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CAUSE NO. 2015-03070

MARIO EFRAIN ROSALES BARRALAGA	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
V.	§	**HARRIS COUNTY, TEXAS**
	§	
COOPER TIRE & RUBBER COMPANY	§	
and EDWIN REYES EDGARDO-CASTRO	§	
Defendants.	§	**295th JUDICIAL DISTRICT**

PLAINTIFF'S RESPONSE IN OPPOSITION TO COOPER TIRE & RUBBER COMPANY'S MOTION TO APPLY THE LAW OF HONDURAS

Plaintiff Mario Efrain Rosales Barralaga ("Plaintiff"), through his Next Friend Cristina Gomez, files this Response in Opposition to Cooper Tire & Rubber Company's ("Cooper") Motion to Apply the Law of Honduras, and in support states as follows:

I. BACKGROUND

By now, this Court has become familiar with the essential facts underlying Plaintiff's action. To summarize, on the afternoon of April 25, 2014, a tire on the truck in which Plaintiff was riding experienced a tread separation. Sec. Am. Pet. ¶ 8–12. As a result of the ensuing accident, Plaintiff suffered catastrophic injuries. He was rendered a functional quadriplegic who is blind, suffers severe dysarthria and myoclonus, and cannot perform basic tasks like feeding himself or using the bathroom. Plaintiff filed this lawsuit on January 20, 2015, bringing causes of action against the tire manufacturer, Cooper, for strict liability, design defects, manufacturing defects, marketing defects, negligence, and gross negligence. Orig. Pet. ¶ 15–47.

On March 29, 2016, Cooper filed a motion asking this Court to conduct a choice of law analysis and apply the substantive law of Honduras to Plaintiff's claims. Cooper's central—indeed, only—argument is that, because Plaintiff is a citizen of Honduras, Honduras has a greater interest in the outcome of this litigation than the State of Texas. This Court has already

considered and rejected a truncated version of this argument, as presented in Cooper's Motion to Compel Production of Documents and to Determine the Sufficiency of Plaintiff's Objections to Second Requests for Admission, filed on March 22, 2016 and heard on April 18, 2016. There, Cooper argued it was entitled to documents and admissions concerning Plaintiff's immigration status because "a potential conflict of laws issue exists given Plaintiff is a citizen of Honduras." The Court denied Cooper's motion then, and it should deny its motion now.

II. ARGUMENT

A. This Court Should Disregard the Affidavit of David Lopez.

As a preliminary matter, this Court should disregard the affidavit of David Lopez, which Cooper submitted as an exhibit in support of its motion. Def.'s Ex. C (Affidavit of David Lopez). Despite his designation by Cooper as a retained expert, David Lopez is not qualified to "opine as to the differences between Texas and Honduran law"—or to the content of Honduran law at all. Mot. 4. Mr. Lopez is a practicing civil attorney in San Antonio. Def.'s Ex. C at 8. He was formerly a professor at St. Mary's University School of Law, University of California at Davis, and Baylor Law School. *Id.* at 9. As is evident both from his resume and from his deposition testimony, Mr. Lopez has an extensive background studying, teaching, writing, and presenting on various topics concerning Mexican law. However, he has no similar experience concerning Honduran law, indeed, no experience at all. He has never practiced before a Honduran court, he has never witnessed a proceeding before a Honduran court, and he has never spoken to a Honduran lawyer or judge. In fact, he has never visited Honduras. Ex. 1 (Dep. of David Lopez, Aug. 12, 2016) at 26. In the many lectures and presentations he has given over the course of his career, he has never even uttered the word "Honduras." *Id.* at 11. His proposed knowledge of Honduran law is extrapolated entirely from his generalized understanding of civil

law regimes, including the regime with which he is most familiar, Mexico. *Id.* at 27–28 ("I'm generally familiar with the litigation process in civil law countries. And my *expectation* would be that Honduras would be consistent maybe with some regional, more historical differences that are minor.") (emphasis added). Yet, he admits that the law of Honduras is different than the law off Mexico. *Id.* at 20. Although he has offered expert testimony on Mexican law numerous times, Mr. Lopez has offered expert testimony on Honduran law only one previous time, in a case where he was never deposed, his credentials were never challenged, and a second expert testified about Honduran law with substantially more detail. *Id.* at 24.

In addition to lacking the qualifications necessary to offer expert testimony on Honduran law, which he has never studied, the methodology Mr. Lopez used to reach his opinions is insufficient to warrant any consideration by this Court. Mr. Lopez testified that, to prepare his affidavit, his sole sources of information were the relevant Honduran civil codes themselves—codes any court or lawyer could read and interpret independently in translation. He testified that he searched for but did not utilize any case law, any secondary sources or treatises, or any legal dictionaries in interpreting the statutory text. *Id.* at 19. He spoke with no lawyers, scholars, or Honduran law experts. He relied largely on an affidavit prepared by an expert witness in another case, which he considers "one of the better writings that I could find on Honduran law." *Id.* at 39. Of course, this "writing" was prepared by a retained expert, in a litigation context in which the expert's employer had as its goal the application of Honduran law. In the future, Mr. Lopez plans to visit the University of Texas at Austin to locate a dictionary of Honduran law, which he hopes will confirm the assumptions about Honduran law he has presented to the Court. *Id.* at 60. But, at the time he drafted his affidavit and at the time he was deposed, he had consulted no such dictionary.

Finally, and perhaps most importantly, Mr. Lopez's testimony provides no value to this Court. He offers no opinion about whether Texas or Honduran law should apply in this action. *Id.* at 5. And he cannot state definitively what the law of Honduras is. For example, when asked to substantiate the opinion reflected in his affidavit that Honduran law limits monetary damages to losses sustained to a plaintiff's assets and future gains he will not receive, he can point to no actual source:

> Q. What is your basis for the opinion that Honduras specifically means reduction in patrimony when it says the value of the loss suffered?
>
> A. Let's see. I would fall back on my general understanding of civil law which is what damages means in that context.
>
> Q. But you don't have anything specific to Honduras? . . .
>
> A. There's nothing that I can tell you in the civil code of Honduras that defines damages beyond loss to the—the value of the loss that has been suffered.

Id. at 35.

Given that Mr. Lopez offers no opinion on whether the law of Texas or Honduras should apply in this action, and given that his explanation of Honduran law is based on expectations and assumptions rather than any Honduras-specific expertise or source materials, Mr. Lopez's affidavit bears no value to this Court. Perhaps the only portion of Mr. Lopez's affidavit the Court can utilize in its analysis is his admission that Plaintiff is a resident of Texas—a fact with substantial relevance to the choice of law analysis outlined in the following sections. Def.'s Ex. C at 3 ("Mario Efrain Rosales Barralaga ('Mr. Barralaga') is and at all times relevant hereto was a citizen of Honduras *residing in Houston, Texas*.") (emphasis added).

B. The "Most Significant Relationship" Test Applies.

Setting aside Mr. Lopez's affidavit, this Court must evaluate Cooper's argument that Honduran law should apply to Plaintiff's claims. Under Texas law, a court presented with a potential choice of law question must first determine whether there is a conflict between various laws that might apply. *See Schneider Nat'l Transp. v. Ford Motor Co.*, 280 F.3d 532, 536 (5th Cir. 2002). If no such conflict exists, the choice of law question is moot, and the law of the forum state applies by default. *Id.* Cooper has failed to demonstrate that there is a conflict between the laws of Texas and Honduras, since it relies exclusively on Mr. Lopez's unqualified and unhelpful affidavit to identify potential differences.

Regardless, even if Texas and Honduran law did conflict, it is clear that this Court must apply Texas law. Choice of law is determined with reference to the Restatement (Second) of Conflict of Laws' ("Second Restatement") "most significant relationship" test. *Hughes Wood Prods., Inc. v. Wagner*, 18 S.W.3d 202, 205 (Tex. 2000); *Gutierrez v. Collins*, 583 S.W.2d 312, 318 (Tex. 1979) ("[I]n the future all conflicts cases sounding in tort will be governed by the 'most significant relationship' test as enunciated in Sections 6 and 145 of the Restatement (Second) of Conflicts."). The Second Restatement requires a court to consider which forum's law has the most significant relationship to the particular substantive issue to be resolved. *Wagner*, 18 S.W.3d at 205 (citing Restatement (Second) of Conflict of Laws § 145(1)). The Second Restatement states that the following contacts are to be considered:

(a) the place where the injury occurred;

(b) the place where the conduct causing the injury occurred;

(c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and

(d) the place where the relationship, if any, between the parties is centered.

Restatement (Second) of Conflict of Laws § 145(2). The following policy factors are also relevant to the court's analysis:

(a) the needs of the 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.

Id. at § 6.

C. Under the "Most Significant Relationship" Test, Texas Law Applies.

1. The Many Undisputed Facts of this Case Support the Application of Texas Law.

In its 20-page brief, Cooper identifies only a single fact that conceivably supports the application of Honduran law in this case: Plaintiff is a citizen of Honduras. Plaintiff does not dispute—and has never disputed—this fact. Regardless, Cooper has not presented any other additional facts reasonably suggesting that Honduras has any relationship to this litigation. By contrast, numerous undisputed facts demonstrate clearly that Texas has a substantial relationship here, including the following:

- Plaintiff resides in Texas;
- Plaintiff resided in Texas at the time of the accident;
- Plaintiff continuously resided in Texas for the five years prior to the accident, without interruption;
- Plaintiff has continuously resided in Texas in the two years following the accident, without interruption;
- Plaintiff was legally married in Texas in a ceremonial wedding;
- Plaintiff has paid income taxes in the United States for work he performed in Texas, *see* Ex. 2 (Income Tax Filing);
- Plaintiff has received Medicare benefits for medical care he received in Texas, *see* Ex. 3 (Shannon Medical Center Billing Records);

- Plaintiff is currently receiving assistance through the Harris County Hospital Gold Card Program;
- Plaintiff was working in Texas at the time of the accident;
- Plaintiff was injured in Texas;
- The owners of the subject vehicle resided in Texas at the time of the incident;
- The owners of the subject vehicle continue to reside in Texas;
- The owners of the subject vehicle have been named as potentially responsible third parties by Cooper;
- The driver of the subject vehicle resided in Texas at the time of the incident;
- The driver of the subject vehicle is a settling defendant in this case;
- The subject vehicle was purchased in Texas;
- The subject vehicle was maintained in Texas;
- The subject tire was purchased in Texas;
- The subject tire was maintained in Texas;
- The trip during which Plaintiff was injured originated in Texas;
- The trip during which Plaintiff was injured terminated in Texas;
- The entire trip during which Plaintiff was injured occurred in Texas;
- The subject vehicle never left Texas;
- The subject tire never left Texas;
- All of the relevant witnesses reside in Texas;
- All of the emergency responders and investigators reside in Texas;
- Plaintiff's medical treatment occurred in Texas;
- Plaintiff's treating physicians are located in Texas; and
- Cooper is a U.S. company doing regular business in Texas.

Of these facts, it is perhaps most compelling that Plaintiff's injuries, due to Cooper's tortious conduct, occurred in Texas. While not controlling, the place of injury has long been held to be a key factor in making proper choice of law determinations. Restatement (Second) of Conflict of Laws § 145 cmt. E ("In the case of personal injuries or of injuries to tangible things, the place where the injury occurred is a contact that, as to most issues, plays an important role in the selection of the state of the applicable law. . . . This is so for the reason among others that persons who cause injury in a state should not ordinarily escape liabilities imposed by the local law of that state on account of the injury."). Additionally, the relationship between Plaintiff and Cooper is centered in Texas, where the defective Cooper tire was purchased, maintained, and driven, where it suffered the tread separation at issue, and where Plaintiff was consequently

injured and treated for his injuries. No element of the parties' relationship relates in any way to Honduras. Also crucial is the fact that all relevant physical evidence, witnesses, and Plaintiff's extensive medical records are located in Texas, while none are located in Honduras.

2. Plaintiff's National Origin Does Not Preclude Recovery Under Texas Tort Law.

Cooper emphasizes, repeatedly, that Plaintiff was undocumented at the time of the accident, arguing that his immigration status should play a determinative role in what law this Court should apply. Specifically, Cooper argues that applying Texas law to this case would "encourage[] workers from other countries to abandon their home country," "frustrate Honduran policies while rewarding illegal immigration in direct violation of the policies of the United States and Texas[,] and would allow Plaintiff to reap financial benefits from a system to which he did not contribute and without a legitimate expectation of benefitting from that system." Mot. 2–3.

As a threshold issue, Plaintiff has both contributed to (income tax) and received benefits from (Medicaid and Harris County) the system that he is obligated to repay when he is successful in his case against Cooper. Because Plaintiff was a long-time, contributing resident of Texas prior to the incident, the cases cited by Cooper are factually and fundamentally distinguishable from the case currently before the Court.

Plaintiff also notes it is exceedingly implausible that a worker would be incentivized to leave his home country and immigrate to the United States because he hopes to receive a larger recovery in tort after he sustains catastrophic injuries, due to another party's negligence, that render him a functional quadriplegic for the remainder of his life. *Grocers Supply, Inc. v. Cabello*, 390 S.W.3d 707, 719 (Tex. App.—Dallas 2012) ("Most courts considering the issue of whether damage awards under state law thwart Congress's purpose have concluded similarly that

potential damage awards are not meaningful incentives to draw illegal immigrants into this country."); *Asylum Co. v. Dist. of Columbia Dep't. of Emp't. Servs.*, 10 A.3d 619, 633 (D.C. Cir. 2010) ("We think it unlikely that the availability of workers' compensation benefits in the event of a debilitating work injury in the United States would significantly affect an alien worker's decision about whether to enter this country in response to the already 'magnetic' force of the job market.").

Federal immigration policy is "a highly charged area of political debate" which Texas courts will not wade into without good reason. *See, e.g.*, *Republic Waste Servs., Ltd. v. Martinez*, 335 S.W.3d 401, 409 (Tex. App.—Houston [1st Dist.] 2011). Further, it is well established that undocumented immigrants are entitled to recover in tort in Texas courts applying Texas law—even for, contrary to Cooper's suggestion, lost wages.[1] *See, e.g.*, *Grocers Supply*, 390 S.W.3d at 724 ("Texas law does not require citizenship or the possession of immigration work authorization permits as a prerequisite to recovering tort damages."); *Tyson Foods, Inc. v. Guzman*, 116 S.W.3d 233, 247 (Tex. App.—Tyler 2003) ("As we stated previously, Texas law does not require citizenship or the possession of immigration work authorization permits as a prerequisite to recovering damages for lost earning capacity."); *Wal-Mart Stores, Inc. v. Cordova*, 856 S.W.2d 768, 770 n.1 (Tex. App.—El Paso 1993, writ denied) ("The current state of Texas law does not require citizenship or the possession of immigration work authorization permits as a prerequisite to recovering damages for loss of earning capacity, nor will this Court espouse such a theory."). This is because the tort system in Texas was not designed to advance

[1] Cooper misleadingly cites a Florida case for the proposition that a plaintiff's status as an undocumented immigrant precludes an award for lost wages, arguing it is therefore "clear [here] that an illegal alien has no expectation of damages." Mot. 12–13 (quoting *Veliz v. Rental Serv. Corp. USA, Inc.*, 313 F. Supp. 2d 1317, 1336 (M.D. Fla. 2003). Texas law holds precisely the opposite of *Veliz*.

or comment on federal immigration policy but rather "to compensate victims and to create incentives for citizens to act with the proper degree of care." *Villaman v. Schee*, 15 F.3d 1095 (9th Cir. 1994) (unpublished). Here, Texas has a strong interest in deterring tortious conduct that occurs within its borders, regardless of the immigration status of the victim of such conduct. Cooper is not entitled to avoid responsibility under Texas law simply because the person injured by its defective tire happens to be a non-citizen.

Cooper also cites *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (U.S. 2002), for the proposition that it runs contrary to federal immigration policy to award state law tort damages to which an undocumented immigrant has no right of expectation. Mot. 12–13. In *Hoffman*, an undocumented immigrant worker brought a claim through the National Labor Relations Board ("NLRB") for back pay and reinstatement. The Supreme Court held that the worker was not entitled to recovery under the National Labor Relations Act ("NLRA") because the Immigration Reform and Control Act of 1986 ("IRCA") preempts other federal regulation of labor relations between employers and undocumented workers.

Yet, contrary to Cooper's misleading analysis, Texas courts have consistently declined to extend the holding in *Hoffman* outside the narrow arena of federal labor relations regulations. They have expressly held that the IRCA does not preempt or otherwise impact state tort law, which, as discussed above, exists for purposes entirely distinct from federal immigration policy. *Grocers Supply*, 390 S.W.3d at 717 ("The structure of IRCA, and recent decisions interpreting the Act, also suggest Congress did not intend to preempt state tort law."); *Tyson Foods*, 116 S.W.3d at 247 (rejecting the argument that *Hoffman* applies in the context of state tort recovery for lost wages); *Vargas v. Kiewit La. Co.*, No. H-09-2521, 2012 WL 2952171, at *3 (S.D. Tex. July 18, 2012) ("[A]lthough Congress's interest is pervasive and dominant in immigration, tort

and labor are areas that traditionally have been left to the states to regulate."). A claim traditionally within the domain of state law will not be superseded by federal law "unless that was the clear and manifest purpose of Congress." *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (U.S. 1995). Thus, *Hoffman* offers no support for Cooper's sweeping argument that applying the tort law of Texas—to a tortfeasor doing regular business in Texas, whose negligent conduct caused an injury in Texas to a person residing in Texas—violates or runs contrary in any way to federal immigration policy.

3. Cooper Cites No Texas Case Law Supporting the Application of Honduran Law.

Cooper offers this Court no relevant Texas precedent to consider, and the federal cases it cites do not support the application of Honduran law under the facts of this case. Indeed, the case Cooper relies upon most heavily, *Figueroa v. Williams*, 2010 WL 5387599 (S.D. Tex. Dec. 17, 2010), points to the application of Texas law here.

In *Figueroa*, a truck driver was paid to illegally transport citizens of Mexico and Honduras in his tractor-trailer. The driver abandoned the trailer—with 74 aliens trapped in the back—at a gas station in Victoria, Texas. Dozens were injured, and 19 died of dehydration, hyperthermia, suffocation, or mechanical asphyxia. The scheme was plotted in Mexico and begun in Mexico and none of the unfortunate souls in the back of that trailer had ever set foot on Texas soil. The truck in which they were transported happened to break down in Texas, but it could just have easily have broken down before it crossed the border. As pointed out by the court, the site of the abandonment of the truck was "fortuitous," although undeniably unfortunate.

The defendants in *Figueroa* moved for the application of Mexican and Honduran law. The court began its choice of law analysis by citing the Second Restatement "most substantial

relationship" test. Analyzing the Section 145 factors outlined above, the court emphasized: "All plaintiffs and decedents lived in Mexico and Honduras. There is no evidence indicating that any plaintiff or decedent previously resided in Texas, and there is no evidence that any Plaintiff will live in Texas after the conclusion of this lawsuit." *Id.* at *4. The only connection between the suit and the State of Texas was that the driver happened to abandon the trailer in Texas, rather than another state along his route. The court in *Figueroa* further emphasized that "[m]uch of the conduct leading up to—and allegedly causing—decedents' deaths occurred outside Texas." *Id.*

The facts of this case stand in direct contrast to those in *Figueroa*. Here, Plaintiff is a resident of Texas. Def.'s Ex. C at 3. Plaintiff and his sister (and Next Friend) lived in Texas for more than five years preceding the accident, and they have remained in Texas for the two years since. As Cooper's expert, Mr. Lopez, admitted, Plaintiff worked continuously in Texas from 2009 to 2014. *Id.* Plaintiff's extensive medical treatment has all occurred in Texas. And both Plaintiff's and Cooper's life-care experts have opined that Plaintiff should remain in Texas. Further, no one contends that any tortious conduct occurred in Honduras at any time. Instead, it is Cooper's contention that *all* relevant tortious conduct occurred in Texas: Cooper blames the owners of the tire (Texas residents) for failing to maintain the tire (which never left Texas) while they owned it (exclusively in Texas). Cooper further blames the owners of the truck for allowing (in Texas) the driver (a Texas resident) to drive the truck (exclusively in Texas). Cooper also blames the driver of the vehicle (a Texas resident) for failing to control the truck after the tread separated (in Texas) from the Cooper tire (purchased and maintained in Texas). Thus, all of the Second Restatement factors the court in *Figueroa* considered in choosing whether to apply Texas or foreign law point to the application of Texas law in this case.

Likewise, the *Figueroa* court's policy analysis under Section 6 of the Second Restatement, also outlined above, points to the application of Texas law here. Concerning "the needs of interstate and international systems," the court stated: "[T]he Court finds that the needs of the international system weigh in favor of applying the law of each decedent's domicile to Plaintiffs' damage claims." *Id.* at 6. Here, it is undisputed that Plaintiff's domicile was and remains Texas. Concerning the "relevant policies of the forum," the Court again referenced the importance of domicile, underscoring that parties who are not domiciled in Texas neither contribute to nor pose a burden to Texas welfare systems or state funds. But, again, this reasoning stands in contrast to the facts of this case. Plaintiff worked in Texas and bought gas, groceries, and necessities in Texas, regularly contributing to the Texas economy. He was married in a church in Texas and paid for a Texas marriage license. He paid taxes in the United States for his work in Texas. Ex. 2. He has a bank account in Texas. Since the accident, unfortunately, Plaintiff has been forced to burden the system to which he once contributed. Medicare paid a portion of his enormous medical bill at the Shannon Medical Center and now must be repaid. Ex. 3. Plaintiff currently receives assistance from Harris County to fund his ongoing medical treatment; like his costs to Medicare, his costs to Harris County must also be repaid from any recovery in this suit. All of Plaintiff's extensive medical treatment, medical supplies, and prescriptions have been paid for, and will continue to be paid for, in Texas. In *Figueroa*, the Court rightly stated that "the State of Texas has no interest in the amount of damages awarded to Plaintiffs." *Figueroa*, 2010 WL 5387599, at *7. But, here, the State of Texas has a substantial interest in the damage award in this case.

Finally, concerning the "certainty, predictability, and uniformity of result" factor the court in *Figueroa* highlighted, the application of Honduran law—in the form recommended by

Cooper's "expert" David Lopez—would by no means serve that goal. Mr. Lopez has never practiced Honduran law, read Honduran case law, or witnessed a trial or any other legal proceeding in Honduras. He has never spoken to a Honduran lawyer or even visited Honduras on vacation. Ex. 1 at 26. Mr. Lopez testified in his deposition that, if this Court chooses to apply Honduran law, it should present the Jury with a charge directly translating sections 2236 and 1365 of the Honduran Civil Code, which read as follows:

> Art. 2236 – Whoever by act or omission causes injury to another through fault or negligence, shall be obligated to repair the injury caused.
>
> Art. 1365 – Compensation for damages and losses includes not only the value of the loss suffered, but also what the creditor failed to gain, with the exception of the provisions of the following Articles.

Id. at 44; Def.'s Ex. C at 19. Yet, Mr. Lopez testified that he is not certain how to properly define "losses"—or "daños"—under Honduran law, and he cannot exclude the possibility that Honduran law allows compensation for pain, suffering, and impairment. Ex. 1 at 36 ("There's nothing that I found in the civil code that goes into detail with regard to that definition of damages."). So, if this Court chooses to apply Honduran law, it will be left in doubt as to how to properly interpret the relevant Honduran codes—with no definitions, case law, or secondary sources to guide it, but instead with only the expectations and presumptions of a civil attorney who lacks any experience related directly to Honduran law. The Court can be assured that this would create a key appellate point to guarantee a reversal of any eventual trial result in favor of either party.

Like *Figueroa*, the two other federal cases Cooper cites are either inapposite or support the application of Texas law here. In *Gonzales v. Chrysler Corp.*, 301 F.3d 377 (5th Cir. 2002), the survivors of a child killed in a car accident in Mexico sued the car manufacturer in federal district court in Texas. The Fifth Circuit affirmed the court's dismissal on forum non conveniens

grounds, finding that the connection between the survivors' claims and Texas was too attenuated. Yet, there, unlike here, the accident at issue took place in Mexico, and the car was purchased and driven exclusively in Mexico. None of the Plaintiffs or witnesses resided in the United States, none of the medical treatment occurred in Texas, no part of the trip occurred in Texas, and none of the victims paid taxes or received benefits in the United States. The single connection to the State of Texas was that one of the plaintiffs, a citizen and resident of Mexico, initially became interested in purchasing the car during a visit to Texas, although he ultimately purchased the vehicle in Mexico. *Id.* at *379. Similarly, in *Vasquez v. Bridgestone/Firestone, Inc.*, 325 F.3d 665 (5th Cir. 2003), survivors of the victim of a car accident, caused by a defective tire, sued the tire manufacturer in federal district court in Texas. The Fifth Circuit again affirmed the court's dismissal on forum non conveniens grounds, noting the following key facts: "[T]he vehicle and tires were manufactured, purchased, and maintained in Mexico. The vehicle had a Mexican owner, and the trip took place entirely in Mexico. All the physical evidence and medical reports are in Mexico; conducting trial in the United States would require the translation of numerous reports and witness testimony." *Id.* at 672–73. Not only do these latter cases address forum non conveniens, rather than choice of law, but the reasoning Cooper highlights does not apply where the State of Texas has a substantial connection to the cause of action.

III. CONCLUSION

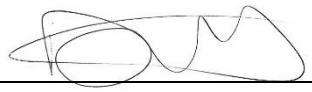
This is a Texas case before a Texas court, and Texas law should be applied. All of the relevant contacts, as analyzed by any court cited by either party, point clearly to Texas law. Cooper asks this Court to ignore all relevant precedent and attempt to apply a law with which neither the Court nor the proffered "expert" has any familiarity—to the certain end that this case

will have to be tried a second time. The appropriate course, which is in line with the current law in every jurisdiction in the United States, is to apply Texas law to this Texas case.

Accordingly, for the reasons set forth above, Plaintiff respectfully requests that this Court deny Cooper's Motion to Apply the Law of Honduras.

Respectfully submitted,

THE MERMAN LAW FIRM, P.C.



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CERTIFICATE OF SERVICE

I certify that on the 19th day of August 2016, a true and correct copy of the foregoing document was served by certified mail, regular mail, or facsimile on the Defendants or counsel of record, including:

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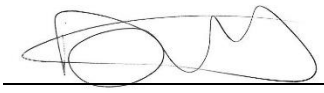

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