

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

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4                   \_\_\_\_\_  
5                   JAMES NALDER, GUARDIAN AD LITEM ON BEHALF OF  
6                   CHEYANNE NALDER; AND GARY LEWIS, INDIVIDUALLY  
7  
8                   \_\_\_\_\_  
9                   Electronically Filed  
10                  Jan 16 2019 10:43 a.m.  
11                  Elizabeth A. Brown  
12                  Clerk of Supreme Court

6                   Appellants,

7                   v.

8                   UNITED AUTOMOBILE INSURANCE COMPANY,  
9

10                  Respondent,  
11

12  
13                  \_\_\_\_\_  
14                  **RESPONDENT'S MOTION FOR LEAVE**  
15                  **TO FILE SUPPLEMENTAL BRIEFING**  
16                  \_\_\_\_\_  
17

18                  Thomas E. Winner, Esq.  
19                  Matthew J. Douglas, Esq.  
20                  ATKIN WINNER & SHERROD  
21                  1117 South Rancho Drive  
22                  Las Vegas, Nevada 89102

18                  Thomas E. Scott, Esq.  
19                  Scott A. Cole, Esq.  
20                  COLE, SCOTT & KISSANE, P.A.  
21                  9150 South Dadeland Boulevard  
22                  Suite 1400  
23                  Miami, Florida 33156

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

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

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

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

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

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

**Dated this 16th day of January, 2019.**

**ATKIN, WINNER & SHERROD**

ATKIN, WINNER & SHERROD  
  
Matthew J. Douglas, Esq.  
Nevada Bar No. 11371  
Thomas E. Winner, Esq.  
1117 South Rancho Drive  
Las Vegas, NV 89102  
*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 Motion for Leave to File Supplemental Briefing and states as  
5 follows:  
6

7  
8 1. This matter concerns the following question certified by the Ninth  
9 Circuit Court of Appeals and accepted by this Court:

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

15 2. The parties completed their briefing of this certified question on  
16 February 17, 2017.

17 3. On December 13, 2018, after the parties had fully briefed the above  
18 issue, this Court issued its decision in *Century Surety Company v. Andrew*, Case No.  
19 73756, 134 Nev., Advance Opinion 100, involving a similar question certified by  
20 the United States District Court for the District of Nevada.  
21

22 4. Because this Court’s *Century Surety* decision issued after the parties  
23 completed their briefing on this certified question, Respondent respectfully requests  
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1 the Court grant the parties leave to file supplemental briefing addressing the newly  
2 issued decision.

3  
4 5. Respondent has contemporaneously filed its proposed Supplemental  
5 Brief Addressing Recent Case Law with this Motion.

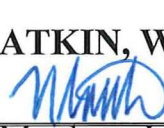
6 WHEREFORE, Respondent respectfully request that this Court grant  
7 Respondent's Motion for Leave to File Supplemental Briefing, accept the attached  
8 Supplemental Brief for filing, and grant such other and further relief as this Court  
9 deems just and proper.  
10

11  
12 Dated this 16th day of January, 2019.

13 COLE, SCOTT & KISSANE, P.A.

14 /s/ Thomas E. Scott  
15 **Thomas E. Scott, Esq.**  
16 Florida Bar No.: 149100  
17 **Scott A. Cole, Esq.**  
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*Counsel for Respondent*

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*Counsel for Respondent*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 16th day of January 2019, I served the  
3 foregoing **Respondent's Motion for Leave to File Supplemental Briefing** by  
4 electronically filing and serving the document listed above with the Nevada  
5 Supreme Court.  
6


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