

IN THE SUPREME COURT OF THE STATE OF NEVADA  
Case No. 81510 consolidated with Case No. 81710

CHEYENNE NALDER,  
Appellant,  
vs.

GARY LEWIS and  
UNITED AUTOMOBILE  
INSURANCE COMPANY  
Respondents,

GARY LEWIS, and  
CHEYENNE NALDER  
Appellants,

VS.

UNITED AUTOMOBILE  
INSURANCE COMPANY

Electronically Filed  
Oct 15 2021 07:53 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

## GARY LEWIS' MOTION TO ENLARGE THE RECORD

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## **MOTION TO ENLARGE**

Respondent Gary Lewis, by and through his counsel E. Breen Arntz, and Appellant Gary Lewis, by and through his counsel counsel, Thomas Christensen, by and through his counsel of record, Thomas Christensen hereby file the instant Motion to Supplement the record in connection with this Appeal. This Motion is based on Nev. R. App. Pro. 27 and 30, and the attached memorandum of points and authorities.

Dated this 15th day of October, 2021.

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

In its Answering Brief, UAIC presents facts and argues legal theories that cite to 397 pages of documents submitted in the “Respondent UAIC’s Supplement Appendix Volumes I and II.” However, the documents included within the Respondent’s Appendix are wholly irrelevant to the issue on appeal, were not part of the district court record and were never submitted to the district court (by motion or otherwise) for inclusion in the record prior to the wrongful intervention of UAIC into the underlying case. Many of UAIC’s purported arguments refer to the documents contained in their Supplemental Appendices and Lewis believes they are irrelevant and should be stricken from the record on Appeal.<sup>1</sup> If however, the Court expands the record and allows UAIC to cloud the record with the documents submitted, the Court should also allow Gary Lewis to address the arguments and theories asserted by UAIC in its Supplemental Appendices. Gary Lewis should be allowed an opportunity to respond with proof by way of additional supplementation to the record as attached hereto.

### **II. ARGUMENT**

The appellate court has the inherent authority to supplement the record on appeal. *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003), (citations

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<sup>1</sup> See Lewis’ Motion to Strike, filed concurrently herewith.

omitted); See also *Rosales-Martinez v. Palmer*, 753 F.3d 890, (9th Cir. June 3, 2014). Herein, an insurance company conglomerate has filed response to an appeal by its insured (and a consumer claimant) pertaining to costs and attorneys fees after wrongful intervention by the insurance company in the underlying tort case after judgment. The insurance company herein has presented a supplemental appendix, without first bringing a Motion to Enlarge, that misdirects the Court's attention from the narrow issue on appeal. If the Appellate Court will allow the Supplemental Appendices and issue enlarging arguments made by UAIC herein, Gary Lewis should be afforded an opportunity to respond and present additional evidence including the documents attached hereto and noted below:

1. Judgment in favor of Plaintiffs Nalder and Lewis in U.S. District Court, District of Nevada, 2:09-cv-01348, entered October 30, 2013 .
2. Complaint filed in Eighth Judicial District Court case 18-77220, filed April 3, 2018.
3. Judgment entered July 24, 2018, Superior Court of California, County of Los Angeles, case KS021378.
4. 28(j) letter to the U.S. Court of Appeals for the Ninth Circuit, Docket 13-17441, ECF 52, dated January 29, 2019.
5. Motion to Supplement, Docket 13-17441, ECF 67, dated November 14, 2019, U.S. Court of Appeals for the Ninth Circuit.
6. Motion to Withdraw, filed on January 1, 2019, by Randall Tindall, Esq., in Eighth Judicial District Court case 07A549111 (this underlying case.)

### **III. CONCLUSION**

For the foregoing reasons, Gary Lewis respectfully requests that this Court strike UAIC's Supplemental Appendix in its entirety. If this Court is inclined to



entertain the irrelevant and superfluous arguments alleged to be supported by the Supplemental Appendices, Gary Lewis respectfully requests the attached documents be allowed and additional time to request to supplement the record with further responsive documents as well.

DATED this 15th day of October, 2021.

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### **CERTIFICATE OF SERVICE**

I certify that on the 15th day of October 2021, I submitted the foregoing Motion for filing via the Court's eFlex electronic filing system, thereby notifying counsel of record of the filing.

\_\_\_\_\_/s/Thomas Christensen\_\_\_\_\_  
An employee of CHRISTENSEN LAW OFFICES, LLC

## Proposed Additional Document 1

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JAMES NALDER, Guardian Ad Litem for  
 minor Cheyanne Nalder, real party in  
 interest, and GARY LEWIS, Individually,

Plaintiffs,

v.

UNITED AUTOMOBILE INSURANCE  
 COMPANY, DOES I through V, and ROE  
 CORPORATIONS I through V, inclusive,

Defendants.

2:09-cv-1348-RCJ-GWF

**ORDER**

Currently before the Court are a Motion for Summary Judgment (#88) and a Counter-Motion for Summary Judgment (#89). This case, originally ruled upon by the Honorable Edward C. Reed, is on partial remand from the U.S. Court of Appeals for the Ninth Circuit. The Court heard oral argument on October 22, 2013.

**BACKGROUND**

In July 2009, Defendant United Automobile Insurance Company ("UAIC") filed a petition for removal based on diversity jurisdiction. (Pet. for Removal (#1) at 1-2). Defendant attached Plaintiffs James Nalder, guardian ad litem for minor Cheyanne Nalder, real party in interest, and Gary Lewis's (collectively "Plaintiffs") complaint which had been filed in the Eighth Judicial District in Clark County, Nevada. (Compl. (#1) at 5-16).

The complaint alleged the following. (*Id.* at 5). Lewis was the owner of a 1996 Chevy Silverado and had an automobile insurance policy with Defendant on July 8, 2007. (*Id.* at 6). On July 8, 2007, Lewis drove over top of Cheyanne while Cheyanne was a pedestrian in a residential area and caused Cheyanne serious personal injuries. (*Id.* at 7). Cheyanne made

1 a claim to Defendant for damages and offered to settle the claim for personal injuries and  
2 damages against Lewis within the policy limits. (*Id.*). Defendant refused to settle and denied  
3 the claim all together indicating that Lewis did not have coverage at the time of the accident.  
4 (*Id.*). Defendant was required to provide insurance coverage under the policy. (*Id.* at 9).  
5 Defendant never informed Lewis that Cheyanne was willing to settle the claim for the sum of  
6 \$15,000, the policy limit. (*Id.*). Due to the dilatory tactics and failure of Defendant to protect  
7 its insured, Cheyanne filed a complaint on October 9, 2007 against Lewis for her personal  
8 injuries and damages. (*Id.*). Cheyanne procured a default judgment in the amount of  
9 \$3,500,000 against Lewis. (*Id.*). Plaintiffs alleged breach of contract, breach of the implied  
10 covenant of good faith and fair dealing, bad faith, breach of Nev. Rev. Stat. § 686A.310, and  
11 fraud against Defendant. (*Id.* at 9-14).

12 In March 2010, Defendant filed a motion for summary judgment on all claims. (See  
13 Mot. for Summ. J. (#17)). In December 2010, Judge Reed issued an order granting  
14 Defendant's motion for summary judgment on all claims and directed the Clerk of the Court  
15 to enter judgment accordingly. (Order (#42) at 13). The order provided the following factual  
16 history:

17 Lewis was the owner of a 1996 Chevy Silverado insured, at various times,  
18 by Defendant. Lewis had an insurance policy issued by UAIC on his vehicle  
19 during the period of May 31, 2007 to June 30, 2007. Lewis received a renewal  
20 statement, dated June 11, 2007, instructing him to remit payment by the due  
21 date of June 30, 2007 in order to renew his insurance policy. The renewal  
22 statement specified that "[t]o avoid lapse in coverage, payment must be received  
prior to expiration of your policy." The renewal statement listed June 30, 2007  
as effective date, and July 31, 2007 as an "expiration date." The renewal  
statement also states that the "due date" of the payment is June 30, 2007, and  
repeats that the renewal amount is due no later than June 30, 2007. Lewis  
made a payment on July 10, 2007.

23 Defendant then issued a renewal policy declaration and automobile  
24 insurance cards indicating that Lewis was covered under an insurance policy  
between July 10, 2007 to August 10, 2007.

25 (*Id.* at 2-3).<sup>1</sup>

26 The order stated the following. (*Id.* at 5). Defendant sought summary judgment on all  
27

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28 <sup>1</sup> Record citations omitted.

1 claims on the basis that Lewis had no insurance coverage on the date of the accident. (*Id.*).  
2 Plaintiffs argued that Lewis was covered on the date of the accident because the renewal  
3 notice was ambiguous as to when payment had to be received in order to avoid a lapse in  
4 coverage and that any ambiguities had to be construed in favor of the insured. (*Id.* at 5-6).  
5 Defendants, in the alternative, requested that the Court dismiss Plaintiffs' extra-contractual  
6 claims or bifurcate the claim of breach of contract from the remaining claims. (*Id.* at 6).

7 The order stated the following regarding Lewis's insurance coverage on July 8, 2007:

8 Plaintiffs contend that Lewis was covered under an insurance policy on  
9 July 8, 2007, the date of the accident, because Lewis' payment on July 10, 2007  
10 was timely. Plaintiffs rely on the sentence "[t]o avoid lapse in coverage, payment  
11 must be received prior to expiration of your policy" contained in the renewal  
12 statement. Defendant contends that "expiration of your policy" did not refer to  
13 the expiration date of the renewal policy listed on the renewal statement, but to  
14 the expiration of Lewis' current policy, which coincided with the listed due date  
15 on the renewal statement. Plaintiffs contend that Lewis reasonably believed that  
16 while there was a due date on which UAIC preferred to receive payment, there  
17 was also a grace period within which Lewis could pay and avoid any lapse in  
18 coverage.

19 The renewal statement cannot be considered without considering the  
20 entirety of the contract between Lewis and UAIC. Plaintiff attached exhibits of  
21 renewal statements, policy declarations pages, and Nevada automobile  
22 insurance cards issued by UAIC for Lewis. The contract, taken as a whole,  
23 cannot reasonably be interpreted in favor of Plaintiffs' argument.

24 Lewis received a "Renewal Policy Declarations" stating that he had  
25 coverage from May 31, 2007 to June 30, 2007 at 12:01 A.M. (Pls' Opp., Exhibit  
26 A at 29 (#20-1); Pls' Supp., Exhibit A at 11-12 (#26-1); Pls' Supp., Exhibit A at  
27 15 (#26-1).) The declarations page stated that "[t]his declaration page with  
28 'policy provisions' and all other applicable endorsements complete your policy."  
(Pls' Opp., Exhibit A at 29 (#20-1).) Lewis also received a Nevada Automobile  
Insurance Card issued by UAIC stating that the effective date of his policy was  
May 31, 2007, and the expiration date was June 30, 2007. (*Id.* at 30; Pls' Supp.,  
Exhibit A at 11-12 (#26-1).) The renewal statement Lewis received in June must  
be read in light of the rest of the insurance policy, contained in the declarations  
page and also summarized in the insurance card.

"In interpreting a contract, 'the court shall effectuate the intent of the  
parties, which may be determined in light of the surrounding circumstances if not  
clear from the contract itself.'" *Anvui, LLC v. G.L. Dragon, LLC*, 163 P.3d 405,  
407 (Nev. 2007). Plaintiffs contend that there was a course of dealing between  
Lewis and UAIC supporting a reasonable understanding that there was a grace  
period involved in paying the insurance premium for each month-long policy. In  
fact, the so-called course of dealing tilts, if at all, in favor of Defendant. Lewis  
habitually made payments that were late. UAIC never retroactively covered  
Lewis on such occasions. Lewis' new policy, clearly denoted on the declarations  
page and insurance cards Lewis was issued, would always become effective on  
the date of the payment.

Plaintiffs point to the fact that in April 2007, Lewis was issued a revised  
renewal statement stating that the renewal amount was due on May 6, 2007, a  
date after the effective date of the policy Lewis would be renewing through the

1 renewal amount. This isolated occasion occurred due to the fact that Lewis  
2 added a driver to his insurance policy, resulting in an increase in the renewal  
3 amount, after UAIC had previously sent a renewal notice indicating that a lower  
4 renewal amount was due on April 29, 2007. UAIC issued a revised renewal  
5 statement dated April 26, 2007, and gave Lewis an opportunity to pay by May  
6 6, 2007, instead of April 29, 2007, when the original renewal amount had been  
due upon expiration of his April policy. In that case, Lewis made a timely  
payment on April 28, 2007, and therefore there is not a single incident Plaintiffs  
can point to in which Lewis was retroactively covered for a policy before  
payment was made, even in the single instance UAIC granted him such an  
opportunity due to a unique set of circumstances.

7 (*Id.* at 7-9).

8 Plaintiffs appealed. (Notice of Appeal (#46)). In a two-page memorandum disposition,  
9 the Ninth Circuit held, *inter alia*, the following:

10 We reverse the district court's grant of United Automobile Insurance  
11 Company's motion for summary judgment with respect to whether there was  
12 coverage by virtue of the way the renewal statement was worded. Plaintiffs  
13 came forward with facts supporting their tenable legal position that a reasonable  
14 person could have interpreted the renewal statement to mean that Lewis's  
15 premium was due by June 30, 2007, but that the policy would not lapse if his  
premium were "received prior to expiration of [his] policy," with the "expiration  
date" specifically stated to be July 31, 2007. We remand to the district court for  
trial or other proceedings consistent with this memorandum. The portion of the  
order granting summary judgment with respect to the statutory arguments is  
affirmed.

16 (Ninth Cir. Mem. Dispo. (#82) at 2-3).

17 The pending motions now follow.

## 18 LEGAL STANDARD

19 In reviewing a motion for summary judgment, the court construes the evidence in the  
20 light most favorable to the nonmoving party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir.  
21 1996). Pursuant to Fed.R.Civ.P. 56, a court will grant summary judgment "if the movant shows  
22 that there is no genuine dispute as to any material fact and the movant is entitled to judgment  
23 as a matter of law." Fed.R.Civ.P. 56(a). Material facts are "facts that might affect the outcome  
24 of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106  
25 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). A material fact is "genuine" if the evidence is such  
26 that a reasonable jury could return a verdict for the nonmoving party. *Id.*

27 The moving party bears the initial burden of identifying the portions of the pleadings and  
28 evidence that the party believes to demonstrate the absence of any genuine issue of material

fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). A party asserting that a fact cannot be or is genuinely disputed must support the assertion by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials” or “showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1)(A)-(B). Once the moving party has properly supported the motion, the burden shifts to the nonmoving party to come forward with specific facts showing that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). “The mere existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at 252, 106 S.Ct. at 2512. The nonmoving party cannot defeat a motion for summary judgment “by relying solely on conclusory allegations unsupported by factual data.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). “Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Matsushita*, 475 U.S. at 587, 106 S.Ct. at 1356.

## DISCUSSION

### I. Plaintiff James Nalder’s Motion for Summary Judgment (#88)

Nalder moves for partial summary judgment as to liability against Defendant. (Mot. for Summ. J. (#88) at 1). Nalder makes three arguments which will be addressed in turn.

#### A. Ambiguous Contract

Nalder argues that because the renewal statement was ambiguous it must be strictly construed against the insurance company pursuant to Nevada law and, thus, Lewis had coverage at the time of the accident. (Mot. for Summ. J. (#88) at 10).

In response, Defendant argues that Lewis’s renewal statement is not ambiguous and clearly demanded remittance of the policy premium for the subsequent term by the expiration

1 of the present policy period. (Opp'n to Mot. for Summ. J. (#90) at 15). Defendant argues that  
2 a material issue of fact remains over whether the renewals were ambiguous. (*Id.*).

3 Nalder filed a reply. (Reply to Mot. for Summ. J. (#95)).

4 "Summary judgment is appropriate in contract cases only if the contract provision or the  
5 contract in question is unambiguous." *Econ. Forms Corp. v. Law Co., Inc.*, 593 F.Supp. 539,  
6 540 (D. Nev. 1984). A contract is ambiguous if it is reasonably susceptible to more than one  
7 interpretation. *Shelton v. Shelton*, 78 P.3d 507, 510 (Nev. 2003). Whether a contract is  
8 ambiguous is a question of law. *Margrave v. Dermody Properties, Inc.*, 878 P.2d 291, 293  
9 (Nev. 1994). "The interpretation of an ambiguous contract is a mixed question of fact and  
10 law." *Econ. Forms Corp.*, 593 F.Supp. at 541. However, in Nevada, "any ambiguity or  
11 uncertainty in an insurance policy must be construed against the insurer and in favor of the  
12 insured." *United Nat'l Ins. Co. v. Frontier Ins. Co., Inc.*, 99 P.3d 1153, 1156 (Nev. 2004).

13 In this case, the Court finds that the renewal statement is ambiguous based on the  
14 Ninth Circuit's reverse and remand. The Court finds that the renewal statement is reasonably  
15 susceptible to more than one interpretation as demonstrated by both Judge Reed and the  
16 Ninth Circuit's conflicting interpretations. As such, the Court finds that, pursuant to Nevada  
17 law, this ambiguity is construed against Defendant and in favor of the insured such that Lewis  
18 was covered by the insurance policy on the date of the accident. The Court grants summary  
19 judgment on this issue in favor of Plaintiffs.

## 20 **B. Bad Faith**

21 Nalder argues that Defendant's actions constitute bad faith. (Mot. for Summ. J. (#88)  
22 at 19). Specifically, Nalder argues that Lewis properly renewed his policy pursuant to the  
23 policy's renewal statements, Defendant renewed Lewis's policy, and then Defendant claimed  
24 that there was a lapse in coverage. (*Id.*). Nalder asserts that Defendant never investigated  
25 to determine whether Lewis was covered, made a snap decision that there was no coverage,  
26 and left Lewis bereft of protection against Cheyanne's lawsuit. (*Id.*). Nalder contends that  
27 these facts constitute bad faith which requires Defendant to compensate Lewis, pay for the  
28 judgment currently entered against him, and pay for compensatory and punitive damages.



1 (Id.).

2 In response, Defendant argues that every case cited by Nalder involves a situation  
3 where there existed a policy in force at the time of the loss. (Opp'n to Mot. for Summ. J. (#90)  
4 at 21). Defendant asserts that, in this case, Nalder asks the Court to find an implied policy  
5 from an ambiguity in the renewal. (Id. at 22). Defendant argues that Nevada law provides that  
6 a court may review an insurer's actions at the time they were made to determine whether the  
7 insurer's actions were reasonable as a matter of law and that bad faith cannot be premised  
8 upon an honest mistake, bad judgment, or negligence. (Id. at 25). Defendant asserts that  
9 Nevada law provides that an insurer cannot be found liable for bad faith, as a matter of law,  
10 if it had a reasonable basis to contest coverage. (Id.). Defendant contends that if an insurer's  
11 actions are reasonable the court can decide as a matter of law to dismiss the extra-contractual  
12 claims. (Id. at 26). Defendant asserts that because Lewis admits that he did not make any  
13 policy payments between June 12, 2007 and July 10, 2007 its actions were reasonable. (Id.).  
14 Defendant contends that even if it may be found to owe coverage on an implied contract,  
15 Plaintiffs must admit that a genuine dispute existed as to coverage at the time of the accident.  
16 (Id.).

17 Nalder filed a reply. (Reply to Mot. for Summ. J. (#95)).

18 Nevada law imposes the covenant of good faith and fair dealing on insurers. *Allstate*  
19 *Ins. Co. v. Miller*, 212 P.3d 318, 324 (Nev. 2009). A violation of the covenant gives rise to a  
20 bad-faith tort claim. *Id.* The Nevada Supreme Court has defined "bad faith as 'an actual or  
21 implied awareness of the absence of a reasonable basis for denying benefits of the [insurance]  
22 policy.'" *Id.* (quoting *Am. Excess Ins. Co. v. MGM*, 729 P.2d 1352, 1354-55 (Nev. 1986). "To  
23 establish a prima facie case of bad-faith refusal to pay an insurance claim, the plaintiff must  
24 establish that the insurer had no reasonable basis for disputing coverage, and that the insurer  
25 knew or recklessly disregarded the fact that there was no reasonable basis for disputing  
26 coverage." *Powers v. United Servs. Auto. Ass'n*, 962 P.2d 596, 604 (Nev. 1998) *opinion*  
27 *modified on denial of reh'g*, 979 P.2d 1286 (Nev. 1999).

28 In this case, the Court denies Nalder's motion for summary judgment on the bad faith

1 claims. The procedural history of this case demonstrates that Defendant had a reasonable  
2 basis for disputing coverage during the time of the incident. As demonstrated by Judge  
3 Reed's original order, there was arguably sufficient evidence to find a basis for Defendant to  
4 deny Lewis benefits of the insurance policy. Even though the Ninth Circuit reversed and  
5 remanded Judge Reed's original order, this Court finds that the procedural history of this case  
6 demonstrates that Defendant had a reasonable basis to dispute coverage and, on one  
7 occasion, had succeeded in that argument. The Court denies Nalder's motion for summary  
8 judgment on this issue.

### 9 **C. Pre and Post-Judgment Interest**

10 Nalder argues that because there was arguable or possible coverage under the policy,  
11 Defendant had a duty to defend Lewis. (Mot. for Summ. J. (#88) at 20). Nalder asserts that  
12 Defendant's failure to provide coverage and its breach of the duty to defend was the proximate  
13 cause of the default judgment being entered against Lewis. (*Id.*). Nalder contends that  
14 Defendant has the duty to indemnify Lewis. (*Id.*).

15 In response, Defendant argues that there are court cases where an insurer who  
16 investigated coverage and based its decision not to defend on a reasonable construction of  
17 the policy was not liable for bad faith breach of the duty to defend even after the court resolved  
18 the ambiguity in the contract in favor of the insured. (Opp'n to Mot. for Summ. J. (#90) at 33).

19 Nalder filed a reply. (Reply to Mot. for Summ. J. (#95)).

20 The Nevada Supreme Court has held that primary liability insurance policies create a  
21 hierarchy of duties between the insurer and the insured. *Allstate Ins.*, 212 P.3d at 324. One  
22 of these contractual duties is the duty to defend. *Id.* A breach of the duty to defend is a  
23 breach of a contractual obligation. See *id.* at 324-25. An insurer bears a duty to defend its  
24 insured whenever it ascertains facts which give rise to the potential of liability under the policy.  
25 *United Nat'l Ins. Co. v. Frontier Ins. Co., Inc.*, 99 P.3d 1153, 1158 (Nev. 2004). Once the duty  
26 to defend arises, it continues through the course of litigation. *Id.* "If there is any doubt about  
27 whether the duty to defend arises, this doubt must be resolved in favor of the insured." *Id.*  
28 "The purpose behind construing the duty to defend so broadly is to prevent an insurer from

1 evading its obligation to provide a defense for an insured without at least investigating the facts  
2 behind a complaint.” *Id.* However, the duty to defend is not absolute. *Id.* “A potential for  
3 coverage only exists when there is arguable or possible coverage.” *Id.* “Determining whether  
4 an insurer owes a duty to defend is achieved by comparing the allegations of the complaint  
5 with the terms of the policy.” *Id.* If an insurer breaches the duty to defend, damages are  
6 limited to attorneys’ fees and costs incurred by the insured to defend the action. *See Home*  
7 *Sav. Ass’n v. Aetna Cas. & Sur. Co.*, 854 P.2d 851, 855 (Nev. 1993) (holding that an insured  
8 was not barred from further pursuing recovery from insurance company for fees and costs  
9 incurred in defending an action); *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev.*  
10 *Co., Inc.*, 255 P.3d 268, 278 (Nev. 2011) (discussing damages related to an indemnitor’s duty  
11 to defend an indemnitee).

12 In this case, as discussed at oral argument, the Court finds that Defendant breached  
13 its contractual duty to defend Gary Lewis in the underlying action. As such, Gary Lewis’s  
14 damages are limited to the attorneys’ fees and costs he incurred in defending that action.  
15 However, the Court awards no damages to Gary Lewis because he did not incur any fees or  
16 costs in defending the underlying action because he chose not to defend and, instead, took  
17 a default judgment.

18 As such, the Court grants in part and denies in part Nalder’s motion for summary  
19 judgment. The Court grants summary judgment for Nalder on the ambiguity issue and finds  
20 that there is an ambiguity in the renewal statement and, thus, the policy is construed in favor  
21 of coverage at the time of the accident. Defendant must pay the policy limits of the implied  
22 insurance policy. The Court denies summary judgment for Nalder on the remaining bad-faith  
23 claims. The Court grants in part and denies in part summary judgment for Nalder on the duty  
24 to defend issue. The Court finds that Defendant did breach its contractual duty to defend but  
25 denies Nalder’s request for damages for that breach.

26 **II. Defendant’s Counter-Motion for Summary Judgment on All Extra-Contractual**  
27 **Claims or Remedies (#89)**

28 Defendant seeks summary judgment on all of Plaintiff’s claims for extra-contractual

1 remedies and/or bad faith claims because there was a genuine dispute as to whether  
2 coverage existed at the time and its actions were reasonable. (Counter Mot. for Summ. J.  
3 (#89) at 15). Defendant argues that because it had a reasonable basis to deny coverage there  
4 can be no bad faith. (*Id.* at 16).

5 Nalder filed a response and Defendant filed a reply. (Opp'n to Counter Mot. for Summ.  
6 J. (#96); Reply to Counter Mot. for Summ. J. (#97)).

7 The Court grants Defendant's counter-motion for summary judgment on Plaintiffs' extra-  
8 contractual claims and/or bad faith claims. As discussed above, the procedural history of this  
9 case demonstrates that Defendant had a reasonable basis for disputing coverage during the  
10 time of the accident and, thus, there is no bad faith on the part of Defendant.

### 11 CONCLUSION

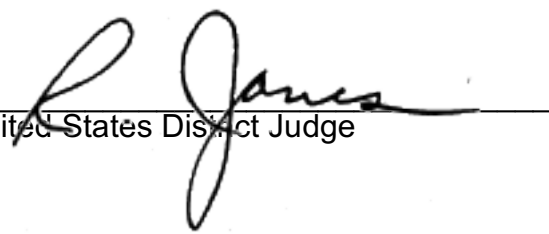
12 For the foregoing reasons, IT IS ORDERED that Plaintiff James Nalder's Motion for  
13 Summary Judgment (#88) is GRANTED in part and DENIED in part. The Court grants  
14 summary judgment in favor of Nalder and finds that the insurance renewal statement  
15 contained an ambiguity and, thus, the statement is construed in favor of coverage during the  
16 time of the accident. The Court denies summary judgment on Nalder's remaining bad-faith  
17 claims.

18 IT IS FURTHER ORDERED that Defendant's Counter-Motion for Summary Judgment  
19 on All Extra-Contractual Claims or Remedies (#89) is GRANTED. The Court grants summary  
20 judgment on all extra-contractual claims and/or bad faith claims in favor of Defendant.

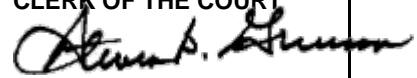
21 The Court directs Defendant to pay Cheyanne Nalder the policy limits on Gary Lewis's  
22 implied insurance policy at the time of the accident.

23 The Clerk of the Court shall enter judgment accordingly.

24 Dated this 30th of October, 2013.

25  
26  
27  
28  
  
United States District Judge

## Proposed Additional Document 2



1 **COMP**

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@sblawfirm.com  
10 Attorney for Cheyenne Nalder

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 CHEYENNE NALDER,

14 Plaintiff,

15 vs.

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

18 Defendants.

CASE NO.: ~~A-549111~~ A-18-772220-C

DEPT NO.: ~~XXIX~~ Department 29

19 **COMPLAINT**

20 Date: n/a

21 Time: n/a

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

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

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

31 3. That the true names or capacities, whether individual, corporate, associate or  
32 otherwise, of Defendants names as DOES 1 through V, inclusive, are unknown to Plaintiff, who

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

10 CLAIM FOR RELIEF;

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

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

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

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

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

22           4. Costs of this suit;

23           5. Attorney's fees; and

24 ///

26 ///

28 ///

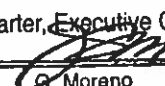
6. For such other and further relief as to the Court may seem just and proper in the premises.

DATED this 3<sup>rd</sup> day of April, 2018.

STEPHENS GOURLEY &amp; BYWATER

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

## Proposed Additional Document 3

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp <b>FILED</b> Superior Court of California County of Los Angeles <b>JUL 24 2018</b> Sherri R. Carter, Executive Officer/Clerk By:  Deputy CASE NUMBER KS021378
COURTHOUSE ADDRESS: Pomona Courthouse, 400 Civic Center Plaza, Pomona CA 91766		
PLAINTIFF/PETITIONER: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder		
DEFENDANT/RESPONDENT: Gary Lewis		
<b>JUDGMENT BASED ON SISTER-STATE JUDGMENT</b> (Code Civ. Proc., § 1710.25)		

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

Pursuant to Code of Civil Procedure section 1710.25, judgment is hereby entered in favor of plaintiff/judgment creditor

James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

and against defendant/judgment debtor

Gary Lewis

For the amount shown in the application remaining unpaid under said Judgment in the sum of \$ 3,485,000, together with interest on said Judgment in the sum of \$ 2,174,998.52, Los Angeles Superior Court filing fees in the sum of \$ 435, costs in the sum of \$ 0, and interest on said judgment accruing from the time of entry of Judgment at the rate provided by law.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: JUL 24 2018

By: 

G. MORENO  
Deputy Clerk

### CERTIFICATE OF MAILING

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment Based on Sister-State Judgment (Code Civ. Proc., § 1710.25) upon each party or counsel named below by depositing in the United States mail at the courthouse in \_\_\_\_\_, California, one copy of the original filed herein in a separate sealed envelope for each address as shown below with the postage thereon fully prepaid.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name): Mark J. Linderman (State Bar No. 144685) mlinderman@jco.com  
 Joshua M. Deitz (State Bar No. 267454) jdeitz@jco.com  
 311 California Street San Francisco, California 94104

TELEPHONE NO.: 415-956-2821

ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder

NAME OF COURT: Superior Court of California, County of Los Angeles  
 STREET ADDRESS: 400 Civic Center Plaza  
 MAILING ADDRESS:  
 CITY AND ZIP CODE: Pomona 91766  
 BRANCH NAME: Pomona Courthouse

PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder  
 DEFENDANT: Gary Lewis

**NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT**

FOR COURT USE ONLY

**FILED**  
 Superior Court of California  
 County of Los Angeles

**JUL 24 2018**

Sherri R. Carter, Executive Officer/Clerk  
 By G. Moreno Deputy

CASE NUMBER: KS021378

1. TO JUDGMENT DEBTOR (name): Gary Lewis  
 733 S. Minnesota Ave, Glendora, CA 91740

**BY FAX**

2. YOU ARE NOTIFIED

a. Upon application of the judgment creditor, a judgment against you has been entered in this court as follows:

(1) Judgment creditor (name): James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

(2) Amount of judgment entered in this court: \$ 5,660,433.52

b. This judgment was entered based upon a sister-state judgment previously entered against you as follows:

(1) Sister state (name): Nevada

(2) Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
 200 Lewis Ave, Las Vegas, NV. 89155

(3) Judgment entered in sister state on (date): June 2, 2008

(4) Title of case and case number (specify): Nalder v. Lewis, Case No. A549111

3. A sister-state judgment has been entered against you in a California court. Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final.

This court may order that a writ of execution or other enforcement may issue. Your wages, money, and property could be taken without further warning from the court.

If enforcement procedures have already been issued, the property levied on will not be distributed until 30 days after you are served with this notice.

Date: **JUL 24 2018**

**SHERRI R. CARTER**, Clerk, by G. MORENO, Deputy

4. ☒ NOTICE TO THE PERSON SERVED: You are served

a. ☒ as an individual judgment debtor.

b. ☐ under the fictitious name of (specify):

c. ☐ on behalf of (specify):

Under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

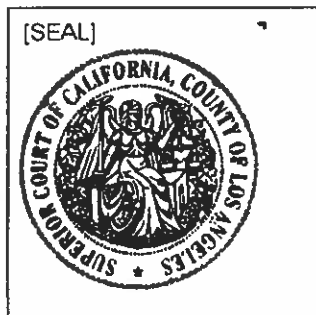
☐ other:

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☒ CCP 416.90 (individual)

(Proof of service on reverse)



**PROOF OF SERVICE**  
(Use separate proof of service for each person served)

1. I served the Notice of Entry of Judgment on Sister-State Judgment as follows:

a. on judgment debtor (name): **GARY LEWIS**

b. by serving ☒ judgment debtor ☐ other (name and title or relationship to person served):

c. ☒ by delivery ☒ at home ☐ at business

(1) date: 07/26/18

(2) time: 7:00 p.m.

(3) address: 733 S. Minnesota Ave  
Glendora, CA 91740

d. ☐ by mailing

(1) date:

(2) place:

2. Manner of service (check proper box):

a. ☒ **Personal service.** By personally delivering copies. (CCP 415.10)

b. ☐ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))

c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) **(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)**

d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) **(Attach completed acknowledgment of receipt.)**

e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) **(Attach signed return receipt or other evidence of actual delivery to the person served.)**

f. ☐ Other (specify code section):

☐ Additional page is attached.

3. The "Notice to the Person Served" was completed as follows:

a. ☒ as an individual judgment debtor.

b. ☐ as the person sued under the fictitious name of (specify):

c. ☐ on behalf of (specify):

under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (individual)

☐ other:

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

a. ☐ California sheriff, marshal, or constable.

b. ☒ Registered California process server.

c. ☐ Employee or independent contractor of a registered California process server.

d. ☐ Not a registered California process server.

e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

Jorge Rivera (Reg# 4690 Los Angeles County)  
52 Second Street, 3rd Floor  
San Francisco, California 94105  
(415) 546-6000

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

Date: 07/27/18



(SIGNATURE)

[EJ-110]

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

Date:



(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Mark J. Linderman (State Bar No. 144685) mlinderman 415-956-2828 Joshua M. Deitz (State Bar No. 267454) jdcitz@rjo.com 415-956-2828 311 California Street San Francisco, California 94104		TELEPHONE NO.: FOR COURT USE ONLY <div style="text-align: center; font-weight: bold; font-size: 1.2em;">FILED</div> Superior Court of California County of Los Angeles <div style="display: flex; justify-content: space-around; font-weight: bold; font-size: 1.1em;"> <span>JUL 17 2018</span> <span>JUL 17 2018</span> </div> Sherri R. Carter, Executive Officer/Clerk By <u>[Signature]</u> Deputy D. Moreno	
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder NAME OF COURT: Superior Court of California, County of Los Angeles STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: CITY AND ZIP CODE: Pomona 91766 BRANCH NAME: Pomona Courthouse		<div style="text-align: center; font-weight: bold; font-size: 1.2em;">RECEIVED</div> <div style="text-align: center; font-weight: bold; font-size: 1.1em;">JUL 17 2018</div> <div style="text-align: center; font-weight: bold; font-size: 1.1em;">EAST DISTRICT</div>	
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis		CASE NUMBER: <div style="text-align: center; font-weight: bold; font-size: 1.1em;">KS021378</div>	
APPLICATION FOR ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT <input type="checkbox"/> AND ISSUANCE OF WRIT OF EXECUTION OR OTHER ENFORCEMENT <input type="checkbox"/> AND ORDER FOR ISSUANCE OF WRIT OR OTHER ENFORCEMENT			

Judgment creditor applies for entry of a judgment based upon a sister-state judgment as follows:

BY FAX

1. Judgment creditor (name and address):  
 James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder  
 5037 Sparkling Sky Avenue  
 Las Vegas, Nevada, 89130
2. a. Judgment debtor (name): Gary Lewis
  - b. ☒ An individual (last known residence address): 733 S. Minnesota Ave, Glendora, CA 91740
  - c. ☐ A corporation of (specify place of incorporation):
    - (1) ☐ Foreign corporation
 

☐ qualified to do business in California  
☐ not qualified to do business in California
    - d. ☐ A partnership (specify principal place of business):
      - (1) ☐ Foreign partnership which
 

☐ has filed a statement under Corp C 15700  
☐ has not filed a statement under Corp C 15700
3. a. Sister state (name): Nevada
  - b. Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
 200 Lewis Ave, Las Vegas, NV. 89155
  - c. Judgment entered in sister state on (date): June 2, 2008
4. An authenticated copy of the sister-state judgment is attached to this application. Include accrued interest on the sister-state judgment in the California judgment (item 5c).
  - a. Annual interest rate allowed by sister state (specify): 6.5%
  - b. Law of sister state establishing interest rate (specify): NRS 17.130
5. a. Amount remaining unpaid on sister-state judgment: ..... \$ 3,485,000
  - b. Amount of filing fee for the application: ..... \$ 435
  - c. Accrued interest on sister-state judgment: ..... \$ 2,174,998.52
  - d. Amount of judgment to be entered (total of 5a, b, and c): ..... \$ 5,660,433.52

(Continued on reverse)

Amended

SHORT TITLE: Nalder v. Lewis

CASE NUMBER:

KS021378

6. ☐ Judgment creditor also applies for issuance of a writ of execution or enforcement by other means before service of notice of entry of judgment as follows:

a. ☐ Under CCP 1710.45(b).

b. ☐ A court order is requested under CCP 1710.45(c). Facts showing that great or irreparable injury will result to judgment creditor if issuance of the writ or enforcement by other means is delayed are set forth as follows:

☐ continued in attachment 6b.

7. An action in this state on the sister-state judgment is not barred by the statute of limitations.

8. I am informed and believe that no stay of enforcement of the sister-state judgment is now in effect in the sister state.

9. No action is pending and no judgment has previously been entered in any proceeding in California based upon the sister-state judgment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters which are stated to be upon information and belief, and as to those matters I believe them to be true.

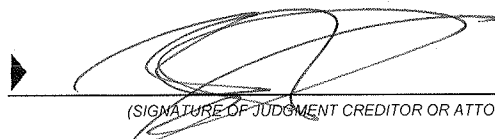
Date:

7/17/12

Joshua M. Deitz

(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGMENT CREDITOR OR ATTORNEY)





# EXHIBIT A

ORIGINAL

FILED

AUG 26 11 00 AM '08

CLERK OF THE COURT

JUDG

DAVID F. SAMPSON, ESQ.,

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

(702) 870-1000

Attorney for Plaintiff,

JAMES NALDER As Guardian Ad

Litem for minor, CHEYENNE NALDER

DISTRICT COURT  
CLARK COUNTY, NEVADA

JAMES NALDER, individually )

and as Guardian ad Litem for )

CHEYENNE NALDER, a minor. )

Plaintiffs, )

vs. )

CASE NO: A549111

DEPT. NO: VI

GARY LEWIS, and DOES I )

through V, inclusive ROES I )

through V )

Defendants. )

**NOTICE OF ENTRY OF JUDGMENT**

PLEASE TAKE NOTICE that a Judgment against Defendant, GARY LEWIS, was

entered in the above-entitled matter on June 2, 2008. A copy of said Judgment is attached

hereto.

DATED this 5 day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: [Signature]

DAVID F. SAMPSON, ESQ.

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorneys for Plaintiff

CLERK OF THE COURT

RECEIVED  
AUG 26 2008

1  
2  
3 **CERTIFICATE OF SERVICE**

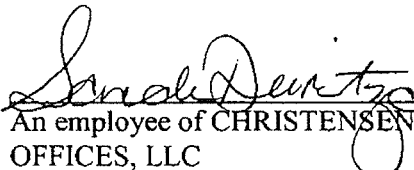
4 Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW  
5 OFFICES, LLC., and that on this 5<sup>th</sup> June day of ~~March~~, 2008, I served a copy of the  
6 foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:  
7

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

10 ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile  
11 number(s) shown below and in the confirmation sheet filed herewith. Consent to  
12 service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by  
13 facsimile transmission is made in writing and sent to the sender via facsimile within  
14 24 hours of receipt of this Certificate of Service; and/or

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

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

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

1 JMT

2 THOMAS CHRISTENSEN, ESQ.,  
3 Nevada Bar #2326

4 DAVID F. SAMPSON, ESQ.,  
5 Nevada Bar #6811

6 1000 S. Valley View Blvd.

7 Las Vegas, Nevada 89107

8 (702) 870-1000

9 Attorney for Plaintiff,

*Clark*  
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

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

15 Plaintiffs, )

16 vs. )

CASE NO: A549111

DEPT. NO: VI

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

19 Defendants. )

20 JUDGMENT

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

27 ...

28 ...

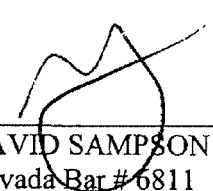
...

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

6 DATED THIS 2 day of June, 2008.

7  
8   
9 DISTRICT JUDGE

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

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

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

*Anna L. Linn*  
CLERK OF THE COURT 2-25-2010

## Proposed Additional Document 4



Molly C. Dwyer, Clerk of the Court  
Office of the Clerk  
U.S. Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, CA 94103  
**Electronically Filed and Served**

January 29, 2019

**Re: James Nalder et al v. United Automobile Insurance Co., Case No. 13-17441**  
**Appellants' Citation of Supplemental Authority Pursuant to Rule 28(j)**


Pursuant to Fed.R.App.P.28(j), Appellants provide an additional citation of supplemental authority relevant to the issues presented for consideration by the court. This matter is currently submitted to the Nevada Supreme Court on two certified questions. The first and main certified question is directly and completely resolved. The second question is rendered moot because the default judgment is identified as just one of the possible consequential damages an insurer will be liable for as a result of the breach of the duty to defend. In addition, recently entered judgments against Lewis are attached which demonstrate the inapplicability of the second certified question.

*Century Surety Company v. Andrew*, 134 Nev. Advance Opinion 100, filed on December 13, 2008 and the judgments entered in Nevada and California support Appellants' arguments set forth in Appellants' Opening Brief pp. 9-13 and in Appellants' Reply Brief pp. 2-4. Appellants' Response To Appellee's Motion To Dismiss For Lack Of Standing pp. 6-8.

In *Andrew*, the Nevada Supreme Court settled the law in Nevada on this issue by stating "...an insurer's liability where it breaches its contractual duty to defend is ... for any consequential damages caused by its breach." All three judgments are recent judgments against Gary Lewis for the injuries to Ms. Nalder.

Attached are Exhibits: 1. *Century Surety Company v. Andrew*, 134 Nev. Advance Opinion 100, filed on December 13, 2018. 2. The Nevada Amended Judgment filed March 28, 2018. 3. The Nevada judgment in case No. 18-A-772220 filed January 22, 2019 in 07A549111(consolidated with 18-A-772220. 4. The California sister state judgment filed July 24, 2018.

Respectfully Submitted,



Thomas Christensen  
Attorney for Appellants



Exhibit 1

**134 Nev., Advance Opinion 100**

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 73756

**FILED**

DEC 13 2018

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

Certified question pursuant to NRAP 5 concerning insurer's liability for breach of its duty to defend. United States District Court for the District of Nevada; Andrew P. Gordon, Judge.

*Question answered.*

Gass Weber Mullins, LLC, and James Ric Gass and Michael S. Yellin, Milwaukee, Wisconsin; Christian, Kravitz, Dichter, Johnson & Sluga and Martin J. Kravitz, Las Vegas; Cozen O'Connor and Maria L. Cousineau, Los Angeles, California,  
for Appellant.

Eglet Prince and Dennis M. Prince, Las Vegas,  
for Respondents.

Lewis Roca Rothgerber Christie LLP and J. Christopher Jorgensen and Daniel F. Polsenberg, Las Vegas,  
for Amicus Curiae Federation of Defense & Corporate Counsel.

Lewis Roca Rothgerber Christie LLP and Joel D. Henriod and Daniel F. Polsenberg, Las Vegas; Crowell & Moring LLP and Laura Anne Foggan, Washington, D.C.,  
for Amici Curiae Complex Insurance Claims Litigation Association, American Insurance Association, and Property Casualty Insurers Association of America.

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

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BEFORE THE COURT EN BANC.<sup>1</sup>

*OPINION*

By the Court, DOUGLAS, C.J.:

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

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

*FACTS AND PROCEDURAL HISTORY*

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

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

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

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

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

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

### *DISCUSSION*

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

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

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

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

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

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

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

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

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

(Emphasis added.)

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

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



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

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



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

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

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

refusal to entertain a settlement offer within the policy limit and not solely because the insurer refused to defend); *George R. Winchell, Inc. v. Norris*, 633 P.2d 1174, 1177 (Kan. Ct. App. 1981) (“Absent a settlement offer, the plain refusal to defend has no causal connection with the amount of the judgment in excess of the policy limits.”). In *Winchell*, the court explained the theory behind the majority view, reasoning that when an insurer refuses a settlement offer, unlike a refusal to defend, “the insurer is causing a discernible injury to the insured” and “the injury to the insured is traceable to the insurer’s breach.” 633 P.2d at 1777. “A refusal to defend, in itself, can be compensated for by paying the costs incurred in the insured’s defense.” *Id.* In sum, “[a]n [insurer] is liable to the limits of its policy plus attorney fees, expenses and other damages where it refuses to defend an insured who is in fact covered,” and “[t]his is true even though the [insurer] acts in good faith and has reasonable ground[s] to believe there is no coverage under the policy.” *Allen v. Bryers*, 512 S.W.3d 17, 38-39 (Mo. 2016) (first and fifth alteration in original) (internal quotation marks omitted), *cert. denied by Atain Specialty Ins. Co. v. Allen*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 212 (2017).

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

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

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

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

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

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

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

We conclude that the minority view is the better approach. Unlike the minority view, the majority view places an artificial limit to the insurer’s liability within the policy limits for a breach of its duty to defend. That limit is based on the insurer’s duty to indemnify but “[a] duty to defend limited to and coextensive with the duty to indemnify would be essentially meaningless; insureds pay a premium for what is partly litigation insurance designed to protect . . . the insured from the expense of defending suits brought against him.” *Capitol Envtl. Servs., Inc. v. N. River Ins. Co.*, 536 F. Supp. 2d 633, 640 (E.D. Va. 2008) (internal quotation marks omitted). Even the *Comunale* court recognized that “[t]here is an important difference between the liability of an insurer who performs its obligations and that of an insurer who breaches its contract.” 328 P.2d at 201. Indeed, the insurance policy limits “only the amount the insurer may have to pay in the performance of the contract as compensation to a third person for personal injuries caused by the insured; they do not restrict the damages recoverable by the insured for a breach of contract by the insurer.” *Id.*

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

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

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

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

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

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

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



### CONCLUSION

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

Douglas, C.J.  
Douglas

We concur:

Cherry, J.  
Cherry

Gibbons, J.  
Gibbons

Pickering, J.  
Pickering

Hardesty, J.  
Hardesty

Stiglich, J.  
Stiglich

Exhibit 2



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**JMT**  
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Las Vegas, Nevada 89130  
Attorneys for Plaintiff  
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E: dstephens@sbgllawfirm.com  
*Attorney for Cheyenne Nalder*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

CHEYENNE NALDER,  
  
Plaintiff,  
  
vs.  
  
GARY LEWIS,  
  
Defendant.

07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

**AMENDED JUDGMENT**

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

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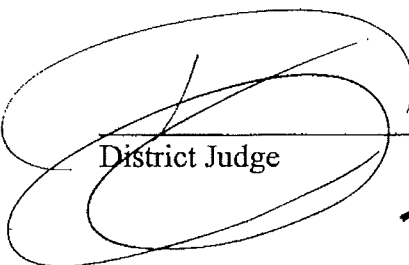

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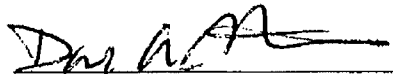
...

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

6 DATED this 26 day of March, 2018.

7  
8  
9  
10   
11 District Judge 

12 Submitted by:  
13 STEPHENS GOURLEY & BYWATER

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

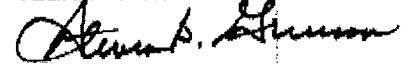
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JAN 23 2019

## Exhibit 3

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**JUDG**

E. BREEN ARNTZ, ESQ.  
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T: (702) 384-8000  
F: (702) 446-8164  
breen@breen.com

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAMES NALDER,  
Plaintiff,

vs.  
GARY LEWIS and DOES I through V,  
inclusive

Defendants,

CASE NO: 07A549111  
DEPT. NO: XX  
Consolidated with  
CASE NO: 18-A-772220

UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Intervenor.

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

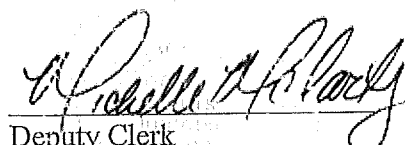
**JUDGMENT PURSUANT TO NRCP 68 IN CASE NO 18-A-772220**

It appearing from the Notice of Acceptance of Offer of Judgment in the above-entitled matter that Cheyenne Nalder has accepted the Offer of Judgment served by Gary Lewis pursuant to NRCP 68, therefore, Judgment shall be entered as follows:

Judgment is hereby entered in favor of Plaintiff, Cheyenne Nalder, and against Defendant, Gary Lewis, in the sum of five million six hundred ninety-six thousand eight hundred ten dollars and forty-one cents, (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. All court costs and attorney's fees are included in this Judgment.

Dated this \_\_\_\_\_ day of January, 2019.

STEVEN D. GRIERSON  
CLERK OF THE COURT

  
Deputy Clerk  
07A549111 1/23/2019

Michelle McCarthy

Submitted by:

  
E. BREEN ARNTZ, ESQ.  
Nevada Bar No. 3853  
5545 Mountain Vista Ste. E  
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T: (702) 384-8000  
[breen@breen.com](mailto:breen@breen.com)

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JAN 23 2019

Exhibit 4

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp <b>FILED</b> Superior Court of California County of Los Angeles
COURTHOUSE ADDRESS: Pomona Courthouse, 400 Civic Center Plaza, Pomona CA 91766		<b>JUL 24 2018</b>
PLAINTIFF/PETITIONER: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder		Sherri R. Carter, Executive Officer/Clerk
DEFENDANT/RESPONDENT: Gary Lewis		By: <u>G. Moreno</u> Deputy
<b>JUDGMENT BASED ON SISTER-STATE JUDGMENT</b> (Code Civ. Proc., § 1710.25)		CASE NUMBER KS021378

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

Pursuant to Code of Civil Procedure section 1710.25, judgment is hereby entered in favor of plaintiff/judgment creditor

James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

and against defendant/judgment debtor  
Gary Lewis

For the amount shown in the application remaining unpaid under said Judgment in the sum of \$ 3,485,000, together with interest on said Judgment in the sum of \$ 2,174,998.52, Los Angeles Superior Court filing fees in the sum of \$ 435, costs in the sum of \$ 0, and interest on said judgment accruing from the time of entry of Judgment at the rate provided by law.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: JUL 24 2018

By: G. MORENO

Deputy Clerk

### CERTIFICATE OF MAILING

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment Based on Sister-State Judgment (Code Civ. Proc., § 1710.25) upon each party or counsel named below by depositing in the United States mail at the courthouse in California, one copy of the original filed herein in a separate sealed envelope for each address as shown below with the postage thereon fully prepaid.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Deputy Clerk

LACIV 209 (Rev. 09/13)  
LASC Approved  
For Optional Use

**JUDGMENT BASED ON SISTER-STATE JUDGMENT**  
(Code Civ. Proc., § 1710.25)

Code Civ. Proc., § 1710.25

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name): Mark J. Linderman (State Bar No. 144685) mlinderman Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.co 311 California Street San Francisco, California 94104		Address: 415-956-2822 TELEPHONE NO.: 415-956-2828	FOR COURT USE ONLY  <b>FILED</b> Superior Court of California County of Los Angeles  <b>JUL 24 2018</b> Sherri R. Carter, Executive Officer/Clerk By <u>G. Moreno</u> Deputy
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder NAME OF COURT: Superior Court of California, County of Los Angeles STREET ADDRESS: 400 Civic Center Plaza MAILING ADDRESS: CITY AND ZIP CODE: Pomona 91766 BRANCH NAME: Pomona Courthouse		RECEIVED <b>JUL 17 2018</b> EAST DISTRICT	
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder DEFENDANT: Gary Lewis		CASE NUMBER: KS021378	
<b>NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT</b>			

1. TO JUDGMENT DEBTOR (name): Gary Lewis  
 733 S. Minnesota Ave, Glendora, CA 91740

BY FAX

2. YOU ARE NOTIFIED

a. Upon application of the judgment creditor, a judgment against you has been entered in this court as follows:

(1) Judgment creditor (name): James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

(2) Amount of judgment entered in this court: \$5,660,433.52

b. This judgment was entered based upon a sister-state judgment previously entered against you as follows:

(1) Sister state (name): Nevada

(2) Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
 200 Lewis Ave, Las Vegas, NV. 89155

(3) Judgment entered in sister state on (date): June 2, 2008

(4) Title of case and case number (specify): Nalder v. Lewis, Case No. A549111

3. A sister-state judgment has been entered against you in a California court. Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final.

This court may order that a writ of execution or other enforcement may issue. Your wages, money, and property could be taken without further warning from the court.

If enforcement procedures have already been issued, the property levied on will not be distributed until 30 days after you are served with this notice.

Date: JUL 24 2018

SHERRI R. CARTER, Clerk, by

G. MORENO, Deputy

4. ☒ NOTICE TO THE PERSON SERVED: You are served

a. ☒ as an individual judgment debtor.

b. ☐ under the fictitious name of (specify):

c. ☐ on behalf of (specify):

Under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

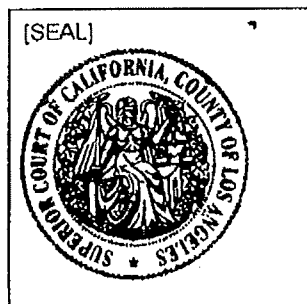
☐ other:

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☒ CCP 416.90 (individual)

(Proof of service on reverse)



Form Approved by the  
 Judicial Council of California  
 EJ 110 (Rev. July 1 1993)

NOTICE OF ENTRY OF JUDGMENT ON  
 SISTER-STATE JUDGMENT

CCP 1710.30, 1710.40  
 1710.45

14:29:38 2018-07-17



**PROOF OF SERVICE**  
(Use separate proof of service for each person served)

1. I served the Notice of Entry of Judgment on Sister-State Judgment as follows:

a. on judgment debtor (name): **GARY LEWIS**

b. by serving ☒ judgment debtor ☐ other (name and title or relationship to person served):

c. ☒ by delivery ☒ at home ☐ at business

(1) date: 07/26/18

(2) time: 7:00 p.m.

(3) address: 733 S. Minnesota Ave  
Glendora, CA 91740

d. ☐ by mailing

(1) date:

(2) place:

2. Manner of service (check proper box):

a. ☒ **Personal service.** By personally delivering copies. (CCP 415.10)

b. ☐ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))

c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) *(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)*

d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) *(Attach completed acknowledgment of receipt.)*

e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) *(Attach signed return receipt or other evidence of actual delivery to the person served.)*

f. ☐ Other (specify code section):

☐ Additional page is attached.

3. The "Notice to the Person Served" was completed as follows:

a. ☒ as an individual judgment debtor.

b. ☐ as the person sued under the fictitious name of (specify):

c. ☐ on behalf of (specify):

under:

☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (individual)

☐ other:

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

a. ☐ California sheriff, marshal, or constable.

b. ☒ Registered California process server.

c. ☐ Employee or independent contractor of a registered California process server.

d. ☐ Not a registered California process server.

e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

Jorge Rivera (Reg# 4690 Los Angeles County)  
52 Second Street, 3rd Floor  
San Francisco, California 94105  
(415) 546-6000

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

Date: 07/27/18

*(For California sheriff, marshal, or constable use only)*

I certify that the foregoing is true and correct.

Date:

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

Judgment creditor applies for entry of a judgment based upon a sister-state judgment as follows:

BY FAX

## 1. Judgment creditor (name and address):

James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder  
 5037 Sparkling Sky Avenue  
 Las Vegas, Nevada, 89130

## 2. a. Judgment debtor (name): Gary Lewis

b. ☒ An individual (last known residence address): 733 S. Minnesota Ave, Glendora, CA 91740c. ☐ A corporation of (specify place of incorporation):(1) ☐ Foreign corporation☐ qualified to do business in California☐ not qualified to do business in Californiad. ☐ A partnership (specify principal place of business):(1) ☐ Foreign partnership which☐ has filed a statement under Corp C 15700☐ has not filed a statement under Corp C 15700

## 3. a. Sister state (name): Nevada

b. Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
200 Lewis Ave, Las Vegas, NV. 89155

c. Judgment entered in sister state on (date): June 2, 2008

## 4. An authenticated copy of the sister-state judgment is attached to this application. Include accrued interest on the sister-state judgment in the California judgment (item 5c).

a. Annual interest rate allowed by sister state (specify): 6.5%

b. Law of sister state establishing interest rate (specify): NRS 17.130

5. a. Amount remaining unpaid on sister-state judgment: ..... \$ 3,485,000  
 b. Amount of filing fee for the application: ..... \$ 435  
 c. Accrued interest on sister-state judgment: ..... \$ 2,174,998.52  
 d. Amount of judgment to be entered (total of 5a, b, and c): ..... \$ 5,660,433.52

(Continued on reverse)

Amended

SHORT TITLE: Nalder v. Lewis	CASE NUMBER: KS021378
------------------------------	--------------------------

6. ☐ Judgment creditor also applies for issuance of a writ of execution or enforcement by other means before service of notice of entry of judgment as follows:
- a. ☐ Under CCP 1710.45(b).
- b. ☐ A court order is requested under CCP 1710.45(c). Facts showing that great or irreparable injury will result to judgment creditor if issuance of the writ or enforcement by other means is delayed are set forth as follows:

☐ continued in attachment 6b.

7. An action in this state on the sister-state judgment is not barred by the statute of limitations.

8. I am informed and believe that no stay of enforcement of the sister-state judgment is now in effect in the sister state.

9. No action is pending and no judgment has previously been entered in any proceeding in California based upon the sister-state judgment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters which are stated to be upon information and belief, and as to those matters I believe them to be true.

Date:

7/17/18

Joshua M. Deitz  
(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGMENT CREDITOR OR ATTORNEY)

# EXHIBIT A

ORIGINAL

FILED

Aug 26 11 00 AM '08

CLERK

**JUDG**

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

vs. )

CASE NO: A549111  
 DEPT. NO: VI

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

**NOTICE OF ENTRY OF JUDGMENT**

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

DATED this 5 day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: DAVID F. SAMPSON, ESQ.

DAVID F. SAMPSON, ESQ.  
 Nevada Bar #6811  
 THOMAS CHRISTENSEN, ESQ.,  
 Nevada Bar #2326  
 1000 S. Valley View Blvd.  
 Las Vegas, Nevada 89107  
 Attorneys for Plaintiff

CLERK OF THE COURT

RECEIVED  
 AUG 26 2008

**CERTIFICATE OF SERVICE**

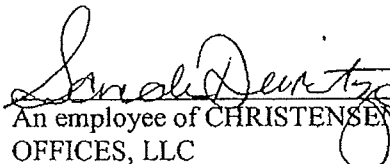
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW  
OFFICES, LLC., and that on this 5<sup>th</sup> day of June, 2008, I served a copy of the  
foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

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

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

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

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

  
An employee of CHRISTENSEN LAW  
OFFICES, LLC

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

  
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

CASE NO: A549111  
DEPT. NO: VI

JUDGMENT

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

...

...

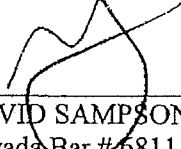
...

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

5  
6 DATED THIS 2 day of June, 2008.

7  
8   
9 DISTRICT JUDGE

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

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



CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

*[Signature]*  
CLERK OF THE COURT 2-25-2010

## Proposed Additional Document 5

**DOCKET No.13-17441**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

JAMES NALDER, GUARDIAN AD LITEM FOR MINOR CHEYANNE  
NALDER, REAL PARTY IN INTEREST, AND GARY LEWIS,  
INDIVIDUALLY,

PLAINTIFFS/ APPELLANTS,

v.

UNITED AUTOMOBILE INSURANCE COMPANY,

DEFENDANTS/ APPELLEES.

---

APPEAL FROM A DECISION OF UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEVADA  
CASE No. 2:09-cv-01348 RCJ-GWF

---

**APPELLANTS' MOTION TO SUPPLEMENT THE RECORD**

THOMAS CHRISTENSEN, ESQ.

Nevada Bar #2326

CHRISTENSEN LAW OFFICES

1000 S. Valley View Blvd.

Las Vegas, NV 89107

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to F.R.A.P. 26.1(a) United Automobile Insurance Company ("UAIC") is the only corporation involved in the subject action.

## **I. INTRODUCTION**

Pursuant to Federal Rule of Appellate Procedure 27, Appellants Gary Lewis and James Nalder bring this Motion to Supplement the Record on Appeal. UAIC brought its Motion to Dismiss for Lack of Standing (DktEntry #44) while the first certified question in this case was pending. UAIC's Motion to Dismiss included supplemental facts not contained in the record below that this Court has considered; and Appellants now seek to bring that factual information current, so that the Court has a complete and accurate record of what has transpired while this appeal was pending.

It is imperative for the Court to recognize that Nalder and Lewis are not adverse to each other in this litigation. This matter was brought against UAIC to collect on the judgment and all other damages consequential to the breach of the duty to defend and breach of the covenant of good faith and fair dealing, arising from when UAIC insured Lewis. On October 30, 2013, the referring Court found UAIC liable for its failure to defend Lewis, as a matter of law, and that is a final decision. (See case 2:09-cv-001348-RCJ-GWF, Document #103: Judgment in a Civil Case).

In bringing this motion, Nalder and Lewis do not waive their objections to any of the procedural and jurisdictional irregularities that have transpired.<sup>1</sup> UAIC has been allowed to sneak in a supplement to the record on appeal (without first moving this Court for permission) within its Motion to Dismiss. Based upon the supplemental information provided to this Court by way of UAIC's Counsel's affidavit, this Court fashioned a second certified question. The information contained in the affidavit of UAIC's counsel, however, is now outdated and inaccurate.

Nalder and Lewis previously provided this court with supplemental authority, pursuant to FRAP 28(j), regarding developments in the Nalder v. Lewis litigation. (See DktEntry #52, 1/29/2019). UAIC objected on the grounds that Nalder and Lewis were supplementing the record. (See DktEntry #53, 2/1/19 at second paragraph.) In that same correspondence to this Court, UAIC also made other claims that are untrue.<sup>2</sup> Nalder and Lewis respectfully request permission to

---

<sup>1</sup> Finally, respondent has attempted to bolster his position by reference to events completely outside the record that occurred long after the district court reviewed the case. Reference to matters outside the record is improper. *Hines v. Plante*, 99 Nev. 259 n. 1, 661 P.2d 880 (1983). *See also McCracken v. Fancy*, 98 Nev. 30, 639 P.2d 552 (1982).

<sup>2</sup> In DktEntry #53, UAIC states "the judgment taken in California is also being appealed." However, also see Exhibit E, letter from UAIC's counsel, dated February 12, 2019 which is authored 12 days after DktEntry #53, and which

supplement the record with the current factual record and status of the underlying litigations between Nalder and Lewis.

The current record below reflects two valid, enforceable judgments in favor of Nalder and against Lewis that have been recently entered consistent with NRS 11.190, 11.200, 11.250, 11.300 and *Mandlebaum v. Gregovich*, 24 Nev. 154, (Nev. 1897). In answering the second certified question, the Nevada Supreme Court cited, with approval, the *Mandlebaum* case, which validates the common law action on a judgment to obtain a new judgment as another method, independent and different than the statutory judgment renewal under NRS 17.214.

One valid enforceable judgment was entered in favor of Nalder and against Lewis in Nevada on March 22, 2018 (See Exhibit A, attached hereto which includes the Amended Judgment together with the application therefore; Also, see this case, DktEntry #52, @ page 18; Also, see Exhibit B, which is the updated docket sheet for the underlying case 07A549111).

---

clearly states UAIC will not appeal the CA judgment. In DktEntry #54, UAIC did not correct its statement. Also, in DktEntry #54, which is just a few weeks later, UAIC supplements the record with an Order that was obtained ex parte, but does not disclose it was ex parte. This ex parte order withdrew a validly entered offer and acceptance judgment entered into by the parties to the suit. Objections to this action by the lower court denying due process to the parties is the subject of a fully briefed writ to the Nevada Supreme Court. (See Exhibit L hereto.)

The other valid and enforceable judgment against Lewis is in California. (See Exhibit C, attached hereto, which includes the Judgement and Application; Also, see this case, DktEntry #52, at page 24; Also, see Exhibit D, attached hereto, which is the docket sheet for Case number KS021378 in the County of Los Angeles, Superior Court of California).

Both judgments resulted from a trial court considering the effect of tolling statutes and statute of limitations and ruling in favor of Nalder. UAIC attacked both judgments -- unsuccessfully. Both judgments are valid and enforceable. UAIC tried to defeat both judgments and lost. The state courts have ruled on these factual issues. UAIC appealed the refusal to set aside the Nevada judgment, but it did not post a bond to obtain a stay. The California judgment was not appealed and the time to appeal has passed. (See Exhibit E, letter from UAIC's counsel, dated February 12, 2019).

Both of these judgments are now final and enforceable against Lewis and are a consequence of UAIC's original breach of the duty to defend. Lewis has already suffered damage as a result of the 2008 judgment against him, the resulting assignment of proceeds, and now suffers additional damages as a result of this further litigation and these judgments against him. (See Exhibit F, Affidavit of Gary Lewis.)



A third action on a judgment is currently pending in the state court of Nevada and continues to damage Lewis. (See Exhibit G, the Declaration of David Stephens, Esq. and Exhibit H, the updated docket sheet for Case #A-18-77220-C and, finally, see Exhibit I, the Transcript of Proceedings from the hearing on January 9, 2019.) Although UAIC has been allowed to intervene and consolidate and has challenged this judgment, the matter is still pending and active and continues to damage Lewis. This case will likely result in another, even larger, judgment in favor of Nalder and against Lewis. (See Exhibit J, which includes a stipulation and a judgment [which was withdrawn at the ex parte request of UAIC without notice or an opportunity to be heard]); Also see Exhibit K, Affidavit of Breen, Arntz., Esq.; and Exhibit L, which are the docket sheets for Case 78243 and 78085, pending NV Supreme Court writs opposing consolidation and intervention and continued due process violations by the court at the urging of UAIC)<sup>3</sup>.

Based upon the above, Appellants therefore request the Court recognize the Exhibits attached hereto and further supplement the record as set forth in the

---

<sup>3</sup> Writs were filed in February and March, 2019 and the Supreme Court directed Answers be filed against issuance of the requested writs. Both are now fully briefed and awaiting decision by the Nevada Supreme Court.

Affidavit of Thomas Christensen, Esq. (See Exhibit N, attached hereto which contains the Affidavit of Thomas Christensen.)

## **BACKGROUND<sup>4</sup>**

### **A. GARY LEWIS HAD A REASONABLE EXPECTATION OF COVERAGE**

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

### **B. UAIC DID NOT DEFEND LEWIS OR COMMUNICATE OFFERS TO SETTLE WHICH PRESENT QUESTIONS OF FACT FOR THE JURY ON THE BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

James Nalder (Nalder), Cheyanne’s father, made an offer to UAIC to settle her claim for \$15,000, the policy limit. UAIC never informed Lewis that Nalder was

---

<sup>4</sup> Factual background taken from DktEntry #39, Order Certifying Question, dated June 1, 2016, unless otherwise noted.

willing to settle. UAIC did not pay the policy limits. Nalder sued Lewis in Nevada state court and obtained a \$3.5 million judgment. Nalder and Lewis then filed the instant claim against UAIC in state court, which UAIC removed to federal court. Nalder executed on the judgment against Lewis and obtained a voluntary partial assignment of proceeds in lieu of execution up to the full judgment amount.<sup>5</sup>

### **C. UAIC BREACHED ITS DUTY TO DEFEND AS A MATTER OF LAW**

Nalder and Lewis ultimately prevailed on the coverage issue as a matter of law. The district court ruled in favor of coverage after being reversed on appeal. The Ninth Circuit held that summary judgment “with respect to whether there was coverage” was improper and reversed. *Nalder v. United Auto. Ins. Co.*, 500 F. app’x 701, 702 (9th Cir. 2012). On remand, the District Court filed an Order on October 30, 2013, finding, as a matter of law, that UAIC breached its duty to defend Lewis.

---

<sup>5</sup> This assignment is part of the record on appeal, found at Appellants' Excerpts of Record, DktEntry #11, dated 3/6/2016, Volume III, @ page 495 and demonstrates that Gary Lewis has already suffered damage as a result of the Judgment, when he assigned rights against UAIC to Nalder. It also demonstrates that Nalder already executed and obtained the cause of action to collect the judgment from UAIC. Thus, the continued ability for Nalder to collect from Lewis is irrelevant -- Nalder has already collected on the judgment from Lewis. The current enforceability of the judgment is irrelevant. Lewis was damaged when he entered into the assignment. The damage now comes from the assignment, not the judgment.

**D. THE DISTRICT COURT REFUSES TO SUBMIT DAMAGES TO A JURY**

Although the District Court found (after reversal) that the duty to defend had been breached as a matter of law, the Court refused to submit the amount of damages consequential to that breach to the jury, as required by Nevada law in *Century Surety v. Andrew*, 432 P.3d 180 (2018), 134 Nev. Adv. Op. 100 (Dec. 13, 2018) (*en banc*). Instead, the trial court, rather arbitrarily, capped the award of damages at the policy limits of \$15,000. UAIC then made three payments to Lewis and Nalder that were applied to the judgment pursuant to the assignment on June 23, 2014; on June 25, 2014; and on March 5, 2015. (See See case 2:09-cv-001348-RCJ-GWF, Document #103: Judgment in a Civil Case and Exhibit F hereto, Affidavit of Gary Lewis.)

**E. THE DISTRICT COURT REFUSED TO SUBMIT TO THE JURY THE ISSUE OF REASONABLENESS OF THE BREACH OF THE DUTY TO DEFEND AND FAILURE TO COMMUNICATE OFFERS OF SETTLEMENT TO THE INSURED**

The Nevada Supreme Court issued a very clear mandate in *Allstate Insurance v. Miller*, 212 P.3d 318, 125 Nev. 300 (2009):

We conclude that whether Allstate violated its duty to adequately inform Miller of the settlement opportunities that existed in this case presented a question of fact for the jury.”

The court below refused to allow the questions of the reasonableness of UAIC's failure to inform its insured of offers of settlement, refusal to provide a defense and failure to file a declaratory relief action to go to the jury. The lower court in this case, instead of construing the factual record in favor of the non-moving party (the insured), arbitrarily found that UAIC had a reasonable basis to dispute coverage<sup>6</sup>, but did not submit the question to the jury of whether UAIC's actions (in how they disputed coverage) were reasonable, in good faith and fair to the insured pursuant to Nevada law as expressed in *Allstate v. Miller. Id.*

#### **F. NALDER AND LEWIS APPEAL DENIAL OF THEIR RIGHT TO A JURY TRIAL**

Nalder and Lewis appealed both the grant of summary judgment on the amount of damages flowing from the breach of the duty to defend **and also** the grant of summary judgment on their claims for breach of the duty of good faith and fair dealing, as evidenced by UAIC's breach of the duty to defend and failure to communicate offers of settlement to their insured. Nalder and Lewis claim that failing to submit these issues to a jury denied their right to trial by jury.

The Ninth Circuit certified a first question to the Nevada Supreme Court in

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<sup>6</sup> The dispute was found to be reasonable because UAIC was able to persuade the same court to commit reversible error. How many times will UAIC be rewarded for making forceful, improper arguments?

*Nalder v. UAIC*, 824 F.3d 854 (9<sup>th</sup> Cir. 2016):

Whether, under Nevada law, the liability of an insurer that has breached its duty to defend, but has not acted in bad faith, is capped at the policy limit plus any costs incurred by the insured in mounting a defense, or is the insurer liable for all losses consequential to the insurer's breach? *Id.* at 855.

**G. THE NEVADA SUPREME COURT HOLDS THAT INSURERS WHO BREACH THE DUTY TO DEFEND ARE LIABLE FOR ALL CONSEQUENTIAL DAMAGES OF THAT BREACH AND THE JURY MUST DETERMINE THE DAMAGES**

While the first certified question was pending, the same question was answered by the Nevada Supreme Court on December 13, 2018, in *Century Surety v. Andrew*, 432 P.3d 180 (2018) wherein the Nevada Supreme Court held:

In answering the certified question, we conclude that an insured may recover **any damages consequential to the insurer's breach of its duty to defend**. As a result, an insurer's liability for the breach of the duty to defend is not capped at the policy limits, even in the absence of bad faith. *Century Surety v. Andrew*, 432 P.3d 180 (2018), 134 Nev. Adv. Op. 100 (Dec. 13, 2018) (*en banc*).<sup>7</sup> (emphasis added.)

This decision was provided to the Ninth circuit by Nalder and Lewis pursuant to FRAP 28j and UAIC claimed the current case is distinguishable<sup>8</sup>. (See

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<sup>7</sup> The certified question was the same in both the *Nalder* and *Century Surety* cases.

<sup>8</sup> DktEntry #53, page 1, on February 1, 2019.

DktEntry #52, page 3, on January 29, 2019.) The Nevada Supreme Court disagreed. The Nevada Supreme Court adopted the opinion in *Century Surety*, applying it to this case. (See DktEntry #55, 9/20/19 Order Answering Certified Questions). The Nevada Supreme Court further held in *Century Surety* that whether an item of damage is a consequence of the duty to defend ***must*** be determined by the jury on remand. The Court stated: “The determination of the insurer’s liability depends on the unique facts of each case and is one that is **left to the jury’s determination.**” *Miller v. Allstate, Id.* at 186. (Emphasis added.)

#### **H. UAIC ENGAGES IN CONTINUING BAD FAITH USING AN IMPROPER AND UNSUPPORTED STANDING ARGUMENT**

While the first certified question was pending,<sup>9</sup> UAIC claimed to have “recently” become aware of the lack of a renewal under NRS 17.214. At the same time, UAIC claimed the time for filing a renewal expired more than two years before, on August 26, 2014. Regardless of when UAIC had actual knowledge, it did not use that knowledge to protect Lewis. UAIC did not contact Lewis to investigate the facts or act on his behalf to relieve Lewis of the judgment at the trial court level. Instead, UAIC, scrambling to protect itself from its long list of

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<sup>9</sup> Now UAIC requests this court not act until a remittitur comes from the Nevada Supreme Court, even though *Miller* and *Century Surety* are the controlling authorities on this appeal.

bad acts, put its own interests ahead of its insured's and argued to this Court that Lewis' appeal should be dismissed for lack of standing. UAIC thereby compounded its original failure to defend and communicate offers with another new act of bad faith by putting its own interests above that of the insured. UAIC asked for relief from the judgment for itself, in this Court, prior to attempting to get relief for its insured. This ripped the judgment wound open afresh, causing even more damage to Lewis, UAIC's insured.

#### **I. NALDER TAKES ACTION CONSISTENT WITH UAIC'S CLAIM**

UAIC, in its Motion to Dismiss, argued that unless Nalder took some action in the underlying case to preserve the judgment against Lewis, Nalder could no longer recover any damages for breach of the contractual duty to defend. Nalder thereafter took action. She consulted independent counsel on the validity of her judgment. David A. Stephens, Esq. and Mark J. Linderman, Esq. took actions to preserve the Nalder judgment against Lewis. This amounted to ripping off the newly formed scab, caused by UAIC's improper "lack of standing" motion, which resulted in Lewis being sued afresh by Nalder.

Because of the tolling provisions, a statutory renewal under NRS 17.214 could well be viewed as premature because the statute of limitations on the judgment



would not run for years. The renewal statute suggests that the renewal must come ninety days prior to the running of the statute of limitations. David Stephens, Esq., on behalf of Nalder, instead brought an action on the judgment, which does not have this ninety day restriction. Nalder also retained Mark J. Linderman, Esq. of the law firm of Rogers Joseph O'Donnell, PC. to pursue an action on the judgment in California, where Lewis has resided since 2010.

Nalder provided the results of those actions to this court.<sup>10</sup> UAIC has not supplemented the record on appeal or acknowledged that the factual issues it raised are now inaccurate.<sup>11</sup>

#### **J. UAIC IGNORED NEVADA TOLLING STATUTES**

In its Motion to Dismiss, UAIC inappropriately presented new evidence into the appeal process and deliberately hid Nevada tolling statutes in an effort to bolster its arguments. Lewis has lived out of state since 2008. (See Exhibit F, Affidavit of Gary Lewis). During Gary Lewis' absence from the state of Nevada,

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<sup>10</sup> See DktEntry #52 filed on January 29, 2019.

<sup>11</sup> NRPC 3.3, Candor to the Court, requires counsel to correct his false affidavit. Plaintiffs' counsel contacted Daniel Polsenberg, Esq. on November 13, 2019 and requested the parties coordinate a joint supplement. He would not agree. The Affidavit of Matthew Douglas, attached to UAIC's Motion to Dismiss, states that he reviewed the Register of Actions in case A549111 on March 8, 2017, which was more than two years ago. There are more than 100 entries in case A549111 alone since March 8, 2017.

the statute of limitations has been tolled pursuant to NRS 11.300 and remains tolled. (See Exhibit G, Declaration of David Stephens). UAIC made three payments on the judgment: on June 23, 2014; on June 25, 2014; and on March 5, 2015.<sup>12</sup> These payments toll the statute of limitations pursuant to NRS 11.200. (See Exhibit G, Declaration of David Stephens). Cheyenne Nalder was a minor when she was injured. During Cheyenne Nalder's minority, which ended on April 4, 2016, all statutes of limitations were tolled pursuant to NRS 11.250. (See Exhibit G, Declaration of David Stephens, Esq.

#### **K. LEWIS FILES A NEW ACTION FOR UAIC'S RECENT BAD FAITH ACTS**

Nevada law provides: "If, post-filing, the insurer's obligation to pay becomes clear and the insurer still does not pay, then a separate bad faith claim may arise." *See Pulley v. Preferred Risk Mut. Ins. Co.*, 111 Nev. 856, 897 P.2d 1101, 1102–03 (1995)" *Searcy v. Esurance Ins. Co.*, 243 F. Supp. 3d 1146, 1153 (D. Nev. 2017). Lewis brought an action in Nevada state court against UAIC for the acts breaching the duty of good faith and fair dealing **that have occurred since 2017**. By definition, those are recent acts, occurring after this action went to judgment and appeal and could not have been brought against UAIC in the present

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<sup>12</sup> The earliest date a renewal could be filed is December of 2020, 90 days prior to the extended Statute of Limitations expiration of March 5, 2021.

case. UAIC nevertheless has made the false argument to the Nevada state court judge that those issues were on appeal, and thereby UAIC persuaded the Nevada court to stay the recently filed action.

After the decision in *Century Surety*, UAIC's failure to relieve Lewis of the judgment is clearly bad faith. Since UAIC argued these new bad faith allegations are on appeal, the Ninth Circuit should supplement the record with this new, continuing bad faith and remand to the Federal District Court to allow the parties to amend their complaint to bring these new claims or, in the alternative, the Court should clearly state those claims are not and cannot be litigated here, instructing the Nevada state court judge they are not part of this appeal.

**L. UAIC RETALIATES AGAINST THE INSURED, HIS INDEPENDENT COUNSEL AND HIS CLAIMS COUNSEL, FURTHER DAMAGING THE INSURED**

To cap things off, UAIC poured salt in the wound of the insured by filing a SLAPP lawsuit (Strategic Lawsuit Against Public Participation) against Lewis, his counsel representing him in this appeal (Christensen), and his *Cumis/Hansen* counsel defending him in the Nevada action on a judgment litigation, (Arntz). (See *San Diego Navy Federal Credit Union v. Cumis Insurance Society, Inc.*, 162 Cal. App. 3d 358, 208 Cal. Rptr. 494 (Ct. App. 1984) and *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev. Adv. Op. 74 (9/24/2015)). (See Exhibit M, attached

hereto, which is the docket sheet for case 2:18-cv-02269-JAD-BNW, UAIC vs. Christensen, Arntz & Lewis).

The record must be supplemented with these damages which result from the breach of the duty to defend Lewis and the continuing lack of good faith and fair dealing on the part of UAIC.

### **III. DISCUSSION**

#### **A. THIS COURT HAS THE INHERENT AND EXPRESS AUTHORITY UNDER RULE 10 TO SUPPLEMENT THE RECORD ON APPEAL**

The Court has the inherent authority to supplement the record on appeal. *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003), (citations omitted); See also *Rosales-Martinez v. Palmer*, 753 F.3d 890, (9th Cir. June 3, 2014). The Court may exercise its discretion to supplement the record when, for example, a remand for the sole purpose of the district court considering the additional facts would be “contrary to both the interests of justice and the efficient use of judicial resources,” *Dickerson v. State of Ala.*, 667 F.2d 1364, 1367-68 (11th Cir. 1982) (footnote omitted) (citations omitted).

If the Court intends to consider any facts brought into this appeal by counsel for UAIC,<sup>13</sup> the record should be supplemented to correct the now

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<sup>13</sup> UAIC never moved and was never granted leave to supplement the record; however, the Court recently invited briefing pertaining to standing, which is an

inaccurate supplement by UAIC. If expanded for this limited purpose, Appellees will not be prejudiced. If, however, the record is not expanded, Appellants will be prejudiced by the now false affidavit filed by UAIC's counsel. For the reasons above, Nalder and Lewis respectfully ask the Court to supplement the record with and consider the attached records in support of their appeal, their opposition to UAIC's pending Motion to Dismiss and any further briefing allowed.

If the Court is not willing to limit the appeal to appellate issues raised, but rather wishes to expand its review to issues not contained in the trial record, then the Court should supplement the record with the complete record and consider the developments in the other cases of Nalder v. Lewis. Nalder and Lewis therefore request to supplement the record with the full proceedings regarding the damages and injuries to Lewis flowing from UAIC's breach of the duty to defend.

#### **IV. CONCLUSION**

Based upon the above, Appellants without waiving objections as noted earlier, request that this Court do the following:

Strike all additions to the record so that the Court is reviewing the District Court's legal rulings based on the factual record before it at the time of ruling.

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issue that was propelled into this appeal by the (now untrue) affidavit of UAIC's attorney, thereby leading Appellants to understand that the Court is accepting UAIC's counsel's statements as material to the record on appeal.

Alternatively, should this Court wish to decide the question of fact regarding the enforceability of the judgments that Nalder has against Lewis, which UAIC argues defeats the standing of the Appellants in this case, the Court should allow Appellants' supplement with the full record. This would include the factual basis for the tolling of the statute of limitations, the proceedings between Nalder and Lewis in the state courts of Nevada and California and the two valid and enforceable judgments in Nevada and California and valid settlement entered into between the parties in the most recent Nevada case.

As a third alternative, the court could stay decision and request the Nevada trial court to decide remaining material factual issues, if any.

Dated this 14th day of November, 2019.

CHRISTENSEN LAW OFFICES, LLC

/s/ Thomas Christensen  
Nevada Bar #2326  
CHRISTENSEN LAW OFFICES  
1000 S. Valley View Blvd.  
Las Vegas, NV 89107  
Attorney for Appellants

### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/DktEntry system on November 14, 2019.

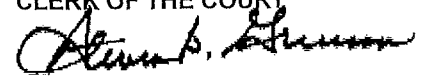
I certify that all participants in the case are registered CM/DktEntry users and that service will be accomplished by the appellate CM/DktEntry system.

/s/ Thomas Christensen  
Counsel for Appellants

# **EXHIBIT A**



Electronically Filed  
3/28/2018 3:05 PM  
Steven D. Grierson  
CLERK OF THE COURT



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

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

07A549111  
CASE NO: A549111  
DEPT. NO: XXIX

**AMENDED JUDGMENT**

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

...

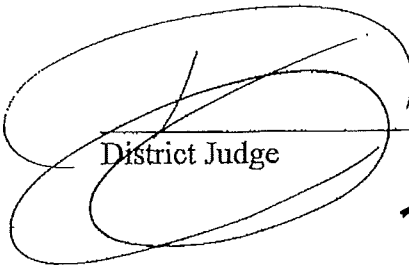
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...

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

6 DATED this 26 day of March, 2018.

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10   
11 District Judge *mc*

12 Submitted by:  
13 STEPHENS GOURLEY & BYWATER

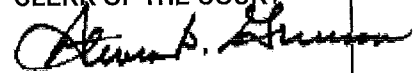
14   
15 DAVID A. STEPHENS, ESQ.  
16 Nevada Bar No. 00902  
17 STEPHENS GOURLEY & BYWATER  
18 3636 North Rancho Dr  
19 Las Vegas, Nevada 89130  
20 Attorneys for Plaintiff

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CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

  
CLERK OF THE COURT

JAN 23 2019

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5/18/2018 3:37 PM  
Steven D. Grierson  
CLERK OF THE COURT



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

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

9 **CHEYENNE NALDER,**

10 Plaintiff,

11 vs.

12 **GARY LEWIS**

13 Defendant.  
14

Case No. 07A549111

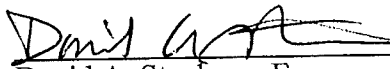
Dept. No. XXIX

15 **NOTICE OF ENTRY OF AMENDED JUDGMENT**

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

19 Dated this 17 day of May, 2018.

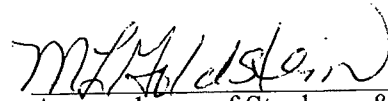
20 STEPHENS & BYWATER

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

**CERTIFICATE OF MAILING**

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

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



\_\_\_\_\_  
An employee of Stephens & Bywater

Electronically Filed  
3/22/2018 11:15 AM  
Steven D. Grierson  
CLERK OF THE COURT



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

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

9 CHEYENNE NALDER,

07-A-849111  
CASE NO.: ~~A549111~~

10 Plaintiff,

DEPT NO.: XXIX

11 vs.

12 GARY LEWIS,

13 Defendants.

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


17 Date: N/A

18 Time: N/A

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

26  
27  
28 / / / /

Dated this 19 day of March, 2018.

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

**EXHIBIT “1”**

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

*Chaf*  
 CLERK OF THE COURT

JUN 3 1 52 PM '08

**FILED**

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

CASE NO: A549111  
 DEPT. NO: VI

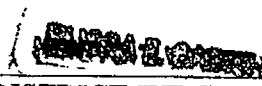
JUDGMENT

18  
 19 In this action the Defendant, GARY LEWIS, having been regularly served with the  
 20 Summons and having failed to appear and answer the Plaintiff's complaint filed herein, the  
 21 legal time for answering having expired, and no answer or demurrer having been filed, the  
 22 Default of said Defendant, GARY LEWIS, in the premises, having been duly entered according  
 23 to law; upon application of said Plaintiff, Judgment is hereby entered against said Defendant as  
 24 follows:  
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 28 ...

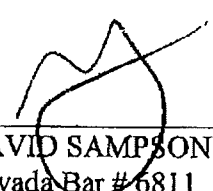


1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the  
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in  
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,  
4 until paid in full.

5  
6 DATED THIS 2 day of June, 2008.

7  
8   
9 DISTRICT JUDGE

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

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

# **EXHIBIT “2”**

**JMT**

DAVID A. STEPHENS, ESQ.

Nevada Bar No. 00902

STEPHENS GOURLEY & BYWATER

3636 North Rancho Dr

Las Vegas, Nevada 89130

Attorneys for Plaintiff

T: (702) 656-2355

F: (702) 656-2776

E: dstephens@sbglawfirm.com

*Attorney for Cheyenne Nalder*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

CASE NO: A549111

DEPT. NO: XXIX

**AMENDED JUDGMENT**

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

...

...

...

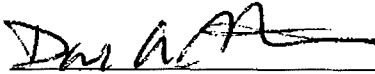
...

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

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

10 \_\_\_\_\_  
District Judge  
11

12 Submitted by:  
STEPHENS GOURLEY & BYWATER  
13

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

10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6658417>

Skip to Main Content Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back Location : District Court Civil/Criminal Help

**REGISTER OF ACTIONS****CASE No. 07A549111****James Nalder vs Gary Lewis**§  
§  
§  
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§Case Type: **Negligence - Auto**Date Filed: **10/02/2007**Location: **Department 20**Cross-Reference Case Number: **A549111**Supreme Court No.: **79487****RELATED CASE INFORMATION****Related Cases**

A-18-772220-C (Consolidated)

**PARTY INFORMATION****Lead Attorneys****Defendant Lewis, Gary****E. Breen Arntz**  
*Retained*  
702-384-8000(W)**Guardian Ad Nalder, James**  
**Litem****Thomas F. Christensen**  
*Retained*  
702-870-1000(W)**Intervenor United Automobile Insurance Company****Matthew J Douglas**  
*Retained*  
702-243-7000(W)**Plaintiff Nalder, Cheyenne****David Allen Stephens**  
*Retained*  
702-656-2355(W)**Plaintiff Nalder, James****David Allen Stephens**  
*Retained*  
702-656-2355(W)**Subject Minor Nalder, Cheyenne****Thomas F. Christensen**  
*Retained*  
702-870-1000(W)**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

01/04/2008 **Order Approving Minor's Compromise** (Judicial Officer: Cadish, Elissa F.)  
 Converted Disposition:  
 Entry Date & Time: 01/07/2008 @ 08:24 Description: ORDER OF APPROVAL OF MINORS CLAIM Debtor: Lewis, Gary  
 Creditor: Nalder, Cheyenne Amount Awarded: \$66519.11 Attorney Fees: \$33333.33 Costs: \$147.56 Interest Amount: \$0.00  
 Total: \$100000.00

06/03/2008 **Default Judgment Plus Legal Interest** (Judicial Officer: Cadish, Elissa F.)  
 Converted Disposition:  
 Entry Date & Time: 06/05/2008 @ 11:09 Description: DEFAULT JUDGMENT PLUS LEGAL INTEREST Debtor: Lewis, Gary  
 Creditor: Nalder, Cheyenne Amount Awarded: \$3500000.00 Attorney Fees: \$0.00 Costs: \$0.00 Interest Amount: \$0.00 Total:  
 \$3500000.00

10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6658417>

03/28/2018 **Amended Default Judgment Plus Legal Interest** (Judicial Officer: Cadish, Elissa F.) Reason: Amended  
 Converted Disposition:  
 Entry Date & Time: 06/05/2008 @ 11:00 Description: DEFAULT JUDGMENT PLUS LEGAL INTEREST Debtor: Lewis, Gary  
 Creditor: Nalder, James Amount Awarded: \$3500000.00 Attorney Fees: \$0.00 Costs: \$0.00 Interest Amount: \$0.00 Total:  
 \$3500000.00  
 Debtors: Gary Lewis (Defendant)  
 Creditors: James Nalder (Plaintiff)  
 Judgment: 03/28/2018, Docketed: 03/29/2018  
 Total Judgment: 3,434,444.63

06/03/2008 **Default Judgment Plus Legal Interest** (Judicial Officer: Cadish, Elissa F.)  
 Converted Disposition:  
 Entry Date & Time: 06/05/2008 @ 11:00 Description: DEFAULT JUDGMENT PLUS LEGAL INTEREST Debtor: Lewis, Gary  
 Creditor: Nalder, James Amount Awarded: \$3500000.00 Attorney Fees: \$0.00 Costs: \$0.00 Interest Amount:  
 \$0.00 Total: \$3500000.00

01/28/2019 **Order of Dismissal With Prejudice** (Judicial Officer: Johnson, Eric)  
 Debtors: Gary Lewis (Third Party Plaintiff)  
 Creditors: Resnick and Louis PC (Third Party Defendant), Tindall, Randall Esq (Third Party Defendant), United Automobile Insurance Company  
 (Third Party Defendant)  
 Judgment: 01/28/2019, Docketed: 01/29/2019

01/30/2019 **Compromise Settlement** (Judicial Officer: Johnson, Eric)  
 Debtors: Gary Lewis (Defendant)  
 Creditors: Cheyenne Nalder (Plaintiff)  
 Judgment: 01/30/2019, Docketed: 01/22/2019  
 Total Judgment: 5,696,810.41  
 Comment: 2/14/19 Judgment Withdrawn Per Order

02/14/2019 **Amended Compromise Settlement** (Judicial Officer: Johnson, Eric) Reason: Vacated  
 Debtors: Gary Lewis (Defendant)  
 Creditors: Cheyenne Nalder (Plaintiff)  
 Judgment: 02/14/2019  
 Total Judgment: 5,696,810.41  
 Comment: 2-14-19 Per Order Judgment Withdrawn (See also in Cons. Case)  
 Debtors: Gary Lewis (Defendant)  
 Creditors: Cheyenne Nalder (Plaintiff)  
 Judgment: 01/23/2019, Docketed: 01/22/2019  
 Total Judgment: 5,696,810.41

01/23/2019 **Compromise Settlement** (Judicial Officer: Johnson, Eric)  
 Debtors: Gary Lewis (Defendant)  
 Creditors: Cheyenne Nalder (Plaintiff)  
 Judgment: 01/23/2019, Docketed: 01/22/2019  
 Total Judgment: 5,696,810.41

**OTHER EVENTS AND HEARINGS**

10/02/2007 **Petition**  
*PETITION FOR ORDER APPOINTING GUARDIAN AD LITEM Fee \$148.00*  
 07A5491110001.tif pages

10/09/2007 **Order Appointing Guardian Ad Litem**  
*ORDER APPOINTING GUARDIAN AD LITEM*  
 07A5491110002.tif pages

10/09/2007 **Initial Appearance Fee Disclosure**  
*INITIAL APPEARANCE FEE DISCLOSURE*  
 07A5491110003.tif pages

10/09/2007 **Complaint**  
*COMPLAINT FILED*  
 07A5491110004.tif pages

11/02/2007 **Summons**  
*SUMMONS*  
 07A5491110005.tif pages

12/13/2007 **Default**  
*DEFAULT*  
 07A5491110006.tif pages

12/21/2007 **Petition for Compromise of Minors Claim**  
*PETITION TO COMPROMISE CLAIM OF MINORS*  
 07A5491110007.tif pages

01/04/2008 **Conversion Case Event Type**  
*STATUS CHECK: BLOCKED ACCOUNT /1*  
 07A5491110008.tif pages

01/04/2008 **Judgment**  
*ORDER OF APPROVAL OF MINORS CLAIM*  
 07A5491110009.tif pages

03/03/2008 **Status Check: Blocked Account (3:00 AM)** (Judicial Officer Cadish, Elissa F.)  
*STATUS CHECK: BLOCKED ACCOUNT /1*  
Minutes  
 Result: Continuance Granted

03/31/2008 **CANCELED Status Check: Blocked Account (9:00 AM)** (Judicial Officer Cadish, Elissa F.)  
*Vacated*  
Minutes  
 Result: Continuance Granted

04/08/2008 **Conversion Case Event Type**

10/30/2019

HEARING RE: SHOW CAUSE /2  
07A5491110010.tif pages

04/14/2008 **Motion**

ALL PENDING MOTIONS 4-14-08  
07A5491110011.tif pages

04/14/2008 **Conversion Case Event Type**

STATUS CHECK: PAYMENT OF SANCTIONS/ FURTHER PROCEEDINGS VR 5/21/08  
07A5491110012.tif pages

04/14/2008 **CANCELED Status Check: Blocked Account** (9:00 AM) (Judicial Officer Cadish, Elissa F.)  
*Vacated*

Result: Continuance Granted

04/14/2008 **Show Cause Hearing** (9:00 AM) (Judicial Officer Cadish, Elissa F.)

HEARING RE: SHOW CAUSE /2

04/14/2008 **All Pending Motions** (9:00 AM) (Judicial Officer Cadish, Elissa F.)

ALL PENDING MOTIONS 4-14-08 Court Clerk: Keith Reed Reporter/Recorder: Jessica Ramirez Heard By: ELISSA CADISH

Minutes

Result: Matter Heard

04/21/2008 **Conversion Case Event Type**

PROVE UP OF DEFAULT /5  
07A5491110013.tif pages

04/22/2008 **Motion**

ALL PENDING MOTIONS 4-22-08  
07A5491110014.tif pages

04/22/2008 **CANCELED Status Check: Blocked Account** (9:00 AM) (Judicial Officer Cadish, Elissa F.)  
*Vacated*

Result: Continuance Granted

04/22/2008 **Status Check** (9:00 AM) (Judicial Officer Cadish, Elissa F.)

STATUS CHECK: PAYMENT OF SANCTIONS/ FURTHER PROCEEDINGS VR 5/21/08

Result: Continuance Granted

04/22/2008 **All Pending Motions** (9:00 AM) (Judicial Officer Cadish, Elissa F.)

ALL PENDING MOTIONS 4-22-08 Court Clerk: Keith Reed Reporter/Recorder: Jessica Ramirez Heard By: ELISSA CADISH

Minutes

Result: Matter Heard

04/30/2008 **Motion**

ALL PENDING MOTIONS 4-30-08  
07A5491110015.tif pages

04/30/2008 **CANCELED Status Check: Blocked Account** (9:00 AM) (Judicial Officer Cadish, Elissa F.)  
*Vacated*

Result: Continuance Granted

04/30/2008 **CANCELED Status Check** (9:00 AM) (Judicial Officer Cadish, Elissa F.)*Vacated*

Result: Continuance Granted

04/30/2008 **All Pending Motions** (9:00 AM) (Judicial Officer Cadish, Elissa F.)

ALL PENDING MOTIONS 4-30-08 Court Clerk: Keith Reed Reporter/Recorder: Jessica Ramirez Heard By: ELISSA CADISH

Parties PresentMinutes

Result: Matter Heard

05/15/2008 **Application**

APPLICATION FOR JUDGMENT BY DEFAULT  
07A5491110016.tif pages

05/15/2008 **Notice**

NOTICE OF PAYING SANCTIONS  
07A5491110017.tif pages

05/16/2008 **Application**

AMENDED APPLICATION FOR JUDGMENT BY DEFAULT  
07A5491110018.tif pages

05/21/2008 **Minute Order** (3:00 AM) (Judicial Officer Cadish, Elissa F.)

MINUTE ORDER RE: BLOCKED ACCOUNT Relief Clerk: Phyllis Irby/pi Heard By: ELISSA CADISH

Minutes

Result: Matter Heard

05/22/2008 **Prove Up/Default** (9:00 AM) (Judicial Officer Cadish, Elissa F.)

PROVE UP OF DEFAULT /5 Relief Clerk: Phyllis Irby/pi Reporter/Recorder: Jessica Ramirez Heard By: ELISSA CADISH

Parties PresentMinutes

Result: Motion Granted

05/28/2008 **Conversion Case Event Type**

MINUTE ORDER RE: BLOCKED ACCOUNT  
07A5491110019.tif pages

05/29/2008 **Conversion Case Event Type**

STATUS CHECK: PAYMENT OF SANCTIONS/ FURTHER PROCEEDINGS  
07A5491110020.tif pages

05/29/2008 **Conversion Case Event Type**

STATUS CHECK: BLOCKED ACCOUNT  
07A5491110021.tif pages

05/29/2008 **CANCELED Status Check: Blocked Account** (9:00 AM) (Judicial Officer Cadish, Elissa F.)  
*Vacated*

05/29/2008 **CANCELED Status Check** (9:00 AM) (Judicial Officer Cadish, Elissa F.)  
*Vacated*

05/29/2008 **Status Check** (9:00 AM) (Judicial Officer Cadish, Elissa F.)



10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6658417>

STATUS CHECK: PAYMENT OF SANCTIONS/ FURTHER PROCEEDINGS Relief Clerk: Nora Pena Reporter/Recorder: Jessica Ramirez Heard  
By: ELISSA CADISH

Parties Present

Minutes

Result: Matter Heard

06/03/2008

**Judgment**

DEFAULT JUDGMENT PLUS LEGAL INTEREST

07A5491110022.tif pages

06/03/2008

**Judgment**

DEFAULT JUDGMENT PLUS LEGAL INTEREST

07A5491110023.tif pages

06/26/2008

**Status Check** (9:00 AM) (Judicial Officer Cadish, Elissa F.)

STATUS CHECK: BLOCKED ACCOUNT Court Clerk: Keith Reed Reporter/Recorder: Jessica Ramirez Heard By: ELISSA CADISH

Parties Present

Minutes

Result: Blocked Account / Proof Filed

06/30/2008

**Acknowledgment**

ACKNOWLEDGEMENT OF BLOCKED ACCOUNT

07A5491110024.tif pages

08/01/2008

**Motion**

PLTF'S MTN TO STRIKE SOCIAL SECURITY NUMBER/11 (vj 9/2/08)

07A5491110025.tif pages

08/26/2008

**Notice of Entry of Judgment**

NOTICE OF ENTRY OF JUDGMENT

07A5491110028.tif pages

09/02/2008

**Conversion Case Event Type**

MINUTE ORDER RE: PLTF'S MTN TO STRIKE SOCIAL SECURITY NUMBER

07A5491110026.tif pages

09/02/2008

**Minute Order** (3:00 AM) (Judicial Officer Cadish, Elissa F.)

MINUTE ORDER RE: PLTF'S MTN TO STRIKE SOCIAL SECURITY NUMBER Relief Clerk: Monica Schmidt Heard By: ELISSA CADISH

Minutes

Result: Matter Heard

09/03/2008

**Conversion Case Event Type**

STATUS CHECK: HEARING VI 10-3-08

07A5491110027.tif pages

09/03/2008

**CANCELED Motion to Strike** (3:00 AM) (Judicial Officer Cadish, Elissa F.)

Vacated

09/05/2008

**Acknowledgment**

ACKNOWLEDGEMENT OF BLOCKED ACCOUNT

07A5491110029.tif pages

10/06/2008

**CANCELED Status Check** (3:00 AM) (Judicial Officer Cadish, Elissa F.)

Vacated

Minutes

Result: Matter Heard

07/29/2009

**Writ of Execution**

02/01/2010

**Affidavit of Service**

Affidavit of Service

06/24/2011

**Case Reassigned to Department 29**

Case reassigned from Judge Kathleen E. Delaney

01/02/2017

**Case Reassigned to Department 29**

Case reassigned from Judge Susan Scann Dept 29

03/22/2018

**Ex Parte Motion**

Ex Parte Motion to Amend Judgment in the Name of Cheyenne Nalder, Individually

03/28/2018

**Amended Judgment**

Amended Judgment

05/18/2018

**Notice of Entry**

Notice of Entry of Amended Judgment

08/17/2018

**Motion to Intervene**

UAIC's Motion to Intervene

09/17/2018

**Opposition**

Plaintiff's Opposition to Motion to Intervene

09/18/2018

**Reply in Support**

UAIC's Reply in Support of its Motion to Intervene

09/19/2018

**Motion to Intervene** (3:00 AM) (Judicial Officer Jones, David M)

UAIC's Motion to Intervene

Minutes

Result: Granted

09/27/2018

**Initial Appearance Fee Disclosure**

Initial Appearance Fee Disclosure (NRS Chapter 19)

10/08/2018

**Opposition**

Plaintiff's Opposition to Defendant's Motion for Relief from Judgment

10/17/2018

**Motion to Strike**

Defendant's Motion to Strike Defendant's Motion for Relief from Judgment

10/19/2018

**Order Granting Motion**

Order Granting UAIC's Motion to Intervene

10/19/2018

**Initial Appearance Fee Disclosure**

Initial Appearance Fee Disclosure

10/19/2018

**Notice of Entry of Order**

Notice of Entry of Order on Intervenor United Automobile Insurance Company's Motion to Intervene

10/19/2018

**Motion**

10/30/2019

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60

10/24/2018 **Minute Order** (10:55 AM) (Judicial Officer Jones, David M)*Minute Order Re: Recusal*Parties PresentMinutes

Result: Recused

10/29/2018 **Notice of Department Reassignment***Notice of Department Reassignment*10/29/2018 **Notice of Department Reassignment***Amended Notice of Department Reassignment*10/29/2018 **Opposition***Defendant's Opposition to Intervenor's Motion for Relief From Judgment Pursuant to NRCP 60*10/29/2018 **Opposition***Plaintiff's Opposition to UAIC's Motion for Relief from Judgment*11/01/2018 **Opposition***Opposition to Gary Lewis' Motion to Strike Motion to Set Aside Judgment*11/02/2018 **Opposition***UAIC'S Opposition to Defendant's Motion to Strike Defendant's Motion for Relief from Judgment & Counter-Motion for Evidentiary Hearing for a Fraud Upon the Court or, Alternatively, for the Court to Vacate the 3/28/18 Amended Judgment on Its Own Motion*11/08/2018 **Motion for Sanctions***NRCP 11 Motion for Sanctions*11/08/2018 **Notice of Hearing***Notice of Hearing*11/15/2018 **Opposition***Defendant's Opposition To Counter-Motion For Evidentiary Hearing For A Fraud Upon The Court Or, Alternatively, For The Court To Vacate The 3/28/18 Amended Judgment On It's Own Motion*11/20/2018 **Opposition and Countermotion***Plaintiff's Opposition to UAIC's Counter Motion for Evidentiary Hearing for Fraud Upon the Court or, Alternatively, for the Court to Vacate the 3/28/2018 Amended Judgment on its Own Motion*11/26/2018 **Motion to Consolidate***Intervenor's Motion to Consolidate on Order Shortening Time*11/27/2018 **Opposition***Plaintiff's Opposition to Intervenor UAIC's Motion to Consolidate*11/27/2018 **Opposition***Opposition to UAIC's Motion to Consolidate and Countermotion to Set Aside Void Order and To Strike All Filings By Intervenor*11/28/2018 **CANCELED Motion to Consolidate** (10:30 AM) (Judicial Officer Johnson, Eric)*Vacated**Intervenor's Motion to Consolidate on OST*11/28/2018 **CANCELED Motion to Consolidate** (10:30 AM) (Judicial Officer Johnson, Eric)*Vacated - per Law Clerk**Intervenor's Motion to Consolidate on Order Shortening Time*11/28/2018 **Opposition***UAIC's Opposition to Defendant Lewis' Motions for Sanctions Against Randall Tindall, Esq.*11/30/2018 **Minute Order** (11:30 AM) (Judicial Officer Johnson, Eric)Minutes

Result: Minute Order - No Hearing Held

12/03/2018 **Notice of Hearing***Notice of Hearings*12/10/2018 **Motion***(1/3/18 Withdrawn) Motion For Relief From Orders And Joinder In Motions For Relief From Orders*12/12/2018 **Motion***(2/14/19 Withdrawn- Filed also in A772220) - Motion For Relief From Orders And Joinder In Motions For Relief From Orders On Order Shortening Time*12/12/2018 **Stipulation and Order***Stipulation Regarding Scheduling Of Hearing Dates*12/13/2018 **Motion to Set Aside***Plaintiff's Motion to Set Aside Order, Pursuant to NRCP 60(b) Allowing UAIC to Intervene*12/14/2018 **Opposition***Uaic s Opposition To Third Party Plaintiff Lewis Counter-Motion For Summary Judgment & Counter-Motion To Strike Affidavit Of Lewis In Support Of Same Counter-Motion For Summary Judgment And/Or Stay Proceedings Pending Appellate Ruling And/Or Stay Counter-Motion For Summary Judgment Pending Necessary Discovery Pursuant To N.R.C.P. 56(F)*12/20/2018 **Opposition to Motion For Summary Judgment***UAIC s Opposition To Plaintiff Nalder s Motion For Summary Judgment & Counter-Motion To Stay Proceedings Pending Appellate Ruling*12/20/2018 **Opposition to Motion***Randall Tindall, Esq., and Resnick & Louls P.C.'s Opposition to Defendant/Cross-Claimant's NRCP 11 Motion for Sanctions*12/27/2018 **Stipulation***Stipulation Re: Early Case Conference and Early Case Conference Report*12/27/2018 **Order Granting Motion***Order Granting Intervenor's Motion to Consolidate Cases on Order Shortening Time*12/28/2018 **Notice of Entry***Notice of Entry of Order Granting Intervenor's Motion to Consolidate Cases on Order Shortening Time*12/31/2018 **Opposition***UAIC s Opposition to Third Party Plaintiff Lewis Motion for Relief from Order and Joinder in Motions for Relief from Orders on Order Shortening Time as well as UAIC s Opposition to Plaintiff s Motion to Set Aside Order, Pursuant To N.R.C.P. 60(B), Allowing UAIC to Intervene & Opposition to Defendant Lewis Motion for Relief from Orders and Joinder in Motions for Relief from Orders and, UAIC s Counter-Motion to Stay Pending Ruling on Appeal*01/02/2019 **Reply in Support***UAIC's Reply in Support of its Motion for Relief from Judgment Pursuant to NRCP 60*01/02/2019 **Reply in Support***UAIC s Reply In Support of Its Counter-Motion for Evidentiary Hearing for a Fraud Upon the Court or, Alternatively, for the Court to Vacate The 3/28/18 Amended Judgment on its Own Motion*01/02/2019 **Reply in Support**

10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6658417>

UAIC'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT & MOTION FOR COURT TO DENY STIPULATION TO ENTER JUDGMENT BETWEEN PLAINTIFF AND LEWIS and/or, IN THE ALTERNATIVE TO STAY SAME PENDING HEARING ON MOTION TO DISMISS

01/02/2019

**Opposition**

Opposition to Counter-Motion to Strike Affidavit of Lewis in Support of his Counter-Motion for Summary Judgment AND Opposition to UAIC's Counter-Motion to Stay proceedings pending Appellate Ruling and Stay Counter-Motion for Summary Judgment Pending Necessary Discovery Pursuant to NRCP 56(f) and Reply in Support of Motion to Set Aside Order Allowing Intervention and Oppositions and Replies in Support of any other Motions to be heard on January 9, 2019

01/02/2019

**Withdrawal**

Defendant's Withdrawal Of Defendant's Motion For Relief From Judgment Pursuant To NRCP 60

01/02/2019

**Withdrawal**

Defendant's Withdrawal Of Defendant's Motion To Dismiss And Withdrawal Of Defendant's Motion For Relief From Judgment Pursuant To NRCP 60

01/07/2019

**Motion to Withdraw As Counsel**

Motion to Withdraw As Counsel on Order Shortening Time

01/09/2019

**Motion for Relief** (8:30 AM) (Judicial Officer Johnson, Eric)

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

10/31/2018 Reset by Court to 11/21/2018

11/21/2018 Reset by Court to 12/12/2018

12/12/2018 Reset by Court to 01/09/2019

Result: Withdrawn

01/09/2019

**Motion to Strike** (8:30 AM) (Judicial Officer Johnson, Eric)

Defendant's Motion to Strike Defendant's Motion for Relief from Judgment

12/12/2018 Reset by Court to 01/09/2019

12/12/2018 Reset by Court to 12/12/2018

Result: Granted

01/09/2019

**Motion for Relief** (8:30 AM) (Judicial Officer Johnson, Eric)

UAIC's Motion for Relief from Judgment Pursuant to NRCP 60

12/12/2018 Reset by Court to 01/09/2019

12/12/2018 Reset by Court to 12/12/2018

Result: Denied

01/09/2019

**Motion to Dismiss** (8:30 AM) (Judicial Officer Johnson, Eric)

Defendant's Motion to Dismiss

12/19/2018 Reset by Court to 01/09/2019

Result: Withdrawn

01/09/2019

**Motion to Dismiss** (8:30 AM) (Judicial Officer Johnson, Eric)

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

12/19/2018 Reset by Court to 01/09/2019

Result: Granted in Part

01/09/2019

**Motion for Relief** (8:30 AM) (Judicial Officer Johnson, Eric)

Defendant's Motion for Relief From Judgment Pursuant to NRCP 60

12/19/2018 Reset by Court to 01/09/2019

Result: Withdrawn

01/09/2019

**Motion to Strike** (8:30 AM) (Judicial Officer Johnson, Eric)

Defendant's Motion to Strike Both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss

Result: Granted

01/09/2019

**Joinder** (8:30 AM) (Judicial Officer Johnson, Eric)

Motion For Relief From Orders And Joinder In Motions For Relief From Orders On Order Shortening Time

Result: Denied

01/09/2019

**Motion to Set Aside** (8:30 AM) (Judicial Officer Johnson, Eric)

Plaintiff's Motion to Set Aside Order, Pursuant to NRCP 60(b) Allowing UAIC to Intervene

01/23/2019 Reset by Court to 01/09/2019

Result: Denied

01/09/2019

**Opposition and Countermotion** (8:30 AM) (Judicial Officer Johnson, Eric)

UAIC s Opposition to Third Party Plaintiff Lewis Motion for Relief from Order and Joinder in Motions for Relief from Orders on Order Shortening Time as well as UAIC s Opposition to Plaintiff s Motion to Set Aside Order, Pursuant To N.R.C.P. 60(B), Allowing UAIC to Intervene & Opposition to Defendant Lewis Motion for Relief from Orders and Joinder in Motions for Relief from Orders and, UAIC s Counter-Motion to Stay Pending Ruling on Appeal

Result: Granted in Part

01/09/2019

**Motion to Withdraw as Counsel** (8:30 AM) (Judicial Officer Johnson, Eric)

Defense's Motion to Withdraw As Counsel on OST

Result: Granted

01/09/2019

**CANCELED Motion to Withdraw as Counsel** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - Duplicate Entry

Motion to Withdraw As Counsel on Order Shortening Time

01/09/2019

**All Pending Motions** (8:30 AM) (Judicial Officer Johnson, Eric)

Parties Present

Minutes

Result: Matter Heard

01/16/2019

**Reply in Support**

UAIC's Reply in Support of its Motion to Dismiss Lewis' Third Party Complaint & Replies in Support of its Counter-Motion to Strike Affidavit of Lewis in Support of the Counter-Motion for Summary Judgment and/or to Stay Proceedings Pending Appellate Ruling and/or Stay Counter-Motion for Summary Judgment Pending Necessary Discovery Pursuant to N.R.C.P. 56(f)

01/16/2019

**Reply**

Third Party Plaintiff's Reply in Support of his Counter-Motion for Summary Judgment

01/16/2019

**Reply in Support**

Plaintiff's Reply in Support of Her Motion for Summary Judgment and Opposition to Countermotion for Stay

10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6658417>01/22/2019 **Minute Order** (7:15 AM) (Judicial Officer Johnson, Eric)Minutes

Result: Minute Order - No Hearing Held

01/22/2019 **Notice of Acceptance of Offer**

Notice of Acceptance of Offer of Judgment in Case 18-A-772220

01/22/2019 **Judgment**

(A772220) Judgment Pursuant to NRCP 68 in Case No. 18-A-772220

01/23/2019 **CANCELED Motion for Sanctions** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

NRCP 11 Motion for Sanctions

12/19/2018 Reset by Court to 01/23/2019

01/23/2019 **CANCELED Motion for Sanctions** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

NRCP 11 Motion for Sanctions

12/19/2018 Reset by Court to 01/09/2019

12/19/2018 Reset by Court to 01/23/2019

01/09/2019 Reset by Court to 12/19/2018

01/23/2019 **CANCELED Motion for Summary Judgment** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

Plaintiff's Motion for Summary Judgment and Relief From Order Pursuant to NRCP 60(b)

01/23/2019 **CANCELED Motion to Dismiss** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

UAIC's Motion to Dismiss Third Party Plaintiff Lewis's Third Party Complaint

01/23/2019 **CANCELED Opposition and Countermotion** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

Opposition to UAIC's Motion to Dismiss and Countermotion for Summary Judgment

01/23/2019 **CANCELED Opposition and Countermotion** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

Uaic s Opposition To Third Party Plaintiff Lewis Counter-Motion For Summary Judgment &amp; Counter-Motion To Strike Affidavit Of Lewis In Support Of Same Counter-Motion For Summary Judgment And/Or Stay Proceedings Pending Appellate Ruling And/Or Stay Counter-Motion For Summary Judgment Pending Necessary Discovery Pursuant To N.R.C.P. 56(F)

01/23/2019 **CANCELED Opposition and Countermotion** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

UAIC s Opposition To Plaintiff Nalder s Motion For Summary Judgment &amp; Counter-Motion To Stay Proceedings Pending Appellate Ruling

01/28/2019 **Notice of Entry of Judgment**

Notice of Entry of Judgment

01/28/2019 **Stipulation and Order**

Stipulation and Order for Dismissal of All Third-Party Claims with Prejudice Against Third-Party Defendants Randall Tindall, Esq. and Resnick &amp; Louis P.C.

01/29/2019 **Notice of Entry of Stipulation & Order for Dismissal**

Notice of Entry Stipulation and Order for Dismissal of all Third-Party Claims, With Prejudice, Against Third Party Defendants Randall Tindall, Esq., And Resnick &amp; Louis, P.C.

01/30/2019 **CANCELED Motion to Dismiss** (10:30 AM) (Judicial Officer Johnson, Eric)

Vacated - per Law Clerk

Third-Party Defendants Randall Tindall, Esq., and Resnick &amp; Louis P.C.'s (1) Motion to Dismiss or, (2) In the Alternative for a More Definite Statement or (3) In the Alternative, to Dismiss Resnick &amp; Louis for Failure to State a Claim

02/05/2019 **Order Granting Motion**

A549111 and A772220 Order Granting Randall Tindall's Resnick &amp; Louis P.C.'s Motion to Withdraw As Counsel

02/05/2019 **Notice of Entry of Order**

Notice of Entry of Order Granting Randall Tindall and Resnick &amp; Louis P.C.'s Motion to Withdraw as Counsel

02/11/2019 **Motion for Relief**

UAIC s Motion For Relief From Judgment, Entered 1/23/19 In Case No A-18-772220-C, Pursuant to NRCP 60 and/or, in The Alternative, Motion for Rehearing on Motion to Dismiss Plaintiff s First Cause of Action in Case No A-18-772220-C on an Order Shortening Time

02/14/2019 **Order**

Order Granting in Part Motion for Relief From Judgment, Entered 1/23/19 In Case No A-18-772220-C, Pursuant To NRCP 60 And/Or, In the Alternative, Motion for Rehearing on Motion to Dismiss Plaintiff's First Cause of Action In Case No A-18-772220-C On An Order Shortening Time

02/14/2019 **Notice of Entry of Order**

NOTICE OF ENTRY OF ORDER GRANTING IN PART MOTION FOR RELIEF FROM JUDGMENT, ENTERED 1123/19 IN CASE NO A-18-772220-C, PURSUANT TO NRCP 60 AND/OR, IN THE ALTERNATIVE, MOTION FOR REHEARING ON MOTION TO DISMISS PLAINTIFF'S FIRST CAUSE OF ACTION IN CASE NO A.18.772220-C ON AN ORDER SHORTENING TIME

02/14/2019 **Transcript of Proceedings**

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, January 9, 2019

02/14/2019 **Order**

Order on Motions Heard on January 9, 2019

02/14/2019 **Order**

Order on Motions for January 23, 2019

02/15/2019 **Notice of Entry of Order**

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

02/15/2019 **Notice of Entry of Order**

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

02/15/2019 **Request**

Request for Stay

02/20/2019 **CANCELED Motion for Relief** (8:30 AM) (Judicial Officer Johnson, Eric)

Vacated

UAIC's Motion for Relief from Judgment, Entered 01/23/19 in Case No. A-18-772220-C, Pursuant to NRCP 60 and/or, In the Alternative, Motion for Rehearing on Motion to Dismiss Plaintiff's First Cause of Action in Case No. A-18-772220-C on OST

03/01/2019 **Motion**

Motion for Reconsideration, Motion for hearing and Motion for Relief from Order

03/04/2019 **Motion**



10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6658417>

*Motion for Reconsideration of Orders signed 2/11/19, Motion for Hearing and Motion for Relief from Orders*

03/06/2019 **Notice of Hearing**  
*Notice of Hearing*

03/15/2019 **Opposition to Motion**  
*UAIC's Opposition to 3rd Party Plaintiff Lewis' Motion for Reconsideration, Motion for Hearing and Motion for Relief from Order*

03/18/2019 **Notice of Change of Hearing**  
*Notice of Change of Hearing*

03/18/2019 **Opposition to Motion**  
*UAIC'S OPPOSITION TO 3RD PARTY PLAINTIFF LEWIS' MOTION FOR RECONSIDERATION OF ORDERS SIGNED 2/11/19, MOTION FOR HEARING, AND MOTION FOR RELIEF FROM ORDERS AND UAIC'S COUNTER-MOTION TO STRIKE UNTIMELY JOINDER BY PLAINTIFF TO SAID MOTION*

03/19/2019 **Joinder**  
*Joinder in Motion for Reconsideration of Orders Signed 2/11/2019, Motion for Hearing, and Motion for Relief from Orders*

04/04/2019 **Reply**  
*Reply In Support of Motion for Reconsideration, Motion for Hearing and Motion for Relief for Order and Reply in Support of Motion for Reconsideration of Orders Signed 2/11/19, Motion for Hearing and Motion for Relief from Orders*

04/10/2019 **Motion For Reconsideration** (8:30 AM) (Judicial Officer Johnson, Eric)  
*Third Party Plaintiff's Motion for Reconsideration, Motion for Hearing and Motion for Relief from Order*  
*04/03/2019 Reset by Court to 04/10/2019*

Result: Denied

04/10/2019 **Motion For Reconsideration** (8:30 AM) (Judicial Officer Johnson, Eric)  
*Third Party Plaintiff's Motion for Reconsideration of Orders signed 2/11/19, Motion for Hearing and Motion for Relief from Orders*

Result: Denied

04/10/2019 **Joinder** (8:30 AM) (Judicial Officer Johnson, Eric)  
*Plaintiff's Joinder in Motion for Reconsideration of Orders Signed 2/11/2019, Motion for Hearing, and Motion for Relief from Orders*

Result: Denied

04/10/2019 **All Pending Motions** (8:30 AM) (Judicial Officer Johnson, Eric)  
Parties Present  
Minutes

Result: Matter Heard

07/08/2019 **Transcript of Proceedings**  
*Transcript of Hearing: All Pending Motions, April 10, 2019*

07/26/2019 **Order**  
*Order*

07/30/2019 **Notice of Entry of Order**  
*Notice of Entry of Order*

08/21/2019 **Case Appeal Statement**  
*Case Appeal Statement*

08/21/2019 **Notice of Appeal**  
*Notice of Appeal*

09/25/2019 **Motion for Relief**  
*Motion for Relief from Stay and Renewed Motion for Summary Judgment*

09/25/2019 **Ex Parte Motion**  
*Plaintiff's Ex Parte Motion for Order Shortening Time*

09/25/2019 **Clerk's Notice of Hearing**  
*Notice of Hearing*

09/27/2019 **Notice of Association of Counsel**  
*Notice of Association of Counsel*

09/27/2019 **Notice**  
*United Automobile Insurance Company's Notice of Nevada Supreme Court Decision*

09/27/2019 **Amended Notice**  
*United Automobile Insurance Company's Amended Notice of Nevada Supreme Court Decision*

10/01/2019 **Notice of Change of Hearing**  
*Notice of Change of Hearing*

10/09/2019 **Opposition to Motion**  
*Opposition to "Plaintiff's Motion for Relief from Stay and Renewed Motion for Summary Judgment"*

10/16/2019 **Notice of Change of Firm Name**  
*NOTICE OF FIRM NAME CHANGE*

10/25/2019 **Reply in Support**  
*Plaintiff's Reply in Support of Plaintiff's Motion for Relief from Stay and Renewed Motion for Summary Judgment*

11/06/2019 **Status Check** (8:30 AM) (Judicial Officer Johnson, Eric)  
*Status Check: Supreme Court Decision*  
*08/28/2019 Reset by Court to 10/30/2019*  
*10/23/2019 Reset by Court to 08/28/2019*  
*10/30/2019 Reset by Court to 11/06/2019*

11/06/2019 **Motion for Relief** (8:30 AM) (Judicial Officer Johnson, Eric)  
*Plaintiff's Motion for Relief from Stay and Renewed Motion for Summary Judgment*  
*10/30/2019 Reset by Court to 11/06/2019*

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**FINANCIAL INFORMATION**

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**Conversion Extended Connection Type No Convert Value @ 07A549111**

Total Financial Assessment

161.00

Total Payments and Credits

161.00

**Balance Due as of 10/30/2019****0.00**

10/02/2007 Transaction Assessment

148.00

10/02/2007 Conversion Payment

Receipt # 01384855

CHRISTENSEN LAW OFFICES LLC

(148.00)

10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6658417>

07/22/2009	Transaction Assessment			6.00
07/22/2009	Payment (Window)	Receipt # 2009-40253-FAM	Christensen, Thomas F.	(6.00)
02/25/2010	Transaction Assessment			7.00
02/25/2010	Payment (Window)	Receipt # 2010-11919-FAM	Christensen, Thomas F.	(7.00)

<b>Defendant Lewis, Gary</b>				
Total Financial Assessment				231.00
Total Payments and Credits				231.00
<b>Balance Due as of 10/30/2019</b>				<b>0.00</b>

09/28/2018	Transaction Assessment			223.00
09/28/2018	Efile Payment	Receipt # 2018-64986-CCCLK	Lewis, Gary	(223.00)
01/23/2019	Transaction Assessment			8.00
01/23/2019	Payment (Window)	Receipt # 2019-04784-CCCLK	Christensen Law Offices	(8.00)

<b>Intervenor United Automobile Insurance Company</b>				
Total Financial Assessment				268.00
Total Payments and Credits				268.00
<b>Balance Due as of 10/30/2019</b>				<b>0.00</b>

10/19/2018	Transaction Assessment			223.00
10/19/2018	Efile Payment	Receipt # 2018-70094-CCCLK	United Automobile Insurance Company	(223.00)
08/21/2019	Transaction Assessment			3.50
08/21/2019	Efile Payment	Receipt # 2019-51484-CCCLK	United Automobile Insurance Company	(3.50)
08/21/2019	Transaction Assessment			27.50
08/21/2019	Efile Payment	Receipt # 2019-51485-CCCLK	United Automobile Insurance Company	(27.50)
09/27/2019	Transaction Assessment			3.50
09/27/2019	Efile Payment	Receipt # 2019-59300-CCCLK	United Automobile Insurance Company	(3.50)
09/27/2019	Transaction Assessment			3.50
09/27/2019	Efile Payment	Receipt # 2019-59312-CCCLK	United Automobile Insurance Company	(3.50)
09/27/2019	Transaction Assessment			3.50
09/27/2019	Efile Payment	Receipt # 2019-59316-CCCLK	United Automobile Insurance Company	(3.50)
10/09/2019	Transaction Assessment			3.50
10/09/2019	Efile Payment	Receipt # 2019-61779-CCCLK	United Automobile Insurance Company	(3.50)

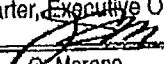
<b>Third Party Defendant Resnick &amp; Louis P.C. Randall Tindall, Esq.</b>				
Total Financial Assessment				3.50
Total Payments and Credits				3.50
<b>Balance Due as of 10/30/2019</b>				<b>0.00</b>

01/30/2019	Transaction Assessment			3.50
01/30/2019	Efile Payment	Receipt # 2019-06163-CCCLK	Resnick & Louis P.C. Randall Tindall, Esq.	(3.50)

<b>Third Party Defendant Tindall, Randall Esq</b>				
Total Financial Assessment				10.50
Total Payments and Credits				10.50
<b>Balance Due as of 10/30/2019</b>				<b>0.00</b>

12/21/2018	Transaction Assessment			3.50
12/21/2018	Efile Payment	Receipt # 2018-83811-CCCLK	Tindall, Randall Esq	(3.50)
12/21/2018	Transaction Assessment			3.50
12/21/2018	Efile Payment	Receipt # 2018-84091-CCCLK	Tindall, Randall Esq	(3.50)
01/29/2019	Transaction Assessment			3.50
01/29/2019	Efile Payment	Receipt # 2019-05821-CCCLK	Tindall, Randall Esq	(3.50)

# **EXHIBIT C**

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b>		Reserved for Clerk's File Stamp <b>FILED</b> Superior Court of California County of Los Angeles <b>JUL 24 2018</b> Sherri R. Carter, Executive Officer/Clerk By:  Deputy CASE NUMBER <b>KS021378</b>
COURTHOUSE ADDRESS: Pomona Courthouse, 400 Civic Center Plaza, Pomona CA 91766		
PLAINTIFF/PETITIONER: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder		
DEFENDANT/RESPONDENT: Gary Lewis		
<b>JUDGMENT BASED ON SISTER-STATE JUDGMENT</b> (Code Civ. Proc., § 1710.25)		

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

**BY FAX**

Pursuant to Code of Civil Procedure section 1710.25, judgment is hereby entered in favor of plaintiff/judgment creditor

James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

and against defendant/judgment debtor  
Gary Lewis

For the amount shown in the application remaining unpaid under said Judgment in the sum of \$ 3,485,000, together with interest on said Judgment in the sum of \$ 2,174,998.52, Los Angeles Superior Court filing fees in the sum of \$ 435, costs in the sum of \$ 0, and interest on said judgment accruing from the time of entry of Judgment at the rate provided by law.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: JUL 24 2018

By: 

**G. MORENO**  
Deputy Clerk

**CERTIFICATE OF MAILING**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment Based on Sister-State Judgment (Code Civ. Proc., § 1710.25) upon each party or counsel named below by depositing in the United States mail at the courthouse in \_\_\_\_\_, California, one copy of the original filed herein in a separate sealed envelope for each address as shown below with the postage thereon fully prepaid.

SHERRI R. CARTER, Executive Officer/Clerk

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Deputy Clerk

LACIV 209 (Rev. 09/13)  
LASC Approved  
For Optional Use

**JUDGMENT BASED ON SISTER-STATE JUDGMENT**  
(Code Civ. Proc., § 1710.25)

Code Civ. Proc., § 1710.25



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name): Mark J. Linderman (State Bar No. 144685) mlinderman@jdoe.com Joshua M. Deitz (State Bar No. 267454) jdeitz@rjo.co 311 California Street San Francisco, California 94104		TELEPHONE NO.: 415-956-2828 415-956-2828	FOR COURT USE ONLY
ATTORNEY FOR (Name): Cheyenne Nalder, James Nalder			<b>FILED</b> Superior Court of California County of Los Angeles  JUL 24 2018  Sherri R. Carter, Executive Officer/Clerk By <u>G. Moreno</u> Deputy
NAME OF COURT: Superior Court of California, County of Los Angeles			
STREET ADDRESS: 400 Civic Center Plaza			
MAILING ADDRESS: Pomona 91766			
CITY AND ZIP CODE: Pomona Courthouse			
BRANCH NAME: EAST DISTRICT			
PLAINTIFF: James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder			
DEFENDANT: Gary Lewis			
NOTICE OF ENTRY OF JUDGMENT ON SISTER-STATE JUDGMENT		CASE NUMBER:	KS021378

1. TO JUDGMENT DEBTOR (name): Gary Lewis  
733 S. Minnesota Ave, Glendora, CA 91740

BY FAX

2. YOU ARE NOTIFIED

a. Upon application of the judgment creditor, a judgment against you has been entered in this court as follows:  
(1) Judgment creditor (name): James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder

(2) Amount of judgment entered in this court: \$5,660,433.52

b. This judgment was entered based upon a sister-state judgment previously entered against you as follows:

(1) Sister state (name): Nevada

(2) Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
200 Lewis Ave, Las Vegas, NV, 89155

(3) Judgment entered in sister state on (date): June 2, 2008

(4) Title of case and case number (specify): Nalder v. Lewis, Case No. A549111

3. A sister-state judgment has been entered against you in a California court. Unless you file a motion to vacate the judgment in this court within 30 DAYS after service of this notice, this judgment will be final.

This court may order that a writ of execution or other enforcement may issue. Your wages, money, and property could be taken without further warning from the court.

If enforcement procedures have already been issued, the property levied on will not be distributed until 30 days after you are served with this notice.

Date: JUL 24 2018

SHERRI R. CARTER, Clerk, by G. MORENO, Deputy

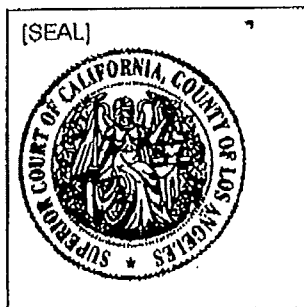
4. ☒ NOTICE TO THE PERSON SERVED: You are served

- a. ☒ as an individual judgment debtor.  
b. ☐ under the fictitious name of (specify):  
c. ☐ on behalf of (specify):

Under:

- ☐ CCP 416.10 (corporation)  
☐ CCP 418.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)  
☐ other:  
☐ CCP 416.60 (minor)  
☐ CCP 416.70 (conservatee)  
☒ CCP 416.90 (individual)

(Proof of service on reverse)



Form Approved by the  
Judicial Council of California  
EJ 110 (Rev. July 1, 1993)

NOTICE OF ENTRY OF JUDGMENT ON  
SISTER-STATE JUDGMENT

CCP 1710.30, 1710.40  
1710.4b

14:29:38 2018-07-17

PROOF OF SERVICE

(Use separate proof of service for each person served)

1. I served the Notice of Entry of Judgment on Sister-State Judgment as follows:

a. on judgment debtor (name): GARY LEWIS

b. by serving ☒ judgment debtor ☐ other (name and title or relationship to person served):

c. ☒ by delivery ☒ at home ☐ at business

(1) date: 07/26/18

(2) time: 7:00 p.m.

(3) address: 733 S. Minnesota Ave

Glendora, CA 91740

d. ☐ by mailing

(1) date:

(2) place:

2. Manner of service (check proper box):

a. ☒ Personal service. By personally delivering copies. (CCP 415.10)

b. ☐ Substituted service on corporation, unincorporated association (including partnership), or public entity. By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))

c. ☐ Substituted service on natural person, minor, conservatee, or candidate. By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)

d. ☐ Mail and acknowledgment service. By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (Attach completed acknowledgment of receipt.)

e. ☐ Certified or registered mail service. By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) (Attach signed return receipt or other evidence of actual delivery to the person served.)

f. ☐ Other (specify code section):

☐ Additional page is attached.

3. The "Notice to the Person Served" was completed as follows:

a. ☒ as an individual judgment debtor.

b. ☐ as the person sued under the fictitious name of (specify):

c. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (individual)

☐ other:

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

a. ☐ California sheriff, marshal, or constable.

b. ☒ Registered California process server.

c. ☐ Employee or independent contractor of a registered California process server.

d. ☐ Not a registered California process server.

e. ☐ Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

Jorge Rivera (Reg# 4690 Los Angeles County)

52 Second Street, 3rd Floor

San Francisco, California 94105

(415) 546-6000

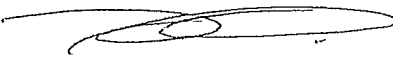
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date: 07/27/18

Date:





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

Judgment creditor applies for entry of a judgment based upon a sister-state judgment as follows:

BY FAX

1. Judgment creditor (name and address):  
James Nalder, individually and as Guardian ad Litem for Cheyenne Nalder  
5037 Sparkling Sky Avenue  
Las Vegas, Nevada, 89130
2. a. Judgment debtor (name): Gary Lewis
  - b. ☒ An individual (last known residence address): 733 S. Minnesota Ave, Glendora, CA 91740
  - c. ☐ A corporation of (specify place of incorporation):
    - (1) ☐ Foreign corporation
      - ☐ qualified to do business in California
      - ☐ not qualified to do business in California
  - d. ☐ A partnership (specify principal place of business):
    - (1) ☐ Foreign partnership which
      - ☐ has filed a statement under Corp C 15700
      - ☐ has not filed a statement under Corp C 15700
3. a. Sister state (name): Nevada
  - b. Sister-state court (name and location): Eighth Judicial District Court, Clark County, Nevada  
200 Lewis Ave, Las Vegas, NV. 89155
  - c. Judgment entered in sister state on (date): June 2, 2008
4. An authenticated copy of the sister-state judgment is attached to this application. Include accrued interest on the sister-state judgment in the California judgment (Item 5c).
  - a. Annual interest rate allowed by sister state (specify): 6.5%
  - b. Law of sister state establishing interest rate (specify): NRS 17.130
5. a. Amount remaining unpaid on sister-state judgment: \$ 3,485,000
  - b. Amount of filing fee for the application: \$ 435
  - c. Accrued interest on sister-state judgment: \$ 2,174,998.52
  - d. Amount of judgment to be entered (total of 5a, b, and c): \$ 5,660,433.52

(Continued on reverse)

Amended

SHORT TITLE: Nalder v. Lewis

CASE NUMBER:

KS021378

6. ☐ Judgment creditor also applies for issuance of a writ of execution or enforcement by other means before service of notice of entry of judgment as follows:

a. ☐ Under CCP 1710.45(b).

b. ☐ A court order is requested under CCP 1710.45(c). Facts showing that great or irreparable injury will result to judgment creditor if issuance of the writ or enforcement by other means is delayed are set forth as follows:

☐ continued in attachment 6b.

7. An action in this state on the sister-state judgment is not barred by the statute of limitations.

8. I am informed and believe that no stay of enforcement of the sister-state judgment is now in effect in the sister state.

9. No action is pending and no judgment has previously been entered in any proceeding in California based upon the sister-state judgment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters which are stated to be upon information and belief, and as to those matters I believe them to be true.

Date:

7/17/12

Joshua M. Deitz  
(TYPE OR PRINT NAME)

(SIGNATURE OF JUDGMENT CREDITOR OR ATTORNEY)

# EXHIBIT A

ORIGINAL

FILED

Aug 26 11 00 AM '08

CLERK

**JUDG**

DAVID F. SAMPSON, ESQ.,

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

(702) 870-1000

Attorney for Plaintiff,

JAMES NALDER As Guardian Ad

Litem for minor, CHEYENNE NALDER

DISTRICT COURTCLARK COUNTY, NEVADA

JAMES NALDER, individually )

and as Guardian ad Litem for )

CHEYENNE NALDER, a minor. )

Plaintiffs, )

vs. )

CASE NO: A549111

DEPT. NO: VI

GARY LEWIS, and DOES I )

through V, inclusive ROES I )

through V )

Defendants. )

**NOTICE OF ENTRY OF JUDGMENT**

PLEASE TAKE NOTICE that a Judgment against Defendant, GARY LEWIS, was

entered in the above-entitled matter on June 2, 2008. A copy of said Judgment is attached

hereto.

DATED this 26 day of June, 2008.

CHRISTENSEN LAW OFFICES, LLC

By: DAVID F. SAMPSON, ESQ.

Nevada Bar #6811

THOMAS CHRISTENSEN, ESQ.,

Nevada Bar #2326

1000 S. Valley View Blvd.

Las Vegas, Nevada 89107

Attorneys for Plaintiff

CLERK OF THE COURT

RECEIVED  
AUG 26 2008

**CERTIFICATE OF SERVICE**

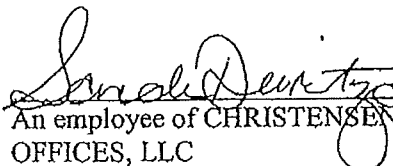
Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW  
OFFICES, LLC., and that on this 5<sup>th</sup> day of June, 2008, I served a copy of the  
foregoing **NOTICE OF ENTRY OF JUDGMENT** as follows:

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

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

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

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

  
An employee of CHRISTENSEN LAW  
OFFICES, LLC



1 JMT

2 THOMAS CHRISTENSEN, ESQ.,  
Nevada Bar #2326

3 DAVID F. SAMPSON, ESQ.,  
Nevada Bar #6811

4 1000 S. Valley View Blvd.  
5 Las Vegas, Nevada 89107  
(702) 870-1000

6 Attorney for Plaintiff,

*CRF SRS*  
CLERK OF THE COURT

JUN 3 1 52 PM '08

FILED

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

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

11 Plaintiffs, )

12 vs. )

CASE NO: A549111  
DEPT. NO: VI

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

15 Defendants. )  
16 )

17 JUDGMENT

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

26 ...

27 ...

28 ...

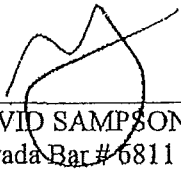


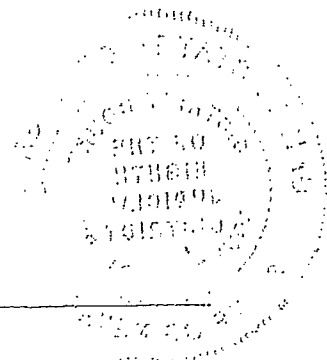
1 IT IS ORDERED THAT PLAINTIFF HAVE JUDGMENT AGAINST DEFENDANT in the  
2 sum of \$3,500,000.00, which consists of \$65,555.37 in medical expenses, and \$3,434,444.63 in  
3 pain, suffering, and disfigurement, with interest thereon at the legal rate from October 9, 2007,  
4 until paid in full.

5  
6 DATED THIS 2 day of June, 2008.

7  
8   
9 DISTRICT JUDGE

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

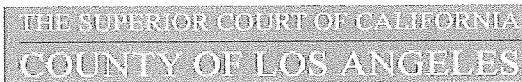
14  
15 BY:   
16 DAVID SAMPSON  
17 Nevada Bar # 6811  
18 1000 S. Valley View  
19 Las Vegas, Nevada 89107  
20 Attorney for Plaintiff  
21  
22  
23  
24  
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27  
28



CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

*[Signature]*  
CLERK OF THE COURT 2.25.2010

# **EXHIBIT D**



Search

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## ONLINE SERVICES

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## CASE INFORMATION

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Case Number: KS021378

CHEYENNE NALDER ET AL VS GARY LEWIS

Filing Courthouse: Pomona Courthouse South

Filing Date: 06/28/2018

Case Type: Sister State Judgment (General Jurisdiction)

Status: Legacy Judgment 07/24/2018

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If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page

## FUTURE HEARINGS

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None

## PARTY INFORMATION

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DEITZ JOSHUA M. - Attorney for Plaintiff

INAMINE BRIAN S. ESQ - Intervenor

INAMINE BRIAN SEISHIN - Attorney for Plaintiff in Intervention

LEWIS GARY - Defendant

NALDER CHEYENNE - Plaintiff

NALDER JAMES - Plaintiff

UNITED AUTO INSURANCE COMPANY - Plaintiff in Intervention

## DOCUMENTS FILED

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Documents Filed (Filing dates listed in descending order)

10/17/2019

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Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

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Filed by United Auto Insurance Company (Plaintiff in Intervention)

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Filed by United Auto Insurance Company (Plaintiff in Intervention)

12/14/2018 Order (Granting Second Request for Judicial Notice)  
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## PROCEEDINGS HELD

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### Proceedings Held (Proceeding dates listed in descending order)

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

02/05/2019 at 08:30 AM in Department O, Peter A. Hernandez, Presiding  
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12/10/2018 at 08:31 AM in Department O, Peter A. Hernandez, Presiding  
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## REGISTER OF ACTIONS

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Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

07/24/2018 Sister State Judgment

Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

07/24/2018 Notice

Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

07/24/2018 Judgment

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

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TOP 07/17/2018

07/17/2018 Application for Entry of Judgment on Sister-State Judgment (Amended: 2018-07-17)

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Filed by CHEYENNE NALDER (Plaintiff); JAMES NALDER (Plaintiff)

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TOP 07/17/2018

[NEW SEARCH](#)

# **EXHIBIT E**

# O'HAGAN MEYER

ATTORNEYS & ADVISORS

**Brian S. Inamine**

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February 12, 2019

**VIA: EMAIL & U.S. MAIL**

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San Francisco, CA 94104  
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Los Angeles, CA 90017  
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Re: *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder v. Gary Lewis*  
Los Angeles Superior Court Case No. KS021378  
Our Client: United Automobile Insurance Company (UAIC)

Dear counsel:

Please be advised that our client UAIC will not be appealing the Court's denial of its motion for leave to intervene.

Thank you.

Very truly yours,



Brian S. Inamine

BSI:ei

cc: Samantha L. Barron, Esq.

# **EXHIBIT F**

1  
2 STATE OF NEVADA )  
3 ) ss:  
4 COUNTY OF CLARK )

5  
6 **AFFIDAVIT OF GARY LEWIS**

7 Comes now Appellant, GARY LEWIS, first being duly sworn deposes and says:

8 1. I, Gary Lewis was, at all times relevant to the injury to Cheyenne Nalder, a  
9 resident of the County of Clark, State of Nevada. I then moved my residence to California in  
10 December of 2008 and have had no presence for purposes of service of process in Nevada since  
11 that date.

12  
13 2. I retained attorney, Thomas Christensen, Esq. to file a Cross-Claim/Third party  
14 complaint against United Automobile Insurance Co., Randall Tindall, Esq., and Resnick &  
15 Louis, P.C., for acts and omissions committed by them and each of them, as a result of the  
16 finding of coverage on October 30, 2013.

17 3. United Automobile Insurance Company, hereinafter referred to as "UAIC", was  
18 my insurance company.

19  
20 4. Randall Tindall, hereinafter referred to as "Tindall," is an attorney licensed and  
21 practicing in the State of Nevada.

22 5. I requested that UAIC or any attorneys they hired to defend me in these two state  
23 court actions communicate through my current attorney in my claim against UAIC in Federal  
24 Court, Mr. Thomas Christensen.

25 6. I ran over Cheyenne Nalder (born April 4, 1998), a nine-year-old girl at the time,  
26 on July 8, 2007.

27 7. This incident occurred on private property.  
28

1           8.       I maintained an auto insurance policy with United Auto Insurance Company  
2 (“UAIC”), which was renewable on a monthly basis.  
3

4           9.       Before the subject incident, I received a statement from UAIC instructing me  
5 that my renewal payment was due by June 30, 2007.

6           10.      The renewal statement also instructed me that I remit payment prior to the  
7 expiration of my policy “[t]o avoid lapse in coverage.”

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

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

10          13.      On July 10, 2007, I paid UAIC to renew my auto policy. My policy limit at this  
11 time was \$15,000.00.  
12

13          14.      I wanted UAIC to pay these limits to offset the damage I did and to protect me  
14 from greater damages.

15          15.      Following the incident, Cheyenne’s father, James Nalder, extended an offer to  
16 UAIC to settle Cheyenne’s injury claim for my policy limit of \$15,000.00.

17          16.      UAIC never informed me that Nalder offered to settle Cheyenne’s claim.

18          17.      UAIC never filed a declaratory relief action.

19          18.      UAIC rejected Nalder’s offer.

20          19.      UAIC rejected the offer without doing a proper investigation and claimed that I  
21 was not covered under my insurance policy and that I did not renew my policy by June 30,  
22 2007.  
23

24          20.      After UAIC rejected Nalder’s offer, James Nalder, on behalf of Cheyenne, filed a  
25 lawsuit against me in the Nevada state court.  
26

27          21.      UAIC was notified of the lawsuit but declined to defend me or file a declaratory  
28 relief action regarding coverage.

1           22. I thought UAIC would defend me but they failed to appear and answer the  
2 complaint. As a result, Nalder obtained a default judgment against me for \$3,500,000.00.

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

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

7           25. Rather than have my whole claim taken from me I assigned to Nalder my right to  
8 "all funds necessary to satisfy the Judgment." I retained the rest of my claims against UAIC. I  
9 left the state of Nevada and located in California in December of 2008. Neither I nor anyone on  
10 my behalf has been subject to service of process in Nevada since January 7, 2009.

11           26. At this time I had already suffered damages as a result of the judgment entered  
12 against me.

13           27. I continued to suffer damages as a result of the entry of this judgment that UAIC  
14 has refused to remedy.

15           28. The district court ordered UAIC to pay the policy limit of \$15,000.00.

16           29. UAIC made three payments that went to Nalder as payments on the judgment per  
17 the assignment agreement: on June 23, 2014; on June 25, 2014; and on March 5, 2015, but  
18 made no effort to defend me or relieve me of the judgment against me.

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

21           31. UAIC has admitted that their duty to defend has still not been discharged.

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



1           33. Our second appeal to the Ninth Circuit, ultimately led to certification of the first  
2 question to the Nevada Supreme Court, namely, whether an insurer that breaches its duty to  
3 defend is liable for all foreseeable consequential damages to the breach.  
4

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

8           35. UAIC mischaracterized the law and brought new facts into the appeal process that  
9 had not been part of the underlying case. UAIC brought the false, frivolous and groundless  
10 claim that neither Nalder nor I had standing to maintain a lawsuit against UAIC without filing a  
11 renewal of the judgment pursuant to NRS 17.214.  
12

13           36. Even though UAIC knew at this point that it owed a duty to defend me, UAIC did  
14 not undertake to investigate the factual basis or the legal grounds or to discuss this with me, nor  
15 did it seek declaratory relief on my behalf regarding the statute of limitations on the judgment.  
16

17           37. This failure to investigate the factual basis for the validity of the judgment against  
18 me caused me additional damages. I was sued again by Nalder. I had to hire lawyers to defend  
19 me.

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

22           39. This was not something brought up in the trial court, but only in the appellate  
23 court for the first time. My understanding is that the Ninth Circuit is not a trial court that takes  
24 evidence.  
25

26           40. This action could leave me with a valid judgment against me and no cause of  
27 action against UAIC.  
28

1           41.     Nalder took action in Nevada and California to protect her judgment against me.  
2  
3     Before the actions of UAIC questioning the validity of the judgment, as part of my assignment  
4     of a portion of my claim against UAIC Nalder's only efforts to collect the judgment had been  
5     directed at UAIC and not me. Thus UAIC's improper investigation and refusal to withdraw a  
6     fraudulent affidavit caused me and continue to cause me additional injury and damage.

7           42.     These Nevada and California state court actions are further harming me but were  
8     undertaken by Nalder because UAIC has again tried to escape responsibility by making  
9     misrepresentations to the Federal and State Courts and putting their interests ahead of mine.

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

11          44.     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

15          45.     This was done appropriately by demonstrating to the court that the judgment was  
16     still within the applicable statute of limitations. I have read the *Mandlebaum v. Gregovich*, 24  
17     Nev. 154, 50 P. 849, (1897) case. It is exactly my situation and it provides: "The averments of  
18     the complaint and the undisputed facts are that, at the time of the rendition and entry of the  
19     judgment in 1882, the appellant was out of the state, and continuously remained absent  
20     therefrom until March, 1897, thereby preserving the judgment and all rights of action of the  
21     judgment creditor under the same. Notwithstanding nearly fifteen years had elapsed since the  
22     entry of the judgment, yet, for the purposes of action, the judgment was not barred — for that  
23     purpose **the judgment was valid.**" *Id.*, *Mandlebaum* at 851.  
24

25          46.     A separate action was then filed with three distinct causes of action pled in the  
26     alternative. The first, an action on the amended judgment to obtain a new judgment and have  
27     the total principal and post judgment interest reduced to judgment so that interest would now  
28

1 run on the new, larger principal amount. The second alternative action was one for declaratory  
2 relief as to when a renewal must be filed based on when the statute of limitations, which is  
3 subject to tolling provisions, is running on the judgment. The third cause of action was, should  
4 the court determine that the judgment is invalid, Cheyenne brought the injury claim within the  
5 applicable statute of limitations for injury claims - 2 years after her majority.  
6

7 47. Nalder also retained California counsel, who filed a judgment in California, which  
8 has a ten year statute of limitations regarding actions on a judgment.

9 48. UAIC did not discuss with me any proposed defense, nor did it coordinate it with  
10 my counsel Thomas Christensen, Esq.  
11

12 49. UAIC hired attorney Stephen Rogers, Esq. to represent me, misinforming him of  
13 the factual and legal basis of the representation. This resulted in a number of improper contacts  
14 with me. These contacts were made in spite of my requests to discuss any matters related to my  
15 claims against UAIC with my attorney handling my action against UAIC Thomas Christensen.  
16

17 50. Thomas Christensen explained the nature of the conflict and my concern  
18 regarding a frivolous defense put forth on my behalf. I fear that if the state court judge makes  
19 an improper ruling that then has to be appealed in order to get the correct law applied damage  
20 could occur to me during the pendency of the appeal.

21 51. The Nevada Trial judge at UAIC's urging has made a number of decisions that  
22 have further damaged me by causing greater attorney fees for me and delays in getting the  
23 question answered in the trial court of my continued liability.

24 52. Regardless of potential greater damage should the trial court rule in favor of  
25 UAIC these actions by UAIC and Tindall are causing immediate damages of continued  
26 litigation, litigation costs and fees and damage to my contractual relationship with Cheyenne  
27 Nalder.  
28

1           53.     UAIC's strategy of trickery, delay and misrepresentation was designed to benefit  
2 UAIC but harm me.

3  
4           54.     In order to evaluate the benefits and burdens to me and the likelihood of success  
5 of the course of action proposed by UAIC and the defense attorneys hired by UAIC, I asked  
6 through my attorney Thomas Christensen that UAIC and their attorneys communicate to  
7 Thomas Christensen regarding the proposed course of action and what research supported it. It  
8 was requested that this communication go through Thomas Christensen's office because that  
9 was my desire, in order to receive counsel prior to embarking on a course of action.

10  
11           55.     My attorney Thomas Christensen informed Stephen Rogers, Esq. that when I felt  
12 the proposed course by UAIC was not just a frivolous delay and was based on sound legal  
13 research and not just the opinion of UAIC's counsel, that it could be pursued.

14           56.     Stephen Rogers, Esq. never provided any Nevada law or assurances that UAIC  
15 will be responsible if their proposed defense fails or documents or communications regarding  
16 my representation.

17           57.     Instead, UAIC obtained my confidential client communications and then  
18 misstated the content of these communications to the Court. That is why I sought Cumis  
19 counsel. The conflict of having UAIC as a co-client with any attorney representing me is a  
20 conflict I am unwilling to waive. This was for UAIC's benefit and again harmed me.

21  
22           58.     UAIC, without notice to me or any attorney representing me, then filed two  
23 motions to intervene, which were both defective in service on the face of the pleadings.

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

26  
27           60.     In the motions to intervene, UAIC fraudulently claimed that I refused  
28 representation by Stephen Rogers.

1           61. I was concerned about Steve Rogers representing me but taking direction from  
2 UAIC who is a defendant in my lawsuit in federal court against them. I therefore hired  
3 additional CUMIS counsel E. Breen Arntz. I requested Steve Rogers have UAIC pay Mr.  
4 Arntz because of the conflict in Rogers representing both me and UAIC.  
5

6           62. I am informed that David Stephens, Esq., counsel for Nalder in her 2018 action,  
7 through diligence, discovered the filings on the court website. He contacted Matthew Douglas,  
8 Esq., described the lack of service, and asked for additional time to file an opposition.  
9

10           63. These actions by UAIC and counsel on its behalf are harmful to me and benefit  
11 UAIC and not me.

12           64. I am informed that David Stephens thereafter filed oppositions and  
13 hand-delivered courtesy copies to the court. UAIC filed replies. The matter was fully briefed  
14 before the in chambers "hearing," but the court granted the motions citing in the minute order  
15 that "no opposition was filed."

16           65. I do not understand why the court granted UAIC's Motion to Intervene after  
17 judgment since it is contrary to NRS 12.130, which states: Intervention: Right to intervention;  
18 procedure, determination and costs; exception. 1. Except as otherwise provided in subsection  
19 2: (a) **Before the trial ...**  
20

21           66. These actions by State Actor David Jones ignore my rights to due process and the  
22 law and constitution of the United States and Nevada. The court does the bidding of UAIC and  
23 clothes defense counsel in the color of state law in violation of 42 USCA section 1983.

24           67. David Stephens representing Nalder and E. Breen Arntz representing me worked  
25 out a settlement of the action and signed a stipulation. This stipulation was filed and submitted  
26 to the court with a judgment prior to the "hearing" on UAIC's improperly served and groundless  
27 motions to intervene.  
28

1           68. I was completely aware of the settlement entered into by E. Breen Arntz. I  
2 authorized that action because the defense put forward by UAIC is frivolous. I do not want to  
3 incur greater fees and expenses in a battle that I will most likely lose. I also don't want to create  
4 the situation where Nalder will have even greater damages against me than the judgment. From  
5 all the information I have gathered from UAIC the judgment against me is valid for purposes of  
6 an action on a judgment. I don't want a frivolous defense that will ultimately fail. I don't want  
7 to take that risk.  
8

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

13           70. 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           71. Instead, the judge granted the Motion to Intervene, fraudulently claiming, in a  
16 minute order dated September 26, 2018, that no opposition had been filed.

17           72. Randall Tindall, Esq. fraudulently filed unauthorized pleadings on my behalf on  
18 September 26, 2018 and on September 27, 2018.  
19

20           73. UAIC hired Tindall to further its strategy to defeat Nalder and my claims. Tindall  
21 agreed to the representation despite his knowledge and understanding that this strategy  
22 amounted to fraud and required him to act against the best interests of his "client" me.

23           74. Tindall mischaracterized the law and filed documents designed to mislead the  
24 Court and benefit UAIC, to the detriment of me.

25           75. These three filings by Randall Tindall, Esq. are almost identical to the filings  
26 proposed by UAIC in their motion to intervene.  
27

28           76. I was not consulted and I did not consent to the representation.

1           77. I did not authorize the filings by Randall Tindall, Esq.

2           78. I and my attorneys, Thomas Christensen, Esq. and E. Breen Arntz, Esq., have  
3 requested that Tindall withdraw the pleadings filed fraudulently by Tindall.  
4

5           79. Tindall refused to comply and violated ethical rules regarding his claimed  
6 representation of me.

7           80. I filed a bar complaint against Tindall, but State Actors Daniel Hooze and Phil  
8 Pattee dismissed the complaint claiming they do not enforce the ethical rules if there is litigation  
9 pending. This makes no sense to me. Why won't the bar protect the public from these  
10 unethical fraudulent practices by Tindall?  
11

12           81. Following Mr. Tindall's involvement the court signed an order granting  
13 intervention while still failing to sign the judgment resolving the case.

14           82. I later discovered Judge Jones and Mr. Tindall had a business relationship while  
15 working together at another insurance company.

16           83. Although Judge Jones removed himself from these cases he did not rescind the  
17 orders he issued after Mr. Tindall's involvement in the case. I don't understand why Judge  
18 Jones can sign orders after he has identified a conflict that required his recusal but then did not  
19 reverse those orders. That does not increase my belief in the judiciary.  
20

21           84. UAIC and Tindall, and each of the state actors, by acting in concert, intended to  
22 accomplish an unlawful objective for the purpose of harming me.

23           85. I sustained damage resulting from defendants' acts in incurring attorney fees,  
24 litigation costs, loss of claims, delay of claims.  
25

26           86. UAIC and Tindall acting under color of state law deprived me of rights,  
27 privileges, and immunities secured by the Constitution or laws of the United States.  
28



1           87. I have duly performed all the conditions, provisions and terms of the agreements  
2 or policies of insurance with UAIC relating to the claim against me, have furnished and  
3 delivered to UAIC full and complete particulars of said loss and have fully complied with all  
4 the provisions of said policies or agreements relating to the giving of notice as to said loss, and  
5 have duly given all other notices required to be given by me under the terms of such policies or  
6 agreements.  
7

8           88. That I had to sue UAIC in order to get protection under the policy. That UAIC,  
9 and each of them, after being compelled to pay the policy limit and found to have failed to  
10 defend me, now fraudulently claim to be defending me when in fact UAIC is continuing to  
11 delay investigating and processing the claim; not responding promptly to requests for  
12 settlement; doing a one-sided investigation, and have compelled me to hire counsel to defend  
13 myself from Nalder, Tindall and UAIC. All of the above are unfair claims settlement practices  
14 as defined in N.R.S. 686A.310 and I have been damaged.  
15

16           89. That UAIC failed to settle the claim when given the opportunity to do so and then  
17 compounded that error by making frivolous and fraudulent claims and represented to the court  
18 that it would be bound by any judgment and is therefore responsible for the full extent of any  
19 judgment against me in this action.  
20

21           90. UAIC and Tindall's actions have interfered with the settlement agreement Breen  
22 Arntz had negotiated with David Stephens and have caused me to be further damaged.

23           91. The actions of UAIC and Tindall, and each of them, in this matter have been  
24 fraudulent, malicious, oppressive and in conscious disregard of my rights.  
25

26           92. During the litigation and investigation of the claim, UAIC, and Tindall,  
27 threatened, intimidated and harassed me and my counsel.  
28



1           93.     Because of the improper conduct of UAIC and Randall Tindall, I was forced to  
2 hire an attorney.

3           94.     I have suffered damages as a result of the delayed investigation, defense and  
4 payment on the claim.  
5

6           95.     I have suffered anxiety, worry, mental and emotional distress as a result of the  
7 conduct of UAIC and Tindall.

8           96.     The conduct of UAIC and Tindall, was oppressive and malicious and done in  
9 conscious disregard of my rights.

10          97.     As a proximate result of the aforementioned, I have suffered and will continue to  
11 suffer in the future damages as a result of the fraudulent litigation tactics and delayed payment  
12 on the judgment.  
13

14          98.     As a further proximate result of the aforementioned, I have suffered anxiety,  
15 worry, mental and emotional distress, and other incidental damages and out of pocket expenses.

16          99.     As a further proximate result of the aforementioned, I was compelled to retain  
17 legal counsel to prosecute this claim, and UAIC and Tindall, are liable for attorney's fees  
18 reasonably and necessarily incurred in connection therewith. I am told the fees for just E. Breen  
19 Arntz are in excess of \$100,000.  
20

21          100.    The conduct of UAIC and Tindall, was oppressive and malicious and done in  
22 conscious disregard of my rights.

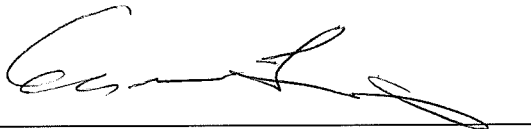
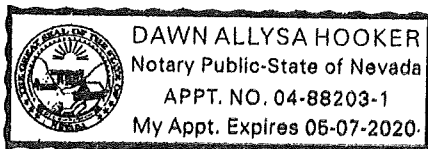
23          101.    The aforementioned actions of UAIC and Tindall, constitute extreme and  
24 outrageous conduct and were performed with the intent or reasonable knowledge or reckless  
25 disregard that such actions would cause severe emotional harm and distress to me.  
26  
27  
28

102. As a proximate result of the aforementioned intentional infliction of emotional distress, I have suffered severe and extreme anxiety, worry, mental and emotional distress, and other incidental damages and out of pocket expenses.

103. As a further proximate result of the aforementioned intentional infliction of emotional distress, I was compelled to retain legal counsel to prosecute this claim, and UAIC and Tindall, are liable for attorney's fees reasonably and necessarily incurred in connection therewith.

104. I want the settlement worked out with my knowledge and consent signed by the court so this part of the litigation can be concluded.

FURTHER AFFIANT SAYETH NAUGHT.



GARY LEWIS

SUBSCRIBED and SWORN to before  
me this 7th day of November, 2018.



Notary Public in and for said County and State.

# **EXHIBIT G**

**DECLARATION OF DAVID A. STEPHENS, ESQ.**  
**IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD**

I, DAVID A. STEPHENS, under the pains and penalties of perjury, depose and say:

1. I am the attorney for Cheyenne Nalder in case no. 07A549111 and case no. A-18-772220-C filed in the Eighth Judicial District Court for Clark County, Nevada.

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

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

4. According to my notes I first met with Cheyenne Nalder on March 27, 2018.

5. After discussion of the concerns Cheyenne had with respect to the judgment, we entered into a retainer agreement.

6. Pursuant to the retainer agreement I immediately filed a motion to amend the judgment which was filed in the original case in 2008 so that I could get the judgment into Cheyenne's name in that she was a minor at the time of the accident and thus, the complaint had been filed in the name of James Nalder as her Guardian ad Litem.

7. One basis for the amended judgment was the fact that the statute of limitations had been tolled for various reasons, among them the absence of the judgment debtor from Nevada, under NRS 11.300.

8. I served Mr. Lewis with a copy of the motion to amend the judgment at his last known address. He did not file an opposition to that motion and the motion was granted, amending the judgment such that Cheyenne Nalder became the Plaintiff. The amended judgment then became final and executable.

1           9. I also then filed case number A-18-772220-C (later consolidated with  
2 07A549111) on behalf of Cheyanne Nalder. The complaint included a claim for enforcement of  
3 judgment, a claim for declaratory relief and a new claim based on the accident. The main claim  
4 is an action on the judgment in case number 07A549111 pursuant to *Mandlebaum*. In  
5 *Mandlebaum* the judgment was 15 years old but because the debtor was living out of the State of  
6 Nevada "The respondents held a judgment, which is the highest evidence of indebtedness,  
7 without any right to enforce the same, and that right could be obtained by an action prosecuted to  
8 final judgment." *Mandlebaum v. Gregovich*, 24 Nev. 154, 162 (Nev. 1897).  
9

10  
11           10. I served the complaint upon Mr. Lewis, who again did not answer.

12           11. I advised UAIC of the fact that this new complaint was proceeding forward and  
13 eventually UAIC appeared through counsel in this complaint in the new matter by way of a  
14 motion to intervene.  
15

16           12. I was not served with either motion to intervene filed by UAIC.

17           13. In my evaluation, the judgment against Gary Lewis remains valid for purposes of  
18 an action on a judgment pursuant to *Mandelbaum*. In my evaluation, UAIC's proposed defense  
19 of Lewis was not based in law or fact.  
20

21           14. While to my knowledge Mr. Lewis has never filed an actual answer in the new  
22 matter, he is represented by counsel and I have never entered a default against him in the new  
23 matter. In fact, after I served an Offer of Judgment, a settlement with Mr. Lewis was reached.  
24

25           15. I filed this settlement agreement and requested the court execute the resulting  
26 judgment. The court asked for a wet signed stipulation which was provided but still the judge  
27 did not sign the judgment. The judge has not returned the wet signed stipulation. This judge  
28 later recused himself. But did not rescind his orders allowing the improper intervention of  
UAIC.

1           16. A judgment was entered by the clerk of the court pursuant to the rules of court.

2           17. UAIC sought to have this judgment withdrawn in an ex parte motion filed and  
3  
4 then granted by the court with no opportunity to oppose it and no hearing.

5           18. The basis for the withdrawal of the valid judgment based on a settlement was that  
6 the Judge alleged he had stayed all matters in this case on January 9, 2019. Contrary to the  
7 Judge's order signed ex parte at the request of UAIC the transcript provides that not only did the  
8 judge not orally stay all proceeding he even referenced that he would be taking up issues on  
9 January 23, 2019 including my motion for summary judgment.  
10

11           19. Since that time I have represented Cheyenne Nalder on the old lawsuit and in the  
12 new lawsuit, including filing a petition for writ of mandamus with the Nevada Supreme Court.  
13

14           20. The facts underlying the tolling provisions are not in dispute. To my knowledge,  
15 Gary Lewis left the State of Nevada in late 2008 and had no service of process presence in  
16 Nevada since that time to the present. Thus the statute of limitations was tolled pursuant to NRS  
17 11.300 and *Mandlebaum*. "The averments of the complaint and the undisputed facts are that, at  
18 the time of the rendition and entry of the judgment in 1882, the appellant was out of the state,  
19 and continuously remained absent therefrom until March, 1897, thereby preserving the judgment  
20 and all rights of action of the judgment creditor under the same. Notwithstanding nearly fifteen  
21 years had elapsed since the entry of the judgment, yet, for the purposes of action, the judgment  
22 was not barred — for that purpose the judgment was valid." *Id.*, (Emphasis added.) *Mandlebaum*  
23  
24 at 851.  
25

26           21. UAIC made three payments which were applied to the judgment pursuant to the  
27 assignment in lieu of execution: on June 23, 2014; on June 25, 2014; and on March 5, 2015,  
28 These payments extend the statute of limitations pursuant to NRS 11.200.

1           22. Cheyenne Nalder was a minor when she was injured. During Cheyenne Nalder's  
2 minority, which ended on April 4, 2016, all statutes of limitations were tolled pursuant to NRS  
3 11.250.  
4

5           23. It is my opinion that UAIC is not litigating in good faith by misrepresenting both  
6 factual and legal issues.  
7

8           24. I have only represented Cheyenne Nalder in this matter, and I have never  
9 represented Gary Lewis.

10           The undersigned declares and acknowledges, under penalty of perjury, that the  
11 information provided herein is correct to the best of his information and belief and can be  
12 supported by documentation if called upon to substantiate the information provided herein.  
13

14                           FURTHER AFFIANT SAYETH NAUGHT.

15                             
16                           DAVID A. STEPHENS, ESQ.  
17  
18  
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27  
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# **EXHIBIT H**



10/30/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11857271>

Skip to Main Content Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back Location : District Court Civil/Criminal Help

**REGISTER OF ACTIONS****CASE No. A-18-772220-C****Cheyenne Nalder, Plaintiff(s) vs. Gary Lewis, Defendant(s)**§  
§  
§  
§  
§  
§Case Type: **Negligence - Auto**Date Filed: **04/03/2018**Location: **Department 20**Cross-Reference Case Number: **A772220****RELATED CASE INFORMATION****Related Cases**

07A549111 (Consolidated)

**PARTY INFORMATION**

<b>Defendant</b>	<b>Lewis, Gary</b>	<b>Lead Attorneys</b> <b>E. Breen Arntz</b> <i>Retained</i> 702-384-8000(W)
<b>Intervenor</b>	<b>United Automobile Insurance Company</b>	<b>Matthew J Douglas</b> <i>Retained</i> 702-243-7000(W)
<b>Plaintiff</b>	<b>Nalder, Cheyenne</b>	<b>David Allen Stephens</b> <i>Retained</i> 702-656-2355(W)

**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

- 09/13/2018 **Judgment Plus Legal Interest** (Judicial Officer: Jones, David M)  
Debtors: Gary Lewis (Defendant)  
Creditors: Cheyenne Nalder (Plaintiff)  
Judgment: 09/13/2018, Docketed: 09/13/2018  
Total Judgment: 5,696,820.41
- 02/14/2019 **Order of Dismissal** (Judicial Officer: Johnson, Eric)  
Debtors: Cheyenne Nalder (Plaintiff), Gary Lewis (Defendant)  
Creditors: United Automobile Insurance Company (Intervenor)  
Judgment: 02/14/2019, Docketed: 02/15/2019  
Comment: Certain Claims. Doc filed in 07A549111
- 02/14/2019 **Amended Judgment Plus Legal Interest** (Judicial Officer: Johnson, Eric) Reason: Vacated  
Debtors: Gary Lewis (Defendant)  
Creditors: Cheyenne Nalder (Plaintiff)  
Judgment: 02/14/2019, Docketed: 01/29/2019  
Total Judgment: 5,696,810.41  
Comment: 2/14/19 Per Order, Judgment Withdrawn, Filed in A549111
- 01/29/2019 **Judgment Plus Legal Interest** (Judicial Officer: Johnson, Eric)  
Debtors: Gary Lewis (Defendant)  
Creditors: Cheyenne Nalder (Plaintiff)  
Judgment: 01/29/2019, Docketed: 01/29/2019  
Total Judgment: 5,696,810.41  
Comment: Filed in A549111

**OTHER EVENTS AND HEARINGS**

- 04/03/2018 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*
- 04/03/2018 **Complaint**  
*Complaint*
- 05/10/2018 **Summons Electronically Issued - Service Pending**

10/30/2019

*Summons*07/18/2018 **Summons***Summons*07/18/2018 **Three Day Notice***Three Day Notice to Plead*08/16/2018 **Motion to Intervene***UAIC Motion to Intervene*09/13/2018 **Stipulation***Stipulation to Enter Judgment*09/17/2018 **Opposition***Plaintiff's Opposition to Motion to Intervene*09/18/2018 **Reply in Support***UAIC'S Reply in Support of its Motion to Intervene*09/18/2018 **Reply in Support***UAIC's Reply to Lewis' Opposition in Support of its Motion to Intervene*09/19/2018 **Motion to Intervene** (3:00 AM) (Judicial Officer Jones, David M)*UAIC's Motion to Intervene*Minutes

Result: Granted

09/21/2018 **Opposition to Motion***Defendant's Opposition to Motion to Intervene and Joinder to Plaintiff's Opposition to Motion to Intervene*09/26/2018 **Initial Appearance Fee Disclosure***Initial Appearance Fee Disclosure (NRS Chapter 19)*10/05/2018 **Notice of Hearing***Amended Notice of Hearing*10/08/2018 **Opposition to Motion to Dismiss***Plaintiff's Opposition to Defendant's Motion to Dismiss*10/11/2018 **Opposition***Plaintiff's Opposition to Defendant's Motion to Set Aside Judgment*10/17/2018 **Motion to Strike***(2/14/19 Withdrawn) Defendant's Motion to Strike Both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss*10/19/2018 **Order Granting***Order Granting UAIC's Motion to Intervene*10/19/2018 **Initial Appearance Fee Disclosure***Initial Appearance Fee Disclosure*10/19/2018 **Notice of Entry of Order***Notice of Entry of Order on Intervenor United Automobile Insurance Company's Motion to Intervene*10/19/2018 **Motion***UAIC s Motion To Dismiss Plaintiff s Complaint & Motion For Court To Deny Stipulation to Enter Judgment Between Plaintiff and Lewis and/or, In The Alternative To Stay Same Pending Hearing On Motion To Dismiss*10/24/2018 **Hearing** (9:00 AM) (Judicial Officer Jones, David M)Parties PresentMinutes

Result: Recused

10/24/2018 **Third Party Complaint***Third Party Complaint*10/24/2018 **Answer***Answer to Complaint*10/29/2018 **Notice of Department Reassignment***Notice of Department Reassignment*10/29/2018 **Opposition to Motion to Dismiss***Cross-Claimant's Opposition to UAIC's Motion to Dismiss Plaintiff's Complaint & Opposition to Motion for Court to Deny Stipulation to Enter Judgment Between Plaintiff and Lewis And/Or in the Alternative to Stay Same Pending Hearing on Motion to Dismiss*10/29/2018 **Opposition***Plaintiff's Opposition to UAIC's Motion to Dismiss, to Deny Stipulation for Judgment and for a Stay of the Proceedings*10/30/2018 **Summons Electronically Issued - Service Pending***Summons*10/30/2018 **Summons Electronically Issued - Service Pending***Summons*10/30/2018 **Summons Electronically Issued - Service Pending***Summons*10/30/2018 **Peremptory Challenge***Intervenor United Automobile Insurance Company's Peremptory Challenge of Judge*10/31/2018 **Notice of Department Reassignment***Notice of Department Reassignment*11/01/2018 **Opposition***Opposition to Gary Lewis' Motion to Strike Motion to Set Aside Judgment*11/06/2018 **Affidavit of Service***Affidavit Of Service*11/06/2018 **Affidavit of Service***Affidavit Of Service*11/06/2018 **Affidavit of Service***Affidavit Of Service*11/08/2018 **Motion for Relief** (3:00 AM) (Judicial Officer Kephart, William D.)*Defendant's Motion for Relief form Judgment Pursuant to NRCP 60*Minutes*10/31/2018 Reset by Court to 11/08/2018**11/08/2018 Reset by Court to 11/08/2018*

Result: Matter Continued

11/08/2018 **Motion for Sanctions***NRCP 11 Motion for Sanctions*

10/30/2019

11/08/2018 **Notice of Hearing**  
*Notice of Hearing*

11/13/2018 **Request for Exemption From Arbitration**

11/15/2018 **Motion to Dismiss**  
*UAIC'S Motion to Dismiss Third Party Plaintiff Lewis's Third Party Complaint*

11/26/2018 **Motion to Consolidate**  
*Intervenor's Motion to Consolidate on Order Shortening Time*

11/27/2018 **Opposition**  
*Opposition to UAIC's Motion to Dismiss and Countermotion for Summary Judgment*

11/27/2018 **Opposition**  
*Opposition to UAIC's Motion to Consolidate and Countermotion to Set aside Void Order and to Strike all Filings by Intervenor, or, in the Alternative, for Summary Judgment*

11/28/2018 **CANCELED Motion to Consolidate** (10:30 AM) (Judicial Officer Johnson, Eric)  
*Vacated - per Law Clerk*  
*Intervenor's Motion to Consolidate on Order Shortening Time*

11/28/2018 **Initial Appearance Fee Disclosure**  
*Initial Appearance Fee Disclosure*

11/28/2018 **Motion for Summary Judgment**  
*Plaintiff's Motion for Summary Judgment*

11/30/2018 **Minute Order** (11:30 AM) (Judicial Officer Johnson, Eric)  
Minutes  
Result: Minute Order - No Hearing Held

12/03/2018 **Commissioners Decision on Request for Exemption - Granted**  
*COMMISSIONER'S DECISION ON REQUEST FOR EXEMPTION - GRANTED*

12/04/2018 **Notice of Early Case Conference**  
*Notice of Early Case Conference*

12/11/2018 **CANCELED Motion to Dismiss** (9:00 AM) (Judicial Officer Kephart, William D.)  
*Vacated*  
*Defendant's Motion to Dismiss*  
*10/31/2018 Reset by Court to 11/13/2018*  
*11/13/2018 Reset by Court to 12/11/2018*

12/11/2018 **CANCELED Motion to Dismiss** (9:00 AM) (Judicial Officer Kephart, William D.)  
*Vacated*  
*UAIC s Motion To Dismiss Plaintiff s Complaint & Motion For Court To Deny Stipulation to Enter Judgment Between Plaintiff and Lewis and/or, In The Alternative To Stay Same Pending Hearing On Motion To Dismiss*  
*12/12/2018 Reset by Court to 12/11/2018*  
*12/12/2018 Reset by Court to 12/12/2018*

12/13/2018 **CANCELED Motion to Strike** (3:00 AM) (Judicial Officer Kephart, William D.)  
*Vacated*  
*Defendant's Motion to Strike Both Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss*  
*12/12/2018 Reset by Court to 12/13/2018*  
*12/13/2018 Reset by Court to 12/13/2018*

12/13/2018 **CANCELED Motion for Sanctions** (3:00 AM) (Judicial Officer Kephart, William D.)  
*Vacated*  
*NRCP 11 Motion for Sanctions*

01/15/2019 **CANCELED Motion to Dismiss** (9:00 AM) (Judicial Officer Kephart, William D.)  
*Vacated*  
*UAIC'S Motion to Dismiss Third Party Plaintiff Lewis's Third Party Complaint*

01/15/2019 **CANCELED Opposition and Countermotion** (9:00 AM) (Judicial Officer Kephart, William D.)  
*Vacated*  
*Opposition to UAIC's Motion to Dismiss and Countermotion for Summary Judgment*

01/15/2019 **CANCELED Motion for Summary Judgment** (9:00 AM) (Judicial Officer Kephart, William D.)  
*Vacated*  
*Plaintiff's Motion for Summary Judgment and Relief From Order Pursuant to NRCP 60(b)*

**FINANCIAL INFORMATION**

<b>Defendant Lewis, Gary</b>				
Total Financial Assessment				558.00
Total Payments and Credits				558.00
<b>Balance Due as of 10/30/2019</b>				<b>0.00</b>
09/27/2018	Transaction Assessment			223.00
09/27/2018	Efile Payment	Receipt # 2018-64487-CCCLK	Lewis, Gary	(223.00)
10/24/2018	Transaction Assessment			135.00
10/24/2018	Efile Payment	Receipt # 2018-70959-CCCLK	Lewis, Gary	(135.00)
11/28/2018	Transaction Assessment			200.00
11/28/2018	Efile Payment	Receipt # 2018-78576-CCCLK	Lewis, Gary	(200.00)
<b>Intervenor United Automobile Insurance Company</b>				
Total Financial Assessment				673.00
Total Payments and Credits				673.00
<b>Balance Due as of 10/30/2019</b>				<b>0.00</b>
10/19/2018	Transaction Assessment			223.00
10/19/2018	Efile Payment	Receipt # 2018-70057-CCCLK	United Automobile Insurance Company	(223.00)

10/30/2019

10/31/2018	Transaction Assessment			450.00
10/31/2018	Efile Payment	Receipt # 2018-72510-CCCLK	United Automobile Insurance Company	(450.00)

	<b>Plaintiff Nalder, Cheyenne</b>			
	Total Financial Assessment			470.00
	Total Payments and Credits			470.00
	<b>Balance Due as of 10/30/2019</b>			<b>0.00</b>

04/04/2018	Transaction Assessment			270.00
04/04/2018	Efile Payment	Receipt # 2018-23353-CCCLK	Nalder, Cheyenne	(270.00)
11/29/2018	Transaction Assessment			200.00
11/29/2018	Efile Payment	Receipt # 2018-78718-CCCLK	Nalder, Cheyenne	(200.00)

# **EXHIBIT I**

Case Number: 07A549111

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 under -- 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 counter-motion 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 \* \* \* \* \*

24

25

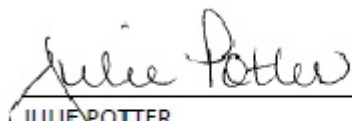
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

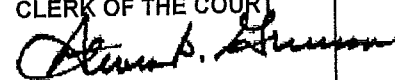
I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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

  
\_\_\_\_\_  
JULIE POTTER  
TRANSCRIBER

# **EXHIBIT J**

Electronically Filed  
9/13/2018 12:26 PM  
Steven D. Grierson  
CLERK OF THE COURT



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@sdblwfir.com  
Attorney for Cheyenne Nalder

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS,

Defendant.

Case No. A-18-772220-C

Dept. No. XXIX

**STIPULATION TO ENTER JUDGMENT**

Date: n/a

Time: n/a

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

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

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

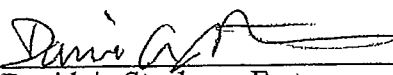
2 6. Gary Lewis does not believe there is a valid statute of limitations defense and Gary Lewis  
3 does not want to incur greater fees or damages.

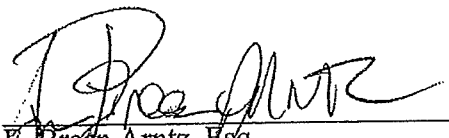
4 7. Cheyenne Nalder is willing to allow judgment to enter in the amount of the judgment plus  
5 interest minus the payment of \$15,000.00 and without additional damages, attorney fees or costs.  
6 Plaintiff is also willing to accept the judgment so calculated as the resulting judgment of the  
7 alternatively 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.

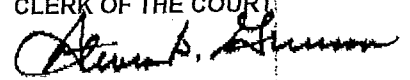
12 9. The attached judgment may be signed and entered by the Court.

13 Dated this 12 day of September, 2018

14  
15   
16 David A. Stephens, Esq.  
17 Nevada Bar No. 00902  
18 Stephens & Bywater  
3636 North Rancho Drive  
Las Vegas, Nevada 89130  
Attorney for Cheyenne Nalder

14  
15   
16 E. Brian Arntz, Esq.  
17 Nevada Bar No. 03853  
18 5545 Mountain Vista, #E  
Las Vegas, NV 89120  
Attorney for Gary Lewis

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Steven D. Grierson  
CLERK OF THE COURT


**JUDG**

E. BREEN ARNTZ, ESQ.  
Nevada Bar No. 3853  
5545 Mountain Vista Ste. E  
Las Vegas, Nevada 89120  
T: (702) 384-8000  
F: (702) 446-8164  
breen@breen.com

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

JAMES NALDER,  
Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive

Defendants,

CASE NO: 07A549111  
DEPT. NO: XX  
Consolidated with  
CASE NO: 18-A-772220

UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Intervenor.

GARY LEWIS,  
Third Party Plaintiff,

vs.

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

**JUDGMENT PURSUANT TO NRCP 68 IN CASE NO 18-A-772220**

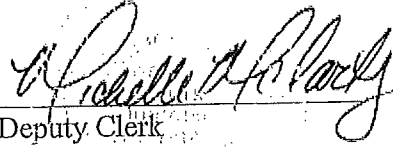
It appearing from the Notice of Acceptance of Offer of Judgment in the above-entitled matter that Cheyenne Nalder has accepted the Offer of Judgment served by Gary Lewis pursuant to NRCP 68, therefore, Judgment shall be entered as follows:



Judgment is hereby entered in favor of Plaintiff, Cheyenne Nalder, and against Defendant, Gary Lewis, in the sum of five million six hundred ninety-six thousand eight hundred ten dollars and forty-one cents, (\$5,696,810.41), plus interest at the legal rate from September 4, 2018. All court costs and attorney's fees are included in this Judgment.

Dated this \_\_\_\_\_ day of January, 2019.

STEVEN D. GRIERSON  
CLERK OF THE COURT

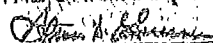
  
Deputy Clerk  
07A549111 1/23/2019

Michelle McCarthy

Submitted by:

  
E. BREEN ARNTZ, ESQ.  
Nevada Bar No. 3853  
5545 Mountain Vista Ste. E  
Las Vegas, Nevada 89120  
T: (702) 384-8000  
[breen@breen.com](mailto:breen@breen.com)

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

  
CLERK OF THE COURT

JAN 23 2019

# **EXHIBIT K**

1 STATE OF NEVADA )  
2 ) ss:  
3 COUNTY OF CLARK )

4 **AFFIDAVIT OF E. BREEN ARNTZ, ESQ.**  
5 **IN SUPPORT OF MOTION TO SUPPLEMENT THE RECORD**

6 I, E. BREEN ARNTZ, first being duly sworn, hereby depose and state as follows:

7 1. I am an attorney licensed to practice law in the State of Nevada, Federal District  
8 Court for the District of Nevada and the United States Court of Appeals for the Ninth Circuit. I  
9 am the Owner of E. Breen Arntz, Chtd. and I am counsel of record for Gary Lewis. I make this  
10 declaration based on my personal knowledge.

11 2. I am a trial attorney and have many years of experience representing clients in  
12 personal injury cases as both defendants and Plaintiffs.

13 3. I have always filed pleadings that are truthful or made without knowledge of  
14 falsehood pursuant to Rule 11. I have also been careful in my communications to be ethical at all  
15 times and in all ways.

16 4. I have only ever represented Gary Lewis in his capacity as a Defendant and I have  
17 never represented Cheyanne Nalder. I have not filed any cases against UAIC. All  
18 communications I have made in connection with my representation of Gary Lewis have been  
19 truthful or without knowledge of their falsity.

20 5. I have appeared in case number A-18-772220-C (erroneously consolidated with  
21 07A549111) on behalf of Gary Lewis, Defendant. In that case, Randall Tindall, Esq., filed  
22 pleadings on behalf of Gary Lewis without attempting to get authority from Gary Lewis directly,  
23 without communicating with me, and without communicating with Thomas Christensen, Esq,  
24 who represents Mr. Lewis as a Plaintiff against UAIC. Randall Tindall, refused to withdraw  
25 pleadings that were filed on behalf of Gary Lewis without Lewis' authority.  
26  
27  
28

1           6. In my evaluation, the judgment against Gary Lewis remains valid for purposes of  
2 an action on a judgment pursuant to *Mandlebaum*. In my evaluation, UAIC's proposed defense  
3 of Lewis was not based in law or fact.  
4

5           7. The facts underlying the tolling provisions are not in dispute. Gary Lewis left the  
6 State of Nevada in late 2008 and had no service of process presence in Nevada since that time to  
7 the present. Thus the statute of limitations was tolled pursuant to NRS 11.300 and *Mandlebaum*.  
8 "The averments of the complaint and the undisputed facts are that, at the time of the rendition  
9 and entry of the judgment in 1882, the appellant was out of the state, and continuously remained  
10 absent therefrom until March, 1897, thereby preserving the judgment and all rights of action of  
11 the judgment creditor under the same. **Notwithstanding nearly fifteen years had elapsed since**  
12 **the entry of the judgment**, yet, for the purposes of action, the judgment was not barred — for  
13 that purpose **the judgment was valid.**" *Id.*, (Emphasis added.) *Mandlebaum* at 851.  
14

15           8. UAIC made three payments which were applied to the judgment pursuant to the  
16 assignment in lieu of execution: on June 23, 2014; on June 25, 2014; and on March 5, 2015,  
17 These payments extend the statute of limitations pursuant to NRS 11.200.  
18

19           9. Cheyenne Nalder was a minor when she was injured. During Cheyenne Nalder's  
20 minority, which ended on April 4, 2016, all statutes of limitations were tolled pursuant to NRS  
21 11.250.

22           10. Based upon my evaluation of his options, Mr. Lewis wanted to resolve the action  
23 on a judgment against him. I assisted Mr. Lewis with securing a settlement. That settlement was  
24 reached and entered into for the purpose of mitigating and limiting the damages against Mr.  
25 Lewis.  
26

27           11. This stipulation was filed with the court. The court without explanation has failed  
28 to execute the judgment forcing the parties to continue the litigation and expenses.

1           12. I have not been paid by UAIC and I am owed for my representation by Gary Lewis  
2 in excess of \$100,000.00. I have requested that UAIC compensate me under Cumis/Hanson.  
3 UAIC refused and then sued me in federal court in a SLAPP (Strategic Lawsuit Against Public  
4 Participation) lawsuit.  
5

6           13. I communicated the offer of judgment I received from David Stephens to UAIC  
7 counsel Mathew Douglass before accepting it.  
8

9           14. After judgment was entered pursuant to the offer and acceptance UAIC moved ex  
10 parte and was granted relief from the judgment ex parte. The Court finding that it had entered a  
11 stay of the entire case on January 9, 2019 when in fact there were still pending motions set for  
12 January 23, 2019 that were not taken off calendar or stayed. In the transcript of the January 9,  
13 2019 hearing the Court referenced that those issues would be taken up on January 23, 2019.

14           15. UAIC knew that I represented Gary Lewis at the time they moved to intervene but  
15 they did not serve me with or inform me of either motion to intervene.

16           16. UAIC did not serve or inform Gary Lewis of either motion to intervene.

17           17. I filed a writ with the Nevada Supreme Court regarding the improper grant of  
18 intervention to UAIC. This writ was accepted fully briefed and is waiting for further action by  
19 the Nevada Supreme Court.  
20

21           18. Requests have been made for UAIC or their attorneys to explain what Nevada law  
22 they have that prevents the tolling statutes application to the statute of limitations on this  
23 judgment.  
24

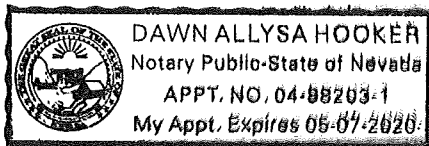
25           19. Requests have been made for UAIC or its attorneys to explain what Nevada law  
26 they have which contradicts the clear on point law in *Mandlebaum* where the judgment was 15  
27 years old but because the debtor was out of the State of Nevada "The respondents held a  
28

judgment, which is the highest evidence of indebtedness, without any right to enforce the same, and that right could be obtained by an action prosecuted to final judgment.” *Mandlebaum v. Gregovich*, 24 Nev. 154, 162 (Nev. 1897).

20. UAIC has not given me any persuasive authority that convinces me we would have a high or even more likely than not chance of success.

21. Instead UAIC has blocked and delayed the trial court from addressing the factual issues regarding the statute of limitations and the tolling provisions in an ongoing attempt to prejudice and harm its insured Gary Lewis.


The undersigned declares and acknowledges, under penalty of perjury, that the information provided herein is correct to the best of his information and belief and can be supported by documentation if called upon to substantiate the information provided herein.



FURTHER AFFIANT SAYETH NAUGHT.

  
E. BREEN ARNTZ, ESQ.

SUBSCRIBED and SWORN to before me this 1<sup>st</sup> day of Nov, 2019.

  
Notary Public in and for said County and State.

# **EXHIBIT L**

11/5/2019

78243: Case View

Nevada  
Appellate Courts

Find Case...

## Appellate Case Management System

C-Track, the browser based CMS for Appellate Courts

### Cases



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**Only filed documents can be viewed. Some documents received in a case may not be available for viewing.**

**Some documents originating from a lower court, including records and appendices, may not be available for viewing.**

**For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.**

### Case Information: 78243

<b>Short Caption:</b>	LEWIS VS. DIST. CT. (UNITED AUTO. INS. CO.) C/W 78085	<b>Court:</b>	Supreme Court
<b>Consolidated:</b>	78085*, 78243	<b>Related Case(s):</b>	78085, 79487
<b>Lower Court Case(s):</b>	Clark Co. - Eighth Judicial District - A549111 Clark Co. - Eighth Judicial District - A772220	<b>Classification:</b>	Original Proceeding - Civil - Mandamus
<b>Disqualifications:</b>		<b>Case Status:</b>	Screening Completed
<b>Replacement:</b>		<b>Panel Assigned:</b>	Panel
<b>To SP/Judge:</b>		<b>SP Status:</b>	
<b>Oral Argument:</b>		<b>Oral Argument Location:</b>	
<b>Submission Date:</b>		<b>How Submitted:</b>	

### + Party Information

### Docket Entries

Date	Type	Description	Pending?	Document
03/05/2019	Filing Fee	Filing fee paid. E-Payment \$250.00 from Thomas Christensen. (SC)		
03/05/2019	Petition/Writ	Filed Petition for Writ of Mandamus. (SC)	Y	19-09742
03/05/2019	Appendix	Filed Appendix to Petition for Writ Volume I. (SC)		19-09884
03/05/2019	Appendix	Filed Appendix to Petition for Writ Volume II. (SC)		19-09885
03/19/2019	Order/Procedural	Filed Order Directing Answer. Real parties on behalf of respondents, shall have 28 days from the date of this order to file		19-12124



11/5/2019

78243: Case View

		and serve an answer against issuance of the requested writ. Thereafter, petitioner shall have 14 days from service of the answer to file and serve any reply. fn1[If Cheyenne Nalder will not be filing an answer to this petition, she should inform this court in writing within the time allowed to file an answer.] (SC)	
04/16/2019	Petition/Writ	Filed Real Party in Interest Cheyenne Nalder's Response to Petition for Writ of Mandams. (SC)	19-16556
04/16/2019	Notice/Incoming	Filed Notice of Appearance (Daniel F. Polsenberg, Joel D. Henriod and Abraham G. Smith as counsel for Real Party in Interest United Automobile Insurance Company). (SC)	19-16742
04/16/2019	Motion	Filed Real Party in Interest United Automobile Insurance Company's Motion for Extension to File Answer. (SC)	19-16743
05/09/2019	Order/Procedural	Filed Order Granting Motion. United Automobile Insurance Company's Answer due: June 17, 2019. Petitioner shall have 14 days from service of UAIC's answer to file and serve any reply. (SC)	19-20398
06/17/2019	Motion	Filed Real Party in Interest United Automobile Insurance Company's Motion for Extension to File Answer. (SC)	19-26196
06/25/2019	Motion	Filed Petitioner's Objection to UAIC's Second Request for Extension to File Answer. (SC)	19-27335
07/02/2019	Motion	Filed Real Party in Interest United Automobile Insurance Company's Reply Brief on Motion for Extension to File Answer. (SC).	19-28432
07/03/2019	Order/Procedural	Filed Order Regarding Motion. Real Party in Interest United Automobile Insurance Company's Answer to the Writ Petition due: July 10, 2019. Petitioner shall have 14 days from service of UAIC's answer to file and serve any reply. (SC).	19-28543
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 1. (SC)	19-29360

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07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 2. (SC)	19-29361
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 3. (SC)	19-29362
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 4. (SC)	19-29363
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 5. (SC)	19-29364
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 6. (SC)	19-29365
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 7. (SC)	19-29366
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 8. (SC)	19-29369
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 9. (SC)	19-29371
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 10. (SC)	19-29373
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 11. (SC)	19-29374
07/10/2019	Appendix	Filed Real Party in Interest United Automobile Insurance Company's Appendix Volume 12. (SC)	19-29375
07/10/2019	Petition/Writ	Filed Real Party in Interest United Automobile Insurance Company's Answer. (SC)	19-29400
07/25/2019	Motion	Filed Stipulation for Extension to File Reply Brief. (SC)	19-31529
07/30/2019	Order/Procedural	Filed Order Approving Stipulation. Petitioner's Reply due: August 26, 2019. (SC)	19-32120
08/26/2019	Petition/Writ	Filed Petitioner's Reply to Response to Petition for Writ of Mandamus Pursuant to NRS 34.160. (SC)	19-35719

Combined Case View

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### Cases



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For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600.

### Case Information: 78085

<b>Short Caption:</b>	NALDER VS. DIST. CT. (UNITED AUTO. INS. CO.) C/W 78243	<b>Court:</b>	Supreme Court
<b>Consolidated:</b>	78085*, 78243	<b>Related Case(s):</b>	70504, 78243, 79487
<b>Lower Court Case(s):</b>	Clark Co. - Eighth Judicial District - A549111, A772220	<b>Classification:</b>	Original Proceeding - Civil - Mandamus
<b>Disqualifications:</b>		<b>Case Status:</b>	Screening Completed
<b>Replacement:</b>		<b>Panel Assigned:</b>	Panel
<b>To SP/Judge:</b>		<b>SP Status:</b>	
<b>Oral Argument:</b>		<b>Oral Argument Location:</b>	
<b>Submission Date:</b>		<b>How Submitted:</b>	

### → Party Information

### Docket Entries

Date	Type	Description	Pending?	Document
02/07/2019	Filing Fee	Filing fee paid. E-Payment \$250.00 from David A. Stephens. (SC)		
02/07/2019	Petition/Writ	Filed Petition for Writ of Mandamus. (SC)	Y	19-05986
02/08/2019	Appendix	Filed Petitioners' Appendix Volume 1. (SC)		19-06021
02/11/2019	Notice/Incoming	Filed - Amended Certificate of Service - Petition for Writ of Mandamus and Appendix. (SC)		19-06390
02/27/2019	Appendix	Filed Petitioner's Errata to Appendix. (SC)		19-08971
03/14/2019	Order/Procedural	Filed Order Directing		19-11397

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		Answer. Real party in interest, on behalf of respondents, shall have 28 days from the date of this order to file and serve an answer, including authorities, against issuance of the requested writ. Thereafter, petitioners shall have 14 days from service of the answer to file and serve any reply. (SC)	
04/11/2019	Motion	Filed Real Party in Interest's Motion for Extension to File Answer. (SC).	19-16031
04/12/2019	Notice/Incoming	Filed Notice of Appearance (Daniel Polsenberg, Joel Henriod and Abraham Smith). (SC).	19-16096
04/25/2019	Order/Procedural	Filed Order Granting Motion. Real Party in Interest's Answer to Petition for Writ due: June 10, 2019. (SC).	19-18139
06/10/2019	Motion	Filed Real Party in Interest United Automobile Insurance Company's Motion for Extension to File Answer. (SC)	19-25125
06/19/2019	Order/Procedural	Filed Order Granting Motion. Real party in interest shall have until July 10, 2019, to file and serve the answer. Petitioners shall have 14 days from service of the answer to file and serve any reply. (SC)	19-26477
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 1. (SC)	19-29346
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 2. (SC)	19-29347
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 3. (SC)	19-29349
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 4. (SC)	19-29350
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 5. (SC)	19-29351
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 6. (SC)	19-29352
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 7. (SC)	19-29353
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 8. (SC)	19-29355
07/10/2019	Appendix	Filed Real Party in Interest	19-29356

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		United Auto Ins. Co.'s Appendix Volume 9. (SC)	
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 10. (SC)	19-29357
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 11. (SC)	19-29358
07/10/2019	Appendix	Filed Real Party in Interest United Auto Ins. Co.'s Appendix Volume 12. (SC)	19-29359
07/10/2019	Petition/Writ	Filed Real Party in Interest United Automobile Insurance Company's Answer to Petition for Writ. (SC)	19-29395
07/25/2019	Motion	Filed Stipulation for Extension to File Reply Brief. (SC)	19-31530
07/30/2019	Order/Procedural	Filed Order Approving Stipulation. Petitioners' Reply due August 26, 2019. (SC)	19-32113
08/26/2019	Petition/Writ	Filed Petitioners' Reply to Answer to Petition for Writ of Mandamus. (SC)	19-35711

Combined Case View

**EXHIBIT M**

11/14/2019

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**United States District Court  
District of Nevada (Las Vegas)  
CIVIL DOCKET FOR CASE #: 2:18-cv-02269-JAD-BNW**

United Automobile Insurance Company v. Christensen et al  
Assigned to: Judge Jennifer A. Dorsey  
Referred to: Magistrate Judge Brenda Weksler  
Cause: 28:2201 Declaratory Judgment (Insurance)

Date Filed: 11/27/2018  
Jury Demand: Defendant  
Nature of Suit: 110 Insurance  
Jurisdiction: Diversity

**Plaintiff**

**United Automobile Insurance Company**

represented by **Matthew John Douglas**  
Winner & Sherrod  
1117 South Rancho  
Las Vegas, NV 89102  
702-243-7000  
Email: mdouglas@winnerfirm.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Thomas E. Winner**  
Winner & Sherrod  
1117 South Rancho Drive  
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702-243-7000  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**J Christopher Jorgensen**  
Lewis Roca Rothgerber Christie LLP  
3993 Howard Hughes Parkway  
Suite 600  
Las Vegas, NV 89169  
702-949-8200  
Fax: 702-949-8398  
Email: cjorgensen@lrrc.com  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Thomas Christensen**

represented by **James E Whitmire, III**  
Santoro Whitmire  
10100 W. Chareleston Blvd., Ste 250  
Las Vegas, NV 89135  
702-948-8771  
Fax: 702-948-8773  
Email: jwhitmire@santoronevada.com  
*ATTORNEY TO BE NOTICED*

**Defendant**

11/14/2019

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**E. Breen Arntz**

represented by **Terry A. Coffing**  
 Marquis & Aurbach  
 10001 Park Run Drive  
 Las Vegas, NV 89145  
 702-382-0711  
 Fax: 702-382-5816  
 Email: [tcoffing@marquisaurbach.com](mailto:tcoffing@marquisaurbach.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Brian R. Hardy**  
 Marquis Aurbach Coffing  
 10001 Park Run Drive  
 Las Vegas, NV 89145  
 702-382-0711  
 Fax: 702-382-5816  
 Email: [bhardy@maclaw.com](mailto:bhardy@maclaw.com)  
**ATTORNEY TO BE NOTICED**

**Defendant****Gary Lewis**

represented by **Janeen V. Isaacson**  
 Lipson Neilson  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Joseph P Garin**  
 Lipson Neilson P.C.  
 9900 Covington Cross Drive  
 Suite 120  
 Las Vegas, NV 89144  
 702-382-1500  
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 Email: [NVECF@lipsonneilson.com](mailto:NVECF@lipsonneilson.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
11/28/2018	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$400 receipt number 0978-5337795) by United Automobile Insurance Company. Proof of service due by 2/26/2019. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons, # <u>3</u> Summons, # <u>4</u> Summons)(Winner, Thomas)  NOTICE of Certificate of Interested Parties requirement: Under Local Rule 7.1-1, a party must <u>immediately</u> file its disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. (Entered: 11/28/2018)
11/28/2018	<u>2</u>	CERTIFICATE of Interested Parties by United Automobile Insurance Company that identifies all parties that have an interest in the outcome of this case. Corporate Parent United Automobile Insurance Company for United Automobile Insurance Company added. (Winner, Thomas) (Entered: 11/28/2018)
11/28/2018		Case assigned to Judge Jennifer A. Dorsey and Magistrate Judge Peggy A. Leen. (SLD) (Entered: 11/28/2018)



11/14/2019

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12/03/2018	<u>3</u>	PROPOSED Summons to be Issued <del>NOTICE of Corrected Image/Document</del> re <u>1</u> Complaint,, by Plaintiff United Automobile Insurance Company. (Service of corrected image is attached.) (Attachments: # <u>1</u> Summons, # <u>2</u> Summons)(Winner, Thomas) <u>Modified text on 12/3/2018 (EDS).</u> (Entered: 12/03/2018)
12/03/2018	<u>4</u>	Summons Issued as to All Defendants re <u>1</u> Complaint. (SLD) (Entered: 12/03/2018)
02/22/2019	<u>5</u>	MOTION to Dismiss by Defendant Thomas Christensen. Responses due by 3/8/2019. Discovery Plan/Scheduling Order due by 4/8/2019. (Attachments: # <u>1</u> Exhibit List, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G) (Whitmire, III, James)  NOTICE of Certificate of Interested Parties requirement: Under Local Rule 7.1-1, a party must <u>immediately</u> file its disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. (Entered: 02/22/2019)
02/26/2019	<u>6</u>	SUMMONS Returned Executed by United Automobile Insurance Company re <u>4</u> Summons Issued. All Defendants. (Winner, Thomas) (Entered: 02/26/2019)
02/26/2019	<u>7</u>	CERTIFICATE of Interested Parties by Thomas Christensen. There are no known interested parties other than those participating in the case (Whitmire, III, James) (Entered: 02/26/2019)
03/01/2019	<u>8</u>	NOTICE of Appearance by attorney Terry A. Coffing on behalf of Defendant E. Breen Arntz. (Coffing, Terry) (Entered: 03/01/2019)
03/01/2019	<u>9</u>	JOINDER to <u>5</u> Motion to Dismiss,, by Defendant E. Breen Arntz. (Coffing, Terry) (Entered: 03/01/2019)
03/01/2019	<u>10</u>	JOINDER to <u>5</u> Motion to Dismiss,, by Defendant Gary Lewis. (Garin, Joseph) (Entered: 03/01/2019)
03/01/2019	<u>11</u>	MOTION to Dismiss by Defendant Gary Lewis. Responses due by 3/15/2019. (Garin, Joseph) (Entered: 03/01/2019)
03/08/2019	<u>12</u>	RESPONSE to <u>5</u> Motion to Dismiss,, by Plaintiff United Automobile Insurance Company. Replies due by 3/15/2019. (Attachments: # <u>1</u> Exhibit 1 - Lewis Deposition Transcript, # <u>2</u> Exhibit 2 - Motion for Relief with Affidavit) (Jorgensen, J) (Entered: 03/08/2019)
03/08/2019	<u>13</u>	RESPONSE to <u>9</u> Joinder by Plaintiff United Automobile Insurance Company. (Attachments: # <u>1</u> Exhibit 1 - Lewis Deposition Transcript, # <u>2</u> Exhibit 2 - Motion for Relief with Affidavit) (Jorgensen, J) (Entered: 03/08/2019)
03/14/2019	<u>14</u>	MOTION to Extend Time (First Request) <i>Defendant Thomas Christensen's Motion for Ten (10) Day Extension to File Reply to Plaintiff United Automobile Insurance Company's Response [ECF No. 12] to Special Motion to Dismiss Pursuant to NRS 41.660 [ECF No. 5] re <u>12</u> Response, <u>5</u> Motion to Dismiss,,</i> by Defendant Thomas Christensen. (Whitmire, III, James) (Entered: 03/14/2019)
03/15/2019	<u>15</u>	JOINDER to <u>14</u> Motion to Extend/Shorten Time, by Defendant E. Breen Arntz. (Coffing, Terry) (Entered: 03/15/2019)
03/15/2019	<u>16</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Jennifer A. Dorsey on 3/15/2019. Based on defendant Thomas Christensen's motion <u>14</u> and good cause appearing, Thomas Christensen's motion to extend time [ECF No. <u>14</u> ] to file its reply to the motion to dismiss ECF No. <u>5</u> is granted. Christensen's reply is due by 3/25/2019. ( <b>no image attached</b> ) (Copies have been distributed pursuant to the NEF - DC) (Entered: 03/15/2019)
03/15/2019	<u>17</u>	RESPONSE to <u>10</u> Joinder by Plaintiff United Automobile Insurance Company.

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		(Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (Jorgensen, J) (Entered: 03/15/2019)
03/15/2019	<u>18</u>	RESPONSE to <u>11</u> Motion to Dismiss by Plaintiff United Automobile Insurance Company. Replies due by 3/22/2019. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5) (Jorgensen, J) (Entered: 03/15/2019)
03/18/2019	<u>19</u>	CERTIFICATE of Interested Parties by Gary Lewis. There are no known interested parties other than those participating in the case (Garin, Joseph) (Entered: 03/18/2019)
03/19/2019	<u>20</u>	CERTIFICATE of Interested Parties by E. Breen Arntz. There are no known interested parties other than those participating in the case (Coffing, Terry) (Entered: 03/19/2019)
03/22/2019	<u>21</u>	REPLY to <u>17</u> Response to <u>10</u> Joinder to <u>5</u> Motion to Dismiss by Defendant Gary Lewis. (Garin, Joseph) (Entered: 03/22/2019)
03/22/2019	<u>22</u>	REPLY to Response to <u>11</u> Motion to Dismiss by Defendant Gary Lewis. (Garin, Joseph) (Entered: 03/22/2019)
03/25/2019	<u>23</u>	REPLY to Response to <u>5</u> Motion to Dismiss,, by Defendant Thomas Christensen. (Whitmire, III, James) (Entered: 03/25/2019)
03/26/2019	<u>24</u>	NOTICE of Appearance by attorney Brian R. Hardy on behalf of Defendant E. Breen Arntz. (Hardy, Brian) (Entered: 03/26/2019)
03/27/2019	<u>25</u>	JOINDER to <u>23</u> Reply to Response to <u>5</u> Motion to Dismiss by Defendant E. Breen Arntz. (Hardy, Brian) (Entered: 03/27/2019)
04/08/2019	<u>26</u>	MOTION to Stay Case by Defendant Thomas Christensen. (Whitmire, III, James) (Entered: 04/08/2019)
04/08/2019	<u>27</u>	PROPOSED Discovery Plan/Scheduling Order by Plaintiff United Automobile Insurance Company (Jorgensen, J) (Entered: 04/08/2019)
04/09/2019	<u>28</u>	JOINDER to <u>26</u> Motion to Stay Case by Defendant Gary Lewis. (Garin, Joseph) (Entered: 04/09/2019)
04/10/2019	<u>29</u>	JOINDER to <u>26</u> Motion to Stay Case by Defendant E. Breen Arntz. (Hardy, Brian) (Entered: 04/10/2019)
04/26/2019	<u>30</u>	ORDER Granting <u>26</u> Motion to Stay Discovery. The court will not enter the <u>27</u> proposed Discovery Plan and Scheduling Order. The parties shall submit a proposed Discovery Plan and Scheduling Order 14 days after entry of the order deciding the special motion to dismiss should any claims survive. Signed by Magistrate Judge Peggy A. Leen on 4/26/2019. (Copies have been distributed pursuant to the NEF - SLD) (Entered: 04/26/2019)
05/02/2019	31	CLERK'S NOTICE that this case is randomly reassigned to Magistrate Judge Brenda Weksler for all further proceedings. All further documents must bear the correct case number <b>2:18-cv-02269-JAD-BNW. (no image attached)</b> (EDS) (Entered: 05/02/2019)
09/13/2019	<u>32</u>	ORDER Denying <u>5</u> and <u>11</u> Motions to Dismiss. The <u>30</u> Order re Discovery Stay is LIFTED. The parties have 14 days to submit a proposed discovery plan and scheduling order. Signed by Judge Jennifer A. Dorsey on 9/13/2019. (Copies have been distributed pursuant to the NEF - SLD) (Entered: 09/13/2019)
09/27/2019	<u>33</u>	Joint STIPULATION re Discovery <i>and Order for Stay</i> re <u>32</u> Order on Motion to Dismiss,,,,, by Plaintiff United Automobile Insurance Company. (Jorgensen, J) (Entered: 09/27/2019)
09/27/2019	<u>34</u>	ANSWER to <u>1</u> Complaint filed by Thomas Christensen.(Whitmire, III, James) (Entered: 09/27/2019)

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		09/27/2019)
09/27/2019	<u>35</u>	DEMAND for Trial by Jury by Defendant Thomas Christensen. (Whitmire, III, James) (Entered: 09/27/2019)
09/27/2019	<u>36</u>	ANSWER to <u>1</u> Complaint,, filed by Gary Lewis.(Garin, Joseph) (Entered: 09/27/2019)
09/27/2019	<u>37</u>	NOTICE of Nevada Supreme Court Decision by United Automobile Insurance Company. (Jorgensen, J) (Entered: 09/27/2019)
09/27/2019	<u>38</u>	ERRATA to <u>37</u> Notice of Nevada Supreme Court Decision by Plaintiff United Automobile Insurance Company. (Jorgensen, J) (Entered: 09/27/2019)
09/30/2019	<u>39</u>	ANSWER to <u>1</u> Complaint filed by E. Breen Arntz.(Hardy, Brian) (Entered: 09/30/2019)
10/04/2019	<u>40</u>	ORDER Granting <u>33</u> Stipulation for Stay re Discovery re <u>32</u> Order. Signed by Magistrate Judge Brenda Weksler on 10/4/2019. (Copies have been distributed pursuant to the NEF - MR) (Entered: 10/04/2019)
10/10/2019	<u>41</u>	MOTION for Reconsideration of <u>32</u> Order Denying Defendant's Special Motions to Dismiss Under NRS 41.660 by Defendant Thomas Christensen. Responses due by 10/24/2019. (Attachments: # <u>1</u> Index of Exhibits, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I) (Whitmire, III, James) (Entered: 10/10/2019)
10/11/2019	<u>42</u>	JOINDER to <u>41</u> Motion for Reconsideration, by Defendant E. Breen Arntz. (Attachments: # <u>1</u> Declaration Breen Arntz) (Hardy, Brian) (Entered: 10/11/2019)
10/15/2019	<u>43</u>	JOINDER to <u>41</u> Motion for Reconsideration, by Defendant Gary Lewis. (Garin, Joseph) (Entered: 10/15/2019)
10/16/2019	<u>44</u>	NOTICE of Firm Name Cgange by United Automobile Insurance Company. (Douglas, Matthew) (Entered: 10/16/2019)
10/16/2019	<u>45</u>	CLERK'S NOTICE Regarding Local Rule IC 2-1(g). Filer's account information is different from the address information contained in the filed document, ECF No. <u>44</u> Notice of Change of Firm Name. Attorney Matthew John Douglas is advised to review and update his/her user account information. <b>(no image attached)</b> (EDS) (Entered: 10/16/2019)
10/24/2019	<u>46</u>	RESPONSE to <u>43</u> Joinder, <u>41</u> Motion for Reconsideration, <u>42</u> Joinder by Plaintiff United Automobile Insurance Company. Replies due by 10/31/2019. (Attachments: # <u>1</u> Exhibit 1 - Petition for Rehearing, # <u>2</u> Exhibit 2 - Errata to Petition for Rehearing) (Jorgensen, J) <u>Filed incorrectly by counsel. Modified by Clerk's Office on 10/24/2019 to include estimated reply deadline (EDS).</u> (Entered: 10/24/2019)
10/31/2019	<u>47</u>	REPLY to <u>46</u> Response to <u>41</u> Motion for Reconsideration, by Defendant Thomas Christensen. (Whitmire, III, James) <u>Modified to link to underlying motion on 11/1/2019 (EDS).</u> (Entered: 10/31/2019)

PACER Service Center			
Transaction Receipt			
11/14/2019 15:24:16			
PACER Login:	christensenlaw:2685640:0	Client Code:	2001.98TC
Description:	Docket Report	Search Criteria:	2:18-cv-02269-JAD-BNW

11/14/2019

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<b>Billable</b>		<b>Cost:</b>	
<b>Pages:</b>	4		0.40

**EXHIBIT N**

**AFFIDAVIT ACCOMPANYING RULE 27 MOTION TO SUPPLEMENT RECORD**

STATE OF NEVADA     )  
                                  ) ss:  
COUNTY OF CLARK    )

I, THOMAS CHRISTENSEN, first being duly sworn hereby depose and state as follows:

1. I was admitted to the bar of Nevada in December of 1981, my bar number is 2326.
2. I am an attorney duly licensed to practice law in Federal District Court for the District of Nevada, the United States Court of Appeals for the Ninth Circuit and The Supreme Court of the United States of America. I am the managing member of Christensen Law Offices, LLC and I am counsel of record for Plaintiffs/Appellants James Nalder and Gary Lewis in the above referenced action. I make this declaration based on my personal knowledge;
3. On October 30, 2019, I reviewed the online Nevada Eighth Judicial District Court case docket (wiznet) as well as the online Register of Actions to review the docket for any action taken to file an action on the judgment entered in the District Court of Clark County in case A549111 titled James Nalder as Guardian Ad Litem for Cheyanne Nalder, a minor vs. Gary Lewis;
4. A true and correct copy of the Register of Action for said case A549111 as printed from the District Court for Clark County, Nevada is attached to Appellants Motion to Supplement the Record as Exhibit B;
5. Case number A549111, per the Clerk of the District Court of Clark County, Nevada, is the case which resulted in the original judgment in favor of Nalder and against Lewis;
6. A review of the online docket revealed that a motion to amend judgment in the name of Cheyanne Nalder, who had reached the age of majority, was filed by the law firm



Stephens, Gourley & Bywater on March 22, 2018. (A true and correct copy of this Motion (Sans Exhibits) is attached as Exhibit A to Appellants' Motion to Supplement the Record);

7. One ground for the motion to amend was the tolling statute NRS 11.300 for Gary Lewis' absence from the State of Nevada since at least February of 2010;
8. A further review revealed an amended judgment, executed by Judge Jones on the 26th day of March, 2018 and filed on the 28 day of March, 2018 in favor of Cheyenne Nalder and against Gary Lewis. (A true and correct copy of this judgment is also attached as Exhibit A to Appellants' Motion to Supplement the Record).
9. A further review revealed more than one hundred entries, after March 8, 2017, the date counsel for UAIC, by his Affidavit attached to the Motion to Dismiss, last viewed the record. There are some by non-party UAIC, attacking the judgment; and some filings defending the amended judgment, with the ultimate result being denial of the attack on the amended judgment and allowing the amended judgment to stand. A further review revealed that UAIC has appealed the denial of its attack on the amended judgment;
10. On October 30, 2019 I reviewed the online Nevada Eighth Judicial District Court case docket (wiznet) as well as the online Register of Actions to review the docket for any action taken to file an action on the judgment entered in the District Court of Clark County in case 18-A-772220 titled James Cheyanne Nalder vs. Gary Lewis;
11. A true and correct copy of the Register of Action for said case 18-A-772220 as printed from the District Court for Clark County, Nevada is attached to Appellants Motion to Supplement the Record as Exhibit E;

12. A Further review revealed a transcript of the hearing on January 9, 2019 in which the court did not orally stay the action but instead referenced the Plaintiff's motion for summary judgment to be taken up at the hearing currently scheduled for January 23, 2019.
13. A further review revealed a stipulation has been entered by the parties to this action (A true and correct copy of this stipulation is attached as Exhibit F to Appellants' Motion to Supplement the Record) and a judgment resulting from a statutory offer and acceptance filed by the clerk.
14. A further review revealed an order entered ex parte withdrawing the statutory offer and acceptance judgment.
15. On October 17, 2019 I reviewed the online Superior Court of California County of Los Angeles case number KS021378 for any action taken to file an action on the judgment entered in the Superior Court of California County of Los Angeles in case number KS021378 titled Cheyenne Nalder et al v. Gary Lewis;
16. A true and correct copy of the Register of Action for said case KS021378 as printed from the Superior Court of California, County of Los Angeles is attached to Appellants Motion to Supplement the Record as Exhibit D;
17. A review of the online docket revealed that judgment was entered in favor of Nalder and against Lewis filed by Mark J. Linderman, Esq. and Joshua M. Dietz, Esq. of the law firm of Rogers Joseph O'Donnell, P.C., in California on July 24, 2018. (A true and correct copy of this judgment is attached as Exhibit C to Appellants' Motion to Supplement the record);



18. A further review revealed that UAIC sought to intervene and set aside the judgment entered in California;
19. A further review revealed that defense counsel selected and paid for by UAIC filed an opposition to UAIC's motion to intervene. (A true and correct copy of this motion (*sans exhibits*) is attached to Appellants Motion to Supplement the record as Exhibit I);
20. A further review revealed that the court ruled UAIC could not intervene.
21. A further review revealed that UAIC withdrew its motion to set aside the California judgment;
22. A further review demonstrates that UAIC did not appeal and the California judgment is final and enforceable against Gary Lewis;
23. This judgment was forwarded to the Ninth Circuit on January 29, 2019, filed as Docket entry #52 in the instant Appeal.
24. UAIC claimed falsely that they were appealing this judgment. In DktEntry #53, UAIC states "the judgment taken in California is also being appealed." However, also see Exhibit E, letter from UAIC's counsel, dated February 12, 2019 which is a letter penned 12 days later and which clearly states UAIC would not appeal the CA judgment.
25. Counsel contacted Daniel Polsenberg, Esq. on November 13, 2019 and requested a joint update supplementing the record. He would not agree.
26. Regarding the representation of Nalder and Lewis, throughout, I have referred both Nalder and Lewis for independent representation when there is a conflict between them and I have not represented both sides in these actions.

27. I currently represent Gary Lewis and James Nalder, as Guardian ad Litem for Cheyanne Nalder, in this case against UAIC. I also represent Gary Lewis in a case filed against UAIC and Randall Tindall based on actions by UAIC mostly in 2018 and continuing to the present.
28. UAIC has claimed, in the Nevada state court case, that its failure to act in good faith and treat its insured fairly in 2018 and 2019 are before the Ninth Circuit. This argument was made in an effort to escape liability in the Nevada state court;
29. Cheyanne Nalder is represented by David A. Stephens, Esq., in her amendment of the 2008 judgment and her action on a judgment filed against Gary Lewis in 2018. Gary Lewis, as a defendant in those lawsuits, is represented by E. Breen Arntz, Esq. pursuant to *Cumis/Hansen* because of the obvious conflict between UAIC and Lewis.
30. After Nalder obtained an amended judgment and sued Gary Lewis, I communicated with Stephen Rogers, Esq. who was hired to defend Gary Lewis from Nalder's action on a judgment, pursuant to *Mandlebaum*, a common law action that even UAIC now acknowledges is appropriate and that the Nevada Supreme Court has now approved of. On behalf of Lewis we welcomed Mr. Rogers' defense but requested that he provide case law supporting any proposed filings before filing them so that no weak or worse frivolous defense that would harm Gary Lewis further would be put forward. Mr. Rogers could not supply us with any case law contrary to the clear on point holding in *Mandlebaum*. Rogers subsequently declined to represent Gary Lewis further.
31. Gary Lewis then sought legal counsel from E. Breen Arntz, Esq. to defend him pursuant to *Cumis* as adopted in Nevada by *Hansen*. We specifically asked Mr. Rogers to

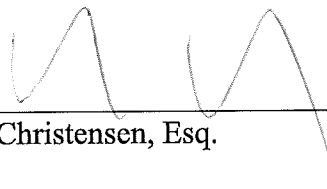
communicate to UAIC that any other potential representation for Gary Lewis should contact me because Gary Lewis and UAIC are obviously in conflict.

32. E. Breen Arntz appeared in the action on behalf of Gary Lewis. Randall Tindall, Esq., then filed pleadings on behalf of Gary Lewis without even attempting to get authority from Gary Lewis directly, without communicating with Mr. Arntz, and without communicating with my office. It was requested that Randall Tindall withdraw the unauthorized pleadings and when he refused, Gary Lewis requested a complaint be filed against Randall Tindall and UAIC.
33. It was filed after requesting that Randall Tindall, Esq., provide a legal basis for the defense he was asserting on Gary Lewis' behalf. Gary Lewis was concerned that the defense suggested would only have benefited UAIC and harmed Gary Lewis.
34. Any communications to the defense attorneys hired by UAIC to "defend" Gary Lewis against the Nalder judgment were consistent and were made under attorney client privilege. A privilege the defense attorneys did not always respect, because they reported the communication to UAIC, which is the adverse party to Gary Lewis. These communications were: 1) I represent Gary Lewis (not as a defendant in the Nalder v. Lewis litigation) and Nalder (not as a plaintiff in the Nalder v. Lewis litigation) in their claims against UAIC. 2) Gary Lewis welcomes your belated defense if it is likely of success, ethical and non-frivolous. 3) Before taking any action on behalf of Gary Lewis please let us know the basis for your defense and your evaluation of the likelihood of success. 4) Gary Lewis does not want to use a frivolous or weak defense that may increase his liability. 5) Nor does he wish to delay the inevitable and create more damage

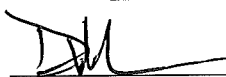
or exposure to him in the end. 6) Gary Lewis does not trust that UAIC is actually looking out for his best interests, so please communicate through me; after all, he has been in litigation with UAIC for ten years. He has been exposed to a multimillion dollar judgment for more than 10 years and is still exposed to it. 7) If UAIC will confirm that if its proposed defense fails, it will pay the judgment, then Gary Lewis does not need to review your defense. 8) However, if UAIC's position is: if we lose, you are on your own (which has been its approach from the beginning), then Gary Lewis wants to at least be able to evaluate the strength of the defense before embarking on that path.

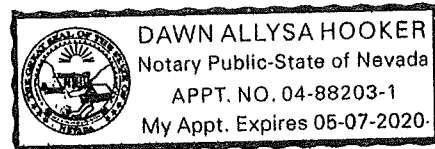
The undersigned, Thomas F. Christensen, Esq., declares and acknowledges, under penalty of perjury, that the information provided herein is correct to the best of his information and belief and can be supported by documentation if called upon to substantiate the information provided herein.

Dated this 14 day of November, 2019.

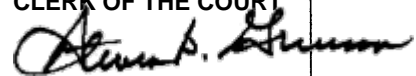
  
\_\_\_\_\_  
Thomas Christensen, Esq.

Subscribed and sworn to before  
me this 14<sup>th</sup> day of November, 2019.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for  
said County and State.



## Proposed Additional Document 6



1 **MWCN**  
2 **RESNICK & LOUIS, P.C.**  
3 **RANDALL TINDALL**  
4 Nevada Bar No. 6522  
5 8925 W. Russell Rd., Ste. 220  
6 Las Vegas, NV 89148  
7 Telephone: (702) 997-3800  
8 Facsimile: (702) 997-3800  
9 rtindall@rlattorneys.com  
10 Attorneys for Defendant Gary Lewis

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

10 **CHEYENNE NALDER,**

11 Plaintiff,

12 v.

13 **GARY LEWIS,**

14 Defendant.

CASE NO. A549111

CONSOLIDATED WITH:

CASE NO. A-18-772220-C

DEPT. NO. 20

**MOTION TO WITHDRAW AS  
COUNSEL ON ORDER SHORTENING  
TIME**

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19 **UNITED AUTOMOBILE INSURANCE**  
20 **COMPANY,**

21 Intervenor.  
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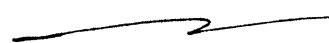
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28 106991481\_1

1 Defendant Gary Lewis's insurance-appointed counsel, Randall Tindall, moves the court  
2 to allow him and his firm, Resnick & Louis, P.C., to withdraw from Defendant's representation.  
3 This motion is based upon the points and authorities, the exhibit, and any oral argument that this  
4 court may require.

5 DATED this 7th day of January, 2019.

6 **RESNICK & LOUIS, P.C.**

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9 \_\_\_\_\_  
10 RANDALL TINDALL  
11 5940 S. Rainbow Blvd.  
12 Las Vegas, NV 89118  
13 Attorneys for Defendant Gary Lewis

14 **ORDER SHORTENING TIME**

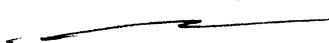
15 GOOD CAUSE APPEARING, Pursuant to EDCR 2.26, the hearing of MOTION TO  
16 WITHDRAW AS COUNSEL ON ORDER SHORTENING TIME is set for the 9<sup>th</sup> day of  
17 January, 2019 at 8:30 (a.m.) / p.m.

18 DATED this 7th day of January, 2019.

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20 \_\_\_\_\_  
21 DISTRICT COURT JUDGE SS

22 Submitted by:

23 **RESNICK & LOUIS, P.C.**

24   
25 \_\_\_\_\_  
26 RANDALL TINDALL  
27 Nevada Bar No. 6522  
28 8925 W. Russell Road, Suite 220  
Las Vegas, NV 89148  
Attorneys for Defendant Gary Lewis

**DECLARATION OF RANDALL TINDALL IN  
SUPPORT OF ORDER SHORTENING TIME**

RANDALL TINDALL, pursuant to NRS 53.045, declares:

1. I am over the age of 21, am an attorney for Defendant Gary Lewis, and have personal knowledge about the facts related to the filing of this motion.

2. A hearing on several motions is already scheduled in this matter for January 9, 2019, at 9:00 a.m. An order shortening time **TO 01/09/19** is necessary and is sought for good cause, in the interest of justice and for no other purpose.

3. I submit pursuant to EDCR 2.26 that good cause exists to have this motion heard on shortened time because of the following:

I and Resnick & Louis, P.C. were retained by Gary Lewis's insurance carrier, United Automobile Insurance Company ("UAIC"), to defend him in the lawsuit filed against him in A-18-772220-C, which necessitated action in 07A549111 (consolidated), as well;

In a letter apparently written by Mr. Lewis, it is asserted that he does not want me to represent him. Please see attached as Exhibit A a true and correct copy of the letter that was sent to me, purportedly by Mr. Lewis;

A lawyer claiming to be acting on Mr. Lewis's behalf, E. Breen Arntz, has filed a motion for sanctions against me and Resnick & Louis, P.C., alleging among other things that I am representing Mr. Lewis without authorization;

On 01/02/19, E. Breen Arntz, claiming to be acting on Mr. Lewis's behalf, filed a withdrawal of two motions that I filed in these now consolidated cases on behalf of Mr. Lewis: (1) the motion to dismiss, and (2) the motion to set aside judgment (collectively, the "Motions").

4. Mr. Arntz's filing on Mr. Lewis's behalf the withdrawal of the Motions that I filed has created a conflict. More specifically, Mr. Lewis's instructions to me (through Mr. Arntz) not to go forward with the motions I filed on Mr. Lewis's behalf and UAIC's instructions to me to go forward with the motions puts me in a conflict requiring my withdrawal. To be clear, when I commenced my representation of Mr. Lewis, I was aware of only one way to preserve a



1 judgment—i.e., through the NRS 17.214 renewal process. After reading Mr. Arntz's motions and  
2 points and authorities, I've now come to realize there are two ways to preserve a judgment—i.e., the  
3 statutory renewal process and an action on the judgment. I have no experience with the action on  
4 the judgment method of preserving a judgment. Therefore, I cannot say whether Mr. Arntz's  
5 arguments are wrong (that is what judges decide). Regardless, Mr. Arntz is exercising independent  
6 judgment on Mr. Lewis's behalf that is contrary to the direction that I had believed was in Mr.  
7 Lewis's best interest and that is contrary to the instructions I have received from UAIC, putting me  
8 in an irreconcilable conflict of interest.

9         5.       If the motion is not heard **ON 01/09/19** before the motions scheduled to be heard in  
10 this matter, I and Resnick & Louis, P.C., will need to appear prepared to argue. Because of the  
11 conflict and impasse, effective representation cannot be given by me or my firm.

12         6.       Because I was hired by Mr. Lewis's insurance carrier (UAIC) to represent Mr.  
13 Lewis, I have duties to both Mr. Lewis and UAIC, *State Farm Mut. Auto. Insur. Co. v. Hansen*, 131  
14 Nev. Adv. Op. 74, 357 P.3d 338 (2015), but my withdrawal will not cause any prejudice to Mr.  
15 Lewis because he is represented by E. Breen Arntz. Additionally, my withdrawal will not cause any  
16 prejudice to UAIC because it is represented in this action, as a third-party defendant, by attorney  
17 Matthew J. Douglas (Atkin Winner & Sherrod).

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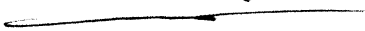
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7. Gary Lewis's last known contact information is as follows:

c/o E. Breen Arntz, Esq.  
5545 Mountain Vista, Ste. E  
Las Vegas, NV 89120  
(702) 384-8000

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

  
\_\_\_\_\_  
RANDALL TINDALL

### POINTS AND AUTHORITIES

The rules governing the legal profession in Nevada provide that once an attorney appears in an action, the attorney may withdraw from representation "upon the order of the court or Judge thereof on application of the attorney or client." Orme v. Eighth Judicial District Court, 105 Nev. 712, 714 n. 1, 782 P.2d 1325, 1326 n. 1 (1989). Likewise, EDCR 7.40 entitled "Appearances; substitutions; withdrawal or change of attorney" states the following regarding withdrawal by an attorney:

(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion, and

(i) If the application is made by the attorney, the attorney must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached and the attorney must serve a copy of the application upon the client and all other parties to the action or their attorneys,

In this case, the application is being made by the attorney. Included in the attached affidavit is the last known addresses of the clients and the clients' last known phone numbers. Therefore, EDCR 7.40 has been satisfied and this court should grant this motion.

Furthermore, SCR 46, entitled "Withdrawal or change of attorney" states the following regarding withdrawal by an attorney:

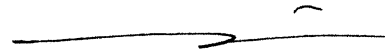
The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.
2. Upon the order of the court or judge thereof on the application of the attorney or the client. After judgment or final determination, an attorney may withdraw as attorney of record at any time upon the attorney's filing a withdrawal, with or without the client's consent.

In this case, as stated in the attached affidavit, the client and the attorney have reached an impasse. Therefore, SCR 46 has been satisfied and this court should grant this motion. The interests of the Plaintiffs will not be materially affected if withdrawal is granted. Therefore, the undersigned requests he be allowed to withdraw as attorney of record.

1 DATED this 7th day of January, 2019.

2 **RESNICK & LOUIS, P.C.**

3 


4 RANDALL TINDALL  
5 5940 S. Rainbow Blvd.  
6 Las Vegas, NV 89118  
7 Attorneys for Defendant Gary Lewis

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that service of the foregoing MOTION TO WITHDRAW AS  
COUNSEL ON ORDER SHORTENING TIME was served this 7th day of January, 2019, by:

☒ **ELECTRONIC SERVICE:** to counsel by transmitting via the Court's electronic filing services the document(s) listed above to the Counsel set forth on the service list on this date; and



employee of Resnick & Louis

A

October 16, 2018

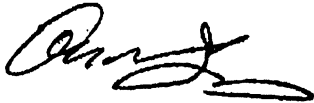
Randall Tindall, Esq.  
Resnick and Louis, P.C.  
8925 W. Russell Rd., Ste 220  
Las Vegas NV 89148  
FAX: 702-997-8478  
rtindall@rlattorneys.com

Re: Stop telling the Court you represent me.

Dear Mr. Tindall :

You have never communicated with me and I have never retained you to represent me. I am writing to make it very clear to you that I do not want you to make any representations or communications on my behalf without first getting my authority to do so in connection with the lawsuits that are currently pending in Nevada. I left Nevada at the end of 2008. I believe the actions you have taken on my behalf are fraudulent, improper and inaccurate. You already know all of this because Steve Rogers, who was previously hired by UAIC to represent me, also was told this and then did not file anything on my behalf. I have had the issues explored by my own counsel and I do not agree that your actions are in my best interest. My attorney defending me in these two cases is Breen Amtz. My attorney representing me against UAIC is Thomas Christensen. Please communicate with him regarding my desires. Please withdraw your three motions filed on my behalf and discontinue making any representations to the court that you are acting on my behalf. You are not.

Thank you.



Gary Lewis

cc: [breen@breen.com](mailto:breen@breen.com)  
[thomasc@injuryhelpnow.com](mailto:thomasc@injuryhelpnow.com)