

**THE SUPREME COURT
OF THE STATE OF NEVADA**

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Tracie K. Lindeman
Clerk of Supreme Court

FORD MOTOR COMPANY,

Appellant,

v.

THERESA GARCIA TREJO AS THE
SUCCESSOR-IN-INTEREST AND
SURVIVING SPOUSE OF RAFAEL
TREJO, DECEASED,

Respondent.

Supreme Court Case No. 67843

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT, COUNTY OF CLARK
THE HONORABLE VALERIE ADAIR, DISTRICT JUDGE
DISTRICT COURT CASE No. A-11-641059-C

NOTICE OF SUPPLEMENTAL AUTHORITIES

HORVITZ & LEVY LLP
LISA PERROCHET (*PRO HAC VICE*)
EMILY V. CUATTO (*PRO HAC VICE*)
15760 VENTURA BOULEVARD, 18TH FLOOR
ENCINO, CALIFORNIA 91436-3000
(818) 995-0800 • FAX: (818) 995-3157
lperrochet@horvitzlevy.com
ecuatto@horvitzlevy.com

SNELL & WILMER L.L.P.
VAUGHN A. CRAWFORD (SBN 7665)
JAY J. SCHUTTERT (SBN 8656)
MORGAN T. PETRELLI (SBN 13221)
3883 HOWARD HUGHES PARKWAY,
SUITE 1100
LAS VEGAS, NEVADA 89169
(702) 784-5200 • FAX: (702) 784-5252
vcrawford@swlaw.com
jschuttert@swlaw.com
mpetrelli@swlaw.com

THOMPSON COE COUSINS & IRONS, L.L.P.
MICHAEL W. EADY (*PRO HAC VICE*)
701 BRAZOS STREET, 15TH FLOOR
AUSTIN, TEXAS 78701
(512) 708-8200 • FAX: (512) 708-8777
meady@thompsoncoe.com

ATTORNEYS FOR APPELLANT
FORD MOTOR COMPANY

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Pursuant to Nevada Rule of Appellate Procedure 31(e), we write to alert the Court to the Connecticut Supreme Court’s recent decision in *Izzarelli v. R.J. Reynolds Tobacco Co.*, No. 90-345, 2016 WL 1637665 (Conn. May 3, 2016).

Page 18 of Ford’s Reply Brief cites to the Connecticut Supreme Court’s decision in *Potter v. Chicago Pneumatic Tool Co.*, 694 A.2d 1319, 1333 (Conn. 1997). In *Izzarelli*, that Court revisits *Potter* in light of the two decades of development in products liability law since *Potter* was decided. *Izzarelli*, 2016 WL 1637665, at *8. The *Izzarelli* opinion clarifies the ambiguity left after *Potter* about when the ordinary consumer expectations test applies versus when Connecticut’s “modified” consumer expectations test—i.e., Connecticut’s version of the risk vs. benefit test—applies. The opinion holds that Connecticut’s version of the risk vs. benefit test is the “primary test” for design defect cases, and that “[t]he ordinary consumer expectation test is reserved for cases in which the product failed to meet the

ordinary consumer's *minimum* safety expectations, *such as res ipsa type cases*." *Id.* at *9 (second emphasis added).

Izzarelli is consistent with the trend described in Ford's briefing (AOB 34 n.3; ARB 17–19), which explained that many jurisdictions consider the risk vs. benefit test to be the superior test in complex design defect cases like the present one, in which the plaintiff claims a complex automotive system that performed as intended in a severe crash situation unfamiliar to most consumers should have been designed differently.

Dated: July 1, 2016

HORVITZ & LEVY LLP

LISA PERROCHET (*Pro Hac Vice*)

EMILY V. CUATTO (*Pro Hac Vice*)

SNELL & WILMER L.L.P.

VAUGHN A. CRAWFORD (Nevada SBN 7665)

JAY J. SCHUTTERT (Nevada SBN 8656)

MORGAN T. PETRELLI (Nevada SBN 13221)

THOMPSON COE COUSINS & IRONS, L.L.P.

MICHAEL W. EADY (*Pro Hac Vice*)

By: s/Emily V. Cuatto

Emily V. Cuatto

Horvitz & Levy LLP

15760 Ventura Blvd., 18th Floor

Encino, California 91436

By: s/Jay J. Schuttert

Jay J. Schuttert

Snell & Wilmer L.L.P.

3883 Howard Hughes Parkway, Suite 1100

Las Vegas, Nevada 89169

Attorneys for Appellant

FORD MOTOR COMPANY

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On July 1, 2016, I served true copies of the following document(s) described as **NOTICE OF SUPPLEMENTAL AUTHORITIES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 1, 2016, at Encino, California.

s/ Robyn Whelan

SERVICE LIST

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

| Attorneys | Party(s) Represented |
|--|--|
| Jay J. Schuttert Morgan T. Petrelli Snell & Wilmer LLP 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89169 | Appellant <i>Ford Motor Company</i> Electronic Copy, via Nevada Supreme Court's Appellate Case Management System (ACMS) |
| Vaughn A. Crawford Snell & Wilmer LLP 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89169 | Appellant <i>Ford Motor Company</i> Hard copy, via U.S. Mail |
| Michael W. Eady Thompson Coe Cousins & Irons, LLP 701 Brazos Street, 15th Floor Austin, Texas 78701 | Appellant <i>Ford Motor Company</i> Hard copy, via U.S. Mail |
| Brian D. Nettles William R. Killip, Jr. Nettles Law Firm 1389 Galleria Drive, Suite 200 Henderson, Nevada 89014 | Respondent <i>Teresa Garcia Trejo</i> Electronic Copy, via Nevada Supreme Court's Appellate Case Management System (ACMS) |
| Ricardo A. Garcia Jody R. Mask Garcia Ochoa Mask 820 South Main Street McAllen, Texas 78501 | Respondent <i>Teresa Garcia Trejo</i> Hard copy, via U.S. Mail |
| Larry W. Lawrence, Jr. Lawrence Law Firm 3112 Windsor Road, Suite A234 Austin, Texas 78703 | Respondent <i>Teresa Garcia Trejo</i> Hard copy, via U.S. Mail |

| | |
|---|---|
| A. William Maupin, Esq. Jennifer L. Braster Naylor & Braster 1050 Indigo Drive, Suite 112 Las Vegas, Nevada 89145 | Respondent <i>Teresa Garcia Trejo</i> Electronic Copy, via Nevada Supreme Court's Appellate Case Management System (ACMS) |
| David N. Frederick, Esq. 43 Innisbrook Avenue Las Vegas, Nevada 89113 | Respondent <i>Teresa Garcia Trejo</i> Electronic Copy via Nevada Supreme Court's Appellate Case Management System (ACMS) |
| Beau Sterling Sterling Law, LLC 228 South 4th Street, 1st Floor Las Vegas, Nevada 89101 | Respondent <i>Teresa Garcia Trejo</i> Electronic Copy via Nevada Supreme Court's Appellate Case Management System (ACMS) |
| Dennis L. Kennedy Sarah E. Harmon Bailey ♦ Kennedy 8984 Spanish Ridge Avenue Las Vegas, Nevada 89148-1302 | <i>Amicus Curiae</i> <i>The National Association of</i> <i>Manufacturers and Alliance of Automobile</i> <i>Manufacturers, Inc.</i> Electronic Copy via Nevada Supreme Court's Appellate Case Management System (ACMS) |
| Victor E. Schwartz Shook, Hardy & Bacon L.L.P. 1155 F Street, N.W., Suite 200 Washington, DC 20004-1305 | <i>Amicus Curiae</i> <i>The National Association of</i> <i>Manufacturers and Alliance of Automobile</i> <i>Manufacturers, Inc.</i> Hard copy, via U.S. Mail |
| Robert T. Eglet Erica D. Entsminger Eglet Prince 400 South Seventh Street, 4th Floor Las Vegas, Nevada 89101 | <i>Amicus Curiae</i> <i>Nevada Justice Association</i> Hard copy, via U.S. Mail |

| | |
|--|---|
| Matthew L. Sharp Matthew L. Sharp, Ltd. 432 Ridge Street Reno, Nevada 89501 | <i>Amicus Curiae</i> <i>Nevada Justice Association</i> Electronic Copy via Nevada Supreme Court's Appellate Case Management System (ACMS) |
|--|---|