

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 * * * *

3 FCH1, LLC, A NEVADA LIMITED
4 LIABILITY COMPANY F/K/A FIESTA
5 PALMS, LLC, D/B/A THE PALMS
CASINO RESORT,
Appellant,

Electronically Filed
Jul 19 2012 10:54 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

6 vs.

No. 59630

7 ENRIQUE RODRIGUEZ, AN
8 INDIVIDUAL,

9 Respondent.
/

10
11 **MOTION FOR PERMISSION TO FILE OPENING BRIEF IN EXCESS OF
12 WORD COUNT LIMITATION; CERTIFICATION OF COUNSEL**

13 Pursuant to NRAP 32(a)(7)(D), appellant hereby moves for permission to file an
14 opening brief that is 852 words longer than the 14,000 word limit for an opening brief.
15 The proposed brief, which contains 14,852 words, is being submitted concurrently with
16 the filing of this motion.

17 **CERTIFICATION OF COUNSEL**

18 Pursuant to NRAP 32(a), appellant's counsel hereby provides the following
19 certification stating the reasons for this motion.


20 This appeal involves a very unusual personal injury case that resulted in a
21 judgment of more than \$6 million. Respondent (plaintiff) was attending a televised
22 Monday Night Football game at appellant's (the Palms) sports book. During halftime,
23 a sports book employee tossed souvenirs to the audience, as she had done throughout
24 the first half of the game. An empty souvenir water bottle landed on the floor near
25 where plaintiff was standing. Another patron suddenly, and completely unexpectedly,
26 dove for the bottle and bumped into respondent's knee. Plaintiff sued the Palms,
27 claiming a constellation of injuries, including everything from an injured knee to an in-
28 grown toe. The district judge, trying the case without a jury, granted plaintiff's motion

1 for judgment as a matter of law against the Palms, and the judge awarded damages of
2 more than \$6 million.

3 This appeal raises serious issues that are unusual, precedent-setting, and of
4 statewide significance. These issues include, but are not limited to: (1) whether a sports
5 or entertainment venue can be held liable in these circumstances; (2) whether a treating
6 doctor can render trial opinions far beyond the scope of his treatment of the plaintiff,
7 without providing defense counsel with any pretrial disclosures of the new opinions; (3)
8 whether one doctor, who is testifying at trial, can testify regarding the opinions of
9 dozens of non-testifying doctors; and (4) whether non-medical experts must always
10 express their opinions using a “reasonable degree of professional certainty” standard.

11 The trial lasted 12 days, resulting in a 16-volume appendix. Because of the
12 unusual and precedent-setting nature of this case, and to assist the court as much as
13 possible in deciding these important issues, the opening brief provides the court with a
14 thorough and comprehensive analysis of each issue. This caused the brief to exceed the
15 usual word limitation by only about six percent. Counsel has edited the brief to the
16 extent possible, and we respectfully contend that the brief cannot be shortened any more,
17 without impacting the court’s ability to understand and analyze the issues accurately and
18 efficiently. Accordingly, the Palms requests the court to grant permission to file the
19 brief containing 14,852 words; the brief is being submitted concurrently with this
20 motion.

21 DATED: July 17, 2012

22
23 
24 ROBERT L. EISENBERG (Bar No. 0950)
25 6005 Plumas Street, Third Floor
26 Reno, Nevada 89519
27 775-786-6868
28 Email: rle@lge.net

ATTORNEYS FOR APPELLANT

1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date
3 Appellant's **Motion for Permission to File Opening Brief in Excess of Word Count**
4 **Limitation; Certification of Counsel** was filed electronically with the Clerk of the Nevada
5 Supreme Court, and therefore electronic service was made in accordance with the master service
6 list as follows:

7 Steven Baker
8 John Naylor
9 Marsha Stephenson
10 Michael Wall

I further certify that on this date I served copies of this **Motion** by U.S. mail to:

11 Kenneth C. Ward
12 Keith R. Gillette
13 ARCHER NORRIS
14 A Professional Law Corporation
15 2033 North Main Street, Suite 800
16 P.O. Box 8035
17 Walnut Creek, California 94596-3728

18 Adam S. Davis
19 Moran Law Firm
20 630 S. Fourth Street
21 Las Vegas, Nevada 89101

22 DATED this 19 day of July, 2012.

23 
24 _____