

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

FORD MOTOR COMPANY,  
Appellant,  
vs.  
THERESA GARCIA TREJO AS THE  
SUCCESSOR-IN-INTEREST AND  
SURVIVING SPOUSE OF RAFAEL TREJO,  
DECEASED,  
Respondent.

No. 67843

Electronically Filed  
May 12 2015 01:22 p.m.  
DOCKETING STATEMENT  
CIVIL APPEALS  
Supreme Court

## GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXI  
County Clark Judge Honorable Valerie Adair  
District Ct. Case No. A-11-641059-C

**2. Attorney filing this docketing statement:**

Attorney Emily V. Cuatto (pro hac vice) Telephone (818) 995-0800

Firm Horvitz & Levy LLP

Address 15760 Ventura Boulevard, 18th Floor  
Encino, California 91436

(Add'l counsel for appellant: Snell & Wilmer, Las Vegas, NV, etc. on attached sheet)

Client(s) Defendant and Appellant Ford Motor Company

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Brian D. Nettles Telephone (702) 434-8282

Firm Nettles Law Firm

Address 1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014

Client(s) Plaintiff and Respondent Teresa Garcia Trejo, etc.

Attorney William R. Killip Telephone (702) 434-8282

Firm Nettles Law Firm

Address 1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014

Client(s) Plaintiff and Respondent Teresa Garcia Trejo, etc.

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial             | <input type="checkbox"/> Dismissal:                                     |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                       | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                       | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief      | <input type="checkbox"/> Other (specify): _____                         |
| <input type="checkbox"/> Grant/Denial of injunction             | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief     | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination         | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Plaintiff Theresa Trejo was driving a 2000 Ford Excursion with a trailer when she and her husband, Rafael Trejo, who was sitting in the front passengers' seat, were involved in a single-vehicle rollover accident that resulted in the death of Mr. Trejo. Plaintiff, individually and as successor-in-interest to her husband, brought this strict products liability action against Ford Motor Company alleging the Excursion's roof was defective in design. Ford disputed that there was anything defective about Excursion's roof design, and that any alleged defect caused Mr. Trejo's injuries. The jury found for plaintiff and awarded her \$4.5 million in damages.

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

- (1) The trial court erred in denying Ford's motion for judgment as a matter of law because plaintiff failed to present competent evidence from which a reasonable jury could conclude that the roof was defective or that any claimed defect in the roof caused Mr. Trejo's death.
- (2) The trial court erroneously instructed the jury, including by instructing the jury based on the "consumer expectations" test for determining whether a product is defective in design; the court should have instructed the jury based on the "risk vs. utility" test.
- (3) The trial court committed various evidentiary errors, including admitting improper expert opinion and admitting evidence of irrelevant and prejudicial documents.
- (4) A new trial is required due to the misconduct of counsel.
- (5) A new trial is required due to jury misconduct.
- (6) The trial court's cost award is excessive.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Ford intends to ask the Court to hold that in design defect cases like this one, applying a "consumer expectations" test, which purportedly derives from Section 402A of the Restatement (Second) of Torts, is inappropriate. The appropriate test is the "risk vs. utility" test described in the Restatement (Third) of Torts.

**13. Trial.** If this action proceeded to trial, how many days did the trial last? 12

Was it a bench or jury trial? Jury

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
No

## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** Oct 7, 2014

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**16. Date written notice of entry of judgment or order was served** Oct 8, 2014

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☒ NRCP 50(b)      Date of filing 10/21/14 via electronic service

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☒ NRCP 59      Date of filing 10/21/14 via electronic service

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion Mar 19, 2015

(c) Date written notice of entry of order resolving tolling motion was served see attached

Was service by:

☐ Delivery

☐ Mail

**18. Date notice of appeal filed** Apr 16, 2015

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)(4)(A) and (D)

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**SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1)                        | <input type="checkbox"/> NRS 38.205   |
| <input checked="" type="checkbox"/> NRAP 3A(b)(2)                        | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Ford appeals from the final judgment on the jury's verdict, the order denying Ford's renewed motion for judgment as a matter of law, or, in the alternative, motion for new trial, and the post-judgment order awarding plaintiff costs of suit.

**21. List all parties involved in the action or consolidated actions in the district court:**

**(a) Parties:**

Plaintiff Teresa Garcia Trejo

Plaintiff Estate of Rafael Trejo

Defendant Ford Motor Company

**(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:**

Plaintiff Jose de Jesus Garcia voluntarily abandoned his claims as stated in the joint pretrial report filed 8/22/2014.

Defendant Alan Koransky obtained summary judgment on 1/24/14.

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Mrs. Trejo's claims against Ford: (1) strict products liability: judgment on jury verdict entered 10/7/14; (2) negligence: voluntarily dismissed orally on the record on 9/16/14; (3) breach of express & implied warranty and loss of consortium: abandoned as stated in joint pretrial report filed 8/22/14; (4) NIED: voluntarily dismissed orally on the record on 9/3/14; (5) punitive damages: dismissed with prejudice by stipulation on 5/2/14.

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

**(a) Specify the claims remaining pending below:**



(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

**ATTACHMENT — DOCKETING STATEMENT CIVIL APPEALS**

***Ford Motor Company v. Theresa Garcia Trejo, etc.***  
Nevada Supreme Court Case No. 67843

**2. Attorney(s) representing appellant:**

*Attorney:* Lisa Perrochet (*pro hac vice*)                      *Telephone:* (818) 995-0800  
HORVITZ & LEVY LLP  
15760 Ventura Boulevard, 18th Floor  
Encino, California 91436

*Client:* Defendant and Appellant Ford Motor Company

*Attorney:* Vaughn A. Crawford                      *Telephone:* (702) 784-5200  
Jay J. Schuttert  
Morgan T. Petrelli  
SNELL & WILMER  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169

*Client:* Defendant and Appellant Ford Motor Company

*Attorney:* Michael W. Eady (*pro hac vice*)                      *Telephone:* (512) 708-8200  
THOMPSON, COE, COUSINS & IRONS, LLP  
701 Brazos Street, Suite 1500  
Austin, Texas 78701

*Client:* Defendant and Appellant Ford Motor Company

**3. Attorney(s) representing respondents(s) (cont'd):**

*Attorney:* Ricardo A. Garcia  
Jody R. Mask                      *Telephone:* (956) 630-2882  
GARCIA OCHOA MASK  
820 South Main Street  
McAllen, Texas 78501

*Client:* Plaintiff and Respondent Teresa Garcia Trejo, etc.

*Attorney:* Larry W. Lawrence, Jr.  
LAWRENCE LAW FIRM  
3112 Windsor Road, Suite A234  
Austin, Texas 78703

*Telephone:* (956) 994-0057

*Client:* Plaintiff and Respondent Teresa Garcia Trejo, etc.

*Attorney:* A. William Maupin, Esq.  
NAYLOR & BRASTER  
1050 Indigo Drive, Suite 112  
Las Vegas, Nevada 89145

*Telephone:* (702) 420-7000

*Client:* Plaintiff and Respondent Teresa Garcia Trejo, etc.

*Attorney:* David N. Frederick, Esq.  
43 Innisbrook Avenue  
Las Vegas, Nevada 89113

*Telephone:* unknown

*Client:* Plaintiff and Respondent Teresa Garcia Trejo, etc.

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

**(c) Date written notice of entry of order resolving tolling motion was served:**

March 19, 2015

**Was service by:** Electronic transmission





**Service of Process  
Transmittal**

07/11/2011

CT Log Number 518809553



**TO:** Chris Dzbanski  
Ford Motor Company  
One American Road, WHQ 433-E3  
Dearborn, MI 48126

**RE: Process Served in Nevada**

**FOR:** Ford Motor Company (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Teresa Garcia Trejo, Individually and as The Successor-in-Interest and Surviving Spouse of Rafael Trejo, Deceased and Jose De Jesus Garcia, etc., Pltfs. vs. Alan Koransky, et al. including Ford Motor Company, Dfts.

**DOCUMENT(S) SERVED:** Summons, Affidavit Form, Complaint

**COURT/AGENCY:** Clark County District Court, NV  
Case # A11641059C

**NATURE OF ACTION:** Personal Injury - Vehicle Collision - Wrongful Death - Injuries sustained on December 16, 2009

**ON WHOM PROCESS WAS SERVED:** The Corporation Trust Company of Nevada, Carson City, NV

**DATE AND HOUR OF SERVICE:** By Process Server on 07/11/2011 at 15:02

**JURISDICTION SERVED:** Nevada

**APPEARANCE OR ANSWER DUE:** Within 20 days

**ATTORNEY(S) / SENDER(S):** Stacey A. Upson, Esq.  
Nettles Law Firm  
1389 Galleria Drive  
Suite 110  
Henderson, NV 89014  
702-434-8282

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex Priority Overnight , 797293634168  
Image SOP  
Email Notification, Chris Dzbanski CDZBANSKI@FORD.COM

**SIGNED:** The Corporation Trust Company of Nevada

**PER:** Amy McLaren

**ADDRESS:** 311 South Division Street  
Carson City, NV 89703

**TELEPHONE:** 800-592-9023

OGC LIT 2011JUL19 PM2:07

ndd  
7/11/11  
2:45 pm

**SUMM**

**District Court**  
**CLARK COUNTY, NEVADA**

TERESA GARCIA TREJO, et al.

Plaintiffs,

vs.

ALAN KORANSKY, FORD MOTOR  
COMPANY, DOES 1 through 10, ROE  
CORPORATIONS 11 through 20, inclusive

Defendants.

Case No.: A-11-641059-C

Dept. No.: XXI

**SUMMONS**

**FORD MOTOR COMPANY**

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING  
HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.**

**TO THE DEFENDANT: FORD MOTOR COMPANY**

A civil Complaint has been filed by the Plaintiff against you for the relief as set forth in the Complaint.

1. If you wish to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff, and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this summons within which to file an answer or other responsive pleading to the complaint.

Issued at the direction of  
NETTLES LAW FIRM

**STEVEN D. GRIERSON**  
**CLERK OF THE COURT**

Stacey A. Upson, Esq., Nevada Bar #4773  
Attorney for Plaintiff  
1389 Galleria Drive, Suite 110  
Henderson, Nevada 89014  
Telephone: (702) 434-8282

By:

Deputy Clerk  
Regional Justice Center  
200 East Lewis Avenue  
Las Vegas, Nevada 89155

JUN 10 2011

Date

WALTER ABREGO-BONILLA

**NOTE:** When service is by publication, add a brief statement of the object of the action.  
See Rules of Civil Procedure 4(b).

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

ss:

**AFFIDAVIT OF SERVICE**

\_\_\_\_\_, being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceeding in which this affidavit is made. That affiant received \_\_\_\_\_ copy(ies) of the Summons and Complaint,

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by:

(Affiant must complete the appropriate paragraph)

1. Delivering and leaving a copy with the Defendant at (state address) \_\_\_\_\_
2. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy with \_\_\_\_\_, a person of suitable age and discretion residing at the defendant's usual place of abode located at (state address) \_\_\_\_\_

(Use paragraph 3 for service upon agent, completing A or B)

3. Serving the Defendant \_\_\_\_\_ by personally delivering and leaving a copy at (state address) \_\_\_\_\_
  - a. With \_\_\_\_\_, as an agent lawfully designated by statute to accept service of process;
  - b. With \_\_\_\_\_, pursuant to NRS § 14.020 as a persona of suitable age and discretion at the above address, which address is the address of the resident agent as shown on the current certificate of designation filed with the Secretary of State.

4. Personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope, postage prepaid (check appropriate method):

\_\_\_\_ Ordinary mail  
\_\_\_\_ Certified mail, return receipt requested  
\_\_\_\_ Registered mail, return receipt requested

addressed to the defendant \_\_\_\_\_ at Defendant's last known address which is (state address) \_\_\_\_\_

**SUBSCRIBED AND SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of person making service

\_\_\_\_\_  
**NOTARY PUBLIC** in and for the  
County of \_\_\_\_\_  
State of Nevada



CLERK OF THE COURT

1 **COMP**

2 STACEY A. UPSON, ESQ.

3 Nevada Bar No. 4773

4 NETTLES LAW FIRM

5 1389 Galleria Drive, Suite 110

6 Henderson, Nevada 89014

7 Telephone: (702) 434-8282

8 Facsimile: (702) 434-1488

9 staceyupson@nettleslawfirm.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 TERESA GARCIA TREJO, )  
14 Individually and as The Successor-in )  
15 Interest and Surviving Spouse of )  
16 Rafael Trejo, Deceased; and JOSE )  
17 DE JESUS GARCIA, Individually )

18 Plaintiffs, )

19 VS. )

20 ALAN KORANSKY, FORD )  
21 MOTOR COMPANY, DOES 1 )  
22 through 10, ROE CORPORATIONS )  
23 11 through 20, Inclusive, )

24 Defendants. )

CASE NO. A- 11- 641059- C  
DEPT. NO. XXI

25 **COMPLAINT FOR DAMAGES FOR PERSONAL INJURIES AND WRONGFUL**

26 **DEATH AND DEMAND FOR JURY TRIAL**

27 COME NOW, Plaintiffs Teresa Garcia Trejo, Individually and as Representative of the  
28 Estate of Rafael Trejo, Deceased, and Jose De Jesus Garcia, Individually, by and through their  
counsel, Stacey A. Upson, Esq., and for causes of action against Alan Koransky and Ford Motor  
Company allege as follows:

///

NETTLES LAW FIRM  
1389 Galleria Drive Suite 110  
Henderson, NV 89014  
(702) 434-8282 / (702) 434-1488 (fax)



# I. THE PARTIES AND GENERAL ALLEGATIONS

1. Teresa Garcia Trejo ("Mrs. Trejo") is the surviving spouse of Rafael Trejo, Deceased. She brings suit herein in her individual capacity for the injuries she sustained in the crash in question and as the successor-in-interest and surviving heir of Rafael Trejo, Deceased. Mrs. Trejo resides in Las Vegas, Clark County, Nevada.

2. Jose De Jesus Garcia ("Mr. Garcia") brings this action in his individual capacity for the injuries he sustained in the crash in question. Mr. Garcia currently resides in Mexico.

3. Defendant, Alan Koransky ("Koransky"), is a Nevada resident living in Henderson.

4. Defendant, Ford Motor Company, is a Delaware corporation doing business through its authorized agents in the State of Nevada. Plaintiffs are informed and believe and upon such information and belief, allege that at all times and places herein mentioned, Defendant FORD MOTOR COMPANY was and is a corporation, partnership, sole proprietorship, association, or other type of business entity organized to do business in, was doing business in at the time of the crash in question, and is doing business in the State of Nevada. FORD MOTOR COMPANY is authorized to conduct business in Nevada, conducts business in Nevada, and derives substantial economic profits from Nevada. FORD MOTOR COMPANY is subject to personal jurisdiction in Nevada.

5. FORD MOTOR COMPANY ("Ford") was at all times engaged in the business of designing, selecting materials for, manufacturing, fabricating, assembling, inspecting, testing, marketing, distributing, advertising, selling, installing, and placing at market in the ordinary course of trade and business and recommending for sale and selling 2000 Ford Excursion XLT vehicles and their component parts, used by Plaintiffs as it was intended to be used at all times and places mentioned herein.

6. Plaintiffs are informed and believe, and thereon allege, that all of the acts and conduct herein below described of each and every corporate Defendant was duly authorized, ordered, and directed by the respective and collective Defendant corporate employers, officers, and management-level employees of said corporate employers. In addition thereto, said corporate employers participated in the aforementioned acts and conduct of their said employees, agents

1 and representatives and each of them; and upon completion of the aforesaid acts and conduct of  
2 said corporate employees, agents and representatives, the Defendant corporations, respectively,  
3 and collectively, ratified, accepted the benefits of, condoned, lauded, acquiesced, approved, and  
4 consented to each and every of the said acts and conduct of the aforesaid corporate employees,  
5 agents and representatives.

6 7. The true names and capacities, whether individual, corporate, associate, governmental or  
7 otherwise, of defendants Does 1 through 10 and Roe Corporations 11 through 20 ("Doe/Roe  
8 Defendants"), inclusive, are unknown to Plaintiffs at this time, who therefore sue said  
9 Defendants by such fictitious names. When the true names and capacities of said Defendants  
10 have been ascertained, Plaintiffs will amend this Complaint accordingly.

11 8. On information and belief, Doe/Roe Defendants participated in the ownership,  
12 maintenance, inspection, design, repair, construction, manufacture, improvement, alteration,  
13 management, control, entrustment, supervision, execution, driving, and/or operation of the  
14 vehicles and/or roads involved in this action; Doe/Roe Defendants include, but are not limited to,  
15 owners, operators, drivers, passengers, family members, principals, employers, mechanics,  
16 contractors, manufacturers, supervisors, insurers, designers, engineers, sellers, governmental  
17 authorities, and their agents, servants, representatives, employees, partners, joint venturers,  
18 related companies, subsidiaries, parents, affiliates, predecessors, and/or successors in interest.

19 9. On information and belief, Doe/Roe Defendants are responsible, negligently or in some  
20 other actionable manner, for the events and happenings hereinafter referred to, and caused  
21 injuries and damages proximately thereby to Plaintiffs as hereinafter alleged.

22 10. On information and belief, Doe/Roe Defendants were involved in the initiation, approval,  
23 support or execution of the wrongful acts upon which this litigation is premised, or of similar  
24 actions against Plaintiffs of which Plaintiffs are presently unaware.

## 25 II. THE INSTRUMENTALITIES AND LOCATION OF THE INCIDENT

26 11. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through  
27 10 as though fully set forth herein.

28 ///

1 12. On or about December 16, 2009, Mrs. Trejo was lawfully driving a 2000 Ford Excursion  
2 XLT with Vehicle Identification Number 1FMNU41S1YEE51577, bearing a State of Nevada  
3 license plate number 643-WKT (herein after "subject vehicle" or "vehicle in question") with a  
4 utility trailer attached. Rafael Trejo and Mr. Garcia were occupants in the subject vehicle.

5 13. Based on the available evidence at this time, on the occasion in question, Mrs. Trejo was  
6 traveling eastbound on Interstate 10 in Dona Ana County, New Mexico. Mrs. Trejo was  
7 traveling in the right traffic lane when she noticed a commercial motor vehicle merging onto the  
8 Interstate from a right side entrance ramp. Mrs. Trejo proceeded to change lanes to the left to  
9 allow the commercial motor vehicle to gain entry into the right traffic lane. As Mrs. Trejo  
10 moved to the left lane, the utility trailer attached to the subject vehicle began to swerve from side  
11 to side, at which time she lost control of the vehicle and it rolled over. During the rollover  
12 sequence, the subject vehicle was severely damaged and failed to adequately protect its  
13 occupants due to design defects in the occupant protection and handling and stability systems of  
14 the 2000 Ford Excursion XLT. Rafael Trejo died as a result of the injuries he sustained in the  
15 crash in question. Mrs. Trejo and Mr. Garcia sustained serious injuries in the crash.

16 14. Additionally, the death of Rafael Trejo and injuries sustained by Mrs. Trejo and Mr.  
17 Garcia were caused by the defective condition of the trailer that was attached to the subject  
18 vehicle in question and/or the vehicle itself which was designed, manufactured, marketed, and  
19 sold by Ford which was defective in design and manufacture.

20 15. The Plaintiffs assert a claim in negligence against Defendant Alan Koransky ("Koransky"),  
21 who sold the trailer to Plaintiff Mr. Garcia knowing that it was in need of repair to remedy a  
22 dangerous and defective condition, without adequately warning Mr. Garcia of the defective  
23 condition of the trailer.

24 16. As a direct and proximate result of the negligence, acts, omissions, and/or defective  
25 products of the Defendants, and each of them, Rafael Trejo suffered certain and severe injuries in  
26 the subject crash that resulted in his death.

27 17. As a direct and proximate result of the negligence, acts, omissions, and conduct of the  
28 Defendants, and each of them, Mrs. Trejo and Mr. Garcia witnessed the events which resulted in

1 the injuries to, and subsequent death of their husband and/or brother-in-law, Rafael Trejo. Mrs.  
2 Trejo and Mr. Garcia sustained general damages including shock, emotional injury, suffering,  
3 worry, and anxiety after witnessing the death of Mr. Trejo, to be shown at time of trial.

4 18. As a direct and legal result of the negligent acts and omissions and/or defective products  
5 of Defendants, and each of them, Plaintiff Mrs. Trejo has been deprived of her loving husband  
6 and has suffered and will continue to suffer, among other things, loss of the decedents' support,  
7 services, advice, love, companionship, solace, society, comfort, affection, and moral support, all  
8 to their damage in an amount to be shown at time of trial.

9 19. As a further direct and legal result of the aforesaid negligent acts and omissions and/or  
10 defective products of Defendants, and each of them, Plaintiff have had, and in the future will  
11 have, pain, suffering, worry, anxiety, emotional distress, and loss of consortium, all to their  
12 general damages in an amount within the jurisdictional limits of this Court, to be shown at time  
13 of trial.

14 20. As a further direct and proximate result of said negligent acts and omissions and/or  
15 defective products of the Defendants, and each of them, Mrs. Trejo and Mr. Garcia were required  
16 to and did incur expenses for services of hospitals, doctors, and other medical expenses, and will  
17 be required to incur additional future medical expenses, in an amount to be proven at trial in  
18 addition to loss of earning and loss of earning capacity.

19 21. As a further direct and proximate result of the above-described conduct of the  
20 Defendants, Mrs. Trejo has incurred expenses for an appropriate burial and funeral of Rafael  
21 Trejo as well as loss of society and companionship.

### 22 III. FIRST CAUSE OF ACTION

23 (All Defendants-Negligence)

24 22. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through  
25 21 as though fully set forth herein.

26 ///

27 ///

28 ///

1 26. At the time it sold the 2000 Ford Excursion in question, Defendant Ford was in the  
2 business of selling vehicles such as the vehicle in question to the general public. In the normal  
3 course of business, Defendant routinely marketed vehicles, such as the Ford Excursion, in such a  
4 manner that a reasonable person in Plaintiffs' position would expect the vehicle to present no  
5 greater risk of defect than any other type of vehicle of the same vintage and class during  
6 expected, ordinary and reasonably foreseeable use.

7 27. Defendant Ford committed acts of omission and commission, including the failure to  
8 exercise reasonable care with regard to the vehicle in question and negligently introducing  
9 defects and/or failing to eliminate defects. Defendant failed to inspect and/or repair the vehicle  
10 and failed to discover and/or provide adequate warnings about the defects. These acts of  
11 commission and omission, collectively and severally, constitute negligence, which were the  
12 proximate cause of Plaintiffs' injuries and damages, including the death of Rafael Trejo.

13 28. Defendant Koransky committed acts or omissions that constitute negligence by failing to  
14 take reasonable steps or warn or notify Mr. Garcia that the trailer was not in a reasonably safe  
15 condition for ordinary use at the time Koransky sold the trailer to Mr. Garcia. Koransky either  
16 knew, or should have known with the exercise of reasonable diligence, that the trailer was in a  
17 dangerous and defective condition and knew that Mr. Garcia was unaware of this condition. Mr.  
18 Koransky failed to do that which a person of ordinary and reasonable produce would have done,  
19 by failing to take reasonable steps to warn Mr. Garcia of the dangerous and defective condition  
20 of the trailer.

21 29. The negligence of Defendant Koransky was a proximate cause of the death of Mr. Trejo  
22 and the injuries to Mr. Garcia, and Mrs. Trejo as alleged herein because the defective condition  
23 of the trailer about which Defendant Koransky negligently failed to warn Mr. Garcia was a  
24 contributing cause of the vehicle going out of control during the incident in question.

25 30. As a direct and proximate result of the aforesaid negligent acts and omissions by  
26 Defendants, and each of them, Plaintiffs suffered injuries, loss of earnings, loss of earning  
27 capacity and damages in an amount in excess of \$10,000 and attorney fees/costs.

28 ///

## IV. SECOND CAUSE OF ACTION

## (Ford -Strict Liability in Tort)

31. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 30 as though fully set forth herein.

32. The defective vehicle involved in the crash is a 2000 Ford Excursion XLT. At the time the vehicle was designed, manufactured, marketed, and sold by Ford, it was defective in design and manufacture.

33. There was a safer alternative design other than the one used, which was economically and technologically feasible and would have prevented or significantly reduced the risk of the accident and/or injury in question without substantially impairing the vehicle's utility. Further, at the time the vehicle in question was sold, the defective design caused the product to unexpectedly fail to function in a manner reasonably expected by an ordinary consumer and user of the same type of vehicle. The defective design of the vehicle was a producing cause of the crash in question, Plaintiffs' damages, and Plaintiffs' injuries, including the death of Rafael Trejo.

34. Ford designed, manufactured, marketed, and sold the vehicle in question, and at the time it did so, Ford was in the business of designing, manufacturing, and selling vehicles like the vehicle in question.

35. From the time that the vehicle left the possession of Ford until the time of the accident, the vehicle remained in substantially similar condition it was in at the time it left the possession of Ford.

36. Ford is liable under the doctrine of strict product liability for placing the subject vehicle into the stream of commerce and is liable for the injuries and damages produced by the defects in the subject vehicle. The subject vehicle was defective at the time it was designed, manufactured, marketed, and distributed. The defective nature of the subject vehicle included defects in design, stability, handling, marketing, warnings, crashworthiness, rollover resistance, controllability, and occupant protection. The defective nature of the subject vehicle also included, but is not limited to, the following:

- 1 (a) The vehicle is defective in that the design of the "package," which includes the  
2 combination of track width, wheelbase and vertical center of gravity height, creates  
3 an unreasonable risk of rollover given the uses for which the vehicle was marketed;  
4 (b) Both prior to and subsequent to the sale of the vehicle in question, Ford failed to give  
5 adequate and proper warnings and instructions regarding the dangers of the vehicle,  
6 which failure rendered the vehicle defective;  
7 (c) The vehicle was defective in that it was not designed to provide reasonable and  
8 necessary occupant protection and occupant containment in the event of a rollover  
9 accident;  
10 (d) The vehicle is defective and inherently dangerous due to its general vehicle design  
11 parameters that cause rollover instability under ordinary emergency avoidance and  
12 driving conditions; and  
13 (e) The vehicle in question was not properly designed for vehicle stability when used for  
14 its intended purposes and foreseeable uses.

15 37. The design, marketing, and manufacturing defects in the vehicle in question rendered it  
16 defective, which defective condition was a producing cause of the rollover in question, the  
17 injuries caused thereby, and the damages sought by Plaintiffs herein. Further, at the time the  
18 vehicle in question was sold, the defective design caused the product to unexpectedly fail to  
19 function and/or operate in a manner reasonably expected by an ordinary consumer and user.

20 38. At the time the vehicle in question left the possession of Ford, it did not have adequate  
21 warnings of the product's dangers that were known by, or should have been known by, Ford.  
22 Defendant failed to give adequate instructions to avoid the dangers associated with its product,  
23 such as the vehicle's inability to properly protect its passengers during a rollover, propensity to  
24 destabilize during reasonably foreseeable and intended use, and propensity to rollover. These  
25 failures, among others, rendered the product defective, and these defects were a producing cause  
26 of the accident, the injuries sustained by Plaintiffs, and Plaintiffs' damages in addition to the  
27 death of Mr. Trejo.

28 ///

1 39. Safer alternative designs were economically and technologically feasible at the time the  
2 product in question left the control of Ford and would have prevented the crash without affecting  
3 the utility of the product.

4 40. Defendant Ford knew or should have known that said subject vehicle would be used by  
5 ordinary and unsuspecting consumers, including Plaintiffs, without inspection thereof for  
6 defects.

7 41. As a direct and proximate result of the aforesaid acts and omissions by Defendants, and  
8 each of them, Plaintiffs suffered injuries, loss of earnings, loss of earning capacity, medical  
9 expenses, and other damages in an amount in excess of \$10,000 and attorney fees/costs and the  
10 death of Rafael Trejo.

#### 11 V. THIRD CAUSE OF ACTION

##### 12 (Ford - Breach of Express Warranty)

13 42. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through  
14 41 as though fully set forth herein.

15 43. Ford and Plaintiffs entered into a contract for the sale of goods.

16 44. At all times herein mentioned, Defendant Ford by and through the sale of the Ford  
17 Excursion, expressly warranted to the public generally, and to the Plaintiffs specifically, that the  
18 subject vehicle and its component parts was fit and safe for the purposes for which it was  
19 intended.

20 45. The subject vehicle manufactured and/or distributed by FORD did not conform to the  
21 warranty in that it was unfit and unsafe for its intended uses and purposes because of design,  
22 manufacturing, and marketing defects that caused the accident and enhanced the injuries because  
23 the vehicle was not crashworthy.

24 46. Ford breached these warranties. Specifically, it breached express warranties of  
25 merchantability and fitness, which breach was the producing cause of Plaintiffs' injuries,  
26 including but not limited to loss of earnings, loss of earning capacity, medical expenses, and  
27 other damages in an amount in excess of \$10,000 and attorney fees/costs and the death of Rafael  
28 Trejo.



**VI. FOURTH CAUSE OF ACTION**

**(Ford - Breach of Implied Warranty)**

47. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 46 as though set forth fully herein.

48. Ford and Plaintiffs entered into a contract for the sale of goods.

49. At all times herein mentioned, Defendant Ford by and through the sale of the Ford Excursion, impliedly warranted to the public generally, and to the Plaintiffs specifically, that the subject vehicle and its component parts was fit and safe for the purposes for which it was intended.

50. Ford provided a vehicle that was not intended for ordinary use as it manufactured and/or distributed a vehicle conform to the warranty in that it was unfit and unsafe for its intended uses and purposes because of design, manufacturing, and marketing defects that caused the accident and enhanced the injuries because the vehicle was not crashworthy.

51. Ford breached these warranties. Specifically, it breached express warranties of merchantability and fitness, which breach was the producing cause of Plaintiffs' injuries which include but are not limited to loss of earnings, loss of earning capacity, medical expenses, and other damages in an amount in excess of \$10,000 and attorney fees/costs and the death of Rafael Trejo.

**VII. FIFTH CAUSE OF ACTION**

**(All Defendants - Negligent Infliction of Emotional Distress)**

52. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 51 as though fully set forth herein.

53. At all times mentioned herein, Rafael Trejo and Mrs. Trejo were husband and wife.

54. As a direct and proximate result of the aforesaid acts and omissions by Defendants and each of them, Mrs. Trejo and Mr. Garcia, in addition to suffering physical injuries, suffered shock by the witnessing of the events described herein, including contemporaneously observing and sensing the injuries to Rafael Trejo.

1 55. As a direct and proximate result of the aforesaid acts and omissions by Defendants, and  
2 each of them, Plaintiffs have suffered and will continue to suffer fright, shock, emotional injury,  
3 mental anguish, worry and anxiety in an amount in excess of \$10,000 along with attorney  
4 fees/costs.

5 **VIII. SIXTH CAUSE OF ACTION**  
6 **PUNITIVE AND EXEMPLARY DAMAGES**  
7 **(Against Ford)**

8 56. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through  
9 55 as though fully set forth herein.

10 57 In committing the acts described above, Defendants, and each of them, were guilty of  
11 malice, oppression, and conscious disregard as those terms are defined in NRS 42.001.

12 58. Specifically, as alleged in detail above, Plaintiffs are informed and believe that Defendant  
13 Ford, developed, assembled, manufactured, marketed, advertised, purchased, inspected, repaired,  
14 serviced, distributed, and sold the vehicle in question knowing that it was defective and  
15 dangerous and likely to cause severe debilitating injuries, including fatal injuries, to users in  
16 foreseeable circumstances as a result of its conscious disregard of defective conditions of the  
17 vehicle that rendered it unreasonably dangerous for intended and reasonably foreseeable use.  
18 This conduct demonstrates a conscious disregard for the rights and safety of others amounting to  
19 oppression, or in the alternative, malice.

20 59. Plaintiffs are informed and believe that Ford management, including those responsible for  
21 the design, production, and marketing of the subject vehicle, knew before the subject vehicle was  
22 manufactured or sold, that the vehicle was defective. Ford management knew how to design and  
23 manufacture a vehicle to eliminate or significantly mitigate the possibility of a rollover due to  
24 vehicle instability, including design of the vehicle's height to track width ratio.

25 60. Despite this specific knowledge, management at Ford consciously disregarded its ability  
26 to include these design changes and safety features, which created the risk of serious harm and  
27 death to occupants of its vehicles, including the subject vehicle.

28

61. The acts and/or omissions of Ford, and each of them, were either committed by or authorized, ratified, or otherwise approved by the officers, directors, and/or managing agents of Ford, or were carried out unfairly, in bad faith, or in an oppressive, fraudulent, malicious, deliberate, callous, intentional, and/or unreasonable manner, causing injury and damage to Plaintiffs and the death of Rafael Trejo, and were done with a conscious disregard to Plaintiffs' rights.

62. Accordingly, Plaintiffs should recover, in addition to actual damages, punitive and exemplary damages.

### IX. SEVENTH CAUSE OF ACTION

#### LOSS OF CONSORTIUM

(All Defendants)

63. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 62 as though fully set forth herein.

64. Mrs. Trejo was the lawful wife of Mr. Trejo and was and is entitled to society, comfort, affection, services, companionship and consortium of her husband.

65. That as a direct and proximate result of the acts and/or omissions of the Defendants, and each of them, Mrs. Trejo has been denied the society, comfort, affection, services, companionship and consortium of her husband, Mr. Trejo, all to her general damages in excess of \$10,000.

### X. PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- (a) For general damages according to proof;
- (b) For special damages according to proof;
- (c) For medical and related expenses according to proof;
- (d) For loss of earning and earning capacity according to proof;
- (e) For loss of consortium according to proof;
- (f) For impairment according to proof;


NETTLES LAW FIRM  
1389 Galleria Drive Suite 110  
Henderson, NV 89014  
(702) 434-8282 / (702) 434-1488 (fax)

- 1 (g) For physical pain and mental anguish according to proof;  
2 (h) For punitive and exemplary damages according to proof;  
3 (i) For costs of suit incurred herein;  
4 (j) For interest on said judgment pursuant to law; and  
5 (k) For such other and further relief as the Court may deem just and proper.

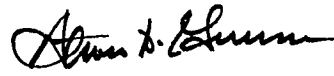
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NETTLES LAW FIRM

By   
STACEY A. UPSON, ESQ.  
Nevada Bar No. 4773  
1389 Galleria Drive, Suite 110  
Henderson, Nevada 89014  
Telephone: (702) 434-8282  
Facsimile: (702) 434-1488  
[staceyupson@nettlawfirm.com](mailto:staceyupson@nettlawfirm.com)  
Attorney for Plaintiff

**B**

  
CLERK OF THE COURT

1 **NEOJ**  
2 BRIAN D. NETTLES, ESQ.  
3 Nevada Bar No. 7462  
4 WILLIAM R. KILLIP, JR, ESQ.  
5 Nevada Bar No. 3660  
6 NETTLES LAW FIRM  
7 1389 Galleria Drive, Suite 200  
8 Henderson, Nevada 89014  
9 Telephone: (702) 434-8282  
10 Facsimile: (702) 434-1488  
11 [briannettles@nettleslawfirm.com](mailto:briannettles@nettleslawfirm.com)  
12 [bill@nettleslawfirm.com](mailto:bill@nettleslawfirm.com)

13 Ricardo A. Garcia, Esq.  
14 LAW OFFICES OF GARCIA & KARAM  
15 820 South Main Street  
16 McAllen, TX 78501  
17 Telephone Number: (956) 630-2882  
18 Facsimile Number: (956) 630-5393  
19 Attorneys for Plaintiffs

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 TERESA GARCIA TREJO, et al.

23 Plaintiffs,

24 vs.

25 ALAN KORANSKY, FORD MOTOR  
26 COMPANY, DOES 1 through 10, ROE  
27 CORPORATIONS 11 through 20, inclusive

28 Defendants.

Case No.: A-11-641059-C

Dept. No.: XXI

**NOTICE OF ENTRY OF JUDGMENT UPON JURY VERDICT**

TO: ALL PARTIES; and  
TO: THEIR RESPECTIVE ATTORNEYS.

...

...

**NETTLES LAW FIRM**  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

NETTLES LAW FIRM  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

1 PLEASE TAKE NOTICE that a Judgment Upon Jury Verdict was dully entered on the  
2 above-entitled matter on 7<sup>th</sup> day of October, 2014, a true and correct copy of said Judgment  
3 Upon Jury Verdict is attached hereto.

4 DATED this 8 day of October, 2014.

5 NETTLES LAW FIRM

6  
7  
8 By   
9 BRIAN D. NETTLES, ESQ.  
10 Nevada Bar No. 7462  
11 WILLAM R. KILLIP, JR., ESQ.  
12 Nevada Bar No. 3660  
13 1389 Galleria Drive, Suite 200  
14 Henderson, Nevada 89014  
15 Telephone: (702) 434-8282  
16 Facsimile: (702) 434-1488  
17 [briannettles@nettlslawfirm.com](mailto:briannettles@nettlslawfirm.com)  
18 [bill@nettlslawfirm.com](mailto:bill@nettlslawfirm.com)  
19 Attorneys for Plaintiffs  
20  
21  
22  
23  
24  
25  
26  
27  
28

NETTLES LAW FIRM  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

**CERTIFICATE OF E-SERVICE**

Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on the 8<sup>th</sup> day of October, 2014, a true and correct copy of the foregoing *Notice of Entry of Judgment Upon Jury Verdict* was served to the following party electronic transmission through the Wiznet system:

Michael R. Hall, Esq.  
HALL JAFFE & CLAYTON, LLP  
7455 West Washington Avenue, Suite 460  
Las Vegas, NV 89128  
Telephone Number: (702) 316-4111  
Facsimile Number: (702) 316-4114  
Attorney for Defendant,  
*Alan Koransky*

Joshua D. Cools, Esq.  
Jay J. Schuttert, Esq.  
SNELL & WILMER, LP  
3883 Howard Hughes Parkway, Suite 110  
Las Vegas, NV 89169  
Telephone Number: (702) 784-5200  
Facsimile Number: (702) 784-5252  
Attorney for Defendant,  
*Ford Motor Company*

**CERTIFICATE OF SERVICE BY MAIL**

Pursuant to NRCP 5(b) and EDCR 7.26, I hereby certify that on the 8<sup>th</sup> day of October, 2014, a true and correct copy of the foregoing *Notice of Entry of Judgment Upon Jury Verdict* was served to the following party by facsimile and regular mail, addressed as follows, as they have not been added to the E-Service Master List on Wiznet:

Ricardo A. Garcia, Esq.  
LAW OFFICES OF GARCIA & KARAM  
820 South Main Street  
McAllen, TX 78501  
Telephone Number: (956) 630-2882  
Facsimile Number: (956) 630-5393  
*Attorney for Plaintiffs*

Larry W. Lawrence, Jr., Esq.  
LAWRENCE LAW FIRM  
3112 Windsor Rd. #A234  
Austin, Texas 78703  
Telephone Number: (956) 994-0057  
Facsimile Number: (956) 994-0741  
*Attorneys for Plaintiffs*

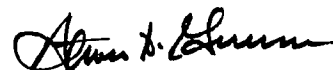


An employee of the  
NETTLES LAW FIRM



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CLERK OF THE COURT

BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
WILLIAM R. KILLIP, JR, ESQ.  
Nevada Bar No. 3660  
NETTLES LAW FIRM  
1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
Telephone: (702) 434-8282  
Facsimile: (702) 434-1488  
[briannettles@nettlslawfirm.com](mailto:briannettles@nettlslawfirm.com)  
[bill@nettlslawfirm.com](mailto:bill@nettlslawfirm.com)

Ricardo A. Garcia, Esq.  
LAW OFFICES OF GARCIA & KARAM  
820 South Main Street  
McAllen, TX 78501  
Telephone Number: (956) 630-2882  
Facsimile Number: (956) 630-5393  
Attorneys for Plaintiffs

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TERESA GARCIA TREJO, et al.

Plaintiffs,

vs.

ALAN KORANSKY, FORD MOTOR  
COMPANY, DOES 1 through 10, ROE  
CORPORATIONS 11 through 20, inclusive

Defendants.

Case No.: A-11-641059-C

Dept. No.: XXI

**JUDGMENT UPON JURY VERDICT**

This action having come on for trial beginning on the 8<sup>th</sup> day of September, 2014, before the Court and a jury, Honorable Valerie Adair, District Judge, presiding, the issues having been duly tried and the jury having duly rendered its verdict on September 23, 2014:

...

**NETTLES LAW FIRM**  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

NETTLES LAW FIRM  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

IT IS ORDERED AND ADJUDGED that Plaintiff Teresa Garcia Trejo recover from Defendant Ford Motor Company the principal sum of four million five hundred thousand dollars and 00/100 (\$4,500,000.00), together with pre-judgment interest in the amount of \$517,376.70, with interest on the principal amount of the judgment accruing at the rate of 5.25 percent per annum as provided by law. Plaintiff may apply separately for her costs and attorneys' fees and an amended judgment will be entered accordingly.

DATED this 3<sup>rd</sup> day of October, 2014.

  
DISTRICT COURT JUDGE 

Submitted by:

NETTLES LAW FIRM

By   
BRIAN D. NETTLES, ESQ.  
Nevada Bar No. 7462  
WILLIAM R. KILLIP, JR., ESQ.  
Nevada Bar No. 3660  
1389 Galleria Drive, Suite 200  
Henderson, Nevada 89014  
Telephone: (702) 434-8282  
Facsimile: (702) 434-1488  
[briannettles@nettlawfirm.com](mailto:briannettles@nettlawfirm.com)  
[bill@nettlawfirm.com](mailto:bill@nettlawfirm.com)  
Attorneys for Plaintiff

c

**MJUD**

Vaughn A. Crawford  
Nevada Bar No. 7665  
Jay J. Schuttert  
Nevada Bar No. 8656  
Morgan T. Petrelli  
Nevada Bar No. 13221  
SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252  
Email: [vcrawford@swlaw.com](mailto:vcrawford@swlaw.com)  
Email: [jschuttert@swlaw.com](mailto:jschuttert@swlaw.com)  
Email: [mpetrelli@swlaw.com](mailto:mpetrelli@swlaw.com)

Michael W. Eady (*Pro Hac Vice*)  
Thompson Coe Cousins & Irons, L.L.P.  
701 Brazos St., 15th Floor  
Austin, TX 78701  
Telephone: (512) 708-8200  
Facsimile: (512) 708-8777  
Email: [MEady@thompsoncoecoe.com](mailto:MEady@thompsoncoecoe.com)

Attorneys for Defendant  
FORD MOTOR COMPANY

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TERESA GARCIA TREJO as The Success-  
in-Interest and Surviving Spouse of Rafael  
Trejo, Deceased,

Plaintiff,

vs.

FORD MOTOR COMPANY,

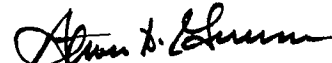
Defendant.

Case No.: A-11-641059-C

Dept. No.: XXI

**DEFENDANT FORD MOTOR  
COMPANY'S RENEWED MOTION  
FOR JUDGMENT AS A MATTER OF  
LAW OR, IN THE ALTERNATIVE,  
FOR A NEW TRIAL**

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CLERK OF THE COURT

Defendant Ford Motor Company hereby moves this Court for judgment as a matter of law  
pursuant to NRCP 50(b) or, in the alternative, for a new trial. NRCP 59.

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1 This Motion is based on the pleadings and papers on file herein, any argument this Court  
2 may entertain at the hearing of this Motion, and the following Memorandum of Points and  
3 Authorities.

4 DATED this 21 day of October, 2014.

5 SNELL & WILMER L.L.P.

6  
7 By: 

Vaughn A. Crawford  
Nevada Bar No. 7665  
Jay J. Schuttert  
Nevada Bar No. 8656  
Morgan T. Petrelli  
Nevada Bar No. 13221  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

11 Michael W. Eady (*Pro Hac Vice*)  
12 Thompson Coe Cousins & Irons, L.L.P.  
13 701 Brazos St., 15th Floor  
14 Austin, TX 78701

15 Attorneys for Defendant  
16 FORD MOTOR COMPANY  
17  
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NOTICE OF MOTION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for  
hearing in Department XXI of the above-entitled Court on the 1 day of Dec, 2014 at  
In Chambers  
\_\_\_\_\_ a.m., or as soon thereafter as counsel may be heard.

DATED this \_\_\_\_\_ day of October, 2014.

SNELL & WILMER L.L.P.

By: 

Vaughn A. Crawford  
Nevada Bar No. 7665  
Jay J. Schuttart  
Nevada Bar No. 8656  
Morgan T. Petrelli  
Nevada Bar No. 13221  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

Michael W. Eady (*Pro Hac Vice*)  
Thompson Coe Cousins & Irons, L.L.P.  
701 Brazos St., 15th Floor  
Austin, TX 78701

Attorneys for Defendant  
FORD MOTOR COMPANY

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

This case was tried beginning September 8, 2014 and concluding on September 23, 2014, when the jury returned its verdict. Based upon the jury's verdict, this Court entered judgment in favor of the Plaintiff.

As allowed by law, Ford now renews its Motion for Judgment as a Matter of Law.<sup>1</sup> The Judgment should be vacated and judgment entered in Ford's favor on grounds that (1) Plaintiff failed to prove that Mr. Trejo suffered his injury in the manner she claimed at the 5/8 point of the first roll; (2) under the Restatement (Third) of Torts: *Products Liability* § 2 "risk versus utility test," a reasonable jury could not have found that the roof of the 2000 Ford Excursion was both defective and unreasonably dangerous; (3) even under this Court's instructions to the jury based upon the outdated Restatement (Second) of Torts § 402A, Plaintiff failed to prove a *prima facie* case; and (4) excluding Brian Herbst's improperly admitted opinions, the remaining evidence in the record does not support the jury's verdict.

In the alternative, Ford asks that this Court grant a new trial because of the jury's manifest disregard for the Court's instructions on the law, misconduct of counsel, irregularity in the proceedings, certain additional errors identified below, and for the fundamental reason that based upon all the evidence presented, the jury's verdict is clearly wrong.

This Motion is timely filed, having been filed within ten (10) days following the Notice of Entry of Judgment.

### **II. LEGAL ARGUMENT**

#### *A. Standards of Review*

##### **1. Judgment as a matter of law**

Judgment as a matter of law is warranted when "a party has failed to prove a sufficient issue for the jury," so that the non-moving party's claim cannot be maintained under the controlling law. NRCP 50(a)(1); *see Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420, 424

<sup>1</sup> Ford's original Motion for Judgment as a Matter of Law was filed on September 18, 2014 and presented to the Court the following day, at the close of evidence. The motion was denied on the record. 223:3-224:7, Sept. 19, 2014.



(2007); *GA, Inc. v. Giglio*, 128 Nev. Adv. Op. No. 26 (Nev. 2012). To prove a “sufficient issue for the jury,” the plaintiff must have presented a *prima facie* case upon which the trier-of-fact can grant relief. *Nev. Indus. Dev. v. Benedetti*, 103 Nev. 360, 362-63, 741 P.2d 802, 804 (1987). Moreover, a directed verdict may be ordered if “the evidence is so overwhelming for one party that any other verdict would be contrary to the law.” *Grosjean v. Imperial Palace, Inc.*, 212 P.3d 1068, 1076 (Nev. 2009). The court should determine whether “there exists evidence of record upon which a jury might properly have returned a verdict in [the non-movant’s] favor *when the correct legal standard is applied*.” *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 975 (Fed. Cir. 1995) (quoting *Jamesbury Corp. v. Litton Indus. Prods., Inc.*, 756 F.2d 1556, 1560 (Fed. Cir. 1985) (emphasis added in *Markman*)). If the Court does not grant judgment as a matter of law at the close of evidence, the motion may be renewed following timely notice of entry of judgment and the Court may enter judgment as a matter of law at that time. NRCP 50(b) and *Nelson*, 123 Nev. at 223.

## 2. New trial

Alternatively, this Court may also order a new trial. NRCP 50(b)(1)(B). A new trial may be granted for all of the following pertinent reasons: (1) irregularity in the proceedings of the jury; (2) misconduct of the jury or prevailing party; (3) manifest disregard by the jury of the instructions of the Court; or (4) error of law occurring at the trial and objected to by the party moving for a new trial. NRCP 59(a). Moreover, a jury’s verdict will be overturned “if it was clearly wrong from all the evidence presented.” *Soper v. Means*, 111 Nev. 1290, 1294, 903 P.2d 222, 225 (1995) (citing *Bally’s Emp.’s Credit Union v. Wallen*, 105 Nev. 553, 555–56, 779 P.2d 956, 957 (1989)). The decision to grant a motion for new trial rests within the sound discretion of the trial court. *See Edwards Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 923 P.2d 569 (1996).

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1           B.       *Ford's Renewed Rule 50 Motion Should Be Granted*

2                   1.       **No evidence supports the jury's finding in answer to Question No. 2**  
3                               **that an alleged defect in the roof proximately caused Rafael Trejo's**  
4                               **death**

5           Causation is an essential element of a strict product liability claim. *Yamaha Motor Co.,*  
6     *Inc. (USA) v. Arnoult*, 955 P.2d 661, 664 (Nev. 1998). "To establish causation, a plaintiff must  
7     produce medical expert testimony opining to a reasonable degree of medical certainty that the  
8     allegedly defective product caused the plaintiff's injury." *Neal-Lomax v. Las Vegas Metro.*  
9     *Police Dep't*, 574 F. Supp. 2d 1193, 1198 (D. Nev. 2008) (citing *Morsicato v. Sav-On Drug*  
10    *Stores, Inc.*, 121 Nev. 153, 111 P.3d 1112, 1116 (2005); *United Exposition Serv. Co. v. State*  
11    *Indus. Ins. Sys.*, 109 Nev. 421, 851 P.2d 423, 425 (1993)). The mere potential that the product  
12    could have caused the claimed injury is legally insufficient. *United Exposition Serv. Co.*, 851 P.2d  
13    at 425. Without sufficient evidence of causation, a plaintiff's case fails. *See Arnoult*, 955 P.2d at  
14    664; *Price v. Blaine Kern Artista, Inc.*, 111 Nev. 515, 518, 893 P.2d 367, 369 (1995); *Dow Chem.*  
15    *Co. v. Mahlum*, 114 Nev. 1468, 1481, 970 P.2d 98, 107 (1998), *overruled in part on other*  
16    *grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 270, 21 P.3d 11, 14 (2001); *see also M & R Inv.*  
17    *Co. v. Anzalotti*, 105 Nev. 224, 227, 773 P.2d 729, 731 (1989) (affirming dismissal of product  
18    liability action because plaintiff failed to make a *prima facie* showing of causation).

19           Plaintiff's theory of how Mr. Trejo sustained his C7 fracture was that Mr. Trejo became  
20    "pinned" between the deforming roof and his seat bottom. That theory was presented to the jury  
21    during the testimony of Dr. Peles—

22                   Q.       *By definition, if he's pinned, he's pinned between something*  
23                               *and something. The first something was the roof, the other*  
24                               *something was the seat, wasn't it?*

25                   A.       *I agree. It's not on the foam insert.<sup>2</sup> You have to be pinned*  
26                               *if you're below that crush.*

27                   Q.       *Okay. So let's not make it any harder than it is. At the time*  
28                               *you believe the injury occurred, his buttocks was back in the seat,*  
                              *wasn't it?*

                  A.       *I believe that's likely. The process started before, the actual*

<sup>2</sup> The "foam insert" was used in the vehicle "buck" for courtroom demonstrative purposes of showing the undeformed roof line and post-collision roof line, represented by the "foam insert."

1 injury --

2 Peles' Trial Test., 76:16-25, Sept. 12, 2014 (emphasis added).

3 Given Mr. Trejo's height (5' 4"), his seated posture placed his head four to five inches  
4 from the roof rail—

5 A. Okay. So these are slides actually that Mr. Herbst made --  
6 and you might've already seen them -- but basically showing that  
7 *prior to the accident there's going to be a certain amount of head  
clearance between Mr. Trejo, and I found that -- and we'll discuss  
that -- about 4 to 5 inches would be his head clearance.*

8 Peles' Trial Test., 193:15-20, Sept. 11, 2014 (emphasis added).

9 Thus, before any "pinning" could have occurred, that four to five-inch gap had to close,  
10 along with an inch of seat compression—

11 Q. Okay. Obviously, in order to even start your theory of  
12 pinning, that four-inch gap has to close, doesn't it?

13 A. Correct.

14 Q. And then we're going to have another inch of compression  
15 into the seat, aren't we?

16 A. Correct.

17 Peles' Trial Test., 89:12-18, Sept. 12, 2014 (emphasis added).<sup>3</sup>

18 Once pinned, the actual mechanism causing Mr. Trejo's C7 cervical fracture was  
19 hyperflexion, according to Dr. Peles—i.e., the pushing on the back of Mr. Trejo's head, forcing  
20 his chin into his chest.<sup>4</sup> For a hyperflexion injury to occur, a *minimum of six additional inches*  
21 representing the downward vertical distance that Mr. Trejo's head toward his chest must be added  
22 to the equation:

23 Q. You have a statement on here injury occurs due to  
24 hyperflexion of the neck. *How far down had the head been pushed  
25 when you believe the injury occurs as you have represented it on  
this slide?*

26 A. Well, this is not a [indiscernible] diagram, this is a generic

27 <sup>3</sup> There was no evidence of damage to the seat cushion consistent with a "pinning" theory.  
28 Carter's Trial Test., 67:23-68:3, Sept. 17, 2014.

<sup>4</sup> Mr. Trejo had no marks on either his chin or chest consistent with this theory. Bennett's Trial  
Test., 118:1-19, Sept. 16, 2014. This type of injury does not typically result in a fractured neck.  
Bennett's Trial Test., 176:3-16, Sept. 16, 2014.

1 diagram of Mr. Herbst. But *I can't tell you the exact position. I*  
2 *can just tell you it's hyperflexion and it was related to the pinning*  
3 *so it had to be after that four to five inches pushing the head back*  
4 *into the seat.*

5 Q. So did you say at least six inches as a minimum?

6 A. That's -- yes, as a minimum, yes.

7 Peles' Trial Test., 91:3-13, Sept. 12, 2014 (emphasis added).<sup>5</sup>

8 All totaled, the roof would have had to deform *a minimum of eleven to twelve inches* for  
9 this injury mechanism to have been even theoretically possible. Dr. Peles thought that this was all  
10 very logical *and possible* because he *assumed* that *all* the roof deformation occurred during the  
11 first roll—

12 Q. And the charts that you put up showed that over the area  
13 where Mr. Trejo's head was -- in fact, it had a line on the chart,  
14 injury location per Dr. Peles, the vertical roof crush was ten and a  
15 half inches, wasn't it?

16 A. I can check. If that's what it says, yes.

17 Q. Okay. And -- we can put it up. Right, ten and a half  
18 inches?

19 A. Yes.

20 Q. Vertical roof crush injury location per Dr. Peles.

21 A. Yes.

22 Q. *And then there was three inches of lateral for a resultant*  
23 *10.9, correct?*

24 A. Yes.

25 \* \* \*

26 Q. *So you believe that all of the deformation that you used to*  
27 *create the foam insert happened at one impact at approximately the*  
28 *five-eighths roll position, all of it.*

A. I believe Mr. Herbst discussed some of it might have been  
taken away from the last roll, but I only had the static roof  
afterward to measure so, yes, that's what I'm using. And I believe  
that the analysis of Mr. Stevens describes why this occurred during  
that roll because of the scratch mark pattern. *So, yes, I believe*

<sup>5</sup> If anything, the distance could be more than six inches given the flexible nature of the cervical spine. Bennett's Trial Test., 121:5-12, Sept. 16, 2014.

1                   *that's when that occurred.*

2       Peles' Trial Test., 86:10-17; 87:5-14, Sept. 12, 2014 (emphasis added).

3               Indeed, Dr. Peles admitted that he had assumed as the foundation for his opinions on  
4       injury causation that all the roof deformation occurred at the 5/8 position of the *first roll*:

5               Q.     Okay. Now, you are assuming for the purposes of your  
6                   *analysis that all of that roof deformation happened on the first roll*  
7                   *at five-eighths and pinned Mr. Trejo between the roof and the seat,*  
8                   *aren't you, sir?*

9               A.     *I believe that's the case.* And probably even more from  
10              dynamic deformation.

11       Peles' Trial Test., 86:24-87:4, Sept. 12, 2014 (emphasis added).

12              But that was not Mr. Herbst's testimony at trial. Mr. Herbst, the only expert called by  
13       Plaintiff to testify on the amount of roof deformation and when it occurred, opined only that  
14       something more than one-half of the crush, *but not all of it*, occurred in that the first passenger  
15       side roof to ground contact—

16              Q.     All right. Let me -- *let me jump to your testing and*  
17                   *measurements of this vehicle. You told -- you told us, I think, that in*  
18                   *terms of the deformation that you measured in the roof most of it*  
19                   *came during a single-roof impact?*

20              A.     Yes. *I believe my testimony was the majority of it occurred*  
21                   *during the first strike to the passenger side, if we're talking about*  
22                   *the passenger side.*

23              Q.     And by majority, *give me the best you can in terms of the*  
24                   *percent that you believe occurred on that single and initial*  
25                   *passenger side contact?*

26              A.     *I would say more than -- the majority being more than 50*  
27                   *percent [indiscernible] more than that. It does come to rest on its*  
28                   *roof at the end, and at that point it can't even support its own*  
                  *weight so there's certainly going to be additional crush there. But*  
                  *certainly I'd say the majority of it's during the first ground strike.*

              Q     Okay. *So more than half of it -- you really can't get me much*  
                  *more specific than more than half on the initial roof contact on the*  
                  *passenger side, correct?*

              A     Correct

              Herbst's Trial Test., 72:2-22, Sept. 10, 2014 (emphasis added).

              ///

1 Dr. Peles was unaware of Mr. Herbst's trial testimony—

2 Q. Okay. But to be clear, it is your opinion that all of the  
3 deformation that produced the injury occurred at that single impact  
4 at the five-eighths roll position and that there may have even been  
5 more.

6 A. That was what Mr. Stevens and Mr. Herbst did, so it's not  
7 really my independent opinion, but that's what their analysis shows.

8 Q. Mr. Herbst has already come in and testified. Were you  
9 aware of that?

10 A. Yes.

11 Q. *Mr. Herbst testified that all he could say is that something  
12 more than half of the roof deformation occurred on that single roll.  
13 Were you told that?*

14 A. No.

15 Peles' Trial Test., 87:20–88:8, Sept. 12, 2014 (emphasis added).

16 Hence, Dr. Peles' opinion on causation is based upon the incorrect factual assumption that  
17 the roof deformed eleven to twelve inches at the 5/8 position of the first roll. But based upon  
18 Mr. Herbst's measurement of the amount of roof deformation at the 5/8 roll position, *Mr. Trejo*  
19 *simply could not have been pinned* because there was insufficient roof deformation to cause a  
20 hyperflexion injury. This point needs repeating—there was insufficient roof deformation at the  
21 5/8 roll point for the mechanism of injury to Mr. Trejo to have occurred as claimed. The roof  
22 deformation was several inches short of that necessary to pin Mr. Trejo's head against his chest  
23 and cause a flexion injury, much less positional asphyxiation.

24 In sum, Plaintiff tried this case under the theory that the fatal C7 injury occurred during  
25 the first roof-to-ground contact at Mr. Trejo's seated location. Plaintiff offered no analysis of the  
26 occupant kinematics past that point, let alone during the *second* impact. No foundation therefore  
27 exists to support an alternative opinion that Mr. Trejo suffered his C7 injury later in the roll  
28 sequence, magically returning to the precise point of the greatest roof deformation in time for the  
last roof-to-ground contact over his seated position. Dr. Peles made no attempt to opine how that  
could even be possible and other witnesses testified that it was not possible. (Carter Trial Test.,  
55:17–57:6, Sept. 17, 2014). After the 5/8 point ground contact, there were other ground

1 contacts, including driver side contacts that would have pushed Mr. Trejo away from the area of  
2 significant roof deformation. *Id.*

3 Consistent with the law given to the jury in the Court's Instruction No. 23 on proximate  
4 cause, the *only* possible answer to Question No. 2 was "no," because Plaintiff failed to adduce  
5 evidence of sufficient roof crush at the 5/8 point of the first roll to cause a flexion injury to  
6 Mr. Trejo. This Court will recall that during closing argument, Ford discussed this fatal gap in  
7 proof, and Plaintiff responded with no claim that Ford misstated Dr. Peles' testimony or that the  
8 math was wrong. Tellingly, Plaintiff instead responded in rebuttal with arguments that are  
9 discussed *infra* as misconduct warranting a new trial.

10 Based upon this fatal gap in the causation proof, Ford's Renewed Motion for Judgment as  
11 a Matter of Law should be granted.

12 **2. Determining the correct law to apply on Plaintiff's strict products**  
13 **liability claim**

14 The wrong product liability law was applied. This Court should have applied the  
15 principles set forth in the Restatement (Third) of Torts: *Products Liability* § 2. Under the correct  
16 law, Ford is entitled to judgment as a matter of law for the reasons that follow. In the alternative,  
17 Ford is at least entitled to a new trial applying the correct law.

18 *a. Restatement (Second) of Torts § 402A*

19 Currently, Nevada follows the 402A test for determining whether a product is defective in  
20 its design. *See Ginnis v. Mapes Hotel Corp.*, 470 P.2d 135 (Nev. 1970) (citing *Shoshone Coca-*  
21 *Cola Bottling Co. v. Dolinski*, 82 Nev. 439, 420 P.2d 855 (1966)). Indeed, the Court instructed  
22 the jury based upon 402A. To recover under a strict products liability theory under 402A, a  
23 plaintiff must establish, *inter alia*, two elements: (1) the design of the product was defective, and  
24 (2) that defective design was a proximate cause of the damage or injury to the plaintiff. *See*  
25 *Ginnis*, 470 P.2d at 138; *Shoshone Coca-Cola Bottling Co.*, 420 P.2d at 858.

26 The Plaintiff must further prove that design defect rendered the product "unreasonably  
27 dangerous." *See Ward v. Ford Motor Co.*, 99 Nev. 47, 49, 657 P.2d 95, 96 (Nev. 1983); *see also*  
28 *Lewis v. Sea Ray Boats, Inc.*, 119 Nev. Adv. Rep. 10, 65 P.3d 245 (2003); *Outboard Marine*

1 *Corp. v. Schupbach*, 93 Nev. 158; 561 P.2d 450 (1977). Determining whether a product is  
2 “unreasonably dangerous” under principles grounded in the Restatement (Second) of Torts  
3 requires the trier of fact to assess whether the product failed to perform in a manner reasonably  
4 expected in light of its nature and intended function, and was more dangerous than would be  
5 contemplated by the ordinary user having the ordinary knowledge available in the community.  
6 *Stackiewicz v. Nissan Motor Co.*, 100 Nev. 443, 686 P.2d 925 (1984). This “test” is the  
7 “consumer expectations test.”

8 *b. Restatement (Third) of Torts: Product Liability § 2*

9 Responding to criticisms of the consumer expectations test as outlined in the Restatement  
10 (Second) of Torts, and recognizing the need to provide both reasonable protection for the interests  
11 of consumers and workers and practicable standards of conduct for those who produce goods, the  
12 American Law Institute in 1998 promulgated the Restatement (Third) of Torts: *Products*  
13 *Liability*, superseding the old Restatement (Second) of Torts: § 402A. The Restatement (Third)  
14 sets forth three distinct categories of product defect and the legal standards appropriate to each.  
15 Under the Restatement (Third), a product is defective in its design when the foreseeable risks of  
16 harm posed by the product could have been reduced or avoided by the adoption of a reasonable  
17 alternative design, and failure to use the alternative design renders the product not reasonably  
18 safe.

19 Whether a product’s design is not reasonably safe—the functional equivalent of  
20 unreasonably dangerous—is determined by weighing the inherent danger in the product against  
21 its utility. This is known as a “risk versus utility” or “risk versus benefit” test. Factors to be  
22 weighed in the “risk versus benefit” balancing include:

- 23 (a) the likelihood that the product will cause injury considering  
24 the product as sold with any instructions or warnings  
regarding its use;
- 25 (b) the ability of the plaintiff to have avoided injury;
- 26 (c) the plaintiff’s awareness of the product’s dangers;
- 27 (d) the usefulness of the product as designed as compared to a  
28 safe design;



- (e) the functional and monetary cost of using the alternative design; and
- (f) the likely effect of liability for failure to adopt the alternative design on the range of consumer choice among products.

Restatement (Third) of Torts: *Products Liability* § 2, cmt. f.

Since its adoption in 1998, a number of states have abandoned 402A and the consumer expectation test in favor of the Restatement (Third) approach, including its risk versus benefit balancing test for determining whether a product's design is not reasonably safe. *See* Cami Perkins, *The Increasing Acceptance of the Restatement (Third) Risk Utility Analysis in Design Defect Claims*, 4 Nev. L. J. 609 (2004). Indeed, "[s]ome form of a risk-utility test is employed by an overwhelming majority of the jurisdictions in this country." *Id.*; *see also Branham v. Ford Motor Co.*, 390 S.C. 203, 701 S.E.2d 5, 14-15 (2010) ("By our count 35 of the 46 states that recognize strict products liability utilize some form of risk-utility analysis in their approach to determine whether a product is defectively designed"); 1 Owen & Davis on Prod. Liab. § 8:4 (4th ed. 2014) ("Most modern courts have abandoned consumer expectations as the sole test for design defectiveness, due to its inherent weaknesses...").

The Nevada Supreme Court has not yet considered the question of whether Nevada will likewise abandon 402A in favor of the Restatement (Third) or at a minimum abandon 402A's "consumer expectation test" in favor of the Restatement's (Third) "risk versus benefit" analysis in design defect cases for determining whether a product is "unreasonably dangerous." When confronted with the same question, the Supreme Court of South Carolina, rejected 402A's "consumer expectation test" in favor of a risk-utility balancing—

We believe that in design defect cases the risk-utility test provides the best means for analyzing whether a product is designed defectively. Unlike the consumer expectations test, the focus of a risk-utility test centers upon the alleged defectively designed product. The risk-utility test provides objective factors for a trier of fact to analyze when presented with a challenge to a manufacturer's design. Conversely, we find the consumer expectations test and its focus on the consumer ill-suited to determine whether a product's design is unreasonably dangerous

*Id.* at 15.

1 Like it did in South Carolina, Ford has in this case squarely framed that issue for  
2 consideration by the Nevada Supreme Court by requesting (1) that this Court measure the  
3 sufficiency of the Plaintiff's evidence not against the 402A "consumer expectation test," but  
4 rather against the new Restatement (Third) "risk versus benefit test," and (2) that the jury be  
5 instructed under section 2 of the Restatement (Third) of Torts: *Products Liability*, not under  
6 402A.<sup>6</sup>

7 Which standard applies makes a difference, especially in this case.

8 **3. If properly instructed on the correct law—the Restatement (Third) of**  
9 **Torts: *Products Liability*—a reasonable jury could not have found in**  
10 **favor of the Plaintiff**

11 Rollover accidents comprise a small percentage (2-3%)<sup>7</sup> of all accidents. The risk of a  
12 rollover accident involving a vehicle as large as the Ford Excursion is even rarer. Of the rollover  
13 accidents that do occur (involving all types of vehicles), 94.5% of them involve fewer than the  
14 number of rolls Plaintiff claimed occurred in this accident (1½) and 99.5% involve fewer than 2½  
15 rolls (the number of rolls reconstructed by Mr. Hoover). See Carter Trial Test. 85:20-86:13,  
16 Sept. 17, 2014 and Defense Exhibit 1204, admitted 17:15-20 and 21:14-15, Sept. 22, 2014. But  
17 accepting Plaintiff's number, the severity of this accident at 1 ½ rolls occurs in only 5.5% of all  
18 rollover accidents. Even then, only 1.3% of that 5.5% of the most severe rollover accidents  
19 results in a serious or fatal head, neck, or face injury of a *belted occupant*. Simply put, the risk of  
20 what happened in this case (a fatal cervical injury of a belted occupant in a 1 ½ roll accident  
21 involving a Ford Excursion) was by all measures extraordinarily remote.

22 Balanced against *that* remote risk are the questionable benefits of increased roof strength  
23 in reducing cervical injuries in rollover crashes. The scientific literature points to no such benefit.  
24 Indeed, the lack of difference in cervical injuries in occupants of vehicles with stiffer roofs, like  
25 the Subaru Forester, proves the point. Stiffening the roof structure does not prevent occupant

26 <sup>6</sup> The suggestion that Nevada law should change is not new. See Young, J., *Concurring in part*  
27 *and dissenting in part, Allison v. Merck & Co., Inc.*, 110 Nev. 762, 878 P.3d 948 (1994) ("... I  
28 believe that a better way is to apply a balancing test weighing the benefits of the particular drug  
against the risks inherent in the use of the drug...").

<sup>7</sup> Herbst Trial Test., 68:13-17, Sept. 10, 2014.

1 contact with the roof in a rollover accident.<sup>8</sup> Moreover, stiffening the roof structure creates its  
2 own risks. Whereas a roof structure that deforms dissipates energy, a stiff roof structure allows  
3 potentially injurious accident forces to be transmitted to occupants in other more common crash  
4 modes, thereby posing a greater risk to those occupants. Leigh Trial Test., 234:15-235:19,  
5 Sept. 17, 2014.

6 Reasonable minds would not disagree that given the minute risk of a fatal rollover  
7 accident involving a belted occupant in a vehicle in the Excursion weight class weighed against  
8 the questionable science that a stronger roof can prevent injuries like those suffered by Mr. Trejo,  
9 the roof on the 2000 Ford Excursion was not unreasonably dangerous. The risk at issue here is  
10 nearly infinitesimal and the benefits illusory under even the most forgiving view of the evidence  
11 in this record. Although whether a product is defective is generally a question of fact, in an  
12 appropriate case like this one, the “risk versus benefit” balancing may be determined as a matter  
13 of law. *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 311 (Tex. 2009); *see also Hernandez v.*  
14 *Tokai Corp.*, 2 S.W.3d 251, 260-61 (Tex. 1999) (“the issue of whether the product is  
15 unreasonably dangerous as designed may nevertheless be a legal one if reasonable minds cannot  
16 differ on the risk-utility analysis considerations”).

17 Had the jury been properly instructed, it could have reached but one conclusion based  
18 upon the evidence. Hence, Ford renews its Motion for Judgment as a Matter of Law that this  
19 Court enter judgment in Ford’s favor based upon the correct rule of law.

20 **4. Even under 402A, Plaintiff’s proof of a *prima facie* case was deficient,**  
21 **as a matter of law**

22 The words “defective” and “unreasonably dangerous” were notably absent from Plaintiff’s  
23 proof. From beginning to end, Plaintiff pursued nothing more than a *negligent design* defect  
24 theory, pointing to what she characterized as *reasonable* alternative stronger roof designs—

25 Q. Okay. And you are also here to look at whether there was a  
26 better, safer, *reasonable* way to make this vehicle stronger than it  
was actually sold?

27 A. Yes.

28 <sup>8</sup>Peles’ Trial Test., 39:15-40:5; 75:24-76:2, Sept. 12, 2014.

Herbst Trial Test., 43:5-8, Sept. 10, 2014 (emphasis added).

Q. Okay. Do you have an opinion about whether or not this particular vehicle was *responsibly* engineered? Do you think -- would you think *reasonable* measures were taken to test this particular model before it was manufactured?

A. No, I do not.

Q. Okay. And do you think that *reasonable* measures were taken in checking to see with respect -- do you think it was *reasonable* to use the 131 testing to make an engineering decision about how much strength this roof should take?

A. No.

Herbst Trial Test., 43:16-25, Sept. 10, 2014 (emphasis added).

Q. Do you have an opinion about whether or not if *reasonable* measures had been taken to test the vehicle and make it stronger, whether or not the nonintrusion zone in Mr. Trejo's vehicle would have been substantially more preserved?

A. Yes, I think very easily they could have made it so the roof was stronger and would have not encroached into his space in this accident.

Herbst Trial Test., 44:1-8, Sept. 10, 2014 (emphasis added).

Q. Okay. Was there anything that you're aware that would have inhibited Ford from doing any of the things we talked about that you believe *a reasonable engineering company, manufacturer could have done* at the time this vehicle was actually manufactured before it was sold into the public?

A. No, there's no reason they couldn't have done that.

MR. LAWRENCE: Thank you.

Your Honor, I pass --

THE COURT: Pass the witness.

Herbst Trial Test., 45:4-13, Sept. 10, 2014 (emphasis added).

Near the conclusion of trial, Plaintiff wisely abandoned her negligence theory to prevent the jury from considering her comparative negligence in causing the accident that lead to her husband's death. Trial Test., 60:10-67:3, Sept. 16, 2014.

Under 402A's consumer expectation analysis, a manufacturer's chosen design is not unreasonably dangerous merely because reasonable alternative designs were available. *See*

1 *Weakley v. Fishbach & Moore, Inc.*, 515 F.2d 1260, 1267-68 (5th Cir. 1975) (“It is one thing to  
2 show that the defendant might have designed a safer product; quite another to show that the  
3 product he did design was unreasonably dangerous”); *Linegar v. Armour of Am., Inc.*, 909 F.2d  
4 1150, 1154 (8th Cir. 1990) (product law does not restrict the manufacturer of products to “only  
5 one version of a product, that being the very safest design possible”). Hence, Plaintiff’s proof  
6 based upon a negligence theory did not suffice as proof that the Excursion’s roof was  
7 unreasonably dangerous, as designed.<sup>9</sup>

8 Courts in jurisdictions applying 402A have consistently held that mere evidence that a  
9 product could be made safer does not prove that the manufacturer’s selected design was less  
10 safe than would be expected by an ordinary consumer. *See Yeaman v. Hillerich & Bradsby Co.*,  
11 570 Fed. Appx. 725, 737 (10th Cir. 2014); *Curtis v. Gen. Motors Corp.*, 649 F.2d 808 (10th Cir.  
12 1981); *Gates v. Ford Motor Co.*, 494 F.2d 458 (10th Cir. 1974); *Henderson v. Ford Motor Co.*,  
13 519 S.W.2d 87, 93 (Tex. 1974); *Thibault v. Sears, Roebuck & Co.*, 118 N.H. 802, 395 A.2d 843  
14 (1978); *Salerno v. Innovative Surveillance Tech., Inc.*, 402 Ill. App.3d 490, 932 N.E.2d 101, 111  
15 (Ill. App. 1 Dist. 2010).

16 Even under current Nevada law, Plaintiff’s proof fell short of a *prima facie* case of defect  
17 under 402A.

18 **5. Excluding Brian Herbst’s inadmissible expert opinions on the**  
19 **existence of a design defect, the remaining evidence in the record will**  
20 **not support the jury’s affirmative answers to Question Nos. 1 and 2**

21 Not all “expert” testimony is admissible or competent. A court’s obligations under  
22 NRS 50.275 include the obligation to screen and exclude inadmissible expert testimony. *See*  
23 *Cramer v. State, DMV*, 240 P.3d 8, 12 (Nev. 2010); *Mulder v. State*, 116 Nev. 1, 13, 992 P.2d  
24 845, 852 (2000); *Hallmark v. Eldridge*, 124 Nev. 492, 499, 189 P.3d 646, 650 (2008); *Higgs v.*  
25 *State*, 222 P.3d 648 (Nev. 2010). To be competent and admissible, expert testimony must consist  
26 of scientific, technical, or other specialized knowledge *that will assist the trier-of-fact* in  
understanding the evidence or determining a fact in issue. NRS 50.275.

27 <sup>9</sup> The only comparative evidence in the entire record is Mike Leigh’s testimony that the roof  
28 strength of this vehicle was the same or better than that of comparable vehicles. Leigh Trial Test.,  
212:9–19, and 224:19–225:2, Sept. 17, 2014.

1 To “assist” the trier-of-fact, the expert’s testimony must be the product of reliable  
2 methodology. *Hallmark*, 189 P.3d at 651; *LVMPD v. Yeghiazarian*, 312 P.3d 503 (Nev. 2013).  
3 Whether an expert’s methodology is reliable under Nevada law is determined with reference to  
4 the following five factors: (1) whether the opinion is within a recognized field of expertise;  
5 (2) whether the opinion is testable or has been tested; (3) whether the opinion is published and  
6 subjected to peer review; (4) whether the opinion is generally accepted in the scientific  
7 community; and (5) whether the opinion is based more on particularized facts rather than  
8 assumption, conjecture, or generalization. *Hallmark*, 189 P.3d at 650-52. “The reasoning  
9 between steps in a theory must be based on objective, verifiable evidence and scientific  
10 methodology of the kind traditionally used by experts in the field.” *Domingo v. T.K.*, 289 F.3d  
11 600, 607 (9th Cir. 2002); *In re Phenylpropanolamine Prods. Liab. Litig.*, 289 F. Supp. 2d 1230,  
12 1237 (W.D. Wash. 2003) (“The inferences or assertions drawn by the expert must be derived by  
13 the scientific method.”) (citation omitted).<sup>10</sup> Thus, if the expert’s opinions are based upon  
14 unreliable data, and/or based upon flawed methodology, or the analytical gap between the data  
15 and the opinion proffered is too great, the opinion is fundamentally flawed and will not assist the  
16 trier-of-fact.

17 Here, Plaintiff relied exclusively on the testimony of Brian Herbst to establish a defect in  
18 the roof. His testimony, however superficially appealing it may have seemed to the jury, was  
19 neither competent nor admissible. This Court’s duty is to reflect upon the legal bar to considering  
20 his testimony, without which the remaining evidence in the record will not support the jury’s  
21 answer to Question Nos. 1 and 2. *See Weisgram v. Marley Co.*, 528 U.S. 440 (2000) (“The  
22 authority of courts of appeals to direct the entry of judgment as a matter of law extends to cases  
23 such as the present one in which, on the appellate court’s excision of erroneously admitted  
24 testimony, there remains insufficient evidence to support the jury’s verdict”).

25 The deficiencies in Mr. Herbst’s expert opinions are not merely in their lack of persuasive  
26 value, but in their objectively flawed foundations. His opinions can be subdivided into two

27 <sup>10</sup> While Nevada has declined to adopt the federal *Daubert* standards, the Nevada Supreme Court  
28 has recognized that FRE 702 and federal court decisions may be looked to for persuasive  
authority, where needed. *See Higgs*, 222 P.3d at 657-59.

1 groups: (1) that the roof of the 2000 Ford Excursion is weak, failed in this accident, and could be  
2 made stronger; and (2) that a stronger roof reduces injuries and would have prevented Mr. Trejo's  
3 fatal injury in this accident. Whether it is *possible* to build a stronger roof—the point of the first  
4 opinion—was largely undisputed. Whether the roof is dangerously “weak” and whether it  
5 “failed” is tied to the second opinion—whether a stronger roof prevents cervical injuries like the  
6 one suffered by Mr. Trejo. Mr. Herbst's methodology in answering that second inquiry is  
7 unreliable, particularly in this case.

8 Most of Mr. Herbst's work in this case was directed at proving the first point—the roof of  
9 the Excursion could be made stronger, *e.g.*, showing the jury the shape of the roof components,  
10 providing the jury with a list on how to improve roof strength, culminating with his before and  
11 after drop tests validating his opinion that “yes” it can be done. His methodology and foundation  
12 for answering the second inquiry, unlike the first, is not based upon testing but instead employs a  
13 litigation methodology, relying upon his interpretation of documents written by others. His  
14 analysis is as follows:

- 15 1. Historically, car manufacturers have linked roof crush in rollover  
16 accidents with injuries, and that can be seen in their documents from the  
17 1960s. Based upon references to phrases such as “non-encroachment  
18 zones” and “safety cells” in more modern marketing materials,  
19 manufacturers must still believe that roof strength matters;
- 20 2. The goals and criteria of “non-encroachment” were not met in this  
21 accident because the roof intruded in Mr. Trejo's seated area; and
- 22 3. Had the roof not intruded, Mr. Trejo would not have received his fatal  
23 injury.

24 There is no testing that supports any of these three opinions, either generally or  
25 specifically for this accident. No testing in Mr. Herbst's methodology addresses the pivotal  
26 question of when roof crush occurs in a rollover crash vis-à-vis when cervical injuries occur.  
27 Mr. Herbst's drop tests have no bearing on that question. Neither drop test he performed was  
28 instrumented with crash dummies. And in any event, drop-tests do not, and are not intended to,  
replicate what happens in a rollover crash. They fail to account for translational and rotational  
velocities and incorrectly assume that the entire weight of the vehicle contacts the ground during

1 each roof-to-ground impact, which is generally not true.

2 The “cardboard box” example used in Mr. Herbst’s affidavit filed in response to Ford’s  
3 motion to exclude his testimony exemplifies the reason why uninstrumented drop tests are both  
4 unreliable and of no assistance to the jury. Consider the widely used project where a box with an  
5 egg inside is dropped off the roof of a house (or other high place). Each year thousands of Boy  
6 Scouts, and probably even more grade school students, participate in this project that helps them  
7 understand basic crashworthiness principles. To succeed, the box must contact the ground  
8 without breaking the egg. The goal is not to design a box that does not bend when it hits the  
9 ground. The goal is to protect the egg *inside* the box, not the box. Mr. Herbst ran his drop test  
10 without the egg, peddling the results (an undeformed box) as proof the egg would not have  
11 broken. That is exactly what he said in his affidavit—“Inverted drop tests demonstrate that  
12 alternate designs and approaches can be applied to reduce the risk of injuries in rollovers.”  
13 (Herbst Aff. at ¶ 60.c) He also told this to the jury. It is difficult to conceive of a situation  
14 involving expert testimony with a more basic analytical gap.

15 The test design for the drop-tests is of no assistance to the jury in answering what happens  
16 *to the occupants inside the vehicle* during a rollover accident—the relevant inquiry in a  
17 crashworthiness case. The entire theory of “crashworthiness” focuses on what happens in the  
18 second crash—when the occupant contacts the inside of the vehicle—something that Mr. Herbst  
19 did not measure in his drop-tests. And that is not the only shortcoming.

20 Simplistic drop-tests do not take into account rollover variables that include forward  
21 velocity, rotational velocity, progressive dissipation of energy by various vehicle components,  
22 irregular surface contacts, and the roll environments, all of which affect the occupant in the  
23 vehicle. It is therefore no surprise that the Society of Automotive Engineers abandoned use of  
24 drop-tests for the stated reason that the tests do not relate to real-world rollover crashes. While  
25 “drop-tests” may have been “brainstorm testing” in the 1960s (fifty years ago), that is not true  
26 today in the age of computer simulations and test fixtures like CRIS and ROCS.

27 In determining the admissibility of Mr. Herbst’s testimony, the Court was required to  
28 consider all the scientific literature and testing in this case which includes: (a) “spit” tests



1 demonstrating the limits of existing seat belt systems to prevent downward occupant excursion  
2 towards the roof in a rollover; (b) Malibu testing published literature evaluating the data from that  
3 testing; (c) CRIS testing and associated published articles; and (d) instrumented drop tests  
4 conducted for this case. *Taken together, these demonstrations and testing establish that cervical*  
5 *injuries in rollover accidents occur before—and in the absence of—any meaningful roof crush.*

6 In light of that scientific literature and testing, Mr. Herbst's contrary "say-so" was of no  
7 assistance to the jury. His testimony does not rise to the level of evidence that can support any  
8 judgment, and, without it, nothing remains to support the jury's answer to Question Nos. 1 and 2.

9 Even if it is assumed that there were a general association between roof crush in rollover  
10 accidents and cervical injuries, that association would not be sufficient proof of causation as  
11 required by law. More is required. Roof crush must be shown to be a "but for" cause of the  
12 injuries *in this case*. Mr. Herbst's opinions were of no assistance to the jury in answering *that*  
13 question. His opinions lacked a reliable foundation and therefore do not rise to the level of  
14 admissible evidence to be considered by the Court in ruling on this renewed motion. Without his  
15 testimony, the remaining evidence in the record will not support liability under either the  
16 Restatement (Third) of Torts: *Products Liability* § 2 or 402A.

17 C. *In the Alternative, Ford Is Entitled to a New Trial with a Jury Properly Instructed*  
18 *on the Elements of a Strict Products Liability Claim Under the Restatement*  
*(Third) of Torts: Products Liability § 2*

19 Rule 59 allows for a new trial when an error in law occurs at trial and that error is objected  
20 to by the party seeking a new trial. During trial, Ford objected to trying this case under 402A,  
21 arguing in its Motion for Judgment as a Matter of Law that the correct law is the Restatement  
22 (Third) of Torts: *Products Liability* § 2. Indeed, Ford requested jury instructions under the  
23 correct law, but this Court refused them, remarking that the jury would be instructed under the  
24 current law. Ford now further preserves its right to have the Nevada Supreme Court decide  
25 whether this case was correctly tried under 402A, and if it was not, vacate the judgment and  
26 remand the case back to this Court for trial under the correct law, including, if necessary, a jury  
27 properly instructed based upon that law.

28 ///

1           D.       *Independent Grounds for a New Trial*

2                   1.       **Manifest disregard for instructions**

3           A district court may grant a new trial if it finds that the jury has shown manifest disregard  
4 for instructions of the court. See Rule 59(a)(5); *M & R Inv. Co., Inc. v. Mandarino*, 103 Nev.  
5 711, 748 P.2d 488 (1987). Had the jury correctly applied the law as stated in this Court's  
6 Instruction No. 23 ("proximate cause"), it would have been impossible to reach a verdict in favor  
7 of Plaintiff for the reasons stated in section II, B.1., *supra*. See *Rees v. Roderiques*, 101 Nev. 302,  
8 701 P.2d 1017 (1985); *Weaver Bros., Ltd. v. Misskelly*, 98 Nev. 232, 645 P.2d 438 (1982).  
9 Indeed, a trial court is obligated to grant a new trial if the jurors could not have reached the  
10 verdict they reached if they had properly applied the court's instruction on proximate cause. See  
11 *Taylor v. Silva*, 96 Nev. 738, 615 P.2d 970 (1980). At a very minimum, this Court should order a  
12 new trial because the jury's verdict was plainly erroneous, considering all the evidence.

13                   2.       **Misconduct of counsel**

14           Attorney misconduct in the form of objected-to argument is also a recognized ground for  
15 granting a new trial. Rule 59(a). Nevada law is unique, in this regard. See *DeJesus v. Flick*, 116  
16 Nev. 812, 7 P.3d 459 (2000). A district court may grant a new trial based upon attorney  
17 misconduct without proof that the misconduct changed the outcome of the trial. *Id.*

18           The flavor of the misconduct here permeated the entire proceeding from beginning to end.  
19 The misconduct was telling the jury to decide the case in Plaintiff's favor based upon  
20 considerations other than those contained in the Court's instructions. In opening statement,  
21 counsel for Plaintiff plainly mischaracterized Nevada's strict products liability law—

22                   And afterwards you will have the tools, but it will really boil  
23 down to one very simple concept: Was the vehicle that Mr. Trejo  
24 was riding in on December 16, 2009, could it have been made safer  
25 to protect him and keep him from dying?

26                   *If you believe it could have been, that there was an affordable  
27 and safer way to make the 2000 Ford Excursion, you will return a  
28 verdict for the plaintiff in this case.*

29                   But if you believe that Ford -- if you believe that Ford did all  
30 that it could reasonably do to protect Mr. Trejo and occupants like  
31 him when it designed and made the 2000 Ford Excursion, you will  
32 return a verdict for Ford. It's really that simple.

1 Opening Statements, 26:16–27:2, Sept. 9, 2014 (emphasis added).

2 Plaintiff then proceeded to marshal proof around this theme, as illustrated in the testimony  
3 of her experts quoted elsewhere in this Motion (section II. B.5.). Concerned about the prospect of  
4 juror confusion over the proper elements of proof under Nevada law in a strict products liability  
5 case, Ford raised the issue during discussion of the Court’s instructions. Ford went as far as to  
6 request curative instructions that a manufacturer such as Ford is not a guarantor that no one will  
7 be injured using its products or that it is required to design the “safest possible product.” (Ford  
8 Requested Instruction Nos. 26 and 27). Plaintiff opposed those requests. This Court agreed with  
9 Plaintiff, opting instead to instruct the jury that “arguments and opinions are not evidence in the  
10 case.” (Court Instruction No. 3.)

11 Boxed-in by the *negligence evidence and no question involving negligence on the verdict*  
12 *form*, Plaintiff’s counsel had no choice but to return to this tactic during “rebuttal” of attempting  
13 to confuse the jury on the law, compounding the misconduct with statements of his personal  
14 beliefs that, after enough iteration, could not realistically be cured through vague admonitions that  
15 the jury must read the instructions —

16 If you think that a 5-foot-4 man should be able to walk away from a  
17 27-mile-an-hour crash, you will return a verdict for Ms. Trejo. If  
18 you think that a manufacturer should test its products before it sells  
19 them to the public, you will return a verdict--

20 MR. CRAWFORD: *Objection*, Your Honor --

21 MR. MASK: -- for Ms. Trejo.

22 MR. CRAWFORD: -- *that is contrary to the law that has been*  
23 *read.*

24 THE COURT: Yes. *That’s sustained.* Ladies and gentleman --

25 MR. MASK: Your Honor, this is final argument, Your Honor.

26 THE COURT: Well, that doesn’t matter. *I’ll just remind you,*  
27 *ladies and gentlemen, that the elements that have to be proven by*  
28 *the plaintiff are set out in the instructions on the law, and those are*  
*the things. You know, what’s said is just the argument, but at the*  
*end of the day you have to follow the instructions on the law if they*  
*sort of differ from what’s being said by one of the lawyers. Of*  
*course, that’s what controls.*

Go on, Counsel.

\* \* \*

MR. MASK: . . . If you believe that rare is not an excuse and is not a good excuse to protect against known dangers, I believe that you will return a verdict for Ms. Trejo.

MR. CRAWFORD: Your Honor, again, I'm going to have to object. First of all, *it's contrary to the law, and his personal beliefs* are improper --

THE COURT: Yes. That's *sustained. That's sustained.*

\* \* \*

MR. MASK: . . . America gets better because people stand up for what is right. Year ago -- we've had lots of problems, not far in our past regarding civil rights issues. It wasn't until 1973 that all women could serve on juries in all 50 states in this country. *America gets better because people stand up, and people speak for those that cannot speak for themselves.*

...

MR. CRAWFORD: Objection. Your Honor, *this is a jury nullification argument. That is absolutely prohibited.*

THE COURT: *That's sustained. Yes, that's sustained.*

MR. MASK: Ladies and gentlemen, you know what your job is. I have the utmost confidence that you will do it. *I make no apologies for what I do. I stand up, and I speak --*

MR. CRAWFORD: Your Honor, again --

THE COURT: That's *sustained.*

Closing Arguments, 137:7–138:4; 138:13–21; 139:24–140:16, Sept. 22, 2014 (emphasis added).

RPC 3.4(e) prohibits attorneys from expressing personal opinions as to the justness of a cause or the culpability of a civil litigant. For reasons already articulated, the jury's verdict cannot be reconciled with the evidence and the Court's instructions and can be viewed only as the result of passion and prejudice, fueled by arguments of counsel. *See Gunderson v. D.R. Horton, Inc.*, 319 P.3d 606 (Nev. 2014) ("the district court must acknowledge that although specific instances of misconduct alone might have been curable by objection and admonishment, the

1 effect of persistent or repeated misconduct might be incurable"). A new trial is warranted to cure  
2 the misconduct.

3 **3. Irregularity in the proceedings of the jury and misconduct**

4 A district court may also grant a new trial for irregularity in the proceedings of the jury,  
5 and/or misconduct of the jury. Rule 59(a)(1). Misconduct here included sleeping during trial,  
6 refusing to deliberate, bullying other jurors, and injecting extraneous information during  
7 deliberations.

8 As the Court is well-aware, Juror Rick Janisch slept through many parts of the trial.  
9 Indeed, the bailiff had to awaken Mr. Janisch from his slumber during closing arguments. Both  
10 parties were aware of Juror Janisch's inattentiveness. Indeed, so too were the other jurors. Aff.  
11 of Carmelita Ireland at ¶ 1.<sup>11</sup>

12 A juror who has been sleeping during trial cannot meaningfully deliberate. Inattentiveness  
13 is a form of juror misconduct. *Lester v. Com.*, 132 S.W.3d 857, 862 (Ky. 2004). A juror who has  
14 not heard all of the evidence in a case is unqualified to render a verdict. *People v. Valerio*, 141  
15 A.D.2d 585, 529 N.Y.S.2d 350 (1988). Upon noticing a juror sleeping, without prompting from  
16 counsel, the court must, *on its own*, make further inquiry to ensure that the parties receive a fair  
17 trial. *People v. Jones*, 369 Ill. App. 3d 452, 308 Ill. Dec. 211, 861 N.E.2d 276 (1st Dist. 2006),  
18 *appeal denied*, 224 Ill. 2d 5894, 312 Ill. Dec. 658, 871 N.E.2d 58 (2007). A sleeping juror is a  
19 "structural error" that so infringes on the right to a fair trial that it can never be presumed  
20 harmless. *See Commonwealth v. Dancy*, 75 Mass. App. Ct. 175, 182, 912 N.E.2d 525 (2009).

21 If Juror Janisch's sleeping were not enough, he engaged in further misconduct. Once he  
22 awoke, despite having been too inattentive to have come to a reasoned opinion about the case, he  
23 became a driving force behind the verdict in favor of the Plaintiff, bullying other jurors. Affidavit  
24 of Carmelita Ireland at ¶ 6. Knowing the schedules of the other jurors and their need to promptly  
25 conclude deliberations, Juror Janisch, along with Juror McIntyre, made coercive statements  
26 threatening to hold all the jurors hostage for weeks until a vote was returned in favor of the  
27 Plaintiff. Both Jurors Janisch and McIntyre implemented their strategy to obtain a plaintiff's

28 <sup>11</sup> Attached hereto as Exhibit A.

1 verdict, refusing to deliberate and insisting that the other jurors change their views and votes  
2 before they would be permitted to leave. Affidavit of Carmelita Ireland at ¶¶ 5-6. In addition to  
3 being coercive, these jurors' conduct improperly introduced an erroneous notion of court  
4 procedure into the dynamic; the jurors hard-pressed for time had no way of knowing that, in fact,  
5 a deadlock could be declared, and the jurors would not be kept in deliberations indefinitely.  
6 Jurors Janisch and McIntyre thus engaged in double misconduct. *See In re Stankewitz*, 40 Cal.3d  
7 391, 399-400 & n 4 (1985) (a juror who does convey outside information to other jurors commits  
8 misconduct that is both "overt" and "serious"); *see also People v. Marshall*, 50 Cal.3d 907, 950  
9 (1990) ("the introduction of extraneous law, whether erroneous or not, constitutes misconduct").

10 Because it appears that Juror Janisch and/or Juror McIntyre made up their minds before  
11 the close of evidence (which Juror Janisch seemingly did not listen to anyway) or at the outset of  
12 deliberations without considering other jurors' views, they engaged in misconduct. A refusal to  
13 deliberate is misconduct. *People v. Leonard*, 40 Cal. 4th 1370, 1411, 58 Cal. Rptr. 3d 368, 157  
14 P.3d 973 (2007). Examples of refusal to deliberate include, but are not limited to, expressing a  
15 fixed conclusion at the beginning of deliberations and refusing to consider other points of view:

16 As discussed above, proper grounds for removing a deliberating  
17 juror include refusal to deliberate. A refusal to deliberate consists of  
18 a juror's unwillingness to engage in the deliberative process; that is,  
19 he or she will not participate in discussions with fellow jurors by  
20 listening to their views and by expressing his or her own views.  
21 Examples of refusal to deliberate include, but are not limited to,  
22 expressing a fixed conclusion at the beginning of deliberations and  
23 refusing to consider other points of view, refusing to speak to other  
24 jurors, and attempting to separate oneself physically from the  
25 remainder of the jury.

22 *People v. Cleveland*, 106 Cal. Rptr. 2d 313, 329, 25 Cal. 4th 466, 21 P.3d 1225 (2001); *see also*  
23 *People v. Lomax*, 49 Cal. Rptr. 4th 530, 234 P.3d 377, 389 (2010) (same).

24 In sum, the jury's deliberations in this case were dysfunctional, replete with failure to  
25 deliberate, bullying and misrepresentations about deliberation procedures. The guarantee of a  
26 right to jury trial necessarily includes a right to a competent jury. With a smaller complement of  
27 jurors (8 and not 12), that guarantee is more critical. It is of fundamental importance, and  
28 fundamental fairness.

1                   4.       Additional errors of law

2               Lastly, Rule 59(a)(7) allows a district court to grant a new trial for errors of law affecting  
3 the substantial rights of the moving party. Here, there were two errors that played a predominant  
4 role in the jurors' verdict.

5               First, the Court erred in allowing Dr. Zumwalt, the New Mexico Medical Examiner, to  
6 materially change the opinions in his 2009 autopsy report. In that 2009 report, that Dr. Zumwalt  
7 concluded that Mr. Trejo died as a result of complications from a cervical spine fracture. He  
8 changed that opinion following a meeting on July 30, 2014 with counsel for Plaintiff and their  
9 expert, Joseph Peles, Ph.D. Afterwards, he suddenly opined that Mr. Trejo suffered a "flexion"  
10 injury and ultimately died from positional asphyxiation. The error in admitting the changed  
11 opinions was further compounded by also allowing Dr. Peles to then give "new" and different  
12 opinions based upon having spoken with Dr. Zumwalt. Both rulings were objected to by Ford  
13 before trial and during trial.

14               The addition of Dr. Zumwalt's testimony was key to Plaintiff's case. Referring to  
15 Dr. Zumwalt in Opening Statement, counsel for the Plaintiff told the jury—

16                   One of the things this [sic] you're going to hear from is the head of  
17 the New Mexican -- New Mexico Office of Medical Examiner,  
18 Dr. Ross Zumwalt. The New Mexico Office of Medical Examiner  
19 is the number two forensic facility of its type in the U.S.

20                   *He will take the stand, and he has no dog in this fight. He  
21 doesn't work for the plaintiffs or the defendant. He doesn't get  
22 paid by anybody to come here and tell you his opinions.*

23                   *And he will tell you that Mr. Rafael Trejo's neck was  
24 crushed -- not crushed, but was bent and pinned by the roof crush  
25 and broke at the C7, and that it was pushed so hard -- and you'll  
26 actually see a demonstration like this in this courtroom in front of  
27 you -- that it was pushed so hard that it asphyxiated or suffocated  
28 him. And that -- that he was alive in the crash, but suffocated to  
death, pinned in that 2000 Ford Excursion.*

Opening Statement, 34:24–35:15, Sept. 9, 2014.

And during closing argument, the pivotal nature of Dr. Zumwalt's testimony was again  
trumpeted—

///

1           Someone may -- back there in that jury room may say, well,  
2 you know, I think Mr. Trejo broke his neck before any of the roof  
3 crush ever occurred. *You -- if someone says that, you remind them*  
4 *of Dr. Zumwalt's testimony. Remember Dr. Zumwalt, the*  
5 *individual, the coroner who performed the real autopsy, the*  
6 *coroner who put his hands on Mr. Trejo. He told you there were no*  
7 *skull fractures.*

8           The skull was not fractured. It didn't hit the pavement. It  
9 didn't hit the roof so hard to fracture the skull. He told you there  
10 was no significant cerebral edema; in other words, swelling of the  
11 brain. Okay. He told you that there were no injuries or fractures to  
12 the upper cervical spine. Very important.

13                                 \* \* \*

14           *You remember Dr. Zumwalt's testimony that Mr. Trejo had*  
15 *asphyxiated, he had actually choked on his own vomit, that there*  
16 *was vomit and gastro contents in the lungs, okay, that he testified*  
17 *that he was alive. This is Zumwalt. "Did you believe based on*  
18 *your findings that Mr. Trejo had for some period of time after he*  
19 *was trapped inside the vehicle, where he'd been alive within*  
20 *reasonable medical probability? Yes.*

21           ". . . He was still breathe -- I think he was still breathing  
22 based on a reasonable medical probability." The only doctor who  
23 laid hands on Mr. Trejo, that's what he told you.

24                                 \* \* \*

#### 25 PLAINTIFF'S REBUTTAL ARGUMENT

26                                 \* \* \*

27           *I don't know about you, but maybe Mr. Crawford was*  
28 *asleep whenever I talked about Dr. Zumwalt's testimony, and we*  
29 *went through it in detail. He definitely believes, clearly,*  
30 *unequivocally that this is a bending injury, not a compression or*  
31 *diving injury.*

32                                 \* \* \*

33           Okay. But I talked to you about Dr. Zumwalt because  
34 Dr. Zumwalt doesn't get paid by either side. Dr. Zumwalt came in  
35 here and gave you true testimony. If you threw out experts for both  
36 sides, what would you have left? You'd have Dr. Zumwalt and the  
37 New Mexico State Police. That's it. Okay. So that's something  
38 for you to consider in this case.

39 Opening Statement, 49:19-50:7; 69:25-70:11; 128:8, 17-21; 129:1-7.

40           Before trial, Ford complained that "Plaintiffs are attempting to improperly transform  
41 Dr. Zumwalt into a retained forensic pathology expert to give medical support for Peles' opinion



1 that Raphael Trejo's neck injury was the result of hyperflexion due to the 2000 Ford Excursion's  
2 deforming roof striking him on the head. . . ." And that is exactly what occurred. Dr. Zumwalt's  
3 "trial" opinions far exceeded those in his autopsy report. Plaintiff was required before trial to  
4 comply with NRCP 16.1(a)(2) and to disclose Dr. Zumwalt as an expert witness and to provide a  
5 written report that outlined Dr. Zumwalt's new opinions. Absent compliance with  
6 NRCP 16.1(a)(2), it was harmful error to allow Dr. Zumwalt to give opinions, five years later,  
7 outside those in his 2009 autopsy report.

8 Second, it was error to admit Plaintiff's Exhibit 18, the Ford 2002 U137 roof crush study,  
9 even in a redacted form. Once admitted, Plaintiff used its existence to argue, incorrectly, that  
10 Ford missed its own design targets—

11 If someone in that jury room says, well, you know what, but  
12 I think Ford did computer modeling of the Ford Excursion roof, you  
13 remind them that at the time that this vehicle went to production  
14 they had not done one physical test. You remind them that there  
15 was no computer modeling at the time this vehicle went to  
16 production.

17 *It was not until 2002, several years after it had developed  
18 this vehicle, this is the U-137 computer modeling that Ford is trying  
19 to tell you shows their roof is strong enough, and we're going to  
20 talk more about it. But look at the date, February 2002. Our  
21 vehicle was manufactured in '99 and sold in 2000, the 2000 Ford  
22 Excursion.*

23 . . . In fact, in looking at the chart you will see that Ford's  
24 own computer modeling, *that the Excursion roof fails Ford's own  
25 design criteria well below*, at 1.33. And then, if the windshield and  
26 side glasses are removed, which happens in rollover events, it  
27 miserably fails at a .87. You remind that to each other in the room.

28 Remind them that the -- . . . *this is Exhibit 18* that we're  
referring to, *Plaintiff's Exhibit 18*. These -- *this is how Ford built  
the Expedition roof.*

\* \* \*

Based on the weight of the Excursion, its steel would not meet  
Ford's internal guideline, but it would certainly strengthen it from  
what it was.

Closing Arguments, 53:4-15, 17-54:2; 54:10-12 (emphasis added).

This was the only exhibit the jury requested to view during its deliberations and it was  
plainly inadmissible because *it was irrelevant to Plaintiffs' strict liability case*. NRS 48.015 and

1 48.025. It should not have been admitted at all. NRCP 61. A new trial is warranted.

2 **III. CONCLUSION**

3 Plaintiff's case was based on claims and theories that she failed to support with competent  
4 evidence. The Court's failure to dispose of these legally untenable positions permitted Plaintiff to  
5 present a non-existent case to the jury. Not surprisingly, the law and evidence simply do not  
6 support Plaintiff's position. On the basis that Plaintiff has utterly failed in her burden to present  
7 evidence sufficient to allow a reasonable jury to find in her favor, Ford respectfully requests that  
8 this Court enter judgment as a matter of law in Ford's favor or, alternatively, vacate the judgment  
9 and return the case to the Court's docket for a new trial.

10 DATED this 21 day of October, 2014.

11 SNELL & WILMER L.L.P.

12 By: 

13 Vaughn A. Crawford  
14 Nevada Bar No. 7665  
15 Jay J. Schuttert  
16 Nevada Bar No. 8656  
17 Morgan T. Petrelli  
18 Nevada Bar No. 13221  
19 3883 Howard Hughes Parkway, Suite 1100  
20 Las Vegas, NV 89169

21 Michael W. Eady (*Pro Hac Vice*)  
22 Thompson Coe Cousins & Irons, L.L.P.  
23 701 Brazos St., 15th Floor  
24 Austin, TX 78701

25 Attorneys for Defendant  
26 FORD MOTOR COMPANY  
27  
28

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT FORD MOTOR COMPANY'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL** by the method indicated below:

<u>XXXXXX</u>	Electronic Service (Wiznet)	_____	Federal Express
_____	U.S. Mail	_____	U.S. Certified Mail
_____	Facsimile Transmission	_____	Hand Delivery
_____	Email Transmission	_____	Overnight Mail

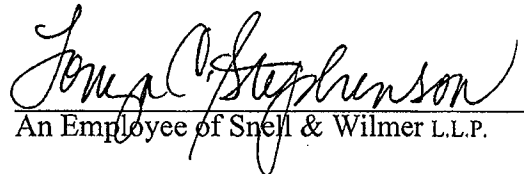
and addressed to the following:

***Electronic Service (Wiznet)***  
Brian D. Nettles, Esq.  
William R. Killip, Jr. Esq.  
NETTLES LAW FIRM  
1389 Galleria Drive, Suite 200  
Henderson, NV 89014  
Telephone: (702) 434-8282  
Facsimile: (702) 434-1488  
Attorneys for Plaintiffs

***Electronic Service (Wiznet – courtesy copy)***  
Email: [Ric@gomlaw.com](mailto:Ric@gomlaw.com)  
Email: [Jody@gomlaw.com](mailto:Jody@gomlaw.com)  
Ricardo A. Garcia, Esq. (*Pro Hac Vice*)  
Jody R. Mask, Esq. (*Pro Hac Vice*)  
GARCIA OCHOA MASK  
820 South Main Street  
McAllen, TX 78501  
Telephone: (956) 630-2882  
Facsimile: (956) 630-5393  
Attorneys for Plaintiffs

***Electronic Service (Wiznet – courtesy copy)***  
Email: [lawrencefirm@aol.com](mailto:lawrencefirm@aol.com)  
Larry Wayne Lawrence, Esq. (*Pro Hac Vice*)  
LAWRENCE LAW FIRM  
3112 Windsor Rd., #A234  
Austin, TX 78703  
Telephone: (956) 994-0057  
Facsimile: (956) 994-0741  
Attorney for Plaintiffs

DATED this 21<sup>st</sup> day of October, 2014.

  
An Employee of Snell & Wilmer L.L.P.

**EXHIBIT A**

**EXHIBIT A**

**AFFIDAVIT OF CARMELITA IRELAND**

Carmelita Ireland, being duly sworn, deposes and says:

1. I was a juror in the case of *Teresa Garcia Trejo v. Ford Motor Company*, A-11-641059, heard before the Honorable Valarie Adair in the Eighth Judicial District Court of Nevada for Clark County beginning on September 8, 2014.
2. I was present at and participated in all deliberations of the jury. I did not agree with the verdict rendered by the other jurors.
3. During the trial, I observed juror Rick Janisch sleeping throughout the majority of the trial.
4. During a straw poll at the outset of deliberations, four jurors voted in favor of the Plaintiff and four jurors voted in favor of the Defendant. This remained the case until the first day of deliberations came to a close and juror Thomas Pagano changed his vote.
5. From the outset of deliberations, jurors Maureen McIntyre and Rick Janisch, threatened that if the jurors in favor of Defendant did not change their vote to find in favor of Plaintiff, they would make sure that the jury was stuck deliberating "for weeks," preventing the jurors from returning to their daily lives.
6. Throughout the course of deliberations, Ms. McIntyre and Mr. Janisch continued to make statements of a similar nature, interfering with further deliberation or discussion. They urged jurors Alicia de la Cruz, Maria Taligatos and me to change our votes not based upon the evidence, but so they could conclude the deliberations. Mrs. de la Cruz had reported that she had a new job, and Mrs. Taligatos said she wanted to return to caring for her grandchildren. This information was known to all the jurors. Hence, the statements by Maureen McIntyre and Rick Janisch were made in a context in which it could reasonably be understood that the defense-oriented jurors would "give in" rather than engage in stalemated deliberations without any apparent means of breaking the deadlock.
7. Ms. de la Cruz and Ms. Taligatos ultimately changed their vote after being intimidated, bullied and talked down to by Ms. McIntyre and Mr. Janisch.

///

///

1 I hereby certify and affirm under penalties of perjury that the information contained within  
2 this Affidavit is true, complete and accurate to the best of my knowledge.

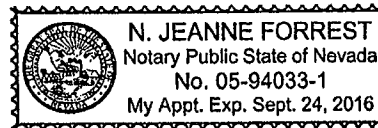
3 EXECUTED this 16th day of October, 2014.

4 Carmelita L Ireland  
5 CARMELITA IRELAND  
6

7 STATE OF NEVADA )  
8 ) ss.:  
9 COUNTY OF CLARK )

10 On the 16th day of October in the year 2014, before me, the undersigned, a notary  
11 public in and for said state, personally appeared CARMELITA IRELAND, personally known to  
12 me or proved to me on the basis of satisfactory evidence to be the individual whose name is  
13 subscribed to the within instrument and acknowledged to me that she executed the same in her  
14 capacity, and that by her signature on the instrument, the individual, or the person upon behalf of  
15 which the individual acted, executed the instrument.

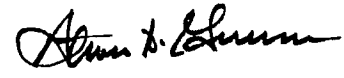
16 SUBSCRIBED and SWORN to before me  
17 this 16th day of October, 2014.



18 N. Jeanne Forrest  
19 Notary Public  
20  
21  
22  
23  
24  
25  
26  
27  
28

20171190

**D**



CLERK OF THE COURT

**NETTLES LAW FIRM**

1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

1 **NEOJ**

2 BRIAN D. NETTLES, ESQ.

3 Nevada Bar No. 7462

4 WILLIAM R. KILLIP, JR., ESQ.

5 Nevada Bar No. 3660

6 NETTLES LAW FIRM

7 1389 Galleria Drive, Suite 200

8 Henderson, Nevada 89014

9 Telephone: (702) 434-8282

10 Facsimile: (702) 434-1488

11 *Attorney for Plaintiffs*

12 Ricardo A. Garcia, Esq.

13 LAW OFFICES OF GARCIA & KARAM

14 820 South Main Street

15 McAllen, TX 78501

16 Telephone Number: (956) 630-2882

17 Facsimile Number: (956) 630-5393

18 *Plaintiffs Attorney Pro Hac Vice*

19 Larry W. Lawrence, Jr., Esq.

20 LAWRENCE LAW FIRM

21 3112 Windsor Rd. #A234

22 Austin, Texas 78703

23 Telephone Number: (956) 994-0057

24 Facsimile Number: (956) 994-0741

25 *Plaintiffs Attorney Pro Hac Vice*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 TERESA GARCIA TREJO, et al.

21 Plaintiffs,

22 vs.

23 ALAN KORANSKY, FORD MOTOR

24 COMPANY, DOES 1 through 10, ROE

25 CORPORATIONS 11 through 20, inclusive

26 Defendants.

Case No.: A-11-641059-C

Dept. No.: XXI

**NOTICE OF ENTRY ORDER**



1 **NOTICE OF ENTRY ORDER**

2 TO: ALL PARTIES; and

3 TO: THEIR RESPECTIVE ATTORNEYS.

4 PLEASE TAKE NOTICE that an Order was dully entered on the above-entitled matter  
5 on 19<sup>th</sup> day of March, 2015, a true and correct copy of said Order is attached hereto.

6 DATED this 19 day of March, 2015.

7 NETTLES LAW FIRM

8  
9  
10 By 

11 BRIAN D. NETTLES, ESQ.

12 Nevada Bar No. 7462

13 WILLAM R. KILLIP, JR., ESQ.

14 Nevada Bar No. 3660

15 1389 Galleria Drive, Suite 200

16 Henderson, Nevada 89014

17 Telephone: (702) 434-8282

18 Facsimile: (702) 434-1488

19 [briannettles@nettleslawfirm.com](mailto:briannettles@nettleslawfirm.com)

20 [bill@nettleslawfirm.com](mailto:bill@nettleslawfirm.com)

21 Attorneys for Plaintiffs

22  
23  
24  
25  
26  
27  
28  
  
NETTLES LAW FIRM  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26, I hereby certify that on the 19<sup>th</sup> day  
3 of March, 2015, a true and correct copy of the foregoing *Notice of Entry of Order* was served to  
4 the following party electronic transmission through the Wiznet system:

5  
6 Vaughn A. Crawford, Esq.  
7 Jay J. Schuttert, Esq.  
8 Morgan Petrelli, Esq.  
9 SNELL & WILMER, LP  
10 3883 Howard Hughes Parkway, Suite 110  
11 Las Vegas, NV 89169  
12 Telephone Number: (702) 784-5200  
13 Facsimile Number: (702) 784-5252  
14 *Attorney for Defendant*  
15 *ord Motor Company*

Michael W. Eady, Esq.  
THOMPSON COE COUSINS & IRONS,  
L.L.P  
701 Brazos St., 15<sup>th</sup> Fl.  
Austin, Texas 78701  
*Attorney for Defendant*  
*Ford Motor Company*

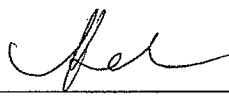
12 Beau Sterling, Esq.  
13 STERLING LAW, LLC  
14 228 South 4<sup>th</sup> Street, 1<sup>st</sup> Floor  
15 Las Vegas, NV 89101  
*Attorney for Plaintiffs*

16 **CERTIFICATE OF SERVICE BY MAIL**

17 Pursuant to NRCP 5(b) and EDCR 7.26, I hereby certify that on the 19<sup>th</sup> day of March,  
18 2015, a true and correct copy of the foregoing *Notice of Entry of Order* was served to the  
19 following party by facsimile and regular mail, addressed as follows, as they have not been added  
20 to the E-Service Master List on Wiznet:

21  
22 Ricardo A. Garcia, Esq.  
23 LAW OFFICES OF GARCIA & KARAM  
24 820 South Main Street  
25 McAllen, TX 78501  
26 Telephone Number: (956) 630-2882  
27 Facsimile Number: (956) 630-5393  
28 *Attorney for Plaintiffs*

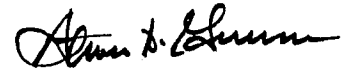
Larry W. Lawrence, Jr., Esq.  
LAWRENCE LAW FIRM  
3112 Windsor Rd. #A234  
Austin, Texas 78703  
Telephone Number: (956) 994-0057  
Facsimile Number: (956) 994-0741  
*Attorneys for Plaintiffs*

  
An employee of the  
NETTLES LAW FIRM

NETTLES LAW FIRM  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

 ORIGINAL

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CLERK OF THE COURT

**ORDER**

BRIAN D. NETTLES, ESQ.

Nevada Bar No. 7462

WILLIAM R. KILLIP, JR., ESQ.

Nevada Bar No. 3660

NETTLES LAW FIRM

1389 Galleria Drive, Suite 200

Henderson, NV 89014

Telephone: (702) 434-8282

Facsimile: (702) 434-1488

*Attorneys for Plaintiffs*

Ricardo A. Garcia, Esq.

LAW OFFICES OF GARCIA & KARAM

820 South Main Street

McAllen, TX 78501

Telephone Number: (956) 630-2882

Facsimile Number: (956) 630-5393

*Plaintiffs Attorney Pro Hac Vice*

Larry W. Lawrence, Jr., Esq.

LAWRENCE LAW FIRM

3112 Windsor Rd., #A234

Austin, TX 78703

Telephone: (956) 994-0057

Facsimile: (956) 994-0741

*Plaintiffs Attorney Pro Hac Vice*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

TERESA GARCIA TREJO, as The Success-in- )

Interest and Surviving Spouse of Rafael Trejo )

Deceased, )

Plaintiff, )

vs. )

FORD MOTOR COMPANY, )

Defendant. )

///

Case No.:

A-11-641059-C

Dept.:

XXI

**ORDER**

NETTLES LAW FIRM  
1389 Galleria Drive, Suite 200  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

Date of Hearing: January 7, 2015  
Time of Hearing: 9:30 a.m.

Plaintiff's Application for Attorneys' Fees, Costs and Interest filed on October 10, 2014; Ford Motor Company's Motion to Retax and Settle Costs and Disbursements filed on October 15, 2014; and Ford Motor Company's Renewed Motion for Judgment as a Matter of Law or, in the alternative, for a New Trial filed on October 21, 2014, came before the Court for hearing on January 7, 2015, before the Honorable Judge Valerie Adair. Plaintiff appeared through her counsel Larry W. Lawrence, Esq., Ricardo Garcia, Esq., Jody R. Mask, Esq., and William R. Killip, Jr., Esq. Defendant appeared through its counsel Jay J. Schuttert, Esq., Morgan T. Petrelli, Esq., and Michael W. Eady, Esq.

The Court having read and considered the pleadings on file, oppositions and replies thereto, and having heard the oral arguments of counsel, and having considered the matter and being fully advised, and good cause appearing therefore, enters the following:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Ford Motor Company's Renewed Motion for Judgment as a Matter of Law, or in the Alternative, for a New Trial is hereby **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court's analysis of the Beattie factors as outlined in the Court's February 18, 2015 Minutes precludes an award of attorneys' fees, and therefore, Plaintiff's Application for Attorneys' Fees is **DENIED**.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Ford Motor Company's Motion to Retax and Settle Costs and Disbursements is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff is awarded costs in the total amount of three hundred fifty-six thousand seven hundred three dollars and 51/100 cents (\$356,703.51), with interest accruing at the statutory rate beginning October 8, 2014.

///

///

NETTLES LAW FIRM  
1389 Galleria Drive, Suite 200  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

**AMENDED JUDGMENT**

Accordingly,

**IT IS FURTHER ORDERED** that Plaintiff Teresa Trejo is entitled to judgment against Defendant Ford Motor Company as follows:

Jury Verdict:	\$ 4,500,000.00
Pre-Judgment Interest	\$ 517,376.70
<u>Allocated Costs:</u>	<u>\$ 356,703.51</u>
JUDGMENT TOTAL:	\$ 5,374,080.21 <sup>1</sup>

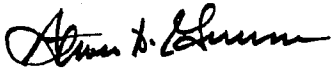
All requested relief not expressly granted herein is denied.

**IT IS SO ORDERED** this 16<sup>th</sup> day of March, 2015.

  
DISTRICT COURT JUDGE *Bo*

<sup>1</sup> All amounts awarded in the Judgment Upon Jury Verdict entered on October 8, 2014, and awarded herein shall bear post-judgment interest at the statutory rate from October 8, 2014 until satisfied.

E



CLERK OF THE COURT

1 **NEOJ**  
2 Vaughn A. Crawford  
3 Nevada Bar No. 7665  
4 Jay J. Schuttert  
5 Nevada Bar No. 8656  
6 Joshua D. Cools  
7 Nevada Bar No. 11941  
8 SNELL & WILMER LLP.  
9 3883 Howard Hughes Parkway, Suite 1100  
10 Las Vegas, NV 89169  
11 Telephone: (702) 784-5200  
12 Facsimile: (702) 784-5252  
13 Email: [vcrawford@swlaw.com](mailto:vcrawford@swlaw.com)  
14 Email: [jschuttert@swlaw.com](mailto:jschuttert@swlaw.com)  
15 Email: [jcools@swlaw.com](mailto:jcools@swlaw.com)

16 Attorneys for Defendant  
17 FORD MOTOR COMPANY

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 TERESA GARCIA TREJO, Individually and  
21 as The Success-in-Interest and Surviving  
22 Spouse of Rafael Trejo, Deceased; and JOSE  
23 DE JESUS GARCIA, Individually,

24 Plaintiffs,

25 vs.

26 ALAN KORANSKY, FORD MOTOR  
27 COMPANY, DOES 1 through 10, ROE  
28 CORPORATIONS 11 through 20, Inclusive,

29 Defendants.

Case No.: A-11-641059-C

Dept. No.: XXI

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER TO DISMISS PUNITIVE  
DAMAGES WITH PREJUDICE**

30 PLEASE TAKE NOTICE that a **STIPULATION AND ORDER TO DISMISS**  
31 **PUNITIVE DAMAGES WITH PREJUDICE** was entered in the above-referenced action on

32 ///

33 ///

34 ///

35 ///

36 ///

37 ///

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
(702) 784-5200  
FAX (702) 784-5252

1 the 30<sup>th</sup> day of April, 2013. A copy of said Order is attached hereto.

2 DATED this 2nd day of May, 2013.

3 SNELL & WILMER LLP.

4  
5 By: 

6 Vaughn A. Crawford

7 Nevada Bar No. 7665

8 Jay J. Schuttert

9 Nevada Bar No. 8656

10 Joshua D. Cools

11 Nevada Bar No. 11941

12 3883 Howard Hughes Parkway, Suite 1100

13 Las Vegas, NV 89169

14 Attorneys for Defendant

15 FORD MOTOR COMPANY

16  
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18  
19  
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28  
Snell & Wilmer

LLP  
Law Offices  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.261.5300



**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS PUNITIVE DAMAGES WITH PREJUDICE** by the method indicated below:

<u>XXXXX</u>	U.S. Mail	_____	Overnight Mail
_____	U.S. Certified Mail	_____	Federal Express
_____	Facsimile Transmission	_____	Hand Delivery
_____	Electronic Service		

and addressed to the following:

Stacey A. Upson, Esq.  
NETTLES LAW FIRM  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014  
Telephone: (702) 434-8282  
Facsimile: (702) 434-1488  
Email: [staceyupson@nettlawfirm.com](mailto:staceyupson@nettlawfirm.com)  
Attorneys for Plaintiffs

Paul A. Gaytan, Esq. (*Pro Hac Vice*)  
Ricardo A. Garcia, Esq. (*Pro Hac Vice*)  
LAW OFFICES OF GARCIA & KARAM  
820 South Main Street  
McAllen, TX 78501  
Telephone: (956) 630-2882  
Facsimile: (956) 630-5393  
Email: [paul@garciakaram.com](mailto:paul@garciakaram.com)  
Attorneys for Plaintiffs

Michael R. Hall, Esq.  
Michael J. Shannon, Esq.  
HALL JAFFE & CLAYTON, LLP  
7425 Peak Dr.  
Las Vegas, NV 89128  
Telephone: (702) 316-4111  
Facsimile: (702) 316-4114  
Email: [mhall@lawhjc.com](mailto:mhall@lawhjc.com)  
Email: [mshannon@lawhjc.com](mailto:mshannon@lawhjc.com)  
Attorneys for Defendant  
ALAN KORANSKY

DATED this 2nd day of May, 2013.

  
An Employee of Snell & Wilmer LLP.

Snell & Wilmer

LAW OFFICES  
1181 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
(702) 784-5100

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF ENTRY OF STIPULATION AND ORDER TO DISMISS PUNITIVE DAMAGES WITH PREJUDICE filed in District Court, Case No. A-11-641059-C:

☒ Does not contain the social security number of any person.

- OR -

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

- OR -

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 2nd day of May, 2013.

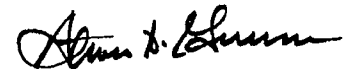
SNELL & WILMER LLP.

By: \_\_\_\_\_

Vaughn A. Crawford  
Nevada Bar No. 7665  
Jay J. Schuttart  
Nevada Bar No. 8656  
Joshua D. Cools  
Nevada Bar No. 11941  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

Attorneys for Defendant  
FORD MOTOR COMPANY

**ORIGINAL**



CLERK OF THE COURT

1 SAO  
2 Vaughn A. Crawford  
3 Nevada Bar No. 7665  
4 Jay J. Schuttert  
5 Nevada Bar No. 8656  
6 Joshua D. Cools  
7 Nevada Bar No. 11941  
8 SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169  
Telephone: (702) 784-5200  
Facsimile: (702) 784-5252  
Email: [vcrawford@swlaw.com](mailto:vcrawford@swlaw.com)  
Email: [jschuttert@swlaw.com](mailto:jschuttert@swlaw.com)  
Email: [jcools@swlaw.com](mailto:jcools@swlaw.com)

9 Attorneys for Defendant  
10 FORD MOTOR COMPANY

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 TERESA GARCIA TREJO, Individually and  
14 as The Success-in-Interest and Surviving  
Spouse of Rafael Trejo, Deceased; and JOSE  
DE JESUS GARCIA, Individually,

15 Plaintiffs,

16 vs.

17 ALAN KORANSKY, FORD MOTOR  
18 COMPANY, DOES 1 through 10, ROE  
CORPORATIONS 11 through 20, Inclusive,

19 Defendants.

Case No.: A-11-641059-C

Dept. No.: XXI

**STIPULATION AND ORDER TO DISMISS  
PUNITIVE DAMAGES WITH PREJUDICE**

21 IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs Teresa Garcia  
22 Trejo, individually and as surviving spouse of Rafael Trejo, deceased, and Jose De Jesus Garcia  
23 and Defendants Ford Motor Company and Alan Koransky, by their respective counsel of record,  
24 that Plaintiffs' claim for punitive damages against Ford Motor Company are hereby dismissed  
25 with prejudice.

26 ///

27 ///

28 ///

Snell & Wilmer

LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 784-5200

DATED this 26<sup>th</sup> day of April, 2013.

SNELL & WILMER L.L.P.

By:

Vaughn A. Crawford, Esq.  
Jay J. Schuttert, Esq.  
Joshua D. Cools, Esq.  
3883 Howard Hughes Pkwy.,  
Ste. 1100  
Las Vegas, NV 89169

Attorneys for Defendant  
FORD MOTOR COMPANY

DATED this 26 day of April, 2013.

NETTLES LAW FIRM

By:

Eric C. Marshall, Esq.  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014

Paul A. Gaytan, Esq. (*Pro Hac Vice*)  
Ricardo A. Garcia, Esq. (*Pro Hac Vice*)  
LAW OFFICES OF GARCIA & KARAM  
820 South Main Street  
McAllen, TX 78501

Attorneys for Plaintiff

DATED this 26<sup>th</sup> day of April, 201.

HALL JAFFE & CLAYTON, LLP

By:

Michael R. Hall, Esq.  
Michael J. Shannon, Esq.  
7425 Peak Dr.  
Las Vegas, NV 89128

Attorneys for Defendant  
ALAN KORANSKY

DATED this 30 day of April, 2013.

Valerie L. Adair

DISTRICT COURT JUDGE

Prepared and Submitted by:  
SNELL & WILMER L.L.P.

Vaughn A. Crawford  
Nevada Bar No. 7665  
Jay J. Schuttert  
Nevada Bar No. 8656  
Joshua D. Cools  
Nevada Bar No. 11941  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

Attorneys for Defendant  
FORD MOTOR COMPANY

**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding **STIPULATION AND ORDER TO DISMISS PUNITIVE DAMAGES WITH PREJUDICE** filed in District Court, Case No. A-11-641059-C:

☒ Does not contain the social security number of any person.

- OR -

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

- OR -

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 26<sup>th</sup> day of April, 2013.

SNELL & WILMER L.L.P.

By: 

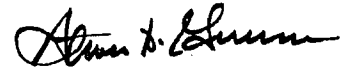
Vaughn A. Crawford  
Nevada Bar No. 7665  
Jay J. Schuttart  
Nevada Bar No. 8656  
Joshua D. Cools  
Nevada Bar No. 11941  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

Attorneys for Defendant  
FORD MOTOR COMPANY

Snell & Wilmer

LAW OFFICES  
3883 HOWARD HUGHES PARKWAY, SUITE 1100  
LAS VEGAS, NEVADA 89169  
(702) 734-5700

**F**

  
CLERK OF THE COURT

1 **PMEM**  
2 Vaughn A. Crawford  
3 Nevada Bar No. 7665  
4 Jay J. Schuttert  
5 Nevada Bar No. 8656  
6 Joshua D. Cools  
7 Nevada Bar No. 11941  
8 SNELL & WILMER L.L.P.  
9 3883 Howard Hughes Parkway, Suite 1100  
10 Las Vegas, NV 89169  
11 Telephone: (702) 784-5200  
12 Facsimile: (702) 784-5252  
13 Email: [vcrawford@swlaw.com](mailto:vcrawford@swlaw.com)  
14 Email: [jschuttert@swlaw.com](mailto:jschuttert@swlaw.com)  
15 Email: [jcools@swlaw.com](mailto:jcools@swlaw.com)

16 Attorneys for Defendant  
17 FORD MOTOR COMPANY

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

20 TERESA GARCIA TREJO, Individually and  
21 as The Success-in-Interest and Surviving  
22 Spouse of Rafael Trejo, Deceased; and JOSE  
23 DE JESUS GARCIA, Individually,

24 Plaintiffs,

25 vs.

26 ALAN KORANSKY, FORD MOTOR  
27 COMPANY, DOES 1 through 10, ROE  
28 CORPORATIONS 11 through 20, Inclusive,

Defendants.

Case No.: A-11-641059-C

Dept. No.: XXI

**JOINT PRE-TRIAL MEMORANDUM**

21 COMES NOW, Plaintiffs TERESA GARCIA TREJO, Individually and as The Success-  
22 in-Interest and Surviving Spouse of Rafael Trejo, Deceased; and JOSE DE JESUS GARCIA,  
23 Individually, by and through counsel, Brian D. Nettles and William R. Killip of the NETTLES  
24 LAW FIRM, Larry Wayne Lawrence of the LAWRENCE LAW FIRM, and Ricardo A. Garcia of  
25 GARCIA OCHOA MASK, and Defendant FORD MOTOR COMPANY, by and through counsel,  
26 Vaughn A. Crawford, Jay J. Schuttert, and Joshua D. Cools, of the law firm Snell & Wilmer L.L.P.,  
27 who submit the following Joint Pre-Trial Memorandum, pursuant to EDCR 2.67. Counsel for  
28

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.784.5200

1 Plaintiffs, Larry Lawrence and counsel for Ford, Jay Schuttert and Joshua Cools, pursuant to  
2 agreement, have met telephonically over the past week to prepare this memorandum, pursuant to  
3 EDCR 2.67(a).

4 I.

5 STATEMENT OF THE FACTS

6 On December 16, 2009, Plaintiff Teresa Trejo was driving the subject 2000 Ford Excursion  
7 eastbound on Interstate 10 in Dona Ana County, New Mexico. Her husband, Rafael Trejo, was  
8 seated in the right front passenger seat; he was wearing his seatbelt. The Excursion was towing a  
9 flatbed utility trailer and was loaded with household goods. While attempting a lane change,  
10 Mrs. Trejo lost control and rolled the Excursion and trailer. The Excursion came to rest on its roof.  
11 Mr. Trejo, who was still inside the vehicle, suffered injuries resulting in his death.

12 II.

13 CLAIMS FOR RELIEF

14 Plaintiff sued Ford Motor Company, claiming the roof structure of the 2000 Ford Excursion  
15 was defective and caused Rafael Trejo's death. Plaintiff seeks general and special damages arising  
16 out of Rafael Trejo's death and Teresa Trejo's emotional distress. Ford generally denies all liability  
17 for the injuries sustained in the collision.

18 III.

19 DEFENSES

20 Ford Motor Company's Defenses to Plaintiffs' Complaint:

21 1. Plaintiffs' Complaint, and each and every allegation contained therein, fails to  
22 state a claim upon which relief can be granted.

23 2. Ford is informed and believes, and upon such information and belief alleges, that  
24 Plaintiffs were aware of, or should have been aware of, the proper, safe and intended use, care  
25 and maintenance of Plaintiffs' vehicle. Plaintiffs nevertheless, and with full knowledge of the  
26 consequences thereof, misused and/or abused the vehicle by not properly and faithfully caring for,  
27  
28



1 using and maintaining the vehicle, and such abuse and misuse of the vehicle by Plaintiffs was the  
2 proximate cause of Plaintiffs' own damages, if any.

3 3. Ford is informed and believes, and upon such information and belief alleges, that  
4 any and all damages, if any, sustained or suffered by Plaintiffs, were proximately caused and  
5 contributed to by Plaintiffs' use of the vehicle which is the subject of this lawsuit, for a purpose  
6 for which the product was not intended to be so used. Plaintiffs knew, or should have known, that  
7 the use to which Plaintiffs put this vehicle was not the use for which the vehicle was  
8 manufactured or intended and that such unintended use could cause damages to Plaintiffs.

9 4. The vehicle which is the subject of this lawsuit was accompanied with specific  
10 instructions regarding the proper use and care of said vehicle, the manner in which to properly use  
11 the vehicle, the manner in which the vehicle may safely be used, the procedures to follow to  
12 correctly, properly and safely use and care for the vehicle and the use for which the vehicle was  
13 designed, intended or marketed. Ford is informed and believes and thereon alleges that Plaintiffs  
14 were aware of, or should have been aware of, said instructions, and Plaintiffs knew, or should  
15 have known, of the consequences of using or caring for the vehicle contrary to and/or in disregard  
16 of said instructions, and yet Plaintiffs nevertheless used said vehicle contrary to said instructions  
17 which proximately caused Plaintiffs' own damages. Ford further alleges on information and  
18 belief that had Plaintiffs used said vehicle pursuant to and in compliance with said instructions,  
19 Plaintiffs would not have damages in the sums alleged, or in any sum, or at all.

20 5. Ford is informed and believes, and upon such information and belief alleges, that  
21 Plaintiffs are barred from recovering from Ford because Plaintiffs did not properly maintain the  
22 vehicle, changed it from its original condition as it existed at the time of its manufacture, and  
23 Plaintiffs misused and abused the vehicle.

24 6. Ford is informed and believes, and upon such information and belief alleges, that  
25 by reason of Plaintiffs' conduct and actions, Plaintiffs are estopped from obtaining the relief  
26 sought in Plaintiffs' Complaint.  
27  
28

1           7. Ford is informed and believes, and upon such information and belief alleges, that  
2 by reason of Plaintiffs' conduct and actions, Plaintiffs have waived their right to assert every  
3 cause of action set forth in Plaintiffs' Complaint.

4           8. Ford is informed and believes, and upon such information and belief alleges, that  
5 Plaintiffs' alleged damages, if any, is the result, in whole or in part, of Plaintiffs' failure to  
6 exercise reasonable care to reduce or mitigate their damages.

7           9. Ford is informed and believes, and upon such information and belief alleges, that  
8 any damage, injury or loss sustained by Plaintiffs, if such occurred, was proximately caused and  
9 contributed to by negligence on the part of Plaintiffs in that Plaintiffs did not exercise ordinary  
10 care at the times and places set forth in Plaintiffs' Complaint, and further in the event that  
11 Plaintiffs were somehow to prevail under Plaintiffs' Complaint, any recovery would be reduced  
12 by the amount of negligence attributable to Plaintiffs.

13           10. Ford is informed and believes, and upon such information and belief alleges, that  
14 Plaintiffs' damage, if any, were the direct and proximate result of the conduct of Plaintiffs and/or  
15 Plaintiffs' agents, employees and invitees, in that they negligently, carelessly, recklessly,  
16 knowingly and willfully operated, maintained, serviced, directed and otherwise controlled all  
17 operations and maintenance of Plaintiffs' vehicle. Said damage, if any, was directly and  
18 proximately caused, in whole or in part and/or was contributed to or aggravated by the conduct of  
19 Plaintiffs and/or Plaintiffs' agents, employees and invitees, when they so negligently, carelessly,  
20 recklessly, knowingly and willfully failed to repair said vehicle, knowing that said vehicle needed  
21 repair, but, instead proceeded to operate, maintain, navigate, direct and otherwise make use of the  
22 vehicle and/or made improper and inadequate repairs to said vehicle. Ford is further informed  
23 and believes and thereon alleges that the owner of said vehicle knowingly and willfully  
24 authorized the hereinabove described operation of the vehicle and knowingly and willfully  
25 assumed the known risk that such actions would proximately cause damage to said vehicle.

26           11. The risk and dangers in Plaintiffs' conduct was known to Plaintiffs. Plaintiffs  
27 nevertheless conducted themselves in such a manner as to expose themselves and remain exposed  
28

1 to said risks and dangers and by doing so assumed all the risks attendant thereto. At said time,  
2 date and place of the incidents described in Plaintiffs' Complaint, Plaintiffs voluntarily assumed  
3 the risks of the activities in which they were then and there engaged and under the circumstances  
4 and conditions then and there existing, and the resultant injuries and damages, if any, sustained by  
5 Plaintiffs were proximately caused by Plaintiffs' own voluntary assumption of risk.

6 12. The vehicle which is the subject of this lawsuit contains specific warnings  
7 regarding the consequences of its use which admonished the user not to use the vehicle except  
8 pursuant to, and in strict conformance with, the instructions for its use. Ford is informed and  
9 believes and thereon alleges that Plaintiffs, with complete disregard for said warnings, and with  
10 knowledge of said warnings and with complete appreciation of the consequences of using the  
11 vehicle contrary to said warnings, nevertheless used said product in disregard of the warnings and  
12 thereby proximately caused Plaintiffs' own damage.

13 13. The vehicle was not in a defective condition at any time, including when it left the  
14 possession, custody or control of Ford.

15 14. The Complaint, and each and every cause of action contained therein, is barred by  
16 the applicable statute of limitations.

17 15. If Plaintiffs suffered any damages or loss, which allegation is expressly denied,  
18 then said damages or loss was solely caused by and attributable to superseding and/or intervening  
19 causes.

20 16. Ford alleges that persons, both served and unserved, named and unnamed, in some  
21 manner or percentage were responsible for Plaintiffs' damages.

22 17. Plaintiffs' allegations contained in Plaintiffs' Complaint, and each of them, are  
23 barred by the doctrine of laches in that Plaintiffs have unreasonably delayed in bringing these  
24 claims, and said delays have caused prejudice to Ford.

25 18. Ford is informed and believes, and upon such information and belief alleges, that  
26 any injury, damage or loss sustained by Plaintiffs, if such occurred, was proximately caused and  
27 contributed to by the negligence of third parties who did not exercise ordinary care toward either  
28

1 Plaintiffs or Ford with respect to the matters at issue. Accordingly, Plaintiffs' recovery, if any,  
2 against Ford must be barred or reduced by the failure of such third parties to exercise ordinary  
3 care.

4 19. Ford is informed and believes, and upon such information alleges, that a vehicle  
5 manufactured or sold by defendant did not proximately cause Plaintiffs' alleged damages.  
6 Therefore, Ford is not liable for any injuries or losses allegedly sustained by Plaintiffs.

7 20. If Plaintiffs were damaged by any product manufactured or distributed by Ford,  
8 Ford nonetheless did not breach any duty to Plaintiffs and is not liable for Plaintiffs' alleged  
9 damages because the Ford Excursion, when manufactured and distributed, conformed to the then  
10 current state of the art and because the then current state of scientific and industrial knowledge,  
11 art and practice was such that Ford did not, and could not, know that the Ford Excursion might  
12 pose a risk of harm in normal and foreseeable use. In addition, the Ford Excursion, when  
13 manufactured and distributed, complied with all applicable governmental and regulatory safety  
14 standards.

15 21. Ford breached no duty, if any, owed to Plaintiffs.

#### 16 IV.

#### 17 PARTIES AND CLAIMS TO BE ABANDONED

##### 18 a. Parties

19 Plaintiff Jose De Jesus Garcia intends to dismiss, with prejudice, his claims against Ford  
20 Motor Company. Likewise, Plaintiff Teresa Garcia Trejo intends to dismiss, with prejudice, her  
21 claims for personal physical injuries against Ford Motor Company. This is not intended to affect  
22 her claims for wrongful death and emotional distress based on the death of her husband, Rafael  
23 Trejo.

##### 24 b. Claims

25 Plaintiff is abandoning her claims related to stability and handling of the subject 2000 Ford  
26 Excursion. Plaintiff's claims are limited to damages arises from the alleged lack of crashworthiness  
27  
28

1 and occupant protection features of the 2000 Excursion. Further, Plaintiffs intend to dismiss, with  
2 prejudice, the following claims from the Complaint at issue in this case:

- 3 i. Breach of warranty
- 4 ii. Breach of implied warranty
- 5 iii. Loss of consortium (as a cause of action)

6 Plaintiffs' remaining claims are for strict products liability, negligence, and negligent  
7 infliction of emotional distress.

8 **V.**

9 **EXHIBITS**

10 Plaintiffs' Exhibit List is attached as Exhibit 1; Ford Motor Company's Exhibit List is  
11 attached as Exhibit 2. Those listed may be offered into evidence.

12 The parties reserve the right to object to exhibits. The parties have agreed to reserve any  
13 such objections until the time of trial, other than those applicable to the Motions in Limine and in  
14 accordance with the parties' stipulation regarding the same, and the Court's rulings on those  
15 motions being contested.

16 Further, the parties agree that no later than 8:00 pm of the evening preceding each trial  
17 day, they will disclose the exhibits and demonstrative aids, including power point presentations,  
18 to be presented the following trial day. Accordingly, the parties can raise objections to those  
19 exhibits the following morning prior to the seating of the jury. The parties are not required to  
20 disclose exhibits and/or demonstrative aids used in cross-examination or re-direct in advance.

21 **XI.**

22 **AGREEMENTS AS TO LIMITATION OR EXCLUSION OF EVIDENCE**

23 None.

24 **XII.**

25 **LIST OF WITNESSES**

26 Plaintiffs' Witness List is attached as Exhibit 3; Ford Motor Company's Witness List is  
27 attached as Exhibit 4.

1 The parties will disclose all "live" trial witnesses 48 hours in advance of calling those  
2 witnesses for trial. For example, Plaintiffs will advise Defendant of the witnesses they intend to call  
3 "live" at trial on a Monday by 9:00 a.m. of the preceding Saturday.

4 The parties will disclose all deposition or video designated testimony 72 hours in advance of  
5 presenting the designated testimony. Objections and counter-designations will be due 24 hours  
6 later. Objections to counter-designations will be due 24 hours in advance of presenting the  
7 designated testimony. For example, Defendant will advise Plaintiffs of the deposition or video  
8 designated testimony they intend to present at trial on Monday by 9:00 a.m. the preceding Friday.

### 9 XIII.

#### 10 BRIEF STATEMENT OF EACH PRINCIPAL ISSUE OF LAW

11 1. Whether Defendant Ford Motor Company is liable to Plaintiffs for strict products  
12 liability. Plaintiffs contend that the 2000 Ford Excursion was defectively designed and, having  
13 insufficient roof strength, caused Rafael Trejo's death. Ford contends that the 2000 Ford Excursion  
14 was not defective in any way and that Rafael Trejo's death was not caused by roof crush.

15 2. Whether Defendant Ford Motor Company is liable to Plaintiffs for negligence.  
16 Plaintiffs contend that the 2000 Ford Excursion was negligently designed and, having insufficient  
17 roof strength, caused Rafael Trejo's death. Ford contends that the 2000 Ford Excursion was not  
18 defective or negligently designed in any way and that Rafael Trejo's death was not caused by roof  
19 crush.

20 3. Whether Defendant Ford Motor Company is liable to Plaintiffs for negligent  
21 infliction of emotional distress. Plaintiffs contend that the 2000 Ford Excursion was negligently  
22 designed and, having insufficient roof strength, caused Rafael Trejo's death, and thereby caused  
23 Plaintiff Teresa Trejo extreme emotional distress when she witnessed her husband's death. Ford  
24 contends that the 2000 Ford Excursion was not defective or negligently designed in any way and  
25 that Rafael Trejo's death was not caused by roof crush.

26 ///

27 ///

IX.

ESTIMATE OF TIME REQUIRED FOR TRIAL

Ten to twelve trial days, plus jury deliberation.

X.

ADDITIONAL MATTERS FOR THE COURT

Issues presented by the Parties' Motions *in Limine*. A hearing is set in this matter for September 3, 2014, at 9:30 a.m.

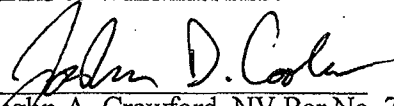
DATED this 22nd day of August, 2014.

DATED this 22 day of August, 2014.

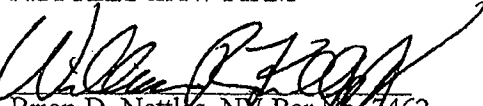
SNELL & WILMER L.L.P.

NETTLES LAW FIRM

By:

  
Vaughn A. Crawford, NV Bar No. 7665  
Jay J. Schuttart, NV Bar No. 8656  
Joshua D. Cools, NV Bar No. 11941  
3883 Howard Hughes Pkwy., Ste. 1100  
Las Vegas, NV 89169

By:

  
Brian D. Nettles, NV Bar No. 7462  
William R. Killip, Jr., NV Bar No. 3660  
1389 Galleria Drive, Suite 200  
Henderson, NV 89014

Attorneys for Defendant  
FORD MOTOR COMPANY

Larry Wayne Lawrence (*Pro Hac Vice*)  
LAWRENCE LAW FIRM  
3112 Windsor Rd., #A234  
Austin, TX 78703

Ricardo A. Garcia, Esq. (*Pro Hac Vice*)  
GARCIA OCHOA MASK  
820 South Main Street  
McAllen, TX 78501

Attorneys for Plaintiffs

**G**



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

TERESA TREJO,  
Plaintiff,  
vs.  
ALAN KORANSKY,  
Defendant.

CASE NO. A-11-641059  
DEPT NO. XXI

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

MOTIONS

WEDNESDAY, SEPTEMBER, 3, 2014

APPEARANCES:

For the Plaintiff: LARRY W. LAWRENCE, ESQ.  
WILLIAM KILLIP, ESQ.  
RICARDO GARCIA, ESQ.  
For the Defendant: VAUGHN A. CRAWFORD, ESQ.  
JAY J. SCHUTTERT, ESQ.  
MORGAN PETRELLI, ESQ.

RECORDED BY JANIE OLSEN, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 3, 2014, 9:53 A.M.

\*\*\*\*\*

MR. LAWRENCE: Good morning, Your Honor. Larry  
Lawrence here with the --

THE COURT: Let's everybody come up, and then I want  
everyone starting at the like furthest away to state their  
appearances for the record, to make it easy on us.

MR. KILLIP: Good morning, Your Honor. William  
Killip, local counsel on behalf of the plaintiff.

MR. GARCIA: Your Honor, Ricardo Garcia on behalf of  
the plaintiff.

MR. LAWRENCE: Your Honor, Larry Lawrence on behalf  
of the plaintiff.

MR. CRAWFORD: Vaughn Crawford on behalf of Defendant  
Ford Motor Company.

MR. SCHUTTERT: Good morning, Your Honor. Jay  
Schutttert on behalf of Defendant Ford Motor Company.

MS. PETRELLI: Good morning. Morgan Petrelli on  
behalf of defendant [inaudible].

THE COURT: All right. I'm just going to go through  
the motions one by one. I want to actually complement  
everyone, because I think everyone made their positions very  
clear in the motions and in the oppositions, so I want to  
complement everyone.

And in fact, I thought everyone's persuasive writing

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was quite good. Because I'd read one and think, oh, yeah,  
yeah, I agree. And then I'd read the opposition, oh, yeah,  
yeah, I agree. So on some of these I had questions, on others  
I didn't.

So I'm just going to go through each one, and then if  
the movant wants to add something they can, and then we'll  
hear from the other side. And then I'm -- you know, some of  
these I may, you know, neither grant nor deny. It's going to  
be if this happens then this happens kind of a thing.

All right. We'll start with Defendant Ford's motion  
to exclude the reference to Volvo or Ford's ownership of  
Volvo. To kind of give a heads up, I was inclined to deny  
this unless the argument was made by Ford that it was not  
technologically feasible to design a different type of a roof.  
I don't think that's Ford's primary argument. On the economic  
feasibility, you know, I'm not quite sure on that because, you  
know, Volvo's obviously a more expensive vehicle than Ford.

Whenever you go up, you know, you can have like, you  
know, going from a Toyota to a Lexus, you're going to have  
greater safety elements, and so while it may be economically  
feasible in a more expensive vehicle, I don't know how germane  
that really is to the question before the jury. And so that's  
where I'm inclined to lean.

So Mr. Crawford, are you going to be offering these?

MR. CRAWFORD: I think we've split them up, Your

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Honor, and I think this one's Mr. Schutttert's.

THE COURT: All right. Mr. Schutttert, so that's  
where I'm leaning on this. Do you want to respond, or  
anything to add?

MR. SCHUTTERT: Just very briefly, Your Honor. We  
think the Volvo XC90, which was not introduced until model  
year 2003, versus our 2004 Ford Excursion, which was designed  
sometime in the mid '90s and then first released late 1999,  
are just so widely different, setting apart the fact that the  
Volvo doesn't come onto the market until three years after our  
vehicle just make it totally irrelevant.

And there's really no earthly reason why we should  
spend some of our trial talking about a vehicle that couldn't  
have served the mission --

THE COURT: So it wasn't designed prior to the  
manufacture of the 2000 Ford at issue here?

MR. SCHUTTERT: The Volvo XC90?

THE COURT: Right.

MR. SCHUTTERT: Volvo XC90 was designed early 2000s  
for release to the public in September of 2002. The Excursion  
which came onto the market for model year 2000, the design  
work for that vehicle started in the mid to late 1990s. So  
there's just not an overlap of those technologies. They're  
three years apart.

THE COURT: Counsel.

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1 THE COURT: The NIED claim is being dropped.

2 MR. LAWRENCE: Right.

3 MR. CRAWFORD: Thank you.

4 THE COURT: And any claims relating to anyone other  
5 than Mr. Trejo are being dropped.

6 MR. LAWRENCE: That is correct.

7 THE COURT: All right.

8 MR. CRAWFORD: So just so we're clear, at time of  
9 trial we will have crash-worthiness under strict liability  
10 theory and negligent --

11 THE COURT: And negligent design.

12 All right. The motion in limine to exclude evidence  
13 and argument of dissimilar tests on dissimilar vehicles. It's  
14 been so long since I read this. I think my intent was to  
15 deny -- deny the motion. The only concern I had was the issue  
16 with the seat belt slack, but I think we've kind of covered  
17 that.

18 Did anyone have any questions relating to -- like I  
19 said, I've read this all and we've gone through so many  
20 things, I kind of forget what -- I know I marked that -- what  
21 my thinking was.

22 MR. CRAWFORD: All I would say is that in light of  
23 the Court's ruling on the drop test, this is sort of the  
24 mirror side of that --

25 THE COURT: That's kind of what I thought. Okay.

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1 MR. CRAWFORD: -- and I -- so.

2 THE COURT: The plaintiff's motion to exclude  
3 reference to the controlled rollover impact system testing,  
4 including videos and conclusions. Anything to add on that?

5 MR. LAWRENCE: The only thing I would add, Your  
6 Honor, is that the difference between the drop testing that  
7 was at issue in defendant's motion and most of, maybe almost  
8 all of the tests that Ford wants to introduce, whether it be  
9 the CRIS testing or all the other tests that I've identified  
10 in our motions, doesn't involve the same vehicle or not even  
11 close to the same circumstances.

12 I mean, if you take for instance the CRIS testing,  
13 the vehicle was dropped from a much higher height. It's a  
14 Crown Victoria. It's not an Excursion. If you take the  
15 Forester testing, those vehicles were launched off a dolly at  
16 40-something miles an hour and rolled to 140 feet. So I'm not  
17 sure how those can relate in any way to an Excursion that  
18 rolls at 26 miles an hour.

19 If you look at the GMC referenced testing, same  
20 issue; different vehicle, different test parameters. You  
21 know, there's -- the myriad of tests that they are going to  
22 trot out with their experts don't even come close to setting a  
23 foundation for substantial similarity.

24 It'd be one thing if they'd taken an Excursion in any  
25 of these cases and rolled them off a dolly or did a CRIS test

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1 with them. But here it's not even close. I mean, it's not  
2 even an attempt to use the same vehicle, same speed, same  
3 anything.

4 So I think there's a distinction between looking at  
5 an Excursion and whether it can be replicated, the forces can  
6 be replicated from the accident and taking tests that were  
7 performed not for this case, but a long time ago under  
8 different speeds, different circumstances.

9 And I understand the Court's argument about it's  
10 going to be about weight. But there does have to be at least  
11 a threshold showing of the foundation of how they're similar,  
12 and I didn't see that.

13 THE COURT: Okay. Do you want to respond?

14 MR. CRAWFORD: Sure. Your Honor, it's interesting in  
15 light of all of the arguments we heard about why drop tests,  
16 which are indisputably not similar, ought to be allowed, but  
17 now when it comes to a rollover test, they're not  
18 substantially similar. These are not replications of our  
19 crash. These are to demonstrate scientific principles. We  
20 talked about what those are in the motion.

21 These are routinely admitted. Judge Villani let them  
22 in, in the Bradshaw case. We talked about them before. It is  
23 not true what you just heard, that they were dropped from a  
24 much higher height. The drop height in the Crown Victoria  
25 test was 11.1 inches and 11.7 inches, actually from a lesser

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1 height. If anything they would understate rather than  
2 overstate the issue.

3 The only court that's ever excluded them was a Texas  
4 court which said, you know, our case involves a Crown Vic, so  
5 I'm a little concerned about rollover testing of a Crown Vic,  
6 because that looks like you're trying to replicate our case.  
7 The very issues that is they weren't the same vehicle is why  
8 they are admissible here. There's no confusion. There's no  
9 possibility that a jury is going to be misled.

10 They are demonstrations of the scientific principle,  
11 and they don't have to meet the substantial similarity test.  
12 They clearly are not substantially similar. Now, they're more  
13 similar than a drop test, but they're being used to  
14 demonstrate the scientific principles. That's why they've  
15 been admitted over and over again and that's why they're  
16 relevant.

17 THE COURT: All right. I'm inclined to deny that  
18 motion.

19 Number 12, the motion in limine to exclude the  
20 opinions of Todd Hoover and Jeff Croteau. Look at you here in  
21 your opposition. You say, you know, the validity or strength  
22 of an expert's scientific conclusions is a matter for the  
23 jury, that the judge shouldn't be making those determinations.  
24 So that is denied.

25 In any event, we're moving on to the motion in limine

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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

TERESA TREJO,  
Plaintiff,  
vs.  
ALAN KORANSKY,  
Defendant.

CASE NO. A-11-641059  
DEPT NO. XXI

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 7

TUESDAY, SEPTEMBER 16, 2014

APPEARANCES:

For the Plaintiff: RICARDO GARCIA, ESQ.  
LARRY LAWRENCE, ESQ.  
JODY MASK, ESQ.  
WILLIAM KILLIP, ESQ.

For the Defendant: VAUGHN A. CRAWFORD, ESQ.  
JAY J. SCHUTTERT, ESQ.  
MORGAN PETRELLI, ESQ.

RECORDED BY JANIE OLSEN, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

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I N D E X

WITNESSES FOR THE DEFENDANT:

TODD HOOVER	
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Further Redirect Examination By Mr. Crawford	45
THOMAS BENNETT	
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1 LAS VEGAS, NEVADA, TUESDAY, SEPTEMBER 16, 2014, 11:06 A.M.

2 \*\*\*\*\*

3 (In the presence of the jury.)

4 THE COURT: All right. Court is now back in session.

5 And sir, you are still under oath, and you may resume your  
6 cross-examination.

7 TODD HOOVER, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

8 MR. MASK: Thank you, Your Honor.

9 CROSS-EXAMINATION - (Continued)

10 BY MR. MASK:

11 Q Mr. Hoover, yesterday in your direct  
12 examination, I took notes. And at one point, you said that  
13 this -- our vehicle weighed 7,000 pounds. Then at another  
14 point in your testimony, you said it weighed 7,900 pounds.  
15 And Mr. Crawford got up on his -- at another point and said it  
16 weighed 8,900 pounds.

17 MR. CRAWFORD: Objection, Your Honor. Misstates the  
18 record and the evidence.

19 MR. MASK: Mr. Hoover, this is my question.

20 THE COURT: Okay. And ladies and gentlemen, I --  
21 frankly, Mr. Crawford, I don't remember exactly what it was.  
22 It's your collective recollection, again, that controls,  
23 regardless of what the lawyers say the evidence was, whatever  
24 you remember it. So if someone premises a question on  
25 something that wasn't the testimony as you remember it, then

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1 of course it's your recollection that's important, not  
2 anything the lawyers or I may say.

3 All right, go on.

4 BY MR. MASK:

5 Q Mr. Hoover, my question to you is this: Do you  
6 know how much this Excursion weighs?

7 A No, because we don't know how much weight that  
8 they had in it. Our CG measurements are based off curb plus  
9 driver, and 8,900 is GVW.

10 Q Okay. Mr. Hoover, do you know how much this  
11 Excursion is rated to pull trailers?

12 A It depends on if it has a -- the bilateral  
13 stabilizers on the vehicle. It's all dependent on the hitch  
14 type, but the -- it's a class B hitch, I believe, and I think  
15 it can tow 10,000 pounds.

16 Q And Ford marketed it in their materials that you  
17 can pull trailers with it, didn't they?

18 A I've never looked at that marketing, but I would  
19 imagine that they do.

20 Q Okay. Let's talk about scratch pattern  
21 analysis. Mr. Don Stevens did scratch pattern analysis. He  
22 was the first to do that, and then Ford and its lawyers and  
23 the defense team was given that information before you guys  
24 conducted your scratch pattern analysis.

25 Mr. Stevens used a set of colors to delineate

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1 THE COURT: -- he -- you know, he did everything he  
2 was supposed to do, and she was driving well, and --  
3 MR. MASK: No one says that -- that --  
4 MR. CRAWFORD: Your Honor, when we brought -- when we  
5 brought up the issue of the brakes it was with respect to the  
6 reconstruction and handling of the crash. It had --  
7 THE COURT: Right. And I said, that they can, of  
8 course, introduce the trailer and the weight and all of that  
9 because otherwise --  
10 MR. CRAWFORD: Right.  
11 THE COURT: -- you can't have an accident  
12 reconstruction unless they get the full picture of the vehicle  
13 and how it was all operating. So, you know, I -- that came in  
14 on crush.  
15 MR. MASK: Sure.  
16 THE COURT: Like I said, my impression is, when you  
17 were talking about Mr. Trejo, it was about the seatbelt --  
18 MR. MASK: Seatbelt.  
19 THE COURT: -- which is separate. So, I'm okay with  
20 that.  
21 MR. MASK: Right. Okay.  
22 THE COURT: Ms. Trejo, my impression is, she didn't  
23 really say too much, but I'm going to think about this more  
24 fully. Unfortunately, we don't have a transcript and I'm just  
25 relying on my --

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1 MR. CRAWFORD: We actually just got it.  
2 THE COURT: Oh, lucky me. And I -- if you just got  
3 it, then is that filed in Odyssey, Janie?  
4 THE COURT RECORDER: It is filed.  
5 THE COURT: It's filed in Odyssey, which means I can,  
6 you know, read it during my lunch break.  
7 Let me ask you this. What page -- do you have just  
8 the transcript or do you have a page that's germane to this?  
9 MR. CRAWFORD: It looks like it starts this  
10 discussion, Your Honor, on page 13 of the transcript.  
11 THE COURT: Okay. All right. Well, I can access  
12 that myself. And so I will do that over the lunch break.  
13 MR. MASK: Okay.  
14 THE COURT: All right. Thank you.  
15 MR. MASK: Thank you, Your Honor.  
16 (Court recessed at 12:21 p.m. until 1:27 p.m.)  
17 (Outside the presence of the jury.)  
18 THE COURT: Yes.  
19 MR. MASK: Yes, Your Honor. If I may follow up on  
20 what we discussed. We visited and talked about our pleadings  
21 and theories, and we have made a decision to proceed solely on  
22 the strict liability claim --  
23 THE COURT: Okay.  
24 MR. MASK: -- and to drop our negligent design cause  
25 of action. We think that that simplifies things from a not

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1 only some evidentiary decisions you're going to have to make,  
2 but also a charge and a number of other issues.  
3 THE COURT: And jury instructions and all of that.  
4 MR. MASK: Jury instructions, the whole nine yards,  
5 so...  
6 THE COURT: All right. Then the evidence of the  
7 negligence is not coming in, or purported negligence on behalf  
8 of Ms. Trejo and Mr. Trejo. But again, you know, that doesn't  
9 give you a license to sort of bolster them through --  
10 MR. MASK: Absolutely, Your Honor. We're well aware  
11 of it.  
12 THE COURT: -- you know, evidence of her good driving  
13 or anything like that, so.  
14 MR. MASK: Absolutely.  
15 THE COURT: All right. Well, just stay away from the  
16 issue.  
17 MR. MASK: Sounds good. And procedurally for --  
18 what, do we need to sign another stipulation or something to  
19 that effect, or is this --  
20 THE COURT: I don't think we do. I can --  
21 MR. MASK: -- representation good enough on the  
22 record?  
23 THE COURT: -- just dismiss it. It's good enough on  
24 the record.  
25 MR. MASK: Okay. Thank you, Your Honor.

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1 THE COURT: All right. Thank you. And then  
2 everybody ready to -- you can excuse your witness.  
3 MR. CRAWFORD: Thank you, Your Honor.  
4 THE COURT: And then is your next witness ready?  
5 MR. CRAWFORD: Yes.  
6 THE COURT: Okay. Kenny, they can excuse the  
7 witness, and then bring the jury in.  
8 (Pause in proceeding.)  
9 (Jurors reconvene at 1:32 p.m.)  
10 THE COURT: Court is now back in session, and the  
11 defense may call its next witness.  
12 MR. SCHUTTERT: Thank you, Your Honor. Ford would  
13 call Thomas Bennett as its next witness.  
14 THOMAS BENNETT, DEFENDANT'S WITNESS, SWORN  
15 MR. SCHUTTERT: Good afternoon, Dr. Bennett.  
16 THE CLERK: Can you please state and spell your name.  
17 THE WITNESS: It's Thomas Lynn, with two N's,  
18 Bennett, B-e, double N, E, double T.  
19 THE COURT: Thank you.  
20 DIRECT EXAMINATION  
21 BY MR. SCHUTTERT:  
22 Q Dr. Bennett, good afternoon.  
23 A Good afternoon.  
24 Q Dr. Bennett, please tell the jury a little bit  
25 about yourself and your background.

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1 **NEOJ**

MICHAEL R. HALL, ESQ.

2 Nevada Bar No. 005978

[mhall@lawhjc.com](mailto:mhall@lawhjc.com)

3 MICHAEL J. SHANNON, ESQ.

Nevada Bar No. 007510

4 [mshannon@lawhjc.com](mailto:mshannon@lawhjc.com)

5 **HALL JAFFE & CLAYTON, LLP**

7425 PEAK DRIVE

6 LAS VEGAS, NEVADA 89128

(702) 316-4111

7 FAX (702) 316-4114

8 *Attorneys for Defendant*

9 *ALAN KORANSKY*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 TERESA GARCIA TREJO, Individually and  
as the Successor in Interest and Surviving  
13 Spouse of Rafael Trejo, Deceased; and JOSE  
DE JESUS GARCIA, Individually,

14 Plaintiff,

15 vs.

16 ALAN KORANSKY, FORD MOTOR  
COMPANY, DOES 1 through 10, ROE  
17 CORPORATIONS 11 through 20, Inclusive,

18 Defendants.

CASE NO. A-11-641059-C

DEPT. NO. XXI

**NOTICE OF ENTRY OF ORDER AND  
JUDGMENT PURSUANT TO EDCR 2.23(b)**

19  
20 NOTICE IS HEREBY GIVEN that an Order and Judgment Pursuant to EDCR 2.2(b) was  
21 entered in this matter on the 24<sup>th</sup> day of January, 2014, a copy of which is attached hereto.

22 DATED this 28<sup>th</sup> day of January, 2014.

23 HALL JAFFE & CLAYTON, LLP

24 By 

MICHAEL R. HALL, ESQ.

Nevada Bar No. 005978

MICHAEL J. SHANNON, ESQ.

Nevada Bar No. 007510

7425 Peak Drive

Las Vegas, Nevada 89128

*Attorneys for Defendant*

*Alan Koransky*

Snell & Wilmer  
L.L.P.

JAN 29 2014

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Eric L. Marshall, Esq.  
NETTLES LAW FIRM  
1389 Galleria Drive, Suite 110  
Henderson, NV 89014

Paul A. Gaytan, Esq.  
Ricardo A. Garcia, Esq.  
W OFFICES OF GARCIA & KARAM  
820 S. Main Street  
McAllen, TX 78501  
*Co-Counsel for Plaintiffs*

Hayley Angelo  
An Employee of HALL JAFFE & CLAYTON, LLP





*Anna D. Shuman*

CLERK OF THE COURT

1 **ORDER**

2 MICHAEL R. HALL, ESQ.

3 Nevada Bar No. 005978

4 [mhall@lawhjc.com](mailto:mhall@lawhjc.com)

5 MICHAEL J. SHANNON, ESQ.

6 Nevada Bar No. 007510

7 [mshannon@lawhjc.com](mailto:mshannon@lawhjc.com)

8 **HALL JAFFE & CLAYTON, LLP**

9 7425 Peak Drive

10 LAS VEGAS, NEVADA 89128

11 (702) 316-4111

12 FAX (702) 316-4114

13 *Attorneys for Defendant*

14 **ALAN KORANSKY**

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 TERESA GARCIA TREJO, Individually and  
18 as the Successor in Interest and Surviving  
19 Spouse of Rafael Trejo, Deceased; and JOSE  
20 DE JESUS GARCIA, Individually,

21 Plaintiff,

22 vs.

23 ALAN KORANSKY, FORD MOTOR  
24 COMPANY, DOES 1 through 10, ROE  
25 CORPORATIONS 11 through 20, Inclusive,

26 Defendants.

27 CASE NO. A641059  
28 DEPT. NO. XXI

19 **ORDER AND JUDGMENT PURSUANT TO EDCR 2.23(b)**

20 Defendant ALAN KORANSKY ("Koransky") filed and served a Motion for Summary Judgment  
21 on December 13, 2013. The matter was set for hearing on January 15, 2014 in Department XXI of the  
22 Eighth Judicial District Court, Honorable Valerie Adair presiding. The deadline to file an Opposition to  
23 Koransky's Motion for Summary Judgment was January 3, 2014. However, no Opposition was filed.  
24 Pursuant to EDCR 2.20(e), Plaintiffs' failure to oppose the Motion for Summary Judgment may be construed  
25 as an admission the motion is meritorious and a consent to granting the motion. Therefore, having reviewed  
26 the papers and pleadings on file herein, and noting that no Opposition to Koransky's Motion for Summary  
27 Judgment was timely filed, and pursuant to EDCR 2.23(b), the Court hereby makes the following findings  
28

1 and orders:

2 **I**

3 **FINDINGS**

4 1. On December 16, 2009 at approximately 1740, a rollover motor vehicle accident occurred  
5 at Mile Marker #116 on Interstate-10 in New Mexico. The vehicle involved in the rollover was a 2000 Ford  
6 Excursion driven by Plaintiff Teresa Trejo. Plaintiff Jose De Jesus Garcia and decedent Rafael Trejo were  
7 occupants in the vehicle. The Excursion was towing a two-axle trailer at the time of the accident.

8 2. Prior to the motor vehicle accident, Defendant Alan Koransky sold the trailer to the Plaintiffs  
9 that was presumably being towed at the time of the accident.

10 3. At the time the trailer was purchased from Mr. Koransky, Plaintiff Jose De Jesus Garcia  
11 inspected the trailer and found no evident defects aside from some wearing of the wood surface on the  
12 flatbed.

13 4. After the trailer was purchased and before Plaintiffs embarked on the roadtrip at issue,  
14 Plaintiffs made significant modifications to the trailer, including the installation of six-foot plywood walls  
15 along the outer perimeter of the flatbed trailer and the installation of a new wood surface on the flatbed.

16 5. Prior to embarking on the roadtrip at issue, Plaintiffs loaded a significant amount of  
17 household goods onto the modified trailer, such that the entire surface of the flatbed was covered and the  
18 household goods were stacked all the way to the top of the six foot sidings. This load was not secured in  
19 any way.

20 6. Shortly after the accident occurred, the New Mexico State Police arrived at the scene. Of the  
21 three responding officers, each concluded that the trailer was overloaded. Aside from this overloading, none  
22 of the responding officers perceived any defect or unsafe condition present on the trailer itself that  
23 contributed to the accident.

24 7. The expert disclosure deadlines governing this litigation have passed. At the expert  
25 disclosure deadline, Koransky designated Dale Fridley, MBA, P.E. as his expert on safety and accident  
26 reconstruction. Mr. Fridley inspected both the trailer and the Ford Excursion involved in the subject  
27 accident. He also visited the accident site. He reconstructed the accident and made several critical findings.

1 Among these critical findings, as set forth in his expert report, Mr. Fridley concluded the trailer did not roll  
2 first, and thus did not precipitate the vehicular roll. Even more critically, Mr. Fridley found there were no  
3 mechanical defects on the trailer that would have caused or contributed to the rollover.

4 8. Plaintiffs designated four experts, including three experts who specifically addressed liability  
5 issues. None of these experts have offered any opinions in their respective reports that rebut Mr. Fridley's  
6 conclusion that no mechanical defects on the trailer caused or contributed to the rollover.

7 9. Each of Plaintiffs' experts have been deposed. During their respective depositions, each of  
8 Plaintiffs' experts confirmed they did not dispute the conclusion of Mr. Fridley that no mechanical defects  
9 on the trailer caused or contributed to the rollover.

10 10. Defendant Ford Motor Company designated seven experts, including four experts that opined  
11 on issues involving accident reconstruction and mechanical analysis. None of Ford's experts offered any  
12 opinions in their respective reports that rebut Mr. Fridley's conclusion that no mechanical defects on the  
13 trailer caused or contributed to the rollover.

14 11. None of Ford's expert witnesses were scheduled for deposition prior to the December 13,  
15 2013 discovery cut-off.

16 12. There is no evidence the trailer sold by Koransky to the Plaintiffs was defective or in a  
17 dangerous condition at the time of the sale.

18 13. There is no evidence that any mechanical defect or condition of the trailer sold by Koransky  
19 to the Plaintiffs caused or contributed to the motor vehicle accident at issue.

20 14. Based on the absence of any evidence suggesting a defect in the trailer at the time of its sale  
21 by Koransky and/or that any defect of the trailer caused or contributed to the motor vehicle accident at issue,  
22 Plaintiffs are unable to establish a prima facie case of negligence against Koransky.

23 15. The Court hereby expressly makes the finding and determination that there is no just reason  
24 for delay in entering a final judgment in favor of Koransky.

## 25 II

### 26 ORDER

27 IT IS HEREBY ORDERED, ADJUDGED and DECREED that, based upon the Non-Opposition to  
28

1 Koransky's Motion for Summary Judgment, and pursuant to EDCR 2.23(b), Koransky's Motion for  
2 Summary Judgment is GRANTED; Plaintiffs take nothing; Plaintiffs' case against Koransky is dismissed  
3 on the merits, with prejudice, in its entirety; and Koransky recover of the Plaintiffs his costs of the action  
4 in an amount to be determined.

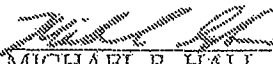
5 IT IS FURTHER ORDERED, ADJUDGED and DECREED that, based on the foregoing express  
6 determination that there is no just reason for delay, Final Judgment is hereby entered in favor of Defendant  
7 Koransky pursuant to NRCP 54(b).

8 DATED this 16 day of January, 2014.

9  
10   
11 DISTRICT COURT JUDGE *Je*  
12

13 Respectfully submitted by:

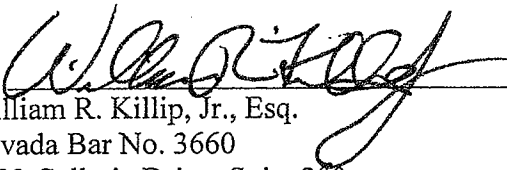
14 HALL JAFFE & CLAYTON, LLP

15   
16 MICHAEL R. HALL, ESQ.  
17 Nevada Bar No. 005978  
18 MICHAEL J. SHANNON, ESQ.  
19 Nevada Bar No. 007510  
20 7425 Peak Drive  
21 Las Vegas, Nevada 89128  
22 Attorney for Defendant  
23 Alan Koransky  
24  
25  
26  
27  
28

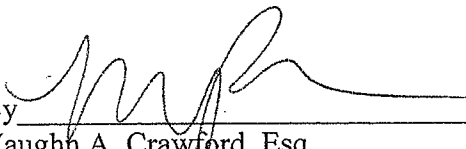
NETTLES LAW FIRM  
1389 Galleria Drive, Suite 200  
Henderson, NV 89014  
702.434.8282 / 702.434.1488 (fax)

Trejo vs. Ford Motor Company  
Case No.: A-11-641059-C  
Dept. XXI

Respectfully submitted by:  
NETTLES LAW FIRM

By   
William R. Killip, Jr., Esq.  
Nevada Bar No. 3660  
1389 Galleria Drive, Suite 200  
Henderson, NV 89014  
*Attorneys for Plaintiff*

Approved as to form and content:  
SNELL & WILMER L.L.P.

By   
Vaughn A. Crawford, Esq.  
Nevada Bar No. 7665  
Jay J. Schuttart, Esq.  
Nevada Bar No. 8656  
Morgan Petrelli, Esq.  
Nevada Bar No. 13221  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, NV 89169

Michael W. Eady (Pro Hac Vice)  
Thompson Coe Cousins & Irons, L.L.P.  
701 Brazos St., 15th Floor  
Austin, TX 78701

Lisa J. Perrochet (Pro Hac Vice)  
Emily V. Cuatto (Pro Hac Vice)  
Horvitz & Levy LLP  
15760 Ventura Boulevard, 18th Floor  
Encino, CA 91436

*Attorneys for Defendant*  
*Ford Motor Company*

## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Ford Motor Company  
Name of appellant

Emily V. Cuatto  
Name of counsel of record

May 12, 2015  
Date

s/ Emily V. Cuatto  
Signature of counsel of record

Los Angeles, California  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 12th day of May, 2015, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Ara Shirinian  
Michael W. Eady  
Ricardo A. Garcia  
Jody R. Mask  
Larry W. Lawrence, Jr.

Dated this 12th day of May, 2015

s/ Robyn Whelan  
Signature

## SERVICE LIST

*Trejo v. Ford Motor Company*  
Nevada Supreme Court No. 67843

Attorneys	Party(s) Represented
Ara Shirinian Mediation 10651 Capesthorne Way Las Vegas, Nevada 89135	Mediator
Michael W. Eady Thompson Coe Cousins & Irons, LLP 701 Brazos Street, 15th Floor Austin, Texas 78701	Defendant and Appellant <i>Ford Motor Company</i>
Ricardo A. Garcia Jody R. Mask Garcia Ochoa Mask 820 South Main Street McAllen, Texas 78501	Plaintiff and Respondent <i>Teresa Garcia Trejo</i>
Larry W. Lawrence, Jr. Lawrence Law Firm 3112 Windsor Road, Suite A234 Austin, Texas 78703	Plaintiff and Respondent <i>Teresa Garcia Trejo</i>
E-filers in this case who are registered with the Nevada Supreme Court will be electronically served with this document by the Nevada Supreme Court e-filing system.	