

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZURICH AMERICAN INSURANCE
COMPANY; AND AMERICAN
GUARANTEE AND LIABILITY
INSURANCE COMPANY,
Appellants,

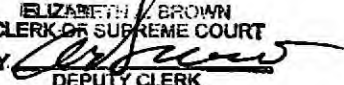
vs.

IRONSHORE SPECIALTY INSURANCE
COMPANY,
Respondent.

No. 81428

FILED

SEP 11 2020

ELIZABETH K. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

***ORDER ACCEPTING CERTIFIED QUESTIONS, DIRECTING
BRIEFING AND DIRECTING SUBMISSION OF FILING FEE***

This matter involves legal questions certified to this court, under NRAP 5, by the United States Court of Appeals for the Ninth Circuit. Specifically, the Ninth Circuit has certified the following questions to this court:

Whether, under Nevada law, the burden of proving the applicability of an exception to an exclusion of coverage in an insurance policy falls on the insurer or the insured? Whichever party bears such a burden, may it rely on extrinsic evidence to the complaint to carry its burden, and if so, is it limited to extrinsic evidence available at the time the insured tendered the defense of the lawsuit to the insurer?

As no clearly controlling Nevada precedent exists with regard to these legal questions and the answers may determine the federal case, we accept these certified questions. See NRAP 5(a); *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).

Accordingly, appellants shall have 30 days from the date of this order to file and serve an opening brief addressing the certified questions. Respondent shall have 30 days from the date the opening brief is served to

file and serve an answering brief. Appellants shall then have 21 days from the date the answering brief is served to file and serve any reply brief. The parties' briefs shall comply with NRAP 28, 28.2, 31(c), and 32. See NRAP 5(g)(2). The parties may file a joint appendix containing any documents necessary for this court to resolve the certified questions that were not already provided to this court with the Certification Order. See NRAP 5(d).

Lastly, in any proceeding under NRAP 5, fees "shall be the same as in civil appeals . . . and shall be equally divided between the parties unless otherwise ordered by the certifying court." NRAP 5(e). The Ninth Circuit's order does not address the payment of this court's fees. Accordingly, appellants and respondent shall each tender to the clerk of this court, within 14 days from the date of this order, the sum of \$125, representing half of the filing fee. See NRAP 3(e); NRAP 5(e).

It is so ORDERED.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

cc: Morales Fierro & Reeves
Morison & Prough, LLP
Clerk, United States Court of Appeals for the Ninth Circuit