IN THE SUPREME COURT OF MISSOURI

ADAM DUTTON,	)	
	)	
Appellant,	)	
	)	**Case No. SC 94075**
vs.	)	
	)	
AMERICAN FAMILY MUTUAL INSURANCE COMPANY	)	
	)	
	)	
Respondent.	)	

On Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Marco A. Roldan
Case No. 1116-CV 08343

Transferred From the Missouri Court of Appeals Western District
Case No. WD 74940

APPELLANT'S SUBSTITUTE REPLY BRIEF

Respectfully Submitted By:

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STATEMENT OF FACTS

Respondent American Family does not adopt nor controvert Appellant's Statement of Facts. Rather, Respondent states that it offers additions to Appellant's Statement of Facts. Respondent's additions are merely a subjective summary and paraphrasing of the Legal File and the opinion from the Western District Court of Appeals. There are no actual facts added. Therefore, Appellant stands upon his Statement of Facts contained in his substitute brief.

Appellant will controvert Respondent's additions to the Statement of Facts in regard to Respondent's allegations that Appellant waived his arguments by not raising certain contentions in the trial court in the Reply Argument section below.

REPLY ARGUMENT

I. Missouri statutes and case law mandate that every owner's motor vehicle insurance policy issued in the state of Missouri must provide the minimum limits of liability coverage required by the MVFRL

A. Standard of Review

Respondent has misinterpreted the standard of review. Summary judgment was not granted in favor of either party. The trial court denied summary judgment to Plaintiff/Appellant Adam Dutton on February 2, 2012. (LF 151). Defendant/Respondent American Family did not move for summary judgment at any time. The trial court entered judgment on February 17, 2012, after consideration of the parties' respective positions based upon prior briefing. (LF 153).

In this case, there is no dispute as to the material facts. This case involves the interpretation of an insurance policy, which is a question of law that the court reviews *de novo*. *Karscig v. McConville*, 303 S.W.3d 499, 502 (Mo. banc 2010)(*citing McCormack Baron Management Services, Inc. v. American Guarantee and Liability Ins. Co.*, 989 S.W.2d 168, 171 (Mo. banc 1999)).

B. Respondent's contention that Appellant failed to preserve his argument on appeal is without merit

Respondent American Family's claim that Appellant never raised the issue of whether coverage was provided under the Ford F-250 policy at the trial court

level is without merit. In fact, this waiver "argument" was raised for the first time by the minority dissenting opinions in the Western District Court of Appeals decision and American Family has adopted this contention as its own.

Coverage under the Ford F-250 policy for Ms. Hiles' operation of the 2007 Nissan which injured Appellant Adam Dutton is the essence of this case. From the outset, Appellant has contended that coverage was available under the Ford F-250 policy. In the Settlement Agreement prior to the filing of this case, Adam Dutton and American Family agreed that:

> WHEREAS, Adam L. Dutton claims that the coverage available to Barbara L. Hiles under the aforesaid insurance policies with regard to liability to Adam L. Dutton for injuries sustained in the aforesaid motor vehicle accident is not limited to a total sum of $25,000.00 and that coverage should be afforded under Policy No. 2428-7830-02-80-FPPA-MO [the Ford F-250 policy] issued to Barbara L. Hiles on an auto owned by Ms. Hiles that was not involved in the aforesaid motor vehicle accident; … LF 18 (emphasis added).

In the Petition, Adam Dutton asserted that "Plaintiff alleges that coverage should be provided under the [Ford F-250] policy and damages are due for injuries sustained." (LF 3,¶10; LF 18). American Family, in its Answer, admitted this fact. (LF 23,¶7).

In its brief to this Court, American Family states:

> "In Point One of Dutton's opening brief, he asserts that the trial court erred in entering judgment in favor of American Family because Hiles is the named insured and she is legally liable for Dutton's damages "due to her use of a private passenger car." (Dutton brief at 15-26.) He argues that the Ford policy defines "use" of a car to include "ownership" and "use", and that Hiles owned the Nissan and was using it at the time of the accident. He argues that the definition of "car" includes not only the named insured vehicle, but also a "private passenger car." (Dutton brief at 25.) Dutton alleges that pursuant to the Ford policy, the vehicle does not have to be listed on the declarations page in order for the policy to afford coverage. (Dutton brief at 25.)" Respondent Substitute Brief at pg. 13.
>
> American Family continues on to state:
>
> "This argument is insupportable because Dutton never advanced it in any of his pleadings before the trial court, and it is not preserved for this Court's review." *Id.*

However, Appellant Adam Dutton stated the following at the trial court level in regard to this argument and in construing the insuring agreement contained in the Ford F-250 Policy as follows:

“”We” is American Family Mutual Insurance Company. American Family should pay compensatory damages. Ms. Hiles is an insured person, she is the named insured. She is legally liable for the damages, this fact has been admitted. The accident was due to the use of a “car”. The definition of “car” includes a “private passenger car”. The [2007 Nissan][1] is a private passenger car. Per the plain language of the Policy, the vehicle does not have to be the vehicle referenced in the declarations page to cover the insured, it merely needs to be a private passenger car. Therefore, this Ford F-250 Policy covers Ms. Hiles for this accident.” LF 139 (emphasis added).

Appellant Adam Dutton also stated at the trial court level:

“Plaintiff [Appellant] requests that the Court hold that the American Family “owner’s” liability Policy […the Ford F-250 Policy], which insured Ms. Hiles, provide coverage for Plaintiff’s injuries. The Policy is an “owner’s” policy as Ms. Hiles is the named insured and owns the described vehicle. This Policy provides coverage for Ms. Hiles for the accident as Ms. Hiles is the named insured, she is

[1] Appellant’s trial court brief contained a typographical error that transposed “Ford F-250” for “2007 Nissan”. Clearly the wording was meant to be “2007 Nissan” as that is the vehicle that was being driven during the accident.

> legally liable for plaintiff's injuries and she was using a private passenger car owned by her at the time of the accident." LF 133 (emphasis added).

Clearly, this argument was raised in the trial court by the Appellant. Appellant requested coverage under the Ford F-250 policy as a result of the tortfeasor's operation of the 2007 Nissan consistently throughout his briefing and his argument.

Additionally, Respondent American Family conceded that coverage was triggered under the Ford F-250 policy at oral argument before the Western District Court of Appeals en banc argument. Western District Opinion, pg. 8, FN 4. Counsel for American Family stated:

> "[B]ut for the existence of Exclusion Number 9, or even the anti-stacking language of this policy, I wouldn't be here arguing." *Id*.

Also, the trial court found that coverage was triggered under the Ford F-250 policy in its Judgment, however, it found that an owner's policy on a non-accident vehicle is not required by the MVFRL to provide coverage to an insured. LF 153.

Appellant does not claim that the 2007 Nissan was specifically listed or identified on the Ford F-250 policy. The Ford F-250 policy does not contain the words 2007 Nissan. In the Statement of Facts, Appellant uses the word "listed" in regard to the vehicles named on the two policies to differentiate between the Ford

F-250 policy and the 2007 Nissan policy. There is no other way to differentiate the policies as they are identical in all other respects.

Appellant's claim is that pursuant to the MVFRL, R.S.Mo. §303.190.2(1), the Ford F-250 policy "designates" by "appropriate reference" the 2007 Nissan being driven at the time of the accident. The insuring agreement makes clear that "**We** will pay compensatory damages an **insured person** is legally liable for because of **bodily injury** and **property damage** due to the **use** of a **car**".

Ms. Hiles is legally liable for Appellant's damages and the accident was due to the use of a "car". The definition of "car" includes a "private passenger car". The 2007 Nissan being driven at the time of the accident is a private passenger car. Per the plain language of the policy, the vehicle does not have to be the vehicle referenced in the declarations page to cover the insured, it simply needs to be a private passenger car. Therefore, this Ford F-250 policy covers Ms. Hiles for this accident.

A party on appeal generally "must stand or fall" by the theory which he tried and submitted his case in the court below. *Kleim v. Sansone*, 248 S.W.3d 599, 602 (Mo. banc 2008)(*citing Walker v. Owen*, 79 Mo. 563, 568 (Mo. 1883). Appellant has never raised any new theories in this matter. Appellant has consistently maintained that the Ford F-250 policy provides coverage for this matter from the outset.

American Family's contention that Appellant has waived his coverage argument is without merit. This Court should hold that there is coverage under the Ford F-250 policy for the tortfeasor's operation of the 2007 Nissan as requested.

C. Missouri statutes and case law mandate liability coverage under the Ford F-250 owner's liability policy

The MVFRL and this Court's rulings in *Karscig v. McConville*, 303 S.W.3d 499 (Mo. banc 2010) and *American Standard Ins. Co. v. Hargrave*, 34 S.W.3d 88 (Mo. 2000) require liability coverage up to state minimums of $25,000 on owner's policies where multiple policies apply to a covered accident.

1. *Karscig* and *Hargrave* hold coverage must be provided

Respondent attempts to distinguish both *Karscig v. McConville*, 303 S.W.3d 499 (Mo. banc 2010) and *American Standard Insurance Company v. Hargrave*, 34 S.W.3d 88 (Mo. 2000) by arguing that they do not apply to the facts of this case. However, both *Karscig* and *Hargrave* apply to the facts of this case and are controlling.

Respondent attempts to distinguish *Karscig v. McConville*, 303 S.W.3d 499 (Mo. banc 2010) by arguing that the *Karscig* holding was limited to whether the American Family operator's policy at issue provided coverage and whether the exclusions and anti-stacking provisions in the operator's policy were valid under the MVFRL. Respondent incorrectly contends that since the instant matter

involves two owner's policies and *Karscig* involved one owner's policy and one operator's policy, *Karscig* is not applicable. In *Karscig* this Court held:

> The MVFRL requires each owner's and operator's policy issued in Missouri to provide minimum liability coverage of $25,000. It also does not restrict minimum liability payments to a single policy if coverage is provided under multiple policies.

Id. at 500-501 (*citing American Standard Ins. Co. v. Hargrave*, 34 S.W.3d at 91-2)(emphasis added).

Karscig is controlling for this case. This Court held that each owner's and operator's policy issued in Missouri must provide coverage, not just the operator's policy that was involved in the case. *Id*.

It is important to note that this Court in *Karscig* held that Exclusion 9 violated the mandate of the MVFRL and the minimum coverage limit must be provided. *Id*. The *Karscig* Court also held that even though there was anti-stacking language in the policy, the anti-stacking language violated the mandate of the MVFRL and coverage up to the $25,000 limit must be provided. *Id*. at 504.

Respondent relies upon a footnote in *Karscig* to suggest that *Karscig* holds that the Ford F-250 owner's policy in the instant matter does not provide coverage. Footnote 5 of the *Karscig* case suggests that if Jennifer (the tortfeasor) had been driving the car listed in her operator's policy then coverage would not have been afforded under her parent's owner's policy for the 1998 Pontiac. *Id*. at 503, FN5.

This footnote is not controlling as that issue was not before the Court because Jennifer was not driving the car listed in her operator's policy. This footnote is consistent with the main holdings in *Karscig* and *Hargrave* that each owner's and operator's policy must provide minimal coverage as required by the MVFRL. As Jennifer was not the owner, the policyholder, or named insured in her parent's 1998 Pontiac owner's policy, the MVFRL would not require minimal coverage to extend to her. The 1998 Pontiac owner's policy was not an owner's or operator's policy to Jennifer -- she wasn't the owner or operator for that vehicle or policy.

Respondent attempts to distinguish *American Standard Insurance Company v. Hargrave*, 34 S.W.3d 88 (Mo. 2000) by arguing that since the owners of the two owner's policies involved in the case were not the same and the household exclusion was also at issue, *Hargrave* is distinguishable from the instant matter. *Hargrave* is on point and controlling. In *Hargrave*, this Court ruled upon the issue of the application of the MVFRL where an insured is covered by two owner's liability policies. *Id*. at 89-90. The factual pattern in *Hargrave* is nearly identical to the facts of this case as the owner's policy at issue in *Hargrave* was also a policy that listed a non-accident vehicle.

The *Hargrave* Court held that because Mrs. Hargrave was covered by two valid owner's policies at the time of the accident, both policies would be required to pay the minimum $25,000 as required by the MVFRL. *Id*. at 92. *Hargrave* is

on point as both *Hargrave* and the instant matter involve the interpretation of two similar owner's policies pursuant to the MVFRL.

2. The MVFRL requires that all owner's policies provide minimum coverage

The MVFRL requires that all owner's policies:

> 2. Such owner's policy of liability insurance:
>
> (1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted … R.S.Mo. § 303.190.2(1).

Pursuant to the MVFRL the Ford F-250 policy "designates" by "appropriate reference" the 2007 Nissan being driven at the time of the accident. The insuring agreement in the Ford F-250 policy designates by "appropriate reference" what is covered when it says "**We** will pay compensatory damages an **insured person** is legally liable for because of **bodily injury** and **property damage** due to the **use** of a **car**".

Ms. Hiles is legally liable for Appellant's damages and the accident was due to the use of a "car". The definition of "car" includes a "private passenger car". The 2007 Nissan being driven at the time of the accident is a private passenger car. Per the plain language of the policy, the vehicle does not have to be the vehicle referenced in the declarations page to cover the insured, it simply has to be a "private passenger car". Therefore, the Ford F-250 policy designates by

appropriate reference the vehicle being driven at the time of the accident and therefore coverage is triggered.

Respondent American Family has conceded that coverage was triggered under the Ford F-250 policy at oral argument before the Western District Court of Appeals en banc argument. Western District Opinion, pg. 8, FN 4. Counsel for American Family stated:

> "[B]ut for the existence of Exclusion Number 9, or even the anti-stacking language of this policy, I wouldn't be here arguing." *Id.*

After coverage is triggered through policy language, any policy exclusions must be considered. The burden of showing that an exclusion to coverage applies is on the insurer. *Manner v. Schiermeier*, 393 S.W.3d 58, 62 (Mo. banc 2013)(*citing Burns v. Smith*, 303 S.W.3d 505, 510 (Mo. banc 2010) ("Missouri also *strictly* construes exclusionary clauses against the drafter, who also bears the burden of showing the exclusion applies") (emphasis in original). *Id.* In this case, as in *Karscig*, it appears on its face as though Exclusion 9 would prohibit coverage. *Karscig*, 303 S.W.3d at 502. However, pursuant to this Court's opinion in *Karscig*, this exclusion violates the mandate of the MVFRL and the minimum $25,000 coverage limit must be applied. *Id.*

The *Karscig* Court also held that even though there was anti-stacking language in the policy, this anti-stacking language also violated the mandate of the MVFRL and coverage up to the $25,000 minimum must be provided. *Id.* at 504.

It appears as though Respondent also contends that the only vehicles for which coverage is granted under the MVFRL is the car actually listed or named on the policy. However, this is not the case. The Ford F-250 policy, as most all owner's policies, would cover the use of a rental car, a borrowed car, and any number of different scenarios where the insured is not actually driving the car listed on the declarations page. Obviously, those vehicles would not and could not be listed on the policy or the declarations page (or even the insurance card that is put in the car), however coverage would be required. Therefore, the argument that the vehicle to be covered must be listed on the policy is without merit.

3. Respondent's contention that the "One Policy in Place Rule" is applicable is without merit

Respondent American Family also contends that because there was already one policy in place to cover the injuries from the accident, the MVFRL has been satisfied and the Ford F-250 policy does not have to cover the accident. For this proposition, American Family has relied upon *First National Insurance v. Clark*, 899 S.W.2d 520 (Mo. banc 1995), *DeMeo v. State Farm Mutual Automobile Insurance Company*, 686 F.3d 607 (8th Cir. 2012) and *O'Rourke v. Esurance Ins. Co.*, 325 S.W.3d 395 (Mo. App. E.D. 2010).

American Family made a similar argument in *Karscig* regarding the holding of *First National v. Clark*. However, the Missouri Supreme Court stated in *Karscig*:

> It is unclear what viability remains in *Clark* after *Hargrave*. *Hargrave* neither distinguished nor mentioned *Clark* in any way.
>
> *Karscig*, 303 S.W.3d at 505.

The holding in *Clark* is not viable in regard to the minimum limits[2] given the holding in *Hargrave*. This Court in *Clark* in 1995 held that the MVFRL was satisfied when there is one owner's policy sufficient to supply the minimum requirements of the MVFRL. *Id*. at 523. However, that decision has been abandoned by the holding in *Hargrave* and more recently in the holding in *Karscig*.

This Court in *Karscig* held that even though there was one owner's policy and one operator's policy at issue, both were required to cover the injuries from the accident. *Karscig* at 500-01. This holding in *Karscig* explicitly abandons the "one policy in place" rule that American Family relies upon. If the "one policy in place rule" were applicable, the operator's policy in *Karscig* would not have been required to cover the accident as there had already been one policy in place to cover the accident – the owner's policy that upon which American Family had already paid its policy limits.

Additionally, *Hargrave* also specifically addressed the issue whether the MVFRL requirement of $25,000 per owner's or operator's policy can be satisfied

[2] *Clark* is still probably viable for the proposition that any coverage amounts over the mandatory minimum limits of $25,000 are not required by the MVFRL.

by the payment of one policy where multiple owner's policies are applicable. *Hargrave* held that the MVFRL requirement of $25,000 per policy coverage was not satisfied by the payment of one policy when there were other owner's policies that provide coverage. *Hargrave* at 91-2. If the "one policy in place" rule were applicable, then the second owner's policy in *Hargrave* would not have been required to provide coverage. The policy situation in *Hargrave* is nearly identical to the case at hand. In the case at hand there are two valid owner's policies that should cover the accident and the damages suffered by Appellant.

Respondent also cites *DeMeo v. State Farm Mutual Automobile Insurance Company*, 686 F.3d 607 (8th Cir. 2012) and *O'Rourke v. Esurance Ins. Co.*, 325 S.W.3d 395 (Mo. App. E.D. 2010) as support for the above proposition.

DeMeo comes from the 8th Circuit Court of Appeals and is not binding upon this court. *See Hanch v. K.F.C. Nat. Management Corp.*, 615 S.W.2d 28, 33 (Mo. banc 1981).

O'Rourke v. Esurance Ins. Co., 325 S.W.3d 395 (Mo. App. E.D. 2010) reiterates the same principles and law pronounced in the *Karscig* and *Hargrave* -- that the MVFRL requires every owner's and operator's policy issued in Missouri to provide minimum liability coverage. *Id.* at 398. *O'Rourke* held that the plaintiff could not stack coverage on a multi-vehicle policy. *Id.* In *O'Rourke* the appellant had two vehicles listed on one insurance policy and requested that the court stack the liability coverage on that single policy. *Id.*

> The *O'Rourke* court distinguished its holding from *Karscig* by stating that:
>
> However, this fact pattern is clearly distinguishable from *Karscig*. Where in *Karscig* two policies covered one automobile, here one policy covers two automobiles, only one of which was involved in the accident. *Id*.

The inference of the *O'Rourke* court clearly indicates given the same facts as this case, it would be bound by *Hargrave* and *Karscig*, and the MVFRL minimum coverage would be required for the Ford F-250 policy in the case at hand.

4. Other cases cited by Respondent are not applicable

American Family relies upon S*isk v. American Family Mutual Insurance Company*, 860 S.W.2d 34 (Mo. App. E.D. 1993) and *Shelter Mutual Insurance Company v. Ridenhour*, 936 S.W.2d 857 (Mo.App. E.D. 1997) to contend that the non-accident vehicle policy does not extend to provide coverage. Both cases were decided by the Eastern District Court of Appeals several years before the Supreme Court decided either *Hargrave* or *Karscig*. In *Sisk*, the court correctly determined that a policy cannot be both an owner's policy and an operator's policy under the MVFRL. *Id*. at 6. However, the court's main discussion in *Sisk* was Exclusion 9, the regular use exclusion, one that is identical to the case at hand. *Id*. at 35. This Court in *Karscig* also discussed the identical American Family Exclusion 9, the regular use exclusion, in its holding. This Court in *Karscig* held that Exclusion 9,

was invalid as it violated the MVFRL. *Id*. at 503. Therefore, the *Karscig* holding is controlling and *Sisk* does not apply in this case.

The *Ridenhour* case is also inapplicable. In *Ridenhour*, a single car accident injured the passenger. *Id*. at 858. The at-fault driver was driving a non-owned vehicle without the owner's permission. *Id*. The court held that the policy at issue could not be both an owner's policy and an operator's policy and that the non-permissive user exclusion did not violate the MVFRL. *Id*. at 858-59. *Ridenhour* has no application here as the issues involved in the *Ridenhour* case are not present in the instant matter.

5. Conclusion

The MVFRL and this Court's rulings in *Karscig* and *Hargrave* require insurance liability coverage up to state minimums of $25,000 per policy on owner's policies where multiple policies apply to a covered incident.

The tortfeasor Ms. Hiles was covered by two valid owner's policies for the May 25, 2009 accident which injured Appellant. The Ford F-250 policy at issue provides coverage for Ms. Hiles for the accident. Ms. Hiles is the named insured, she is legally liable for plaintiff's injuries and she was using a private passenger car at the time of the accident. Pursuant to the MVFRL, the Ford F-250 policy "designates" by "appropriate reference" the 2007 Nissan being driven at the time of the accident. Exclusion 9 and the anti-stacking language has been held to violate the MVFRL. Therefore coverage is required.

American Family has paid the $25,000 limits of coverage for the 2007 Nissan policy, however, refuses to pay the $25,000 policy limits and minimum coverage limits as mandated by the MVFRL on the Ford F-250 policy. Coverage must be provided on Ms. Hiles' American Family Ford F-250 policy in the amount of $25,000.

II. The "Other Insurance" clause in the Ford F-250 policy is ambiguous in that it conflicts with other anti-stacking language in the policy and it contains a broad grant of coverage with no limitations or qualifying language

The "Other Insurance" clause in the Ford F-250 policy is ambiguous in that it conflicts with other anti-stacking language in the policy and it contains a broad grant of coverage with no limitations or qualifying language. The resulting ambiguity should be decided in favor of coverage.

Respondent states that the Other Insurance clause is not ambiguous by attempting to distinguish *Durbin v. Deitrick*, 323 S.W.3d 122 (Mo.App.W.D. 2010). Respondent contends that *Durbin* is not applicable because the tortfeasor was driving a non-owned auto, however, even though *Durbin* involved a non-owned auto the case is on point.

In *Durbin* the court held that the "Other Insurance" clause in the American Family policy at issue (identical to the instant Ford F-250 policy) when read in conjunction with the policies' other anti-stacking clauses, rendered the policy ambiguous and therefore stacked liability coverage was available under the remaining three American Family policies. *Id*. at 127.

The Ford F-250 policy provides, in the Other Insurance clause, that when there is other liability insurance, American Family will pay its share of the loss. (LF 13). This clause has no limitations or restrictions. This would appear to the average layperson to be applicable in this situation and would appear to cover this

claim. American Family's share of this loss would be the $25,000 limits of the Ford F-250 policy because Appellant's damages exceed $50,000 and American Family has only paid $25,000. (LF 106, ¶3; 108-9, ¶10).

When the Other Insurance clause is read and interpreted by a reasonable insured it is clear that the Ford F-250 policy will pay its share – its policy limit of $25,000. However, the Limits of Liability section and No. 3 in the General Provisions sections seem to conflict in that they prohibit this type of coverage. This creates a conflict in the policy and, pursuant to Missouri case law, the resulting ambiguity is to be resolved in favor of coverage.

"If a contract promises something at one point and takes it away at another, there is an ambiguity." *Seeck v. Geico Gen. Ins. Co.*, 212 S.W.3d 129, 133 (Mo. banc 2007)(*quoting Lutsky v. Blue Cross Hosp. Serv., Inc.*, 695 S.W.2d 870, 875 (Mo. banc 1985)). Specifically, if "an other insurance clause appears to provide coverage but other clauses indicate that such coverage is not provided, then the policy is ambiguous, and the ambiguity will be resolved in favor of coverage for the insured." *Seeck*, 212 S.W.3d at 134.

The Ford F-250 policy gives coverage in the Other Insurance clause, then attempts to take it away in the exclusion and limits of liability. This creates an ambiguity that must be construed in favor of coverage. Therefore, liability coverage of $25,000 should be provided on Ms. Hiles' Ford F-250 American Family policy.

CONCLUSION

Appellant respectfully requests that this Court reverse the judgment of the trial court and remand this cause to the trial court with instructions for entry of judgment in favor of Appellant in the amount of $25,000.00.

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RULE 84.06(c) CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies, pursuant to Rule 84.06(c), that the foregoing brief complies with the limitations contained in Rule 84.06(b), that this brief contains 5,170 words (all inclusive) and that counsel relied on the word count of the word-processing system used to prepare the brief (Microsoft Word). Counsel further certifies that the electronic copies of this brief have been scanned for viruses and are virus free.

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