

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

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Elizabeth A. Brown
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 AND CHANGE
OF ATTORNEY**

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**NOTICE OF SUPPLEMENTAL AUTHORITIES AND
CHANGE OF ATTORNEY**

Pursuant to Nevada Rule of Appellate Procedure 31(e), we write to alert the Court to the California Court of Appeal’s recent decision in *Trejo v. Johnson & Johnson*, B238339, 2017 WL 2825803 (Cal. Ct. App. June 30, 2017). The decision supports the argument presented in Appellant’s Opening Brief at pages 28-39, especially pages 37-38. The plaintiff¹ allegedly contracted a rare illness from a common, over-the-counter medication, and brought a strict liability design defect claim. The plaintiff argued the consumer expectations test for design defect should apply “because the ordinary consumer does not expect to contract [the

¹ The coincidentally-named plaintiff is as far as we know no relation to the plaintiff Theresa Trejo in the case pending before this Court.

rare illness] from taking [the medication].” (*Trejo*, 2017 WL 2825803, at *29.) The court of appeal rejected the argument because applying the consumer expectations test in that manner turned strict liability into absolute liability: “[I]t could be said that any injury from the intended or foreseeable use of a product is not expected by the ordinary consumer. If this were the end of the inquiry, the consumer expectation test always would apply and every product would be found to have a design defect.” *Id.* Rather, a balancing of risks and benefits was analytically required. *Id.*

We also write to alert the Court to the Ninth Circuit’s memorandum disposition in *Edwards v. Ford Motor Co.*, No. 15-55577, 2017 WL 1046188 (9th Cir., Mar. 20, 2017). This authority supports the argument presented in Appellant’s Opening Brief at pages 28-41, especially page 37, and Appellant’s Reply Brief at pages 20-24. Applying California law, the Ninth Circuit affirmed a district court’s decision to instruct the jury only on the risk-benefit test and not the consumer expectations test in a case involving a multiple rollover accident, noting “the lack of consumer expectations regarding the extent to which [the

vehicle's] roof would crush in a multiple rollover accident.”

Edwards, 2017 WL 1046188, at *1.

Also, please take notice that Jay Schuttert, Esq. is no longer with Snell & Wilmer L.L.P. Joshua D. Cools, Esq. of Snell & Wilmer L.L.P has replaced him as counsel for Ford in this matter. Please remove Mr. Schuttert from all distribution lists, and add Mr. Cools.

Dated: July 20, 2017

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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 3601 West Olive Avenue, 8th Floor, Burbank, California 91505-4681.

On July 20, 2017, I served true copies of the following document(s) described as **NOTICE OF SUPPLEMENTAL AUTHORITIES AND CHANGE OF ATTORNEY** 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.

BY ELECTRONIC TRANSMISSION: Based on electronic transmission via the Nevada Supreme Court's Appellate Case Management System (ACMS) indicated as follows:

SEE ATTACHED SERVICE LIST

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

Executed on July 20, 2017, at Burbank, California.

s/Cassandra St. George

SERVICE LIST

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

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