

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 81510 consolidated with Case No. 81710

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May 14 2021 09:52 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CHEYENNE NALDER,)
Appellant,)
vs.)

GARY LEWIS and)
UNITED AUTOMOBILE)
INSURANCE COMPANY)
Respondents,)

GARY LEWIS, and)
CHEYENNE NALDER)
Appellants,)
vs.)

UNITED AUTOMOBILE)
INSURANCE COMPANY)

Appeal from the Eighth Judicial District Court, Clark County, Nevada
The Honorable Eric Johnson, District Judge
District Court Case No. 07A549111

RESPONDENT GARY LEWIS' APPENDIX
Volume 2 of 2

E. Breen Arntz, Esq
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, NV 89120
(702) 384-8000
breen@breen.com

Thomas Christensen, Esq.
Nevada Bar No. 2326
Christensen Law Offices
1000 S. Valley View Blvd. Ste P.
Las Vegas, NV 89107
(702) 870-1000
courtnotices@injuryhelpnow.com

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#	Document	Date	Bates numbers
1	UAIC's Opposition to 3rd Party Plaintiff Lewis' CounterMotion for Summary Judgment and Countermotion to Strike	12/14/2018	RespLewis001-228

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1 (con't)	UAIC's Opposition to 3rd Party Plaintiff Lewis' CounterMotion for Summary Judgment and Countermotion to Strike (con't)	12/14/2018	RespLewis229-399
2	Transcript of Hearing	1/9/2019	RespLewis400-462
3	Order on Motions Heard January 9, 2019	2/11/2019	RespLewis463-468
4	Order denying Motion for Relief from Judgment	7/26/2019	RespLewis469-470
5	Notice of Appeal	8/21/2019	RespLewis471-473
6	Order Dismissing Appeal	04/8/2021	RespLewis474-475

EXHIBIT "C"
TO AFFIDAVIT



ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

Attorneys At Law
Stephen M. Rogers
Rebecca L. Mastrangelo
Dante E. Carvalho
Paul Mitchell
Noah Anwar
Christy A. Michalek
Dawn L. Davis
Marissa R. Temple
Wm C. Mitchell
Nicholas C. Kral
*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



ROGERS
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CARVALHO &
MITCHELL

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

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

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 *CM*

Stephen H. Rogers, Esq.

SHR:TLHK/cm

Attachments

cc: Gary Lewis

\\Rogers\Lewis\pdr_Nalder\Correspondence\Tommy Christensen\letter 080918 11.pdf

1 MDSM
2 STEPHEN H. ROGERS, ESQ.
3 Nevada Bar No. 5755
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL
5 700 South Third Street
6 Las Vegas, Nevada 89101
7 Phone (702) 383-3400
8 Fax (702) 384-1460
9 Email: srogers@rincmlaw.com
10 Attorneys for Defendant

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

CASE NO.: A-18-772220-C

DEPT. NO.: 29

15 vs,

16 GARY LEWIS and DOES'1 through _____

17 Defendants

18 DEFENDANT'S MOTION TO DISMISS

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

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1 This Motion is made and based upon the papers and pleadings on file herein, the Points and
2 Authorities attached hereto, and such oral argument as the Court may permit.
3 DATED this ____ day of August, 2018.

4 ROGERS, MASTRANGELO, CARVALHO &
5 MITCHELL

6
7 Stephen H. Rogers, Esq.
8 Nevada Bar No. 5755
9 700 South Third Street
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant

12 NOTICE OF MOTION

13 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

17 DATED this ____ day of August, 2018.

18 ROGERS, MASTRANGELO, CARVALHO &
19 MITCHELL

20 Stephen H. Rogers, Esq.
21 Nevada Bar No. 5755
22 700 South Third Street
23 Las Vegas, Nevada 89101
24 Attorneys for Defendant

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1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

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

12 Despite the fact that Lewis' liability for any injuries Cheyenne may have sustained in the
13 2007 accident have already been adjudicated and judgment entered, Cheyenne now re-asserts those
14 claims in the instant Complaint. Those claims are subject to dismissal pursuant to the doctrine of
15 claim preclusion.

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

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

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

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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 (unless renewed) 10 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 22, 2018. See Exhibit "C." Contemporaneous with the filing of the instant motion, Lewis 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 (not 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. NACP 58(c).

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

4 III.

5 MOTION TO DISMISS STANDARD

6 A defendant is entitled to dismissal when a plaintiff fails "to state a claim upon which relief can
7 be granted." NRCP 12(b)(5). The Nevada Supreme Court has declared that the dismissal of a
8 complaint is appropriate where "it appears beyond a doubt that [the plaintiff] could prove no set of
9 facts which, if true, would entitle [the plaintiff] to relief." *Stew, LLC v. City of N. Las Vegas*,
10 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

11 In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint.
12 *Id.* As the Nevada Supreme Court held in *Baxter v. Diversity Health*, 131 Nev. Adv. Op. 76, 357 P.3d
13 at 930 (2015) "the court is not limited to the four corners of the complaint." Citing 5B Charles Alan
14 Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d ed.2004). The
15 *Baxter* Court also held that courts "may also consider unattached evidence on which the complaint
16 necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the
17 plaintiff's claim; and (3) the party questions the authenticity of the document." *Id.*, citing *United*
18 *States v. Comptroller of the Currency*, 655 F.3d 984, 999 (9th Cir.2011) (internal quotation omitted). The
19 *Baxter* Court continued "while presentation of matters outside the pleadings will convert the
20 motion to dismiss to a motion for summary judgment, Fed.R.Civ.P. 12(d); NRCP 12(b), such
21 conversion is not triggered by a court's consideration of matters incorporated by reference or integral
22 to the claim," *Id.*, citing 5B Wright & Miller, *supra*, § 1357, at 376.

23 While Defendant's Motion to Dismiss does rely on certain documents which were not
24 attached to the Complaint, those documents are either incorporated by reference (the Judgment and
25 Amended Judgment) or integral to the claim (the Complaint in the 2007 case). Therefore, this Court
26 should consider this matter a motion to dismiss and not convert it to a motion for summary
27 judgment. As discussed below, there is no doubt that there are no facts pursuant to which Cheyenne
28 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*, 134 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Shannon*, 134 Nev. Adv. Op. 28, 350 P.3d 80 (2015) (the modification is not applicable in this case). According to the *Five Star* test, claim preclusion applies when: (1) the parties in their prior cases 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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1 As the *Five Star* Court noted, public policy supports claims preclusion in situations such as
2 this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a), noting
3 that "the purposes of claim preclusion are 'based largely on the ground that fairness to the defendant,
4 and sound judicial administration, require that at some point litigation over the particular controversy
5 come to an end' and that such reasoning may apply 'even though the substantive issues have not
6 been tried . . .'" *Id.* at 1058, 194 P.3d at 715. These policy reasons are applicable here. Lewis is
7 entitled to finality. A Judgment was already entered against him. Renewing the Judgment was not
8 Lewis' responsibility—that was the responsibility of Cheyenne's guardian ad litem, James Nalder.
9 Lewis should not be exposed to judgment being entered against him a second time due to Nalder's
10 failure to act.

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

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

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

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

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

7 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons
8 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the
9 controversy, and (3) the issue is ripe for judicial determination." *Cty. of Clark, ex rel. Univ. Med.*
10 *Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998), citing *Knittle v. Progressive*
11 *Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 723, 725 (1996). Here, declaratory relief is not available
12 because the issue as to whether the Amended Judgment or any future amended judgment is
13 enforceable, or whether the statute of limitations has expired, is not ripe.

14 The conditions under where a justiciable controversy exists were addressed by the Nevada
15 Supreme Court in *Kress v. Carey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a
16 justiciable controversy does not exist, where "damage" . . . is merely apprehended or feared. . . . *Id.*
17 at 28-29, 189 P.2d at 360. As the Court in *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986) noted,
18 "the requirement of an actual controversy has been construed as requiring a concrete dispute
19 admitting of an immediate and definite determination of the parties' rights." *Id.* at 526, 728 P.2d at
20 444. Cheyenne's concern that any effort to enforce the Amended Judgment will be thwarted by a
21 determination that the applicable statute of limitations bars such action is "apprehended or feared"
22 but not existing presently, because she has not taken any action to enforce the Amended Judgment.

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

28 ///

1 "Ripeness focuses on the timing of the action rather than on the party bringing the action.
2 The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the
3 hardship to the parties of withholding judicial review, and (2) the suitability of the issues for
4 review." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1224, 1230-31
5 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003)). In
6 the unpublished decision in *Cassady v. Main*, 2016 WL 412835, a copy of which is attached hereto
7 as Exhibit "E," the Nevada Supreme Court noted that the plaintiff in that case would suffer no harm
8 if declaratory relief were not considered, because he could file a complaint seeking direct redress for
9 complaints. *Id.* at *2. Similarly here, Cheyenne could have a court address her statute of
10 limitations concerns in an action to execute on the Amended Judgment. There is no need for such
11 a determination at this time.

12 Regardless as to whether Cheyenne's request for declaratory relief is appropriate at this
13 juncture, Cheyenne's request for declaratory relief should be dismissed because there is no valid
14 judgment to enforce. The original Judgment entered on June 3, 2008 expired on June 3, 2014. No
15 effort to renew the Judgment was undertaken prior to its expiration. Cheyenne obtained an Amended
16 Judgment, entered on March 28, 2018. As demonstrated in Defendant's Motion for Relief From
17 Judgment Pursuant to NRS 20.010, the Court should not have entered an Amended Judgment, and no
18 other amended judgments should be entered. Nevada law does not permit renewal of expired
19 judgments by amendment.

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

27 ///

28

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. 6755
700 South Third Street
Las Vegas, Nevada 89101
Attorneys for Defendant

DRAFT

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
☒ 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

1 MREL
2 STEPHEN H. ROGERS, ESQ.
3 Nevada Bar No. 5755
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL
5 700 South Third Street
6 Las Vegas, Nevada 89101
7 Phone (702) 383-3400
8 Fax (702) 384-1460
9 Email: srogers@rmcmlaw.com
10 Attorneys for Defendant.

- June 4 page 3

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,
14 Plaintiff,

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

15 vs.

16 GARY LEWIS and DOES I through [unclear]
17 Defendants.

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

3 DATED this ____ day of August, 2018.

4 ROGERS, MASTRANGELO, CARVALHO &
5 MITCHELL

6
7 Stephen H. Rogers, Esq.
8 Nevada Bar No. 5755
9 700 South Third Street
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant

12 **NOTICE OF MOTION**

13 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

18 DATED this ____ day of August, 2018.

19 ROGERS, MASTRANGELO, CARVALHO &
20 MITCHELL

21 Stephen H. Rogers, Esq.
22 Nevada Bar No. 5755
23 700 South Third Street
24 Las Vegas, Nevada 89101
25 Attorneys for Defendant
26
27
28

1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

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

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

17 II.

18 STATEMENT OF FACTS

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

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

25 ///

26 ///

27 ///

28 ///

1 as Exhibit "B." The Judgment was entered on June 3, 2008.¹ James Nalder as guardian ad litem for
2 Cheyenne is the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires by
3 limitation in six (6) years. As such, the Judgment expired on June 3, 2014.

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

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

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

16 III. 17 ARGUMENT

18 A. The Judgment Expired on June 3, 2014.

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

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

27
28 ¹Judgments are entered when filed, not when a Notice of Entry is made. NRCF 58(C).

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

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

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

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

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

18 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six-
19 year "catch all" provision of NRS 11.090(1)(g). *Leven* at 403, 168 P.3d at 715 ("An action on a
20 judgment or its renewal must be commenced within six years under NRS 11.190(1)(a); thus a
21 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS
22 17.214, provides for any tolling of the time period to renew a judgment.

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

24 Setting aside the fact that the deadline to renew a judgment is not an action to which statutes
25 of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS 17.214 were
26 tolled by her minority are moot for a few reasons. First, the tolling statute cited by Cheyenne, NRS
27 11.280, does not universally toll all statutes of limitations while a plaintiff is a minor. Rather, it is
28 expressly limited to actions involving sales of probate estates.

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

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

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

15 As Cheyenne was not the judgment creditor at any time prior to the date of the issuance of
16 the Amended Judgment, anyone looking at the Judgment would believe that it expired on June 4,
17 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were given
18 credence, either the judgment never expired, because she was the real party in interest and was a
19 minor at the time, the Judgment would have otherwise expired or the judgment did expire but was
20 revived upon her reaching the age of majority. To adopt this proposition would frustrate the certainty
21 NRS 17.214 was enacted to promote -- the reliability of title to real property.

22 If tolling of deadlines to amend judgments were sanctioned, title to real property owned by
23 anyone who had ever been a judgment debtor would be clouded, as a title examiner would not know
24 whether a judgment issued more than six years prior had expired pursuant to statute, or was still
25 valid, or could be revived when a real party in interest who was a minor reached the age of majority.
26 As the Court held in *Leven*, one of the primary reasons for the need to strictly comply with NRS
27 17.214's recordation requirement is to "procure reliability of title searches for both creditors and
28 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

1 requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor.

2 *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe
3 that the judgment has expired and he need take no further action to defend himself against execution.

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

5 Cheyenne's Ex Parte Motion next cites NRS 11.300, which provides "if, when the cause of
6 action shall accrue against a person, the person is out of the State, the action may be commenced
7 within the time herein limited after the person's return to the State; and if after the cause of action
8 shall have accrued the person departs from the State, the time of the absence shall not be part of the
9 time prescribed for the commencement of the action." Cheyenne's argument that the deadline to
10 renew the Judgment are tolled by NRS 11.300 fails because, again, renewing a judgment is not a
11 cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada
12 regarding judgments, held in *F/S Manufacturing v. Kensmore*, 798 N.W.2d 853 (N.D. 2011),
13 "Because the statutory procedure for renewal by affidavit is not a separate action to renew the
14 judgment, the specific time period [provided to renew] cannot be tolled under [the equivalent to NRS
15 11.300] based on a judgment debtor's absence from the state." *Id.* at 853.

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

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

26 NRCp 60(b) allows this Court to relieve a party from a final judgment due to mistake (NRCp
27 60(b)(1)) or because a judgment is void (NRCp 60(b)(4)). Both of these provisions apply.

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

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

10 2. *The Amended Judgment is void*

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

16 IV.

17 CONCLUSION

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

20 DATED this ____ day of August, 2018.

21 ROGERS, MASTRANGELO, CARVALHO &
22 MITCHELL

23
24 Stephen H. Rogers, Esq.
25 Nevada Bar No. 5755
26 700 South Third Street
27 Las Vegas, Nevada 89101
28 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 **DEPENDANT'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 Ranch 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
☒ 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.injuryhelplaw.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@rmcmclaw.com

Re: Gary Lewis

Dear Stephen:

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

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

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



CHRISTENSEN LAW
www.injuryhelpnow.com

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

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

1. Within 6 years:

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

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

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

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

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

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

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

Very truly yours,

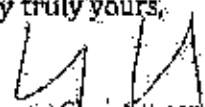

Tommy Christensen
CHRISTENSEN LAW OFFICE, LLC

EXHIBIT "E"
TO AFFIDAVIT



ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

Attorneys At Law
Stephen H. Rogers
Rebecca L. Mastrangelo
Daniel E. Carvalho
Burt Mitchell*
Imran Anwar
Charles A. Michalek
Dawn L. Davis*
Marissa R. Temple
WILL C. MITCHELL
Kimberly C. Boel
*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")



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@rmcmllaw.com

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From: Carolyn Mangundayao
Sent: Friday, September 07, 2018 7:55 AM
To: Thomas Christensen <thomasc@injuryhelpnow.com>; Steve Rogers <srogers@rmcmllaw.com>; breenarntz@me.com
Cc: Reception <reception1st@injuryhelpnow.com>
Subject: RE: Gary Lewis

See attached.

Thank you.



Carolyn Mangundayao

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

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

700 South Third Street

Las Vegas, Nevada 89101

Telephone: (702) 383-3400

Facsimile: (702) 384-1460

Email: cmangundayao@rmcmllaw.com

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

Sent: Thursday, September 06, 2018 5:48 PM

To: Steve Rogers <rogers@rmcmllaw.com>; breenamtz@ma.com

Cc: Carolyn Mangundayao <cmangundayao@rmcmllaw.com>; Reception <receptionist@injurynow.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 “K”



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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

14 STIPULATION TO ENTER JUDGMENT

15 Date: n/a
16 Time: n/a

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

- 19 1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.
- 20 2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the
21 present.
- 22 3. Gary Lewis has been a resident and subject to service of process in California from 2010
23 to the present.
- 24 4. Plaintiff obtained a judgment against GARY LEWIS which was entered on August 26,
25 2008. Because the statute of limitations on the 2008 judgment had been tolled as a result of GARY
26 LEWIS' absence from the State of Nevada pursuant to NRS 11.300, Plaintiff obtained an amended
27 judgment that was entered on May 18, 2018.
- 28 5. Plaintiff filed an action on the judgment under *Mandlebaum v. Gregovich*, 50 P. 849, 851

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

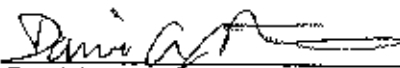
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.

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

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

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

13 Dated this 12 day of September, 2018

14
15 

16 David A. Stephens, Esq.
17 Nevada Bar No. 00902
18 Stephens & Bywater
19 3636 North Rancho Drive
20 Las Vegas, Nevada 89130
21 Attorney for Cheyenne Nalder

14
15 

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

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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

14 JUDGMENT

15 Date: n/a

16 Time: n/a

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

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff Cheyenne Nalder
19 have and recover judgment from Defendant Gary Lewis in the sum of three million five hundred
20 thousand dollars, (\$3,500,000.00), plus prejudgment interest through September 4, 2018 in the sum
21 of two million two hundred eleven thousand eight hundred twenty and 41/100 dollars,
22 (\$2,211,820.41), minus fifteen thousand dollars, (\$15,000.00), previously paid to Cheyenne Nalder,

23 ///

24 ///

25 ///

26
27
28

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

4 DATED this _____ day of September, 2018.

5
6
7 _____
8 DISTRICT JUDGE

9 Submitted by:

10 STEPHENS & BYWATER, P.C.

11
12 _____
13 DAVID A. STEPHENS, ESQ.

14 Nevada Bar No. 00902
15 3636 North Rancho Drive
16 Las Vegas, Nevada 89130
17 Attorneys for Plaintiff
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “L”



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.)	CASE NO. A-18-772220-C
)	DEPT NO. XXIX
Gary Lewis,)	
Defendant.)	
<hr/>		
United Automobile Insurance Company,)	
Intervenor,)	
<hr/>		
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,

1 as a result of the finding of coverage on October 30, 2013 and more particularly states as
2 follows:
3

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

8 2. That United Automobile Insurance Company, hereinafter referred to as "UAIC",
9 was at all times relevant to this action an insurance company doing business in Las Vegas,
10 Nevada.
11

12 3. That third-party defendant, Randall Tindall, hereinafter referred to as "Tindall,"
13 was and is at all times relevant to this action an attorney licensed and practicing in the State of
14 Nevada. At all times relevant hereto, third-party Defendant, Resnick & Louis, P.C. was and is a
15 law firm, which employed Tindall and which was and is doing business in the State of Nevada.
16

17 4. That the true names and capacities, whether individual, corporate, partnership,
18 associate or otherwise, of Defendants, DOES I through V, are unknown to cross-claimant, who
19 therefore sues said Defendants by such fictitious names. cross-claimant is informed and
20 believes and thereon alleges that each of the Defendants designated herein as DOE is
21 responsible in some manner for the events and happenings referred to and caused damages
22 proximately to cross-claimant as herein alleged, and that cross-claimant will ask leave of this
23 Court to amend this cross-claim to insert the true names and capacities of DOES I through V,
24 when the same have been ascertained, and to join such Defendants in this action.
25

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

28 6. This incident occurred on private property.

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

3
4 8. Before the subject incident, Lewis received a statement from UAIC instructing
5 him that his renewal payment was due by June 30, 2007.

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

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

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

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

12
13 13. Following the incident, Cheyenne's father, James Nalder, extended an offer to
14 UAIC to settle Cheyenne's injury claim for Lewis's policy limit of \$15,000.00.

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

16 15. UAIC never filed a declaratory relief action.

17 16. UAIC rejected Nalder's offer.

18 17. UAIC rejected the offer without doing a proper investigation and claimed that
19 Lewis was not covered under his insurance policy and that he did not renew his policy by June
20 30, 2007.

21
22 18. After UAIC rejected Nalder's offer, James Nalder, on behalf of Cheyenne, filed a
23 lawsuit against Lewis in the Nevada state court.

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

26 20. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a
27 default judgment against Lewis for \$3,500,000.00.
28

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

2 22. On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of
3 contract, an action on the judgment, breach of the implied covenant of good faith and fair
4 dealing, bad faith, fraud, and violation of NRS 686A.310.
5

6 23. Lewis assigned to Nalder his right to "all funds necessary to satisfy the
7 Judgment." Lewis left the state of Nevada and located in California prior to 2010. Neither Mr.
8 Lewis nor anyone on his behalf has been subject to service of process in Nevada since 2010.
9

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

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

16 26. Nalder and Lewis appealed to the Ninth Circuit. The Ninth Circuit reversed and
17 remanded the matter because Lewis and Nalder had facts to show the renewal statement was
18 ambiguous regarding the date when payment was required to avoid a coverage lapse.
19

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

24 28. The district court also determined UAIC breached its duty to defend Lewis, but
25 did not award damages because Lewis did not incur any fees or costs in defense of the Nevada
26 state court action.
27
28

1 29. Based on these conclusions, the district court ordered UAIC to pay the policy
2 limit of \$15,000.00.
3

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

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

9 32. UAIC did an unreasonable investigation, did not defend Lewis, did not attempt to
10 resolve or relieve Lewis from the judgment against him, did not respond to reasonable
11 opportunities to settle and did not communicate opportunities to settle to Lewis.
12

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

16 34. After the first certified question was fully briefed and pending before the Nevada
17 Supreme Court, UAIC embarked on a new strategy putting their interests ahead of Lewis's in
18 order to defeat Nalder's and Lewis's claims against UAIC.
19

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

24 36. Even though UAIC knew at this point that it owed a duty to defend Gary Lewis,
25 UAIC did not undertake to investigate the factual basis or the legal grounds or to discuss this
26 with Gary Lewis, nor did it seek declaratory relief on Lewis's behalf regarding the statute of
27 limitations on the judgment.
28

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

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

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

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

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

12 42. As a result, UAIC contends Nalder can no longer recover damages above the
13 \$15,000.00 policy limit for breach of the contractual duty to defend. UAIC admits the Nalder
14 judgment was valid at the time the Federal District Court made its decision regarding damages.

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

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

22 45. Both the suit against UAIC and the judgment against UAIC entered by the trial
23 court were done well within even the non-tolled statute of limitations.
24
25
26
27
28

1 46. Even though Nalder believed the law is clear that UAIC is bound by the
2 judgment, regardless of its continued validity against Lewis, Nalder took action in Nevada and
3 California to demonstrate the continued validity of the underlying judgment against Lewis.
4

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

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

10 49. Nalder hired David Stephens to obtain a new judgment. First David Stephens
11 obtained an amended judgment in Cheyenne's name as a result of her reaching the age of
12 majority.
13

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

16 51. A separate action was then filed with three distinct causes of action pled in the
17 alternative. The first, an action on the amended judgment to obtain a new judgment and have
18 the total principal and post judgment interest reduced to judgment so that interest would now
19 run on the new, larger principal amount. The second alternative action was one for declaratory
20 relief as to when a renewal must be filed base on when the statute of limitations, which is
21 subject to tolling provisions, is running on the judgment. The third cause of action was, should
22 the court determine that the judgment is invalid, Cheyenne brought the injury claim within the
23 applicable statute of limitations for injury claims - 2 years after her majority.
24

25 52. Nalder also retained California counsel, who filed a judgment in California, which
26 has a ten year statute of limitations regarding actions on a judgment. Nalder maintains that all
27 of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the
28

1 judgment; but out of an abundance of caution and to maintain the judgment against Lewis, she
2 brought them to demonstrate the actual way this issue should have been litigated in the State
3 Court of Nevada, not at the tail end of an appeal.
4

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

7 54. UAIC hired attorney Stephen Rogers, Esq. to represent GARY LEWIS,
8 misinforming him of the factual and legal basis of the representation. This resulted in a number
9 of improper contacts with a represented client.
10

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

15 56. A similar thing happened in another case with a frivolous defense put forth by
16 Lewis Brisbois. The trial judge former bar counsel, Rob Bare, dismissed a complaint
17 erroneously which wasn't reversed by the Nevada Supreme Court until the damage from the
18 erroneous decision had already occurred.
19

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

22 58. In order to evaluate the benefits and burdens to Lewis and likelihood of success of
23 the course of action proposed by UAIC and each of the Defendants, Thomas Christensen asked
24 for communication regarding the proposed course of action and what research supported it. It
25 was requested that this communication go through Thomas Christensen's office because that
26 was Gary Lewis's desire, in order to receive counsel prior to embarking on a course of action.
27
28

1 59. Christensen informed Stephen Rogers, Esq. that when Gary Lewis felt the
2 proposed course by UAIC was not just a frivolous delay and was based on sound legal research
3 and not just the opinion of UAIC's counsel, that it could be pursued.
4

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

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

9 62. UAIC, without notice to Lewis or any attorney representing him, then filed two
10 motions to intervene, which were both defective in service on the face of the pleadings.
11

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

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

16 65. David Stephens, Esq., counsel for Naider in her 2018 action, through diligence,
17 discovered the filings on the court website. He contacted Matthew Douglas, Esq., described the
18 lack of service, and asked for additional time to file an opposition.
19

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

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

24 68. The granting of UAIC's Motion to Intervene after judgment is contrary to NRS
25 12.130, which states: Intervention: Right to intervention; procedure, determination and costs;
26 exception. 1. Except as otherwise provided in subsection 2: (a) Before the trial ...
27
28

1 69. These actions by State Actor David Jones ignore due process, the law, the United
2 States and Nevada constitutional rights of the parties. The court does the bidding of insurance
3 defense counsel and clothes defense counsel in the color of state law in violation of 42 USCA
4 section 1983.
5

6 70. David Stephens and Breen Amtz worked out a settlement of the action and
7 signed a stipulation. This stipulation was filed and submitted to the court with a judgment prior
8 to the "hearing" on UAIC's improperly served and groundless motions to intervene.
9

10 71. Instead of signing the judgment and ending the litigation, the court asked for a
11 wet signed stipulation as a method of delaying signing the stipulated judgment.
12

13 72. This request was complied with prior to the September 19, 2018 "hearing" on the
14 Motion to Intervene. The judge, without reason, failed to sign the judgment resolving the case.
15

16 73. Instead, the judge granted the Motion to Intervene, fraudulently claiming, in a
17 minute order dated September 26, 2018, that no opposition had been filed.
18

19 74. Randall Tindall, Esq. filed unauthorized pleadings on behalf of Gary Lewis on
20 September 26, 2018.
21

22 75. UAIC hired Tindall to further its strategy to defeat Naider and Lewis' claims.
23 Tindall agreed to the representation despite his knowledge and understanding that this strategy
24 amounted to fraud and required him to act against the best interests of his "client" Lewis.
25

26 76. Tindall mischaracterized the law and filed documents designed to mislead the
27 Court and benefit UAIC, to the detriment of Gary Lewis.
28

 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.

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

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

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

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

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

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

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

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

22 88. Gary Lewis has duly performed all the conditions, provisions and terms of the
23 agreements or policies of insurance with UAIC relating to the claim against him, has furnished
24 and delivered to UAIC full and complete particulars of said loss and has fully complied with all
25 the provisions of said policies or agreements relating to the giving of notice as to said loss, and
26 has duly given all other notices required to be given by Gary Lewis under the terms of such
27 policies or agreements.
28

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

11 90. That UAIC failed to settle the claim within the policy limits when given the
12 opportunity to do so and then compounded that error by making frivolous and fraudulent claims
13 and represented to the court that it would be bound by any judgment and is therefore responsible
14 for the full extent of any judgment against Gary Lewis in this action.
15

16 91. UAIC and Tindall's actions have interfered with the settlement agreement Breen
17 Airtz had negotiated with David Stephens and have caused Gary Lewis to be further damaged.
18

19 92. The actions of UAIC and Tindall, and each of them, in this matter have been
20 fraudulent, malicious, oppressive and in conscious disregard of Gary Lewis' rights and therefore
21 Gary Lewis is entitled to punitive damages in an amount in excess of Ten Thousand Dollars
22 (\$10,000.00).
23

24 93. Upon information and belief, at all times relevant hereto, that all Defendants, and
25 each of them, whether individual, corporate, associate or otherwise, were the officers, directors,
26 brokers, agents, contractors, advisors, servants, partners, joint venturers, employees and/or
27 alter-egos of their co-Defendants, and were acting within the scope of their authority as such
28

1 agents, contractors, advisors, servants, partners, joint venturers, employees and/or alter-egos
2 with the permission and consent of their co-Defendant.
3

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

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

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

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

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

16 99. That UAIC, and each of them, failed to promptly provide to Gary Lewis a
17 reasonable explanation of the basis in the Policy, with respect to the facts of the Nalder claim
18 and the applicable law, for the delay in the claim or for an offer to settle or compromise the
19 claim.
20

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

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

25 102. That Gary Lewis has suffered anxiety, worry, mental and emotional distress as a
26 result of the conduct of UAIC, and each of the Defendants.
27
28

1 103. The conduct of UAIC, and each of the Defendants, was oppressive and malicious
2 and done in conscious disregard for the rights of Gary Lewis.
3

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

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

17 91. As a proximate result of the aforementioned breach of contract, Gary Lewis has
18 suffered and will continue to suffer in the future damages as a result of the delayed payment on
19 the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert
20 those figures when such have been fully ascertained.
21

22 92. As a further proximate result of the aforementioned breach of contract, Gary
23 Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages
24 and out of pocket expenses, all to their general damage in excess of \$10,0000.
25

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

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

3
4 95. That UAIC, and each of the them, breached the covenant of good faith and fair
5 dealing by their actions which include but are not limited to:

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

17 96. As a proximate result of the aforementioned breach of the covenant of good faith
18 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a
19 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis
20 prays leave of the court to insert those figures when such have been fully ascertained.
21

22 97. As a further proximate result of the aforementioned breach of the covenant of
23 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional
24 distress, and other incidental damages and out of pocket expenses, all to their general damage in
25 excess of \$10,0000.
26

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

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

3
4 99. The conduct of UAIC, and each of the Defendants, was oppressive and malicious
5 and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore
6 entitled to punitive damages.

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

- 10
11 a. Unreasonable conduct in investigating the loss;
12 b. Unreasonable failure to affirm or deny coverage for the loss;
13 c. Unreasonable delay in making payment on the loss;
14 d. Failure to make a prompt, fair and equitable settlement for the loss;
15 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
16 making payment on the loss;
17 f. Failing to defend Gary Lewis;
18 g. Fraudulent and frivolous litigation tactics;
19 h. Filing false and fraudulent pleadings;
20 i. Conspiring with others to file false and fraudulent pleadings;

21
22 101. As a proximate result of the aforementioned breach of the covenant of good faith
23 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a
24 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis
25 prays leave of the court to insert those figures when such have been fully ascertained.

26
27 102. As a further proximate result of the aforementioned breach of the covenant of
28 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional

1 distress, and other incidental damages and out of pocket expenses, all to their general damage in
2 excess of \$10,000.

3
4 103. As a further proximate result of the aforementioned breach of the covenant of
5 good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this
6 claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and
7 necessarily incurred in connection therewith.

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

12 105. That UAIC, and each of them, violated NRS 686A.310 by their actions which
13 include but are not limited to:

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

24
25 106. As a proximate result of the aforementioned violation of NRS 686A.310, Gary
26 Lewis has suffered and will continue to suffer in the future damages as a result of the delayed
27

1 payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court
2 to insert those figures when such have been fully ascertained.
3

4 107. As a further proximate result of the aforementioned violation of NRS 686A.310,
5 Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental
6 damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

7 108. As a further proximate result of the aforementioned violation of NRS 686A.310,
8 Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each
9 of them, are liable for their attorney's fees reasonably and necessarily incurred in connection
10 therewith.
11

12 109. The conduct of UAIC, and each of them, was oppressive and malicious and done
13 in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore entitled to
14 punitive damages.

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

17 111. That at the time of the accident herein complained of, and immediately prior
18 thereto, UAIC, and each of them, in breaching its duty owed to Gary Lewis, was negligent and
19 careless, inter alia, in the following particulars:
20

- 21 a. Unreasonable conduct in investigating the loss;
- 22 b. Unreasonable failure to affirm or deny coverage for the loss;
- 23 c. Unreasonable delay in making payment on the loss;
- 24 d. Failure to make a prompt, fair and equitable settlement for the loss;
- 25 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
26 making payment on the loss;
- 27 f. Failing to defend Gary Lewis;
- 28

- 1 g. Fraudulent and frivolous litigation tactics;
- 2 h. Filing false and fraudulent pleadings;
- 3 i. Conspiring with others to file false and fraudulent pleadings;
- 4

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

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

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

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

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

21 117. As a proximate result of the aforementioned intentional infliction of emotional
22 distress, Gary Lewis has suffered severe and extreme anxiety, worry, mental and emotional
23 distress, and other incidental damages and out of pocket expenses, all to his general damage in
24 excess of \$10,0000.
25
26
27
28

1 118. As a further proximate result of the aforementioned negligence, Gary Lewis was
2 compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are
3 liable for his attorney's fees reasonably and necessarily incurred in connection therewith.
4

5 119. The conduct of UAIC, and each of them, was oppressive and malicious and done
6 in conscious disregard for the rights of Gary Lewis and Gary Lewis is therefore entitled to
7 punitive damages.

8 120. That Randall Tindall, as a result of being retained by UAIC to represent Gary
9 Lewis, owed Gary Lewis the duty to exercise due care toward Gary Lewis.
10

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

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

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

17 124. Gary Lewis was damaged by all of the above as a result of the breach by Randall
18 Tindall.
19

20 WHEREFORE, Gary Lewis prays judgment against UAIC, Tindall and each of
21 them, as follows:
22

23 1. Indemnity for losses under the policy including damages paid to Mr. Lewis,
24 attorney fees, interest, emotional distress, and lost income in an amount in excess of
25 \$10,000.00;

26 2. General damages in an amount in excess of \$10,000.00;

27 3. Punitive damages in an amount in excess of \$10,000.00;
28

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@sdblawnfirm.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 Arutz, Esq.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
breen@breen.com



An employee of CHRISTENSEN LAW OFFICES

EXHIBIT “M”



UNITED AUTOMOBILE INSURANCE COMPANY

NEVADA PERSONAL AUTOMOBILE POLICY

United Automobile Insurance Company
P.O. Box 14950
Las Vegas, NV 89114 - 4950

WARNING:

Any person who knowingly files a statement of claim containing any misrepresentation or any false, incomplete or misleading information may be guilty of a criminal act punishable under state or federal law, or both, and may be subject to civil penalties and **MAY LEAD TO THE DENIAL OF A CLAIM.**

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AGREEMENT

We agree with you, in return for your premium payment, to insure you subject to the terms of this policy. These policy provisions, along with your application, the declarations page and any applicable endorsements will constitute your policy of insurance. We will insure you for the coverages and Limits of Liability for which a premium is shown in the Declarations of this policy.

DEFINITIONS USED THROUGHOUT THIS POLICY

- (1) "We," "us," and "our" mean the Company providing this insurance.
 - (2) "You" and "your" mean the Policyholder named in the Declarations and spouse if living in the same household.
 - (3) "Bodily injury" means bodily injury, sickness, disease or death.
 - (4) "Property damage" means damage to or destruction of tangible property, including loss of its use.
 - (5) "Car" means a licensed and registered automobile of the private passenger type designed for use upon a public road. "Car" also means a vehicle with a load capacity of 1,500 pounds or less of the pick-up or van type not used in any business. This definition shall not include:
 - (a) motorcycles, scooters, mopeds;
 - (b) midget cars;
 - (c) golf mobiles;
 - (d) tractors;
 - (e) farm machinery;
 - (f) any vehicle operated on rails or crawler treads;
 - (g) or any vehicle used as a residence or premises.
 - (h) go carts
 - (6) "Utility trailer" means a vehicle designed to be towed by a private passenger car.
 - (7) "Your insured car" means:
 - (a) the car owned by you described in the Declarations.
 - (b) a car you acquire during the policy period.
 1. "Replacement Car": The car must replace the car described in the Declarations. It will have the same coverages as the car it replaced with the exception of Car Damage Coverage. If you want coverage to apply to the replacement car you must notify us within 30 days of the date you acquire it.
When you ask us to add Car Damage Coverage for the replacement car, such coverage will be in effect no earlier than the time and day on which you ask us to add the coverage. If you ask us to add Car Damage Coverage in writing, the coverage will not be in effect until 12:01 AM, on the day following the date of the postmark shown on the envelope containing your request. If a postage meter is used on the envelope containing your request to add Car Damage Coverage, coverage will be in effect no earlier than the time and day your request is received by us. All insurance for the car being replaced is ended when you take delivery of the replacement car.
 2. "Newly Acquired Additional Car": When you ask us to add an additional car, not previously owned by you, a relative, or a resident, acquired by you while this policy is in effect, you must notify us of the newly acquired additional car within 14 days of date it was acquired to have liability coverage apply.
 3. "Substitute Car": any substitute car or utility trailer not owned by you, a relative, or a resident being temporarily used by you with the express permission of the owner. The car must be a substitute for another car covered which is withdrawn from normal use due to breakdown, repair, servicing, loss or destruction.
- For purposes of this policy, any car leased by you under a written agreement for a continuous period of at least six months shall be deemed to be owned by you.
- (8) "Non-owned car" means a car used by you with the express permission of the owner and not owned by, furnished, or available for the regular use of you, a relative or a resident.
 - (9) "Private passenger car" means a car of the private passenger type with not less than four wheels. This definition shall not include a van or pick-up truck.
 - (10) "Auto business" means the business or occupation of selling, leasing, repairing, servicing, delivering, testing, storing or parking cars.
 - (11) "Business" includes trade, profession, or occupation, or any use where compensation of any type is received.
 - (12) "Relative" means a person living in your household and related to you by blood, marriage or adoption, including a ward or foster child.
 - (13) "Resident" means a person, other than a relative, living in your household.
 - (14) "Occupying" means in, on, getting into or out of.
 - (15) "State" means the District of Columbia and any state of the United States of America.
 - (16) "Racing" means preparation for any racing, speed, demolition or stunting contest or activity. Racing also includes participation in the event itself, whether or not such event, activity or contest is organized.
 - (17) "Crime" means any felony and or misdemeanor and any act of eluding the police.
 - (18) "Diminution in value" means the actual loss in market or resale value of property which results from a loss.

- (19) **"Loss"** means sudden, direct, and accidental loss or damage.
- (20) **"Regular use"** means authorized use of a car without being required to ask permission each time it is used or recurring use of a car.
- (21) **"Compensatory money damages"** means any money required to be paid to compensate a person for economic or non-economic damages resulting from bodily injury or property damage.
- (22) **"Punitive or Exemplary damages"** means any money required to be paid for any purpose other than compensatory money damages for bodily injury or property damage.

PART 1 - LIABILITY

COVERAGE A - LIABILITY COVERAGE INSURING AGREEMENT

We will pay damages for bodily injury or property damage for which an insured person is legally liable because of the ownership or use of your insured car or a non-owned car. The bodily injury or property damage must be caused by an auto accident.

We will defend any suit or settle any claim for damages as we think appropriate. We will not defend or settle any suit or claim after we reach our limit of liability. We have no duty to defend any suit or settle any claim for bodily injury or property damage not covered under this policy.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part, **"insured person"** means:

- (1) you, a relative or resident.
- (2) any person using your insured car with your express or implied permission.
- (3) any other person or organization but only with respect to legal liability for acts or omissions of:
 - (a) a person covered under this Part while using your insured car; or
 - (b) you while using a car other than your insured car. The car must not be owned or hired by that person or organization.

As used in this Part, **"insured person"** means with respect to a non-owned car only you, a relative or a resident.

ADDITIONAL PAYMENTS

We will pay, in addition to our limit of liability:

- (1) all costs we incur in the settlement of a claim or defense of a suit.
- (2) all costs assessed against you in our defense of a suit.
- (3) interest on damages awarded in a suit we defend accruing after a judgment is entered. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
- (4) Any other reasonable expenses incurred at our request.

EXCLUSIONS

We do not provide coverage for bodily injury or property damage:

- (1) resulting from the ownership or use of a vehicle when used to carry persons or property for a charge. This includes rental of your insured car to others. This exclusion does not apply to shared expense car pools.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes, but is not limited to, mail, newspaper, floral and food delivery.
- (3) caused intentionally by or at the direction of an insured person.
- (4) for which a person is an insured under a nuclear energy liability insurance policy. This exclusion applies even if the limits of that policy are exhausted.
- (5) to an employee of an insured person arising in the course of employment by an insured person. Coverage does apply to a domestic employee unless workers' compensation benefits are required or available for that employee.
- (6) resulting from the ownership or use of a vehicle by any person while that person is employed or otherwise engaged in a business, unless we were told of this use before an accident, and an additional premium was charged.
- (7) to property owned or being transported by an insured person.
- (8) to property rented to, used by or in the care of an insured person, except a residence or private garage.
- (9) resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels.
- (10) arising out of the ownership or use of any vehicle, other than your insured car, which is owned by or available for regular use by you, a relative or resident.
- (11) resulting from the use of any vehicle for racing.
- (12) assumed by an insured person under any contract or agreement.
- (13) arising out of the ownership, maintenance or use of a car when rented or leased to others by any insured person.
- (14) incurred while the car is used for towing a trailer designed for use with other than a private passenger car.
- (15) For any amount in excess of the minimum financial responsibility laws of the state where the accident occurs or the State of

Nevada resulting from the use of a car by a person specifically excluded.

- (16) due to or resulting from war, insurrection, rebellion, riot, or revolution.
- (17) arising out of the use of:
 - (a) your insured car by a person without your express or implied permission; or
 - (b) a car by any person without the owner's express or implied permission
- (18) arising out of actual, alleged, or threatened discharge, dispersal, release, or escape of any pollutant except if it is sudden and accidental and arises directly from collision of your insured car.
- (19) in the event of an accident occurring outside the state of Nevada, we will not pay any amount in excess of the minimum financial responsibility limits of that state, or greater than the minimum financial responsibility limits of Nevada, whichever is higher.
- (20) While the insured person is in the commission of a crime.
- (21) to any insured person or third party which results from the discharge of a firearm
- (22) for punitive or exemplary damages.
- (23) arising out of the operation of farm machinery.
- (24) as an insured driver of a non-owned vehicle, this insurance will be secondary to any and all insurance applicable to the non-owned vehicle operated by the insured with permission of the owner of said non-owned vehicle.
- (25) sustained by any person while using or operating your insured car while engaged in the business of selling, leasing, repairing, servicing, parking or storing motor vehicles. This includes testing, road testing and delivery.
- (26) After the sale or relinquished ownership of an insured car.

FEDERAL TORT CLAIMS ACT EXCLUSION

The following are not insured persons under PART I- LIABILITY of the policy:

- (1) the United States of America or any of its agencies.
- (2) any person for bodily injury or property damage arising from operation of a vehicle by that person as an employee of the United States Government.

CONFORMITY WITH STATE FINANCIAL RESPONSIBILITY LAWS

When we certify this policy as proof under a state financial responsibility law, it will comply with that law to the extent of the coverage and limits of liability required by that law.

You agree to reimburse us for any payment made by us that we would not have been obligated to make under the terms of this policy.

OUT OF STATE INSURANCE

If you are traveling in a state that has compulsory motor vehicle insurance requirements for non-residents, we will automatically provide the required liability insurance. We will not provide any coverage under the no-fault law or any other similar law of any other state.

LIMITS OF LIABILITY

The limits of liability shown in the Declarations apply subject to the following:

- (1) the bodily injury liability limits for "each person" is the maximum we will pay as damages for bodily injury to one person in one accident, including, but not limited to, derivative claims of a relative.
- (2) subject to the bodily injury liability limit for "each person," the bodily injury liability limit for "each accident" is the maximum we will pay as damages for all bodily injury to two or more persons in any one accident.
- (3) the property damage liability limit for "each accident" is the maximum we will pay for all damages to property in one accident.
- (4) all bodily injury or property damage limits are subject to Exclusion (19), if applicable.

All bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions, or occurrence shall be considered as arising out of one accident

We will pay no more than the maximum limit of liability regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

We will reduce any amount payable under this coverage to an injured person by any amount paid to that person under PART III, Uninsured/Underinsured Motorists Coverage, of this policy.

OTHER INSURANCE

If there is other applicable liability insurance on a loss covered by this Part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits. However, any insurance afforded under this part for a vehicle you do not own is excess over any other collectible insurance.

No insurance is afforded on newly acquired vehicles if there is other valid and/or collectible insurance.

PART II - MEDICAL PAYMENTS

COVERAGE B - MEDICAL PAYMENTS COVERAGE INSURING AGREEMENT

We will pay reasonable expenses incurred for necessary medical and funeral services because of **bodily injury**,

- (1) sustained by an **insured person**; and
- (2) caused by accident.

We will pay those expenses incurred within one year from the date of the accident.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part "**insured person**" means:

- (1) Any person while occupying your insured car while the car is being used by you, a relative, a resident or another person if that person has your express or implied permission.

EXCLUSIONS

This coverage does not apply for **bodily injury** to any person:

- (1) sustained while occupying your insured car when used to carry persons for a charge. This exclusion does not apply to shared expense car pools.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes but is not limited to mail, newspaper, floral, and food delivery.
- (3) sustained while occupying any vehicle located for use as a residence or premises.
- (4) sustained while occupying a motorized vehicle with less than four wheels.
- (5) sustained while occupying or through being struck by any vehicle, other than your insured car, which is owned by or furnished or available for regular use by you, a relative or resident.
- (6) sustained while occupying a vehicle while the vehicle is being used in the business of an insured person.
- (7) occurring during the course of employment if benefits are payable or must be provided under a workers' compensation law or similar law.
- (8) caused by war, insurrection, rebellion, riot, revolution, nuclear reaction, radiation or radioactive contamination.
- (9) while in the commission of a crime.
- (10) sustained while occupying a vehicle without the owner's express permission to do so.
- (11) resulting from the use of a car by a person or persons specifically excluded.
- (12) while involved in any racing event

LIMITS OF LIABILITY

The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

NO DUPLICATION, STACKING OR COMBINING OF MEDICAL COVERAGE

If you have more than one car insured by us, we will not pay any insured person for bodily injury sustained in any one accident, more than the limit of "Medical Payment Coverage" which you have on any one of those insured cars.

Any amount paid or payable for medical expenses under the Liability or Uninsured/Underinsured Motorists coverages of this policy shall be deducted from the amounts payable under this Part. No payment will be made under this coverage unless the injured person or his legal representative agrees that any payment shall be applied toward any settlement or judgment that person receives under Part I or Part III of this policy.

OTHER INSURANCE

Any payment we make under this Part to an insured person shall be prorated with any other applicable auto medical payments insurance.

We will not be liable under this policy for any medical expense paid or payable under the provisions of any:

- (1) premises insurance providing coverage for medical expenses; or
- (2) individual blanket, or group accident, disability or hospitalization plan; or
- (3) medical, surgical, hospital, or funeral services, benefit or reimbursement plan; or
- (4) worker's compensation or disability benefits law or any similar law.

ARBITRATION

If any **insured person** and we do not agree that the **insured person** is legally entitled to recover **compensatory money damages** or on the amount of **compensatory money damages**, then the dispute will be arbitrated. However, disputes concerning coverage under this part may not be arbitrated.

The **insured person** may make a written demand for arbitration. We and the **insured person** will each select an arbitrator. The two selected arbitrators will then select a third arbitrator. If they cannot agree within 30 days then upon request of the **insured person** or us, the third arbitrator will be selected by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear equally the expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** lives. Local rules of law and evidence will apply. Any decision of the arbitrators will not be binding.

PART III UNINSURED/UNDERINSURED MOTORIST COVERAGE C - UNINSURED/UNDERINSURED MOTORISTS COVERAGE INSURING AGREEMENT

We will pay **compensatory damages** which an **insured person** is legally entitled to recover from the owner or operator of an **Uninsured or Underinsured motor vehicle** because of **bodily injury**,

- (a) sustained by an **insured person**; and
- (b) caused by an accident.

The owner's or operator's liability for these **damages** must be caused by an accident and arise out of the ownership, maintenance or use of the **uninsured or underinsured motor vehicle**.

Any judgment for **damages** arising out of a suit brought without our written consent is not binding on us.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part:

- (1) **"Insured person"** means:
 - (a) you, a relative or a resident.
 - (b) any other person occupying your insured car.
- (2) **Underinsured motor vehicle** means a land motor vehicle or trailer of any type for which the sum of the **damages** for **bodily injury** which the **insured** has incurred and is legally entitled to recover from the owner or operator of the other vehicle up to the limits of his own coverage to the extent that those **damages** exceed the limits of the coverage for **bodily injury** carried by that owner or operator at the time of the accident and is:
 - (a) on the Declarations page of the **insured** as Underinsured Motorists Coverage.However, **underinsured motor vehicle** does not include:
 - (b) an **uninsured motor vehicle**.
 - (c) a vehicle insured under the liability coverage of the same policy of which this Underinsured Motorists Coverage is a part.
- (3) **Uninsured motor vehicle** means a land motor vehicle or trailer of any type:
 - (a) to which no liability bond or policy applies at the time of the accident.
 - (b) to which a liability bond or policy applies at the time of the accident. In this case, its limit for liability must be less than the minimum limit for liability specified by Nevada law.
 - (c) a hit-and-run vehicle whose owner or operator cannot be identified and which hits:
 - (i) the **insured person**;
 - (ii) a vehicle an **insured person** is occupying; or
 - (iii) your insured car.
 - (d) to which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - (i) denies coverage; or
 - (ii) is or becomes insolvent.

However, **uninsured motor vehicle** does not include:

- (a) an **underinsured motor vehicle**.

In addition, neither **uninsured** nor **underinsured motor vehicle** includes any vehicle or equipment:

- (a) owned by or furnished or available for the regular use of you, a relative, or a resident.
- (b) operated on rails or crawler treads.
- (c) designed mainly for use off public roads while not on public roads.
- (d) while located for use as a residence or premises.

EXCLUSIONS

This coverage does not apply for bodily injury:

- (1) to a person sustained while using a vehicle without the owner's express or implied permission to do so.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes but is not limited to mail, newspaper, floral, and food delivery.
- (3) to a person if that person or the legal representative of that person makes a settlement without our written consent.
- (4) to a person occupying or struck by a motor vehicle owned by you, a relative or a resident which is not insured for this coverage under this policy.
- (5) to a person occupying your insured car when used to carry persons or property for a charge. This exclusion does not apply to shared expense car pools.
- (6) resulting from the use of a car by a person or persons specifically excluded.
- (7) for punitive or exemplary damages.
- (8) to a person claiming Uninsured / Underinsured Motorists Coverage who does not notify the police within 24 hours if a hit and run driver is involved.
- (9) resulting from the use of an insured car while involved in any racing event.
- (10) resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels.
- (11) resulting from the discharge of a firearm.
- (12) which arises from an auto accident that does not involve physical contact with another vehicle.

This coverage shall not apply directly or indirectly to benefit:

- (a) any insurer or self-insurer under any of the following or similar law:
 - (i) workers' compensation law, or
 - (ii) disability benefits law.
- (b) any insurer of property.

LIMITS OF LIABILITY

NO DUPLICATION, STACKING OR COMBINING OF UNINSURED MOTORIST BODILY INJURY COVERAGE

If you have more than one car insured by us, we will not pay any injured person more than the limit of "Uninsured Motorist Injury Coverage" which you have on any one of those insured cars, regardless of the number of claims made or motor vehicles involved in the accident. Coverage on your other motor vehicles insured by us CANNOT be added, stacked together or combined.

- (1) The limits of liability shown in the Declarations for Uninsured Motorists Coverage or Underinsured Motorists Coverage apply subject to the following:
 - (a) the bodily injury liability limits for "each person" is the maximum we will pay as damages for bodily injury to one person in one accident, including, but not limited to, derivative claims of a relative.
 - (b) subject to the bodily injury liability limit for "each person," the bodily injury liability limit for "each accident" is the maximum we will pay as damages for all bodily injury to two or more persons in any one accident.
- (2) The limits of liability shall be reduced by all sums paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under PART I - LIABILITY of this policy.
- (3) Any amounts otherwise payable for damages under this coverage shall be reduced by all sums paid or payable because of the bodily injury under any of the following or similar laws:
 - (a) workers' compensation law, or
 - (b) disability benefits law.
- (4) Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under PART I - LIABILITY of this policy.
- (5) We will reduce any amount payable under this coverage to an injured person by any amount paid to that person under PART II, MEDICAL PAYMENTS COVERAGE, of this policy.
- (6) No one will be entitled to receive duplicate payments for the same elements of loss.

All bodily injury arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one accident.

We will pay no more than the maximum limit of liability as shown in the Declarations for Uninsured Motorists Coverage or Underinsured Motorists Coverage regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

OTHER INSURANCE

If there is other similar insurance on a loss covered by this Part we will pay our proportionate share as our limit of liability bears to the total limits of all applicable similar insurance. However, any insurance we provide for a vehicle you do not own is excess over any other applicable similar insurance.

ARBITRATION

If any insured person and we do not agree that the insured person is legally entitled to recover compensatory money damages or on the amount of compensatory money damages, then the dispute will be arbitrated. However, disputes concerning coverage under this part may not be arbitrated.

The insured person may make a written demand for arbitration. We and the insured person will each select an arbitrator. The two selected arbitrators will then select a third arbitrator. If they cannot agree within 30 days then upon request of the insured person or us, the third arbitrator will be selected by a judge of a court having jurisdiction.

Each party will pay the expenses it incurs and bear equally the expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in the county in which the insured person lives. Local rules of law and evidence will apply. Any decision of the arbitrators will not be binding.

TRUST AGREEMENT

If we pay you for a loss under this coverage:

- (1) We are entitled to recover from you an amount equal to such payment if there is a legal settlement made or a judgment paid on your behalf with or against any person or organization legally responsible for the loss.
- (2) You must hold in trust for us all rights to recover money which you have against the person or organization legally responsible for the loss.
- (3) You must do everything reasonable to secure our rights and do nothing to prejudice these rights.
- (4) If we ask, you must take necessary or appropriate action, through a representative designated by us, to recover payment as damages from the responsible person or organization.
- (5) You must execute and deliver to us any legal instrument or papers necessary to secure all rights and obligations of you and us as established here.
- (6) An insured person under this coverage must do nothing before or after a loss to prejudice our rights of recovery from any uninsured motorists.

ADDITIONAL CONDITIONS UNDER THIS PART OF THE POLICY

- (1) No claim can be brought against us unless the insured person has fully complied with all the terms of this policy.
- (2) No claim will accrue to an insured person under this part of the policy unless within two years from the date of the accident:
 - (a) the insured person gives us notice of the claim subject to the other terms and conditions of the policy; or
 - (b) an agreement between us and the insured person on any amount due under this part of the policy has been concluded.

ADDITIONAL DUTIES UNDER THIS PART OF THE POLICY

Any Insured person making a claim under this part of the policy shall:

- (1) Give us all the details about any bodily injury and any other information we request;
- (2) Be examined by physicians chosen and paid by us as often as we may reasonably require. Provide us with an authorization and list of medical providers which will allow us to obtain any and all medical records which we deem relevant to the claim made by you. If the insured person is no longer living or unable to act, his or her legal representative shall authorize us to obtain all medical reports and records;
- (3) As a condition precedent to receiving any benefits under this Policy, any person seeking benefits must cooperate with us in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by us when or as often as we may reasonably require at a place designated by us within a reasonable time after we are notified of the claim. Only the person being examined and his attorney may be present during the examination. A minor seeking benefits must submit to an examination with a guardian who may also be present;
- (4) Report a hit and run accident to the police or proper authorities within 24 hours.
- (5) Allow us to see and inspect the car that the insured person occupied in a hit and run accident,
- (6) Immediately send us a copy of all suit papers if the insured person or his or her legal representative sues the party liable for the accident for compensatory money damages.

PART IV - CAR DAMAGE / PHYSICAL DAMAGE (COMPREHENSIVE & COLLISION)

COVERAGE D - CAR DAMAGE COVERAGE INSURING AGREEMENT

We will pay for loss to your insured car:

- (1) caused by collision; or

(2) not caused by **collision**

less any applicable deductibles shown in the Declarations. The deductible shall apply separately to each loss. Coverage does not apply under this Part for a car or utility trailer not owned by you other than your insured car.

LOSS SETTLEMENT

We may pay the loss in money or repair or replace damaged or stolen property. Repair or replacement may be made with materials or equipment of the same like, kind, and quality. We may, at any time before the loss is paid or the property is replaced, return, at our expense, any stolen property either to you or to the address shown in the Declarations, with payment for any resulting damage. We may apply depreciation. We may keep all or part of the property at the agreed or appraised value. You do not have the right to abandon salvage to us.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part:

- (1) **"Your insured car"** means:
 - (a) The vehicle listed in the Declarations for this coverage.
 - (b) A vehicle you acquire during the policy period provided:
 - (i) it replaces the vehicle which was insured under the Car Damage portion of this policy; and
 - (ii) you notify us within 30 days of the date you acquire it.
 - (c) A car or utility trailer not owned by or furnished or available for the regular use of you, a relative or a resident while being used with the express permission of the owner.
- (2) **"Insured person"** means:
 - (a) You, a relative or resident.
 - (b) Any person using your insured car with your express permission.
- (3) **"Collision"** means the impact of your insured car with another object or upset of your insured car. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is loss not caused by collision.
- (4) **"Comprehensive" (excluding collision)** at the Company's option to have repaired or to pay for loss caused other than by collision to the owned automobile or to a non-owned automobile operated by an insured but only for the amount of each such loss in excess of the deductible amount stated in the Declaration as applicable hereto. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, shall not be deemed to be loss caused by collision.
- (5) **"Loss"** means sudden, direct and accidental loss of or damage to:
 - (a) your insured car;
 - (b) its original equipment, as available and permanently installed by the manufacturer as part of a standard option package at the time of purchase; or
 - (b) special equipment as described in the Declarations of this policy.
- (6) **"Like kind and quality part"** includes but is not limited to a replacement part for any vehicle obtained from another vehicle.

Loss shall not include confiscation of the vehicle by any governmental authority.

- (7) **"Special Equipment"** means equipment that was not installed by the manufacturer as part of a standard option package at the time of purchase. This includes but is not limited to:
 - (a) radios, stereos, CD players, tape or cassette players and their accessories;
 - (b) camper shells, toppers, and bed liners;
 - (c) custom interior work such as carpeting, seats, paneling or furniture;
 - (d) any equipment that modifies the vehicles standard appearance or performance;
 - (e) T-tops, moon roofs, sun roofs, nose bras, custom wheels and tires, custom paint work, decals and graphics; or
 - (i) utility trailers.

CAR STORAGE COVERAGE

We will pay up to \$10 a day with a maximum of \$300 for the cost of storage of your insured car in the event of a loss to your insured car for which coverage is provided under this Part, provided that you must cooperate with us in any effort deemed necessary by us to move your insured car to a storage free facility.

TOWING AND RENTAL COVERAGE

This coverage is only available when CAR DAMAGE (Comprehensive and Collision) coverage is purchased. If this optional coverage is purchased, in effect and indicated on the declaration page of the insured at the time of loss, we will pay the following:

1. Towing: \$50 per occurrence, up to \$100 per 12 month period.
2. Rental: \$25 per day to a maximum of \$450 within a 12 month period.

NOTICE: This Towing & Rental coverage is limited to Comprehensive and Collision losses, not mechanical breakdowns.

EXCLUSIONS

We do not cover loss:

- (1) to your insured car while used to carry persons or property for a charge. This includes rental of your insured car to others. This exclusion does not apply to shared-expense car pools.
- (2) Resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes, but is not limited to, mail, newspaper, floral and food delivery.
- (3) caused by war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequences of any of these.
- (4) to sound reproducing equipment not permanently installed in the dash or console opening of your insured car.
- (5) to tapes, compact discs, or similar items used with sound equipment
- (6) to sound receiving or transmitting equipment designed for use as citizens band radios, two-way mobile radios, telephones, scanning monitor receivers, radar detectors, television sets, video cassette recorders, audio cassette recorders, personal computers, their accessories or antennas.
- (7) to awnings, cabanas, or equipment designed to provide living facilities.
- (8) resulting from prior loss or damage, manufacturer's defects, wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires. However, coverage does apply if the damage is the result of other loss covered by this policy.
- (9) to your insured car due to destruction or confiscation by governmental authorities because of use in illegal activities, or failure to bring it into compliance with the Environmental Protection Agency or the Department of Transportation.
- (10) to special equipment not described in the Declarations.
- (11) to refrigeration, cooling or sleeping facilities.
- (12) resulting from your or a family member's ownership, maintenance or use of your insured car in any racing event.
- (13) caused by the theft or conversion of your insured car by a person you have voluntarily entrusted your insured car to. This exclusion does not apply when your insured car is stolen from the person you loaned the car to, if the theft is reported to the police within 24 hours of the loss.
- (14) to your insured car arising out of or during its use for the transportation of any:
 - (a) explosive substance;
 - (b) flammable liquid, or
 - (c) similar hazardous materials; except transportation incidental to your ordinary household or farm activities.
- (15) to clothes, tools or personal effects.
- (16) to your insured car caused by or resulting from you acquiring your insured car from the seller without legal title available to you.
- (17) to any equipment which mechanically or structurally changes your insured car and results in an increase in performance.
- (18) resulting from the use or operation of your insured car in the commission of a crime or while driving under the influence of alcohol or illegal drug usage.
- (19) To your insured car caused intentionally by or at the direction of an insured person.
- (20) To your insured car while being operated by a person or persons specifically excluded.
- (21) To any vehicle not owned by you not caused by collision.
- (22) To any vehicle that is subject to any bailment lease, conditional sale or consignment agreement, not specifically declared and described in this policy.
- (23) To your insured car due to diminution in value.

LIMIT OF LIABILITY

Our limit of liability for loss shall not exceed the lesser of:

- (1) the actual cash value of your insured car which was stolen or damaged; or
- (2) the amount necessary to repair or replace your insured car which was stolen or damaged; or
- (3) the amount necessary to repair or replace a utility trailer not owned by you, a relative or resident subject to a maximum of \$500.

However, in the event that the coverage applies to a car you do not own, our liability is limited to the highest actual cash value of your insured car described in the Declarations for which Car Damage Coverage has been purchased.

Special Equipment is not covered unless the value of the equipment has been reported to us prior to the loss and a premium has been paid for the additional coverage as described in the Declarations. Our limit of liability for this equipment shall be the lesser of:

- (1) the actual cash value; or
- (2) the declared value subject to a \$50 deductible.

Sound reproducing equipment and component parts shall be subject to a maximum limit of \$1,000 in the aggregate.

OTHER INSURANCE

If there is other applicable similar insurance on a loss covered by this Part, we will pay only that proportion of the loss that our limit of liability bears to the total limits of all applicable similar insurance. However, any insurance afforded under this Part for a vehicle you do not own is excess over any other applicable similar insurance.

APPRAISAL

You or we may demand appraisal of the loss. Each will appoint and pay a competent and licensed appraiser and will equally share other appraisal expenses. The appraisers will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of loss. An award in writing by any two will determine the amount payable subject to the terms of this policy.

NO BENEFIT TO BAILEE

This insurance shall not in any way benefit any person or organization caring for or handling property including your insured car for a fee.

PART V - NON-OWNER COVERAGE

This Part V applies only if the term "Non-Owner" appears on the Declarations of the policy. The purpose of "Non-Owner" Coverage is to insure the named insured against the liability imposed by the law upon the named insured for bodily injury to or death of any person or damage to property to the amounts and limits stated on the Declaration of this policy and growing out of the use or operation by the named insured within the continental limits of the United States or the Dominion of Canada of a non-owned automobile. If the term "Non-Owner" appears on the Declarations of the policy, then all the terms and conditions of the policy apply except as modified herein, and to the extent that any definition, term or provision of Part V conflicts with any definition, term or provision of any other Part of this policy, the purpose, definitions, terms and provisions of Part V shall control the other Part of this policy.

If this Part V applies then:

1) In Part I - Liability and in all other Parts incorporating said section "Insured Person" is deleted and the following is substituted: **Insured Person.** The only person insured under this policy is the named insured and his or her spouse, if a resident of the same household, and then only with respect to a non-owned automobile, provided the use and operation thereof is with the permission of its owner and within the scope of permission.

2) Part V Definitions to be substituted for definitions in Part I - Liability and as incorporated in other Parts or Conditions from Part I - Liability:

"Non-owned automobile" means an automobile not owned by or furnished for the regular use of the named insured or any resident of the household of the named insured.

"Your insured car" means any automobile owned by or furnished for the regular use of the named insured or a resident of the household of the named insured.

3) Part V definitions to be substituted in specified Parts and related Conditions:

For purpose of Part III - Uninsured / Underinsured Motorist Coverage and of Part II - Medical Payments Coverage:

"insured person" means the named insured and any relative of the named insured.

4) The following are added Exclusions:

In Part I - Liability:

(26) to any automobile owned by or furnished for the regular use of the named insured, or owned by or furnished for the regular use of a resident of the household of the named insured;

(27) to any automobile while used in a business or occupation of the named insured.

In Part II - Medical Payments:

(13) by arising out of the use, operation, or maintenance of any automobile owned by or furnished for the regular use of the named insured or a resident of the household of the named insured;

In Parts III - Uninsured / Underinsured Motorist Coverage:

(13) to injuries arising out of the operation, use or maintenance of a motor vehicle owned by or furnished for the regular use of the named insured, resident spouse or other resident of the named insured's household.

5) In all Parts, delete the Other Insurance section and replace it with:

Other Insurance: This insurance shall be excess insurance over any other valid and collectible insurance or self-insurance.

PART VI - GENERAL PROVISIONS

TWO OR MORE CARS INSURED

If there is an accident or loss to which this or any other automobile policy issued to you by us applies, the total limit of our liability under all the policies will not exceed the highest applicable limit of liability under any one policy. **YOU CANNOT STACK COVERAGES OR POLICIES.**

NOTICE TO COMPANY

Your notice to our authorized agent will be deemed to be notice to us.

POLICY PERIOD, TERRITORY

This policy applies only to accidents and losses during the policy period shown in the Declarations and occurring within the United States of America, its territories or possessions, or between their ports.

CHANGES

This policy and the Declarations include all the agreements between you and us relating to this insurance. No change or waiver may be effected in this policy except by endorsement issued by us. Messages left after normal business hours will not affect coverage. All changes are subject to underwriting review and approval. If a premium adjustment is necessary we will make it as of the effective date of the change. When we broaden coverage during the policy period without charge, the policy will automatically provide the broadened coverage when effective.

SUIT AGAINST US

We may not be sued unless there is full compliance with all terms of this policy. We may not be sued under PART I - Liability coverage until the obligation of an insured person to pay is finally determined. This determination can be made either by judgment against the person after actual trial or by written agreement of the person, the claimant and us. No one shall have any right to make us a party to a suit to determine the liability of an insured person.

No suit or action whatsoever shall be brought against us for the recovery of any claim under Part III - UNINSURED / UNDERINSURED MOTORISTS coverage unless same is commenced within twenty-four months next after the date of the accident.

OUR RECOVERY RIGHTS

In the event of a payment under this policy, we are entitled to all the rights of recovery that the person or organization to whom payment was made has against another. That person or organization must sign and deliver to us any legal papers relating to that recovery. They must also do whatever else is necessary to help us exercise those rights and do nothing after loss to prejudice our rights.

When a person has been paid damages by us under this policy and also recovers from another, the amount recovered shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

ASSIGNMENT

Interest in this policy may not be assigned without our written consent. If you die, the policy will cover for the remainder of the policy term:

- (1) any surviving spouse;
- (2) the legal representative of the deceased person while acting within the scope of duties of a legal representative while occupying your insured car.

BANKRUPTCY

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an insured person.

CANCELLATION AND NON-RENEWAL

This policy may be canceled during the policy period as follows:

- (1) You may cancel by:
 - (a) returning this policy to us; or
 - (b) giving us advance written notice of the future date cancellation is to take effect.
- (2) We may cancel by mailing to you at the address shown in the Declarations:
 - (a) at least 10 days notice:
 - (i) if cancellation is for nonpayment of premium; or
 - (ii) if notice is mailed during the first 69 days this policy is in effect and this is not a renewal policy; or
 - (b) at least 30 days notice in all other cases.
- (3) After this policy is in effect for 70 days, or if this is a renewal, we will cancel only:
 - (a) for nonpayment of premium; or
 - (b) if your driver's license or that of:
 - (i) any driver who lives with you; or

- (ii) any driver who customarily uses your insured car has been suspended or revoked; or
- (c) for fraud, willful misrepresentation or concealment on the part of any insured with respect to a material fact or circumstance relating to the issuance or continuation of this policy.

If we decide not to renew this policy, we will mail notice to you at the address shown in the Declarations. Notice will be mailed at least 30 days before the end of the policy period.

Proof of mailing any notice shall be sufficient proof of notice. The effective date of cancellation stated in a notice is the end of the policy period.

Upon cancellation, you may be entitled to a premium refund. Our making or offering a refund is not a condition of cancellation.

If we cancel this policy for a reason other than nonpayment of premium, any refund due will be computed on a daily pro-rate basis. Earned premium is calculated on a daily basis.

If you or we cancel, any premium due you of less than \$10 it will be refunded to you only upon your written request.

With regards to dormant accounts, as defined by the Unclaimed Property Act, and property deemed abandoned is subject to a dormancy charge of \$5 per month. This charge shall occur each consecutive month that the account remains dormant until such time the value of the property equals zero dollars.

AUTOMATIC TERMINATION

This policy will automatically terminate at the end of the current policy period if you or your representative does not accept our offer to renew it. Your failure to pay the required renewal premium when due means that you have declined our offer.

If the down payment check for a new policy or renewal term is not honored by the bank, the policy will be rescinded and no coverage will be afforded.

We will mail or deliver any premium billing notice for renewal of this policy to you, at the address shown in the Declarations.

If other insurance is obtained on your insured car, similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.

FRAUD AND MISREPRESENTATION

The statements made by you in the application are deemed to be your representations. If any representation contained in the application is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of facts or incorrect statements, this policy will be null and void from its inception.

If any representation contained in any notification of change is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of facts or incorrect statements, this policy will be null and void from the effective date of the change.

This policy will be void at our option if you or an insured person or any other individual act at or by the direction of you or any insured person has:

- (1) concealed or misrepresented any material fact; or
- (2) committed or attempted fraud concerning any matter regarding this policy whether before or after a loss.

PART VII WHAT TO DO IN CASE OF AN AUTO ACCIDENT OR LOSS

NOTICE OF ACCIDENT OR LOSS

In the event of an accident or loss, notice must be given to us promptly. The notice must give the time, place and circumstances of the accident or loss, including the names and addresses of injured persons and witnesses.

FAILURE TO PROMPTLY REPORT A LOSS OR ACCIDENT TO US MAY JEOPARDIZE YOUR COVERAGE UNDER THIS POLICY.

OTHER DUTIES

A person claiming any coverage under this policy must also:

- (1) cooperate with us and assist us in any matter concerning a claim or suit, including presence at a trial.
- (2) send us promptly any legal papers received relating to any claim or suit.
- (3) submit to physical examinations at our expense by doctors we select as often as we may reasonably require.
- (4) authorize us to obtain medical and other records including but not limited to credit and financial records.
- (5) submit a proof of loss under oath if required by us.

- (6) As a condition precedent to receiving any benefits under this Policy, any person seeking benefits must cooperate with us in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by us when or as often as we may reasonably require at a place designated by us within a reasonable time after we are notified of the claim. Only the person being examined and his attorney may be present during the examination. A minor seeking benefits must submit to an examination with a guardian who may also be present.
- (7) upon our request, allow us to obtain a written or recorded statement concerning the circumstances of the claim and any damages claimed.

CAR DAMAGE

A person claiming Car Damage Coverage must also:

- (1) take reasonable steps after loss to protect the car / and its equipment from further loss. We will pay reasonable expenses incurred in providing that protection.
- (2) report a theft of the car or its equipment to the police within 24 hours of discovering the theft.
- (3) allow us to inspect and appraise the damaged car before its repair or disposal.

PART VIII LOSS PAYEE CLAUSE

We will pay loss or damage due under this policy according to your interest and that of the loss payee if one is shown in the Declarations. We may make separate payments according to those interests.

We will not make payment to the loss payee for a loss under this policy if you or anyone acting on your behalf has violated the terms of this policy. This is inclusive, but not limited to fraud, material misrepresentation, material omission, racing, the commission of a crime or any other intentional damage or loss wantonly, or intentionally caused by you or the loss payee in the process of something done, or failed to do in violation of the terms of this agreement.

We may cancel this policy according to its terms. We will protect the loss payee's interest for 10 days after we mail them notice that the policy will terminate. If we pay the loss payee for any loss or damage suffered during that period, we have the right to recover the amount of any such payment from you.

If you fail to give proof of loss within the time allowed, the loss payee may protect its interest by filing a proof of loss within 30 days after that time.

The loss payee must notify us of any known change of ownership or increase in the risk. If it does not, it will not be entitled to any payment under this protection.

If we pay the loss payee under the terms of this protection for a loss not covered under the policy, we are subrogated to its rights against you. This will not affect the loss payee's right to recover the full amount of its claim. The loss payee must assign us its interest and transfer to us all supporting documents if we pay the balance due to the loss payee on the vehicle.

When the deductible amount shown in the Declarations Page for Car Damage coverage is less than \$250, the deductible amount applicable to losses payable to the loss payee under this coverage shall be \$250.

This deductible amount applies only when the covered automobile has been repossessed by or surrendered to the loss payee and the interest of the loss payee has become impaired.

All other losses payable under PART IV - CAR DAMAGE are subject to the deductible amount shown in the Declarations.

In Witness Whereof, the company has caused this policy to be executed and attested. This policy is countersigned on the declarations page by our authorized representative.


PRESIDENT


SECRETARY

EXHIBIT “J”

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.

I, BRANDON CARROLL, declare:

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)**

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 then 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.

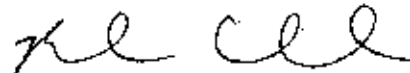
35. UAIC has never delayed investigation of this claim, or failed to respond to settlement requests or, done a one-sided investigation or, committed any other violation of the covenant of good faith and fair dealing and/or N.R.S. 686A.310.

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

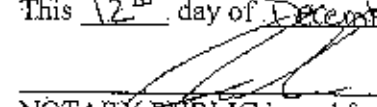

NOTARY PUBLIC in and for said
Miami Dade County, Florida



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 Cheyenne 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:

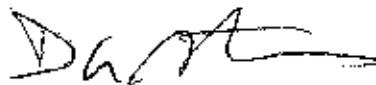
I am enclosing with this letter a Three Day Notice to Plead which I filed in the above entitled matter.

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



RespLewis320

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants.

CASE NO.: A-18-772220-C

DEPT NO.: XXIX

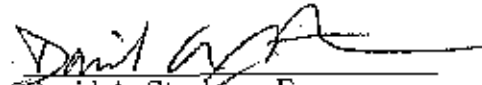
THREE DAY NOTICE TO PLEAD

Date: n/a
Time: n/a

To: Gary Lewis, Defendant

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

Dated this 17 day of July 2018.


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

CERTIFICATE OF MAILING

I hereby certify that service of this THREE DAY NOTICE TO PLEAD was made this 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

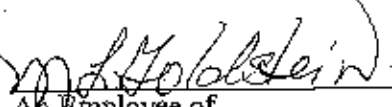

An Employee of
Stephens Gourley & Bywater

EXHIBIT "C"
TO AFFIDAVIT



ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

Attorneys At Law
Stephen M. Rogers
Rebecca L. Mastrangelo
Daniel E. Carvalho
Paul Mitchell
Noah Anwar
Christy A. Michalek
Dawn L. Davis
Marissa R. Temple
Wm C. Mitchell
Nicholas C. Kral
*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



ROGERS
MASTRANGELO
CARVALHO &
MITCHELL

Tommy Christensen, Esq.
Chayenne Nalder v. Gary Lewis
Page 2 of 2

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 *CM*

Stephen H. Rogers, Esq.

SHR:TLHK/cm

Attachments

cc: Gary Lewis

\\Rogers\Lewis.pdx\Nalder\Correspondence\Tommy Christensen\letter 080918 1.vpd

1 MDSM
2 STEPHEN H. ROGERS, ESQ.
3 Nevada Bar No. 5755
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL
5 700 South Third Street
6 Las Vegas, Nevada 89101
7 Phone (702) 383-3400
8 Fax (702) 384-1460
9 Email: srogers@rincmlaw.com
10 Attorneys for Defendant.

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,

14 Plaintiff,

CASE NO.: A-18-772220-C

DEPT. NO.: 29

15 GARY LEWIS and DOES'1 through _____

16 Defendants.

17 DEFENDANT'S MOTION TO DISMISS

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

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

3 DATED this ____ day of August, 2018.

4 ROGERS, MASTRANGELO, CARVALHO &
5 MITCHELL

6
7 Stephen H. Rogers, Esq.
8 Nevada Bar No. 5755
9 700 South Third Street
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant

12 NOTICE OF MOTION

13 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

14 PLEASE TAKE NOTICE that the foregoing DEFENDANT'S MOTION TO DISMISS

15 will come on for hearing before the above-entitled Court on the ____ day of ____, 2018;

16 at ____ a.m. in Department 29 of the Eighth Judicial District Court, Clark County, Nevada.

17 DATED this ____ day of August, 2018.

18 ROGERS, MASTRANGELO, CARVALHO &
19 MITCHELL

20 Stephen H. Rogers, Esq.
21 Nevada Bar No. 5755
22 700 South Third Street
23 Las Vegas, Nevada 89101
24 Attorneys for Defendant

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1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

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

12 Despite the fact that Lewis' liability for any injuries Cheyenne may have sustained in the
13 2007 accident have already been adjudicated and judgment entered, Cheyenne now re-asserts those
14 claims in the instant Complaint. Those claims are subject to dismissal pursuant to the doctrine of
15 claim preclusion.

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

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

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

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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 (unless renewed) 10 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 22, 2018. See Exhibit "C." Contemporaneous with the filing of the instant motion, Lewis 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 (not 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. NACP 58(c).

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

4 III.

5 MOTION TO DISMISS STANDARD

6 A defendant is entitled to dismissal when a plaintiff fails "to state a claim upon which relief can
7 be granted." NRCP 12(b)(5). The Nevada Supreme Court has declared that the dismissal of a
8 complaint is appropriate where "it appears beyond a doubt that [the plaintiff] could prove no set of
9 facts which, if true, would entitle [the plaintiff] to relief." *Stew, LLC v. City of N. Las Vegas*,
10 124 Nev. 224, 228, 181 P.3d 670, 672 (2008).

11 In evaluating a motion to dismiss, courts primarily focus on the allegations in the complaint.
12 *Id.* As the Nevada Supreme Court held in *Baxter v. Quality Health*, 131 Nev. Adv. Op. 76, 357 P.3d
13 at 930 (2015) "the court is not limited to the four corners of the complaint." Citing 5B Charles Alan
14 Wright & Arthur Miller, *Federal Practice & Procedure: Civil* § 1357, at 376 (3d ed.2004). The
15 *Baxter* Court also held that courts "may also consider unattached evidence on which the complaint
16 necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the
17 plaintiff's claim; and (3) the party questions the authenticity of the document." *Id.*, citing *United*
18 *States v. Comptroller of the Currency*, 655 F.3d 984, 999 (9th Cir.2011) (internal quotation omitted). The
19 *Baxter* Court continued "while presentation of matters outside the pleadings will convert the
20 motion to dismiss to a motion for summary judgment, Fed.R.Civ.P. 12(d); NRCP 12(b), such
21 conversion is not triggered by a court's consideration of matters incorporated by reference or integral
22 to the claim," *Id.*, citing 5B Wright & Miller, *supra*, § 1357, at 376.

23 While Defendant's Motion to Dismiss does rely on certain documents which were not
24 attached to the Complaint, those documents are either incorporated by reference (the Judgment and
25 Amended Judgment) or integral to the claim (the Complaint in the 2007 case). Therefore, this Court
26 should consider this matter a motion to dismiss and not convert it to a motion for summary
27 judgment. As discussed below, there is no doubt that there are no facts pursuant to which Cheyenne
28 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*, 134 Nev. 1048, 1054-55, 194 P.3d 709, 713 (2008), holding modified by *Weddell v. Shannon*, 134 Nev. Adv. Op. 28, 350 P.3d 80 (2015) (the modification is not applicable in this case). According to the *Five Star* test, claim preclusion applies when: (1) the parties in their prior cases 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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1 As the *Five Star* Court noted, public policy supports claims preclusion in situations such as
2 this. The *Five Star* Court cited Restatement (Second) of Judgments section 19, comment (a), noting
3 that "the purposes of claim preclusion are 'based largely on the ground that fairness to the defendant,
4 and sound judicial administration, require that at some point litigation over the particular controversy
5 come to an end' and that such reasoning may apply 'even though the substantive issues have not
6 been tried . . .'" *Id.* at 1058, 194 P.3d at 715. These policy reasons are applicable here. Lewis is
7 entitled to finality. A Judgment was already entered against him. Renewing the Judgment was not
8 Lewis' responsibility—that was the responsibility of Cheyenne's guardian ad litem, James Nalder.
9 Lewis should not be exposed to judgment being entered against him a second time due to Nalder's
10 failure to act.

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

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

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

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

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

7 Declaratory relief is only available if: "(1) a justiciable controversy exists between persons
8 with adverse interests, (2) the party seeking declaratory relief has a legally protectable interest in the
9 controversy, and (3) the issue is ripe for judicial determination." *Cty. of Clark, ex rel. Univ. Med.*
10 *Ctr. v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1993), citing *Knittle v. Progressive*
11 *Casualty Ins. Co.*, 112 Nev. 8, 10, 908 P.2d 723, 725 (1995). Here, declaratory relief is not available
12 because the issue as to whether the Amended Judgment or any future amended judgment is
13 enforceable, or whether the statute of limitations has expired, is not ripe.

14 The conditions under where a justiciable controversy exists were addressed by the Nevada
15 Supreme Court in *Kress v. Carey*, 65 Nev. 1, 189 P.2d 352 (1948), where the Court noted a
16 justiciable controversy does not exist, where "damage" . . . is merely apprehended or feared. . . . *Id.*
17 at 28-29, 189 P.2d at 363. As the Court in *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986) noted,
18 "the requirement of an actual controversy has been construed as requiring a concrete dispute
19 admitting of an immediate and definite determination of the parties' rights." *Id.* at 526, 728 P.2d at
20 444. Cheyenne's concern that any effort to enforce the Amended Judgment will be thwarted by a
21 determination that the applicable statute of limitations bars such action is "apprehended or feared"
22 but not existing presently, because she has not taken any action to enforce the Amended Judgment.

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

28 ///

1 "Ripeness focuses on the timing of the action rather than on the party bringing the action.
2 The factors to be weighed in deciding whether a case is ripe for judicial review include: (1) the
3 hardship to the parties of withholding judicial review, and (2) the suitability of the issues for
4 review." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 887, 887, 141 P.3d 1224, 1230-31
5 (2006)(alteration in original)(quoting *In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003)). In
6 the unpublished decision in *Cassady v. Main*, 2016 WL 412835, a copy of which is attached hereto
7 as Exhibit "E," the Nevada Supreme Court noted that the plaintiff in that case would suffer no harm
8 if declaratory relief were not considered, because he could file a complaint seeking direct redress for
9 complaints. *Id.* at *2. Similarly here, Cheyenne could have a court address her statute of
10 limitations concerns in an action to execute on the Amended Judgment. There is no need for such
11 a determination at this time.

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

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

27 ///

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. 6755
700 South Third Street
Las Vegas, Nevada 89101
Attorneys for Defendant

DRAFT

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
☒ 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

1 MREL
2 STEPHEN H. ROGERS, ESQ.
3 Nevada Bar No. 5755
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL
5 700 South Third Street
6 Las Vegas, Nevada 89101
7 Phone (702) 383-3400
8 Fax (702) 384-1460
9 Email: srogers@rmcmllaw.com
10 Attorneys for Defendant.

- June 4 page 3

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 CHEYENNE NALDER,
14 Plaintiff,

CASE NO.: 07A549111

DEPT. NO.: 29

15 vs.

16 GARY LEWIS and DOES I through [unclear]
17 Defendants.

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

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

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26 ///

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

3 DATED this ____ day of August, 2018.

4 ROGERS, MASTRANGELO, CARVALHO &
5 MITCHELL

6
7 Stephen H. Rogers, Esq.
8 Nevada Bar No. 5755
9 700 South Third Street
10 Las Vegas, Nevada 89101
11 Attorneys for Defendant

12 **NOTICE OF MOTION**

13 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

18 DATED this ____ day of August, 2018.

19 ROGERS, MASTRANGELO, CARVALHO &
20 MITCHELL

21 Stephen H. Rogers, Esq.
22 Nevada Bar No. 5755
23 700 South Third Street
24 Las Vegas, Nevada 89101
25 Attorneys for Defendant
26
27
28

1 POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

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

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

17 II.

18 STATEMENT OF FACTS

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

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

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1 as Exhibit "B." The Judgment was entered on June 3, 2008.¹ James Nalder as guardian ad litem for
2 Cheyenne is the judgment creditor. *Id.* NRS 11.190(1)(a) provides that a judgment expires by
3 limitation in six (6) years. As such, the Judgment expired on June 3, 2014.

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

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

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

16 III. 17 ARGUMENT

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

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

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

27
28 ¹Judgments are entered when filed, not when a Notice of Entry is made. NRCF 58(C).

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

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

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

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

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

18 The Nevada Supreme Court has held that actions to enforce a judgment fall under the six-
19 year "catch all" provision of NRS 11.090(1)(g). *Leven* at 403, 168 P.3d at 715 ("An action on a
20 judgment or its renewal must be commenced within six years under NRS 11.190(1)(a); thus a
21 judgment expires by limitation in six years"). In summary, neither statute, NRS 11.190 nor NRS
22 17.214, provides for any tolling of the time period to renew a judgment.

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

24 Setting aside the fact that the deadline to renew a judgment is not an action to which statutes
25 of limitation/tolling apply, Cheyenne's proposition that the deadlines set forth in NRS 17.214 were
26 tolled by her minority are moot for a few reasons. First, the tolling statute cited by Cheyenne, NRS
27 11.280, does not universally toll all statutes of limitations while a plaintiff is a minor. Rather, it is
28 expressly limited to actions involving sales of probate estates.

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

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

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

15 As Cheyenne was not the judgment creditor at any time prior to the date of the issuance of
16 the Amended Judgment, anyone looking at the Judgment would believe that it expired on June 4,
17 2014, since there was no Affidavit of Renewal filed. If Cheyenne's apparent argument were given
18 credence, either the judgment never expired, because she was the real party in interest and was a
19 minor at the time, the Judgment would have otherwise expired or the judgment did expire but was
20 revived upon her reaching the age of majority. To adopt this proposition would frustrate the certainty
21 NRS 17.214 was enacted to promote -- the reliability of title to real property.

22 If tolling of deadlines to amend judgments were sanctioned, title to real property owned by
23 anyone who had ever been a judgment debtor would be clouded, as a title examiner would not know
24 whether a judgment issued more than six years prior had expired pursuant to statute, or was still
25 valid, or could be revived when a real party in interest who was a minor reached the age of majority.
26 As the Court held in *Leven*, one of the primary reasons for the need to strictly comply with NRS
27 17.214's recordation requirement is to "procure reliability of title searches for both creditors and
28 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

1 requirement of NRS 17.124 is important to preserve the due process rights of the judgment debtor.

2 *Id.* If a judgment debtor is not provided with notice of the renewal of a Judgment, he may believe
3 that the judgment has expired and he need take no further action to defend himself against execution.

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

5 Cheyenne's Ex Parte Motion next cites NRS 11.300, which provides "if, when the cause of
6 action shall accrue against a person, the person is out of the State, the action may be commenced
7 within the time herein limited after the person's return to the State; and if after the cause of action
8 shall have accrued the person departs from the State, the time of the absence shall not be part of the
9 time prescribed for the commencement of the action." Cheyenne's argument that the deadline to
10 renew the Judgment are tolled by NRS 11.300 fails because, again, renewing a judgment is not a
11 cause of action. As the Supreme Court of North Dakota, a state with similar statutes to Nevada
12 regarding judgments, held in *F/S Manufacturing v. Kensmore*, 798 N.W.2d 853 (N.D. 2011),
13 "Because the statutory procedure for renewal by affidavit is not a separate action to renew the
14 judgment, the specific time period [provided to renew] cannot be tolled under [the equivalent to NRS
15 11.300] based on a judgment debtor's absence from the state." *Id.* at 853.

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

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

26 NRCp 60(b) allows this Court to relieve a party from a final judgment due to mistake (NRCp
27 60(b)(1)) or because a judgment is void (NRCp 60(b)(4)). Both of these provisions apply.

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

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

10 2. *The Amended Judgment is void*

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

16 IV.

17 CONCLUSION

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

20 DATED this ____ day of August, 2018.

21 ROGERS, MASTRANGELO, CARVALHO &
22 MITCHELL

23
24 Stephen H. Rogers, Esq.
25 Nevada Bar No. 5755
26 700 South Third Street
27 Las Vegas, Nevada 89101
28 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 **DEPENDANT'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
☒ 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.injuryhelplaw.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@rmcmclaw.com

Re: Gary Lewis

Dear Stephen:

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

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

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



CHRISTENSEN LAW
www.injuryhelpnow.com

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

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

1. Within 6 years:

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

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

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

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

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

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

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

Very truly yours,

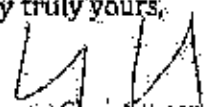

Tommy Christensen
CHRISTENSEN LAW OFFICE, LLC

EXHIBIT "E"
TO AFFIDAVIT



Attorneys At Law
Stephen H. Rogers
Rebecca L. Mastrangelo
Daniel E. Carvalho
Burt Mitchell*
Imran Anwar
Charles A. Michalek
Dawn L. Davis
Marissa R. Temple
WILL C. MITCHELL
Kimberly C. Boel
*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")



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@rmcmllaw.com

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From: Carolyn Mangundayao
Sent: Friday, September 07, 2018 7:55 AM
To: Thomas Christensen <thomasc@injuryhelpnow.com>; Steve Rogers <srogers@rmcmllaw.com>; breenarntz@me.com
Cc: Reception <reception1st@injuryhelpnow.com>
Subject: RE: Gary Lewis

See attached.

Thank you.



Carolyn Mangundayao

Legal Assistant to Stephen H. Rogers, Esq., Bert O. Mitchell, Esq. & William C. Mitchell, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL

700 South Third Street

Las Vegas, Nevada 89101

Telephone: (702) 383-3400

Facsimile: (702) 384-1460

Email: cmangundayao@rmcmllaw.com

Notice of Confidentiality:

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by e-mail (by replying to this message) or telephone (noted above) and permanently delete the original and any copy of any e-mail and any printout thereof. Thank you for your cooperation with respect to this matter.

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

Sent: Thursday, September 06, 2018 5:48 PM

To: Steve Rogers <rogers@rmcmllaw.com>; breenamtz@ma.com

Cc: Carolyn Mangundayao <cmangundayao@rmcmllaw.com>; Reception <receptionist@injurynow.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 “K”



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

DISTRICT COURT
CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

14 STIPULATION TO ENTER JUDGMENT

15 Date: n/a
16 Time: n/a

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

- 19 1. Gary Lewis has been continuously absent from the State of Nevada since at least 2010.
- 20 2. Gary Lewis has not been subject to service of process in Nevada since at least 2010 to the
21 present.
- 22 3. Gary Lewis has been a resident and subject to service of process in California from 2010
23 to the present.
- 24 4. Plaintiff obtained a judgment against GARY LEWIS which was entered on August 26,
25 2008. Because the statute of limitations on the 2008 judgment had been tolled as a result of GARY
26 LEWIS' absence from the State of Nevada pursuant to NRS 11.300, Plaintiff obtained an amended
27 judgment that was entered on May 18, 2018.
- 28 5. Plaintiff filed an action on the judgment under *Mandlebaum v. Gregovich*, 50 P. 849, 851

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

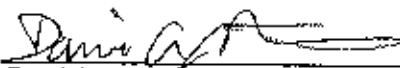
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis
3 does not want to incur greater fees or damages.

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

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

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

13 Dated this 12 day of September, 2018

14
15 

16 David A. Stephens, Esq.
17 Nevada Bar No. 00902
18 Stephens & Bywater
19 3636 North Rancho Drive
20 Las Vegas, Nevada 89130
21 Attorney for Cheyenne Nalder

14
15 

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

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

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 CHEYENNE NALDER,

10 Plaintiff,

11 vs.

12 GARY LEWIS,

13 Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

14 JUDGMENT

15 Date: n/a

16 Time: n/a

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

18 IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that Plaintiff Cheyenne Nalder
19 have and recover judgment from Defendant Gary Lewis in the sum of three million five hundred
20 thousand dollars, (\$3,500,000.00), plus prejudgment interest through September 4, 2018 in the sum
21 of two million two hundred eleven thousand eight hundred twenty and 41/100 dollars,
22 (\$2,211,820.41), minus fifteen thousand dollars, (\$15,000.00), previously paid to Cheyenne Nalder,

23 ///

24 ///

25 ///

26
27
28

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

4 DATED this _____ day of September, 2018.

5
6
7 _____
8 DISTRICT JUDGE

9 Submitted by:

10 STEPHENS & BYWATER, P.C.

11
12 _____
13 DAVID A. STEPHENS, ESQ.

14 Nevada Bar No. 00902
15 3636 North Rancho Drive
16 Las Vegas, Nevada 89130
17 Attorneys for Plaintiff
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT “L”



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

THIRD PARTY COMPLAINT

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

1 as a result of the finding of coverage on October 30, 2013 and more particularly states as
2 follows:
3

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

8 2. That United Automobile Insurance Company, hereinafter referred to as "UAIC",
9 was at all times relevant to this action an insurance company doing business in Las Vegas,
10 Nevada.
11

12 3. That third-party defendant, Randall Tindall, hereinafter referred to as "Tindall,"
13 was and is at all times relevant to this action an attorney licensed and practicing in the State of
14 Nevada. At all times relevant hereto, third-party Defendant, Resnick & Louis, P.C. was and is a
15 law firm, which employed Tindall and which was and is doing business in the State of Nevada.
16

17 4. That the true names and capacities, whether individual, corporate, partnership,
18 associate or otherwise, of Defendants, DOES I through V, are unknown to cross-claimant, who
19 therefore sues said Defendants by such fictitious names. cross-claimant is informed and
20 believes and thereon alleges that each of the Defendants designated herein as DOE is
21 responsible in some manner for the events and happenings referred to and caused damages
22 proximately to cross-claimant as herein alleged, and that cross-claimant will ask leave of this
23 Court to amend this cross-claim to insert the true names and capacities of DOES I through V,
24 when the same have been ascertained, and to join such Defendants in this action.
25

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

28 6. This incident occurred on private property.

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

3
4 8. Before the subject incident, Lewis received a statement from UAIC instructing
5 him that his renewal payment was due by June 30, 2007.

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

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

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

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

12
13 13. Following the incident, Cheyenne's father, James Nalder, extended an offer to
14 UAIC to settle Cheyenne's injury claim for Lewis's policy limit of \$15,000.00.

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

16 15. UAIC never filed a declaratory relief action.

17 16. UAIC rejected Nalder's offer.

18 17. UAIC rejected the offer without doing a proper investigation and claimed that
19 Lewis was not covered under his insurance policy and that he did not renew his policy by June
20 30, 2007.

21
22 18. After UAIC rejected Nalder's offer, James Nalder, on behalf of Cheyenne, filed a
23 lawsuit against Lewis in the Nevada state court.

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

26 20. Lewis failed to appear and answer the complaint. As a result, Nalder obtained a
27 default judgment against Lewis for \$3,500,000.00.
28

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

2 22. On May 22, 2009, Nalder and Lewis filed suit against UAIC alleging breach of
3 contract, an action on the judgment, breach of the implied covenant of good faith and fair
4 dealing, bad faith, fraud, and violation of NRS 686A.310.
5

6 23. Lewis assigned to Nalder his right to "all funds necessary to satisfy the
7 Judgment." Lewis left the state of Nevada and located in California prior to 2010. Neither Mr.
8 Lewis nor anyone on his behalf has been subject to service of process in Nevada since 2010.
9

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

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

16 26. Nalder and Lewis appealed to the Ninth Circuit. The Ninth Circuit reversed and
17 remanded the matter because Lewis and Nalder had facts to show the renewal statement was
18 ambiguous regarding the date when payment was required to avoid a coverage lapse.
19

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

24 28. The district court also determined UAIC breached its duty to defend Lewis, but
25 did not award damages because Lewis did not incur any fees or costs in defense of the Nevada
26 state court action.
27
28

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

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

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

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

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

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

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

21 36. Even though UAIC knew at this point that it owed a duty to defend Gary Lewis,
22 UAIC did not undertake to investigate the factual basis or the legal grounds or to discuss this
23 with Gary Lewis, nor did it seek declaratory relief on Lewis's behalf regarding the statute of
24 limitations on the judgment.
25
26
27
28

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

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

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

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

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

12 42. As a result, UAIC contends Nalder can no longer recover damages above the
13 \$15,000.00 policy limit for breach of the contractual duty to defend. UAIC admits the Nalder
14 judgment was valid at the time the Federal District Court made its decision regarding damages.

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

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

22 45. Both the suit against UAIC and the judgment against UAIC entered by the trial
23 court were done well within even the non-tolled statute of limitations.
24
25
26
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1 46. Even though Nalder believed the law is clear that UAIC is bound by the
2 judgment, regardless of its continued validity against Lewis, Nalder took action in Nevada and
3 California to demonstrate the continued validity of the underlying judgment against Lewis.
4

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

9 48. Cheyenne Nalder reached the age of majority on April 4, 2016.
10

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

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

16 51. A separate action was then filed with three distinct causes of action pled in the
17 alternative. The first, an action on the amended judgment to obtain a new judgment and have
18 the total principal and post judgment interest reduced to judgment so that interest would now
19 run on the new, larger principal amount. The second alternative action was one for declaratory
20 relief as to when a renewal must be filed base on when the statute of limitations, which is
21 subject to tolling provisions, is running on the judgment. The third cause of action was, should
22 the court determine that the judgment is invalid, Cheyenne brought the injury claim within the
23 applicable statute of limitations for injury claims - 2 years after her majority.
24

25 52. Nalder also retained California counsel, who filed a judgment in California, which
26 has a ten year statute of limitations regarding actions on a judgment. Nalder maintains that all
27 of these actions are unnecessary to the questions on appeal regarding UAIC's liability for the
28

1 judgment; but out of an abundance of caution and to maintain the judgment against Lewis, she
2 brought them to demonstrate the actual way this issue should have been litigated in the State
3 Court of Nevada, not at the tail end of an appeal.
4

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

7 54. UAIC hired attorney Stephen Rogers, Esq. to represent GARY LEWIS,
8 misinforming him of the factual and legal basis of the representation. This resulted in a number
9 of improper contacts with a represented client.
10

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

15 56. A similar thing happened in another case with a frivolous defense put forth by
16 Lewis Brisbois. The trial judge former bar counsel, Rob Bare, dismissed a complaint
17 erroneously which wasn't reversed by the Nevada Supreme Court until the damage from the
18 erroneous decision had already occurred.
19

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

22 58. In order to evaluate the benefits and burdens to Lewis and likelihood of success of
23 the course of action proposed by UAIC and each of the Defendants, Thomas Christensen asked
24 for communication regarding the proposed course of action and what research supported it. It
25 was requested that this communication go through Thomas Christensen's office because that
26 was Gary Lewis's desire, in order to receive counsel prior to embarking on a course of action.
27
28

1 59. Christensen informed Stephen Rogers, Esq. that when Gary Lewis felt the
2 proposed course by UAIC was not just a frivolous delay and was based on sound legal research
3 and not just the opinion of UAIC's counsel, that it could be pursued.
4

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

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

9 62. UAIC, without notice to Lewis or any attorney representing him, then filed two
10 motions to intervene, which were both defective in service on the face of the pleadings.
11

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

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

16 65. David Stephens, Esq., counsel for Naider in her 2018 action, through diligence,
17 discovered the filings on the court website. He contacted Matthew Douglas, Esq., described the
18 lack of service, and asked for additional time to file an opposition.
19

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

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

24 68. The granting of UAIC's Motion to Intervene after judgment is contrary to NRS
25 12.130, which states: Intervention: Right to intervention; procedure, determination and costs;
26 exception. 1. Except as otherwise provided in subsection 2: (a) Before the trial ...
27
28

1 69. These actions by State Actor David Jones ignore due process, the law, the United
2 States and Nevada constitutional rights of the parties. The court does the bidding of insurance
3 defense counsel and clothes defense counsel in the color of state law in violation of 42 USCA
4 section 1983.
5

6 70. David Stephens and Breen Amtz worked out a settlement of the action and
7 signed a stipulation. This stipulation was filed and submitted to the court with a judgment prior
8 to the "hearing" on UAIC's improperly served and groundless motions to intervene.
9

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 88. Gary Lewis has duly performed all the conditions, provisions and terms of the
23 agreements or policies of insurance with UAIC relating to the claim against him, has furnished
24 and delivered to UAIC full and complete particulars of said loss and has fully complied with all
25 the provisions of said policies or agreements relating to the giving of notice as to said loss, and
26 has duly given all other notices required to be given by Gary Lewis under the terms of such
27 policies or agreements.
28

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

11 90. That UAIC failed to settle the claim within the policy limits when given the
12 opportunity to do so and then compounded that error by making frivolous and fraudulent claims
13 and represented to the court that it would be bound by any judgment and is therefore responsible
14 for the full extent of any judgment against Gary Lewis in this action.
15

16 91. UAIC and Tindall's actions have interfered with the settlement agreement Breen
17 Aritz had negotiated with David Stephens and have caused Gary Lewis to be further damaged.
18

19 92. The actions of UAIC and Tindall, and each of them, in this matter have been
20 fraudulent, malicious, oppressive and in conscious disregard of Gary Lewis' rights and therefore
21 Gary Lewis is entitled to punitive damages in an amount in excess of Ten Thousand Dollars
22 (\$10,000.00).
23

24 93. Upon information and belief, at all times relevant hereto, that all Defendants, and
25 each of them, whether individual, corporate, associate or otherwise, were the officers, directors,
26 brokers, agents, contractors, advisors, servants, partners, joint venturers, employees and/or
27 alter-egos of their co-Defendants, and were acting within the scope of their authority as such
28

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

3
4 94. That during their investigation of the claim, UAIC, and each of them, threatened,
5 intimidated and harassed Gary Lewis and his counsel.

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

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

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

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

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

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

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

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

1 103. The conduct of UAIC, and each of the Defendants, was oppressive and malicious
2 and done in conscious disregard for the rights of Gary Lewis.
3

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

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

17 91. As a proximate result of the aforementioned breach of contract, Gary Lewis has
18 suffered and will continue to suffer in the future damages as a result of the delayed payment on
19 the claim in a presently unascertained amount. Gary Lewis prays leave of the court to insert
20 those figures when such have been fully ascertained.
21

22 92. As a further proximate result of the aforementioned breach of contract, Gary
23 Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental damages
24 and out of pocket expenses, all to their general damage in excess of \$10,0000.
25

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

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

3
4 95. That UAIC, and each of the them, breached the covenant of good faith and fair
5 dealing by their actions which include but are not limited to:

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

17 96. As a proximate result of the aforementioned breach of the covenant of good faith
18 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a
19 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis
20 prays leave of the court to insert those figures when such have been fully ascertained.
21

22 97. As a further proximate result of the aforementioned breach of the covenant of
23 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional
24 distress, and other incidental damages and out of pocket expenses, all to their general damage in
25 excess of \$10,0000.
26

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

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

3
4 99. The conduct of UAIC, and each of the Defendants, was oppressive and malicious
5 and done in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore
6 entitled to punitive damages.

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

- 10
11 a. Unreasonable conduct in investigating the loss;
12 b. Unreasonable failure to affirm or deny coverage for the loss;
13 c. Unreasonable delay in making payment on the loss;
14 d. Failure to make a prompt, fair and equitable settlement for the loss;
15 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
16 making payment on the loss;
17 f. Failing to defend Gary Lewis;
18 g. Fraudulent and frivolous litigation tactics;
19 h. Filing false and fraudulent pleadings;
20 i. Conspiring with others to file false and fraudulent pleadings;

21
22 101. As a proximate result of the aforementioned breach of the covenant of good faith
23 and fair dealing, Gary Lewis has suffered and will continue to suffer in the future damages as a
24 result of the delayed payment on the claim in a presently unascertained amount. Gary Lewis
25 prays leave of the court to insert those figures when such have been fully ascertained.

26
27 102. As a further proximate result of the aforementioned breach of the covenant of
28 good faith and fair dealing, Gary Lewis has suffered anxiety, worry, mental and emotional

1 distress, and other incidental damages and out of pocket expenses, all to their general damage in
2 excess of \$10,000.

3
4 103. As a further proximate result of the aforementioned breach of the covenant of
5 good faith and fair dealing, Gary Lewis was compelled to retain legal counsel to prosecute this
6 claim, and UAIC, and each of them, are liable for their attorney's fees reasonably and
7 necessarily incurred in connection therewith.

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

12 105. That UAIC, and each of them, violated NRS 686A.310 by their actions which
13 include but are not limited to:

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

24
25 106. As a proximate result of the aforementioned violation of NRS 686A.310, Gary
26 Lewis has suffered and will continue to suffer in the future damages as a result of the delayed
27

1 payment on the claim in a presently unascertained amount. Gary Lewis prays leave of the court
2 to insert those figures when such have been fully ascertained.
3

4 107. As a further proximate result of the aforementioned violation of NRS 686A.310,
5 Gary Lewis has suffered anxiety, worry, mental and emotional distress, and other incidental
6 damages and out of pocket expenses, all to his general damage in excess of \$10,0000.

7 108. As a further proximate result of the aforementioned violation of NRS 686A.310,
8 Gary Lewis was compelled to retain legal counsel to prosecute this claim, and UAIC, and each
9 of them, are liable for their attorney's fees reasonably and necessarily incurred in connection
10 therewith.
11

12 109. The conduct of UAIC, and each of them, was oppressive and malicious and done
13 in conscious disregard for the rights of Gary Lewis, and Gary Lewis is therefore entitled to
14 punitive damages.

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

17 111. That at the time of the accident herein complained of, and immediately prior
18 thereto, UAIC, and each of them, in breaching its duty owed to Gary Lewis, was negligent and
19 careless, inter alia, in the following particulars:
20

- 21 a. Unreasonable conduct in investigating the loss;
- 22 b. Unreasonable failure to affirm or deny coverage for the loss;
- 23 c. Unreasonable delay in making payment on the loss;
- 24 d. Failure to make a prompt, fair and equitable settlement for the loss;
- 25 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or
26 making payment on the loss;
- 27 f. Failing to defend Gary Lewis;
- 28

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

4
5 112. As a proximate result of the aforementioned negligence, Gary Lewis has suffered
6 and will continue to suffer in the future damages as a result of the delayed payment on the claim
7 in a presently unascertained amount. Plaintiff prays leave of the court to insert those figures
8 when such have been fully ascertained.

9
10 113. As a further proximate result of the aforementioned negligence, Gary Lewis has
11 suffered anxiety, worry, mental and emotional distress, and other incidental damages and out of
12 pocket expenses, all to his general damage in excess of \$10,0000.

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

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

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

25
26 117. As a proximate result of the aforementioned intentional infliction of emotional
27 distress, Gary Lewis has suffered severe and extreme anxiety, worry, mental and emotional
28 distress, and other incidental damages and out of pocket expenses, all to his general damage in
excess of \$10,0000.

1 118. As a further proximate result of the aforementioned negligence, Gary Lewis was
2 compelled to retain legal counsel to prosecute this claim, and UAIC, and each of them, are
3 liable for his attorney's fees reasonably and necessarily incurred in connection therewith.
4

5 119. The conduct of UAIC, and each of them, was oppressive and malicious and done
6 in conscious disregard for the rights of Gary Lewis and Gary Lewis is therefore entitled to
7 punitive damages.

8 120. That Randall Tindall, as a result of being retained by UAIC to represent Gary
9 Lewis, owed Gary Lewis the duty to exercise due care toward Gary Lewis.
10

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

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

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

17 124. Gary Lewis was damaged by all of the above as a result of the breach by Randall
18 Tindall.
19

20 WHEREFORE, Gary Lewis prays judgment against UAIC, Tindall and each of
21 them, as follows:
22

23 1. Indemnity for losses under the policy including damages paid to Mr. Lewis,
24 attorney fees, interest, emotional distress, and lost income in an amount in excess of
25 \$10,000.00;

26 2. General damages in an amount in excess of \$10,000.00;

27 3. Punitive damages in an amount in excess of \$10,000.00;
28

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@sdblawnfirm.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 Arutz, Esq.
Nevada Bar No. 3853
5545 Mountain Vista Ste. E
Las Vegas, Nevada 89120
breen@breen.com

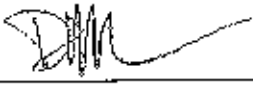

An employee of CHRISTENSEN LAW OFFICES

EXHIBIT “M”



UNITED AUTOMOBILE INSURANCE COMPANY

NEVADA PERSONAL AUTOMOBILE POLICY

United Automobile Insurance Company
P.O. Box 14950
Las Vegas, NV 89114 - 4950

WARNING:

Any person who knowingly files a statement of claim containing any misrepresentation or any false, incomplete or misleading information may be guilty of a criminal act punishable under state or federal law, or both, and may be subject to civil penalties and **MAY LEAD TO THE DENIAL OF A CLAIM.**

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AGREEMENT

We agree with you, in return for your premium payment, to insure you subject to the terms of this policy. These policy provisions, along with your application, the declarations page and any applicable endorsements will constitute your policy of insurance. We will insure you for the coverages and Limits of Liability for which a premium is shown in the Declarations of this policy.

DEFINITIONS USED THROUGHOUT THIS POLICY

- (1) "We," "us," and "our" mean the Company providing this insurance.
 - (2) "You" and "your" mean the Policyholder named in the Declarations and spouse if living in the same household.
 - (3) "Bodily injury" means bodily injury, sickness, disease or death.
 - (4) "Property damage" means damage to or destruction of tangible property, including loss of its use.
 - (5) "Car" means a licensed and registered automobile of the private passenger type designed for use upon a public road. "Car" also means a vehicle with a load capacity of 1,500 pounds or less of the pick-up or van type not used in any business. This definition shall not include:
 - (a) motorcycles, scooters, mopeds;
 - (b) midget cars;
 - (c) golf mobiles;
 - (d) tractors;
 - (e) farm machinery;
 - (f) any vehicle operated on rails or crawler treads;
 - (g) or any vehicle used as a residence or premises.
 - (h) go carts
 - (6) "Utility trailer" means a vehicle designed to be towed by a private passenger car.
 - (7) "Your insured car" means:
 - (a) the car owned by you described in the Declarations.
 - (b) a car you acquire during the policy period.
 1. "Replacement Car": The car must replace the car described in the Declarations. It will have the same coverages as the car it replaced with the exception of Car Damage Coverage. If you want coverage to apply to the replacement car you must notify us within 30 days of the date you acquire it.
When you ask us to add Car Damage Coverage for the replacement car, such coverage will be in effect no earlier than the time and day on which you ask us to add the coverage. If you ask us to add Car Damage Coverage in writing, the coverage will not be in effect until 12:01 AM, on the day following the date of the postmark shown on the envelope containing your request. If a postage meter is used on the envelope containing your request to add Car Damage Coverage, coverage will be in effect no earlier than the time and day your request is received by us. All insurance for the car being replaced is ended when you take delivery of the replacement car.
 2. "Newly Acquired Additional Car": When you ask us to add an additional car, not previously owned by you, a relative, or a resident, acquired by you while this policy is in effect, you must notify us of the newly acquired additional car within 14 days of date it was acquired to have liability coverage apply.
 3. "Substitute Car": any substitute car or utility trailer not owned by you, a relative, or a resident being temporarily used by you with the express permission of the owner. The car must be a substitute for another car covered which is withdrawn from normal use due to breakdown, repair, servicing, loss or destruction.
- For purposes of this policy, any car leased by you under a written agreement for a continuous period of at least six months shall be deemed to be owned by you.
- (8) "Non-owned car" means a car used by you with the express permission of the owner and not owned by, furnished, or available for the regular use of you, a relative or a resident.
 - (9) "Private passenger car" means a car of the private passenger type with not less than four wheels. This definition shall not include a van or pick-up truck.
 - (10) "Auto business" means the business or occupation of selling, leasing, repairing, servicing, delivering, testing, storing or parking cars.
 - (11) "Business" includes trade, profession, or occupation, or any use where compensation of any type is received.
 - (12) "Relative" means a person living in your household and related to you by blood, marriage or adoption, including a ward or foster child.
 - (13) "Resident" means a person, other than a relative, living in your household.
 - (14) "Occupying" means in, on, getting into or out of.
 - (15) "State" means the District of Columbia and any state of the United States of America.
 - (16) "Racing" means preparation for any racing, speed, demolition or stunting contest or activity. Racing also includes participation in the event itself, whether or not such event, activity or contest is organized.
 - (17) "Crime" means any felony and or misdemeanor and any act of eluding the police.
 - (18) "Diminution in value" means the actual loss in market or resale value of property which results from a loss.

(19) **"Loss"** means sudden, direct, and accidental loss or damage.

(20) **"Regular use"** means authorized use of a car without being required to ask permission each time it is used or recurring use of a car.

(21) **"Compensatory money damages"** means any money required to be paid to compensate a person for economic or non-economic damages resulting from bodily injury or property damage.

(22) **"Punitive or Exemplary damages"** means any money required to be paid for any purpose other than compensatory money damages for bodily injury or property damage.

PART 1 - LIABILITY

COVERAGE A - LIABILITY COVERAGE INSURING AGREEMENT

We will pay damages for bodily injury or property damage for which an insured person is legally liable because of the ownership or use of your insured car or a non-owned car. The bodily injury or property damage must be caused by an auto accident.

We will defend any suit or settle any claim for damages as we think appropriate. We will not defend or settle any suit or claim after we reach our limit of liability. We have no duty to defend any suit or settle any claim for bodily injury or property damage not covered under this policy.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part, **"insured person"** means:

- (1) you, a relative or resident.
- (2) any person using your insured car with your express or implied permission.
- (3) any other person or organization but only with respect to legal liability for acts or omissions of:
 - (a) a person covered under this Part while using your insured car; or
 - (b) you while using a car other than your insured car. The car must not be owned or hired by that person or organization.

As used in this Part, **"insured person"** means with respect to a non-owned car only you, a relative or a resident.

ADDITIONAL PAYMENTS

We will pay, in addition to our limit of liability:

- (1) all costs we incur in the settlement of a claim or defense of a suit.
- (2) all costs assessed against you in our defense of a suit.
- (3) interest on damages awarded in a suit we defend accruing after a judgment is entered. Our duty to pay interest ends when we offer to pay that part of the judgment which does not exceed our limit of liability for this coverage.
- (4) Any other reasonable expenses incurred at our request.

EXCLUSIONS

We do not provide coverage for bodily injury or property damage:

- (1) resulting from the ownership or use of a vehicle when used to carry persons or property for a charge. This includes rental of your insured car to others. This exclusion does not apply to shared expense car pools.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes, but is not limited to, mail, newspaper, floral and food delivery.
- (3) caused intentionally by or at the direction of an insured person.
- (4) for which a person is an insured under a nuclear energy liability insurance policy. This exclusion applies even if the limits of that policy are exhausted.
- (5) to an employee of an insured person arising in the course of employment by an insured person. Coverage does apply to a domestic employee unless workers' compensation benefits are required or available for that employee.
- (6) resulting from the ownership or use of a vehicle by any person while that person is employed or otherwise engaged in a business, unless we were told of this use before an accident, and an additional premium was charged.
- (7) to property owned or being transported by an insured person.
- (8) to property rented to, used by or in the care of an insured person, except a residence or private garage.
- (9) resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels.
- (10) arising out of the ownership or use of any vehicle, other than your insured car, which is owned by or available for regular use by you, a relative or resident.
- (11) resulting from the use of any vehicle for racing.
- (12) assumed by an insured person under any contract or agreement.
- (13) arising out of the ownership, maintenance or use of a car when rented or leased to others by any insured person.
- (14) incurred while the car is used for towing a trailer designed for use with other than a private passenger car.
- (15) For any amount in excess of the minimum financial responsibility laws of the state where the accident occurs or the State of

Nevada resulting from the use of a car by a person specifically excluded.

- (16) due to or resulting from war, insurrection, rebellion, riot, or revolution.
- (17) arising out of the use of:
 - (a) your insured car by a person without your express or implied permission; or
 - (b) a car by any person without the owner's express or implied permission
- (18) arising out of actual, alleged, or threatened discharge, dispersal, release, or escape of any pollutant except if it is sudden and accidental and arises directly from collision of your insured car.
- (19) in the event of an accident occurring outside the state of Nevada, we will not pay any amount in excess of the minimum financial responsibility limits of that state, or greater than the minimum financial responsibility limits of Nevada, whichever is higher.
- (20) While the insured person is in the commission of a crime.
- (21) to any insured person or third party which results from the discharge of a firearm
- (22) for punitive or exemplary damages.
- (23) arising out of the operation of farm machinery.
- (24) as an insured driver of a non-owned vehicle, this insurance will be secondary to any and all insurance applicable to the non-owned vehicle operated by the insured with permission of the owner of said non-owned vehicle.
- (25) sustained by any person while using or operating your insured car while engaged in the business of selling, leasing, repairing, servicing, parking or storing motor vehicles. This includes testing, road testing and delivery.
- (26) After the sale or relinquished ownership of an insured car.

FEDERAL TORT CLAIMS ACT EXCLUSION

The following are not insured persons under PART I- LIABILITY of the policy:

- (1) the United States of America or any of its agencies.
- (2) any person for bodily injury or property damage arising from operation of a vehicle by that person as an employee of the United States Government.

CONFORMITY WITH STATE FINANCIAL RESPONSIBILITY LAWS

When we certify this policy as proof under a state financial responsibility law, it will comply with that law to the extent of the coverage and limits of liability required by that law.

You agree to reimburse us for any payment made by us that we would not have been obligated to make under the terms of this policy.

OUT OF STATE INSURANCE

If you are traveling in a state that has compulsory motor vehicle insurance requirements for non-residents, we will automatically provide the required liability insurance. We will not provide any coverage under the no-fault law or any other similar law of any other state.

LIMITS OF LIABILITY

The limits of liability shown in the Declarations apply subject to the following:

- (1) the bodily injury liability limits for "each person" is the maximum we will pay as damages for bodily injury to one person in one accident, including, but not limited to, derivative claims of a relative.
- (2) subject to the bodily injury liability limit for "each person," the bodily injury liability limit for "each accident" is the maximum we will pay as damages for all bodily injury to two or more persons in any one accident.
- (3) the property damage liability limit for "each accident" is the maximum we will pay for all damages to property in one accident.
- (4) all bodily injury or property damage limits are subject to Exclusion (19), if applicable.

All bodily injury and property damage arising out of continuous or repeated exposure to substantially the same general conditions, or occurrence shall be considered as arising out of one accident

We will pay no more than the maximum limit of liability regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

We will reduce any amount payable under this coverage to an injured person by any amount paid to that person under PART III, Uninsured/Underinsured Motorists Coverage, of this policy.

OTHER INSURANCE

If there is other applicable liability insurance on a loss covered by this Part, we will pay only our share. Our share is the proportion that our limits of liability bear to the total of all applicable limits. However, any insurance afforded under this part for a vehicle you do not own is excess over any other collectible insurance.

No insurance is afforded on newly acquired vehicles if there is other valid and/or collectible insurance.

PART II - MEDICAL PAYMENTS

COVERAGE B - MEDICAL PAYMENTS COVERAGE INSURING AGREEMENT

We will pay reasonable expenses incurred for necessary medical and funeral services because of **bodily injury**,

- (1) sustained by an **insured person**; and
- (2) caused by accident.

We will pay those expenses incurred within one year from the date of the accident.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part "**insured person**" means:

- (1) Any person while occupying your insured car while the car is being used by you, a relative, a resident or another person if that person has your express or implied permission.

EXCLUSIONS

This coverage does not apply for **bodily injury** to any person:

- (1) sustained while occupying your insured car when used to carry persons for a charge. This exclusion does not apply to shared expense car pools.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes but is not limited to mail, newspaper, floral, and food delivery.
- (3) sustained while occupying any vehicle located for use as a residence or premises.
- (4) sustained while occupying a motorized vehicle with less than four wheels.
- (5) sustained while occupying or through being struck by any vehicle, other than your insured car, which is owned by or furnished or available for regular use by you, a relative or resident.
- (6) sustained while occupying a vehicle while the vehicle is being used in the business of an insured person.
- (7) occurring during the course of employment if benefits are payable or must be provided under a workers' compensation law or similar law.
- (8) caused by war, insurrection, rebellion, riot, revolution, nuclear reaction, radiation or radioactive contamination.
- (9) while in the commission of a crime.
- (10) sustained while occupying a vehicle without the owner's express permission to do so.
- (11) resulting from the use of a car by a person or persons specifically excluded.
- (12) while involved in any racing event

LIMITS OF LIABILITY

The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

NO DUPLICATION, STACKING OR COMBINING OF MEDICAL COVERAGE

If you have more than one car insured by us, we will not pay any insured person for bodily injury sustained in any one accident, more than the limit of "Medical Payment Coverage" which you have on any one of those insured cars.

Any amount paid or payable for medical expenses under the Liability or Uninsured/Underinsured Motorists coverages of this policy shall be deducted from the amounts payable under this Part. No payment will be made under this coverage unless the injured person or his legal representative agrees that any payment shall be applied toward any settlement or judgment that person receives under Part I or Part III of this policy.

OTHER INSURANCE

Any payment we make under this Part to an insured person shall be prorated with any other applicable auto medical payments insurance.

We will not be liable under this policy for any medical expense paid or payable under the provisions of any:

- (1) premises insurance providing coverage for medical expenses; or
- (2) individual blanket, or group accident, disability or hospitalization plan; or
- (3) medical, surgical, hospital, or funeral services, benefit or reimbursement plan; or
- (4) worker's compensation or disability benefits law or any similar law.

ARBITRATION

If any **insured person** and we do not agree that the **insured person** is legally entitled to recover **compensatory money damages** or on the amount of **compensatory money damages**, then the dispute will be arbitrated. However, disputes concerning coverage under this part may not be arbitrated.

The **insured person** may make a written demand for arbitration. We and the **insured person** will each select an arbitrator. The two selected arbitrators will then select a third arbitrator. If they cannot agree within 30 days then upon request of the **insured person** or us, the third arbitrator will be selected by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear equally the expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in the county in which the **insured person** lives. Local rules of law and evidence will apply. Any decision of the arbitrators will not be binding.

PART III UNINSURED/UNDERINSURED MOTORIST COVERAGE C - UNINSURED/UNDERINSURED MOTORISTS COVERAGE INSURING AGREEMENT

We will pay **compensatory damages** which an **insured person** is legally entitled to recover from the owner or operator of an **Uninsured or Underinsured motor vehicle** because of **bodily injury**,

- (a) sustained by an **insured person**; and
- (b) caused by an accident.

The owner's or operator's liability for these **damages** must be caused by an accident and arise out of the ownership, maintenance or use of the **uninsured or underinsured motor vehicle**.

Any judgment for **damages** arising out of a suit brought without our written consent is not binding on us.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part:

- (1) **"Insured person"** means:
 - (a) you, a relative or a resident.
 - (b) any other person occupying your insured car.
- (2) **Underinsured motor vehicle** means a land motor vehicle or trailer of any type for which the sum of the **damages** for **bodily injury** which the **insured** has incurred and is legally entitled to recover from the owner or operator of the other vehicle up to the limits of his own coverage to the extent that those **damages** exceed the limits of the coverage for **bodily injury** carried by that owner or operator at the time of the accident and is:
 - (a) on the Declarations page of the **insured** as Underinsured Motorists Coverage.However, **underinsured motor vehicle** does not include:
 - (b) an **uninsured motor vehicle**.
 - (c) a vehicle insured under the liability coverage of the same policy of which this Underinsured Motorists Coverage is a part.
- (3) **Uninsured motor vehicle** means a land motor vehicle or trailer of any type:
 - (a) to which no liability bond or policy applies at the time of the accident.
 - (b) to which a liability bond or policy applies at the time of the accident. In this case, its limit for liability must be less than the minimum limit for liability specified by Nevada law.
 - (c) a hit-and-run vehicle whose owner or operator cannot be identified and which hits:
 - (i) the **insured person**;
 - (ii) a vehicle an **insured person** is occupying; or
 - (iii) your insured car.
 - (d) to which a liability bond or policy applies at the time of the accident but the bonding or insuring company:
 - (i) denies coverage; or
 - (ii) is or becomes insolvent.

However, **uninsured motor vehicle** does not include:

- (a) an **underinsured motor vehicle**.

In addition, neither **uninsured** nor **underinsured motor vehicle** includes any vehicle or equipment:

- (a) owned by or furnished or available for the regular use of you, a relative, or a resident.
- (b) operated on rails or crawler treads.
- (c) designed mainly for use off public roads while not on public roads.
- (d) while located for use as a residence or premises.

EXCLUSIONS

This coverage does not apply for bodily injury:

- (1) to a person sustained while using a vehicle without the owner's express or implied permission to do so.
- (2) resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes but is not limited to mail, newspaper, floral, and food delivery.
- (3) to a person if that person or the legal representative of that person makes a settlement without our written consent.
- (4) to a person occupying or struck by a motor vehicle owned by you, a relative or a resident which is not insured for this coverage under this policy.
- (5) to a person occupying your insured car when used to carry persons or property for a charge. This exclusion does not apply to shared expense car pools.
- (6) resulting from the use of a car by a person or persons specifically excluded.
- (7) for punitive or exemplary damages.
- (8) to a person claiming Uninsured / Underinsured Motorists Coverage who does not notify the police within 24 hours if a hit and run driver is involved.
- (9) resulting from the use of an insured car while involved in any racing event.
- (10) resulting from the ownership, maintenance or use of a motorized vehicle with less than four wheels.
- (11) resulting from the discharge of a firearm.
- (12) which arises from an auto accident that does not involve physical contact with another vehicle.

This coverage shall not apply directly or indirectly to benefit:

- (a) any insurer or self-insurer under any of the following or similar law:
 - (i) workers' compensation law, or
 - (ii) disability benefits law.
- (b) any insurer of property.

LIMITS OF LIABILITY

NO DUPLICATION, STACKING OR COMBINING OF UNINSURED MOTORIST BODILY INJURY COVERAGE

If you have more than one car insured by us, we will not pay any injured person more than the limit of "Uninsured Motorist Injury Coverage" which you have on any one of those insured cars, regardless of the number of claims made or motor vehicles involved in the accident. Coverage on your other motor vehicles insured by us CANNOT be added, stacked together or combined.

- (1) The limits of liability shown in the Declarations for Uninsured Motorists Coverage or Underinsured Motorists Coverage apply subject to the following:
 - (a) the bodily injury liability limits for "each person" is the maximum we will pay as damages for bodily injury to one person in one accident, including, but not limited to, derivative claims of a relative.
 - (b) subject to the bodily injury liability limit for "each person," the bodily injury liability limit for "each accident" is the maximum we will pay as damages for all bodily injury to two or more persons in any one accident.
- (2) The limits of liability shall be reduced by all sums paid because of the bodily injury by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under PART I - LIABILITY of this policy.
- (3) Any amounts otherwise payable for damages under this coverage shall be reduced by all sums paid or payable because of the bodily injury under any of the following or similar laws:
 - (a) workers' compensation law, or
 - (b) disability benefits law.
- (4) Any payment under this coverage will reduce any amount that person is entitled to recover for the same damages under PART I - LIABILITY of this policy.
- (5) We will reduce any amount payable under this coverage to an injured person by any amount paid to that person under PART II, MEDICAL PAYMENTS COVERAGE, of this policy.
- (6) No one will be entitled to receive duplicate payments for the same elements of loss.

All bodily injury arising out of continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one accident.

We will pay no more than the maximum limit of liability as shown in the Declarations for Uninsured Motorists Coverage or Underinsured Motorists Coverage regardless of the number of:

- (1) insured persons;
- (2) claims;
- (3) claimants;
- (4) policies; or
- (5) vehicles involved in the accident.

OTHER INSURANCE

If there is other similar insurance on a loss covered by this Part we will pay our proportionate share as our limit of liability bears to the total limits of all applicable similar insurance. However, any insurance we provide for a vehicle you do not own is excess over any other applicable similar insurance.

ARBITRATION

If any insured person and we do not agree that the insured person is legally entitled to recover compensatory money damages or on the amount of compensatory money damages, then the dispute will be arbitrated. However, disputes concerning coverage under this part may not be arbitrated.

The insured person may make a written demand for arbitration. We and the insured person will each select an arbitrator. The two selected arbitrators will then select a third arbitrator. If they cannot agree within 30 days then upon request of the insured person or us, the third arbitrator will be selected by a judge of a court having jurisdiction.

Each party will pay the expenses it incurs and bear equally the expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in the county in which the insured person lives. Local rules of law and evidence will apply. Any decision of the arbitrators will not be binding.

TRUST AGREEMENT

If we pay you for a loss under this coverage:

- (1) We are entitled to recover from you an amount equal to such payment if there is a legal settlement made or a judgment paid on your behalf with or against any person or organization legally responsible for the loss.
- (2) You must hold in trust for us all rights to recover money which you have against the person or organization legally responsible for the loss.
- (3) You must do everything reasonable to secure our rights and do nothing to prejudice these rights.
- (4) If we ask, you must take necessary or appropriate action, through a representative designated by us, to recover payment as damages from the responsible person or organization.
- (5) You must execute and deliver to us any legal instrument or papers necessary to secure all rights and obligations of you and us as established here.
- (6) An insured person under this coverage must do nothing before or after a loss to prejudice our rights of recovery from any uninsured motorists.

ADDITIONAL CONDITIONS UNDER THIS PART OF THE POLICY

- (1) No claim can be brought against us unless the insured person has fully complied with all the terms of this policy.
- (2) No claim will accrue to an insured person under this part of the policy unless within two years from the date of the accident:
 - (a) the insured person gives us notice of the claim subject to the other terms and conditions of the policy; or
 - (b) an agreement between us and the insured person on any amount due under this part of the policy has been concluded.

ADDITIONAL DUTIES UNDER THIS PART OF THE POLICY

Any Insured person making a claim under this part of the policy shall:

- (1) Give us all the details about any bodily injury and any other information we request;
- (2) Be examined by physicians chosen and paid by us as often as we may reasonably require. Provide us with an authorization and list of medical providers which will allow us to obtain any and all medical records which we deem relevant to the claim made by you. If the insured person is no longer living or unable to act, his or her legal representative shall authorize us to obtain all medical reports and records;
- (3) As a condition precedent to receiving any benefits under this Policy, any person seeking benefits must cooperate with us in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by us when or as often as we may reasonably require at a place designated by us within a reasonable time after we are notified of the claim. Only the person being examined and his attorney may be present during the examination. A minor seeking benefits must submit to an examination with a guardian who may also be present;
- (4) Report a hit and run accident to the police or proper authorities within 24 hours.
- (5) Allow us to see and inspect the car that the insured person occupied in a hit and run accident,
- (6) Immediately send us a copy of all suit papers if the insured person or his or her legal representative sues the party liable for the accident for compensatory money damages.

PART IV - CAR DAMAGE / PHYSICAL DAMAGE (COMPREHENSIVE & COLLISION)

COVERAGE D - CAR DAMAGE COVERAGE INSURING AGREEMENT

We will pay for loss to your insured car:

- (1) caused by collision; or

(2) not caused by **collision**

less any applicable deductibles shown in the Declarations. The deductible shall apply separately to each loss. Coverage does not apply under this Part for a car or utility trailer not owned by you other than your insured car.

LOSS SETTLEMENT

We may pay the loss in money or repair or replace damaged or stolen property. Repair or replacement may be made with materials or equipment of the same like, kind, and quality. We may, at any time before the loss is paid or the property is replaced, return, at our expense, any stolen property either to you or to the address shown in the Declarations, with payment for any resulting damage. We may apply depreciation. We may keep all or part of the property at the agreed or appraised value. You do not have the right to abandon salvage to us.

ADDITIONAL DEFINITIONS USED IN THIS PART ONLY

As used in this Part:

- (1) **"Your insured car"** means:
 - (a) The vehicle listed in the Declarations for this coverage.
 - (b) A vehicle you acquire during the policy period provided:
 - (i) it replaces the vehicle which was insured under the Car Damage portion of this policy; and
 - (ii) you notify us within 30 days of the date you acquire it.
 - (c) A car or utility trailer not owned by or furnished or available for the regular use of you, a relative or a resident while being used with the express permission of the owner.
- (2) **"Insured person"** means:
 - (a) You, a relative or resident.
 - (b) Any person using your insured car with your express permission.
- (3) **"Collision"** means the impact of your insured car with another object or upset of your insured car. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, colliding with a bird or animal, or breakage of glass is loss not caused by collision.
- (4) **"Comprehensive" (excluding collision)** at the Company's option to have repaired or to pay for loss caused other than by collision to the owned automobile or to a non-owned automobile operated by an insured but only for the amount of each such loss in excess of the deductible amount stated in the Declaration as applicable hereto. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, shall not be deemed to be loss caused by collision.
- (5) **"Loss"** means sudden, direct and accidental loss of or damage to:
 - (a) your insured car;
 - (b) its original equipment, as available and permanently installed by the manufacturer as part of a standard option package at the time of purchase; or
 - (b) special equipment as described in the Declarations of this policy.
- (6) **"Like kind and quality part"** includes but is not limited to a replacement part for any vehicle obtained from another vehicle.

Loss shall not include confiscation of the vehicle by any governmental authority.

- (7) **"Special Equipment"** means equipment that was not installed by the manufacturer as part of a standard option package at the time of purchase. This includes but is not limited to:
 - (a) radios, stereos, CD players, tape or cassette players and their accessories;
 - (b) camper shells, toppers, and bed liners;
 - (c) custom interior work such as carpeting, seats, paneling or furniture;
 - (d) any equipment that modifies the vehicles standard appearance or performance;
 - (e) T-tops, moon roofs, sun roofs, nose bras, custom wheels and tires, custom paint work, decals and graphics; or
 - (i) utility trailers.

CAR STORAGE COVERAGE

We will pay up to \$10 a day with a maximum of \$300 for the cost of storage of your insured car in the event of a loss to your insured car for which coverage is provided under this Part, provided that you must cooperate with us in any effort deemed necessary by us to move your insured car to a storage free facility.

TOWING AND RENTAL COVERAGE

This coverage is only available when CAR DAMAGE (Comprehensive and Collision) coverage is purchased. If this optional coverage is purchased, in effect and indicated on the declaration page of the insured at the time of loss, we will pay the following:

1. Towing: \$50 per occurrence, up to \$100 per 12 month period.
2. Rental: \$25 per day to a maximum of \$450 within a 12 month period.

NOTICE: This Towing & Rental coverage is limited to Comprehensive and Collision losses, not mechanical breakdowns.

EXCLUSIONS

We do not cover loss:

- (1) to your insured car while used to carry persons or property for a charge. This includes rental of your insured car to others. This exclusion does not apply to shared-expense car pools.
- (2) Resulting from the ownership or use of a vehicle when used for wholesale or retail delivery. This includes, but is not limited to, mail, newspaper, floral and food delivery.
- (3) caused by war, insurrection, rebellion, revolution, nuclear reaction, radiation or radioactive contamination, or any consequences of any of these.
- (4) to sound reproducing equipment not permanently installed in the dash or console opening of your insured car.
- (5) to tapes, compact discs, or similar items used with sound equipment
- (6) to sound receiving or transmitting equipment designed for use as citizens band radios, two-way mobile radios, telephones, scanning monitor receivers, radar detectors, television sets, video cassette recorders, audio cassette recorders, personal computers, their accessories or antennas.
- (7) to awnings, cabanas, or equipment designed to provide living facilities.
- (8) resulting from prior loss or damage, manufacturer's defects, wear and tear, freezing, mechanical or electrical breakdown or failure, or road damage to tires. However, coverage does apply if the damage is the result of other loss covered by this policy.
- (9) to your insured car due to destruction or confiscation by governmental authorities because of use in illegal activities, or failure to bring it into compliance with the Environmental Protection Agency or the Department of Transportation.
- (10) to special equipment not described in the Declarations.
- (11) to refrigeration, cooling or sleeping facilities.
- (12) resulting from your or a family member's ownership, maintenance or use of your insured car in any racing event.
- (13) caused by the theft or conversion of your insured car by a person you have voluntarily entrusted your insured car to. This exclusion does not apply when your insured car is stolen from the person you loaned the car to, if the theft is reported to the police within 24 hours of the loss.
- (14) to your insured car arising out of or during its use for the transportation of any:
 - (a) explosive substance;
 - (b) flammable liquid, or
 - (c) similar hazardous materials; except transportation incidental to your ordinary household or farm activities.
- (15) to clothes, tools or personal effects.
- (16) to your insured car caused by or resulting from you acquiring your insured car from the seller without legal title available to you.
- (17) to any equipment which mechanically or structurally changes your insured car and results in an increase in performance.
- (18) resulting from the use or operation of your insured car in the commission of a crime or while driving under the influence of alcohol or illegal drug usage.
- (19) To your insured car caused intentionally by or at the direction of an insured person.
- (20) To your insured car while being operated by a person or persons specifically excluded.
- (21) To any vehicle not owned by you not caused by collision.
- (22) To any vehicle that is subject to any bailment lease, conditional sale or consignment agreement, not specifically declared and described in this policy.
- (23) To your insured car due to diminution in value.

LIMIT OF LIABILITY

Our limit of liability for loss shall not exceed the lesser of:

- (1) the actual cash value of your insured car which was stolen or damaged; or
- (2) the amount necessary to repair or replace your insured car which was stolen or damaged; or
- (3) the amount necessary to repair or replace a utility trailer not owned by you, a relative or resident subject to a maximum of \$500.

However, in the event that the coverage applies to a car you do not own, our liability is limited to the highest actual cash value of your insured car described in the Declarations for which Car Damage Coverage has been purchased.

Special Equipment is not covered unless the value of the equipment has been reported to us prior to the loss and a premium has been paid for the additional coverage as described in the Declarations. Our limit of liability for this equipment shall be the lesser of:

- (1) the actual cash value; or
- (2) the declared value subject to a \$50 deductible.

Sound reproducing equipment and component parts shall be subject to a maximum limit of \$1,000 in the aggregate.

OTHER INSURANCE

If there is other applicable similar insurance on a loss covered by this Part, we will pay only that proportion of the loss that our limit of liability bears to the total limits of all applicable similar insurance. However, any insurance afforded under this Part for a vehicle you do not own is excess over any other applicable similar insurance.

APPRAISAL

You or we may demand appraisal of the loss. Each will appoint and pay a competent and licensed appraiser and will equally share other appraisal expenses. The appraisers will select an umpire to decide any differences. Each appraiser will state separately the actual cash value and the amount of loss. An award in writing by any two will determine the amount payable subject to the terms of this policy.

NO BENEFIT TO BAILEE

This insurance shall not in any way benefit any person or organization caring for or handling property including your insured car for a fee.

PART V - NON-OWNER COVERAGE

This Part V applies only if the term "Non-Owner" appears on the Declarations of the policy. The purpose of "Non-Owner" Coverage is to insure the named insured against the liability imposed by the law upon the named insured for bodily injury to or death of any person or damage to property to the amounts and limits stated on the Declaration of this policy and growing out of the use or operation by the named insured within the continental limits of the United States or the Dominion of Canada of a non-owned automobile. If the term "Non-Owner" appears on the Declarations of the policy, then all the terms and conditions of the policy apply except as modified herein, and to the extent that any definition, term or provision of Part V conflicts with any definition, term or provision of any other Part of this policy, the purpose, definitions, terms and provisions of Part V shall control the other Part of this policy.

If this Part V applies then:

1) In Part I - Liability and in all other Parts incorporating said section "Insured Person" is deleted and the following is substituted: **Insured Person.** The only person insured under this policy is the named insured and his or her spouse, if a resident of the same household, and then only with respect to a non-owned automobile, provided the use and operation thereof is with the permission of its owner and within the scope of permission.

2) Part V Definitions to be substituted for definitions in Part I - Liability and as incorporated in other Parts or Conditions from Part I - Liability:

"Non-owned automobile" means an automobile not owned by or furnished for the regular use of the named insured or any resident of the household of the named insured.

"Your insured car" means any automobile owned by or furnished for the regular use of the named insured or a resident of the household of the named insured.

3) Part V definitions to be substituted in specified Parts and related Conditions:

For purpose of Part III - Uninsured / Underinsured Motorist Coverage and of Part II - Medical Payments Coverage:

"insured person" means the named insured and any relative of the named insured.

4) The following are added Exclusions:

In Part I - Liability:

(26) to any automobile owned by or furnished for the regular use of the named insured, or owned by or furnished for the regular use of a resident of the household of the named insured;

(27) to any automobile while used in a business or occupation of the named insured.

In Part II - Medical Payments:

(13) by arising out of the use, operation, or maintenance of any automobile owned by or furnished for the regular use of the named insured or a resident of the household of the named insured;

In Parts III - Uninsured / Underinsured Motorist Coverage:

(13) to injuries arising out of the operation, use or maintenance of a motor vehicle owned by or furnished for the regular use of the named insured, resident spouse or other resident of the named insured's household.

5) In all Parts, delete the Other Insurance section and replace it with:

Other Insurance: This insurance shall be excess insurance over any other valid and collectible insurance or self-insurance.

PART VI - GENERAL PROVISIONS

TWO OR MORE CARS INSURED

If there is an accident or loss to which this or any other automobile policy issued to you by us applies, the total limit of our liability under all the policies will not exceed the highest applicable limit of liability under any one policy. **YOU CANNOT STACK COVERAGES OR POLICIES.**

NOTICE TO COMPANY

Your notice to our authorized agent will be deemed to be notice to us.

POLICY PERIOD, TERRITORY

This policy applies only to accidents and losses during the policy period shown in the Declarations and occurring within the United States of America, its territories or possessions, or between their ports.

CHANGES

This policy and the Declarations include all the agreements between you and us relating to this insurance. No change or waiver may be effected in this policy except by endorsement issued by us. Messages left after normal business hours will not affect coverage. All changes are subject to underwriting review and approval. If a premium adjustment is necessary we will make it as of the effective date of the change. When we broaden coverage during the policy period without charge, the policy will automatically provide the broadened coverage when effective.

SUIT AGAINST US

We may not be sued unless there is full compliance with all terms of this policy. We may not be sued under PART I - Liability coverage until the obligation of an insured person to pay is finally determined. This determination can be made either by judgment against the person after actual trial or by written agreement of the person, the claimant and us. No one shall have any right to make us a party to a suit to determine the liability of an insured person.

No suit or action whatsoever shall be brought against us for the recovery of any claim under Part III - UNINSURED / UNDERINSURED MOTORISTS coverage unless same is commenced within twenty-four months next after the date of the accident.

OUR RECOVERY RIGHTS

In the event of a payment under this policy, we are entitled to all the rights of recovery that the person or organization to whom payment was made has against another. That person or organization must sign and deliver to us any legal papers relating to that recovery. They must also do whatever else is necessary to help us exercise those rights and do nothing after loss to prejudice our rights.

When a person has been paid damages by us under this policy and also recovers from another, the amount recovered shall be held by that person in trust for us and reimbursed to us to the extent of our payment.

ASSIGNMENT

Interest in this policy may not be assigned without our written consent. If you die, the policy will cover for the remainder of the policy term:

- (1) any surviving spouse;
- (2) the legal representative of the deceased person while acting within the scope of duties of a legal representative while occupying your insured car.

BANKRUPTCY

We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an insured person.

CANCELLATION AND NON-RENEWAL

This policy may be canceled during the policy period as follows:

- (1) You may cancel by:
 - (a) returning this policy to us; or
 - (b) giving us advance written notice of the future date cancellation is to take effect.
- (2) We may cancel by mailing to you at the address shown in the Declarations:
 - (a) at least 10 days notice:
 - (i) if cancellation is for nonpayment of premium; or
 - (ii) if notice is mailed during the first 69 days this policy is in effect and this is not a renewal policy; or
 - (b) at least 30 days notice in all other cases.
- (3) After this policy is in effect for 70 days, or if this is a renewal, we will cancel only:
 - (a) for nonpayment of premium; or
 - (b) if your driver's license or that of:
 - (i) any driver who lives with you; or

- (ii) any driver who customarily uses your insured car has been suspended or revoked; or
- (c) for fraud, willful misrepresentation or concealment on the part of any insured with respect to a material fact or circumstance relating to the issuance or continuation of this policy.

If we decide not to renew this policy, we will mail notice to you at the address shown in the Declarations. Notice will be mailed at least 30 days before the end of the policy period.

Proof of mailing any notice shall be sufficient proof of notice. The effective date of cancellation stated in a notice is the end of the policy period.

Upon cancellation, you may be entitled to a premium refund. Our making or offering a refund is not a condition of cancellation.

If we cancel this policy for a reason other than nonpayment of premium, any refund due will be computed on a daily pro-rate basis. Earned premium is calculated on a daily basis.

If you or we cancel, any premium due you of less than \$10 it will be refunded to you only upon your written request.

With regards to dormant accounts, as defined by the Unclaimed Property Act, and property deemed abandoned is subject to a dormancy charge of \$5 per month. This charge shall occur each consecutive month that the account remains dormant until such time the value of the property equals zero dollars.

AUTOMATIC TERMINATION

This policy will automatically terminate at the end of the current policy period if you or your representative does not accept our offer to renew it. Your failure to pay the required renewal premium when due means that you have declined our offer.

If the down payment check for a new policy or renewal term is not honored by the bank, the policy will be rescinded and no coverage will be afforded.

We will mail or deliver any premium billing notice for renewal of this policy to you, at the address shown in the Declarations.

If other insurance is obtained on your insured car, similar insurance afforded under this policy for that car will cease on the effective date of the other insurance.

FRAUD AND MISREPRESENTATION

The statements made by you in the application are deemed to be your representations. If any representation contained in the application is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of facts or incorrect statements, this policy will be null and void from its inception.

If any representation contained in any notification of change is false, misleading or materially affects the acceptance or rating of this risk by us, by either direct misrepresentation, omission, concealment of facts or incorrect statements, this policy will be null and void from the effective date of the change.

This policy will be void at our option if you or an insured person or any other individual act at or by the direction of you or any insured person has:

- (1) concealed or misrepresented any material fact; or
- (2) committed or attempted fraud concerning any matter regarding this policy whether before or after a loss.

PART VII WHAT TO DO IN CASE OF AN AUTO ACCIDENT OR LOSS

NOTICE OF ACCIDENT OR LOSS

In the event of an accident or loss, notice must be given to us promptly. The notice must give the time, place and circumstances of the accident or loss, including the names and addresses of injured persons and witnesses.

FAILURE TO PROMPTLY REPORT A LOSS OR ACCIDENT TO US MAY JEOPARDIZE YOUR COVERAGE UNDER THIS POLICY.

OTHER DUTIES

A person claiming any coverage under this policy must also:

- (1) cooperate with us and assist us in any matter concerning a claim or suit, including presence at a trial.
- (2) send us promptly any legal papers received relating to any claim or suit.
- (3) submit to physical examinations at our expense by doctors we select as often as we may reasonably require.
- (4) authorize us to obtain medical and other records including but not limited to credit and financial records.
- (5) submit a proof of loss under oath if required by us.

- (6) As a condition precedent to receiving any benefits under this Policy, any person seeking benefits must cooperate with us in the investigation, settlement or defense of any claim or suit, including submitting to an examination under oath by any person named by us when or as often as we may reasonably require at a place designated by us within a reasonable time after we are notified of the claim. Only the person being examined and his attorney may be present during the examination. A minor seeking benefits must submit to an examination with a guardian who may also be present.
- (7) upon our request, allow us to obtain a written or recorded statement concerning the circumstances of the claim and any damages claimed.

CAR DAMAGE

A person claiming Car Damage Coverage must also:

- (1) take reasonable steps after loss to protect the car / and its equipment from further loss. We will pay reasonable expenses incurred in providing that protection.
- (2) report a theft of the car or its equipment to the police within 24 hours of discovering the theft.
- (3) allow us to inspect and appraise the damaged car before its repair or disposal.

PART VIII LOSS PAYEE CLAUSE

We will pay loss or damage due under this policy according to your interest and that of the loss payee if one is shown in the Declarations. We may make separate payments according to those interests.

We will not make payment to the loss payee for a loss under this policy if you or anyone acting on your behalf has violated the terms of this policy. This is inclusive, but not limited to fraud, material misrepresentation, material omission, racing, the commission of a crime or any other intentional damage or loss wantonly, or intentionally caused by you or the loss payee in the process of something done, or failed to do in violation of the terms of this agreement.

We may cancel this policy according to its terms. We will protect the loss payee's interest for 10 days after we mail them notice that the policy will terminate. If we pay the loss payee for any loss or damage suffered during that period, we have the right to recover the amount of any such payment from you.

If you fail to give proof of loss within the time allowed, the loss payee may protect its interest by filing a proof of loss within 30 days after that time.

The loss payee must notify us of any known change of ownership or increase in the risk. If it does not, it will not be entitled to any payment under this protection.

If we pay the loss payee under the terms of this protection for a loss not covered under the policy, we are subrogated to its rights against you. This will not affect the loss payee's right to recover the full amount of its claim. The loss payee must assign us its interest and transfer to us all supporting documents if we pay the balance due to the loss payee on the vehicle.

When the deductible amount shown in the Declarations Page for Car Damage coverage is less than \$250, the deductible amount applicable to losses payable to the loss payee under this coverage shall be \$250.

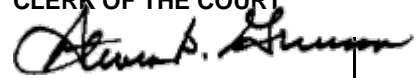
This deductible amount applies only when the covered automobile has been repossessed by or surrendered to the loss payee and the interest of the loss payee has become impaired.

All other losses payable under PART IV - CAR DAMAGE are subject to the deductible amount shown in the Declarations.

In Witness Whereof, the company has caused this policy to be executed and attested. This policy is countersigned on the declarations page by our authorized representative.

Jack Ramirez
PRESIDENT

Charles J. Grimsley
SECRETARY



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

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

DEPT NO. XX

**Transcript of
Proceedings**

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

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

WEDNESDAY, JANUARY 9, 2019

APPEARANCES:

FOR THE PLAINTIFFS:	DAVID ALLEN STEPHENS, ESQ.
FOR THE THIRD PARTY PLAINTIFF GARY LEWIS:	THOMAS F. CHRISTENSEN, ESQ.
FOR THE DEFENDANT GARY LEWIS:	BREEN E. ARNTZ, ESQ.
FOR THIRD PARTY DEFENDANTS:	DAN R. WAITE, ESQ. MATTHEW J. DOUGLAS, ESQ. THOMAS E. WINNER, ESQ.

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

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

2 (Court was called to order)

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

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

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

10 THE COURT: Okay.

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

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

16 MR. WINNER: Tom Winner for UAIC.

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

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

22 MR. WAITE: Could we hear that first.

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

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

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

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

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

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

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

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

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

1 Lewis?

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

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

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

13 THE COURT: Right.

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

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

24 MR. ARNTZ: Yes, Your Honor.

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

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

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

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

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

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

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

21 MR. DOUGLAS: I think so.

22 THE COURT: I mean --

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

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

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

7 MR. CHRISTENSEN: Just --

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

9 MR. CHRISTENSEN: I just want to --

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

11 MR. CHRISTENSEN: Okay.

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

13 MR. CHRISTENSEN: Okay.

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

15 MR. CHRISTENSEN: Before you decide. Okay.

16 THE COURT: I'm sorry. What?

17 MR. CHRISTENSEN: Before you decide.

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

20 MR. CHRISTENSEN: Okay.

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

23 MR. DOUGLAS: Sure.

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

1 MR. DOUGLAS: Yeah.

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

3 MR. DOUGLAS: Yes.

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

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

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

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

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

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

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

12 MR. ARNTZ: Two points.

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

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

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

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

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

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

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

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

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

1 MR. ARNTZ: Well --

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

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

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

15 THE COURT: Okay. Mr. Christensen.

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

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

1 conflict is he has sued his insurance company.

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

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

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

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

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

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

11 MR. CHRISTENSEN: Right.

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

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

17 THE COURT: -- different from --

18 MR. CHRISTENSEN: -- Your Honor?

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

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

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

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

24 THE COURT: -- give them --

25 MR. CHRISTENSEN: Do you have Mandelbaum --

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

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

3 MR. DOUGLAS: I'm okay.

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

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

7 MR. CHRISTENSEN: I have it highlighted --

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

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

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

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

14 THE COURT: Okay.

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

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

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

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

15 THE COURT: Okay.

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

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

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

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

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

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

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

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

20 MR. DOUGLAS: Okay.

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

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

1 case.

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

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

6 THE COURT: Okay.

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

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

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

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

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

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

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

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

10 MR. WINNER: Yeah, some conflicts.

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

12 MR. WINNER: Yes.

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

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

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

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

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

22 MR. WINNER: Thank you.

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

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

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

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

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

18 MR. ARNTZ: Sure.

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

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

1 motion to withdraw.

2 MR. WAITE: Thank you.

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

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

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

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

11 THE COURT: Okay.

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

14 THE COURT: Another representation between parties.

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

17 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 MR. DOUGLAS: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: Right.

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

1 Gary Lewis against UAIC --

2 THE COURT: Right. In the federal case.

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

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

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

19 THE COURT: They look pretty close.

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

1 defendant Gillman (phonetic) in state court.

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

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

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

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

25 MR. CHRISTENSEN: Correct.

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

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

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

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

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

19 MR. CHRISTENSEN: If it's --

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

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

23 THE COURT: Okay. Yeah.

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

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

3 THE COURT: Okay.

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

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

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

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

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

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

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

22 THE COURT: Right.

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

1 THE COURT: But, I mean --
2 MR. CHRISTENSEN: Dave Stephens --
3 THE COURT: -- I'm not suggesting --
4 MR. CHRISTENSEN: -- brought those --
5 THE COURT: -- saying who brought them.
6 MR. CHRISTENSEN: -- on behalf of Cheyenne.
7 THE COURT: I'm saying we now have it, so --
8 MR. CHRISTENSEN: Right. And this is -- so -- so the
9 fact is that your statement that it would have been good if it
10 was 2013 actually argues against the process in my view, right.
11 The -- the fact that more time has gone by makes it more
12 improper for them to be coming in here. This isn't something
13 that just came out of the clear blue sky, but -- but they are
14 kind of the interrelated things.
15 I agree with you that -- that there's this
16 interrelated thing. But assume for a second that the law is
17 crystal clear, black letter law says that that judgment is still
18 valid. Then does the insurance company have a right to come in?
19 Well, of course not. Well, I submit that is what the black
20 letter law is. But so let's -- let's talk a little bit more
21 about how shortly that fuse is and why it's improper.
22 So it's the -- it's the fact that the plain language
23 of NRS 12.130 does not permit intervention after final judgment.
24 What it says is you can intervene before trial. That's what the
25 statutory authorization is. And there's numerous cases from

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

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

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

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

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

8 THE COURT: That's all right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And the minute order was no opposition having been

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

7 THE COURT: All right.

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

11 THE COURT: All right.

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

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

21 MR. DOUGLAS: Thank you, Your Honor.

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

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

24 THE COURT: -- need to --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 intent to delay any of their motions.

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

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

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

25 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 THE COURT: Okay. That's --

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

24 THE COURT: Okay. All right.

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

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

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

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

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

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

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

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

7 THE COURT: Okay.

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

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

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

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

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

6 THE COURT: Okay.

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

10 THE COURT: Okay.

11 MR. STEPHENS: Thank you, Judge.

12 THE COURT: Thanks.

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

14 MR. CHRISTENSEN: Just a few --

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

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

19 THE COURT: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 MR. CHRISTENSEN: Correct.

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

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

12 THE COURT: Okay.

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

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

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

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

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

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

8 THE COURT: Okay.

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

11 THE COURT: Okay.

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

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

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

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

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

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

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

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

18 THE COURT: Okay.

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

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

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

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

6 Do you know what --

7 MR. WAITE: Honeycutt.

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

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

18 THE COURT: It's not on appeal.

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

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

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

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

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

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

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

15 MR. CHRISTENSEN: Yeah.

16 THE COURT: -- the issue that --

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

1 THE COURT: Okay.

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

7 THE COURT: Okay.

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

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

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

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

19 MR. CHRISTENSEN: Okay.

20 THE COURT: All right.

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

1 for --

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

4 MR. DOUGLAS: Okay.

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

7 MR. DOUGLAS: Okay.

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

10 MR. DOUGLAS: Okay.

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

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

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

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

8 THE COURT: Stay.

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

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

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

19 THE CLERK: Yes.

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

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

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

23 THE COURT: But all right.

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

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

3 MR. ARNTZ: No, Your Honor.

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

5 MR. DOUGLAS: Thank you.

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

8 THE COURT: You know --

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

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

14 MR. STEPHENS: Thank you.

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

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

18 THE COURT: Okay. All right.

19 MR. DOUGLAS: Thank you, Your Honor.

20 THE COURT: Thank you all.

21 MR. CHRISTENSEN: Thank you, Your Honor.

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

23 * * * * *

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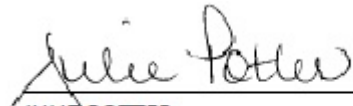
CERTIFICATION

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

AFFIRMATION

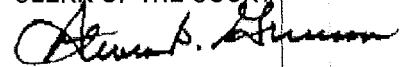
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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



JULIE POTTER
TRANSCRIBER

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Steven D. Grierson
CLERK OF THE COURT


ORDER

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

Attorneys for Intervenor United Automobile Insurance Company

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

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

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

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

ORDER ON MOTIONS HEARD JANUARY 9th, 2019

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

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

FINDINGS OF FACT

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

CONCLUSIONS OF LAW

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

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

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

12 **ORDER**

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

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

26
27 *///*
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1 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor
2 UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN
3 PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her
4 Complaint in case no. A-18-772220-C, herein, (claim 3) seeking general and special damages
5 related to and arising from the July 2007 automobile accident, is DISMISSED, but ruling on the
6 Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case
7 no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case
8 no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further
9 ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*
10 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case
11 no. 70504;

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

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

22 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that UAIC's
23 Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C
24 as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment
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1 pursuant to N.R.C.P. 60 in case No. A-18-772220-C as well as case no. 07A549111 (through
2 Randall Tindall, Esq.) pending new counsel to be retained by UAIC, is hereby DENIED
3 WITHOUT PREJUDICE for the reasons stated in the record;

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

7 **IT IS SO ORDERED.**


8 **DATED** this 11 day of FEBRUARY 2019.

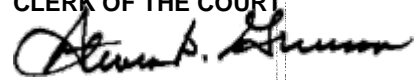
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11 
12 DISTRICT JUDGE

13 ERIC JOHNSON *SS*

14 Submitted by:

15 ATKIN WINNER & SHERROD, LTD.

16 
17 MATTHEW J. DOUGLAS, Esq.
18 Nevada Bar No. 11371
19 1117 South Rancho Drive
20 Las Vegas, Nevada 89102
21 *Attorneys for Intervenor UAIC*



ORDER

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

CHEYENNE NALDER,
Plaintiff,

vs.

GARY LEWIS
and DOES I through V, inclusive
Defendants,

CASE NO: 07A549111

DEPT. NO: XX

Consolidated with 18-A-772220

UNITED AUTOMOBILE
INSURANCE COMPANY,
Intervenor.

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

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,

1 Esq. on behalf of Intervenor United Automobile Insurance Company, Dan Waite, Esq. on behalf
2 of Third Party Defendants Randall Tindall, Esq. and Resnick & Louis, P.C.

3 The Court, having been so fully advised, hereby finds and orders as follows:


4 UAIC's Motion for Relief from Judgment Pursuant to NRCP 60 is DENIED.

5 Dated this 26 day of April, 2019.

6
7 
District Court Judge SS

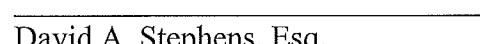
8 ERIC JOHNSON

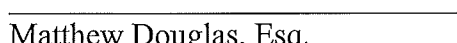
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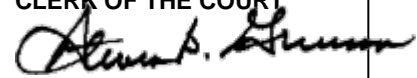
10  #7019
11 CHRISTENSEN LAW OFFICES
12 THOMAS F. CHRISTENSEN, ESQ.
13 Nevada Bar 2326
14 1000 S. Valley View Blvd.
15 Las Vegas, NV 89107
16 T: 702-870-1000
17 courtnotices@injuryhelpnow.com

18 Approved as to form and content by:

19 
20 E. Breen Arntz, Esq.
21 Nevada Bar No. 3853
22 5545 Mountain Vista Ste. E
23 Las Vegas, Nevada 89120
24 T: (702) 384-8000
25 F: (702) 446-8164
26 breen@breen.com
27 Attorney for Gary Lewis, Defendant

28 
David A. Stephens, Esq.
Nevada Bar No. 902
Stephens, Gourley & Bywater
3636 North Rancho Drive
Las Vegas, NV 89130
dstephens@sgblawfirm.com
Attorney for Cheyenne Nalder

29 
30 Matthew Douglas, Esq.
31 Nevada Bar No. 011371
32 Atkin Winner & Sherrod
33 1117 South Rancho Drive
34 Las Vegas, NV 89102
35 mdouglas@awslawyers.com
36 Attorney for UAIC



Electronically Filed
Aug 28 2019 10:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS

MATTHEW J. DOUGLAS (SBN 11,371)

ATKIN WINNER & SHERROD

1117 South Rancho Drive

Las Vegas, Nevada 89102

(702) 243-7000

MDouglas@AWSLawyers.com

DANIEL F. POLSENBERG (SBN 2376)

JOEL D. HENRIOD (SBN 8492)

ABRAHAM G. SMITH (SBN 13,250)

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169-5996

(702) 949-8200

DPolsenberg@LRRC.com

JHenriod@LRRC.com

ASmith@LRRC.com

Attorneys for Intervenor

United Automobile Insurance Company

DISTRICT COURT
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS; DOES I through V, inclu-
sive,

Defendants.

UNITED AUTOMOBILE INSURANCE
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party
Defendants.

Case No. 07A549111

Dept. No. XX

Consolidated with A-18-772220-C

NOTICE OF APPEAL

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David A. Stephens
STEPHENS & BYWATER, P.C.
3636 North Rancho Drive
Las Vegas, Nevada 89130
DStephens@SGBLawFirm.com

Thomas F. Christensen
CHRISTENSEN LAW OFFICES
1000 S. Valley View Blvd.
Las Vegas, Nevada 89107
CourtNotices@InjuryHelpNow.com

/s/ Lisa M. Noltie
An Employee of Lewis Roca Rothgerber Christie LLP

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNITED AUTOMOBILE INSURANCE
COMPANY,
Appellant,
vs.
CHEYENNE NALDER; AND GARY
LEWIS,
Respondents.

No. 79487

FILED

APR 08 2021

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

ORDER DISMISSING APPEAL


This is an appeal from a district court order denying a post-judgment motion for NRCP 60(b) relief. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.

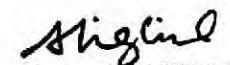
Appellant United Automobile Insurance Company (UAIC) has filed a suggestion of mootness, recognizing that, in related case *Nalder v. Eighth Judicial District Court*, we directed the district court to vacate its order granting UAIC leave to intervene in the underlying case and to strike any related subsequent pleadings and orders, including the appealed order. 136 Nev. 200, 209, 462 P.3d 677, 686 (2020). Respondents Cheyenne Nalder and Gary Lewis have filed a response, agreeing that this appeal should be dismissed as moot but seeking sanctions against UAIC for filing and maintaining a frivolous appeal and for acting in bad faith in pursuing litigation and appellate relief in this matter in general. UAIC has filed a reply opposing the sanctions request.

Having reviewed the parties' filings, we agree that this appeal was rendered moot by our decision in *Nalder*, 136 Nev. 200, 462 P.3d 677, and should be dismissed. *See Univ. & Cmty. Coll. Sys. of Nev. v. Nevadans*

for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004) (recognizing that events subsequent to the district court's decision can render an appeal moot). Further, it does not appear that this appeal—which has not been briefed—was pursued frivolously, and we decline to impose sanctions. NRAP 38. Accordingly, we

ORDER this appeal DISMISSED.

 J.
Parraguirre

 J.
Stiglich

 J.
Silver

cc: Hon. Eric Johnson, District Judge
Paul M. Haire, Settlement Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Winner & Sherrod
Stephens Law Offices
E. Breen Arntz, Chtd.
Christensen Law Offices, LLC
Eighth District Court Clerk