

In the Supreme Court of Nevada

MOTOR COACH INDUSTRIES, INC.,

Appellant,

vs.

KEON KHIABANI; ARIA KHIABANI, minors, by and through their guardian MARIE-CLAUDE RIGAUD; SIAMAK BARIN, as executor of the ESTATE OF KAYVAN KHIABANI, M.D. (decedent); THE ESTATE OF KAYVAN KHIABANI, M.D. (decedent); SIAMAK BARIN, as executor of the ESTATE OF KATAYOUN BARIN, DDS (decedent); and the ESTATE OF KATAYOUN BARIN, DDS (decedent),

Respondents.

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Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO EXCEED WORD LIMIT FOR REPLY BRIEF

Appellant requests permission to file a reply brief that exceeds the word limit in NRAP(32)(a)(7)(A)(ii). The reply contains 15,730 words, more than half the number of words in the opening and answering briefs.

A. Appellant Tightened Where Possible

The brief is long. It was longer before appellant made substantial cuts in several areas:

- Where multiple binding authorities stated similar propositions in similar ways, appellant selected one.
- Appellant replaced discussions of authorities from the opening brief with reference to the opening brief.
- Appellant truncated arguments on post-trial discovery and costs, and eliminated its reply on the exclusion of tax considerations, electing to stand on the opening brief.
- Appellant eliminated portions of its argument on plaintiffs' failure to prove causation.
- Appellant refocused the argument on the exclusion of NRS 484B.270(2) to omit unneeded discussions of the record and duplicative authorities.
- Appellant shortened or deleted several block quotes.

Throughout, appellant seeks concision.

B. To Assist this Court's Resolution of Significant Issues, Appellant Thoroughly Briefed Key Authorities

But this is a significant case with cumulative and interrelated errors. For instance, defects in plaintiffs' causation evidence bear not only on appellant's right to judgment as a matter of law, but to whether (if causation was a fact issue) the jury should have been asked to resolve

it.

And many of these issues are questions of first impression, requiring citation to

- out-of-state authorities and treaties (see section I.A on plaintiffs' causation burden in a failure-to-warn case),
- state interpretations of a uniform act (see sections V.A and V.B on the Uniform Contribution Against Tortfeasors Act),
or
- dictionary definitions and other canons of statutory interpretation (see section V.A).

On many of these issues, it is not simply a matter of mustering authorities. The parties dispute the persuasiveness and interpretation of several authorities, including

- *Greiner v. Volkswagenwerk Aktiengesellschaft*, 429 F. Supp. 495 (E.D. Pa. 1977);
- *Moore v. Ford Motor Co.*, 332 S.W.3d 749 (Mo. 2011);
- *Ayers ex rel. Smith v. Johnson & Johnson Baby Products*, 797 P.2d 527 (Wash. Ct. App. 1990);
- *Bowling v. Heil Co.*, 551 N.E.2d 373 (Ohio 1987);

- *Norton v. Fergstrom*, 2001 WL 1628302 (Nev. Nov. 9, 2001);
and
- *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 5 P.3d
1043 (2000).

Appellant is entitled on reply to correct the misimpressions of key cases in the answering brief. Further cuts would leave the misimpression that these statements are unrebutted.

**C. The Reply Merits Similar Accommodation
to the Opening and Answering Briefs**

This case involves a judgment against appellant for more than \$18 million dollars. This Court recognized the breadth and gravity of the issues in allowing both appellant *and* respondents to file oversize briefs. Respondents' brief was 131% the size of appellant's opening brief. In these unique circumstances, this Court should likewise accommodate appellant's reply.

Appellant appreciates the Court's courtesy.

Dated this 7th day of August, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Abraham G. Smith

DANIEL F. POLSENBERG (SBN 2376)

JOEL D. HENRIOD (SBN 8492)

ABRAHAM G. SMITH (SBN 13,250)

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

Attorneys for Appellant

**DECLARATION OF ABRAHAM G. SMITH IN SUPPORT OF
MOTION TO EXCEED WORD LIMIT FOR REPLY BRIEF**

STATE OF NEVADA }
COUNTY OF CLARK }

1. I, Abraham G. Smith, under penalty of perjury, declare that I am a Nevada licensed lawyer with Lewis Roca Rothgerber Christie LLP and that I am counsel for appellant Motor Coach Industries, Inc.

2. Appellant requests leave under NRAP 28(g) and NRAP 32(a)(7)(D) to file a reply brief that exceeds the word limit in NRAP(32)(a)(7)(A)(ii) by 8,730 words.

3. Appellant's reply brief contains 15,730 words, responding to a 24,477-word answering brief. (This Court also allowed excess words in appellant's opening brief.)

4. As discussed in the motion, counsel have shortened and streamlined those portions of the brief as much as possible to focus on the controlling legal issues.

5. Counsel have also tried to succinctly respond to the answering brief on the critical issues of first impression, but this appeal contains several such issues. Where even basic principles about causation and the right of offset to avoid a double recovery are at issue, appellant de-

cided it would assist the Court to point to a variety of cases and secondary sources establishing these principles.

6. Where possible, counsel have tried to shorten the reply or stand on the opening brief, such as the court's exclusion of tax considerations and its award of costs.

DATED this 7th day of August, 2020.

/s/ Abraham G. Smith
Abraham G. Smith

CERTIFICATE OF SERVICE

I certify that on August 7, 2020, I submitted the foregoing “Motion to Exceed Word Limit for Reply Brief” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

WILL KEMP
ERIC PEPPERMAN
KEMP JONES, LLP
3800 Howard Hughes Parkway
17th Floor
Las Vegas, Nevada 89169

Attorneys for Respondents

PETER S. CHRISTIANSEN
KENDELEE L. WORKS
CHRISTIANSEN LAW OFFICES
810 South Casino Center Boulevard
Las Vegas, Nevada 89101

Attorneys for Respondents

/s/ Jessie M. Helm

An Employee of Lewis Roca Rothgerber Christie LLP