

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

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4                   \_\_\_\_\_  
5                   \_\_\_\_\_  
6                   Electronically Filed  
7                   Dec 18 2018 04:14 p.m.  
8                   Elizabeth A. Brown  
9                   Clerk of Supreme Court

10                   **JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF**  
11                   **CHEYANNE NALDER; AND GARY LEWIS, INDIVIDUALLY**

12                   Appellants,

13                   v.

14                   **UNITED AUTOMOBILE INSURANCE COMPANY,**

15                   Respondent,

16                   \_\_\_\_\_  
17                   **RESPONDENT'S RESPONSE TO APPELLANTS' MOTION TO STAY**  
18                   **BRIEFING PENDING THIS COURT'S DECISION ON APPELLANTS'**  
19                   **MOTION TO STRIKE PORTIONS OF RESPONDENT'S**  
20                   **SUPPLEMENTAL ANSWERING BRIEF TO SECOND CERTIFIED**  
21                   **QUESTION AND APPENDIX**  
22                   \_\_\_\_\_  
23                   \_\_\_\_\_  
24                   \_\_\_\_\_  
25                   \_\_\_\_\_  
26                   \_\_\_\_\_  
27                   \_\_\_\_\_  
28                   \_\_\_\_\_

20                   Thomas E. Winner, Esq.  
21                   Matthew J. Douglas, Esq.  
22                   **ATKIN WINNER & SHERROD**  
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20                   Thomas E. Scott, Esq.  
21                   Scott A. Cole, Esq.  
22                   **COLE, SCOTT & KISSANE, P.A.**  
23                   9150 South Dadeland Boulevard  
24                   Suite 1400  
25                   Miami, Florida 33156

1 **NRAP 26.1 DISCLOSURE STATEMENT**

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

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

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

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

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

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

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

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

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

18 */s/ Thomas E. Scott*  
19 **Thomas E. Scott, Esq.**  
20 Florida Bar No.: 149100  
21 **Scott A. Cole, Esq.**  
22 Florida Bar No.: 885630  
23 9150 South Dadeland Boulevard  
24 Suite 1400  
25 Miami, FL 33156  
26 *Counsel for Respondent*

17 **ATKIN, WINNER & SHERROD**

18   
19 **Matthew J. Douglas, Esq.**  
20 Nevada Bar No. 11371  
21 Thomas E. Winner, Esq.  
22 1117 South Rancho Drive  
23 Las Vegas, NV 89102  
24 *Counsel for Respondent*

1 Respondent, UNITED AUTOMOBILE INSURANCE COMPANY  
2 (“UAIC”), by and through its Counsel of Record, Matthew J. Douglas, Esq. of Atkin  
3 Winner and Sherrod and Thomas E. Scott, Esq., of Cole Scott & Kissane, P.A.,  
4 hereby files this Response in Opposition to Appellants’ Motion to Stay Briefing  
5 pending this Court’s decision on Appellants’ Motion to Strike Portions of  
6 Respondent’s Supplemental Answering Brief to Second Certified Question and  
7 Appendix and states as follows:  
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9  
10 1. Appellants are requesting that this Court *indefinitely* stay briefing in  
11 this matter pending this Court’s decision on Appellants’ Motion to Strike Portions  
12 of Respondent’s Supplemental Answering Brief to Second Certified Question and  
13 Appendix.  
14

15  
16 2. UAIC has filed a separate Response in Opposition to Appellants’  
17 Motion to Strike Portions of Respondent’s Supplemental Answering Brief to Second  
18 Certified Question and Appendix, which it adopts and incorporates by reference  
19 herein.  
20

21 3. In addition to its arguments in opposition to Appellants’ Motion to  
22 Strike, UAIC further objects to Appellants’ request for a stay because Appellants  
23 have engaged in gamesmanship tactics which should not be condoned by this Court.  
24

25 4. As UAIC noted in its Supplemental Answering Brief to Second  
26 Certified Question, Appellants’ counsel Mr. Christensen and his co-counsel  
27  
28

1 requested multiple extensions of time to file their Opening Brief with this Court on  
2 the question of the expired judgment. On each request, Mr. Christensen and his co-  
3 counsel asserted that the extension was not sought for any improper purpose or for  
4 the purpose of delay and, out of professional courtesy, UAIC agreed and did not  
5 oppose said extension requests.  
6

7  
8 5. Unbeknownst to UAIC, however, Appellants had secretly begun  
9 proceedings to try to “fix” the expired default judgment during the time period in  
10 which extensions on the Opening Brief were being sought by Appellants. Had UAIC  
11 known of these secret tactics earlier it would have opposed Appellants’ previous  
12 extensions as it is clear now that Appellants were merely abusing this professional  
13 courtesy in an attempt to alter the default judgment and proceedings below.  
14

15  
16 6. Now, Appellants seek not only to strike any reference by UAIC to these  
17 subsequent efforts to “fix” the expired judgment, but also to *indefinitely* stay briefing  
18 in this matter until such time as this Court rules on their Motion to Strike, thereby  
19 obtaining even more time to continue to pursue these efforts while simultaneously  
20 depriving this Court of its rightful jurisdiction to determine the Second Certified  
21 Question. Such machinations constitute not only an attempt to improperly alter a  
22 proceeding before this Court but also an attempt at forum shopping.  
23

24  
25 7. This Court has harshly criticized tactical gamesmanship from attorneys  
26 on procedural matters, stating that it “tarnish[es] the concept of impartial justice.”  
27  
28

1 See *Millen v. Eighth Judicial District Court*, 122 Nev. 1245, 1257, 148 P.3d 694,  
2 702 (2006). This Court has also directly addressed the issue of gamesmanship and  
3 dilatory conduct in the context of filing briefs with the Court. In *Dias v. State*, 95  
4 Nev. 719, 601 P.2d 706 (1979), when a respondent filed an answering brief three  
5 days later despite numerous extensions, this Court expressed its “strong disapproval  
6 of such dilatory conduct,” *id.* at 709, but nevertheless allowed the late filing as “no  
7 prejudice to the appellant appears.” Here, in contrast, UAIC has been prejudiced by  
8 having to defend against Appellants’ improper subsequent efforts to “fix” the  
9 expired judgment. To grant Appellants’ Motion to Stay Briefing under these  
10 circumstances would be to condone behavior which has been universally  
11 reprimanded. Appellants should not be permitted to further delay proceedings  
12 before this Court.

17 8. Accordingly, for the reasons stated above, as well as those stated in  
18 UAIC’s Response in Opposition to Appellants’ Motion to Strike Portions of  
19 Respondent’s Supplemental Answering Brief to Second Certified Question and  
20 Appendix, which it adopts and incorporates by reference herein, UAIC respectfully  
21 urges this Court to deny Appellants’ Motion to Stay Briefing pending this Court’s  
22 decision on Appellants’ Motion to Strike Portions of Respondent’s Supplemental  
23 Answering Brief to Second Certified Question and Appendix.  
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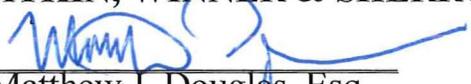
1           WHEREFORE, Respondent respectfully requests that this Court denying  
2 Appellants' Motion to Stay Briefing pending this Court's decision on Appellants'  
3 Motion to Strike Portions of Respondent's Supplemental Answering Brief to Second  
4 Certified Question and Appendix.  
5

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

7  
8           **COLE, SCOTT & KISSANE, P.A.**

9           /s/ Thomas E. Scott  
10          **Thomas E. Scott, Esq.**  
11          Florida Bar No.: 149100  
12          **Scott A. Cole, Esq.**  
13          Florida Bar No.: 885630  
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17          *Counsel for Respondent*

8           **ATKIN, WINNER & SHERROD**

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14          Las Vegas, NV 89102  
15          *Counsel for Respondent*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 18th day of December, 2018, I served the  
3 foregoing **Respondent's Response in Opposition to Appellants' Motion to Stay**  
4 **Briefing Pending this Court's Decision on Appellants' Motion to Strike**  
5 **Portions of Respondent's Supplemental Answering Brief to Second Certified**  
6 **Question and Appendix**, by electronically filing and serving the document listed  
7  
8 above with the Nevada Supreme Court.  
9

10  
11 Richard Christensen, Esq.  
12 Thomas Christensen  
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