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CLERK OF THE COURT

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Jul 20 2011 04:17 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

NOTC
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(702) 333-0000 / FAX: (702) 333-0001

DISTRICT COURT

CLARK COUNTY, NEVADA

OVIDIU A. LUNGU, individually, and as legal representative of the Estate of LETITIA LUNGU, deceased, Plaintiff, vs. COOPER TIRE & RUBBER CO., a Delaware corporation; LES SCHWAB WAREHOUSE CENTER, INC., an Oregon corporation; CHRYSLER GROUP, LLC, a Delaware limited liability corporation; DAIMLER A.G., a German corporation and Successor in Interest to DAIMLERCHRYSLER CORPORATION; SO. NEV. T.B.A. SUPPLY CO., a Nevada corporation, dba TED WIENS TIRE AND AUTO CENTER; and STEAD MOTORS, INC.; Defendants.	Case No.: A-10-620094-C Dept. No. XXXI PLAINTIFF'S NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff Ovidiu A. Lungu, individually, and as legal representative of the Estate of Letitia Lungu, deceased, by and through his attorneys, hereby

Docket 58836 Document 2011-21922

appeals to the Supreme Court of Nevada from the court's Decision and Order entered in this action on or about the 16th day of June 2011, with notice of entry of the order being served by mail on the 17th day of June 2011. The Decision and Order is on (1) Defendant Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens; along with (2) Defendant Cooper Tire & Rubber Company's Joinder in the motion; (3) Defendant Les Schwab Warehouse Center, Inc's Joinder to the motion; and (4) Defendant So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center's Joinder in the motion.

Respectfully submitted, this 15th day of July 2011.

Tingey & Tingey



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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June 2011, the foregoing PLAINTIFF'S NOTICE OF APPEAL was served by facsimile, address as follows:

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dba Ted Wiens Tire and Auto Center
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An Employee of Tingey & Tingey

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-10-620094-C

Ovidiu Lungu, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna**
Cooper Tire and Rubber Co, Defendant(s)	§	Filed on:	**07/02/2010**
	§	Case Number History:	
	§	Conversion Case Number:	**A620094**

CASE INFORMATION

Case Type: **Product Liability**
Sub Type: **Product Liability/Motor Vehicle**

Case Flags: **Appealed to Supreme Court**
Jury Demand Filed
Arbitration Exemption Granted

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-10-620094-C
Court	Department 31
Date Assigned	03/14/2011
Judicial Officer	Kishner, Joanna

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Estate of Letitia Lungu**	**Tingey, Bruce D** *Retained* 7023857373(W)
	Lungu, Ovidiu A	**Tingey, Bruce D** *Retained* 7023857373(W)
Defendant	**Chrysler Group LLC**	**Marsh, Greg Winfield** *Retained* 7023870052(W)
	Cooper Tire and Rubber Co	**Lackland, Lisa W.** *Retained* 7029498200(W)
	Daimler AG	
	Daimlerchrysler Corporation	
	Les Schwab Tire Centers of Calilfornia Inc	**Silvestri, James P. C.** *Retained* 7023836000(W)
	So Nev TBA Supply Co	**Goates, Kenneth E.** *Retained* 7026695200(W)
	Stead Motors Inc	**Marsh, Greg Winfield** *Retained* 7023870052(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

07/02/2010 — Complaint
Filed By: Plaintiff Lungu, Ovidiu A
Complaint

07/02/2010	Case Opened
08/13/2010	Affidavit Filed By: Plaintiff Lungu, Ovidiu A *Affidavit of Service*
08/17/2010	Affidavit Filed By: Plaintiff Lungu, Ovidiu A *Affidavit of Service*
08/17/2010	Affidavit Filed By: Plaintiff Lungu, Ovidiu A *Affidavit of Service*
08/20/2010	Affidavit Filed By: Plaintiff Lungu, Ovidiu A *Affidavit of Service*
08/20/2010	Affidavit Filed By: Plaintiff Lungu, Ovidiu A *Affidavit of Service*
08/27/2010	Affidavit Filed By: Plaintiff Lungu, Ovidiu A *Affidavit of Service*
09/03/2010	Notice of Removal Filed By: Defendant Chrysler Group LLC *Notice of Filing Notice of Removal to Federal Court*
10/08/2010	Initial Appearance Fee Disclosure Filed By: Defendant So Nev TBA Supply Co *Initial Appearance Fee Disclosure*
10/08/2010	Demand for Jury Trial Filed By: Defendant So Nev TBA Supply Co *Demand for Jury Trial*
10/08/2010	Answer to Complaint Filed by: Defendant So Nev TBA Supply Co *Defendant So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center's Answer to Plaintiff's Complaint*
02/09/2011	Certificate of Service Filed by: Plaintiff Lungu, Ovidiu A *Certificate of Service of First Amended Complaint*
02/23/2011	Motion for Judgment Filed By: Defendant Stead Motors Inc *Defendant Stead Motors, Inc.'s Motion For Judgement on the Pleadings*
02/28/2011	Acceptance of Service Filed By: Plaintiff Lungu, Ovidiu A

Acceptance of Service of First Amended Complaint by Defendant Les Schwab Warehouse Center, Inc..

03/01/2011 Initial Appearance Fee Disclosure
Filed By: Defendant Stead Motors Inc
Initial Appearance Fee Disclosure of Defendant Stead Motors, Inc.

03/02/2011 Commissioners Decision on Request for Exemption - Granted
Party: Plaintiff Lungu, Ovidiu A
Commissioner s Decision on Request for Exemption

03/02/2011 Motion to Dismiss
Filed By: Defendant Chrysler Group LLC
Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens

03/02/2011 Initial Appearance Fee Disclosure
Filed By: Defendant Chrysler Group LLC
Initial Appearance Fee Disclosure of Defendant Chrysler Group, LLC

03/14/2011 Joinder To Motion
Filed By: Defendant Cooper Tire and Rubber Co
Cooper Tire & Rubber Company's Joinder in Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens

03/14/2011 Opposition
Filed By: Plaintiff Lungu, Ovidiu A
Plaintiff's Opposition to Defendant Stead Motors, Inc.'s Motion for Judgment on the Pleadings

03/14/2011 Peremptory Challenge
Filed by: Defendant Les Schwab Tire Centers of Calilfornia Inc
Peremptory Challenge of Judge

03/14/2011 Initial Appearance Fee Disclosure
Filed By: Defendant Les Schwab Tire Centers of Calilfornia Inc
Initial Appearance Fee Disclosure (NRS Chapter 19))

03/14/2011 Motion to Associate Counsel
Filed By: Defendant Les Schwab Tire Centers of Calilfornia Inc
Motion to Associate Counsel

03/14/2011 Notice of Department Reassignment

03/21/2011 Opposition
Filed By: Plaintiff Lungu, Ovidiu A
Plaintiff's Opposition to Defendant Chrysler Group, LLC's Motion to Apply Arizona Law and to Dismiss for Forum Non Conveniens and Joinder in Motion by Cooper Tire & Rubber Company

03/21/2011 Affidavit
Filed By: Plaintiff Lungu, Ovidiu A
Affidavit of Ovidiu Lungu Support of Plaintiff's Opposition to Defendant Chrysler Croup, LLC's Motion to Apply Arizona Law and to Dismiss for Forum Non Conveniens and Joinder in Motion by Cooper Tire & Rubber Company

04/01/2011	Reply Filed by: Defendant Stead Motors Inc *Defendant Stead Motor, Inc.'s Reply in Support of its Motion for Judgment on the Pleadings*
04/05/2011	Motion to Dismiss Filed By: Defendant Les Schwab Tire Centers of Calilfornia Inc *Les Schwab Warehouse Center Inc.'s Motion to Dismiss*
04/05/2011	Joinder To Motion Filed By: Defendant Les Schwab Tire Centers of Calilfornia Inc *Joinder to Motion*
04/07/2011	Stipulation and Order Filed by: Plaintiff Lungu, Ovidiu A *Stipulation and Order to Continue Hearing Date of Defendant Stead Motors, Inc.'s Motion for Judgment on the Pleadings to April 15, 2011 at 9:30 a.m.*
04/07/2011	Motion Filed By: Plaintiff Lungu, Ovidiu A *Motion to Associate Counsel Re: Jerry M. White, Esq., with Order Shortening Time; Affidavit of Counsel in Support of Motion for Order Shortening Time*
04/07/2011	Motion Filed By: Plaintiff Lungu, Ovidiu A *Motion to Associate Counsel Re: Tab Turner, Esq., with Order Shortening Time; Affidavit of Counsel in Support of Motion for Order Shortening Time*
04/11/2011	Initial Appearance Fee Disclosure Filed By: Defendant Cooper Tire and Rubber Co *Cooper Tire & Rubber Company's Initial Appearance Fee Disclosure*
04/11/2011	Joinder Filed By: Defendant Cooper Tire and Rubber Co *Cooper Tire & Rubber Company's joinder in Chrysler Group, LLC's Reply in Support of Its Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens*
04/11/2011	Certificate of Mailing Filed By: Defendant Les Schwab Tire Centers of Calilfornia Inc *Certificate of Mailing*
04/11/2011	Reply Filed by: Defendant Chrysler Group LLC *Chrysler Group, LLC's Reply In Support Of Its Motion To Apply Arizona Law And Motion To Dismiss For Forum Non Conveniens*
04/12/2011	Certificate of Service Filed by: Plaintiff Lungu, Ovidiu A *Certificate of Service, Including Receipt of Copies of Motions to Associate Counsel for Plaintiff's for Tab Turner, Esq. and Jerry White, Esq., on Order Shortening Time*
04/14/2011	Notice of Entry of Order Filed By: Plaintiff Lungu, Ovidiu A *Notice of Entry of Order for Stipulation and Order to Continue Hearing Date of Defendant Stead Motors, Inc.'s Motion for Judgment on the Pleadings to April 15, 2011 at 9:30 a.m.*

04/15/2011	**Motion for Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna) **04/15/2011, 06/15/2011** Events: 02/23/2011 Motion for Judgment *Defendant Stead Motors Inc.'s Motion For Judgment on the Pleadings*
04/15/2011	**Motion to Dismiss** (9:30 AM) (Judicial Officer: Kishner, Joanna) Events: 03/02/2011 Motion to Dismiss *Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens*
04/15/2011	**Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Kishner, Joanna) Events: 03/14/2011 Motion to Associate Counsel *Defendant Les Schwab Warehouse Center Inc's Motion to Associate Counsel*
04/15/2011	**Joinder** (9:30 AM) (Judicial Officer: Kishner, Joanna) Events: 03/14/2011 Joinder To Motion *Cooper Tire & Rubber Company's Joinder in Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens*
04/15/2011	**Joinder** (9:30 AM) (Judicial Officer: Kishner, Joanna) Events: 04/05/2011 Joinder To Motion *Defendant Les Schwab Warehouse Center, Inc's Joinder to Motion Filed by Defendants Chrysler Group LLC and Stead Motors Inc to Apply Arizona Law and Motion to Dismiss or Forum Non Conveniens*
04/15/2011	**Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Kishner, Joanna) Events: 04/07/2011 Motion *Plaintiff's Motion to Associate Counsel Re: Jerry M. White, Esq., With Order Shortening Time; Affidavit of Counsel in Support of Motion for Order Shortening Time*
04/15/2011	**Motion to Associate Counsel** (9:30 AM) (Judicial Officer: Kishner, Joanna) Events: 04/07/2011 Motion *Plaintiff's Motion to Associate Counsel Re: Tab Turner, Esq., With Order Shortening Time; Affidavit of Counsel in Support of Motion for Order Shortening Time*
04/15/2011	**All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna)
04/15/2011	Order Admitting to Practice Filed By: Defendant Les Schwab Tire Centers of Calilfornia Inc *Order Admitting Ralph Astor Lombardi, Esq. to Practice Pro Hac Vice*
04/19/2011	Notice of Entry of Order Filed By: Defendant Les Schwab Tire Centers of Calilfornia Inc *Notice of Entry of order*
04/20/2011	Joinder To Motion Filed By: Defendant So Nev TBA Supply Co *Joinder of So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center in the Motion of Chrysler Group to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens*
04/20/2011	Joinder To Motion Filed By: Defendant So Nev TBA Supply Co *Joinder of So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center in the Motion of Chrysler Group to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens*
04/22/2011	Opposition Filed By: Plaintiff Lungu, Ovidiu A *Plaintiff's Opposition to Defendant Les Schwab Warehouse Center, Inc.'s Motion to Dismiss*

	Plaintiff's Claim for Punitive Damages
04/28/2011	Opposition Filed By: Plaintiff Lungu, Ovidiu A *Plaintiff's Opposition to Defendant So. Nev. T.B.A. Supply Co., dba Ted Weins Tire & Auto Center Joinder in Chrysler Group's Motion to Apply Arizona Law & to Dismiss for Forum Non Conveniens*
05/02/2011	Reply to Opposition Filed by: Defendant Les Schwab Tire Centers of Calilfornia Inc *Reply to Plaintiff's Opposition to Defendant Les Schwab Warehouse Center Inc.'s motion to Dismiss Plaintiff's Claim for Punitive Damages*
06/13/2011	Order *Decision And Order*
06/15/2011	**Motion to Dismiss** (3:00 AM) (Judicial Officer: Kishner, Joanna) Events: 04/05/2011 Motion to Dismiss *Les Schwab Warehouse Center Inc.'s Joinder to Motion Filed by Defendants Chrysler Group LLC Motion to Dismiss or Forum Non Conveniens*
06/15/2011	**Motion** (3:00 AM) (Judicial Officer: Kishner, Joanna) *Chrylsler Group, LLC's Motion to Dismiss for Forum Non Conveniens*
06/15/2011	**Motion** (3:00 AM) (Judicial Officer: Kishner, Joanna) *Cooper Tire & Rubber Company's Joinder in Chrylsler Group, LLC's Motion to Dismiss for Forum Non Conveniens*
06/17/2011	Notice of Entry of Decision and Order Filed By: Defendant Chrysler Group LLC *Notice of Entry of Decision and Order*
06/28/2011	Stipulation and Order Filed by: Defendant Les Schwab Tire Centers of Calilfornia Inc *Stipulation and Order to Withdraw Les Schwab's Motion to Dismiss Plaintiff's Punitive Damage Claim*
07/15/2011	Notice of Appeal Filed By: Plaintiff Lungu, Ovidiu A *Plaintiff's Notice of Appeal*

DATE	FINANCIAL INFORMATION	
	Defendant Chrysler Group LLC	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 7/19/2011	**0.00**
	Defendant Cooper Tire and Rubber Co	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 7/19/2011	**0.00**
	Defendant Les Schwab Tire Centers of Calilfornia Inc	
	Total Charges	223.00
	Total Payments and Credits	223.00

CASE SUMMARY

CASE NO. A-10-620094-C

Balance Due as of 7/19/2011	**0.00**
Defendant So Nev TBA Supply Co	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 7/19/2011	**0.00**
Defendant Stead Motors Inc	
Total Charges	223.00
Total Payments and Credits	223.00
Balance Due as of 7/19/2011	**0.00**
Plaintiff Lungu, Ovidiu A	
Total Charges	363.00
Total Payments and Credits	363.00
Balance Due as of 7/19/2011	**0.00**

A-10-620094-C

X

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Ovidiu Lungu Attorney (name/address/phone): Bruce D. Tingey, Esq. (702) 333·0000 723 South Third Street Las Vegas, Nevada 89101	Defendant(s) (name/address/phone): Cooper Tire & Rubber Co., et al Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence

- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☒ **Product Liability**
  - ☒ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

June 29, 2010
Date

Signature of initiating party or representative

Electronically Filed
06/13/2011 03:15:25 PM

CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

OVIDIU A. LUNGU, individually and as Legal representative of the Estate of LETITIA LUNGU, deceased, Plaintiff, v. COOPER TIRE & RUBBER CO., a Delaware corporation; LES SCHWAB WAREHOUSE CENTER, INC., an Oregon corporation; CHRYSLER GROUP, LLC, a German corporation and Successor in Interest to DAIMLER CHRYSLER CORPORATION; SO. NEV. T.B.A. SUPPLY CO., a Nevada corporation, dba TED WIENS TIRE AND AUTO CENTER; and STEAD MOTORS, INC., Defendants.	CASE NO.: A-10-620094-C DEPT. XXXI **DECISION AND ORDER**

RECEIVED
JUN 13 2011
CLERK OF THE COURT

This matter came before the Court on April 14, 2011, on (1) Defendant Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens; (2) Defendant Cooper Tire & Rubber Company's Joinder in Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens; and (3) Defendant Les Schwab Warehouse Center, Inc.'s Joinder to Motion filed by Defendant Chrysler Group, LLC. Bruce D. Tingey, of the Tingey & Tingey law firm, and Jeffrey J. Whitehead, of Whitehead Law Offices, appeared on behalf of Plaintiff. Lisa Lackland, of the law firm of Lewis and Roca, appeared on behalf of Defendant Cooper Tire & Rubber Co.; Greg W. Marsh, of Marsh

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

Law Offices, appeared on behalf of Defendants Chrysler Group, LLC, and Stead Motors, Inc.; and Jeffrey J. Orr, of the law firm of Pyatt Silvestri & Hanlon, appeared on behalf of Defendant Les Schwab Warehouse Center, Inc.; and Kenneth E. Goates, of the Law Offices of Kenneth E. Goates, appeared on behalf of Defendant So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center. At the hearing, the parties requested to provide further briefing as to whether the claims against Ted Wiens should be adjudicated under Arizona or Nevada law. The Court allowed the parties to submit additional briefing. As a result, the Court received Defendant So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center's filed its Joinder of So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center in the Motion of Chrysler Group to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens, and other briefs. Having reviewed the merits of Defendants' motions, hearing oral argument and the positions of the parties during such arguments and having continued the matter to the Court's Chamber Calendar for further review of supplemental pleadings by the parties and research on the Court's part, and good cause appearing, the Court finds and rules as follows.

BACKGROUND FACTS

1. This action arises out of a single vehicle rollover crash that occurred on October 10, 2009, on Interstate 40, outside of Seligman, in Yavapai County, Arizona. Interstate 40 is a four lane interstate highway that runs east and west through north-central Arizona.

2. At the time of the crash, Plaintiff Ovidiu A. Lungu was in Arizona driving a 2000 Jeep Wrangler Sport ("Jeep") purchased from Defendant Stead Motors, Inc. ("Stead") in Walnut Creek, California.

3. Plaintiff's decedent, Letitia Lungu, was the passenger in the vehicle.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

4. Based on interviews and scene and vehicle evidence, Officer R.H. Gateley of the Arizona Department of Public Safety ("Arizona DPS"), allegedly concluded that the crash occurred when Plaintiff Ovidiu A. Lungu lost control of the Jeep.

5. Although Plaintiff alleges residency in Nevada and provided the officer with a Nevada address, Plaintiff Ovidiu A. Lungu held a driver's license issued by the State of Washington at the time of the crash.

6. The Jeep at issue was registered in Washington.

7. After the crash, Plaintiff's decedent Letitia Lungu was pronounced dead at the crash scene by Emergency Medical Technicians from Seligman, Arizona.

8. The Emergency Medical Technicians worked with Dr. Michael Ward at the Kingman Regional Medical Center in Kingman, Arizona.

9. Dr. Ward is a physician licensed to practice medicine in Arizona.

10. Plaintiff's decedent Letitia Lungu's remains were removed from the scene by Arizona Professional Services and transported to the Yavapai County Medical Examiner's Office in Prescott, Arizona.

11. Dr. William Stano, an Arizona coroner, performed an autopsy. Dr. Stano is a medical examiner licensed to practice State of Arizona.

12. Plaintiff Ovidiu A. Lungu was transported to Flagstaff Medical Center in Flagstaff, Arizona, where he received treatment for cuts, abrasions, contusion and fractures. Plaintiff Ovidiu A. Lungu was transported by Guardian Air Ambulance, a company based in Flagstaff, Arizona, from the scene of the crash to Flagstaff, Arizona.

13. Arizona DPS had Ash Fork Towing, located in Ash Fork, Arizona, remove the vehicle from the crash scene and transport it to Ash Fork, Arizona, for impound. Members of

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

Seligman Fire and Rescue, located in Seligman, Arizona, and River Medical Ground Ambulance, located in Kingman, Arizona, also responded to the scene to provide emergency services.

14. The Arizona Crash Report shows that many witnesses to the issues involved in this case and many documents are located in Arizona, where the crash occurred.

15. Known members of Arizona DPS who responded to and/or investigated the crash include: Arizona DPS Officer R.H. Gateley; Arizona DPS Officer Burns; and Unidentified Arizona DPS Officer, I.D. No. 6273.

16. As this was a fatal high speed rollover crash on an Interstate Highway in Arizona, it is believed that several other officers from Arizona DPS responded and assisted in the crash investigation. It is also likely that officers from the Yavapai County Sheriff's Department, in Arizona, responded to the crash scene as well.

17. The individuals and entities that provided treatment or care to Plaintiff Ovidiu Lungu, in Arizona, include: doctors, nurses, and staff at Flagstaff Medical Center, Flagstaff, Arizona; Flight Nurse and/or paramedics from Guardian Air Ambulance, Flagstaff, Arizona; EMTs, paramedics, and/or firefighters from Seligman Fire & Rescue, Seligman, Arizona; EMTs and/or paramedics from River Medical Ground Ambulance, Kingman, Arizona.

18. Those entities and individuals responsible for providing emergency medical care and who performed the autopsy on Plaintiff's decedent Letitia Lungu include: EMTs, paramedics, and/or firefighters from Seligman Fire & Rescue, Seligman, Arizona; and EMTs and/or paramedics from River Medical Ground Ambulance, Kingman, Arizona.

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19. At different points during the time period of December, 2009, through November, 2010, Plaintiff received medical treatment from University Medical Center located in Las Vegas Nevada.

20. At various points after the accident, while undergoing treatment and at other occasions, Plaintiff was visited by various friends and/or members of his volunteer ski team who resided in Southern Nevada.

21. Defendant Chrysler Group, LLC ("Chrysler Group") is a Delaware limited liability corporation with its primary offices located in Auburn Hills, Michigan. Chrysler Group had no involvement in the design, manufacture, distribution, or sale of the Jeep.

22. Stead, the dealership that sold the Jeep, is a California corporation with its principal place of business in Walnut Creek, California.

23. Defendant Cooper Tire & Rubber Co. ("Cooper"), the manufacturer of the tire, is a Delaware corporation with its principal place of business in Findlay, Ohio.

24. Defendant Les Schwab Warehouse Center, Inc., ("Les Schwab") is an Oregon corporation with its principal place of business in Bend, Oregon.

25. Defendant DaimlerChrysler Corporation ("DaimlerChrysler"), which has not been served, was a Delaware corporation. Defendant Daimler AG is a German entity with its principal place of business in Germany.

26. Defendant So. Nev. T.B.A. Supply Co. dba Ted Wiens Tire And Auto Center ("Ted Wiens") is a Nevada corporation with its principal place of business located in Nevada.

27. On July 2, 2010, Plaintiff filed his Complaint against Cooper; Les Schwab; Chrysler Group; Daimler AG; DaimlerChrysler; Ted Weins; and Stead.

28. The Complaint was removed to Federal Court on September 3, 2010.

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29. A First Amended Complaint was filed on October 10, 2010.

30. Thereafter, the Federal Court remanded the action to the State Court.

31. In the First Amended Complaint, Defendant Ted Wiens is only listed as Defendant in one of the eight causes of action. It is listed in the Sixth Cause of Action for Breach of Implied Warranty.

32. Paragraph 21 of the First Amended Complaint provides that Ted Wiens' role in the action was "to dismount, inspect, and reinstall the same Cooper tires onto the Plaintiff's 2000 model year Jeep Wrangler Sport."

33. Paragraph 54 of the First Amended Complaint provides:

> At all times material to the allegations in the complaint, CG LLC, DAIMLER AG, COOPER, LES SCHWAB, WIENS and STEAD MOTORS, were in the business of supplying consumer products to, among others, the Plaintiff. The consumer products at issue included automobiles and tires. By virtue of the sale and distribution of these consumer products to the Plaintiff, the named defendants, individually and collectively, impliedly warranted and represented to Plaintiff that the subject vehicle and subject tire, including its instructions and warnings, were road-worthy, of merchantable quality, fit and safe for the purpose which the products were designed, manufactured, assembled, inspected, tested, marketed, sold, serviced, repaired, maintained, intended to be used and used; and defendants, and each of them, further warranted that the subject tire was free from defects.

34. From the Complaint and the Pleadings, it is asserted that Ted Weins did not supply or distribute any consumer products at issue in the Complaint but instead was engaged by Plaintiff to "dismount, inspect and reinstall" the tires on the automobile that crashed.

35. On March 2, 2011, Defendant Chrysler Group filed its Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens.

36. On April 15, 2011, the Court heard oral Argument on the Motion and granted the Motion to Apply Arizona Law as to all Defendants other that Defendant Ted Wiens. The reasons for the Court's ruling are set forth in more detail herein. The Court reserved ruling on

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the Ted Wiens portion of the Motion pending further briefing by the parties since Ted Wiens had not formally joined the pending motion, and the parties wished to further brief whether the claim against Ted Wiens, the only Nevada Defendant, should be determined under Nevada law or Arizona law. In light of the request, the Court took the Motion to Dismiss for Forum Non Conveniens under advisement so a consolidated written decision could be provided.

CONCLUSIONS OF LAW

37. In *General Motors v. The Eighth Judicial District Court,* 122 Nev. 466, 134 P.3d 111, (2006), the Nevada Supreme Court clarified Nevada law with regard to choice of law issues. Specifically, the Supreme Court held that ". . . the Second Restatement's most significant relationship test governs choice-of-law issues in tort actions unless another, more specific section of the Second Restatement applies to the particular tort." *Id.* at 116.

38. The Supreme Court held that Section 146 of the Second Restatement specifically governs personal injury claims. *Id.* at 117. Pursuant to Section 146 of the Second Restatement, the rights and liabilities of the parties are governed by the "local law where the injury occurred" unless "some other state has a more significant relationship" to the occurrence under the principles stated in Section 6. *Id.*

39. If a party argues that another state has a more significant relationship to the occurrence than the state where the injury occurred, the principles to be identified under Section 6 of Section 145 of the Second Restatement are as follows:

1. A court subject to constitutional restrictions will follow a statutory directive of its own state on choice of law.

2. When there is no such directive, the factors relevant to the choice of the applicable rule of law include

   a. the needs of interstate and international systems,
   b. the relevant policies of the forum,

c. the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
d. the protection of justified expectations,
e. the basic policies underlying the particular field of law,
f. certainty, predictability and uniformity of result, and
g. ease in the determination and application of the law to be applied.

These principles are not intended to be exclusive and no one principle is weighed more heavily than another. *Id.* at 116-117.

40. In *General Motors*, the Court found that it would be proper to have part of claim determined pursuant to the law of one state and another claim ruled upon pursuant to the law of a different state. *Id.*

41. In *General Motors*, the accident occurred in Nevada but some of the transactions occurred in Arizona. The Court found that the Nevada Court where the accident occurred could apply Nevada law to most of the claims alleged but then apply Arizona law on the claim that occurred in Arizona. In the present case, the accident occurred in Arizona but actions relevant to one of the eight claims occurred in Nevada. *Id.*

42. "Arizona's comparative fault defense to tort actions differs from Nevada's. Arizona permits recovery by a plaintiff who is found by a jury to be greater than 50% comparatively at fault, where Nevada does not." *Id.* at 118.

43. "Unlike Nevada, Arizona has made a policy choice to allow comparative fault defenses to strict liability claims where product misuse is asserted as a defense." *Id.*

44. The Arizona Supreme Court has stated that Arizona has a significant interest in regulating conduct within the state and deterring wrongful conduct. *Jackson v. Chandler*, 204 Ariz. 135, 61 P.3d 17 (Ariz. 2003).

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45. In *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, the United States Supreme Court held that trial courts should consider both private and public interests in applying the doctrine of *forum non conveniens*. *Id.* at 508-09, 843.

46. The Nevada Supreme Court in *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) outlined specific factors that the court must balance when deciding *forum non conveniens* issues. The factors to be considered are: 1. public and private interests; 2. access to sources of proof; 3. the availability of a view of the premises, if necessary; 4. availability of compulsory process for unwilling witnesses; 5. the cost of obtaining testimony from willing witnesses; and 6. the enforceability of a judgment. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). Additionally, the court should consider whether the failure to apply the doctrine would subject the defendant to harassment, oppression, vexatiousness or inconvenience. *Eaton v. Second Judicial Dist. Court*, 96 Nev. at 774, 616 P.2d at 401 (1963).

47. ". . . the mere fact that another court is more convenient for one party is not sufficient to justify a dismissal. A plaintiff may be denied his choice of forum only in exceptional circumstances when factors weigh strongly in favor of another forum." *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) (citing *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501 (1947) and *Swisco, Inc. v. District Court*, 79 Nev. 414, 385 P.2d 772 (1963)).

48. ".. . dismissal may not be barred solely because of the possibility of an unfavorable change in law. Under *Gilbert*, dismissal will ordinarily be appropriate where trial in the plaintiffs chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252 (U.S.Pa., 1981).

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DISCUSSION

I. Arizona Law Is The Appropriate Law To Apply In This Case[1]

In accordance with the Supreme Court's decision in *General Motors v. The Eighth Judicial District Court*, 122 Nev. 466, 134 P.3d 111, (2006), with regard to choice-of-law issues in tort, Nevada follows the Second Restatement's most significant interest test. *Id.* at 116. Specifically, in personal injury actions, Section 146 of the Second Restatement governs and provides that the rights and liabilities of the parties are governed by the "local law where the injury occurred" unless "some other state has a more significant relationship" to the occurrence under the principles set forth in subsection 6 of Section 145. *Id.* at 116-117.

In this case, the accident occurred on Interstate 40, outside of Seligman, in Yavapai County, Arizona; so, in accordance with the standard set forth above, the law of the State of Arizona is presumably the law that would apply unless the Court determines, after analyzing the facts under the Section 6 principles, that Nevada has more significant relationship to the occurrence than does Arizona. Plaintiff argues that Nevada's interest is significant because the Plaintiff is a resident of Nevada; and the tire that failed was inspected and put on the vehicle in Nevada. Plaintiff further argues that the Plaintiff underwent medical treatment at UMC, including two surgeries that he attributes to the accident. Plaintiff also points out that Plaintiff's friends and ski patrol volunteers are potential witnesses in the case. Plaintiff further argues that, given the nature of the claims arising in tort, breach of warranty and products liability, the location of the accident -- Arizona -- is not significant. He asserts that Nevada has a greater interest than Arizona, which has less of an interest in this case because of these factors. Alternatively, Plaintiff argues that even though the Court orally ruled that Arizona law

[1]As will be noted below, Arizona law would be applicable to all claims against all Defendants other than Ted Wiens for the reasons stated herein.

should apply to the claims of the non-Nevada Defendants, the breach of warranty claim between Ted Wiens and Plaintiff should be determined under Nevada law.

While Nevada does have a strong interest in protecting its citizens, here, there are questions whether the Plaintiff should be treated as a citizen of Nevada since both his driver's license and car registration are from Washington. Although Plaintiff contends that he has lived and worked in Nevada since 2005, he chose not to re-register his car or renew his driver's license in Nevada. While the Court is not commenting on the legality of that decision for purposes of this Motion, the fact that the car involved in the accident was not even registered in Nevada and Plaintiff, as the driver of the car, did not view that he was a citizen of Nevada enough to have a Nevada driver's license, does minimize Nevada's interest in protecting this Plaintiff.

Further, the state's interest in protecting its citizens is not the only factor to be taken into consideration. The Second Restatement makes it clear that the Court should consider the following factors which this Court considered and which it will address in turn:

a. The needs of interstate and international systems

Comment d to the Second Restatement Section 6 provides that this factor is one of the most important factors to be weighed. REST 2d CONFL §6. Simply stated, this factor exists to ensure that the relationship between states remain harmonious, which translates into this Court taking into account the policies of Arizona and Arizona's interest in this case and giving deference to that interest.

The Arizona Supreme Court has stated that Arizona has a significant interest in regulating conduct within the state and deterring wrongful conduct. *Jackson v. Chandler*, 204 Ariz. 135, 61 P.3d 17 (Ariz. 2003). The *Jackson* case involved a personal injury accident that

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occurred in Arizona, but involved three citizens of California, who were in separate vehicles. The Arizona Supreme Court in *Jackson* reversed the trial court's decision to dismiss the case due to the expiration of the one year statute of limitation provided by California law because the Supreme Court found that Arizona law should apply because the accident occurred in Arizona, the injuries were incurred in Arizona, and the negligent or wrongful conduct producing injury occurred in Arizona, and the failure of the airbags resulting in Plaintiffs' strict liability claim occurred in Arizona.

In this case, the accident took place in Arizona, the Plaintiff's decedent died in Arizona, and Arizona residents were emergency responders at the scene and/or in the hospital. Additionally, giving deference to the law set forth in *Jackson* and taking into account Nevada's position on applying the law of the locality where the accident occurred, this factor weighs in favor of Arizona law being applied.

b. The relevant policies of the forum

Currently, the forum is Nevada. Whether the forum should be changed is addressed in comment e of Section 6 of the Second Restatement, which provides that the forum's policies must be evaluated differently depending on the degree of interest the forum state has in the case. The first situation in comment e is a situation in which only the procedural rules of the state would apply because the forum state's interest in the case only arises as a result of the plaintiff filing a case in that forum. The second situation involves the forum's substantive law which would apply when the forum state has more of an interest in the case and the forum's substantive law would be furthered by its application to out-of-state facts.

Defendants argue that Nevada's only interest in this case stems from the fact that Plaintiff filed suit in Nevada. They contend that the rollover accident, the responders and the

basis of Plaintiff's claims occurred in Arizona. Plaintiff makes the argument that Nevada's interest is to protect its citizens from a transaction that took place in Nevada, between a Nevada corporation and a Nevada resident. He contends that the inspection and placement of the tires on the Jeep from the Plaintiff's other car is a major part of the case since that was one of the last acts that occurred before the accident occurred. The Court is not persuaded that the removal of the tires from one vehicle and their placement on the Jeep over a month before is the main claim in this action.

Instead, as noted above, Ted Wiens is only named in one of eight claims. In that claim for breach of warranty, Ted Wiens' role is briefly mentioned since the nature of that claim as articulated in the First Amended Complaint is against those who "were in the business of supplying consumer products to among others the Plaintiff. The consumer products at issue included automobiles and tires. By virtue of the sale and distribution of these consumer products to the Plaintiff, the named defendants....." (FAC paragraph 54). Moreover, as noted above, Plaintiff's driver's license and car registration were listed as Washington not Nevada. Thus, the Court finds that, as to this element, because Nevada's interest appears to be based simply upon the fact that Plaintiff is a Nevada resident and chose to file suit here, if the case were to remain in Nevada, Arizona would be the substantive law to be applied to the entire case, and Nevada law as pertaining to procedure would apply.

c. <u>The relevant policies of other interested states and the relative interests of those states in the determination of the particular issue</u>

Generally, the commentary in the Second Restatement with regard to this element provides that the state whose interests are affected most should have its local law applied. Defendants discuss a number of reasons why Arizona has more of an interest in this case than Nevada. Namely, the accident occurred in Arizona, the road where the rollover occurred, as

well as the landscape where the car rolled over and the decedent was killed, is in Arizona, so if any site visit were to occur, it would be more convenient in Arizona. Defendants also state the Plaintiff being air lifted and receiving medical treatment lies in favor of Arizona. Similarly, the fact that the Plaintiff's decedent was taken to an Arizona morgue and was examined in Arizona evidences that Arizona would be more appropriate. Defendants also contend that Plaintiff's alleged damages occurred in Arizona and the witnesses to most of the damages that are the basis of the claims are located in Arizona. They further contend that the majority of the witnesses to be called in this case are in Arizona, including medical professionals, emergency responders and the like which cannot likely be compelled to appear in Nevada. Defendants further posture that Plaintiff's witnesses, while residing in Nevada, would come to Arizona to testify on Plaintiff's behalf due to their friendship. Finally, in the supplemental briefing Ted Wiens states that it has few employee witnesses and they would make them available in Arizona. In contrast, Plaintiff asserts that the fact witnesses to be called are not key witnesses in this case, but instead, are merely the first responders. They further argue that the majority of the medical treatment occurred in Nevada and assert that the inspection and placement of the tires on the Jeep occurred in Nevada, with a Nevada Defendant. The Court separately analyzed whether the inspection and placement of the tires by Ted Wiens would favor Nevada over Arizona, and found that this transaction plays such a small role in the First Amended Complaint. Further the representation that the Ted Wiens' witnesses would be made available

in Arizona, support the application of Arizona law over Nevada law as to all claims other than the portion of the Breach of Warranty Claim against Ted Wiens.[2]

d. The protection of justified expectations

Pursuant to comment d of the Second Restatement, this element pertains to the notion that it is unfair to apply the law of a one state to a party who has justifiably conformed his or her conduct so as to abide by the law of another state. This particular element requires thought about legal consequences and, consequently, since this action is based in strict liability and negligence and does not require forethought as to legal consequences, this factor does not weigh into the analysis. Simply, there are no facts that indicate a justified expectation of the application of any particular state's law with regard to the Plaintiff. Plaintiff contends that the fact that he brought his car for servicing to a Nevada corporation in Nevada provides the expectation that he would have his claims heard there. For the reasons set forth herein, although that expectation may apply to that one defendant who is only named in a portion of one of the eight causes of action, that expectation does not apply as to the other defendants and other causes of action.

e. The basic policies underlying the particular field of law

Comment 6(e) of the Second Restatement provides that this particular element comes into play when the policies of interested states are essentially the same, but the relevant local laws differ. The guideline when faced with this issue is to apply the law of the state, which will

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[2] In *General Motors*, the Nevada Supreme Court found it appropriate to apply the law of Arizona to part of the Complaint and the law of Nevada to the rest of the claims. Here, as in *General Motors*, it would be appropriate to apply Nevada law to a portion of the Complaint. Specifically, given the inspection and placement of the tires occurred in Nevada between a Nevada Corporation and a Nevada resident as alleged by Plaintiff, it appears to this Court that Nevada law should apply as to Defendant Ted Wiens but that Arizona Law should apply to all other defendants. See *General Motors v. Eighth Judicial District Court*, 122 Nev. 466, 134 P.3d. 111(2006)

best achieve the policies underlying the particular field of law. Here, the laws of the two states are different on some of the causes of action and the same on others. Therefore, this factor does come into play but balances out between the interests of the two states and does not favor the application of either state law over the other. This is particularly true in this case since there is no discovery as of yet and thus there is no information as to whether other entities will become involved.

f. Certainly, predictability and uniformity of result

According to the commentary in Section 6(f) of the Second Restatement, this an important factor to be considered; however, like the protection of justified expectations, or element d in this analysis, it is more important in areas where the parties gave advanced thought to the consequences of their legal transactions.

Primarily, this case exists due to alleged strict liability, breach of warranty and negligence rather than deliberately contemplated actions creating specific consequences by the Plaintiff. If any party had contemplation about the law, it would be the manufacturer defendant. In addressing the issue of products liability, some states, like Nevada, have strict liability laws with regard to the failure of products where other states do not impose strict liability in product liability cases. The manufacturer of products designed to be used across the Untied States bears the risk of the variance in products liability laws of the individual states. It stands to reason that the laws of the state in which the product fails will control. In this case, the Jeep Grand Cherokee's tire is alleged to have failed in Arizona, which supports the application of Arizona strict liability laws.

g. Ease in the determination and application of the law to be applied

In other words, choice-of-law issues should not lead to complication in the determination and application of the law. Here, the majority of the claims are based on what occurred in Arizona. While this Court is more than competent to advise a jury according to Arizona law; however, the law which applies differs from the law in Nevada in some areas and it is clear that an Arizona court, well versed in Arizona law, is a better candidate to apply Arizona law with ease than is a Nevada court applying the foreign law of Arizona. While the Court believes that the portion of the breach of warranty claim impacting Defendant Ted Wiens should be determined based on Nevada law, it has been argued that the law of the two jurisdictions on this issue is the same and thus an Arizona Court would be more than capable to apply Nevada law if it chose to do so for that one portion of the claim. In sum, the factors as analyzed above do not support a finding that Nevada has a more significant relationship to the occurrence in this case than does Arizona. Arizona is the site of the accident and the facts support application of Arizona law in this case for all claims other than the claim against defendant Ted Wiens.

II. Staying the Case and then Ultimate Dismissal of This Case Under the Doctrine of *Forum Non Conveniens* is Appropriate

The Nevada Supreme Court in *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) outlined specific factors that the court must balance when deciding *forum non conveniens* issues. The factors to be considered are: 1. public and private interests; 2. access to sources of proof; 3. the availability of a view of the premises, if necessary; 4. availability of compulsory process for unwilling witnesses; 5. the cost of obtaining testimony from willing witnesses; and 6. the enforceability of a judgment. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501

(1947). Additionally, the Court should consider whether the failure to apply the doctrine would subject the defendant to harassment, oppression, vexatiousness or inconvenience. *Eaton v. Second Judicial Dist. Court*, 96 Nev. at 774, 616 P.2d at 401 (1963).

The Court held that dismissal of a case is not justified based upon the mere fact that another court is more convenient for one party. Indeed, a plaintiff may be denied his choice of forum when the factors weigh strongly in favor of another forum. *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) (*citing Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947) and *Swisco, Inc. v. District Court*, 79 Nev. 414, 385 P.2d 772 (1963)). ". . dismissal may not be barred solely because of the possibility of an unfavorable change in law. Under Gilbert, dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252 (U.S.Pa., 1981).

This case is exactly the type of case to which the doctrine of *forum non conveniens* is meant to apply. The public interests are served by this case being heard by an Arizona court since Arizona law applies, and Arizona is the site of the accident. Arizona is where the decedent was killed, where the responders live and where the air flight and immediate hospitalization of Plaintiff occurred. Also, the premises or accident scene is in Arizona, which may be important to expert witnesses in reconstructing the accident scene. Furthermore, most of the witnesses so far identified are Arizona residents, which is not only helpful in terms of availability of the witnesses to testify, but also may reduce the cost if this case is litigated in Arizona. While Plaintiff has named several friends who he intends to call, given the friendship of the witnesses to the Plaintiff, having a trial in Arizona should not impede their willingness to

appear whereas attempting to secure the live testimony of the responders, medical professionals, tow truck drivers and other personnel located in Arizona would be more difficult. The fact that Ted Wiens has stated that it would provide its witnesses in Arizona supports this conclusion.

The final element, enforceability of a judgment, is not truly relevant to the analysis in this case. The Court believes that a judgment rendered in Nevada or Arizona would be equally as enforceable against the Defendants in this case.

The decision in this matter was not easily reached by the Court, particularly in light of the fact that Plaintiff resides in Nevada and that one of the defendants is incorporated in Nevada. Nevertheless, law of the State of Nevada and the State of Arizona, as well as the law pertaining to the issue of *forum non conveniens*, overwhelmingly supports application of Arizona law to the facts and consequently, staying this case for four months so that it can be brought in the State of Arizona where it will be more appropriate for litigation given the facts of this case is the best course of action. The fact that Arizona law is less favorable to the Plaintiff on the issue of strict liability was contemplated by the Court, as was the fact that one portion of one of the eight claims should be governed pursuant to Nevada law, but neither of these factors individually or together outweigh the numerous facts that dictate the action that this Court is taking. Dismissal of the is action in Nevada is appropriate but in order to allow the parties time to re-file the case in Arizona with minimal concerns, the Court will stay the present action for a maximum of four months from date of this Order and then will enter its dismissal order. If the parties notify the Court that the matter has been re-filed in Arizona prior to the four month time frame, then the dismissal will be entered after receipt of notification.

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CONCLUSION

Accordingly, based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Apply Arizona Law and Forum Non Conveniens is GRANTED. The Court will stay the dismissal of this action for four months to allow the parties to re-file the action in Arizona prior to the expiration of the Arizona statute of limitations. At the expiration of the four month period, the Court will dismiss this Action unless notice is received earlier that the matter has been re-filed. With respect to the breach of warranty claim against Ted Wiens, the Court believes that Nevada law should be applied as set forth herein, but that determination will be made by the Arizona Court.

Dated this 10th day of June, 2011.

JOANNA S. KISHNER
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, this document was copied through email, or a copy of this **Decision and Order** was placed in the attorney's folder in the Clerk's Office, faxed and/or mailed to the proper party as follows:

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DISTRICT COURT

CLARK COUNTY, NEVADA

OVODIU A. LUNGU, individually, and as legal representative of the Estate of LETITIA LUNGU, deceased,

Plaintiff,

v.

COOPER TIRE & RUBBER CO., a Delaware corporation; LES SCHWAB WAREHOUSE CENTER, INC., an Oregon corporation; CHRYSLER GROUP, LLC, a Delaware limited liability corporation; DAIMLER A.G., a German corporation and Successor in Interest to DAIMLERCHRYSLER CORPORATION; SO. NEV. T.B.A. SUPPLY CO., a Nevada corporation; dba TED WEINS TIRE AND AUTO CENTER; and STEAD MOTORS, INC.;

Defendants.

Case No. A-10-620094-C

Dept. No. XXXI

NOTICE OF ENTRY OF DECISION AND ORDER

Hearing Date: N/A

Hearing Time: N/A

TO: ALL PARTIES:

TO: THEIR RESPECTIVE COUNSEL OF RECORD:

ALL OF YOU WILL PLEASE TAKE NOTICE that the attached Decision and Order on (1) Defendant Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens; (2) Defendant-Cooper Tire & Rubber Company's Joinder in Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens; and (3) Defendant Les Schwab Warehouse Center, Inc.'s Joinder to Motion filed by Defendant Chrysler Group, LLC, was entered and filed with the above-entitled Court on the 16th day of June, 2011.

DATED this 17th day of June, 2011.

BOWMAN AND BROOKE LLP

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NOTICE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Bowman and Brooke LLP and that on June 17th, 2011, I served the foregoing document described **NOTICE OF ENTRY OF DECISION AND ORDER** on the parties set forth below as follows:

■ **VIA MAIL**: placing a true copy thereof enclosed in the sealed envelope with postage thereon fully prepaid, in the United States mail in Phoenix, Arizona.

□ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the office of the addressee.

□ **BY FACSIMILE:** I caused such document to be faxed to the addressee.

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DISTRICT COURT

CLARK COUNTY, NEVADA

OVIDIU A. LUNGU, individually and as Legal representative of the Estate of LETITIA LUNGU, deceased, Plaintiff, v. COOPER TIRE & RUBBER CO., a Delaware corporation; LES SCHWAB WAREHOUSE CENTER, INC., an Oregon corporation; CHRYSLER GROUP, LLC, a German corporation and Successor in Interest to DAIMLER CHRYSLER CORPORATION; SO. NEV. T.B.A. SUPPLY CO., a Nevada corporation, dba TED WIENS TIRE AND AUTO CENTER; and STEAD MOTORS, INC., Defendants.	CASE NO.: A-10-620094-C DEPT. XXXI **DECISION AND ORDER**

This matter came before the Court on April 14, 2011, on (1) Defendant Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens; (2) Defendant Cooper Tire & Rubber Company's Joinder in Chrysler Group, LLC's Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens; and (3) Defendant Les Schwab Warehouse Center, Inc.'s Joinder to Motion filed by Defendant Chrysler Group, LLC. Bruce D. Tingey, of the Tingey & Tingey law firm, and Jeffrey J. Whitehead, of Whitehead Law Offices, appeared on behalf of Plaintiff. Lisa Lackland, of the law firm of Lewis and Roca, appeared on behalf of Defendant Cooper Tire & Rubber Co.; Greg W. Marsh, of Marsh

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Law Offices, appeared on behalf of Defendants Chrysler Group, LLC, and Stead Motors, Inc.; and Jeffrey J. Orr, of the law firm of Pyatt Silvestri & Hanlon, appeared on behalf of Defendant Les Schwab Warehouse Center, Inc.; and Kenneth E. Goates, of the Law Offices of Kenneth E. Goates, appeared on behalf of Defendant So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center. At the hearing, the parties requested to provide further briefing as to whether the claims against Ted Wiens should be adjudicated under Arizona or Nevada law. The Court allowed the parties to submit additional briefing. As a result, the Court received Defendant So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center's filed its Joinder of So. Nev. T.B.A. Supply Co., dba Ted Wiens Tire and Auto Center in the Motion of Chrysler Group to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens, and other briefs. Having reviewed the merits of Defendants' motions, hearing oral argument and the positions of the parties during such arguments and having continued the matter to the Court's Chamber Calendar for further review of supplemental pleadings by the parties and research on the Court's part, and good cause appearing, the Court finds and rules as follows.

BACKGROUND FACTS

1. This action arises out of a single vehicle rollover crash that occurred on October 10, 2009, on Interstate 40, outside of Seligman, in Yavapai County, Arizona. Interstate 40 is a four lane interstate highway that runs east and west through north-central Arizona.

2. At the time of the crash, Plaintiff Ovidiu A. Lungu was in Arizona driving a 2000 Jeep Wrangler Sport ("Jeep") purchased from Defendant Stead Motors, Inc. ("Stead") in Walnut Creek, California.

3. Plaintiff's decedent, Letitia Lungu, was the passenger in the vehicle.

4. Based on interviews and scene and vehicle evidence, Officer R.H. Gateley of the Arizona Department of Public Safety ("Arizona DPS"), allegedly concluded that the crash occurred when Plaintiff Ovidiu A. Lungu lost control of the Jeep.

5. Although Plaintiff alleges residency in Nevada and provided the officer with a Nevada address, Plaintiff Ovidiu A. Lungu held a driver's license issued by the State of Washington at the time of the crash.

6. The Jeep at issue was registered in Washington.

7. After the crash, Plaintiff's decedent Letitia Lungu was pronounced dead at the crash scene by Emergency Medical Technicians from Seligman, Arizona.

8. The Emergency Medical Technicians worked with Dr. Michael Ward at the Kingman Regional Medical Center in Kingman, Arizona.

9. Dr. Ward is a physician licensed to practice medicine in Arizona.

10. Plaintiff's decedent Letitia Lungu's remains were removed from the scene by Arizona Professional Services and transported to the Yavapai County Medical Examiner's Office in Prescott, Arizona.

11. Dr. William Stano, an Arizona coroner, performed an autopsy. Dr. Stano is a medical examiner licensed to practice State of Arizona.

12. Plaintiff Ovidiu A. Lungu was transported to Flagstaff Medical Center in Flagstaff, Arizona, where he received treatment for cuts, abrasions, contusion and fractures. Plaintiff Ovidiu A. Lungu was transported by Guardian Air Ambulance, a company based in Flagstaff, Arizona, from the scene of the crash to Flagstaff, Arizona.

13. Arizona DPS had Ash Fork Towing, located in Ash Fork, Arizona, remove the vehicle from the crash scene and transport it to Ash Fork, Arizona, for impound. Members of

Seligman Fire and Rescue, located in Seligman, Arizona, and River Medical Ground Ambulance, located in Kingman, Arizona, also responded to the scene to provide emergency services.

14. The Arizona Crash Report shows that many witnesses to the issues involved in this case and many documents are located in Arizona, where the crash occurred.

15. Known members of Arizona DPS who responded to and/or investigated the crash include: Arizona DPS Officer R.H. Gateley; Arizona DPS Officer Burns; and Unidentified Arizona DPS Officer, I.D. No. 6273.

16. As this was a fatal high speed rollover crash on an Interstate Highway in Arizona, it is believed that several other officers from Arizona DPS responded and assisted in the crash investigation. It is also likely that officers from the Yavapai County Sheriff's Department, in Arizona, responded to the crash scene as well.

17. The individuals and entities that provided treatment or care to Plaintiff Ovidiu Lungu, in Arizona, include: doctors, nurses, and staff at Flagstaff Medical Center, Flagstaff, Arizona; Flight Nurse and/or paramedics from Guardian Air Ambulance, Flagstaff, Arizona; EMTs, paramedics, and/or firefighters from Seligman Fire & Rescue, Seligman, Arizona; EMTs and/or paramedics from River Medical Ground Ambulance, Kingman, Arizona.

18. Those entities and individuals responsible for providing emergency medical care and who performed the autopsy on Plaintiff's decedent Letitia Lungu include: EMTs, paramedics, and/or firefighters from Seligman Fire & Rescue, Seligman, Arizona; and EMTs and/or paramedics from River Medical Ground Ambulance, Kingman, Arizona.

19. At different points during the time period of December, 2009, through November, 2010, Plaintiff received medical treatment from University Medical Center located in Las Vegas Nevada.

20. At various points after the accident, while undergoing treatment and at other occasions, Plaintiff was visited by various friends and/or members of his volunteer ski team who resided in Southern Nevada.

21. Defendant Chrysler Group, LLC ("Chrysler Group") is a Delaware limited liability corporation with its primary offices located in Auburn Hills, Michigan. Chrysler Group had no involvement in the design, manufacture, distribution, or sale of the Jeep.

22. Stead, the dealership that sold the Jeep, is a California corporation with its principal place of business in Walnut Creek, California.

23. Defendant Cooper Tire & Rubber Co. ("Cooper"), the manufacturer of the tire, is a Delaware corporation with its principal place of business in Findlay, Ohio.

24. Defendant Les Schwab Warehouse Center, Inc., ("Les Schwab") is an Oregon corporation with its principal place of business in Bend, Oregon.

25. Defendant DaimlerChrysler Corporation ("DaimlerChrysler"), which has not been served, was a Delaware corporation. Defendant Daimler AG is a German entity with its principal place of business in Germany.

26. Defendant So. Nev. T.B.A. Supply Co. dba Ted Wiens Tire And Auto Center ("Ted Wiens") is a Nevada corporation with its principal place of business located in Nevada.

27. On July 2, 2010, Plaintiff filed his Complaint against Cooper; Les Schwab; Chrysler Group; Daimler AG; DaimlerChrysler; Ted Weins; and Stead.

28. The Complaint was removed to Federal Court on September 3, 2010.

29. A First Amended Complaint was filed on October 10, 2010.

30. Thereafter, the Federal Court remanded the action to the State Court.

31. In the First Amended Complaint, Defendant Ted Wiens is only listed as Defendant in one of the eight causes of action. It is listed in the Sixth Cause of Action for Breach of Implied Warranty.

32. Paragraph 21 of the First Amended Complaint provides that Ted Wiens' role in the action was "to dismount, inspect, and reinstall the same Cooper tires onto the Plaintiff's 2000 model year Jeep Wrangler Sport."

33. Paragraph 54 of the First Amended Complaint provides:

> At all times material to the allegations in the complaint, CG LLC, DAIMLER AG, COOPER, LES SCHWAB, WIENS and STEAD MOTORS, were in the business of supplying consumer products to, among others, the Plaintiff. The consumer products at issue included automobiles and tires. By virtue of the sale and distribution of these consumer products to the Plaintiff, the named defendants, individually and collectively, impliedly warranted and represented to Plaintiff that the subject vehicle and subject tire, including its instructions and warnings, were road-worthy, of merchantable quality, fit and safe for the purpose which the products were designed, manufactured, assembled, inspected, tested, marketed, sold, serviced, repaired, maintained, intended to be used and used; and defendants, and each of them, further warranted that the subject tire was free from defects.

34. From the Complaint and the Pleadings, it is asserted that Ted Weins did not supply or distribute any consumer products at issue in the Complaint but instead was engaged by Plaintiff to "dismount, inspect and reinstall" the tires on the automobile that crashed.

35. On March 2, 2011, Defendant Chrysler Group filed its Motion to Apply Arizona Law and Motion to Dismiss for Forum Non Conveniens.

36. On April 15, 2011, the Court heard oral Argument on the Motion and granted the Motion to Apply Arizona Law as to all Defendants other that Defendant Ted Wiens. The reasons for the Court's ruling are set forth in more detail herein. The Court reserved ruling on

the Ted Wiens portion of the Motion pending further briefing by the parties since Ted Wiens had not formally joined the pending motion, and the parties wished to further brief whether the claim against Ted Wiens, the only Nevada Defendant, should be determined under Nevada law or Arizona law. In light of the request, the Court took the Motion to Dismiss for Forum Non Conveniens under advisement so a consolidated written decision could be provided.

CONCLUSIONS OF LAW

37. In *General Motors v. The Eighth Judicial District Court*, 122 Nev. 466, 134 P.3d 111, (2006), the Nevada Supreme Court clarified Nevada law with regard to choice of law issues. Specifically, the Supreme Court held that ". . . the Second Restatement's most significant relationship test governs choice-of-law issues in tort actions unless another, more specific section of the Second Restatement applies to the particular tort." *Id.* at 116.

38. The Supreme Court held that Section 146 of the Second Restatement specifically governs personal injury claims. *Id.* at 117. Pursuant to Section 146 of the Second Restatement, the rights and liabilities of the parties are governed by the "local law where the injury occurred" unless "some other state has a more significant relationship" to the occurrence under the principles stated in Section 6. *Id.*

39. If a party argues that another state has a more significant relationship to the occurrence than the state where the injury occurred, the principles to be identified under Section 6 of Section 145 of the Second Restatement are as follows:

1. A court subject to constitutional restrictions will follow a statutory directive of its own state on choice of law.

2. When there is no such directive, the factors relevant to the choice of the applicable rule of law include

   a. the needs of interstate and international systems,
   b. the relevant policies of the forum,

c. the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
d. the protection of justified expectations,
e. the basic policies underlying the particular field of law,
f. certainty, predictability and uniformity of result, and
g. ease in the determination and application of the law to be applied.

These principles are not intended to be exclusive and no one principle is weighed more heavily than another. *Id.* at 116-117.

40. In *General Motors*, the Court found that it would be proper to have part of claim determined pursuant to the law of one state and another claim ruled upon pursuant to the law of a different state. *Id.*

41. In *General Motors*, the accident occurred in Nevada but some of the transactions occurred in Arizona. The Court found that the Nevada Court where the accident occurred could apply Nevada law to most of the claims alleged but then apply Arizona law on the claim that occurred in Arizona. In the present case, the accident occurred in Arizona but actions relevant to one of the eight claims occurred in Nevada. *Id.*

42. "Arizona's comparative fault defense to tort actions differs from Nevada's. Arizona permits recovery by a plaintiff who is found by a jury to be greater than 50% comparatively at fault, where Nevada does not." *Id.* at 118.

43. "Unlike Nevada, Arizona has made a policy choice to allow comparative fault defenses to strict liability claims where product misuse is asserted as a defense." *Id.*

44. The Arizona Supreme Court has stated that Arizona has a significant interest in regulating conduct within the state and deterring wrongful conduct. *Jackson v. Chandler*, 204 Ariz. 135, 61 P.3d 17 (Ariz. 2003).

45. In *Gulf Oil Corporation v. Gilbert*, 330 U.S. 501, 67 S.Ct. 839, the United States Supreme Court held that trial courts should consider both private and public interests in applying the doctrine of *forum non conveniens*. *Id.* at 508-09, 843.

46. The Nevada Supreme Court in *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) outlined specific factors that the court must balance when deciding *forum non conveniens* issues. The factors to be considered are: 1. public and private interests; 2. access to sources of proof; 3. the availability of a view of the premises, if necessary; 4. availability of compulsory process for unwilling witnesses; 5. the cost of obtaining testimony from willing witnesses; and 6. the enforceability of a judgment. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947). Additionally, the court should consider whether the failure to apply the doctrine would subject the defendant to harassment, oppression, vexatiousness or inconvenience. *Eaton v. Second Judicial Dist. Court*, 96 Nev. at 774, 616 P.2d at 401 (1963).

47. ". . . the mere fact that another court is more convenient for one party is not sufficient to justify a dismissal. A plaintiff may be denied his choice of forum only in exceptional circumstances when factors weigh strongly in favor of another forum." *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947) and *Swisco, Inc. v. District Court*, 79 Nev. 414, 385 P.2d 772 (1963)).

48. ". . . dismissal may not be barred solely because of the possibility of an unfavorable change in law. Under *Gilbert*, dismissal will ordinarily be appropriate where trial in the plaintiffs chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252 (U.S.Pa., 1981).

DISCUSSION

I. Arizona Law Is The Appropriate Law To Apply In This Case[1]

In accordance with the Supreme Court's decision in *General Motors v. The Eighth Judicial District Court*, 122 Nev. 466, 134 P.3d 111, (2006), with regard to choice-of-law issues in tort, Nevada follows the Second Restatement's most significant interest test. *Id.* at 116. Specifically, in personal injury actions, Section 146 of the Second Restatement governs and provides that the rights and liabilities of the parties are governed by the "local law where the injury occurred" unless "some other state has a more significant relationship" to the occurrence under the principles set forth in subsection 6 of Section 145. *Id.* at 116-117.

In this case, the accident occurred on Interstate 40, outside of Seligman, in Yavapai County, Arizona; so, in accordance with the standard set forth above, the law of the State of Arizona is presumably the law that would apply unless the Court determines, after analyzing the facts under the Section 6 principles, that Nevada has more significant relationship to the occurrence than does Arizona. Plaintiff argues that Nevada's interest is significant because the Plaintiff is a resident of Nevada; and the tire that failed was inspected and put on the vehicle in Nevada. Plaintiff further argues that the Plaintiff underwent medical treatment at UMC, including two surgeries that he attributes to the accident. Plaintiff also points out that Plaintiff's friends and ski patrol volunteers are potential witnesses in the case. Plaintiff further argues that, given the nature of the claims arising in tort, breach of warranty and products liability, the location of the accident -- Arizona -- is not significant. He asserts that Nevada has a greater interest than Arizona, which has less of an interest in this case because of these factors. Alternatively, Plaintiff argues that even though the Court orally ruled that Arizona law

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[1]As will be noted below, Arizona law would be applicable to all claims against all Defendants other than Ted Wiens for the reasons stated herein.

should apply to the claims of the non-Nevada Defendants, the breach of warranty claim between Ted Wiens and Plaintiff should be determined under Nevada law.

While Nevada does have a strong interest in protecting its citizens, here, there are questions whether the Plaintiff should be treated as a citizen of Nevada since both his driver's license and car registration are from Washington. Although Plaintiff contends that he has lived and worked in Nevada since 2005, he chose not to re-register his car or renew his driver's license in Nevada. While the Court is not commenting on the legality of that decision for purposes of this Motion, the fact that the car involved in the accident was not even registered in Nevada and Plaintiff, as the driver of the car, did not view that he was a citizen of Nevada enough to have a Nevada driver's license, does minimize Nevada's interest in protecting this Plaintiff.

Further, the state's interest in protecting its citizens is not the only factor to be taken into consideration. The Second Restatement makes it clear that the Court should consider the following factors which this Court considered and which it will address in turn:

a. The needs of interstate and international systems

Comment d to the Second Restatement Section 6 provides that this factor is one of the most important factors to be weighed. REST 2d CONFL §6. Simply stated, this factor exists to ensure that the relationship between states remain harmonious, which translates into this Court taking into account the policies of Arizona and Arizona's interest in this case and giving deference to that interest.

The Arizona Supreme Court has stated that Arizona has a significant interest in regulating conduct within the state and deterring wrongful conduct. *Jackson v. Chandler*, 204 Ariz. 135, 61 P.3d 17 (Ariz. 2003). The *Jackson* case involved a personal injury accident that

occurred in Arizona, but involved three citizens of California, who were in separate vehicles. The Arizona Supreme Court in *Jackson* reversed the trial court's decision to dismiss the case due to the expiration of the one year statute of limitation provided by California law because the Supreme Court found that Arizona law should apply because the accident occurred in Arizona, the injuries were incurred in Arizona, and the negligent or wrongful conduct producing injury occurred in Arizona, and the failure of the airbags resulting in Plaintiffs' strict liability claim occurred in Arizona.

In this case, the accident took place in Arizona, the Plaintiff's decedent died in Arizona, and Arizona residents were emergency responders at the scene and/or in the hospital. Additionally, giving deference to the law set forth in *Jackson* and taking into account Nevada's position on applying the law of the locality where the accident occurred, this factor weighs in favor of Arizona law being applied.

b. The relevant policies of the forum

Currently, the forum is Nevada. Whether the forum should be changed is addressed in comment e of Section 6 of the Second Restatement, which provides that the forum's policies must be evaluated differently depending on the degree of interest the forum state has in the case. The first situation in comment e is a situation in which only the procedural rules of the state would apply because the forum state's interest in the case only arises as a result of the plaintiff filing a case in that forum. The second situation involves the forum's substantive law which would apply when the forum state has more of an interest in the case and the forum's substantive law would be furthered by its application to out-of-state facts.

Defendants argue that Nevada's only interest in this case stems from the fact that Plaintiff filed suit in Nevada. They contend that the rollover accident, the responders and the

basis of Plaintiff's claims occurred in Arizona. Plaintiff makes the argument that Nevada's interest is to protect its citizens from a transaction that took place in Nevada, between a Nevada corporation and a Nevada resident. He contends that the inspection and placement of the tires on the Jeep from the Plaintiff's other car is a major part of the case since that was one of the last acts that occurred before the accident occurred. The Court is not persuaded that the removal of the tires from one vehicle and their placement on the Jeep over a month before is the main claim in this action.

Instead, as noted above, Ted Wiens is only named in one of eight claims. In that claim for breach of warranty, Ted Wiens' role is briefly mentioned since the nature of that claim as articulated in the First Amended Complaint is against those who "were in the business of supplying consumer products to among others the Plaintiff. The consumer products at issue included automobiles and tires. By virtue of the sale and distribution of these consumer products to the Plaintiff, the named defendants....." (FAC paragraph 54). Moreover, as noted above, Plaintiff's driver's license and car registration were listed as Washington not Nevada. Thus, the Court finds that, as to this element, because Nevada's interest appears to be based simply upon the fact that Plaintiff is a Nevada resident and chose to file suit here, if the case were to remain in Nevada, Arizona would be the substantive law to be applied to the entire case, and Nevada law as pertaining to procedure would apply.

c. <u>The relevant policies of other interested states and the relative interests of those states in the determination of the particular issue</u>

Generally, the commentary in the Second Restatement with regard to this element provides that the state whose interests are affected most should have its local law applied. Defendants discuss a number of reasons why Arizona has more of an interest in this case than Nevada. Namely, the accident occurred in Arizona, the road where the rollover occurred, as

well as the landscape where the car rolled over and the decedent was killed, is in Arizona, so if any site visit were to occur, it would be more convenient in Arizona. Defendants also state the Plaintiff being air lifted and receiving medical treatment lies in favor of Arizona. Similarly, the fact that the Plaintiff's decedent was taken to an Arizona morgue and was examined in Arizona evidences that Arizona would be more appropriate. Defendants also contend that Plaintiff's alleged damages occurred in Arizona and the witnesses to most of the damages that are the basis of the claims are located in Arizona. They further contend that the majority of the witnesses to be called in this case are in Arizona, including medical professionals, emergency responders and the like which cannot likely be compelled to appear in Nevada. Defendants further posture that Plaintiff's witnesses, while residing in Nevada, would come to Arizona to testify on Plaintiff's behalf due to their friendship. Finally, in the supplemental briefing Ted Wiens states that it has few employee witnesses and they would make them available in Arizona. In contrast, Plaintiff asserts that the fact witnesses to be called are not key witnesses in this case, but instead, are merely the first responders. They further argue that the majority of the medical treatment occurred in Nevada and assert that the inspection and placement of the tires on the Jeep occurred in Nevada, with a Nevada Defendant. The Court separately analyzed whether the inspection and placement of the tires by Ted Wiens would favor Nevada over Arizona, and found that this transaction plays such a small role in the First Amended Complaint. Further the representation that the Ted Wiens' witnesses would be made available

in Arizona, support the application of Arizona law over Nevada law as to all claims other than the portion of the Breach of Warranty Claim against Ted Wiens.[2]

d. The protection of justified expectations

Pursuant to comment d of the Second Restatement, this element pertains to the notion that it is unfair to apply the law of a one state to a party who has justifiably conformed his or her conduct so as to abide by the law of another state. This particular element requires thought about legal consequences and, consequently, since this action is based in strict liability and negligence and does not require forethought as to legal consequences, this factor does not weigh into the analysis. Simply, there are no facts that indicate a justified expectation of the application of any particular state's law with regard to the Plaintiff. Plaintiff contends that the fact that he brought his car for servicing to a Nevada corporation in Nevada provides the expectation that he would have his claims heard there. For the reasons set forth herein, although that expectation may apply to that one defendant who is only named in a portion of one of the eight causes of action, that expectation does not apply as to the other defendants and other causes of action.

e. The basic policies underlying the particular field of law

Comment 6(e) of the Second Restatement provides that this particular element comes into play when the policies of interested states are essentially the same, but the relevant local laws differ. The guideline when faced with this issue is to apply the law of the state, which will

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[2] In *General Motors*, the Nevada Supreme Court found it appropriate to apply the law of Arizona to part of the Complaint and the law of Nevada to the rest of the claims. Here, as in *General Motors*, it would be appropriate to apply Nevada law to a portion of the Complaint. Specifically, given the inspection and placement of the tires occurred in Nevada between a Nevada Corporation and a Nevada resident as alleged by Plaintiff, it appears to this Court that Nevada law should apply as to Defendant Ted Wiens but that Arizona Law should apply to all other defendants. See *General Motors v. Eighth Judicial District Court*, 122 Nev. 466, 134 P.3d. 111(2006)

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best achieve the policies underlying the particular field of law. Here, the laws of the two states are different on some of the causes of action and the same on others. Therefore, this factor does come into play but balances out between the interests of the two states and does not favor the application of either state law over the other. This is particularly true in this case since there is no discovery as of yet and thus there is no information as to whether other entities will become involved.

f. Certainly, predictability and uniformity of result

According to the commentary in Section 6(f) of the Second Restatement, this an important factor to be considered; however, like the protection of justified expectations, or element d in this analysis, it is more important in areas where the parties gave advanced thought to the consequences of their legal transactions.

Primarily, this case exists due to alleged strict liability, breach of warranty and negligence rather than deliberately contemplated actions creating specific consequences by the Plaintiff. If any party had contemplation about the law, it would be the manufacturer defendant. In addressing the issue of products liability, some states, like Nevada, have strict liability laws with regard to the failure of products where other states do not impose strict liability in product liability cases. The manufacturer of products designed to be used across the Untied States bears the risk of the variance in products liability laws of the individual states. It stands to reason that the laws of the state in which the product fails will control. In this case, the Jeep Grand Cherokee's tire is alleged to have failed in Arizona, which supports the application of Arizona strict liability laws.

g. Ease in the determination and application of the law to be applied

In other words, choice-of-law issues should not lead to complication in the determination and application of the law. Here, the majority of the claims are based on what occurred in Arizona. While this Court is more than competent to advise a jury according to Arizona law; however, the law which applies differs from the law in Nevada in some areas and it is clear that an Arizona court, well versed in Arizona law, is a better candidate to apply Arizona law with ease than is a Nevada court applying the foreign law of Arizona. While the Court believes that the portion of the breach of warranty claim impacting Defendant Ted Wiens should be determined based on Nevada law, it has been argued that the law of the two jurisdictions on this issue is the same and thus an Arizona Court would be more than capable to apply Nevada law if it chose to do so for that one portion of the claim. In sum, the factors as analyzed above do not support a finding that Nevada has a more significant relationship to the occurrence in this case than does Arizona. Arizona is the site of the accident and the facts support application of Arizona law in this case for all claims other than the claim against defendant Ted Wiens.

II. Staying the Case and then Ultimate Dismissal of This Case Under the Doctrine of *Forum Non Conveniens* is Appropriate

The Nevada Supreme Court in *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) outlined specific factors that the court must balance when deciding *forum non conveniens* issues. The factors to be considered are: 1. public and private interests; 2. access to sources of proof; 3. the availability of a view of the premises, if necessary; 4. availability of compulsory process for unwilling witnesses; 5. the cost of obtaining testimony from willing witnesses; and 6. the enforceability of a judgment. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501

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(1947). Additionally, the Court should consider whether the failure to apply the doctrine would subject the defendant to harassment, oppression, vexatiousness or inconvenience. *Eaton v. Second Judicial Dist. Court*, 96 Nev. at 774, 616 P.2d at 401 (1963).

The Court held that dismissal of a case is not justified based upon the mere fact that another court is more convenient for one party. Indeed, a plaintiff may be denied his choice of forum when the factors weigh strongly in favor of another forum. *Eaton v. Second Judicial Dist. Court*, 96 Nev. 773, 616 P.2d 400 (1980) (*citing Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947) and *Swisco, Inc. v. District Court*, 79 Nev. 414, 385 P.2d 772 (1963)). ". . dismissal may not be barred solely because of the possibility of an unfavorable change in law. Under Gilbert, dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252 (U.S.Pa., 1981).

This case is exactly the type of case to which the doctrine of *forum non conveniens* is meant to apply. The public interests are served by this case being heard by an Arizona court since Arizona law applies, and Arizona is the site of the accident. Arizona is where the decedent was killed, where the responders live and where the air flight and immediate hospitalization of Plaintiff occurred. Also, the premises or accident scene is in Arizona, which may be important to expert witnesses in reconstructing the accident scene. Furthermore, most of the witnesses so far identified are Arizona residents, which is not only helpful in terms of availability of the witnesses to testify, but also may reduce the cost if this case is litigated in Arizona. While Plaintiff has named several friends who he intends to call, given the friendship of the witnesses to the Plaintiff, having a trial in Arizona should not impede their willingness to

appear whereas attempting to secure the live testimony of the responders, medical professionals, tow truck drivers and other personnel located in Arizona would be more difficult. The fact that Ted Wiens has stated that it would provide its witnesses in Arizona supports this conclusion.

The final element, enforceability of a judgment, is not truly relevant to the analysis in this case. The Court believes that a judgment rendered in Nevada or Arizona would be equally as enforceable against the Defendants in this case.

The decision in this matter was not easily reached by the Court, particularly in light of the fact that Plaintiff resides in Nevada and that one of the defendants is incorporated in Nevada. Nevertheless, law of the State of Nevada and the State of Arizona, as well as the law pertaining to the issue of *forum non conveniens*, overwhelmingly supports application of Arizona law to the facts and consequently, staying this case for four months so that it can be brought in the State of Arizona where it will be more appropriate for litigation given the facts of this case is the best course of action. The fact that Arizona law is less favorable to the Plaintiff on the issue of strict liability was contemplated by the Court, as was the fact that one portion of one of the eight claims should be governed pursuant to Nevada law, but neither of these factors individually or together outweigh the numerous facts that dictate the action that this Court is taking. Dismissal of the is action in Nevada is appropriate but in order to allow the parties time to re-file the case in Arizona with minimal concerns, the Court will stay the present action for a maximum of four months from date of this Order and then will enter its dismissal order. If the parties notify the Court that the matter has been re-filed in Arizona prior to the four month time frame, then the dismissal will be entered after receipt of notification.

CONCLUSION

Accordingly, based upon the foregoing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants' Motion to Apply Arizona Law and Forum Non Conveniens is GRANTED. The Court will stay the dismissal of this action for four months to allow the parties to re-file the action in Arizona prior to the expiration of the Arizona statute of limitations. At the expiration of the four month period, the Court will dismiss this Action unless notice is received earlier that the matter has been re-filed. With respect to the breach of warranty claim against Ted Wiens, the Court believes that Nevada law should be applied as set forth herein, but that determination will be made by the Arizona Court.

Dated this 10th day of June, 2011.

JOANNA S. KISHNER
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, this document was copied through email, or a copy of this **Decision and Order** was placed in the attorney's folder in the Clerk's Office, faxed and/or mailed to the proper party as follows:

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DARHYL KERR
JUDICIAL EXECUTIVE ASSISTANT

DISTRICT COURT
CLARK COUNTY, NEVADA

Product Liability	COURT MINUTES	April 15, 2011

A-10-620094-C Ovidiu Lungu, Plaintiff(s)
vs.
Cooper Tire and Rubber Co, Defendant(s)

April 15, 2011 **9:30 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna COURTROOM: RJC Courtroom 12A

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

PARTIES PRESENT:

Goates, Kenneth E.	Attorney
Lackland, Lisa W.	Attorney
Marsh, Greg Winfield	Attorney
Orr, Jeffrey J.	Attorney
Tingey, Bruce D	Attorney
Whitehead, Jeffrey J	Attorney

JOURNAL ENTRIES

- Following arguments by counsels, COURT ORDERED as follows:

Chrysler Group, LLC s Motion to Apply Arizona Law, GRANTED as to all the parties other than Ted Wiens.

Defendant Les Schwab Warehouse Center Inc s Motion to Associate Counsel, GRANTED.

Cooper Tire & Rubber Company s Joinder in Chrysler Group, LLC s Motion to Apply Arizona Law, GRANTED.

Defendant Les Schwab Warehouse Center Inc s Joinder to Motion Filed by Defendants Chrysler Group, LLC and Stead Motors Inc to Apply Arizona Law, GRANTED.

Plaintiff s Motion to Associate Counsel Re: Jerry M. White, Esq., With Order Shortening Time and Affidavit of Counsel in Support of Motion of Motion for Order Shortening Time, GRANTED.

Plaintiff s Motion to Associate Counsel Re: Tab Turner, Esq., With Order Shortening Time and Affidavit of Counsel in Support of Motion of Motion for Order Shortening Time, GRANTED.

Cooper Tire & Rubber Company s Joinder in Chrysler Group, LLC s Motion to Dismiss for Forum Non Conveniens, CONTINUED.

Chrysler Group, LLC s Motion to Dismiss for Forum Non Conveniens, CONTINUED.

Defendant Les Schwab Warehouse Center Inc s Joinder to Motion Filed by Defendants Chrysler Group, LLC and Stead Motors Inc, Motion to Dismiss or Forum Non Conveniens, CONTINUED.

Defendant Stead Motors Inc. s Motion for Judgment on the Pleadings, CONTINUED.

05/04/11 DECISION (CHAMBER CALENDAR)

DISTRICT COURT
CLARK COUNTY, NEVADA

Product Liability	COURT MINUTES	June 15, 2011

A-10-620094-C Ovidiu Lungu, Plaintiff(s)
vs.
Cooper Tire and Rubber Co, Defendant(s)

June 15, 2011 **3:00 AM** **Motion for Judgment**

HEARD BY: Kishner, Joanna COURTROOM:

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

PARTIES
PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, motion for judgment on the pleadings VACATED in light of the Court's ruling on choice of law and forum non conviens.

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

C. TAB TURNER, ESQ.
4705 SOMERS AVE., SUITE 100
NORTH LITTLE ROCK, AZ 72116

DATE: July 20, 2011
CASE: A620094

RE CASE: OVIDIU A. LUNGU, individually, and as legal representative of the Estate of LETITIA LUNGU vs. COOPER TIRE & RUBBER, CO.; ET AL.

NOTICE OF APPEAL FILED: July 15, 2011

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☒ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

PLAINTIFF'S NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

OVIDIU A. LUNGU, individually, and as legal representative of the Estate of LETITIA LUNGU, Plaintiff(s), vs. COOPER TIRE & RUBBER, CO.; ET AL., Defendant(s),	Case No: A620094 Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 20 day of July 2011.

Steven D. Grierson, Clerk of the Court

Heather Ungermann

Heather Ungermann, Deputy Clerk