

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2 **CASE NO. 70504**

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5 JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF
6 CHEYANNE NALDER; AND GARY LEWIS, INDIVIDUALLY
7 Appellants,
8 v.
9 UNITED AUTOMOBILE INSURANCE COMPANY,
10 Respondent,
11 _____
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Elizabeth A. Brown
Clerk of Supreme Court

13 **RESPONDENT'S RESPONSE IN OPPOSITION TO APPELLANTS'**
14 **MOTION TO STRIKE PORTIONS OF RESPONDENT'S**
15 **SUPPLEMENTAL ANSWERING BRIEF TO SECOND CERTIFIED**
16 **QUESTION AND APPENDIX**
17 _____
18

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3 **NRAP 26.1 DISCLOSURE STATEMENT**

4 The undersigned counsel of record certifies that the following are the persons
5 and entities as described in NRAP 26.1(a)(1), and must be disclosed. These
6 representations are made in order that the justices of this Court may evaluate possible
7 disqualification or recusal:
8

9 Atkin, Winner & Sherrod – counsel for United Automobile Insurance
Company

10 Cole, Scott & Kissane, P.A. – counsel for United Automobile Insurance
11 Company

12 Matthew J. Douglas, Esq. – Atkin, Winner & Sherrod

13 Scott A. Cole, Esq. – Cole, Scott & Kissane, P.A.

14 Thomas E. Scott, Esq. – Cole, Scott & Kissane, P.A.


15 Thomas E. Winner, Esq. – Atkin, Winner & Sherrod
16

17 **Dated this 18th day of December, 2018.**
18

19 **COLE, SCOTT & KISSANE, P.A.**

20 /s/ Thomas E. Scott
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2 Respondent, UNITED AUTOMOBILE INSURANCE COMPANY
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4 (“UAIC”), by and through its Counsel of Record, Matthew J. Douglas, Esq. of Atkin
5 Winner and Sherrod and Thomas E. Scott, Esq., of Cole Scott & Kissane, P.A.,
6 hereby files this Response in Opposition to Appellants’ Motion to Strike Portions of
7
8 Respondent’s Supplemental Answering Brief to Second Certified Question and
9 Appendix and states as follows:

10 1. Appellants seek to strike portions of Respondent’s Supplemental
11 Answering Brief to Second Certified Question and Appendix based on their
12 contention that UAIC included facts therein which exceed the scope of the governing
13 certification order.
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15 2. Appellants themselves, however, also include facts in their Opening
16 Brief Regarding Second Certified Question of Law that are nowhere to be found in
17 the governing certification order, including the following: (1) reference to three
18 payments made by UAIC to Appellants on June 23, 2014; June 25, 2014; and
19 February 5, 2015 in satisfaction of the underlying default judgment, *see* Opening
20 Brief at p. 6; (2) reference to Mr. Lewis’ current residence in California, *see id.*; and
21 (3) reference to Appellants’ incursion of expenses to renew the judgment in both
22 Nevada and California, *see* Opening Brief at p. 15.
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1 3. As Appellants correctly note, an appendix may be submitted in a
2 certified-question proceeding in order to provide context to the issues being
3 presented, as well as to provide the answering court with a greater understanding of
4 the pending action. *See, e.g., In re Fontainebleau Las Vegas Holdings, L.L.C.*, 127
5 Nev. 941, 955-956, 267 P.3d 786, 795 (2001); *Brady, Vorwerck, Ryder & Caspino*
6 *v. New Albertson's, Inc.*, 333 P.3d 229, 230 n.4 (Nev. 2014). This Court has stated,
7 however, that such information may not be used by the answering court to contradict
8 the certification order. *See In re Fontainebleau Las Vegas Holdings, L.L.C.*, 127
9 Nev. at 956, 267 P.3d at 795.

13 4. Here, UAIC has not provided the additional facts and appendix
14 documents at issue in order to contradict the certification order, nor do they in fact
15 contradict the certification order. Rather, UAIC provides said facts and documents
16 in order to provide this Court with context regarding the issues presented and the
17 Appellants' arguments.

20 5. For example, in their Opening Brief Appellants state that "[o]ut of an
21 abundance of caution, Appellants have incurred the expense to renew the judgment
22 in both Nevada and California," facts which are not found anywhere in the governing
23 certification order. Therefore, in order to provide this Court with context and a
24 greater understanding of the Appellants' arguments, it was necessary for UAIC to
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1 provide this Court with facts and documents detailing the Nalders' efforts to
2 domesticate the underlying default judgment in California.

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4 6. Similarly, because Appellants take the position in their Opening Brief
5 that their bad faith and breach of contract action against UAIC is an action on the
6 judgment sufficient to prevent expiration of the default judgment, it was necessary
7 for UAIC to provide this Court with facts and documents detailing Appellants'
8 efforts to amend the default judgment and bring additional actions in order to provide
9 further context to Appellants' arguments and the ultimate issue to be decided by this
10 Court.
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13 7. Contrary to Appellants' assertion, these subsequent judicial actions
14 taken by the Nalders in an effort to "fix" their expired judgment following this
15 Court's acceptance of the Ninth Circuit's certification order provides necessary
16 factual context for this Court to answer the pending legal question. Besides tacitly
17 admitting UAIC's position that the underlying judgment is indeed expired, these
18 subsequent judicial actions also provide necessary context to this Court regarding
19 Appellants' apparent efforts to deprive this Court of ultimate jurisdiction over the
20 pending legal question over whether the default judgment is expired. In this way,
21 the additional facts and documents provided by UAIC serve to provide the Court
22 with context regarding the ulterior motives advanced by Appellants and the attempt
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1 to cause prejudice to UAIC. Moreover, such machinations may be considered forum
2 shopping or, even an attempt to alter a proceeding before this Court improperly.

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4 8. Accordingly, because the additional facts and documents provided in
5 Respondent's Supplemental Answering Brief to Second Certified Question and
6 Appendix were not included for an improper or impermissible purpose, such as to
7 contradict the facts contained in the certification order which control herein,
8 Respondent respectfully requests that this Honorable Court denying Appellants'
9 Motion to Strike Portions of Respondent's Supplemental Answering Brief to Second
10 Certified Question and Appendix.
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13 WHEREFORE, Respondent respectfully request that this Court deny
14 Appellants' Motion to Strike Portions of Respondent's Supplemental Answering
15 Brief to Second Certified Question and Appendix.
16

17 **Dated this 18th day of December, 2018.**

18 **COLE, SCOTT & KISSANE, P.A.**

18 **ATKIN, WINNER & SHERROD**

19 */s/ Thomas E. Scott*

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22 *Counsel for Respondent*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of December 2018, I served the foregoing **Respondent's Response in Opposition to Appellants' Motion to Strike Portions of Respondent's Supplemental Answering Brief to Second Certified Question and Appendix** by electronically filing and serving the document listed above with the Nevada Supreme Court.


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