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

FORD MOTOR COMPANY,

Appellant,,

v.

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

Respondent.

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Jul 13 2016 08:35 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Supreme Court Case No. 67843  
District Court Case No. A-11-641059-C

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**RESPONSE TO APPELLANT'S NOTICE OF SUPPLEMENTAL  
AUTHORITIES**

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**ATTORNEYS FOR RESPONDENT  
THERESA GARCIA TREJO**

1 Ford Motor Company (“Ford”) has filed a Notice of Supplemental  
2 Authorities, directing the Court’s attention to Izzarelli v R J. Reynolds Tobacco  
3 Co., 321 Conn. 172, 2016 WL 1637665 (Conn. 2016). Izzarelli holds that the  
4 “ordinary consumer expectation test” under Restatement (Second) of Torts, § 402A  
5 “is reserved for cases in which the product failed to meet the ordinary consumer’s  
6 minimum safety expectations, such as res ipsa type cases.” Izzarelli, \*9 (emphasis  
7 in original).  
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10 However, Izzarelli ignores the relevancy of the “ordinary knowledge  
11 common to the community as to [the product’s] characteristics” in applying the  
12 consumer expectations test under Restatement (Second) § 402A, Comment i.  
13 Izzarelli thereby disregards the role and responsibility of the manufacturer in not  
14 only developing consumer expectations for its product, but providing such  
15 “ordinary knowledge” regarding its characteristics to the consuming public,  
16 through the product’s design, appearance, advertising, marketing, warnings,  
17 instructions, bulletins, and recalls when necessary. *See* Respondent’s Answering  
18 Brief (“RAB”), pp. 38-45.  
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22 Hence, by limiting what Izzarelli calls the “ordinary consumer expectations  
23 test” to situations where violations of minimum safety expectations are apparent  
24 from res ipsa circumstances, Izzarelli seriously mischaracterizes the proper scope  
25 of the consumer expectations test. Izzarelli thereby severely prejudices ordinary  
26 consumers seeking compensation for injuries caused by products that prove to be  
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1 unreasonably dangerous, in light of the information provided – or not provided –  
2 by the manufacturer in designing, manufacturing and marketing its products.

3 Furthermore, Izzarelli not only does not support, it contradicts Ford’s  
4 arguments on this appeal. The Izzarelli majority rejects the simple/complex  
5 product distinction sought by Ford. Izzarelli, \*10. They also reject the  
6 Restatement (Third) of Torts, Products Liability, that Ford, its amici, and their  
7 academic advocates (as well as the Izzarelli minority) urge the Court to adopt as a  
8 separate test for determining whether a product is “unreasonably dangerous” in  
9 design defect cases. Instead, the Izzarelli majority reaffirms a “modified consumer  
10 expectations test” under which the jury can consider risk/utility factors, but which  
11 “asks the jury to weigh various factors through the ultimate lens of the consumer’s  
12 expectations.” Izzarelli, \*15.

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17 Indeed, in the Izzarelli majority’s view, those factors “essentially provide the  
18 jury with information that a fully informed consumer would know before deciding  
19 whether to purchase the product.” *Id.* Thus, the Izzarelli “modified consumer  
20 expectations test” is no different than what it calls the “ordinary consumer  
21 expectations test,” once the responsibility and role of the manufacturer in  
22 providing the “ordinary information” necessary for consumers to make fully-  
23 informed decisions regarding the purchase and use of their products is considered.

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26 Moreover, the Izzarelli majority not only holds the jury can consider specific  
27 consumer expectations, which may be determinative in a particular case, they  
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1 identify risk/utility factors – by reference to Potter v. Chicago Pneumatic Tool Co.,  
2 241 Conn. 199, 221 n. 15, 694 A.2n 1319 (1997) – that are far, far different than  
3 the factors upon which Ford sought to have the jury instructed in this case.  
4 Izzarelli, \*15. Izzarelli reaffirms risk/utility factors by which the jury could  
5 determine the “ordinary consumer’s” reasonable expectations in purchasing and  
6 using the product. *See* Izzarelli, n. 10 (quoting a sample jury instruction in Potter).  
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9 In contrast, Ford sought jury instructions that would have furthered its  
10 marketing interest in greater utility and consumer choice while attempting to  
11 exonerate itself by reference to plaintiff’s “awareness” and ability to avoid injury  
12 in using the product. *See* RAB 4, 47, 49, 14 JA 3206-07. Hence, Izzarelli provides  
13 no support for Ford’s demand that the Court reject “consumer expectations” and  
14 adopt risk/utility balancing as a separate test with factors favoring the manufacturer  
15 in design defect cases.  
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1 For these reasons, Izzarelli fails to provide relevant supplemental authority  
2 that would assist the Court on this appeal.

3 Dated this 12th day of July 2016.

4  
5 Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Maupin • Naylor • Braster and that  
3 on the 12<sup>th</sup> day of July 2016, I electronically filed and served a true and correct  
4 copy of the above and foregoing **RESPONSE TO APPELLANT'S NOTICE OF**  
5 **SUPPLEMENTAL AUTHORITIES** to be served as follows:

6 [ X ] by depositing same for mailing in the United States Mail, in a sealed  
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