

CODE: 2515
Graham Galloway
Nevada State Bar No. 221
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Attorneys for Appellant

Electronically Filed
Jun 17 2021 03:40 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

AUSTIN LEWIS, an individual,

Plaintiff,

Case No.: CV20-01047

Dept No.: 1

vs.

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X and
DOES I-X inclusive,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that Austin Lewis, appellant above-named, hereby appeals to the Supreme Court of Nevada from the District Court's Order Granting Defendant's Motion for Summary Judgment; and Denying Plaintiff's Cross-Motion for Partial Summary Judgment entered in this action on June 8, 2021.

Affirmation Pursuant To NRS 239b.030: The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 15th day of June, 2021. GALLOWAY & JENSEN

By: /s/ Graham Galloway
GRAHAM GALLOWAY
222 California Avenue
Reno, Nevada 89509
(775) 333-7555

**GALLOWAY
& JENSEN**
222 California Ave
Reno, NV 89509
(775) 333-7555

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of GALLOWAY & JENSEN
3 and that on this date I served a true and correct copy of the preceding document addressed to
4 the following:

5 Todd Alexander
6 Lemons, Grundy & Eisenberg
7 6005 Plumas, Suite 300
8 Reno, NV 89509
Attorney for Defendant

9 ☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully
10 prepaid, an envelope containing the preceding document at Reno, Nevada, in the ordinary
course of business.

11 ☐ **COURTESY COPY VIA FACSIMILE**

12 ☐ **BY PERSONAL SERVICE:** An employee of Galloway & Jensen personally
13 delivered the preceding document by hand delivery to the offices of the address named above.

14 ☐ **BY MESSENGER SERVICE:** Reno Carson Messenger Service received from
15 Galloway & Jensen the preceding document for delivery to the offices of the address named
above.

16 ☒ **BY ELECTRONIC FILING (e-Flex)**

17
18 DATED this 8th day of June, 2021.

19
20 /s/ Yennifer Sanchez
Yennifer Sanchez
21
22
23
24
25

CODE: 1310
Graham Galloway
Nevada State Bar No. 221
Galloway & Jensen
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Attorneys for Appellant

**IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

AUSTIN LEWIS, an individual,

Plaintiff,

Case No.: CV20-01047
Dept No.: 1

vs.

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X and
DOES I-X inclusive,

Defendants.

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Austin Lewis.
2. Identify the judge issuing the decision, judgment or order appealed from:
Honorable Kathleen M. Drakulich.
3. Identify each appellant and the name and address of counsel for each appellant:
Austin Lewis, Plaintiff; Graham Galloway of Galloway and Jensen, 222 California Avenue,
Reno, Nevada 89509
4. Identify each respondent and the name and address of appellate counsel, if
known, for each respondent (if the name of a respondent's appellate counsel is unknown,

1 indicate as much and provide the name and address of that respondent's trial counsel): Mid-
2 Century Insurance Company, Defendant, represented by Todd Alexander of Lemons, Grundy
3 & Eisenberg, 6005 Plumas Suite 300, Reno, NV 89509.

4 5. Indicate whether any attorney identified above in response to question 3 or 4 is
5 not licensed to practice law in Nevada and, if so, whether the district court granted that attorney
6 permission to appear under SCR 42 (attach a copy of any district court order granting such
7 permission): Not applicable.

8 6. Indicate whether appellant was represented by appointed or retained counsel in
9 the district court: The Appellant was represented in the district court by retained counsel,
10 Graham Galloway of Galloway & Jensen.

11 7. Indicate whether appellant is represented by appointed or retained counsel on
12 appeal: The appellant is represented on appeal by retained counsel, Graham Galloway of
13 Galloway & Jensen.

14 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and
15 the date of entry of the district court order granting such leave: No.

16 9. Indicate the date the proceedings commenced in the district court (e.g., date
17 complaint, indictment, information, or petition was filed): The complaint was filed on July 10,
18 2020.

19 10. Provide a brief description of the nature of the action and result in the district
20 court, including the type of judgment or order being appealed and the relief granted by the
21 district court:

22 On October 26, 2019, Austin Lewis was riding his off road motorcycle at what is called
23 the Sand Pits OHV Park outside of South Lake Tahoe, California. Mr. Lewis was travelling in
24 the correct direction on the track and had just taken a large jump when Joshua Brackett drove a
25 Ford Mustang onto the motocross track and came to a stop right under the jump where

1 motorcycles would land. Mr. Lewis was not able to see the Brackett Mustang until coming
2 down off the jump and his motorcycle landed on top of the Mustang. Mr. Lewis sustained
3 fractures of his T4, T9, T11 and T12 vertebrae as a result of smashing into the windshield of
4 Mr. Brackett's Mustang. He also fractured a portion of his sternum and sustained a
5 pneumothorax and a collapsed lung. Mr. Lewis' medical expenses to date are \$112,477.00, and
6 he missed a substantial amount of work at a loader at UPS.

7
8 Mr. Brackett's vehicle was insured by Financial Indemnity Company for the statutory
9 minimum in California of \$15,000.00. Mr. Lewis accepted Mr. Brackett's policy limits and
10 then presented a claim for underinsured motorist coverage to his own insurer, Mid-Century.
11 Mr. Lewis had uninsured/underinsured limits (UM/UIM) of \$250,000.00, but when he
12 presented his claim he was informed by Mid-Century an exclusion in his policy applied to "step
13 down" the uninsured motorist (UIM) coverage from the policy limits of \$250,000.00 to the
14 statutory liability limits of \$25,000.00. Plaintiff believes Mid-Century improperly applied this
15 exclusion, or at a minimum, an ambiguity exists in the policy language such that the exclusion
16 cannot be applied to Mr. Lewis. Defendant filed a Motion for Summary Judgment on March 3,
17 2021 claiming its step down exclusion is clear and unambiguous and limits Lewis' right to
18 recover under the policy. Plaintiff filed his Opposition on March 16, 2021, as well as a Cross
19 Motion for Partial Summary Judgment. Defendant then filed its Reply on March 25, 2021 and
20 Opposition to Plaintiff's cross motion on March 29, 2021. The district court ruled on the
21 motions in an order dated June 8, 2021, granting Defendant's motion for summary judgment
22 and denying Plaintiff's cross motion. Plaintiff appeals the June 8, 2021 order.

23
24 11. Indicate whether the case has previously been the subject of an appeal to or
25 original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
number of the prior proceeding: No.

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12. Indicate whether this appeal involves child custody or visitation: No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: Unlikely.

Affirmation Pursuant To NRS 239b.030: The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 15th day of June, 2021. GALLOWAY & JENSEN

By: /s/ Graham Galloway
GRAHAM GALLOWAY
222 California Avenue
Reno, Nevada 89509
(775) 333-7555
Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

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3 and that on this date I served a true and correct copy of the preceding document addressed to
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6 Lemons, Grundy & Eisenberg
7 6005 Plumas, Suite 300
8 Reno, NV 89509
Attorney for Defendant

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above.

16 ☒ **BY ELECTRONIC FILING (e-Flex)**

17 DATED this 15th day of June, 2021.
18

19
20 /s/ Yennifer Sanchez
Yennifer Sanchez
21
22
23
24
25

SECOND JUDICIAL DISTRICT COURT**STATE OF NEVADA
COUNTY OF WASHOE****Case History - CV20-01047****Case Description: AUSTIN LEWIS VS MID-CENTURY INS CO (D1)****Case Number: CV20-01047 Case Type: OTHER NEGLIGENCE - Initially Filed On: 7/10/2020****Parties**

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - KATHLEEN DRAKULICH - D1	Active
PLTF - AUSTIN LEWIS - @1358522	Active
PLTF - AUSTIN LEWIS - @1358893	Active
DEFT - MID-CENTURY INSURANCE COMPANY - @1358894	Active
DEFT - MID-CENTURY INSURANCE COMPANY - @147631	Active
ATTY - Todd R. Alexander, Esq. - 10846	Active
ATTY - Graham A. Galloway, Esq. - 221	Active

Disposed Hearings

- 1 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 3/25/2021 at 09:56:00
Extra Event Text: MOTION FOR SUMMARY JUDGMENT FILED 3/03/2021
Event Disposition: S200 - 6/8/2021
- 2 Department: D1 -- Event: Request for Submission -- Scheduled Date & Time: 4/5/2021 at 12:31:00
Extra Event Text: CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT FILED MARCH 17, 2021
Event Disposition: S200 - 6/8/2021
- 3 Department: D1 -- Event: PRE-TRIAL CONFERENCE -- Scheduled Date & Time: 8/18/2021 at 14:30:00
Extra Event Text: FINAL PRETRIAL CONFERENCE
Event Disposition: D845 - 6/8/2021
- 4 Department: D1 -- Event: TRIAL - JURY -- Scheduled Date & Time: 9/27/2021 at 09:30:00
Extra Event Text: 5-DAY JURY TRIAL (#2)
Event Disposition: D845 - 6/8/2021

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|--|
| 1 | 7/10/2020 | - | \$1425 - \$Complaint - Civil
Additional Text: Transaction 7964571 - Approved By: CSULEZIC : 07-10-2020:09:36:27 |
| 2 | 7/10/2020 | - | PAYRC - **Payment Receipted
Additional Text: A Payment of \$255.00 was made on receipt DCDC660860. |
| 3 | 7/14/2020 | - | 4090 - ** Summons Issued
Additional Text: Transaction 7969288 - Approved By: BBLOUGH : 07-14-2020:10:48:28 |
| 4 | 7/14/2020 | - | NEF - Proof of Electronic Service
Additional Text: Transaction 7969387 - Approved By: NOREVIEW : 07-14-2020:10:49:45 |
| 5 | 7/17/2020 | - | 1090 - Amended Complaint
Additional Text: AMENDED COMPLAINT - Transaction 7975980 - Approved By: YVILORIA : 07-17-2020:09:58:32 |

Report Does Not Contain Sealed Cases or Confidential Information

- 6 7/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 7976005 - Approved By: NOREVIEW : 07-17-2020:09:59:38
- 7 8/4/2020 - 4085 - Summons Filed
Additional Text: Transaction 8003153 - Approved By: NOREVIEW : 08-04-2020:15:24:03
- 8 8/4/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8003154 - Approved By: NOREVIEW : 08-04-2020:15:25:02
- 9 8/28/2020 - 1140 - Answer to Amended Complaint
Additional Text: ANSWER TO AMENDED COMPLAINT - Transaction 8043372 - Approved By: YVILORIA : 08-28-2020:14:12:02
- 10 8/28/2020 - \$1560 - \$Def 1st Appearance - CV
Additional Text: MID-CENTURY INSURANCE COMPANY - Transaction 8043372 - Approved By: YVILORIA : 08-28-2020:14:12:02
- 11 8/28/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$208.00 was made on receipt DCDC662944.
- 12 8/28/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8043426 - Approved By: NOREVIEW : 08-28-2020:14:13:36
- 13 8/28/2020 - JF - **First Day Jury Fees Deposit
Additional Text: Transaction 8043446 - Approved By: YVILORIA : 08-28-2020:14:38:44
- 14 8/28/2020 - 1580 - Demand for Jury
Additional Text: DEMAND FOR JURY TRIAL: MID-CENTURY INS CO. - Transaction 8043446 - Approved By: YVILORIA : 08-28-2020:14:38:44
- 15 8/28/2020 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$320.00 was made on receipt DCDC662945.
- 16 8/28/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8043556 - Approved By: NOREVIEW : 08-28-2020:14:39:50
- 17 9/14/2020 - 3975 - Statement ...
Additional Text: DEFENDANT'S NRCP 7.1 DISCLOSURE STATEMENT - Transaction 8066295 - Approved By: YVILORIA : 09-14-2020:15:17:31
- 18 9/14/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8066393 - Approved By: NOREVIEW : 09-14-2020:15:18:31
- 19 9/15/2020 - 3840 - Request Exemption Arbitration
Additional Text: REQUEST FOR EXEMPTION FROM ARBITRATION Transaction 8067449 - Approved By: NOREVIEW : 09-15-2020:09:51:13
- 20 9/15/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8067454 - Approved By: NOREVIEW : 09-15-2020:09:52:11
- 21 9/16/2020 - 2501 - Non-Opposition ...
Additional Text: NOTICE OF NON-OPPOSITION - Transaction 8071024 - Approved By: CSULEZIC : 09-17-2020:08:25:59
- 22 9/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8071384 - Approved By: NOREVIEW : 09-17-2020:08:26:59
- 23 9/25/2020 - A190 - Exempt from Arb (over \$50,000)
Additional Text: Transaction 8085505 - Approved By: NOREVIEW : 09-25-2020:09:04:06

- 24 9/25/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8085509 - Approved By: NOREVIEW : 09-25-2020:09:05:07
- 25 9/29/2020 - 3696 - Pre-Trial Order
Additional Text: Transaction 8090812 - Approved By: NOREVIEW : 09-29-2020:12:10:05
- 26 9/29/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8090815 - Approved By: NOREVIEW : 09-29-2020:12:11:05
- 27 10/6/2020 - 2605 - Notice to Set
Additional Text: Notice of Trial Setting and NRCP 16.1 Conference - Transaction 8101735 - Approved By: NOREVIEW : 10-06-2020:10:18:19
- 28 10/6/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8101739 - Approved By: NOREVIEW : 10-06-2020:10:19:18
- 29 10/13/2020 - 1250 - Application for Setting
Additional Text: FPTC: 8/18/21; 5-DAY JURY TRIAL: 9/27/21 (#2) - Transaction 8113583 - Approved By: NOREVIEW : 10-13-2020:14:15:28
- 30 10/13/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8113588 - Approved By: NOREVIEW : 10-13-2020:14:16:27
- 31 11/9/2020 - 1835 - Joint Case Conference Report
Additional Text: Transaction 8153964 - Approved By: NOREVIEW : 11-09-2020:14:14:14
- 32 11/9/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8153968 - Approved By: NOREVIEW : 11-09-2020:14:15:16
- 33 11/17/2020 - 3915 - Scheduling Order
Additional Text: Transaction 8166337 - Approved By: NOREVIEW : 11-17-2020:15:38:04
- 34 11/17/2020 - NEF - Proof of Electronic Service
Additional Text: Transaction 8166338 - Approved By: NOREVIEW : 11-17-2020:15:38:55
- 35 3/3/2021 - \$2200 - \$Mtn for Summary Judgment
Additional Text: Transaction 8322848 - Approved By: CSULEZIC : 03-03-2021:11:13:29
- 36 3/3/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$200.00 was made on receipt DCDC670342.
- 37 3/3/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8322947 - Approved By: NOREVIEW : 03-03-2021:11:14:30
- 38 3/16/2021 - 2645 - Opposition to Mtn ...
Additional Text: PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT - Transaction 8346171 - Approved By: YVILORIA : 03-17-2021:08:23:49
- 39 3/17/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8346435 - Approved By: NOREVIEW : 03-17-2021:08:24:40
- 40 3/17/2021 - \$2160 - \$Mtn Partial Sum Judgment
Additional Text: PLAINTIFF'S CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 8346907 - Approved By: YVILORIA : 03-17-2021:10:31:54
- 41 3/17/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$200.00 was made on receipt DCDC671151.

- 42 3/17/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8346967 - Approved By: NOREVIEW : 03-17-2021:10:32:49
- 43 3/25/2021 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - Transaction 8360452 - Approved By: CSULEZIC : 03-25-2021:10:28:34
- 44 3/25/2021 - 3860 - Request for Submission
Additional Text: - Transaction 8360452 - Approved By: CSULEZIC : 03-25-2021:10:28:34
DOCUMENT TITLE: MOTION FOR SUMMARY JUDGMENT FILED 3/03/2021
PARTY SUBMITTING: TODD ALEXANDER ESQ
DATE SUBMITTED: 3/25/2021
SUBMITTED BY: CS
DATE RECEIVED JUDGE OFFICE:
- 45 3/25/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8360529 - Approved By: NOREVIEW : 03-25-2021:10:29:27
- 46 3/29/2021 - 2645 - Opposition to Mtn ...
Additional Text: OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 8366071 - Approved By: YVILORIA : 03-29-2021:15:30:26
- 47 3/29/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8366162 - Approved By: NOREVIEW : 03-29-2021:15:32:11
- 48 4/5/2021 - 3795 - Reply...
Additional Text: REPLY IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 8377560 - Approved By: YVILORIA : 04-05-2021:13:11:29
- 49 4/5/2021 - 3860 - Request for Submission
Additional Text: - Transaction 8377560 - Approved By: YVILORIA : 04-05-2021:13:11:29
DOCUMENT TITLE: CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT FILED MARCH 17, 2021
PARTY SUBMITTING: GRAHAM GALLOWAY ESQ
DATE SUBMITTED: 4-5-21
SUBMITTED BY: YV
DATE RECEIVED JUDGE OFFICE:
- 50 4/5/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8377692 - Approved By: NOREVIEW : 04-05-2021:13:13:40
- 51 6/8/2021 - 2682 - Ord Addressing Motions
Additional Text: ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND (2) DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT - Transaction 8484494 - Approved By: NOREVIEW : 06-08-2021:11:47:19
- 52 6/8/2021 - S200 - Request for Submission Complet
Additional Text: MOTION FOR SUMMARY JUDGMENT FILED 3/03/2021 (SEE ORDER ISSUED 6/8/21)
- 53 6/8/2021 - S200 - Request for Submission Complet
Additional Text: CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT FILED MARCH 17, 2021 (SEE ORDER ISSUED 6/8/21)
- 54 6/8/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8484498 - Approved By: NOREVIEW : 06-08-2021:11:48:22
- 55 6/8/2021 - F140 - Adj Summary Judgment
No additional text exists for this entry.
- 56 6/9/2021 - 2540 - Notice of Entry of Ord
Additional Text: Transaction 8486879 - Approved By: NOREVIEW : 06-09-2021:11:16:36
- 57 6/9/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8486884 - Approved By: NOREVIEW : 06-09-2021:11:17:41

- 58 6/15/2021 - 1310 - Case Appeal Statement
Additional Text: Transaction 8497108 - Approved By: YVILORIA : 06-16-2021:07:57:36
- 59 6/15/2021 - \$2515 - \$Notice/Appeal Supreme Court
Additional Text: Transaction 8497108 - Approved By: YVILORIA : 06-16-2021:07:57:36
- 60 6/15/2021 - SAB - **Supreme Court Appeal Bond
Additional Text: AUSTIN LEWIS - Transaction 8497107 - Approved By: YVILORIA : 06-16-2021:08:00:08
- 61 6/16/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$24.00 was made on receipt DCDC675632.
- 62 6/16/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8497204 - Approved By: NOREVIEW : 06-16-2021:07:59:25
- 63 6/16/2021 - PAYRC - **Payment Receipted
Additional Text: A Payment of \$500.00 was made on receipt DCDC675633.
- 64 6/16/2021 - NEF - Proof of Electronic Service
Additional Text: Transaction 8497213 - Approved By: NOREVIEW : 06-16-2021:08:01:05
- 65 6/17/2021 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 8500175 - Approved By:
NOREVIEW : 06-17-2021:10:55:15
- 66 6/17/2021 - 4113 - District Ct Deficiency Notice
Additional Text: NOTICE OF APPEAL DEFICIENCY NOTICE - SUPREME COURT FILING FEE - Transaction 8500175 - Approved By:
NOREVIEW : 06-17-2021:10:55:15

2682

IN THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF WASHOE

AUSTIN LEWIS, an individual,

Plaintiff,

vs.

Case No.: CV20-01047

Dept. No.: 1

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X and
DOES I-X inclusive,

Defendants.

**ORDER (1) GRANTING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT; AND
(2) DENYING PLAINTIFF’S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Currently before the Court is Defendant Mid-Century Insurance Company’s (“Mid-Century” or “Defendant”) *Motion for Summary Judgment* (“Motion”) filed March 3, 2021. On March 16, 2021, Plaintiff Austin Lewis (“Mr. Lewis” or “Plaintiff”) filed *Plaintiff’s Opposition to Motion for Summary Judgment* (“Opposition”). On March 25, 2021, Mid-Century filed a *Reply in Support of Motion for Summary Judgment* (“Reply”), and submitted the matter to the Court for consideration.

Also before the Court is *Plaintiff’s Cross Motion for Partial Summary Judgment* (“Cross-Motion”) filed March 17, 2021. On March 29, 2021, Mid-Century filed an *Opposition to Plaintiff’s Cross-Motion for Partial Summary Judgment* (“Opposition to Cross-Motion”). On April 5, 2021, Mr. Lewis filed a *Reply in Support of Plaintiff’s Cross-Motion for Partial Summary Judgment* (“Reply to Cross-Motion”), and submitted the matter to the Court for consideration.

1 In the Motion, Mid-Century argues that summary judgment in this insurance coverage dispute
2 should be granted in favor of Mid-Century, maintaining that uninsured motorist coverage under the
3 Mid-Century policy is excluded pursuant to the undisputed facts of this case. *See* Motion. On the
4 other hand, Mr. Lewis asserts in the Cross-Motion that he is entitled to partial summary judgment on
5 the issue of the amount of the underinsured motorist limits available to him under Mid-Century's
6 policy, and that the limiting exclusion language asserted by Mid-Century does not apply to the facts
7 of this matter. *See* Cross-Motion. As detailed below, this Court finds that Mid-Century is entitled to
8 judgment as a matter of law and grants its Motion.

9 **I. Background**

10 **a. Pleadings**

11 This is a dispute over insurance coverage in a first-party, uninsured motorist claim. Mr. Lewis
12 asserts the following allegations in support of his claim for breach of the operative insurance contract:

- 13 1. On or about October 26, 2019, Plaintiff was injured when Joshua Brackett negligently,
14 carelessly, and recklessly operated an automobile so as to cause it to crash with an off-road
15 motorcycle Plaintiff was riding. As a result of the crash, Plaintiff sustained personal injuries,
16 and Plaintiff's injuries and medical bills exceeded Mr. Brackett's \$15,000.00 liability limit
17 set forth in his policy. Am. Compl. at ¶ 4.
- 18 2. On or about October 26, 2019, Plaintiff was insured under a policy of insurance ("Policy")
19 through Mid-Century, which was in full force and effect at the time of the collision. *Id.* at ¶
20 5.
- 21 3. Plaintiff has performed all conditions required by his Policy with Mid-Century, and has made
22 a demand upon Mid-Century to pay the uninsured motorist coverage to which Plaintiff is
23 entitled under the Policy. Mid-Century refuses to pay Plaintiff under his uninsured motorist
24 coverage an amount sufficient to adequately compensate Plaintiff for his injuries claiming an
25 exclusion limits the underinsured motorist coverage to \$25,000.00. Plaintiff believes this
26 exclusion does not apply to his claim, and therefore Defendant has breached the terms of the
27 Policy. *Id.* at ¶ 6.

28 ///

1 4. As a result of Defendant's breach of the Policy between Plaintiff and Mid-Century, Mid-
2 Century has become liable to Plaintiff for contract and consequential damages. *Id.* at ¶ 7.

3 Notably, Mid-Century admits that Plaintiff was a covered household driver under the Policy,
4 issued by Mid-Century to Rochelle L. Lewis, Policy No. 18927-90-72, and that said Policy was in
5 effect at the time of the subject collision; however, Mr. Century denies that the Policy afforded
6 uninsured motorist coverage for Plaintiff in the alleged injury-causing incident. Ans. to Am. Compl.
7 at ¶¶ 5, 6.

8 **b. Insurance Policy**

9 In Part II of the Policy, entitled Uninsured Motorist, provides that Mid-Century

10 will pay all sums which an **insured person** is legally entitled to recover as
11 **damages** from the owner or operator of an **uninsured motor vehicle** because
12 of **bodily injury** sustained by the **insured person**. The **bodily injury** must be
13 caused by an **accident** and arise out of the ownership, maintenance or use of the
uninsured motor vehicle.

14 Mot., Ex. 1 (Policy) at 7. Notably, "[t]his coverage does not apply while **occupying** any vehicle
15 owned by you or a **family member** for which insurance is not afforded under this policy or through
16 being struck by that vehicle." *Id.* at 8.

17 The Policy likewise defines "Motor vehicle" and "Uninsured motor vehicle" the definitions
18 of which are to be considered only in Part II:

19 2. **Motor vehicle** means a land motor vehicle or a trailer but does not mean a
20 vehicle:

- 21 a. Operated on rails or crawler-treads.
22 b. Designated principally for use of public roads, including, but not limited
23 to, dune buggies, go-carts, all terrain vehicles of two or more wheels,
24 mini-bikes, farm tractors and other farm equipment, stock cars and all
other racing cars, and all other vehicles of similar characteristics.
25 c. Used as a residence or office.

26 3. **Uninsured motor vehicle** means a **motor vehicle** which is:

- 27 a. Not insured by a **bodily injury** liability bond or policy at the time of the
28 **accident**.

....

Uninsured motor vehicle, however, does not mean a vehicle:

- a. Insured under the liability coverage of this policy.

b. Owned by or furnished or available for regular use by your or any **family member**.

Id. at 7-8.

The only vehicles insured under the Policy are as follows: (1) 2013 Audi A7 Quattro; (2) 2007 Chevrolet Colorado; (3) 2018 Ford F350; and (4) 1997 Ford F150. *See* Mot., Ex. 2 (Policy Declaration).

II. Legal Authority

NRCP 56(a) instructs that a “court shall grant summary judgment if the movant shows that there is no genuine dispute as to material fact and the movant is entitled to judgment as a matter of law.” A genuine issue of material fact exists when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). When deciding whether summary judgment is appropriate, the court must view all evidence in light most favorable to the non-moving party and accept all properly supported evidence, factual allegations, and reasonable inferences favorable to the non-moving party as true. *C. Nicholas Pereos, Ltd. v. Bank of Am.*, 131 Nev. 436, 441, 352 P.3d 1133, 1136 (2015); *NGA No. 2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

III. Analysis

In both the Motion and Cross-Motion, each party seeks a determination regarding the interpretation of the Policy with respect to the uninsured motorist coverage. *See Galardi v. Naples Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (“[I]n the absence of ambiguity or other factual complexities, contract interpretation presents a question of law that the district court may decide on summary judgment.” (internal quotation marks omitted)). Mid-Century argues that the applicable exclusion is susceptible to only one reasonable interpretation—which negates uninsured motorist coverage under the undisputed facts of this case: “[t]his coverage does not apply while **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under this policy or through being struck by that vehicle.” Mot. at 3:27-4:16 (quoting Policy); *see also Galardi*, 129 Nev. at 309, 301 P.3d at 366 (“A contract is ambiguous if its terms may reasonably be interpreted in more than one way, but ambiguity does not arise simply because the parties disagree

1 on how to interpret their contract.” (internal citation omitted)). Mid-Century contends that Mr. Lewis
2 was riding an off-road motorcycle owned by the Lewis family, and that said motorcycle was not
3 insured under the Policy; therefore, Mid-Century maintains that uninsured motorist coverage under
4 the Mid-Century policy is excluded under the undisputed facts of this case.¹ *Id.* at 4:17-22.

5 In Plaintiff’s Opposition, as well as his Cross-Motion, Plaintiff asserts that the definition of
6 “motor vehicle” contained in the UM/UIM provisions of the Policy, defines a motor vehicle to not
7 include an off-road motorcycle, and therefore the exclusion does not apply to limit coverage to the
8 Plaintiff. Opp’n at 3:5-4:13; *see also* Cross-Mot. at 2:21-3:2. In the alternative, Plaintiff asserts at a
9 minimum that an ambiguity exists in the UM/UIM language between the exclusion and the definition
10 of “motor vehicle,” such that the language in the Policy must be construed against Defendant. Opp’n
11 at 4:14-7:19; Cross-Mot. at 3:2-3:6.

12 In consideration of the foregoing arguments, as well as the operative legal authority, this Court
13 finds good cause to grant Mid-Century’s Motion. The Policy and the Policy Declaration directly
14 answer the question presented to the Court, and this Court is unpersuaded by Plaintiff’s arguments to
15 the contrary. And as the material facts are not in dispute, this Court may properly interpret the Policy,
16 which presents a question of law, on summary judgment. *See Galardi*, 129 Nev. at 309, 301 P.3d at
17 366. As an initial matter, the Policy Declaration reveals, and the parties do not dispute, that the KTM
18 motorcycle, driven by Plaintiff at the time of the incident, is *not* covered by the Policy. *See* Policy
19 Declaration. The pertinent exclusion contained in the Policy explicitly states, “[T]his coverage does
20 not apply while **occupying** any vehicle owned by you or a **family member** for which insurance is
21 not afforded under this policy or through being struck by that vehicle.” *See* Policy. Based on the
22 foregoing, uninsured motorist coverage under the Policy is excluded pursuant to the undisputed facts
23 of this case—namely, that Mr. Lewis was driving a KTM motorcycle at the time of the accident,
24 which was owned by the Lewis family, but not otherwise insured under the Policy.

25 Plaintiff’s arguments to the contrary do not alter this conclusion. Plaintiff claims that the
26 definition of “motor vehicle” set forth in the operative section, which excludes off-road vehicles from

27
28 ¹ Mid-Century asserts a similar argument in its Opposition to Cross-Motion, maintaining that under Plaintiff’s logic, he
would have UM/UIM coverage any time he is injured while riding any off-road vehicle, regardless of the fact that no such
off-road vehicles are insured under the Policy. *See* Opp’n to Cross-Mot.

1 the definition of “motor vehicle” somehow applies to the word “vehicle” included in the exception—
2 rendering the exclusion inapplicable to Plaintiff. This argument lacks merit. First, “motor vehicle”
3 is a defined term, and that term is not utilized in the exclusion. Instead, that term is utilized in the
4 following context:

5 We will pay all sums which an **insured person** is legally entitled to recover as
6 **damages** from the owner or operator of an **uninsured motor vehicle** because
7 of **bodily injury** sustained by the **insured person**. The **bodily injury** must be
8 caused by an **accident** and arise out of the ownership, maintenance or use of the
uninsured motor vehicle.

9 Policy at 7. In other words, if a person covered by the Policy was injured by the owner of an uninsured
10 motor vehicle, *i.e.*, a land motor vehicle other than one “[d]esigned principally for use off public
11 roads,” then the Policy would cover such injuries. *See id.* Therefore, this Court rejects Plaintiff’s
12 characterization that this defined term somehow applies to the word “vehicle” in the exclusion, or
13 otherwise renders the exclusion ambiguous. In fact, this Court agrees with Mid-Century’s contention
14 that to adopt Plaintiff’s logic would require Mid-Century, under the Policy, to provide UM/UM
15 coverage any time Plaintiff is injured while riding any off-road vehicle, regardless of the fact that no
16 such off-road vehicles are insured under the Policy. Thus, summary judgment is granted in favor of
17 Mid-Century.

18 Based on the foregoing, and good cause appearing,

19 IT IS HEREBY ORDERED that Defendant Mid-Century Insurance Company’s *Motion for*
20 *Summary Judgment* is GRANTED.

21 IT IS HEREBY FURTHER ORDERED that Plaintiff Austin Lewis’ *Cross Motion for Partial*
22 *Summary Judgment* is DENIED.

23 IT IS SO ORDERED.

24 DATED this 8th day of June, 2021.

25 
26 KATHLEEN M. DRAKULICH
27 DISTRICT JUDGE
28

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV20-01047

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 8th day of June, 2021, I electronically
5 filed the **ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT;**
6 **AND (2) DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY**
7 **JUDGMENT** with the Clerk of the Court by using the ECF system.

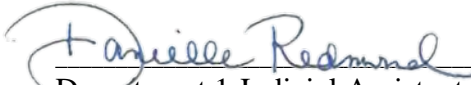
8 I further certify that I transmitted a true and correct copy of the foregoing document by the
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**
11 **of electronic filing to the following:**

12 TODD ALEXANDER, ESQ. for MID-CENTURY INSURANCE COMPANY

13 GRAHAM GALLOWAY, ESQ. for AUSTIN LEWIS et al

14 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
15 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**
16 **[NONE]**

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21 Department 1 Judicial Assistant
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1 **2540**
Todd R. Alexander, Esq. NSB #10846
2 Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
3 Reno, Nevada 89519
(775) 786-6868
4 tra@lge.net
Attorneys for Defendant
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 AUSTIN LEWIS, an individual

10 Plaintiff,

11 vs.

12 MID-CENTURY INSURANCE COMPANY, ROE
13 CORPORATIONS I-X and DOES I-X inclusive,

14 Defendants.

Case No. CV20-01047

Dept. No. 1

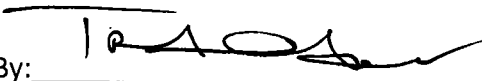
15 **NOTICE OF ENTRY OF ORDER**

16 **PLEASE TAKE NOTICE** that the Order (1) Granting Defendant's Motion for Summary
17 Judgment; and (2) Denying Plaintiff's Cross-Motion for Partial Summary Judgment was entered
18 on June 8, 2021. A copy of said Order is attached hereto as **Exhibit 1**.

19 **The undersigned does hereby affirm that the preceding document does not contain**
20 **the social security number of any person.**

21 Dated: June 9, 2021.


22 Lemons, Grundy & Eisenberg

23
24 By: 
25 Todd R. Alexander, Esq.
26 Attorney for Defendant
27
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the law office of Lemons, Grundy & Eisenberg
3 and that on June 9, 2021, I e-filed a true and correct copy of the foregoing **NOTICE OF**
4 **ENTRY OF ORDER**, with the Clerk of the Court through the Court's eFlex electronic filing
5 system and notice will be sent electronically by the Court to the following:

6 Graham Galloway, Esq.
7 Galloway & Jensen
8 222 California Avenue
9 Reno, Nevada 89509


Susan G. Davis

INDEX OF EXHIBITS

<i>Exhibit No.</i>	<i>Description</i>	<i>Length of Exhibit</i>
1	Order (1) Granting Defendant's Motion for Summary Judgment; and (2) Denying Plaintiff's Cross-Motion for Partial Summary Judgment	7 pages

EXHIBIT 1

EXHIBIT 1

1 2682

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3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9 AUSTIN LEWIS, an individual,

10 Plaintiff,

11 vs.

Case No.: CV20-01047

12 Dept. No.: 1

13 MID-CENTURY INSURANCE COMPANY,
14 ROE CORPORATIONS I-X and
DOES I-X inclusive,

15 Defendants.
16 _____/

17 **ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; AND**
18 **(2) DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

19 Currently before the Court is Defendant Mid-Century Insurance Company's ("Mid-Century"
20 or "Defendant") *Motion for Summary Judgment* ("Motion") filed March 3, 2021. On March 16, 2021,
21 Plaintiff Austin Lewis ("Mr. Lewis" or "Plaintiff") filed *Plaintiff's Opposition to Motion for Summary*
22 *Judgment* ("Opposition"). On March 25, 2021, Mid-Century filed a *Reply in Support of Motion for*
23 *Summary Judgment* ("Reply"), and submitted the matter to the Court for consideration.

24 Also before the Court is *Plaintiff's Cross Motion for Partial Summary Judgment* ("Cross-
25 Motion") filed March 17, 2021. On March 29, 2021, Mid-Century filed an *Opposition to Plaintiff's*
26 *Cross-Motion for Partial Summary Judgment* ("Opposition to Cross-Motion"). On April 5, 2021,
27 Mr. Lewis filed a *Reply in Support of Plaintiff's Cross-Motion for Partial Summary Judgment*
28 ("Reply to Cross-Motion"), and submitted the matter to the Court for consideration.

1 In the Motion, Mid-Century argues that summary judgment in this insurance coverage dispute
2 should be granted in favor of Mid-Century, maintaining that uninsured motorist coverage under the
3 Mid-Century policy is excluded pursuant to the undisputed facts of this case. *See* Motion. On the
4 other hand, Mr. Lewis asserts in the Cross-Motion that he is entitled to partial summary judgment on
5 the issue of the amount of the underinsured motorist limits available to him under Mid-Century's
6 policy, and that the limiting exclusion language asserted by Mid-Century does not apply to the facts
7 of this matter. *See* Cross-Motion. As detailed below, this Court finds that Mid-Century is entitled to
8 judgment as a matter of law and grants its Motion.

9 **I. Background**

10 **a. Pleadings**

11 This is a dispute over insurance coverage in a first-party, uninsured motorist claim. Mr. Lewis
12 asserts the following allegations in support of his claim for breach of the operative insurance contract:

- 13 1. On or about October 26, 2019, Plaintiff was injured when Joshua Brackett negligently,
14 carelessly, and recklessly operated an automobile so as to cause it to crash with an off-road
15 motorcycle Plaintiff was riding. As a result of the crash, Plaintiff sustained personal injuries,
16 and Plaintiff's injuries and medical bills exceeded Mr. Brackett's \$15,000.00 liability limit
17 set forth in his policy. Am. Compl. at ¶ 4.
- 18 2. On or about October 26, 2019, Plaintiff was insured under a policy of insurance ("Policy")
19 through Mid-Century, which was in full force and effect at the time of the collision. *Id.* at ¶
20 5.
- 21 3. Plaintiff has performed all conditions required by his Policy with Mid-Century, and has made
22 a demand upon Mid-Century to pay the uninsured motorist coverage to which Plaintiff is
23 entitled under the Policy. Mid-Century refuses to pay Plaintiff under his uninsured motorist
24 coverage an amount sufficient to adequately compensate Plaintiff for his injuries claiming an
25 exclusion limits the underinsured motorist coverage to \$25,000.00. Plaintiff believes this
26 exclusion does not apply to his claim, and therefore Defendant has breached the terms of the
27 Policy. *Id.* at ¶ 6.

28 ///

1 4. As a result of Defendant's breach of the Policy between Plaintiff and Mid-Century, Mid-
2 Century has become liable to Plaintiff for contract and consequential damages. *Id.* at ¶ 7.

3 Notably, Mid-Century admits that Plaintiff was a covered household driver under the Policy,
4 issued by Mid-Century to Rochelle L. Lewis, Policy No. 18927-90-72, and that said Policy was in
5 effect at the time of the subject collision; however, Mr. Century denies that the Policy afforded
6 uninsured motorist coverage for Plaintiff in the alleged injury-causing incident. Ans. to Am. Compl.
7 at ¶¶ 5, 6.

8 **b. Insurance Policy**

9 In Part II of the Policy, entitled Uninsured Motorist, provides that Mid-Century

10 will pay all sums which an **insured person** is legally entitled to recover as
11 **damages** from the owner or operator of an **uninsured motor vehicle** because
12 of **bodily injury** sustained by the **insured person**. The **bodily injury** must be
13 caused by an **accident** and arise out of the ownership, maintenance or use of the
uninsured motor vehicle.

14 Mot., Ex. 1 (Policy) at 7. Notably, "[t]his coverage does not apply while **occupying** any vehicle
15 owned by you or a **family member** for which insurance is not afforded under this policy or through
16 being struck by that vehicle." *Id.* at 8.

17 The Policy likewise defines "Motor vehicle" and "Uninsured motor vehicle" the definitions
18 of which are to be considered only in Part II:

19 2. **Motor vehicle** means a land motor vehicle or a trailer but does not mean a
20 vehicle:

- 21 a. Operated on rails or crawler-treads.
22 b. Designated principally for use of public roads, including, but not limited
23 to, dune buggies, go-carts, all terrain vehicles of two or more wheels,
24 mini-bikes, farm tractors and other farm equipment, stock cars and all
other racing cars, and all other vehicles of similar characteristics.
25 c. Used as a residence or office.

26 3. **Uninsured motor vehicle** means a **motor vehicle** which is:

- 27 a. Not insured by a **bodily injury** liability bond or policy at the time of the
28 **accident**.

....
Uninsured motor vehicle, however, does not mean a vehicle:

- a. Insured under the liability coverage of this policy.

1 b. Owned by or furnished or available for regular use by your or any **family**
2 **member**.

3 *Id.* at 7-8.

4 The only vehicles insured under the Policy are as follows: (1) 2013 Audi A7 Quattro; (2) 2007
5 Chevrolet Colorado; (3) 2018 Ford F350; and (4) 1997 Ford F150. *See* Mot., Ex. 2 (Policy
6 Declaration).

7 **II. Legal Authority**

8 NRCP 56(a) instructs that a “court shall grant summary judgment if the movant shows that
9 there is no genuine dispute as to material fact and the movant is entitled to judgment as a matter of
10 law.” A genuine issue of material fact exists when the evidence is such that a rational trier of fact
11 could return a verdict for the nonmoving party. *Woods v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026,
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14 factual allegations, and reasonable inferences favorable to the non-moving party as true. *C. Nicholas*
15 *Pereos, Ltd. v. Bank of Am.*, 131 Nev. 436, 441, 352 P.3d 1133, 1136 (2015); *NGA No. 2 Ltd. Liab.*
16 *Co. v. Rains*, 113 Nev. 1151, 1157, 946 P.2d 163, 167 (1997).

17 **III. Analysis**

18 In both the Motion and Cross-Motion, each party seeks a determination regarding the
19 interpretation of the Policy with respect to the uninsured motorist coverage. *See Galardi v. Naples*
20 *Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (“[I]n the absence of ambiguity or other
21 factual complexities, contract interpretation presents a question of law that the district court may
22 decide on summary judgment.” (internal quotation marks omitted)). Mid-Century argues that the
23 applicable exclusion is susceptible to only one reasonable interpretation—which negates uninsured
24 motorist coverage under the undisputed facts of this case: “[t]his coverage does not apply while
25 **occupying** any vehicle owned by you or a **family member** for which insurance is not afforded under
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27 *Galardi*, 129 Nev. at 309, 301 P.3d at 366 (“A contract is ambiguous if its terms may reasonably be
28 interpreted in more than one way, but ambiguity does not arise simply because the parties disagree

1 on how to interpret their contract.” (internal citation omitted)). Mid-Century contends that Mr. Lewis
2 was riding an off-road motorcycle owned by the Lewis family, and that said motorcycle was not
3 insured under the Policy; therefore, Mid-Century maintains that uninsured motorist coverage under
4 the Mid-Century policy is excluded under the undisputed facts of this case.¹ *Id.* at 4:17-22.

5 In Plaintiff’s Opposition, as well as his Cross-Motion, Plaintiff asserts that the definition of
6 “motor vehicle” contained in the UM/UIM provisions of the Policy, defines a motor vehicle to not
7 include an off-road motorcycle, and therefore the exclusion does not apply to limit coverage to the
8 Plaintiff. Opp’n at 3:5-4:13; *see also* Cross-Mot. at 2:21-3:2. In the alternative, Plaintiff asserts at a
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10 of “motor vehicle,” such that the language in the Policy must be construed against Defendant. Opp’n
11 at 4:14-7:19; Cross-Mot. at 3:2-3:6.

12 In consideration of the foregoing arguments, as well as the operative legal authority, this Court
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15 the contrary. And as the material facts are not in dispute, this Court may properly interpret the Policy,
16 which presents a question of law, on summary judgment. *See Galardi*, 129 Nev. at 309, 301 P.3d at
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18 motorcycle, driven by Plaintiff at the time of the incident, is *not* covered by the Policy. *See* Policy
19 Declaration. The pertinent exclusion contained in the Policy explicitly states, “[T]his coverage does
20 not apply while **occupying** any vehicle owned by you or a **family member** for which insurance is
21 not afforded under this policy or through being struck by that vehicle.” *See* Policy. Based on the
22 foregoing, uninsured motorist coverage under the Policy is excluded pursuant to the undisputed facts
23 of this case—namely, that Mr. Lewis was driving a KTM motorcycle at the time of the accident,
24 which was owned by the Lewis family, but not otherwise insured under the Policy.

25 Plaintiff’s arguments to the contrary do not alter this conclusion. Plaintiff claims that the
26 definition of “motor vehicle” set forth in the operative section, which excludes off-road vehicles from

27 ¹ Mid-Century asserts a similar argument in its Opposition to Cross-Motion, maintaining that under Plaintiff’s logic, he
28 would have UM/UIM coverage any time he is injured while riding any off-road vehicle, regardless of the fact that no such
off-road vehicles are insured under the Policy. *See* Opp’n to Cross-Mot.

1 the definition of “motor vehicle” somehow applies to the word “vehicle” included in the exception—
2 rendering the exclusion inapplicable to Plaintiff. This argument lacks merit. First, “motor vehicle”
3 is a defined term, and that term is not utilized in the exclusion. Instead, that term is utilized in the
4 following context:

5 We will pay all sums which an **insured person** is legally entitled to recover as
6 **damages** from the owner or operator of an **uninsured motor vehicle** because
7 of **bodily injury** sustained by the **insured person**. The **bodily injury** must be
8 caused by an **accident** and arise out of the ownership, maintenance or use of the
9 **uninsured motor vehicle**.

10 Policy at 7. In other words, if a person covered by the Policy was injured by the owner of an uninsured
11 motor vehicle, *i.e.*, a land motor vehicle other than one “[d]esigned principally for use off public
12 roads,” then the Policy would cover such injuries. *See id.* Therefore, this Court rejects Plaintiff’s
13 characterization that this defined term somehow applies to the word “vehicle” in the exclusion, or
14 otherwise renders the exclusion ambiguous. In fact, this Court agrees with Mid-Century’s contention
15 that to adopt Plaintiff’s logic would require Mid-Century, under the Policy, to provide UM/UIM
16 coverage any time Plaintiff is injured while riding any off-road vehicle, regardless of the fact that no
17 such off-road vehicles are insured under the Policy. Thus, summary judgment is granted in favor of
18 Mid-Century.

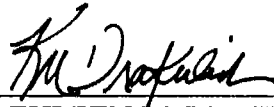
19 Based on the foregoing, and good cause appearing,

20 IT IS HEREBY ORDERED that Defendant Mid-Century Insurance Company’s *Motion for*
21 *Summary Judgment* is GRANTED.

22 IT IS HEREBY FURTHER ORDERED that Plaintiff Austin Lewis’ *Cross Motion for Partial*
23 *Summary Judgment* is DENIED.

24 IT IS SO ORDERED.

25 DATED this 8th day of June, 2021.

26 
27 KATHLEEN M. DRAKULICH
28 DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV20-01047

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 8th day of June, 2021, I electronically
5 filed the **ORDER (1) GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT;**
6 **AND (2) DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY**
7 **JUDGMENT** with the Clerk of the Court by using the ECF system.

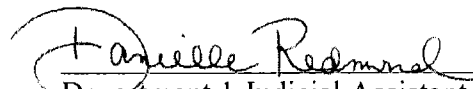
8 I further certify that I transmitted a true and correct copy of the foregoing document by the
9 method(s) noted below:

10 **Electronically filed with the Clerk of the Court by using the ECF system which will send a notice**
11 **of electronic filing to the following:**

12 TODD ALEXANDER, ESQ. for MID-CENTURY INSURANCE COMPANY

13 GRAHAM GALLOWAY, ESQ. for AUSTIN LEWIS et al

14 **Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage**
15 **and mailing by Washoe County using the United States Postal Service in Reno, Nevada:**
16 **[NONE]**

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21 Department 1 Judicial Assistant
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1 Code 1350

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

5

6

AUSTIN LEWIS, an individual,

Case No. CV20-01047

7

Plaintiff,

Dept. No. 1

8

vs.

9

**MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X an
DOES I-X inclusive,**

10

11

Defendants.

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CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL

16

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on the 17th day of June, 2021, I electronically filed the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

17

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19

I further certify that the transmitted record is a true and correct copy of the original pleadings on file with the Second Judicial District Court.

20

Dated this 17th day of June, 2021.

21

22

Alicia Lerud, Interim

23

Clerk of the Court

24

By /s/YViloria

25

YViloria

26

Deputy Clerk

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Code 4132

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Case No. CV20-01047

AUSTIN LEWIS, an individual,

Dept. No. 1

Plaintiff,

vs.

MID-CENTURY INSURANCE COMPANY,
ROE CORPORATIONS I-X an
DOES I-X inclusive,

Defendants.

NOTICE OF APPEAL DEFICIENCY

TO: Clerk of the Court, Nevada Supreme Court,
and All Parties or their Respective Counsel of Record:

On June 15TH, 2021, Attorney Grahm Galloway, Esq. for Austin Lewis, filed a Notice of Appeal with the Court. Attorney Galloway was unable to include the Two Hundred Fifty Dollar (\$250.00) Supreme Court filing fee due to the public closure of the Second Judicial District Court Administrative Order 2021-05(A).

Pursuant to NRAP 3(a)(3), on June 17th, 2021, the Notice of Appeal will be filed with the Nevada Supreme Court. By copy of this notice. Attorney Galloway was notified by electronic mail of the deficiency. (A notice to pay will be issued once the Notice of Appeal is filed in by the Nevada Supreme Court.)

Dated this 17th day of June, 2021.

Jacqueline Bryant
Clerk of the Court
By: /s/YViloria
YViloria
Deputy Clerk

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CERTIFICATE OF SERVICE

CASE NO. CV20-01047

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 17th day of June, 2021, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

TODD ALEXANDER, ESQ. for MID-CENTURY INSURANCE COMPANY

GRAHAM GALLOWAY, ESQ. for AUSTIN LEWIS et al

/s/YViloria
YViloria
Deputy Clerk