

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

GARY LEWIS,  
Appellant,  
vs.  
UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Respondent.

No. 83881  
Electronically Filed  
Jan 03 2022 03:56 p.m.  
Elizabeth N. Brown  
Clerk of Supreme Court  
DOCKETING  
CIVIL APPEALS

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 5  
County Clark Judge Barisich  
District Ct. Case No. A-18-772220

**2. Attorney filing this docketing statement:**

Attorney Thomas Christensen Telephone 702-870-1000  
Firm Christensen Law Offices  
Address 1000 S. Valley View Blvd., Suite P  
Las Vegas, NV 89107

Client(s) Gary Lewis, Third Party Plaintiff

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Daniel Polsenberg Telephone 702-474-2616  
Firm Lewis Roca  
Address 3993 Howard Hughes Parkway  
Las Vegas, NV 89169

Client(s) United Automobile Insurance Company

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_  
Firm \_\_\_\_\_  
Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:                                     |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction                           |
| <input checked="" type="checkbox"/> Summary judgment        | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Consolidated Writs: 78085 and 78243

Writ: 80965

Appeal: 79487

Certified Questions: 70504

Consolidated Appeals: 81710 and 81510

Appeal: 83392

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

UAIC v. Lewis, Christensen, Arntz, 2:18-cv-2269 (US Dist. Ct, Nevada) (pending)

Christensen et al v. UAIC, 20-16729 (9th Cir. Appeal) (pending)

Nalder et al v. UAIC, 21-16283 (9th Cir. Appeal) (pending)

Nalder v. Lewis, 07A549111, (Clark County District Court)(judgment in favor of Nalder 2018)

Nalder v. Lewis, KS021378, Superior Court of CA)(judgment in favor of Nalder 2018)

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This appeal concerns an award of costs. The Order appealed from does not define against whom the costs were awarded.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

May the trial court award costs without identifying which claim the costs were related to and against which party the costs may be enforced?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

See response to #6 above.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively assigned to the Court of Appeals, however the Supreme Court has already decided many issues and cases pertaining to these parties and this matter and it would make sense for the Supreme Court to also retain this case.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** October 27, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served** October 27, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** November 30, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Cheyenne Nalder: December 13, 2021

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4

**SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal of an Order/judgment entered in an action commenced in the court in which it was rendered.



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Cheyenne Nalder as Plaintiff, Gary Lewis as Defendant, UAIC as Intervenor

Gary Lewis as Third Party Plaintiff, UAIC as Third Party Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Cheyenne Nalder action on 2018 judgment. August 14, 2021 dismissed (also on appeal).

Gary Lewis breach of duty of good faith and fair dealing, breach of the duty to defend and pay *Cumis/Hansen* fees. August 14, 2021 dismissed (also on appeal.)

UAIC did not file an Answer or complaint in Intervention in this case; No responsive pleading on file.

UAIC's motion alleged Nalder was bound by claim and issue preclusion (by a 9th Circuit's post 2018 dismissal of appeal for lack of standing).

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

There are no claims pending below, however other claims are already on appeal in case number 83392 .

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The Order granting costs is independently appealable under NRAP 3A(b)

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Gary Lewis, Third Party Plaintiff  
Name of appellant

Thomas Christensen  
Name of counsel of record

January 3, 2022  
Date

/s/Thomas Christensen  
Signature of counsel of record

Clark, Nevada  
State and county where signed

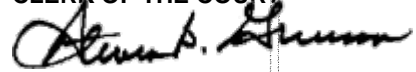
## CERTIFICATE OF SERVICE

I certify that on the 3rd day of January, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)
- ☒ Via EService via Eflex system

Dated this 3rd day of January, 2022

Dawn Hooker  
Signature



**TPC**

Thomas Christensen, Esq.  
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courtnotices@injuryhelpnow.com  
Attorney for Third Party Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**THIRD PARTY COMPLAINT**

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

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

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

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

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

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

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

28 6. This incident occurred on private property.

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

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

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

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

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

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

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

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

16          15.      UAIC never filed a declaratory relief action.

17          16.      UAIC rejected Nalder's offer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

2           38. UAIC, instead, tried to protect themselves and harm Lewis by filing a motion to  
3 dismiss Gary Lewis' and Nalder's appeal with the Ninth Circuit for lack of standing.  
4

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

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

9           41. UAIC ignored all of the tolling statutes and presented new evidence into the  
10 appeal process, arguing Nalder's underlying \$3,500,000.00 judgment against Lewis is not  
11 enforceable because the six-year statute of limitation to institute an action upon the judgment or  
12 to renew the judgment pursuant to NRS 11.190(1)(a) expired.  
13

14           42. As a result, UAIC contends Nalder can no longer recover damages above the  
15 \$15,000.00 policy limit for breach of the contractual duty to defend. UAIC admits the Nalder  
16 judgment was valid at the time the Federal District Court made its decision regarding damages.  
17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21           67. David Stephens thereafter filed oppositions and hand-delivered courtesy copies to  
22 the court. UAIC filed replies. The matter was fully briefed before the in chambers "hearing,"  
23 but the court granted the motions citing in the minuted order that "no opposition was filed."  
24

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

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

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

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

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

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

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

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

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

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

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

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

1           80. Gary Lewis himself and his attorneys, Thomas Christensen, Esq. and E. Breen  
2 Arntz, Esq., have requested that Tindall withdraw the pleadings filed fraudulently by Tindall.  
3

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

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

9           83. This is a false statement as Dave Stephens was investigated by this same state  
10 actor Phil Pattee while he was currently representing the client in ongoing litigation.  
11

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

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

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

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

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

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

11  
12           90. That UAIC failed to settle the claim within the policy limits when given the  
13 opportunity to do so and then compounded that error by making frivolous and fraudulent claims  
14 and represented to the court that it would be bound by any judgment and is therefore responsible  
15 for the full extent of any judgment against Gary Lewis in this action.  
16

17           91. UAIC and Tindall's actions have interfered with the settlement agreement Breen  
18 Arntz had negotiated with David Stephens and have caused Gary Lewis to be further damaged.  
19

20           92. The actions of UAIC and Tindall, and each of them, in this matter have been  
21 fraudulent, malicious, oppressive and in conscious disregard of Gary Lewis' rights and therefore  
22 Gary Lewis is entitled to punitive damages in an amount in excess of Ten Thousand Dollars  
23 (\$10,000.00).  
24

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

1           94.     That UAIC, and each of them, owed a duty of good faith and fair dealing  
2 implied in every contract.  
3

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

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

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

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

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

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

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

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

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

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

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

1 distress, and other incidental damages and out of pocket expenses, all to their general damage in  
2 excess of \$10,0000.

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

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

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

- 13  
14 a. Unreasonable conduct in investigating the loss;  
15 b. Unreasonable failure to affirm or deny coverage for the loss;  
16 c. Unreasonable delay in making payment on the loss;  
17 d. Failure to make a prompt, fair and equitable settlement for the loss;  
18 e. Unreasonably compelling Gary Lewis to retain an attorney before affording coverage or  
19 making payment on the loss;  
20 f. Failing to defend Gary Lewis;  
21 g. Fraudulent and frivolous litigation tactics;  
22 h. Filing false and fraudulent pleadings;  
23 i. Conspiring with others to file false and fraudulent pleadings;  
24

25 106. As a proximate result of the aforementioned violation of NRS 686A.310, Gary  
26 Lewis has suffered and will continue to suffer in the future damages as a result of the delayed  
27  
28

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

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

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

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

15 110. That UAIC, and each of them, had a duty of reasonable care in handling Gary  
16 Lewis' claim.  
17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

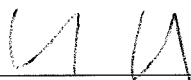
1           4.       Special damages in the amount of any Judgment ultimately awarded against him  
2  
3 in favor of Nalder plus any attorney fees, costs and interest.

4           5.       Attorney's fees; and

5           6.       Costs of suit;

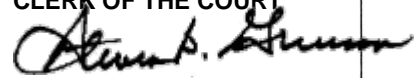
6           7.       For such other and further relief as the Court may deem just and proper.

7  
8 DATED THIS 24 day of October, 2018.

9  
10 

11 Thomas Christensen, Esq.  
12 Nevada Bar No. 2326  
13 1000 S. Valley View Blvd.  
14 Las Vegas, Nevada 89107  
15 T: (702) 870-1000  
16 F: (702) 870-6152  
17 courtnotices@injuryhelpnow.com  
18 Attorney for Cross-Claimant  
19 Third-party Plaintiff  
20  
21  
22  
23  
24  
25  
26  
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28





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*Attorneys for Intervenor United Automobile Insurance Company*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

<sup>B</sup>  
~~CHEYANNE~~ NALDER,

Plaintiff,

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

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants.

ORDER

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

<sup>B</sup>  
//

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//

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

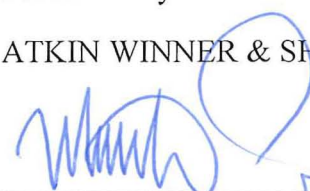
3           **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Intervenor  
4 UNITED AUTOMOBILE INSURANCE COMPANY'S shall file its responsive pleading within  
5 seven (7) days from the date of entry of this Order.

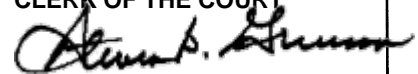
6 DATED this 11 day of October 2018

7  
8   
DISTRICT COURT JUDGE

9 Submitted by:

10 ATKIN WINNER & SHERROD

11   
12 \_\_\_\_\_  
13 Matthew J. Douglas  
14 Nevada Bar No. 11371  
15 1117 South Rancho Drive  
16 Las Vegas, Nevada 89102  
17 Attorneys for Intervenor UNITED  
18 AUTOMOBILE INSURANCE COMPANY  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 ORDR

2 EIGHTH JUDICIAL DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 CHEYANNE NALDER,

Case No. 07A549111

5 Plaintiff,

*Consolidated with Case No. A-18-772220-C*

6 vs.

7 GARY LEWIS, an individual; and DOES I  
through V, inclusive,

Dept. No. XX

8 Defendants,

9 UNITED AUTOMOBILE INSURANCE  
10 COMPANY,

11 Intervenor,

**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**

12 GARY LEWIS,

13 Third Party Plaintiff,

14 vs.

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

17 Third Party Defendants.

18 **INTRODUCTION**

19 Intervenor United Automobile Insurance Company ("UAIC") filed its Motion for Relief  
20 from Judgment, Entered 1/23/19 in Case No A-18-772220-C, Pursuant to NRCP 60 and/or, in the  
21 Alternative, Motion for Rehearing on Motion to Dismiss Plaintiff's First Cause of Action in Case No  
22 A-18-772220-C on an Order Shortening Time on February 11, 2019. This matter was subsequently  
23 set for hearing on the 20<sup>th</sup> day of February 2019 before this Court. Having reviewed the papers and  
24 pleadings on file herein and good cause appearing, this Court grants in part UAIC's Motion for

1 Relief from Judgment, Entered 1/23/19 in Case No A-18-772220-C, Pursuant to NRCP 60 and/or, in  
2 the Alternative, Motion for Rehearing on Motion to Dismiss Plaintiff's First Cause of Action in Case  
3 No A-18-772220-C on an Order Shortening Time for the following reasons:

4 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

5 1. Case 07A549111 was instituted on October 9, 2007 by James Nalder, acting as Guardian  
6 ad Litem for Cheyenne Nalder against Gary Lewis ("Lewis") based on claims relating to a car  
7 accident which occurred on July 8, 2007. It was alleged that Lewis was operating a 1996 Chevy  
8 Pickup and struck Cheyenne Nalder with said vehicle. Nalder asserted a claim against Lewis for  
9 negligence. Nalder requested general damages, special damages for current and future medical  
10 expenses, special damages for current and future lost wages, and costs and attorney's fees associated  
11 with bringing this suit. UAIC declined to hire counsel to represent Lewis in this matter, because it  
12 believed that Lewis was not covered under his insurance policy given that he did not renew the  
13 policy on June 30, 2007.

14 2. On December 13, 2007, James Nalder, on behalf of Cheyenne Nalder, filed a Default  
15 with the Clerk of the Court based on Lewis' failure to file an Answer in this matter. An Application  
16 for Default Judgment was filed on May 15, 2008. An Amended Application for Default Judgment  
17 was filed on May 16, 2008. A Prove Up Hearing was conducted on May 22, 2008, at which time  
18 Default Judgment was granted. A Judgment was filed on June 3, 2008, and Nalder was awarded  
19 \$65,555.37 in medical expenses and \$3,434,444.63 in pain, suffering, and disfigurement for a total  
20 of \$3,500,000.00 with interest thereon at the legal rate from October 9, 2007, until paid in full.

21 3. On May 22, 2009, James Nalder, on behalf of Cheyenne Nalder, and Lewis filed suit  
22 against UAIC, alleging breach of contract, breach of the implied covenant of good faith and fair  
23 dealing, bad faith, fraud, and violation of NRS 686A.310. The case was subsequently removed to the  
24 United States District Court for the District of Nevada.

1           4. The federal court determined that Lewis' insurance coverage had lapsed and UAIC,  
2 therefore, did not have the duty to defend Lewis in the 2007 suit. This decision was appealed to the  
3 Ninth Circuit Court of Appeals, where it was reversed and remanded back to the lower federal court.  
4 The federal court later determined that the insurance contract was ambiguous, and therefore, the  
5 insurance coverage had not lapsed and UAIC had a duty to defend Lewis in 07A549111. The federal  
6 court determined that no damages were to be awarded, although UAIC breached its duty to defend  
7 Lewis. Both Nalder and Lewis appealed that decision to the Ninth Circuit Court of Appeals, which  
8 ultimately led to the certification of the first question to the Nevada Supreme Court.

9           5. UAIC filed a Motion to Dismiss Lewis and Nalder's appeal to the Ninth Circuit for lack  
10 of standing, asserting that the 2008 judgment was no longer enforceable because the judgment had  
11 expired pursuant to NRS 11.190(1)(a) because no renewal pursuant to NRS 17.124 had been filed.  
12 This question has also been certified to the Nevada Supreme Court for decision.

13           6. On March 22, 2018, Cheyenne Nalder ("Nalder") filed an Ex Parte Motion to Amend  
14 Judgment in the Name of Cheyenne Nalder, Individually. Nalder had reached the age of majority  
15 and no longer needed James Nalder to act as her Guardian ad Litem. The Amended Judgment was  
16 filed on March 28, 2018.

17           7. Case A-18-772220-C was instituted on April 3, 2018, by Nalder against Lewis based on  
18 claims relating to the same July 2007 car accident. Nalder asserted claims against Lewis in regards  
19 to her personal injuries suffered in 2007, requesting this Court to enter another Amended Judgment  
20 adding interest accrued through April 3, 2018, and declaratory relief stating that the statute of  
21 limitations on her original judgment was tolled.

22           8. UAIC filed its Motion to Intervene on August 17, 2018. The Order granting UAIC's  
23 Motion to Intervene was filed on October 19, 2018.

1           9. UAIC filed its Motion to Consolidate on Order Shortening Time on November 26, 2018.  
2 This matter was subsequently set for hearing on November 28, 2018. This Court entered a Minute  
3 Order granting consolidation on November 30, 2018. The cases have since been consolidated into  
4 Case 07A549111. The Order Granting Intervenor's Motion to Consolidate Cases on Order  
5 Shortening Time on December 27, 2018. All pending motions were transferred to Department XX of  
6 the Eighth Judicial District Court.

7           10. Several motions were filed in both 07A549111 and A-18-772220-C: Defendant Lewis  
8 filed a Motion to Dismiss and a Motion for Relief from Judgment pursuant to NRCP 60 in case A-  
9 18-772220-C on September 26, 2018. Defendant Lewis filed an identical Motion for Relief in case  
10 07A549111 on September 27, 2018. Defendant Lewis filed a Motion to Strike Defendant's Motion  
11 for Relief from Judgment in case 07A549111 on October 17, 2018. Defendant Lewis also filed a  
12 Motion to Strike Both Defendant's Motion for Relief from Judgment and Defendant's Motion to  
13 Dismiss in case A-18-772220-C on October 17, 2018. UAIC filed a Motion from Relief from  
14 Judgment Pursuant to NRCP 60 and a Motion to Dismiss Plaintiff's Complaint and Motion for Court  
15 to Deny Stipulation to Enter Judgment between Plaintiff and Lewis and/or, in the Alternative, to  
16 Stay Same Pending Hearing on Motion to Dismiss on in case 07A549111 on October 19, 2018.  
17 Third Party Plaintiff Lewis filed a Motion for Relief from Orders and Joinder in Motions for Relief  
18 from Orders on Order Shortening Time on December 12, 2018. Plaintiff Nalder filed a Motion to Set  
19 Aside Order, Pursuant to NRCP 60(b) Allowing UAIC to Intervene on December 13, 2018. UAIC  
20 filed an Opposition to Third Party Plaintiff Lewis' Motion for Relief from Order and Joinder in  
21 Motions for Relief from Orders on Order Shortening Time as well as UAIC's Opposition to  
22 Plaintiff's Motion to Set Aside Order & Opposition to Defendant Lewis' Motion for Relief from  
23 Orders and Countermotion to Stay Pending Ruling on Appeal on December 31, 2018. Finally,

1 Randall Tindall, Esq., filed a Motion to Withdraw as Counsel on Order Shortening Time on January  
2 7, 2019. All matters were subsequently set for hearing on January 9, 2019.

3 11. On January 9, 2019, the above matters were set for hearing. Nalder appeared by and  
4 through her attorney David Stephens, Esq., of Stephens & Bywater. Defendant Gary Lewis  
5 appeared by and through his counsel E. Breen Arntz, Esq. Third Party Plaintiff Gary Lewis also  
6 appeared by an through his counsel Thomas Christensen, Esq., of Christensen Law Offices.  
7 Intervenor/Third Party Defendant UAIC appeared by and through its counsel Matthew J. Douglas,  
8 Esq., and Thomas E. Winner, Esq., of Atkin Winner & Sherrod. Third Party Defendants Randall  
9 Tindall, Esq., and Resnick & Louis, P.C. appeared by and through their counsel Dan R. Waite,  
10 Esq., of Lewis Roca Rothgerber Christie LLP.

11 The Court GRANTED the following motions: Defendant's Motion to Strike Both  
12 Defendant's Motion for Relief from Judgment and Defendant's Motion to Dismiss, Defendant's  
13 Motion to Strike Defendant's Motion for Relief from Judgment, and Randall Tindall, Esq.'s Motion  
14 to Withdraw as Counsel on Order Shortening Time. The Court GRANTED IN PART the following  
15 motions: UAIC's Motion to Dismiss Plaintiff's Complaint and Motion for Court to Deny Stipulation  
16 to Enter Judgment Between Plaintiff and Lewis and/or, in the Alternative, to Stay Same Pending  
17 Hearing on Motion to Dismiss and UAIC's Opposition to Plaintiff's Motion to Set Aside Order &  
18 Opposition to Defendant Lewis' Motion for Relief from Orders and Countermotion to Stay Pending  
19 Ruling on Appeal. The Court DENIED the following motions: UAIC's Motion for Relief from  
20 Judgment Pursuant to NRCP 60, Third Party Plaintiff's Motion for Relief from Orders and Joinder  
21 in Motions for Relief from Orders on Order Shortening Time, and Plaintiff's Motion to Set Aside  
22 Order, Pursuant to NRCP 60(b) Allowing UAIC to Intervene. The Court WITHDREW the following  
23 motions: Defendant's Motion for Relief from Judgment Pursuant to NRCP 60 and Defendant's  
24 Motion to Dismiss.

1        12. Further, at the time of the hearing, the Court granted UAIC's counter-motion for stay  
2 pending appeal and issued a stay of the case pending the determination from the Nevada Supreme  
3 Court. The Court determined that many of the motions revolved around the questions currently  
4 certified to the Nevada Supreme Court, i.e., whether the 2008 Judgment has expired or whether the  
5 statute of limitations was tolled. The Court further stated on the record that it had received a  
6 proposed Judgment from the parties, but declined to sign it until the questions on appeal had been  
7 resolved.

8        13. Nalder filed a Motion for Summary Judgment Pursuant to NRCP 60(b) on November 28,  
9 2018. UAIC filed its Opposition and Counter-motion to Stay Proceedings Pending Appellate Ruling  
10 on December 20, 2018. UAIC filed a Motion to Dismiss Third Party Plaintiff Lewis' Third Party  
11 Complaint on November 15, 2018. Lewis filed an Opposition and Counter-motion for Summary  
12 Judgment on November 27, 2018. UAIC filed its Opposition and Counter-motion to Strike Affidavit  
13 of Lewis and/or Stay Proceedings Pending Appellate Ruling and/or Stay Counter-motion for  
14 Summary Judgment Pursuant to NRCP 56(f). These matters were subsequently set for hearing on  
15 January 23, 2019.

16            The Court issued its decision via Minute Order on January 22, 2019. The Court  
17 GRANTED UAIC's requests for stay and again reiterated that the central questions involved in  
18 these motions are the same as the question currently certified to the Nevada Supreme Court.

19        14. On January 22, 2019, Lewis filed a Notice of Acceptance of Offer of Judgment in Case  
20 No. 18-A-772220 in Case No. 07A549111. A Judgment was then signed and filed by the Clerk of  
21 the Court later that same day, although the date beside the Clerk's signature is January 23, 2019.  
22 Notice of Entry of Judgment was filed on January 28, 2019.

23        15. On February 11, 2019, UAIC filed the instant Motion for Relief from Judgment, Entered  
24 1/23/19 in Case No. A-18-772220-C, Pursuant to NRCP 60 and/or, in the Alternative, Motion for



1 Rehearing on Motion to Dismiss Plaintiff's First Cause of Action in Case No. A-18-772220-C on  
2 an Order Shortening Time. The matter was subsequently set on calendar for February 20, 2019.

3 **CONCLUSIONS OF LAW**

4 1. According to Nevada Rule of Civil Procedure ("NRCP") 60(b),

5 [o]n motion and just terms, the court may relieve a party or its legal  
6 representative from a final judgment, order, or proceeding for the  
7 following reasons:

8 (1) mistake, inadvertence, surprise, or excusable neglect;

9 (2) newly discovered evidence that, with reasonable diligence,  
10 could not have been discovered in time to move for a new trial under  
11 Rule 59(b);

12 (3) fraud (whether previously called intrinsic or extrinsic),  
13 misrepresentation, or misconduct by an opposing party;

14 (4) the judgment is void;

15 (5) the judgment has been satisfied, released, or discharged; it  
16 is based on an earlier judgment that has been reversed or vacated; or  
17 applying it prospectively is no longer equitable; or

18 (6) any other reason that justifies relief.

19 2. The Nevada Supreme Court has held that, once a stay has been issued, a party may not  
20 seek to alter a judgment. *Westside Charter Serv. v. Gray Line Tours*, 99 Nev. 456, 664 P.2d 351  
21 (1983). In *Westside*, the District Court stayed the judgment pending the appeal of the denial of an  
22 NRCP 60(b) motion to vacate judgment. One of parties then began actions which may have been  
23 affected by the outcome of the appeal. The Nevada Supreme Court affirmed the stay as well as the  
24 denial of further action and stated:

It is also clear that the district court's stay of judgment while the case  
was under appeal did not allow PSC to deal with the subject matter of  
the judgment until a final decision had been rendered. The purpose of  
a stay is to preserve the *status quo ante*. It does not allow further  
modifications to the subject matter of the judgment. *East Standard  
Mining Co. v. Devine*, 59 Nev. 134, 81 P.2d 1068 (1938). In this case,  
the stay of judgment pending appeal effectively prevented any further  
administrative proceedings on the subject matter of the appeal while  
the order denying the NRCP 60(b) motion was on appeal. Thus, PSC  
was without jurisdiction to act when it did in regards to Westside's  
second application.

1 *Id.* at 460, 664 P.2d at 353.

2 3. Here, the Court stayed the case pending the appeal currently in front of the Nevada  
3 Supreme Court on January 9, 2019. This was conveyed to the parties through the Court's granting  
4 of UAIC's request to stay the action pending appeal as well as the Court's comments to the parties  
5 that it had received a judgment, but would not sign it until after the appeal had been decided. The  
6 Court made very clear that the issues on appeal would be affected by decisions made in this case,  
7 and so, in the interests of judicial economy, would be staying the matter pending appeal.

8 4. Further, the Court reiterated that the matter was to be stayed in the January 22, 2019  
9 Minute Order. The Court again granted UAIC's request to stay the matter pending appeal and again  
10 stated that the issues to be decided in these consolidated cases would be greatly affected by the  
11 decision made by the Nevada Supreme Court.

12 5. The Judgment was filed with the Clerk of the Court on January 22, 2019, after the matter  
13 had been stayed pending appeal. This was clearly a mistake or inadvertence by the Clerk's Office,  
14 as contemplated by NRCP 60(b). A judgment was not to be entered during the stay of the case, and  
15 so the Judgment filed January 22, 2019 in Case No. 07A549111 is void as a matter of law.  
16 Separately, the Court concludes the facts set out above justifies relief in this matter and withdraws  
17 the judgement.

18 **ORDER**

19 Based on the foregoing, UAIC's Motion for Relief from Judgment, Entered 1/23/19 in Case  
20 No A-18-772220-C, Pursuant to NRCP 60 and/or, in the Alternative, Motion for Rehearing on  
21 Motion to Dismiss Plaintiff's First Cause of Action in Case No A-18-772220-C on an Order  
22 Shortening Time is granted in part and the Court withdraws the Judgment entered by the Clerk of the  
23 Court on January 23, 2019. The Court finds that the matter was stayed at the time the Judgment was  
24 entered. Therefore, the Judgment is void as a matter of law. The Court further finds the facts stated

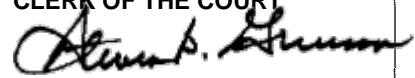
1 in this Order justify withdrawing the judgement. The Court declines to rehear the Motion to Dismiss  
2 Plaintiff's First Cause of Action in Case No. A-18-772220-C at this time.

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DATED this 14 day of February, 2019.



**ERIC JOHNSON**  
**DISTRICT COURT JUDGE**



NEO  
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*Attorneys for Intervenor United Automobile Insurance Company*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CHEYANNE NALDER,  
Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE  
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

CASE NO.: 07A549111  
DEPT. NO.: XX

*Consolidated with*  
CASE NO.: A-18-772220-C  
DEPT. NO.: XX.


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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that the attached **ORDER ON MOTIONS HEARD ON**  
2 **JANUARY 9, 2019** was entered by the Court on the 14<sup>th</sup> day of February 2019.

3 DATED this 15<sup>th</sup> day of February 2019.

4  
5 ATKIN WINNER & SHERROD

6  
7  #9192 for  
8 Matthew J. Douglas  
9 Nevada Bar No. 11371  
10 1117 South Rancho Drive  
11 Las Vegas, Nevada 89102  
12 Attorneys for Intervenor UNITED AUTOMOBILE  
13 INSURANCE COMPANY  
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CERTIFICATE OF SERVICE

I certify that on this 15<sup>th</sup> day of February, the foregoing **NOTICE OF ENTRY ORDER ON MOTIONS HEARD ON JANUARY 9, 2019** was served on the following by:  
**[XX] BY WIZNET pursuant to NEFR 9 this document(s) was electronically served through Odyssey CM/ECF for the above-entitled case to all the parties on the Service List maintained on Odyssey's website for this case on the date specified.**

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

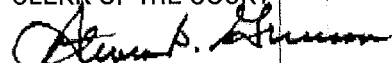
Breen Arntz, Esq.  
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*Additional Attorney for Defendant Lewis*

Randall Tindall, Esq.  
Carissa Christensen, Esq.  
RESNICK & LOUIS, P.C.  
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Las Vegas, NV 89148  
*Attorney for Defendant Lewis*

Daniel Polsenberg, Esq.  
LEWIS ROCA ROTHGERBER  
CHRISTIE, LLP  
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Las Vegas, NV. 89169  
*Counsel for Third-Party Defendants  
Tindal and Resnick & Louis*

  
An employee of ATKIN WINNER & SHERROD

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Steven D. Grierson  
CLERK OF THE COURT



1 **ORDER**

2 MATTHEW J. DOUGLAS  
3 Nevada Bar No. 11371  
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10 *Attorneys for Intervenor United Automobile Insurance Company*

11 EIGHTH JUDICIAL DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 CHEYANNE NALDER,

14 Plaintiff,

15 vs.

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

18 Defendants,

19 UNITED AUTOMOBILE INSURANCE  
20 COMPANY,

21 Intervenor.

22 GARY LEWIS,

23 Third Party Plaintiff,

24 vs.

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

Third Party Defendants.

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

*Consolidated with*  
CASE NO.: A-18-772220-C  
DEPT. NO.: 20.

**ORDER ON MOTIONS HEARD JANUARY 9<sup>th</sup>, 2019**

This matter having come on for hearing on January 9<sup>th</sup>, 2019, in Department XX, before

1 the Honorable Eric Johnson, on (1) Third Party Plaintiff Lewis' Motion for Relief from Orders  
2 and Joinder in Motions for Relief from Orders on Order Shortening Time, (2) Intervenor United  
3 Automobile Insurance Company's ("UAIC") Counter-Motion to Stay Pending Appeal, (3)  
4 Intervenor UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C), (4)  
5 Defendant Lewis' (through Breen Arntz, Esq.) withdrawals of Defendant Lewis Motions to  
6 Dismiss filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'  
7 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case  
8 no. 07A549111; (5) Defendant Lewis Motions to Dismiss (through Randall Tindall, Esq.) filed in  
9 case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis' Motions for Relief  
10 from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case no. 07A549111;  
11 (6) UAIC's Oral Motion to Continue Defendant Lewis Motions to Dismiss (through Randall  
12 Tindall, Esq.) filed in case No. A-18-772220-C and case no. 07A549111 and Defendants Lewis'  
13 Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C and case  
14 no. 07A549111 pending new counsel; (7) UAIC's Motion for an Evidentiary hearing for a fraud  
15 upon the court; Plaintiff appearing through her counsel of record David Stephens, Esq. of  
16 Stephens & Bywater, and Defendant Lewis appearing through his counsel of record, Breen  
17 Arntz, Esq., Intervenor/Third Party Defendant UAIC appearing through its counsel of record,  
18 Thomas E. Winner, Esq. & Matthew J. Douglas, Esq. of the Law Firm of Atkins Winner and  
19 Sherrod, Third Party Plaintiff Lewis appearing through his counsel of record Thomas  
20 Christensen, Esq. of The Christensen Law Offices, and Third Party Defendants Randall Tindall  
21 and Resnick & Louis P.C. appearing through their Counsel of record Dan R. Waite, Esq. of  
22 Lewis Roca Rothgerber Christie, LLP, the Court having reviewed the pleadings and documents  
23 on file herein, and consideration given to hearing at oral argument, finds as follows:  
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///



FINDINGS OF FACT

1. That the issues of law on second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504, are substantially similar and/or related to issues of law in these consolidated cases;
2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain issues of law which substantially similar and/or related to issues of law on a second certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504;
3. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to a July 2007 automobile accident have been previously litigated or, could have been litigated, in her original action, Case no. 07A549111, herein;
4. This case is unusual but the Court does not find any unethical behavior by either Mr. Christensen or Mr. Arnfz.

CONCLUSIONS OF LAW

1. Pursuant to N.R.C.P. 24 and N.R.S. 12.130 UAIC has a shown right and interest to intervene in these matters;
2. That the third claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-772220-C, herein, seeking general and special damages related to the July 2007 automobile accident are precluded as same have been previously litigated or, could

1 have been previously litigated in Case No. 07A549111, herein, pursuant to the factor  
2 as set forth *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054-55, 194 P.3d  
3 709,713 (2008).

- 4  
5 3. That the first claim for relief of Plaintiff Nalder in her Complaint in case no. A-18-  
6 772220-C, herein, seeking a new judgment on her original 2007 judgment from case  
7 no. 07A549111 is not a valid cause of action and the Court would dismiss same under  
8 the *Medina* decision, but based upon the request of Counsel for Plaintiff David  
9 Stephens, Plaintiff's first claim for relief will be stayed pending decision in *James*  
10 *Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis,*  
11 *individually v. United Automobile Insurance Company*, case no. 70504;

12 **ORDER**

13 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Third Party Plaintiff  
14 Lewis' Motion for Relief from Orders and Joinder in all other Motions for Relief from Orders on  
15 Order Shortening Time, as well as Plaintiff Nalder's Motion for Relief from Orders, are  
16 DENIED, for the reasons stated in the record; and,

17 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor's  
18 UAIC's Counter-Motion to Stay Pending Appeal is GRANTED, for ther reasons stated in the  
19 record, and Plaintiff Nalder's first and second claims for relief in her Complaint in case no. A-  
20 18-772220-C, herein, (claim 1) seeking a new judgment on her original judgment entered in case  
21 no. 07A549111 and, (claim 2) seeking Declaratory relief, respectively, are STAYED pending  
22 further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*  
23 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case  
24 no. 70504; and  
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27 *///*  
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1 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor  
2 UAIC's Motion to Dismiss Plaintiff's Complaint (Case No. A-18-772220-C) is GRANTED IN  
3 PART and DEFERRED IN PART, such that Plaintiff Nalder's third claim for relief in her  
4 Complaint in case no. A-18-772220-C, herein, (claim 3) seeking general and special damages  
5 related to and arising from the July 2007 automobile accident, is DISMISSED, but ruling on the  
6 Motion to Dismiss Plaintiff Nalder's first and second claims for relief in her Complaint in case  
7 no. A-18-772220-C, herein, seeking a new judgment on her original judgment, entered in case  
8 no. 07A549111 and seeking Declaratory relief, respectively, are DEFERRED pending further  
9 ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of*  
10 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case  
11 no. 70504;  
12

13 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that  
14 Defendant Lewis (through Breen Arntz, Esq.) WITHDRAWS of Defendant Lewis' Motions  
15 to Dismiss filed in case No. A-18-772220-C as well as case no. 07A549111 and Defendants  
16 Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60 in case No. A-18-772220-C  
17 as well as case no. 07A549111 (filed by Randall Tindall, Esq.) are hereby WITHDRAWN;  
18

19 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that  
20 Defendant Lewis Motions to Dismiss filed in case No. A-18-772220-C as well as case no.  
21 07A549111 and Defendants Lewis' Motions for Relief from Judgment pursuant to N.R.C.P. 60  
22 in case No. A-18-772220-C as well as case no. 07A549111 (through Randall Tindall, Esq.) are  
23 all hereby STRICKEN per WITHDRAWAL by Counsel for Lewis, Breen Arntz, Esq.;

24 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** that UAIC's  
25 Oral Motion to Continue Defendant Lewis' Motions to Dismiss filed in case No. A-18-772220-C  
26 as well as case no. 07A549111 and Defendants Lewis' Motions for Relief from Judgment  
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1 pursuant to N.R.C.P. 60 in case No. A-18-772220-C as well as case no. 07A549111 (through  
2 Randall Tindall, Esq.) pending new counsel to be retained by UAIC, is hereby DENIED  
3 WITHOUT PREJUDICE for the reasons stated in the record;

4 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** UAIC's  
5 Motion for an Evidentiary hearing for a fraud upon the court is hereby DENIED WITHOUT  
6 PREJUDICE for the reasons stated in the record.

7 **IT IS SO ORDERED.**


8 **DATED** this 11 day of FEBRUARY 2019.

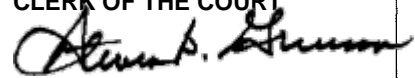
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12 DISTRICT JUDGE

ERIC JOHNSON *SS*

13 Submitted by:

14 ATKIN WINNER & SHERROD, LTD.

15   
16  
17 MATTHEW J. DOUGLAS, Esq.  
18 Nevada Bar No. 11371  
19 1117 South Rancho Drive  
20 Las Vegas, Nevada 89102  
21 *Attorneys for Intervenor UAIC*  
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*Attorneys for Intervenor United Automobile Insurance Company*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

CHEYANNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive,

Defendants,

UNITED AUTOMOBILE INSURANCE  
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

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

Third Party Defendants.

CASE NO.: 07A549111

DEPT. NO.: XX

*Consolidated with*

CASE NO.: A-18-772220-C

DEPT. NO.: XX.

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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

1 PLEASE TAKE NOTICE that the attached **ORDER ON MOTIONS HEARD ON**  
2 **JANUARY 23, 2019** was entered by the Court on the 14<sup>th</sup> day of February 2019.

3 DATED this 15<sup>th</sup> day of February 2019.

4  
5 ATKIN WINNER & SHERROD

6  
7 Matthew J. Douglas #9192 for  
8 Matthew J. Douglas  
9 Nevada Bar No. 11371  
10 1117 South Rancho Drive  
11 Las Vegas, Nevada 89102  
12 Attorneys for Intervenor UNITED AUTOMOBILE  
13 INSURANCE COMPANY  
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CERTIFICATE OF SERVICE

I certify that on this 15<sup>th</sup> day of February, the foregoing **NOTICE OF ENTRY ORDER ON MOTIONS HEARD ON JANUARY 23, 2019** was served on the following by:  
**[XX] BY WIZNET pursuant to NEFR 9 this document(s) was electronically served through Odyssey CM/ECF for the above-entitled case to all the parties on the Service List maintained on Odyssey's website for this case on the date specified.**

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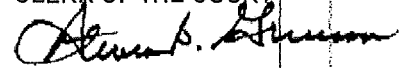
  
An employee of ATKIN WINNER & SHERROD

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Steven D. Grierson

CLERK OF THE COURT

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9 [mdouglas@awslawyers.com](mailto:mdouglas@awslawyers.com)10 *Attorneys for Intervenor United Automobile Insurance Company*11 **EIGHTH JUDICIAL DISTRICT COURT**12 **CLARK COUNTY, NEVADA**

13 CHEYANNE NALDER,

14 Plaintiff,

15 vs.

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

18 Defendants,

19 UNITED AUTOMOBILE INSURANCE  
20 COMPANY,

21 Intervenor.

22 GARY LEWIS,

23 Third Party Plaintiff,

24 vs.

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

Third Party Defendants.

CASE NO.: 07A549111

DEPT. NO.: 20

*Consolidated with*

CASE NO.: A-18-772220-C

DEPT. NO.: 20.

29 **ORDER ON MOTIONS FOR JANUARY 23<sup>rd</sup>, 2019**30 This matter having been set for hearing on January 23<sup>rd</sup>, 2019, in Department XX, before



1 the Honorable Eric Johnson, on (1) Plaintiff Nalder's Motion for Summary Judgment and Relief  
2 from Order Pursuant to N.R.C.P. 60(b), (2) Intervenor United Automobile Insurance Company's  
3 ("UAIC") Counter-Motion to Stay Plaintiff's Summary Judgment Pending Appeal, (3)  
4 Intervenor UAIC's Motion to Dismiss Third-Party Plaintiff Lewis's Complaint (Case No. A-18-  
5 772220-C), (4) Third-Party Plaintiff Lewis' Counter-Motion for summary judgment on his third-  
6 party complaint (case No. A-18-772220-C), (5) Intervenor UAIC's counter-motions to: (a) Strike  
7 the affidavit of Lewis for the counter-motion for summary judgment on the third-party  
8 complaint, and/or (b) Stay said counter-motion for summary judgment and other proceedings on  
9 the third party complaint pending Appellate ruling, and/or (c) Stay counter-Motion for summary  
10 judgment on the third party complaint pending discovery pursuant to N.R.C.P. 56  
11 (f); the Court having reviewed the pleadings and documents on file herein, issued a minute  
12 order, dated January 22, 2018, which vacated the scheduled January 23, 2019 hearings on the  
13 above-noted motions and, per same minute order, the Court finds as follows:  
14  
15

#### 16 FINDINGS OF FACT

- 17 1. That the issues of law on second certified question before the Nevada Supreme Court  
18 in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis,*  
19 *individually v. United Automobile Insurance Company*, case no. 70504, are  
20 substantially similar and/or related to issues of law in these consolidated cases;  
21
- 22 2. That the first and second claims for relief of Plaintiff Nalder in her Complaint in case  
23 no. A-18-772220-C, herein, seeking a new judgment on her original judgment,  
24 entered in case no. 07A549111 and seeking Declaratory relief, respectively, contain  
25 issues of law which substantially similar and/or related to issues of law on a second  
26 certified question before the Nevada Supreme Court in *James Nalder, Guardian Ad*  
27 *Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*  
28

1 *Automobile Insurance Company*, case no. 70504;

- 2 3. That the claims of bad faith and other extra-contractual claims alleged by third party  
3 plaintiff Gary Lewis in his third party complaint against Intervenor UAIC, herein, in  
4 case no. A-18-772220-C, contain issues of law which substantially similar and/or  
5 related to issues of law on a second certified question before the Nevada Supreme  
6 Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary*  
7 *Lewis, individually v. United Automobile Insurance Company*, case no. 70504 .  
8

9 CONCLUSIONS OF LAW

- 10 1. That based upon the hearings in this matter, on January 9<sup>th</sup>, 2019, and, order entered  
11 on same hearings by the court, the issues raised in Plaintiff Nalder's Motion for  
12 summary judgment are the same as those currently pending before the Nevada  
13 Supreme Court and, accordingly, Plaintiff's Motion will be stayed, in the interest of  
14 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*  
15 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance*  
16 *Company*, case no. 70504;  
17  
18 2. That the issues raised in Third Party Plaintiff Lewis' Third party complaint, and the  
19 Motion to dismiss same third party complaint as well as the motion for summary  
20 judgment on the third party complaint, are the same as those currently pending before  
21 the Nevada Supreme Court and, accordingly, Third Party Plaintiff Lewis' third party  
22 complaint and the Motion to dismiss same third party complainat and, counter-motion  
23 for summary judgment on same third party complaint, will be stayed, in the interest of  
24 judicial economy, pending decision in *James Nalder, Guardian Ad Litem on behalf of*  
25 *Cheyenne Nalder; and Gary Lewis, individually v. United Automobile Insurance*  
26 *Company*, case no. 70504.  
27  
28

**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff Nalder's Motion for Summary judgment and Relief from Orders pursuant to N.R.C.P. 60 (Case No. A-18-772220-C) is STAYED, pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504; and

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor's UAIC's Counter-Motion to Stay Plaintiff Nalder's Motion for summary judgment and proceedings pending Appeal is GRANTED, because the court finds the issues raised in Plaintiff's Motion are the same as those currently before the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504, and Plaintiff Nalder's Motion for summary judgment is STAYED pending further ruling by the Nevada Supreme Court; and

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor UAIC's Motion to Dismiss Third Party Plaintiff Lewis's Complaint and Third Party Plaintiff Lewis' Counter-Motion for Summary Judgment (Case No. A-18-772220-C) are STAYED pending further ruling by the Nevada Supreme Court in *James Nalder, Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United Automobile Insurance Company*, case no. 70504; and

**IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor UAIC's Counter-Motion to Stay UAIC's Motion to Dismiss Lewis' Third Party Complaint and Third Party Plaintiff Lewis' Counter-Motion for summary judgment and proceedings (Case No. A-18-772220-C) pending Appeal is GRANTED, because the court finds the issues raised in said Motions are the same as those currently before the Nevada Supreme Court in *James Nalder,*

ATKIN WINNER & SHERROD  
A NEVADA LAW FIRM

1 *Guardian Ad Litem on behalf of Cheyanne Nalder; and Gary Lewis, individually v. United*  
2 *Automobile Insurance Company, case no. 70504, and Third Party Plaintiff Lewis' Motion for*  
3 *summary judgment and Third Party Plaintiff Lewis' Counter-Motion for summary judgment and*  
4 *proceedings (Case No. A-18-772220-C) are STAYED pending further ruling by the Nevada*  
5 *Supreme Court; and*

7 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED** Intervenor  
8 UAIC's Counter-Motion to Strike Lewis' Affidavit for his Counter-Motion for summary  
9 Judgment on his third-party complaint as well as UAIC's Counter-motion for additional  
10 discovery pursuant to N.R.C.P. 56(f) (Case No. A-18-772220-C) are DENIED WITHOUT  
11 PREJUDICE.

12 **IT IS SO ORDERED.**


14 DATED this 11 day of FEBRUARY 2019.

16  
17   
DISTRICT JUDGE

ERIC JOHNSON *JS*

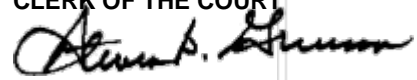
18 Submitted by:

19 ATKIN WINNER & SHERROD, LTD.

20   
21 MATTHEW J. DOUGLAS, Esq.  
22 Nevada Bar No. 11341  
23 1117 South Rancho Drive  
24 Las Vegas, Nevada 89102  
*Attorneys for Intervenor UAIC*

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

27 Consolidated with  
28 CASE NO.: A-18-772220-C  
DEPT. NO.: 20



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

CHEYENNE NALDER,

Plaintiff,

vs.

GARY LEWIS and DOES I through V,  
inclusive

Defendants,

CASE NO:A-18-772220-C  
DEPT. NO: 5

UNITED AUTOMOBILE INSURANCE  
COMPANY,

Intervenor.

GARY LEWIS,

Third Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE  
COMPANY, RANDALL TINDALL,  
ESQ., and RESNICK & LOUIS, P.C.

And DOES I through V,  
Third Party Defendants.

**NOTICE OF ENTRY OF ORDER**

TO: ALL PARTIES AND THEIR COUNSEL

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was entered  
in the above-entitled matter on the 14th day of August, 2021, a copy of which is attached hereto

1 as Exhibit 1.

2 Dated this 16th day of June, 2021.

3 CHRISTENSEN LAW OFFICES, LLC

4  
5 BY: 

6 THOMAS CHRISTENSEN, ESQ.

7 Nevada Bar No. 2326

8 1000 S. Valley View Blvd.

9 Las Vegas, Nevada 89107

10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5(b), I certify that I am an employee of CHRISTENSEN LAW  
12 OFFICES, LLC, and that on this 16th day of August, 2021 I served a copy of the foregoing  
13 **Notice of Entry of Order and order** as follows:

14  
15 XX Electronic Service—By electronically serving all parties registered for the case.

16   
17 \_\_\_\_\_  
18 An employee of CHRISTENSEN LAW OFFICES, LLC  
19  
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*Heather S. Smith*  
CLERK OF THE COURT

**ORDR**

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*Attorneys for United Automobile Insurance Company*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,  
Plaintiff,

vs.

GARY LEWIS; DOES I through V, in-  
clusive,  
Defendants.

UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Intervener.

GARY LEWIS,  
Third-Party Plaintiff,  
vs.  
UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Third-Party Defendant.

Case No. A-18-772220-C

Dep't No. 5

**JUDGMENT AND ORDER  
REGARDING CROSS-MOTIONS  
FOR SUMMARY JUDGMENT**

Hearing Date: November 17, 2020  
Hearing Time: 8:30 a.m.

On October 8, 2020 and November 17, 2020, this Court heard

- “Cheyenne Nalder’s Motion for Summary Judgment and Request for Relief from Order Pursuant to NRCP 60(b)”;
- United Automobile Insurance Company’s (UAIC’s) “Cross-Motion for Summary Judgment” on Nalder’s complaint;
- “Request to Set Cheyenne Nalder's Motion for Summary Judgment for Hearing”;
- “Gary Lewis’s Renewed Motion for Summary Judgment”; and
- UAIC’s “Countermotion for Summary Judgment on Third-Party Complaint.”

Having considered the briefing and oral argument by counsel, this Court orders as follows:

1. For the reasons stated in the transcript and in UAIC’s briefs, Nalder’s motion for summary judgment and request for NRCP 60(b) relief, and Lewis’s renewed motion for summary judgment, are DENIED. UAIC’s cross-motion for summary judgment on Nalder’s complaint and UAIC’s countermotion for summary judgment on Lewis’s third-party complaint are GRANTED.

2. This Court does not believe that there is a tolling issue that allows Nalder to bring in 2018 an action upon the expired 2009 default judgment, after than the six-year statute of limitations for bringing such an action had expired.

3. Nalder contends that her minority status at the time the 2009 judgment was entered entitles her to tolling under NRS 11.250.

4. This Court finds, however, that the 2009 judgment was issued to Cheyenne’s guardian ad litem, who was not a minor and had no disability to toll the six-year statute of limitations. The guardian ad litem had a responsibility here to pursue any action on the judgment but did not.

5. Nalder contends that UAIC made payments in furtherance of the 2009 default judgment that extend the statute of limitations.



1           6.       This Court finds, however, that these payments were not in further-  
2       ance of this particular judgment, but rather in satisfaction of the policy-limits  
3       judgment entered in the U.S. district court action, *Nalder v. United Automobile*  
4       *Insurance Company*, Case No. 2:09-cv-1348-RCJ-GWF.

5           7.       This Court further agrees with the decision of the Ninth Circuit in  
6       the appeal from that matter, Case No. 13-17441.

7           8.       In certifying two questions to the Nevada Supreme Court, the Ninth  
8       Circuit acknowledged Nalder's and Lewis's argument that "UAIC has already  
9       paid out more than \$90,000 in this case, which, they say, acknowledges the va-  
10      lidity of the underlying judgment and that this suit is an enforcement action  
11      upon it." *Nalder v. UAIC*, 878 F.3d 754, 757 (9th Cir. 2017).

12          9.       Yet that did not preclude application of the statute of limitations:  
13      As the Ninth Circuit found, "Nalder and Lewis do not contest that the six-year  
14      period of the statute of limitations has passed and that they have failed to re-  
15      new the judgment." *Id.*

16          10.      More recently, in dismissing Nalder's and Lewis's appeal in reliance  
17      on the Nevada Supreme Court's answers to the second certified question, the  
18      Ninth Circuit held that

19                   [i]f Nalder and Lewis had wanted us to consider their argu-  
20                   ments about Nevada tolling statutes, they should have offered  
21                   them in their response to UAIC's Motion to Dismiss for Lack  
22                   of Standing over three years ago, before we certified our sec-  
23                   ond question to the Nevada Supreme Court. Because they did  
24                   not, such arguments are waived. *See United States v. Dreyer*,  
25                   804 F.3d 1266, 1277 (9th Cir. 2015).  
26      (Order Dismissing Appeal, dated June 4, 2020, 9th Cir. Case No. 13-17441, ECF  
27      No. 90, at 4-5.)

28          11.      Nalder contends that the statute of limitations was tolled under  
NRS 11.300 because Lewis allegedly resided out of state.

        12.      This Court finds, however, that even if defendant Lewis did reside  
in California, he was amenable to service. *See Simmons v. Trivelpiece*, 98 Nev.

1 167, 168, 643 P.2d 1219, 1220 (1982).

2 13. Because the time for bringing an action upon the 2009 judgment  
3 against Lewis expired, Nalder has no claim against Lewis, and Lewis has no  
4 claim against UAIC.

5 Accordingly, JUDGMENT is hereby ENTERED in favor of UAIC.

6  
7 Dated this 14th day of August, 2021

8 

9 Respectfully submitted by:  
10 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6DB B7F 694B 0D23  
Veronica M. Barisich  
District Court Judge

11 By: /s/ Abraham G. Smith

12 DANIEL F. POLSENBERG (SBN 2376)  
13 J CHRISTOPHER JORGENSEN (SBN 5382)  
14 JOEL D. HENRIOD (SBN 8492)  
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17 *Insurance Company*  
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1 **CSERV**

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3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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5  
6 Cheyenne Nalder, Plaintiff(s) CASE NO: A-18-772220-C  
7 vs. DEPT. NO. Department 5  
8 Gary Lewis, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

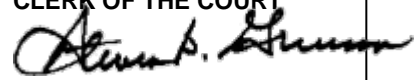
14 Service Date: 8/14/2021

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*Attorneys for United Automobile Insurance Company*

DISTRICT COURT  
CLARK COUNTY, NEVADA

CHEYENNE NALDER,  
Plaintiff,

vs.

GARY LEWIS; DOES I through V, in-  
clusive,  
Defendants.

UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Intervener.

GARY LEWIS,  
Third-Party Plaintiff,

vs.

UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Third-Party Defendant.

Case No. A-18-772220-C

Dep't No. 5

**NOTICE OF ENTRY  
OF ORDER**

1 Please take notice that an “Order on Nalder’s Motion to Retax, Third  
2 Party Plaintiff’s Gary Lewis’s Motion to Retax Costs and Third Party Defendant  
3 United Automobile Insurance Company’s Motion to Strike Third Party Plain-  
4 tiff’s Motion to Retax Costs or Alternatively, Opposition to Motion to Retax  
5 Costs” was entered on October 27, 2021. A true and correct copy is attached  
6 hereto and made part hereof.

7 Dated this 27th day of October, 2021.

8  
9 LEWIS ROCA ROTHGERBER CHRISTIE LLP

10 By: /s/ Abraham G. Smith  
11 DANIEL F. POLSENBERG (SBN 2376)  
12 J CHRISTOPHER JORGENSEN (SBN 5382)  
13 JOEL D. HENRIOD (SBN 8492)  
14 ABRAHAM G. SMITH (SBN 13,250)  
15 3993 Howard Hughes Parkway,  
16 Suite 600  
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19 *Attorneys for United Automobile*  
20 *Insurance Company*  
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I certify that on October 27, 2021, I electronically filed and served the foregoing “*Notice of Entry of Order*” through the Court’s electronic filing system, electronic service of the foregoing documents shall be submitted upon all recipients listed on the master service list.

/s/ Emily D. Kapolnai  
An Employee of Lewis Roca Rothgerber Christie LLP

*Heather S. Smith*  
CLERK OF THE COURT

**ORDR**

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*Attorneys for United Automobile Insurance Company*

DISTRICT COURT

CLARK COUNTY, NEVADA

CHEYENNE NALDER,  
Plaintiff,

vs.

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

UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Intervener.

GARY LEWIS,  
Third-Party Plaintiff,  
vs.  
UNITED AUTOMOBILE INSURANCE  
COMPANY,  
Third-Party Defendant.

Case No. A-18-772220-C

Dep't No. 5

**ORDER ON NALDER'S MOTION TO  
RETAX, THIRD PARTY PLAINTIFF'S  
GARY LEWIS'S MOTION TO RETAX  
COSTS AND THIRD PARTY DEFENDANT  
UNITED AUTOMOBILE INSURANCE  
COMPANY'S MOTION TO STRIKE THIRD  
PARTY PLAINTIFF'S MOTION TO  
RETAX COSTS OR ALTERNATIVELY,  
OPPOSITION TO MOTION TO RETAX  
COSTS**



1 This cause having come before the Court on (1) Cheyenne Nalder's  
2 ("Nalder") Motion to Retax; (2) Third Party Plaintiff's Gary Lewis's ("Lewis")  
3 Motion to Retax Costs; and (3) Third Party Defendant United Automobile  
4 Insurance Company's ("UAIC") Motion to Strike Third Party Plaintiff's Motion to  
5 Retax Costs or Alternatively, Opposition to Motion to Retax Costs; and the Court  
6 being fully advised in the premises pursuant to the applicable Nevada Revised  
7 Statutes, the Court hereby takes notice of following Findings and Conclusions  
8 and the arguments submitted by the parties:

- 9 1. UAIC prevailed in its summary judgment motion against both Nalder and  
10 Lewis, and thus, it may recover costs against both Nalder and Lewis;
- 11 2. While UAIC raises valid points on the timing of the Lewis' motion to retax  
12 under NRS 18.110(4), the Court prefers to consider the case on its merits  
13 and therefore, UAIC's motion to strike Lewis' motion cannot be granted;
- 14 3. UAIC's memorandum of costs and disbursements contained sufficient  
15 evidence of its costs incurred under *Cadle Co. v. Woods & Erickson, LLP*,  
16 131 Nev. 114, 345 P.3d 1049 (2015);
- 17 4. The peremptory challenge fees that UAIC incurred, in the amount of  
18 \$920.50, cannot be awarded under SCR 48.1; a preemptory challenge is  
19 discretionary. Peremptory challenges were not necessary for UAIC's  
20 participation in the case and therefore do not fall under NRS 18.005(1) as  
21 filing fees. Furthermore, a peremptory challenge cannot be deemed to be  
22 "reasonable and necessary expenses" under NRS 18.005(17); and
- 23 5. All other objections to UAIC's memorandum of costs and disbursements,  
24 regarding copying costs, runner fees, and electronic research fees are  
25 without merit under NRS 18.005(12) and (17). Therefore, the costs incurred  
26 in those areas must be deemed reasonable and necessary and awarded in  
27 full. Based on the above findings, and the briefing submitted by the parties:

**IT IS HEREBY ORDERED** that Nalder's Motion shall be GRANTED in part, DENIED in part. Lewis' Motion shall be GRANTED in part, DENIED in part. UAIC's Motion to strike shall be DENIED. Out of the \$4,514.00 in costs sought, UAIC shall be awarded \$3,593.50 in costs, after deducting \$920.50 in costs associated with the UAIC's peremptory challenges from the \$4,514.00 originally sought by UAIC.

**IT IS FURTHER ORDERED** the hearing set for September 28, 2021, is  
VACATED.

**Dated this 27th day of October, 2021**

V. Barisich

**5AA 110 D4D8 CBED**  
**Veronica M. Barisich**  
**District Court Judge**

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Joel D. Henriod  
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*Attorneys for United Automobile  
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1 Approved as to form and content by:

2 STEPHENS LAW OFFICES

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3 By: /s/ David Stephens  
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6 *Attorney for Plaintiff*  
7 *Cheyenne Nalder*

By: /s/ no response  
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*Attorney for Third-Party Plaintiff*  
*Gary Lewis*

*[This order was provided to all  
counsel on October 13, 2021, for  
review, but we received no response  
from plaintiff's counsel]*

## Jaramillo, Annette

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**From:** Kapolnai, Emily  
**Sent:** Monday, October 18, 2021 11:49 AM  
**To:** Jaramillo, Annette  
**Subject:** FW: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

Emily Kapolnai  
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**From:** David A. Stephens <dstephens@davidstephenslaw.com>  
**Sent:** Thursday, October 14, 2021 8:22 AM  
**To:** Helm, Jessica <JHelm@lewisroca.com>; dawnh@injuryhelpnow.com; ervnelson6@gmail.com; breen@breen.com; breenarntz@me.com; thomasc@injuryhelpnow.com  
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**Subject:** RE: Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

[EXTERNAL]

---

Jessica,

I do not have any changes. You may use my e-signature on the proposed order.

Thanks,

David A. Stephens, Esq.

3636 N. Rancho Drive  
Las Vegas, NV 89130

Phone: (702) 656-2355  
Facsimile: (702) 656-2776

<mailto:dstephens@davidstephenslaw.com>

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**Sent:** Wed, 13 Oct 2021 22:32:58 +0000

**Subject:** Nalder v. Lewis, et al. - Case No. A-18-772220-C - Order on Motions to Retax

Counsel,

Attached is a draft of the proposed order on the motions to retax. Please let us know if we may affix your electronic signature.

Thank you,  
Jessie

**Jessica Helm**

Paralegal/ Litigation Support Project Manager

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D. 702.949.8335

**LEWIS  ROCA**

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1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

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6 Cheyenne Nalder, Plaintiff(s) CASE NO: A-18-772220-C  
7 vs. DEPT. NO. Department 5  
8 Gary Lewis, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/27/2021

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