for this convoluted proposition, *Piroozi v. Eighth Jud. Dist. Court*, 2015 Nev. LEXIS 119, 363 P.3d 1168 (2015), has absolutely no bearing on this argument. In *Piroozi* the Court was examining the effect of conflicting comparative negligence statutes. Specifically, the interplay between N.R.S. 41.141 and N.R.S. 41A.045 controls in assessing comparative negligence amounts in a case involving medical professionals. *Id.* Specifically, the court was resolving a conflict when these two statutes were read together and, determined that in such an instance the specialized statute, relating to medical malpractice would apply. *Id.* Nothing in this case stands for the proposition Plaintiff asserts here. Here, Plaintiff is asking this Court to ignore the clear language of N.R.S. 17.214 and extend the time to renew a judgment based on wholly separate limitations statutes.

As noted above, under the plain reading of N.R.S. 17.214, it is clear that in both places the statute references the 90 day time frame to renew a judgment, *it is in relation to the date of the expiration of the judgment*. Nowhere does the statute even mention any other statute of limitations. Obviously, the 90 day time frame in paragraph 1(a) clearly states that an affidavit to renew the judgment must be filed *within 90 days before the judgment expires by limitation.* As such, this refers to the 90 day period before expiration of a judgment under N.R.S. 11.190, or 6 years from June 2008, which has clearly passed here. To suggest the Court should read in an open ended time frame based on any possible statutory limitation period is to ignore the plan meaning. Similarly, Next, under paragraph 4, the statute further notes that *successive renewals* must also be filed *within 90 days before the receding judgment expires by limitation*. Again, this

is referencing the next successive 6 year period under N.R.S. 11.190.

Moreover, as noted above, it is clear that the statutes of limitation Plaintiff clings to, N.R.S. 11.200, N.R.S. 11.250 or N.R.S. 11.300, do not apply herein. See *Section C.2., of this Reply, above.*

Accordingly, in this case, as this 90 day period prior to expiration of the June 2008 judgment passed some time back in 2014, the judgment has clearly expired and cannot be revived and the Court need not accept Plaintiff's pained attempt to alter the plain meaning of a statute to do so.

7. *Plaintiff's Argument that this Court may Equitably toll the time to file Renewal in this Instance has Absolutely no Support.*

In yet another attempt to save her expired judgment, Plaintiff further argues that the Nevada Supreme Court has stated "the time for renewal under N.R.S. 17.214 is subject to statutory and equitable tolling provisions." *Plaintiff's Opposition, p. 15, lines 4-9.* However, the support provided for this argument simply does not stand for the proposition asserted and, thus, must also be dismissed.

Specifically, Plaintiff cites *O'Lane v Spinney,* 110 Nev. 496, 874 P.2d 754 (1994), in support of the above argument. However, besides the issues in that case being completely dissimilar - that case involved a parties alleged mistaken belief they could not timely renew the judgment because of a Bankruptcy Stay for the debtor – it is also true that the case did not even unequivocally hold equitable tolling applied. *Id.* The Court found that the creditor was mistaken in her belief that she could not renew the judgment and, in any event, could have petitioned to lift the stay for such purpose if there was a question. *Id.* Further the Court stated the following:

> "Although there is no basis in law for legally preserving or resuscitating the judgment, there would be a basis for invoking the doctrine of equitable tolling during the period of O'Lane's bankruptcy proceedings if it could be shown that O'Lane had no legitimate basis for seeking protection under the Bankruptcy Act. In other words, if it could be demonstrated that O'Lane's bankruptcy petitions offered no legitimate prospect or intention of a discharge of his indebtedness, and

> that the filings were simply a subterfuge to avoid satisfying Spinney's judgment, then the district court could properly conclude that the Spinney judgment was subject to preservation and continuing validity based upon the doctrine of equitable tolling. **Because this court is in no position to determine whether the requisite support for invoking an equitable tolling exists, we must remand this matter to the district court to provide Spinney an opportunity to prove, if she can, that an evidentiary foundation exists for equitable relief and the continuation of the receivership. In the event Spinney is unable to prove the requisite factual and legal basis for equitable relief, the receivership must be terminated**"

Id. at 501, 757 (internal citations omitted) (emphasis added).

As can be seen, not only did the Court not decide whether equitable tolling even applies, it is also clear the issues there are completely distinguishable from the case at bar. As noted, *O'Lane* dealt with a creditors slight delay in renewal due to a Bankruptcy stay and, thus, the interplay and – potential pre-emption by – Federal Bankruptcy law. None of these facts exist here. Lewis has not filed Bankruptcy, there is no stay and, it had been nearly 4 years since the judgment expired.

Accordingly, this argument offers no bar to granting UAIC's Motion as Plaintiff can offer no such facts to even consider equitable tolling.

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///

///

IV.

CONCLUSION

Since the Judgment expired in 2014, the Amended Judgment should not have been issued. It should be voided, and the Court should declare that the Judgment has expired for all the above.

DATED this 2nd day of January, 2019.

ATKIN WINNER & SHERROD

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CERTIFICATE OF SERVICE

I certify that on this 2nd day of January, 2019, the foregoing **UAIC'S REPLY IN SUPPORT OF ITS MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO NRCP 60** was served on the following by **[X]** Electronic Service pursuant to NEFR 9 [ ] Electronic Filing and Service pursuant to NEFR 9 [ ] hand delivery [ ] overnight delivery [ ] fax [ ] fax and mail [ ] mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

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EXHIBIT “E”

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES NALDER, Guardian Ad Litem on behalf of Cheyanne Nalder; GARY LEWIS, individually, *Plaintiffs-Appellants*, v. UNITED AUTOMOBILE INSURANCE COMPANY, *Defendant-Appellee.*	No. 13-17441 D.C. No. 2:09-cv-01348-RCJ-GWF ORDER CERTIFYING QUESTION TO THE NEVADA SUPREME COURT

Appeal from the United States District Court
for the District of Nevada
Robert Clive Jones, District Judge, Presiding

Argued and Submitted January 6, 2016
San Francisco, California

Filed December 27, 2017

Before: Diarmuid F. O'Scannlain and
William A. Fletcher, Circuit Judges.*

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* This case was submitted to a panel that included Judge Kozinski, who recently retired.

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, Diarmuid F. O'Scannlain and William A. Fletcher, Circuit Judges.

Diarmuid F. O'Scannlain
Circuit Judge

EXHIBIT “F”

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF CHEYANNE NALDER; AND GARY LEWIS, INDIVIDUALLY,
Appellants,
vs.
UNITED AUTOMOBILE INSURANCE COMPANY,
Respondent.

No. 70504

FILED

FEB 23 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER ACCEPTING SECOND CERTIFIED QUESTION AND DIRECTING SUPPLEMENTAL BRIEFING

The United States Ninth Circuit Court of Appeals previously certified a legal question to this court under NRAP 5, asking us to answer the following question:

> Whether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred by the insured in mounting a defense, or is the insurer liable for all losses consequential to the insurer's breach?

Because no clearly controlling Nevada precedent answers that legal question and the answer could determine part of the federal case, we accepted that certified question and directed the parties to file briefs addressing that question. After briefing had been completed, respondent United Automobile Insurance Company informed this court that it had filed a motion to dismiss in the federal case. We then stayed our consideration of the certified question because a decision by the Ninth Circuit granting the motion to dismiss would render the question before this court advisory.

The Ninth Circuit has now certified another legal question to this court under NRAP 5. The new question, which is related to the motion to dismiss pending in the Ninth Circuit, asks us to answer the following:

> Under Nevada law, if a plaintiff has filed suit against an insurer seeking damages based on a separate judgment against its insured, does the insurer's liability expire when the statute of limitations on the judgment runs, notwithstanding that the suit was filed within the six-year life of the judgment?

That question is focused on the insurer's liability, but elsewhere in the Ninth Circuit's certification order, it makes clear that the court is concerned with whether the plaintiff in this scenario can continue to seek the amount of the separate judgment against the insured as consequential damages caused by the insurer's breach of the duty to defend its insured when the separate judgment was not renewed as contemplated by NRS 11.190(1)(a) and NRS 17.214 during the pendency of the action against the insurer. We therefore choose to accept the Ninth Circuit's invitation to "rephrase the question as [we] deem necessary." Consistent with language that appears elsewhere in the certification order, we rephrase the question as follows:

> In an action against an insurer for breach of the duty to defend its insured, can the plaintiff continue to seek consequential damages in the amount of a default judgment obtained against the insured when the judgment against the insured was not renewed and the time for doing so expired while the action against the insurer was pending?

As no clearly controlling Nevada precedent answers this legal question and the answer may determine the federal case, we accept this certified question as rephrased. *See* NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).

Appellants shall have 30 days from the date of this order to file and serve a supplemental opening brief. Respondent shall have 30 days from the date the supplemental opening brief is served to file and serve a supplemental answering brief. Appellants shall then have 20 days from the date the supplemental answering brief is served to file and serve any supplemental reply brief. The supplemental briefs shall be limited to addressing the second certified question and shall comply with NRAP 28, 28.2, 31(c), and 32. *See* NRAP 5(g)(2). To the extent that there are portions of the record that have not already been provided to this court and are necessary for this court to resolve the second certified question, the parties may submit a joint appendix containing those additional documents. *See* NRAP 5(d). Given the relationship between the two certified questions, we lift the stay as to the first certified question.

It is so ORDERED.[1]

Douglas, C.J.

Cherry, J.

Gibbons, J.

Pickering, J.

Hardesty, J.

Stiglich, J.

[1]As the parties have already paid a filing fee when this court accepted the first certified question, no additional filing fee will be assessed at this time.

The Honorable Ron D. Parraguirre, Justice, voluntarily recused himself from participation in the decision of this matter.

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EXHIBIT “G”

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DISTRICT COURT

CLARK COUNTY, NEVADA

Cheyenne Nalder Plaintiff, vs. Gary Lewis, Defendant.	CASE NO. A-18-772220-C DEPT NO. XXIX
United Automobile Insurance Company, Intervenor,	
Gary Lewis, Third Party Plaintiff, vs. United Automobile Insurance Company, Randall Tindall, Esq. and Resnick & Louis, P.C, and DOES I through V, Third Party Defendants.	

THIRD PARTY COMPLAINT

Comes now Cross-claimant/Third-party Plaintiff, GARY LEWIS, by and through his attorney, Thomas Christensen, Esq. and for his Cross-Claim/Third party complaint against the cross-defendant/third party defendants, United Automobile Insurance Co., Randall Tindall, Esq., and Resnick & Louis, P.C., for acts and omissions committed by them and each of them,

as a result of the finding of coverage on October 30, 2013 and more particularly states as follows:

1. That Gary Lewis was, at all times relevant to the injury to Cheyenne Nalder, a resident of the County of Clark, State of Nevada. That Gary Lewis then moved his residence to California at the end of 2008 and has had no presence for purposes of service of process in Nevada since that date.

2. That United Automobile Insurance Company, hereinafter referred to as "UAIC", was at all times relevant to this action an insurance company doing business in Las Vegas, Nevada.

3. That third-party defendant, Randall Tindall, hereinafter referred to as "Tindall," was and is at all times relevant to this action an attorney licensed and practicing in the State of Nevada. At all times relevant hereto, third-party Defendant, Resnick & Louis, P.C. was and is a law firm, which employed Tindall and which was and is doing business in the State of Nevada.

4. That the true names and capacities, whether individual, corporate, partnership, associate or otherwise, of Defendants, DOES I through V, are unknown to cross-claimant, who therefore sues said Defendants by such fictitious names. cross-claimant is informed and believes and thereon alleges that each of the Defendants designated herein as DOE is responsible in some manner for the events and happenings referred to and caused damages proximately to cross-claimant as herein alleged, and that cross-claimant will ask leave of this Court to amend this cross-claim to insert the true names and capacities of DOES I through V, when the same have been ascertained, and to join such Defendants in this action.

5. Gary Lewis ran over Cheyenne Nalder (born April 4, 1998), a nine-year-old girl at the time, on July 8, 2007.

6. This incident occurred on private property.

7. Lewis maintained an auto insurance policy with United Auto Insurance Company ("UAIC"), which was renewable on a monthly basis.

8. Before the subject incident, Lewis received a statement from UAIC instructing him that his renewal payment was due by June 30, 2007.

9. The renewal statement also instructed Lewis that he remit payment prior to the expiration of his policy "[t]o avoid lapse in coverage."

10. The statement provided June 30, 2007 as the effective date of the policy.

11. The statement also provided July 31, 2007 as the expiration date of the policy.

12. On July 10, 2007, Lewis paid UAIC to renew his auto policy. Lewis's policy limit at this time was $15,000.00.

13. Following the incident, Cheyenne's father, James Nalder, extended an offer to UAIC to settle Cheyenne's injury claim for Lewis's policy limit of $15,000.00.

14. UAIC never informed Lewis that Nalder offered to settle Cheyenne's claim.

15. UAIC never filed a declaratory relief action.

16. UAIC rejected Nalder's offer.

17. UAIC rejected the offer without doing a proper investigation and claimed that Lewis was not covered under his insurance policy and that he did not renew his policy by June 30, 2007.

18. After UAIC rejected Nalder's offer, James Nalder, on behalf of Cheyenne, filed a lawsuit against Lewis in the Nevada state court.

19. UAIC was notified of the lawsuit but declined to defend Lewis or file a declaratory relief action regarding coverage.

20. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a default judgment against Lewis for $3,500,000.00.

21. Notice of entry of judgment was filed on August 26, 2008.

22. On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of contract, an action on the judgment, breach of the implied covenant of good faith and fair dealing, bad faith, fraud, and violation of NRS 686A.310.

23. Lewis assigned to Nalder his right to "all funds necessary to satisfy the Judgment." Lewis left the state of Nevada and located in California prior to 2010. Neither Mr. Lewis nor anyone on his behalf has been subject to service of process in Nevada since 2010.

24. Once UAIC removed the underlying case to federal district court, UAIC filed a motion for summary judgment as to all of Lewis's and Nalder's claims, alleging Lewis did not have insurance coverage on the date of the subject collision.

25. The federal district court granted UAIC's summary judgment motion because it determined the insurance contract was not ambiguous as to when Lewis had to make payment to avoid a coverage lapse.

26. Nalder and Lewis appealed to the Ninth Circuit. The Ninth Circuit reversed and remanded the matter because Lewis and Nalder had facts to show the renewal statement was ambiguous regarding the date when payment was required to avoid a coverage lapse.

27. On remand, the district court entered judgment in favor of Nalder and Lewis and against UAIC on October 30, 2013. The Court concluded the renewal statement was ambiguous and therefore, Lewis was covered on the date of the incident because the court construed this ambiguity against UAIC.

28. The district court also determined UAIC breached its duty to defend Lewis, but did not award damages because Lewis did not incur any fees or costs in defense of the Nevada state court action.

29. Based on these conclusions, the district court ordered UAIC to pay the policy limit of $15,000.00.

30. UAIC made three payments on the judgment: on June 23, 2014; on June 25, 2014; and on March 5, 2015, but made no effort to defend Lewis or relieve him of the judgment against him.

31. UAIC knew that a primary liability insurer's duty to its insured continues from the filing of the claim until the duty to defend has been discharged.

32. UAIC did an unreasonable investigation, did not defend Lewis, did not attempt to resolve or relieve Lewis from the judgment against him, did not respond to reasonable opportunities to settle and did not communicate opportunities to settle to Lewis.

33. Both Nalder and Lewis appealed to the Ninth Circuit, which ultimately led to certification of the first question to the Nevada Supreme Court, namely, whether an insurer that breaches its duty to defend is liable for all foreseeable consequential damages to the breach.

34. After the first certified question was fully briefed and pending before the Nevada Supreme Court, UAIC embarked on a new strategy puting their interests ahead of Lewis's in order to defeat Nalder's and Lewis's claims against UAIC.

35. UAIC mischaracterized the law and brought new facts into the appeal process that had not been part of the underlying case. UAIC brought the false, frivolous and groundless claim that neither Nalder nor Lewis had standing to maintain a lawsuit against UAIC without filing a renewal of the judgment pursuant to NRS 17.214.

36. Even though UAIC knew at this point that it owed a duty to defend Gary Lewis, UAIC did not undertake to investigate the factual basis or the legal grounds or to discuss this with Gary Lewis, nor did it seek declaratory relief on Lewis's behalf regarding the statute of limitations on the judgment.

37. All of these actions would have been attempts to protect Gary Lewis.

38. UAIC, instead, tried to protect themselves and harm Lewis by filing a motion to dismiss Gary Lewis' and Nalder's appeal with the Ninth Circuit for lack of standing.

39. This was not something brought up in the trial court, but only in the appellate court for the first time.

40. This action could leave Gary Lewis with a valid judgment against him and no cause of action against UAIC.

41. UAIC ignored all of the tolling statutes and presented new evidence into the appeal process, arguing Nalder's underlying $3,500,000.00 judgment against Lewis is not enforceable because the six-year statute of limitation to institute an action upon the judgment or to renew the judgment pursuant to NRS 11.190(1)(a) expired.

42. As a result, UAIC contends Nalder can no longer recover damages above the $15,000.00 policy limit for breach of the contractual duty to defend. UAIC admits the Nalder judgment was valid at the time the Federal District Court made its decision regarding damages.

43. The Ninth Circuit concluded the parties failed to identify Nevada law that conclusively answers whether a plaintiff can recover consequential damages based on a judgment that is over six years old and possibly expired.

44. The Ninth Circuit was also unable to determine whether the possible expiration of the judgment reduces the consequential damages to zero or if the damages should be calculated from the date when the suit against UAIC was initiated, or when the judgment was entered by the trial court.

45. Both the suit against UAIC and the judgment against UAIC entered by the trial court were done well within even the non-tolled statute of limitations.

46. Even though Nalder believed the law is clear that UAIC is bound by the judgment, regardless of its continued validity against Lewis, Nalder took action in Nevada and California to demonstrate the continued validity of the underlying judgment against Lewis.

47. These Nevada and California state court actions are further harming Lewis and Nalder but were undertaken to demonstrate that UAIC has again tried to escape responsibility by making misrepresentations to the Federal and State Courts and putting their interests ahead of their insured's.

48. Cheyenne Nalder reached the age of majority on April 4, 2016.

49. Nalder hired David Stephens to obtain a new judgment. First David Stephens obtained an amended judgment in Cheyenne's name as a result of her reaching the age of majority.

50. This was done appropriately by demonstrating to the court that the judgment was still within the applicable statute of limitations.

51. A separate action was then filed with three distinct causes of action pled in the alternative. The first, an action on the amended judgment to obtain a new judgment and have the total principal and post judgment interest reduced to judgment so that interest would now run on the new, larger principal amount. The second alternative action was one for declaratory relief as to when a renewal must be filed base on when the statute of limitations, which is subject to tolling provisions, is running on the judgment. The third cause of action was, should the court determine that the judgment is invalid, Cheyenne brought the injury claim within the applicable statute of limitations for injury claims - 2 years after her majority.

52. Nalder also retained California counsel, who filed a judgment in California, which has a ten year statute of limitations regarding actions on a judgment. Nalder maintains that all of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the

judgment; but out of an abundance of caution and to maintain the judgment against Lewis, she brought them to demonstrate the actual way this issue should have been litigated in the State Court of Nevada, not at the tail end of an appeal.

53. UAIC did not discuss with its insured, GARY LEWIS, his proposed defense, nor did it coordinate it with his counsel Thomas Christensen, Esq.

54. UAIC hired attorney Stephen Rogers, Esq. to represent GARY LEWIS, misinforming him of the factual and legal basis of the representation. This resulted in a number of improper contacts with a represented client.

55. Thomas Christensen explained the nature of the conflict and Lewis's concern regarding a frivolous defense put forth on his behalf. If the state court judge is fooled into an improper ruling that then has to be appealed in order to get the correct law applied damage could occur to Lewis during the pendency of the appeal.

56. A similar thing happened in another case with a frivolous defense put forth by Lewis Brisbois. The trial judge former bar counsel, Rob Bare, dismissed a complaint erroneously which wasn't reversed by the Nevada Supreme Court until the damage from the erroneous decision had already occured.

57. UAIC's strategy of delay and misrepresentation was designed to benefit UAIC but harm GARY LEWIS.

58. In order to evaluate the benefits and burdens to Lewis and likelihood of success of the course of action proposed by UAIC and each of the Defendants, Thomas Christensen asked for communication regarding the proposed course of action and what research supported it. It was requested that this communication go through Thomas Christensen's office because that was Gary Lewis's desire, in order to receive counsel prior to embarking on a course of action.

59. Christensen informed Stephen Rogers, Esq. that when Gary Lewis felt the proposed course by UAIC was not just a frivolous delay and was based on sound legal research and not just the opinion of UAIC's counsel, that it could be pursued.

60. Stephen Rogers, Esq. never adequately responded to requests.

61. Instead, UAIC obtained confidential client communications and then misstated the content of these communications to the Court. This was for UAIC's benefit and again harmed Gary Lewis.

62. UAIC, without notice to Lewis or any attorney representing him, then filed two motions to intervene, which were both defective in service on the face of the pleadings.

63. In the motions to intervene, UAIC claimed that they had standing because they would be bound by and have to pay any judgment entered against Lewis.

64. In the motions to intervene, UAIC fraudulently claimed that Lewis refused representation by Stephen Rogers.

65. David Stephens, Esq., counsel for Nalder in her 2018 action, through diligence, discovered the filings on the court website. He contacted Matthew Douglas, Esq., described the lack of service, and asked for additional time to file an opposition.

66. These actions by UAIC and counsel on its behalf are a violation of NRPC 3.5A.

67. David Stephens thereafter filed oppositions and hand-delivered courtesy copies to the court. UAIC filed replies. The matter was fully briefed before the in chambers "hearing," but the court granted the motions citing in the minuted order that "no opposition was filed."

68. The granting of UAIC's Motion to Intervene after judgment is contrary to NRS 12.130, which states: Intervention: Right to intervention; procedure, determination and costs; exception. 1. Except as otherwise provided in subsection 2: (a) **Before the trial** ...

69. These actions by State Actor David Jones ignore due process, the law, the United States and Nevada constitutional rights of the parties. The court does the bidding of insurance defense counsel and clothes defense counsel in the color of state law in violation of 42 USCA section 1983.

70. David Stephens and Breen Arntz worked out a settlement of the action and signed a stipulation. This stipulation was filed and submitted to the court with a judgment prior to the "hearing" on UAIC's improperly served and groundless motions to intervene.

71. Instead of signing the judgment and ending the litigation, the court asked for a wet signed stipulation as a method of delaying signing the stipulated judgment.

72. This request was complied with prior to the September 19, 2018 "hearing" on the Motion to Intervene. The judge, without reason, failed to sign the judgment resolving the case.

73. Instead, the judge granted the Motion to Intervene, fraudulently claiming, in a minute order dated September 26, 2018, that no opposition had been filed.

74. Randall Tindall, Esq. filed unauthorized pleadings on behalf of Gary Lewis on September 26, 2018.

75. UAIC hired Tindall to further its strategy to defeat Nalder and Lewis' claims. Tindall agreed to the representation despite his knowledge and understanding that this strategy amounted to fraud and required him to act against the best interests of his "client" Lewis.

76. Tindall mischaracterized the law and filed documents designed to mislead the Court and benefit UAIC, to the detriment of Gary Lewis.

77. These three filings by Randall Tindall, Esq. are almost identical to the filings proposed by UAIC in their motion to intervene.

78. Gary Lewis was not consulted and he did not consent to the representation.

79. Gary Lewis did not authorize the filings by Randall Tindall, Esq.

80. Gary Lewis himself and his attorneys, Thomas Christensen, Esq. and E. Breen Arntz, Esq., have requested that Tindall withdraw the pleadings filed fraudulently by Tindall.

81. Tindall has refused to comply and continues to violate ethical rules regarding Gary Lewis.

82. Gary Lewis filed a bar complaint against Tindall, but State Actors Daniel Hooge and Phil Pattee dismissed the complaint claiming they do not enforce the ethical rules if there is litigation pending.

83. This is a false statement as Dave Stephens was investigated by this same state actor Phil Pattee while he was currently representing the client in ongoing litigation.

84. The court herein signed an order granting intervention while still failing to sign the judgment resolving the case.

85. UAIC, and each of the defendants, and each of the state actors, by acting in concert, intended to accomplish an unlawful objective for the purpose of harming Gary Lewis.

86. Gary Lewis sustained damage resulting from defendants' acts in incurring attorney fees, litigation costs, loss of claims, delay of claims, judgment against him and as more fully set forth below.

87. Defendants and each of them acting under color of state law deprived plaintiff of rights, privileges, and immunities secured by the Constitution or laws of the United States.

88. Gary Lewis has duly performed all the conditions, provisions and terms of the agreements or policies of insurance with UAIC relating to the claim against him, has furnished and delivered to UAIC full and complete particulars of said loss and has fully complied with all the provisions of said policies or agreements relating to the giving of notice as to said loss, and has duly given all other notices required to be given by Gary Lewis under the terms of such policies or agreements.

89. That Gary Lewis had to sue UAIC in order to get protection under the policy. That UAIC, and each of them, after being compelled to pay the policy limit and found to have failed to defend its insured, now fraudulently claims to be defending him when in fact it is continuing to delay investigating and processing the claim; not responding promptly to requests for settlement; doing a one-sided investigation, and have compelled Gary Lewis to hire counsel to defend himself from Nalder, Tindall and UAIC. All of the above are unfair claims settlement practices as defined in N.R.S. 686A.310 and Defendant has been damaged in an amount in excess of Ten Thousand Dollars ($10,000.00) as a result of UAIC's delay in settling and fraudulently litigating this matter.

90. That UAIC failed to settle the claim within the policy limits when given the opportunity to do so and then compounded that error by making frivolous and fraudulent claims and represented to the court that it would be bound by any judgment and is therefore responsible for the full extent of any judgment against Gary Lewis in this action.

91. UAIC and Tindall's actions have interfered with the settlement agreement Breen Arntz had negotiated with David Stephens and have caused Gary Lewis to be further damaged.

92. The actions of UAIC and Tindall, and each of them, in this matter have been fraudulent, malicious, oppressive and in conscious disregard of Gary Lewis' rights and therefore Gary Lewis is entitled to punitive damages in an amount in excess of Ten Thousand Dollars ($10,000.00).

93. Upon information and belief, at all times relevant hereto, that all Defendants, and each of them, whether individual, corporate, associate or otherwise, were the officers, directors, brokers, agents, contractors, advisors, servants, partners, joint venturers, employees and/or alter-egos of their co-Defendants, and were acting within the scope of their authority as such

agents, contractors, advisors, servants, partners, joint venturers, employees and/or alter-egos with the permission and consent of their co-Defendant.

94. That during their investigation of the claim, UAIC, and each of them, threatened, intimidated and harassed Gary Lewis and his counsel.

95. That the investigation conducted by UAIC, and each of them, was done for the purpose of denying coverage and not to objectively investigate the facts.

96. UAIC, and each of them, failed to adopt and implement reasonable standards for the prompt investigation and processing of claims.

97. That UAIC, and each of them, failed to affirm or deny coverage of the claim within a reasonable time after proof of loss requirements were completed and submitted by Gary Lewis.

98. That UAIC, and each of them, failed to effectuate a prompt, fair and equitable settlement of the claim after liability of the insured became reasonably clear.

99. That UAIC, and each of them, failed to promptly provide to Gary Lewis a reasonable explanation of the basis in the Policy, with respect to the facts of the Nalder claim and the applicable law, for the delay in the claim or for an offer to settle or compromise the claim.

100. That because of the improper conduct of UAIC, and each of them, Gary Lewis was forced to hire an attorney.

101. That Gary Lewis has suffered damages as a result of the delayed investigation, defense and payment on the claim.

102. That Gary Lewis has suffered anxiety, worry, mental and emotional distress as a result of the conduct of UAIC, and each of the Defendants.

103. The conduct of UAIC, and each of the Defendants, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis.

104. UAIC, and each of them, breached the contract existing between UAIC and Gary Lewis by their actions set forth above which include but are not limited to:

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

91. As a proximate result of the aforementioned breach of contract, Gary Lewis has suffered and will continue to suffer in the future damages as a result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert those figures when such have been fully ascertained.

92. As a further proximate result of the aforementioned breach of contract, Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,0000.

93. As a further proximate result of the aforementioned breach of contract, Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.

94. That UAIC, and each of them, owed a duty of good faith and fair dealing implied in every contract.

95. That UAIC, and each of the them, breached the covenant of good faith and fair dealing by their actions which include but are not limited to:

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

96. As a proximate result of the aforementioned breach of the covenant of good faith and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert those figures when such have been fully ascertained.

97. As a further proximate result of the aforementioned breach of the covenant of good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,0000.

98. As a further proximate result of the aforementioned breach of the covenant of good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this

claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

99. The conduct of UAIC, and each of the Defendants, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore entitled to punitive damages.

100. That UAIC, and each of the Defendants, acted unreasonably and with knowledge that there was no reasonable basis for their conduct, in their actions which include but are not limited to:

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

101. As a proximate result of the aforementioned breach of the covenant of good faith and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert those figures when such have been fully ascertained.

102. As a further proximate result of the aforementioned breach of the covenant of good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional

distress, and other incidental damages and out of pocket expenses, all to their general damage in excess of $10,0000.

103. As a further proximate result of the aforementioned breach of the covenant of good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

104. The conduct of UAIC, and each of the Defendants, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore entitled to punitive damages.

105. That UAIC, and each of them, violated NRS 686A.310 by their actions which include but are not limited to:

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

106. As a proximate result of the aforementioned violation of NRS 686A.310, Gary Lewis has suffered and will continue to suffer in the future damages as a result of the delayed

payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert those figures when such have been fully ascertained.

107. As a further proximate result of the aforementioned violation of NRS 686A.310, Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to his general damage in excess of $10,0000.

108. As a further proximate result of the aforementioned violation of NRS 686A.310, Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and necessarily incurred in connection therewith.

109. The conduct of UAIC, and each of them, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore entitled to punitive damages.

110. That UAIC, and each of them, had a duty of reasonable care in handling Gary Lewis' claim.

111. That at the time of the accident herein complained of, and immediately prior thereto, UAIC, and each of them, in breaching its duty owed to Gary Lewis, was negligent and careless, inter alia, in the following particulars:

a. Unreasonable conduct in investigating the loss;

b. Unreasonable failure to affirm or deny coverage for the loss;

c. Unreasonable delay in making payment on the loss;

d. Failure to make a prompt, fair and equitable settlement for the loss;

e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or making payment on the loss;

f. Failing to defend Gary Lewis;

g. Fraudulent and frivolous litigation tactics;

h. Filing false and fraudulent pleadings;

i. Conspiring with others to file false and fraudulent pleadings;

112. As a proximate result of the aforementioned negligence, Gary Lewis has suffered and will continue to suffer in the future damages as a result of the delayed payment on the claim in a presently unascertained amount. Plaintiff prays leave of the court to insert those figures when such have been fully ascertained.

113. As a further proximate result of the aforementioned negligence, Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to his general damage in excess of $10,0000.

114. As a further proximate result of the aforementioned negligence, Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, is liable for his attorney's fees reasonably and necessarily incurred in connection therewith.

115. The conduct of UAIC, and each of them, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis are therefore entitled to punitive damages.

116. The aforementioned actions of UAIC, and each of them, constitute extreme and outrageous conduct and were performed with the intent or reasonable knowledge or reckless disregard that such actions would cause severe emotional harm and distress to Gary Lewis.

117. As a proximate result of the aforementioned intentional infliction of emotional distress, Gary Lewis has suffered severe and extreme anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses, all to his general damage in excess of $10,0000.

118. As a further proximate result of the aforementioned negligence, Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are liable for his attorney's fees reasonably and necessarily incurred in connection therewith.

119. The conduct of UAIC, and each of them, was oppressive and malicious and done in conscious disregard for the rights of Gary Lewis and Gary Lewis is therefore entitled to punitive damages.

120. That Randall Tindall, as a result of being retained by UAIC to represent Gary Lewis, owed Gary Lewis the duty to exercise due care toward Gary Lewis.

121. Randall Tindall also had a heightened duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise.

122. Randall Tindall breached the duty of care by failing to communicate with Gary Lewis, failing to follow his reasonable requests for settlement, case strategy and communication.

123. That breach caused harm to Gary Lewis including but not limited to anxiety, emotional distress, delay, enhanced damages against him.

124. Gary Lewis was damaged by all of the above as a result of the breach by Randall Tindall.

WHEREFORE, Gary Lewis prays judgment against UAIC, Tindall and each of them, as follows:

1. Indemnity for losses under the policy including damages paid to Mr. Lewis, attorney fees, interest, emotional distress, and lost income in an amount in excess of $10,000.00;

2. General damages in an amount in excess of $10,000.00;

3. Punitive damages in an amount in excess of $10,000.00;

4. Special damages in the amount of any Judgment ultimately awarded against him in favor of Nalder plus any attorney fees, costs and interest.

5. Attorney's fees; and

6. Costs of suit;

7. For such other and further relief as the Court may deem just and proper.

DATED THIS 24 day of October, 2018.

Thomas Christensen, Esq.
Nevada Bar No. 2326
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
T: (702) 870-1000
F: (702) 870-6152
courtnotices@injuryhelpnow.com
Attorney for Cross-Claimant
Third-party Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I certify that I am an employee of CHRISTENSEN LAW OFFICES and that on this 24th day of Oct, 2018, I served a copy of the foregoing Cross-Claim/Third Party Complaint as follows:

xx E-Served through the Court's e-service system to the following registered recipients:

Randall Tindall, Esq.
Resnick & Louis
8925 W. Russell Road, Suite 225
Las Vegas, NV 89148
rtindall@rlattorneys.com
lbell@rlattorneys.com
sortega-rose@rlattorneys.com

David A. Stephens, Esq.
Stephens, Gourley & Bywater
3636 North Rancho Drive
Las Vegas, NV 89130
dstephens@sgblawfirm.com

Matthew J. Douglas
Atkin Winner & Sherrod
12117 South Rancho Drive
Las Vegas, NV 89102
mdouglas@awslawyers.com
vhall@awslawyers.com
eservices@awslawyers.com

E. Breen Arntz, Esq.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
breen@breen.com

An employee of CHRISTENSEN LAW OFFICES

EXHIBIT “H”

INTG
THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JAMES NALDER, Guardian Ad Litem for minor Cheyanne Nalder, real party in interest, and GARY LEWIS, Individually;	
Plaintiffs,	Case No.: 2:09-cv-1348
vs.	
UNITED AUTOMOBILE INSURANCE CO, DOES I through V, and ROE CORPORATIONS I through V, inclusive	JURY DEMAND REQUESTED
Defendants.	

ANSWER TO INTERROGATORIES

COMES NOW the Plaintiff, GARY LEWIS, and for his Answers to Interrogatories propounded to him, states, under oath, and in accordance with Rule 33 of the Nevada Rules of Civil Procedure, as follows:

INTERROGATORY NO. 1: State your name and all names by which you have ever been known, your present residence address, any other address at which you have lived during the past five years, and if you are married, state the name and address of your spouse and the date and place of your marriage.

ANSWER TO INTERROGATORY NO. 1: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections Plaintiff responds as follows: Gary Scott Lewis, 4908 Brightview, Covina, CA 91722 (present address); 5049 Spencer Unit D, Las Vegas, NV 89119; 113 Templewood Ct. Las Vegas, NV 89149; I am single. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 2: State your date of birth, and Social Security Number.

ANSWER TO INTERROGATORY NO. 2: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections Plaintiff responds as follows: Date of Birth 4/28/1974, social XXX-XX-7750. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 3: If you have ever been convicted of a felony, state the date of the conviction and the offense involved.

ANSWER TO INTERROGATORY NO. 3: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: 1998, Grand theft and forgery. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 4: Give a complete employment and educational history for the ten (10) years preceding the incident in question, setting forth details such as the name and address

of your employers, the date of commencement and termination, the place and nature of employment duties performed, the name of your supervisor, etc.

ANSWER TO INTERROGATORY NO. 4: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: (2000-2002)ACB Components and Fasteners, Covina, CA , warehouse associate, purchasing agent and sales representative, supervisor-David Hanson; (2002-2007) American Leak Detection, Las Vegas, NV, plumber technician/customer service representative, supervisor-Rich Welsh; (2007-2010)Self employed. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 5: If you involved in an incident on July 8, 2007, state the time and location of said incident and describe the details of the incident in your own words, describing factually (without legal conclusion) what caused it to happen.

ANSWER TO INTERROGATORY NO. 5: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and calls for a narrative response. However without waiving said objections, Plaintiff responds as follows: I ran over Cheyanne Nalder with my truck. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 6: Please state your relationship to Cheyanne Nalder.

ANSWER TO INTERROGATORY NO. 6: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without

waiving said objections, Plaintiff responds as follows: I was friends with Cheyanne's father. Plaintiff reserves the right to supplement this answer as discovery continues. friends

INTERROGATORY NO. 7: Please state your relationship to James Nalder.

ANSWER TO INTERROGATORY NO. 7: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: friends. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 8: If you consumed any intoxicating beverages or consumed any type of drug within twenty-four (24) hours preceding each accident, please state the time and place of each drink or consumption and the kind and amount of intoxicating beverages or drug used or consumed.

ANSWER TO INTERROGATORY NO. 8: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: None. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 9: If you maintain you were insured under a policy of automobile insurance issued by United Automobile Insurance Company please state the dates of coverage for said policy and policy number.

ANSWER TO INTERROGATORY NO. 9: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome and compound. However without waiving said objections, Plaintiff responds as follows: I was covered by a policy of insurance through

UAIC, which UAIC renewed on multiple occasions with me. It is my understanding I was covered by policy No. NVA020021926, which UAIC advised me it was renewing and that I would have no lapse in coverage as long as payment was made prior to the expiration of my policy, which the "Renewal Notice" said was July 31, 2007. I made the payment long before July 31, 2007 and understood the policy had been renewed again and there was no lapse in coverage. Plaintiff reserves the right to supplement this answer as discovery continues. look on insurance card. It is my understanding I was covered with insurance through UAIC which coverage and insurance UAIC continually renewed from early 2007 through I believe September 2009.

INTERROGATORY NO. 10: If you maintain you attempted, or made a payment of policy premium to United Automobile Insurance Company for automobile insurance coverage between June 12, 2007 and July 10, 2007 please state the (a) form or method of such payment (b) the location of said payment, (c) the date of said payment, and (d) proof of any such payment.

ANSWER TO INTERROGATORY NO. 10: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome and compound. However without waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received said that I would not have a lapse in coverage if payment was made before the expiration of my policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10, 2007. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 11: If you maintain any payment, alleged in answer to interrogatory No. 10, herein, was via credit card, please state the card issuing company and account number.

ANSWER TO INTERROGATORY NO. 11: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad and unduly burdensome. However without waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received said that I would not have a lapse in coverage if payment was made before the expiration of my policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10, 2007. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 12: If you maintain any payment, alleged in answer to interrogatory no. 10, herein, was via check, please state the (a) bank account holder's name, (b) the check number, (c) the name of the bank, and (d) the bank account number and account number.

ANSWER TO INTERROGATORY NO. 12: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome and compound. However without waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received said that I would not have a lapse in coverage if payment was made before the expiration of my policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10, 2007. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 13: If you maintain any payment, alleged in answer to interrogatory no. 10, herein was via money order, please state the (a) issuing entity name, and (b) the location issued from.

ANSWER TO INTERROGATORY NO. 13: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome and compound. However without waiving said objections, Plaintiff responds as follows: N/A. The "Renewal Notice" I received said that I would not have a lapse in coverage if payment was made before the expiration of my

policy, which the "Renewal Notice said was July 31, 2007. Payment was made on July 10, 2007. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 14: If you have obtained, or are aware of the existence of, any oral, written, or recorded statement or description made or claimed to have been made by any party or witness, state the name of the person giving the statement and the date given.

ANSWER TO INTERROGATORY NO. 14: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome and compound. However without waiving said objections, Plaintiff responds as follows: Please see Plaintiff's List of Witnesses and Documents and Supplements (particularly the reports of Charles Miller and any and all statements contained in Defendant's claims file). Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 15: State the name and specialty of any person you intend to use as an expert witness in this case and give a summary of the expert's opinion concerning the case.

ANSWER TO INTERROGATORY NO. 15: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and is premature as the time for disclosure of experts is not upon us. However, without waiving said objections, Plaintiff responds as follows: Charles M. Miller, 1442A Walnut St. #55 Berkeley, CA 94709; is expected to testify as an expert regarding any subject matter related to his expertise in the field of insurance, findings on his review and examinations, including but not limited to testing results, as well as the damages as a result of this incident and his report and opinions. Plaintiff reserves the right to supplement this answer as discovery continues. Charles Miller.

INTERROGATORY NO. 16: Please state the name of any checking and savings accounts in your name in June and July 2007 and, of each, state the bank name and account number.

ANSWER TO INTERROGATORY NO. 16: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: I think I may have had an account with Community Bank, however, I do not recall the account number. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 17: Please state the name of any credit card accounts in your name in June and July 2007 and for each, state the issuing entity name and account number.

ANSWER TO INTERROGATORY NO. 17: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: None. Plaintiff reserves the right to supplement this answer as discovery continues. None

INTERROGATORY NO. 18: If you have ever made any claim or filed any lawsuit against any person, group, organization, corporation, industrial commission or any other entity, describe in detail the nature of the claim or lawsuit or how it was resolved.

ANSWER TO INTERROGATORY NO. 18: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: None. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 19: The date you first spoke to, were contacted by, contacted, corresponded with, or otherwise communicated with counsel for James Nalder, Guardian Ad

Litem for minor Cheyanne Nalder, or any individual at the Christensen Law Offices and the method of contact.

ANSWER TO INTERROGATORY NO. 19: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds to the best of his recollection, I do not recall the exact date, it was shortly after the accident, James Nalder asked me to call David Sampson and I called him. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 20: The date your first spoke to, were contacted by, contacted, corresponded with, or otherwise communicated with counsel for James Nalder, Guardian Ad Litem for minor Cheyanne Nalder, or any individual at the Christensen Law Offices wherein a covenant not to execute and/or assignment of rights or chose in action against United Automobile Insurance Company was discussed, proposed or presented and the method of said contact.

ANSWER TO INTERROGATORY NO. 20: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: I spoke with David Sampson about a possible assignment on multiple occasions. I do not recall the exact dates. The assignment was executed on February 28, 2010. Plaintiff reserves the right to supplement this answer as discovery continues.

INTERROGATORY NO. 21: The date you signed or executed a covenant not to execute and assignment of rights to choses in action with counsel for James Nalder, Guardian Ad Litem for minor Cheyanne Nalder, or any individual at the Christensen Law Offices.

ANSWER TO INTERROGATORY NO. 21: OBJECTION: This Interrogatory is objected to on the grounds it is overly broad, unduly burdensome, compound and seeks information not reasonably calculated to lead to the discovery of admissible evidence. However without waiving said objections, Plaintiff responds as follows: February 28, 2010. Plaintiff reserves the right to supplement this answer as discovery continues.

DATED this 3rd day of March, 2010.

CHRISTENSEN LAW OFFICES, LLC

BY: _____

THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorney for Plaintiffs

STATE OF NEVADA)
:ss
COUNTY OF CLARK)

GARY LEWIS, being first duly sworn, deposes and says:

That he is the Plaintiff in the above-entitled action; that he has read the foregoing Answers to Interrogatories and knows the contents thereof, and that the same is true of his own knowledge except for those matters therein stated on information and belief, and as for those matters he believes them to be true.

GARY LEWIS

SUBSCRIBED and SWORN to before me this 28 day of Feb, 2010.

SANDRA J. DURITZA-GONZALES
Notary Public State of Nevada
No. 02-78670-1
My appt. exp. Oct. 22, 2010

NOTARY PUBLIC in and for said County and State.

EXHIBIT "I"

LTWT
THOMAS CHRISTENSEN, ESQ.
Nevada Bar No. 2326
DAVID F. SAMPSON, ESQ.
Nevada Bar No. 6811
CHRISTENSEN LAW OFFICES, LLC
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JAMES NALDER, Guardian Ad Litem for minor Cheyanne Nalder, real party in interest, and GARY LEWIS, Individually;	
Plaintiffs,	Case No.: 2:09-cv-1348
vs.	
UNITED AUTOMOBILE INSURANCE CO, DOES I through V, and ROE CORPORATIONS I through V, inclusive	
Defendants.	

PLAINITFF'S 12th SUPPLEMENT TO LIST OF WINTESSES AND DOCUMENTS

I

LIST OF WITNESSES

1. JAMES NALDER, c/o Christensen Law Offices, LLC, 1000 S. Valley View Blvd., Las Vegas, NV 89107, is expected to testify as to facts and circumstances surrounding this litigation.

2. CHEYENNE NALDER, c/o Christensen Law Offices, LLC, 1000 S. Valley View Blvd., Las Vegas, NV 89107, is expected to testify as to facts and circumstances giving rise this litigation.

3. GARY LEWIS, c/o Christensen Law Offices, LLC, 1000 S. Valley View Blvd., Las Vegas, NV 89107, is expected to testify as to facts and circumstances giving rise this litigation.

4. PERSON MOST KNOWLEDGABLE OF UNITED AUTOMOBILE INSURANCE CO. c/o Atkin, Winner, Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102, is expected to testify as facts and circumstances giving rise to this litigation.

5. PERSON MOST KNOWLEDGABLE OF US AUTO INSURANCE AGENCY, INC., is expected to testify as to facts and circumstances giving rise to this litigation.

6. ELSIE CABRERA OF US AUTO INSURANCE AGENCY, INC., 3909 W. Sahara Ave. #4 Las Vegas, NV 89102, is expected to testify as to facts and circumstances giving rise to this litigation.

7. ELSIE MALDONADO OF US AUTO INSURANCE AGENCY, INC., 3909 W. Sahara Ave. #4 Las Vegas, NV 89102, is expected to testify as to facts and circumstances giving rise to this litigation.

8. MANNY CORDOVA OF US AUTO INSURANCE AGENCY, INC., 3909 W. Sahara Ave. #4 Las Vegas, NV 89102, is expected to testify as to facts and circumstances giving rise to this litigation.

9. ALEX PEREZ or PMK at US Auto Insurance Agency, 3909 W. Sahara, Suite #4, Las Vegas, NV 89102; is expected to testify regarding his knowledge of the facts and circumstances surrounding the incident in question , in specifically regarding Lewis payment of his policy premium July 10, 2007.

10. PMK at US Auto Insurance Agency, 3909 W. Sahara, Suite #4, Las Vegas, NV 89102; is expected to testify regarding his knowledge of the facts and circumstances surrounding the incident in question , in specifically regarding Lewis payment of his policy premium July 10, 2007.

11. Charles M. Miller, 1442A Walnut St. #55 Berkeley, CA 94709; is expected to testify as an expert regarding any subject matter related to his expertise in the field of insurance, findings on his review and examinations, including but not limited to testing results, as well as the damages as a result of this incident and his report and opinions.

12. Steven Plitt, KUNG, PLITT, HYLAND DEMOLONG & KLEIFIELD, 3838 N. Central Ave. 15th Fl. Phoenix, AZ 85012, is expected to testify as an expert designated by Defendants to offer expert testimony as defined in N.R.C.P. 26(b)(5) consistent with his report surrounding his review of the documentation and claim file, and extra-contractual or "bad faith" claims of Plaintiff.

13. Kristen Scott, 399 McClure St. Apt. 4, El Cajon, CA 92021; is expected to testify as to the facts and circumstances giving rise to this litigation.

14. ELYSE CABRERA aka MONICA MALDONADO, 8976 High Horizon Ave. Las Vegas, NV 89149 is expected to testify as to the facts and circumstances giving rise to this litigation.

15. GISELLE MOLINA, c/o Atkin Winner & Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102; is expected to testify as to the facts and circumstances giving rise to this litigation.

16. LISA WATSON, unknown address, is expected to testify as to the facts and circumstances giving rise to this litigation.

17. ERIC COOK, c/o Atkin Winner & Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102; is expected to testify as to the facts and circumstances giving rise to this litigation.

18. ANNIE VEGA, c/o U.S. Auto Insurance Agency, 3909 W. Sahara Ave., #4, Las Vegas, NV 89102, is expected to testify to the facts and circumstances giving rise to this litigation.

19. PMK of U.S. Auto Insurance Agency, 3909 W. Sahara Ave., #4, Las Vegas, NV 89102, is expected to testify to the facts and circumstances giving rise to this litigation.

20. DANICE DAVIS of UAIC, c/o Atkin Winner & Sherrod, 1117 S. Rancho Dr. Las Vegas, NV 89102; is expected to testify as to the facts and circumstances giving rise to this litigation.

21. DOUG HOUSBECK of UAIC 5012 Moose Falls Drive Las Vegas, NV 89141; is expected to testify as to the facts and circumstances giving rise to this litigation.

CUSTODIAN OF RECORDS for all witnesses listed by Plaintiff herein and supplements hereto, are expected to testify as to the records provided to the Plaintiff.

PERSONS MOST KNOWLEDGEABLE for all witnesses listed by Plaintiff herein and supplements hereto, are expected to testify as expert witnesses about the injuries sustained by Plaintiffs as a result of this incident.

All witnesses listed by the Defendant and any other party to this litigation.

All witnesses identified during discovery and or deposed during discovery of this litigation.

Rebuttal and/or impeachment witnesses.

Experts unknown at this time.

Plaintiff reserves the right to supplement this list as the discovery process continues.

II

LIST OF DOCUMENTS

1. Judgment/Notice of Entry

2. Various insurance documents

3. Letter dated 8/2/2007 from Christensen Law to United Automobile Insurance Company

4. Letter dated 8/6/07 from United Automobile Insurance Company to Christensen Law Offices, LLC

5. Letter dated 10/10/2007 from United Automobile Insurance Company to Christensen Law Offices, LLC

6. Letter dated 10/23/07 from Christensen Law to United Automobile Insurance Company

7. Letter dated 11/1/07 from United Automobile Insurance Company to Christensen Law Offices, LLC

8. Defendant's claim file

9. Defendant's Underwriting file materials for policies of insurance with Lewis

10. Charles Miller's report, Deposition/Trial history and curriculum vitae and supplemental report, second supplemental report

11. Assignment

12. Steven Plitt report, curriculum vitae, testimony history and fee schedule

13. US Auto Insurance Agency documentation

14. Recording of UAIG call

15. Article, United Auto Set up in Bad-Faith Case?, published 10/20/2009 http://www.claimsmag.com/News?2009/10/Pages?United-Auto-Set-Up...

16. United Automobile Insurance Company A.M. Best Rating

17. Article, United Automobile Insurance Complaints-Will no Honor Claim, posted 08-22-2008, complaintsboard.com,

18. Article, United Automobile unhappy being caught denying payments to medical providers, posted April 27, 2010, http://injurylaw.labovick.com

19. UAIC-Mission Statement

20. UAIC web page

21.UAIC-Our Products

22. Correspondence from UAIC to Christensen Law Offices and SeegMiller & Associates

23. Underwriter diary notes

24. Specimen Policy Language (terms) for each such policy term referenced in Exhibit "E" to Defendant's Initial Production.

25. All records from U.S. Auto Insurance Agency, 3909 W. Sahara Ave., #4, Las Vegas, NV 89102 related to this matter.

26.Various documents faxed to Christensen Law from U.S. Auto Insurance Agency, Inc.

27. Color photographs of Cheyanne Nalder

101. University Medical Records for Cheyanne Nalder

102. Northstar Imaging Records for Cheyanne Nalder

103. Mercy Air Records for Cheyanne Nalder

104. Desert Radiologists Records for Cheyanne Nalder

105. Grover C. Dills Medical Center Records for Cheyanne Nalder

106. Meadow Valley Ambulance Records for Cheyanne Nalder

All exhibits listed by any other party to this litigation.

All documents identified during discovery in this litigation.

All pleadings filed in the case

All depositions including exhibits

Rebuttal and/or impeachment documents.

Plaintiff reserves the right to supplement this list as the discovery process continues.

III

COMPUTATION OF DAMAGES

Plaintiff has summarized the special damages incurred thus far and, according to current calculations, the special damages appear to be at least $3,500,000.00. See Judgment listed in preceding section. Plaintiff reserves the right to supplement this section as the discovery process continues.

IV

INSURANCE AGREEMENTS

Plaintiff reserves the right to supplement this section as the discovery process continues.

DATED this 15 day of September, 2010.

CHRISTENSEN LAW OFFICES, LLC

By: _____

THOMAS CHRISTENSEN, ESQ.
Nevada Bar # 2326
DAVID F. SAMPSON, ESQ.
Nevada Bar # 6811
1000 S. Valley View Blvd.
Las Vegas, NV 89107
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC., and that on this 15 day of Sept., 2010, I served a copy of the foregoing **PLAINTIFF'S 12th SUPPLEMENT TO LIST OF WITNESSES AND DOCUMENTS** as follows:

XX U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

Hand Delivery—By hand-delivery to the addresses listed below.

Thomas E. Winner, Esq.,
Matthew J. Douglas, Esq.,
1117 S. Rancho Dr.
Las Vegas, NV 89102
Attorney for Defendant

An employee of CHRISTENSEN LAW OFFICES, LLC

EXHIBIT "K"

Carolyn Mangundayao

From: Steve Rogers
Sent: Friday, September 07, 2018 8:12 AM
To: Carolyn Mangundayao; Thomas Christensen; breenarntz@me.com
Cc: Reception
Subject: RE: Gary Lewis

Tom:

In response to your second 09/06/18 email, you'll recall that you declined my request that you conference Mr. Lewis in on our 08/13/18 phone call. My request confirms that I was agreeable to your participation in my communications with Mr Lewis.

I will convey to UAIC your wish to retain Mr. Arntz to represent Mr. Lewis.

Please contact me with any questions.

Steve
(please f that there is a typo in the concluding line of my 08/23/18 letter: "he will communicate with me" inaccurately omitted the word "not")

RM CM | ROGERS MASTRANGELO CARVALHO & MITCHELL
Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third Street
Las Vegas, Nevada 89101
Telephone: (702) 383-3400
Facsimile: (702) 384-1460
Email: srogers@rmcmlaw.com

From: Carolyn Mangundayao
Sent: Friday, September 07, 2018 7:55 AM
To: Thomas Christensen <thomasc@injuryhelpnow.com>; Steve Rogers <srogers@rmcmlaw.com>; breenarntz@me.com
Cc: Reception <receptionist@injuryhelpnow.com>
Subject: RE: Gary Lewis

See attached.

Thank you.

RMCM | ROGERS MASTRANGELO CARVALHO & MITCHELL

Carolyn Mangundayao
Legal Assistant to Stephen H. Rogers, Esq., Bert O. Mitchell, Esq. & William C. Mitchell, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third Street
Las Vegas, Nevada 89101
Telephone: (702) 383-3400
Facsimile: (702) 384-1460
Email: cmangundayao@rmcmlaw.com

From: Thomas Christensen [mailto:thomasc@injuryhelpnow.com]
Sent: Thursday, September 06, 2018 5:46 PM
To: Steve Rogers <srogers@rmcmlaw.com>; breenarntz@me.com
Cc: Carolyn Mangundayao <cmangundayao@rmcmlaw.com>; Reception <receptionist@injuryhelpnow.com>
Subject: Gary Lewis

Stephen,

What is the date of your letter and how was it delivered? We do not have that letter. Please forward it to us. Given your dual representation of UAIC and Mr Lewis and that you feel commmunication with Mr Lewis through my office is not acceptable we think it better to allow Breen Arntz to represent Mr Lewis's interest in these two actions as independent counsel. Could you make a request that UAIC pay for independent counsel? Thank you.

Tommy Christensen

Christensen Law Offices

EXHIBIT "J"

AO450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISTRICT COURT

DISTRICT OF Nevada

Nalder et al.,

Plaintiffs,

V.

United Automobile Insurance Company,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: 2:09-cv-01348-RCJ-GWF

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

☐ **Notice of Acceptance with Offer of Judgment.** A notice of acceptance with offer of judgment has been filed in this case.

IT IS ORDERED AND ADJUDGED

The Court grants summary judgment in favor of Nalder and finds that the insurance renewal statement contained an ambiguity and, thus, the statement is construed in favor of coverage during the time of the accident. The Court denies summary judgment on Nalder's remaining bad-faith claims.

The Court grants summary judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant. The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewis's implied insurance policy at the time of the accident.

October 30, 2013

Date

/s/ Lance S. Wilson

Clerk

/s/ Summer Rivera

(By) Deputy Clerk

EXHIBIT "K"

CHRISTENSEN LAW
www.injuryhelpnow.com

August 13, 2018

Stephen H. Rogers, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 S. Third Street
Las Vegas, Nevada 89101

VIA Fax: (702)384-1460
Email: srogers@rmcmlaw.com

Re: Gary Lewis

Dear Stephen:

I am in receipt of your letter dated Friday, August 10, 2018. I was disappointed that you have chosen to disregard my request that you communicate with me and not directly with my client. You say you have "been retained to defend Mr. Lewis with regard to Ms. Nalder's 2018 actions." Would you be so kind as to provide me with all communications written or verbal or notes of communications you have had with UAIC, their attorneys and/or Mr. Lewis from your first contact regarding this matter to the present?

Please confirm that UAIC seeks now to honor the insurance contract with Mr. Lewis and provide a defense for him and pay any judgment that may result? This is the first indication I am aware of where UAIC seeks to defend Mr. Lewis. I repeat, please do not take any actions, including requesting more time or filing anything on behalf of Mr. Lewis without first getting authority from Mr. Lewis through me. Please only communicate through this office with Mr. Lewis. If you have already filed something or requested an extension without written authority from Mr. Lewis, he requests that you immediately reverse that action. Please also only communicate with UAIC that any attempt by them to hire any other attorneys to take action on behalf of Mr. Lewis must include notice to those attorneys that they must first get Mr. Lewis' consent through my office before taking any action including requesting extensions of time or filing any pleadings on his behalf.

Regarding your statement that Mr. Lewis would not be any worse off if you should lose your motions. That is not correct. We agree that the validity of the judgment is unimportant at this stage of the claims handling case. UAIC, however, is arguing that Mr. Lewis' claims handling case should be dismissed because they claim the judgment is not valid. If you interpose an insufficient improper defense that delays the inevitable entry of judgment against Mr. Lewis and the Ninth Circuit dismisses the appeal then Mr. Lewis will have a judgment against him and no claim against UAIC. In addition, you will cause additional damages and expense to both parties for which, ultimately, Mr. Lewis would be responsible.

CHRISTENSEN LAW
www.injuryhelpnow.com

Could you be mistaken about your statement that "the original judgment expired and cannot be revived?" I will ask your comment on just one legal concept -- Mr. Lewis' absence from the state. There are others but this one is sufficient on its own. There are three statutes applicable to this narrow issue: NRS 11.190; NRS 11.300 and NRS 17.214.

NRS 11.190 Periods of limitation. ... actions .. may only be commenced as follows:
1. Within 6 years:
(a) ... an action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.

NRS 11.300 Absence from State suspends running of statute. If, ... after the cause of action shall have accrued the person (defendant) departs from the State, the time of the absence shall not be part of the time prescribed for the commencement of the action.

NRS 17.214 Filing and contents of affidavit; recording affidavit; notice to judgment debtor; successive affidavits.
1. A judgment creditor or a judgment creditor's successor in interest may renew a judgment which has not been paid by:
(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation.

These statutes make it clear that both an action on the judgment or an optional renewal is still available through today because Mr. Lewis has been in California since late 2008. If you have case law from Nevada contrary to the clear language of these statutes please share it with me so that I may review it and discuss it with my client.

Your prompt attention is appreciated. Mr. Lewis does not wish you to file any motions until and unless he is convinced that they will benefit Mr. Lewis -- not harm him and benefit UAIC. Mr. Lewis would like all your communications to go through my office. He does not wish to have you copy him on correspondence with my office. Please do not communicate directly with Mr. Lewis.

Very truly yours,

Tommy Christensen
CHRISTENSEN LAW OFFICE, LLC

1000 S. Valley View Blvd. Las Vegas, NV 89107 | office@injuryhelpnow.com | P: 702.870.1000 | F: 702.870.6152

Carolyn Mangundayao

From: Steve Rogers
Sent: Friday, September 07, 2018 8:12 AM
To: Carolyn Mangundayao; Thomas Christensen; breenarntz@me.com
Cc: Reception
Subject: RE: Gary Lewis

Tom:

In response to your second 09/06/18 email, you'll recall that you declined my request that you conference Mr. Lewis in on our 08/13/18 phone call. My request confirms that I was agreeable to your participation in my communications with Mr Lewis.

I will convey to UAIC your wish to retain Mr. Arntz to represent Mr. Lewis.

Please contact me with any questions.

Steve
(please f that there is a typo in the concluding line of my 08/23/18 letter: "he will communicate with me" inaccurately omitted the word "not")

RMCM | ROGERS MASTRANGELO CARVALHO & MITCHELL
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Las Vegas, Nevada 89101
Telephone: (702) 383-3400
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Cc: Reception <receptionist@injuryhelpnow.com>
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See attached.

Thank you.

Carolyn Mangundayao
Legal Assistant to Stephen H. Rogers, Esq., Bert O. Mitchell, Esq. & William C. Mitchell, Esq.
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What is the date of your letter and how was it delivered? We do not have that letter. Please forward it to us. Given your dual representation of UAIC and Mr Lewis and that you feel commmunication with Mr Lewis through my office is not acceptable we think it better to allow Breen Arntz to represent Mr Lewis's interest in these two actions as independent counsel. Could you make a request that UAIC pay for independent counsel? Thank you.

Tommy Christensen

Christensen Law Offices

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DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS and DOES I through V, inclusive Defendants,	CASE NO: 07A549111 DEPT. NO: XX Consolidated with 18-A-772220
UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor.	
GARY LEWIS, Third Party Plaintiff, vs. UNITED AUTOMOBILE INSURANCE COMPANY, RANDALL TINDALL, ESQ., and RESNICK & LOUIS, P.C. and DOES I through V, Third Party Defendants.	

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order denying UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 was entered in the above-entitled matter on the 26th day of July, 2019, a copy of which is attached hereto.

...

Dated this 30th day of July, 2019.

CHRISTENSEN LAW OFFICES
THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar 2326
1000 S. Valley View Blvd.
Las Vegas, NV 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC and that on this 30th day of July, 2019, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** via the Court's e-service system to the following:

E. BREEN ARNTZ, ESQ.
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breen@breen.com

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dstephens@sgblawfirm.com

Matthew Douglas, Esq.
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mdouglas@awslawyers.com

An employee of CHRISTENSEN LAW OFFICES, LLC.

ORDR
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courtnotices@injuryhelpnow.com

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS
and DOES I through V, inclusive
Defendants,

CASE NO: 07A549111
DEPT. NO: XX

Consolidated with 18-A-772220

UNITED AUTOMOBILE INSURANCE COMPANY,
Intervenor.

GARY LEWIS,
Third Party Plaintiff,
vs.
UNITED AUTOMOBILE INSURANCE COMPANY, RANDALL TINDALL, ESQ., and RESNICK & LOUIS, P.C. and DOES I through V,
Third Party Defendants.

ORDER

This Honorable Court has read the pleadings and papers on file herein relating to the pending Motions heard oral argument from the parties appearing before the court on the 9th day of January, 2019, including David A. Stephens, Esq. on behalf of Cheyenne Nalder, Breen Arntz, Esq. and Randall Tindall, Esq. on behalf of Defendant Gary Lewis, Thomas Christensen, Esq. on behalf of Third Party Plaintiff Gary Lewis, Matthew Douglas, Esq. and Thomas Winner,

Esq. on behalf of Intervenor United Automobile Insurance Company, Dan Waite, Esq. on behalf of Third Party Defendants Randall Tindall, Esq. and Resnick & Louis, P.C.

The Court, having been so fully advised, hereby finds and orders as follows:

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 is DENIED.

Dated this 26 day of April, 2019.

District Court Judge
ERIC JOHNSON

Submitted By:

#1019

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Approved as to form and content by:

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Attorney for UAIC

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MATTHEW J. DOUGLAS (SBN 11,371)
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DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
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Attorneys for Intervenor
United Automobile Insurance Company

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS; DOES I through V, inclusive, Defendants.	Case No. 07A549111 Dept. No. XX Consolidated with A-18-772220-C **NOTICE OF APPEAL**
UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor.	
GARY LEWIS, Third Party Plaintiff, vs. UNITED AUTOMOBILE INSURANCE COMPANY; RANDALL TINDALL, ESQ.; and RESNICK & LOUIS, P.C.; and DOES I through V, Third Party Defendants.	

NOTICE OF APPEAL

Please take notice that intervenor United Automobile Insurance Company hereby appeals to the Supreme Court of Nevada from:

1. All judgments and orders in this case;

2. "Order," filed on July 26, 2019, notice of entry of which was served electronically on July 30, 2019 (Exhibit B); and

3. All rulings and interlocutory orders made appealable by any of the foregoing.

Dated this 21st day of August, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/Abraham G. Smith*
DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
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MATTHEW J. DOUGLAS (SBN 11,371)
ATKIN WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
(702) 243-7000

Attorneys for Intervenor United Automobile Insurance Company

CERTIFICATE OF SERVICE

I certify that on August 21, 2019, I served the foregoing "Notice of Appeal" through the Court's electronic filing system to the following counsel:

David A. Stephens
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
DStephens@SGBLawFirm.com

Thomas F. Christensen
CHRISTENSEN LAW OFFICES
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CourtNotices@InjuryHelpNow.com

E. Breen Arntz
E. BREEN ARNTZ, ESQ.
5545 Mountain Vista, Suite E
Las Vegas, Nevada 89120
Breen@Breen.com

/s/ Lisa M. Noltie
An Employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca
ROTHGERBER CHRISTIE

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DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS and DOES I through V, inclusive Defendants,	CASE NO: 07A549111 DEPT. NO: XX Consolidated with 18-A-772220
UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor.	
GARY LEWIS, Third Party Plaintiff, vs. UNITED AUTOMOBILE INSURANCE COMPANY, RANDALL TINDALL, ESQ., and RESNICK & LOUIS, P.C. and DOES I through V, Third Party Defendants.	

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order denying UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 was entered in the above-entitled matter on the 26th day of July, 2019, a copy of which is attached hereto.

...

Dated this 30th day of July, 2019.

CHRISTENSEN LAW OFFICES
THOMAS F. CHRISTENSEN, ESQ.
Nevada Bar 2326
1000 S. Valley View Blvd.
Las Vegas, NV 89107
T: 702-870-1000
courtnotices@injuryhelpnow.com

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW OFFICES, LLC and that on this 30th day of July, 2019, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** via the Court's e-service system to the following:

E. BREEN ARNTZ, ESQ.
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CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS
and DOES I through V, inclusive
Defendants,

CASE NO: 07A549111
DEPT. NO: XX

Consolidated with 18-A-772220

UNITED AUTOMOBILE INSURANCE COMPANY,
Intervenor.

GARY LEWIS,
Third Party Plaintiff,
vs.
UNITED AUTOMOBILE INSURANCE COMPANY, RANDALL TINDALL, ESQ., and RESNICK & LOUIS, P.C. and DOES I through V,
Third Party Defendants.

ORDER

This Honorable Court has read the pleadings and papers on file herein relating to the pending Motions heard oral argument from the parties appearing before the court on the 9th day of January, 2019, including David A. Stephens, Esq. on behalf of Cheyenne Nalder, Breen Arntz, Esq. and Randall Tindall, Esq. on behalf of Defendant Gary Lewis, Thomas Christensen, Esq. on behalf of Third Party Plaintiff Gary Lewis, Matthew Douglas, Esq. and Thomas Winner,

Esq. on behalf of Intervenor United Automobile Insurance Company, Dan Waite, Esq. on behalf of Third Party Defendants Randall Tindall, Esq. and Resnick & Louis, P.C.

The Court, having been so fully advised, hereby finds and orders as follows:

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 is DENIED.

Dated this 26 day of April, 2019.

District Court Judge
ERIC JOHNSON

Submitted By:

#1019

CHRISTENSEN LAW OFFICES
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Approved as to form and content by:

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Attorney for Gary Lewis,Defendant

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Attorney for Cheyenne Nalder

Matthew Douglas, Esq.
Nevada Bar No. 011371
Atkin Winner & Sherrod
1117 South Rancho Drive
Las Vegas, NV 89102
mdouglas@awslawyers.com
Attorney for UAIC

MFEE (CIV)
David A. Stephens, Esq.
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Stephens Law offices
3636 North Rancho Drive
Las Vegas, Nevada 89130
Telephone: (702) 656-2355
Facsimile: (702) 656-2776
Email: dstephens@davidstephenslaw.com
Attorney for Cheyenne Nalder

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendants. UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor.	CASE NO.: 07A549111 DEPT NO.: XX

CHEYENNE NALDER'S MOTION FOR COSTS AND ATTORNEY'S FEES

Date:
Time:

Cheyenne Nalder, through her attorney, files this motion to recover the fees and costs incurred by reason of the improper intervention and also improper consolidation by United Automobile Insurance Company of this matter with the newer case. This motion is based upon

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/ / /

/ / /

/ / /

the points and authorities attached to this motion and such argument is made by counsel at the time of the hearing of this matter.

Dated this 2nd day of June, 2020.

S/David A Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Cheyenne Nalder

POINTS AND AUTHORITIES

NRS 12.130 provides:

> (d) The court shall determine upon the intervention at the same time that the action is decided. If the claim of the party intervening is not sustained, the party intervening shall pay all costs incurred by the intervention.

The Nevada Supreme Court has determined that United Automobile Insurance Company, ("UAIC"), was not entitled to intervene into this matter. Thus, UAIC's intervention was improper. Therefore, Nalder is entitled to her costs incurred due to the intervention from UAIC.

Black's Law Dictionary defines "cost" as "a pecuniary allowance made to the successful party (and recoverable from the losing party), for its expenses in prosecuting or defending an action or a distinct proceeding within an action." (Black's Law Dictionary 5th edition, p. 312, 1979).

Cheyenne Nalder has incurred the following costs by reason of the intervention by UAIC, including the litigation revolving around the intervention, the writ proceedings, appeals by

UAIC, and the Writ issued by the Nevada Supreme Court finding that UAIC's intervention was improper. Using the definition of costs in NRS 18.005, and limiting them to those costs related to intervention, Cheyenne's costs are $458.52. (See Memorandum of Costs attached to this motion as Exhibit 1.)

In addition to seeking her costs, Cheyenne Nalder is seeking recovery of her attorney's fees she incurred by due to the intervention of UAIC into this matter. The definition of costs in NRS 18.005 is limited to NRS 18.010 to 18.150.

Webster's Dictionary defines costs as follows:

> "In a general sense expenses incurred in litigation as; a) those payable to the attorney or counsel by his client, especially when fixed by law;-commonly called fees, b) those given by the law or the court to prevailing party against the losing party."

New Webster New Colligate Dictionary, p. 18 1949.

Thus, as defined by Webster's the term costs can include attorney's fees. The term "costs" in NRS 12.130 is not limited by NRS 18.005 and can include attorney's fees.

Additionally in this case, attorney's fees can also be recovered under NRS 18.010(2)(b) which states:

> "[W]ithout regard to recovery sought, when the court finds the claim, counterclaim, cross claim or third party complaint or defense of the opposing party was brought without reasonable ground or to harass the prevailing party."

In this case the intervention by UAIC into this case was brought without good cause. Here the intervention of UAIC into this case was brought without reasonable grounds.

Intervention is specifically prohibited in NRS 12.130 after a judgment had already been entered. It is also prohibited by case law. (See, Opinion of the Nevada Supreme Court in Case No. 78085, which is the writ issued in this matter.)

UAIC's intervention has caused Cheyenne to incur significant time and expense in legal fees defending her judgment in this case, which should have ended upon the entry of the judgment by the court relative to her motion to amend. Since that time she has had to battle a motion to intervene in this case. Once the intervention was granted she has had to oppose a motion to dismiss, and then a motion to set aside the judgment.

She has filed a writ to the Nevada Supreme Court with respect to the intervention. She has also been involved in a second writ to the Supreme Court relative to the consolidation of the two Nalder cases which was caused by the wrongful intervention.

She has also been involved in an appeal of this court's order to denying UAIC's motion to set aside. (It appears this appeal is going to be mooted by the Supreme's Court's decision in Case No. 78085. UAIC has provided a notice of mootness to Nevada Supreme Court which will likely result in the dismissal of this appeal).

Cheyenne's attorney has worked on this case on a contingency fee basis, Cheyenne could not afford to litigate this matter if she had to pay an attorney an hourly rate. She could not even afford to advance the costs. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

Even though Cheyenne's attorney represents her on a contingency fee basis, he has kept track of his hours incurred in litigating this case. As of May 29, 2020, he has incurred 220.4 total hours in litigating this case, including the new case, the writs and appeals, thus far. Of

those total hours, he has isolated the sum of 100.9 hours which are directly related to the intervention by UAIC. He is not seeking recovery for the other hours in that they were not directly related to the intervention. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

He has also incurred more hours where he cannot determine whether those hours involved intervention or not, and also significant hours in the new case. He has not included those hours in this claim for fees in that UAIC's intervention in the new case was allowed to stand by the Nevada Supreme Court. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

Because this case is time consuming and high risk litigation, he should be compensated, at a minimum, on a reasonable hourly basis. The Court could consider the contingency fee arrangement, rather than an hourly basis for awarding fees.

In analyzing a motion for attorney's fees, the Court must look to the *Brunzell* factors, which are as follows:

> "(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived."

Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

1. The qualities of the advocate:

Mr. Stephens was licensed to practice law in Nevada in 1983. He has been practicing law in Nevada since 1983. His litigation experience is broad based having dealt in personal injury, commercial litigation, bankruptcy litigation, etc. He has taught CLE classes on automobile litigation and bankruptcy litigation. He believes he is regarded as having an excellent standing as an attorney in the community. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

2. The character of the work to be done.

This case, to say the least, has been difficult. It involves a large sum of damages and issues regarding liability for paying the damages. It also involves experienced and respected attorneys on the other side. Novel issues of law have been raised. There have been various writs and various appeals made to the Nevada Supreme Court. Mr. Stephens' role has been important in that he has been working to preserve the judgment entered by Cheyenne in 2007 such that she can actually collect the money due to her for the injuries suffered in the accident in 2007. This work has taken a significant amount of time and significant skills to move forward. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

3. The work performed by the lawyer:

Mr. Stephens has performed almost all of the work for Cheyenne since he substituted into this case with respect to his law firm. This work has taken his time away from other legal matters. He has tried to give his best time and attention to the work in this matter in order to properly represent and protect Cheyenne in this hotly contested case. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

4. The result:

Mr. Stephens was able to get an amended judgment for Cheyenne. Thus far he has been successful maintaining the viability of the judgment. He was able, by way of a writ, to get the intervention of UAIC in the 2007 case overturned. Thus, while the new case is not yet final, the results, thus far, have been successful from the perspective of Cheyenne Nalder. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

While Mr. Stephens' retainer agreement with Cheyenne Nalder is a contingency fee agreement, the case of *O'Connell vs. Wynn Las Vegas, LLC*, 134 Nev. Ad. Op. 67, 429 P.3d 664, 670 (Nev. App. 2018), indicates that an attorney does not have to keep track of his or her hours in order to file a motion for attorney's fees and recover attorney's fees.

However, in this case Mr. Stephens has kept track of all of his time worked on this case. He has taken out all of the time related to the new case. He has also taken out all of the time of where he cannot tell if it was directly related to the intervention by UAIC or not. Based on that case his hours in this case resulting from the intervention of UAIC and their related work to that intervention is 100.9 hours. (See Declaration of David A. Stephens, Esq., attached as Exhibit 2 to this Motion.)

The *O'Connell* decision also noted that "whatever method the court ultimately uses, the result will prove reasonable as long as the court provides sufficient reasoning and findings in its support of its ultimate determination." *O'Connell* at 670. Additionally, "the district court must properly weigh the Brunzell factors in deciding what amount to award." *O'Connell* at 670. The O'Connell case is also noted that "[C]ourts should also account for the greater risk of non-payment for attorneys who take contingency fee cases, in comparison to attorneys who bill and

are paid on an hourly basis, as they normally obtain assurances that they will receive payment." *O'Connell*, at 671. Finally "contingency fees allow those who cannot afford an attorney who bills at an hourly rate to secure legal representation." *O'Connell* at 671.

Mr. Stephens took a large risk in litigating this matter on a contingency fee basis. That work has been complicated and the investment of time has increased by UAIC's improper intervention. He should be compensated for the work necessitated by the improper intervention, which given existing statutes and case law, was frivolous in this case. He may be compensated on an hourly basis or based on the risks he has taken thus far on some sort of contingency basis.

For these reasons it is respectfully requested that Cheyenne be awarded her court costs caused by the intervention and attorney's fees.

Dated this 2nd day of June, 2020.

S/David A Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Cheyenne Nalder

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June, 2020, I served the following document: **CHEYENNE NALDER'S MOTION FOR COSTS AND ATTORNEY'S FEES**

■ VlA ELECTRONIC FILING; (N.E.F.R. 9(b))

Daniel Polsenberg, Esq.

Matthew J. Douglas, Esq.

Thomas F. Christensen, Esq.

E. Breen Arntz, Esq.

☐ 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:

☐ 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).

☐ BY HAND DELIVER: 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 Law Offices

Exhibit 1

MEMC (CIV)
David A. Stephens, Esq.
Nevada Bar No. 00902
3636 N. Rancho Drive
Las Vegas, NV 89130
Phone: (702) 656-8423
Facsimile: (702) 656-2776
Email: dstephens@davidstephenslaw.com
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER, Plaintiff, vs. GARY LEWIS, Defendants. UNITED AUTOMOBILE INSURANCE COMPANY, Intervenor.	CASE NO.: 07A549111 DEPT NO.: XX

CHEYENNE NALDER'S MEMORANDUM OF COSTS AND DISBURSEMENTS

Date: n/a
Time: n/a

Filing Fee for Petition for Writ	$250.00
Electronic filing fees	17.50
Service of Process	0.00
Depositions and witness fees	0.00
Facsimile charges	0.50
Long distance	1.47
Runner service	0.00
Copies of Motion to Intervene	35.02

Copies of Writ	
Copies of Reply in Support of Writ	31.52
Postage for Writ	57.94
Postage for Reply	64.57
TOTAL	**$458.52**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

David A. Stephens, Esq., being duly sworn, states: that affiant is the attorney for Cheyenne Nalder, and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

Dated this 2 day of June, 2020.

DAVID A. STEPHENS, ESQ.
Attorney for Plaintiff

Subscribed and Sworn to Before Me
this 2 day of June, 2020.

Notary Public In and For
Said County and State

NOTARY PUBLIC
MARY L. GOLDSTEIN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. APRIL 13, 2022
No: 19-7154-01

IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

CHEYENNE NALDER, AN INDIVIDUAL; AND GARY LEWIS, PETITIONERS AND REAL PARTIES IN INTEREST,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; THE HONORABLE DAVID M. JONES, DISTRICT JUDGE; AND THE HONORABLE ERIC JOHNSON, DISTRICT JUDGE,
Respondents,
and
UNITED AUTOMOBILE INSURANCE COMPANY,
Real Party in Interest.

Supreme Court No. 78085
District Court Case No. A549111;A772220

RECEIPT FOR DOCUMENTS

TO: E. Breen Arntz, Chtd. \ E. Breen Arntz
Stephens & Bywater, P.C. \ David A. Stephens ✓
Atkin Winner & Sherrod \ Matthew J. Douglas
Hon. Eric Johnson, District Judge
Hon. David M. Jones, District Judge
Steven D. Grierson, Eighth District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

02/07/2019 Filing fee paid. E-Payment $250.00 from David A. Stephens. (SC)

02/07/2019 Filed Petition for Writ of Mandamus. (SC)

DATE: February 07, 2019

Elizabeth A. Brown, Clerk of Court
lh

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	Signature Confirmation	$0.00	
	Declared Value: $ 0.00		Carson City, NV, 89701, US

03531915000064570

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789393999915 Weight: 0.90 LBS Dim: 0.00 in. x 0.00 in. x 0.00 in.
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- **USPS claims are to be made by the shipper directly to a local USPS office or through their website www.usps.com**
- **FedEx claims for lost/damaged and missing content packages and late shipments are to be made by the store from where you shipped**
- You acknowledge and agree that each FedEx shipment you tender is governed by the applicable FedEx Express Terms and Conditions and/or FedEx Ground Tariff, as contained in the FedEx Service Guide at fedex.com. Unless a higher value is declared and for, the maximum liability for each shipment you tender is US$100. You acknowledge and agree that shipment(s) does not contain any prohibited items, hazardous materials or dangerous goods.

Customer Signature

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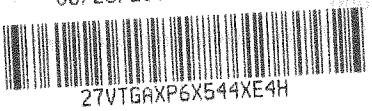

SALE 3351-4-183-792056-19.7.2
3531915 FDX Priority 1 64.57 E
FORM # 08262019
Subtotal: 64.57
Total: 64.57
Visa 8798: 64.57

AUTH CODE 05325G
TDS Chip Read
AID A0000000031010 CHASE VISA
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SALE 3351-4-179-792056-19.7.2

Order Management Invoice # 3690646730015

Approval Code: 999999

114318 JDA GMILL ORDE 31.52 E
Total: 31.52
Visa 8798: 31.52

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EXHIBIT 2

EXHIBIT 2

DECLARATION OF DAVID A STEPHENS, ESQ.
IN SUPPORT OF MOTION FOR FEES AND COSTS

David A. Stephens, under pains and penalty of perjury, declares as follows:

1. I am the attorney of record for Cheyenne Nalder in the above entitled matter.

2. I am licensed to practice law before all courts in the State of Nevada.

3. I was licensed to practice law in the State of Nevada in 1983 and I have been practicing law in the State of Nevada since that time.

4. In the years I have been practicing law I have dealt with personal injury matters, commercial litigation, bankruptcy litigation and other litigation matters.

5. I have taught CLE classes on automobile accident litigation and bankruptcy litigation.

6. I believe that I am regarded as having an excellent standing as an attorney in the legal community of Las Vegas.[1]

7. This case has been a difficult case to handle. It involves a large sum of damages and significant issues regarding who may be liability for paying the damages.

8. The case also involves experienced and respected attorneys on the opposing side of Cheyenne's case.

9. Novel issues have been raised in this case. Various writs have been filed with the Nevada Supreme Court and various appeals have been filed with the Nevada Supreme Court, in addition to appellate litigation out of the US District Court claims handling case.[2] That appellate litigation has also affected this state court case.

10. I have been working to preserve the judgment Cheyenne first obtained in 2007 such that she can actually collect the money owed to her by reason of the injuries she suffered in the motor vehicle accident in 2007.

11. The work on this case has taken a significant amount of time and significant legal skills

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[1] I recognize that this declaration is self-serving to have a high opinion of my status in the legal community. I have worked hard for many years to be a consummate legal professional and an excellent attorney. To the extent the Court trusts Martindale-Hubbell ratings, I am well rated there. In the end, all I can do is hope that it is true.

[2] I am not representing Cheyenne Nalder in the claims handling case in US District Court and the related appeals to the Ninth Circuit.

to move forward.

12. As to my law firm I have performed almost all of the work for Cheyenne since I substituted into this case. This work has taken a significant portion of my time at work away from other legal matters.

13. I have tried to give my best time and attention to the work in this matter in order to properly represent and protect Cheyenne in what is a very hotly contested case.

14. I was able to get an amended judgment for Cheyenne in this case. I have been successful, thus far, in maintaining the viability of that judgment.

15. I was able, by way of a writ, to get the intervention of UAIC into this case overturned, which resulted in the consolidation of this case with her newer filed case, (A-18-772220-C), being overturned too.

17. The results in this case appear to be final, assuming the appeal of UAIC of this Court's order denying UAIC's motion to set aside is dismissed.[3] From the perspective of Cheyenne I believe the results have been successful thus far.

18. I am litigating this matter on a contingency fee for Cheyenne. It is my understanding, from talking with Cheyenne, that she could not afford an attorney to litigate this matter for her but for a contingency fee arrangement. She could not even afford to advance the costs of this matter.

19. I have incurred the costs set forth in the Memorandum of Costs filed in this matter.

20. Even though I am representing Cheyenne on a contingency fee basis, I have kept track of my hours in representing her. As of May 29, 2020, I have incurred 220.4 total hours in litigating this case, including the new case, the writs and appeals, thus far. Of those total hours, I have isolated the sum of 100.9 hours which are related to the intervention by UAIC. I am not seeking recovery for the other hours in that they were not related to the intervention.

21. I have incurred more hours where I cannot determine whether those hours involved intervention or not, and also significant hours in the new case. I have not included those hours in

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[3] UAIC has filed a Notice of Mootness in that appeal and the other parties have requested that it be dismissed. As of this writing no order has been issued by the Nevada Supreme Court as to this appeal.

this claim for attorney's fees in that UAIC's intervention in Cheyenne's new case was allowed to stand by the Nevada Supreme Court.

Dated this 2nd day of June, 2020.

S/David A Stephens
David A. Stephens, Esq.
Nevada Bar No. 00902
3636 N. Rancho Drive
Las Vegas, NV 89130
Attorney for Cheyenne Nalder