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SUPREME COURT OF TEXAS
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NO. 17-0019

IN THE SUPREME COURT OF TEXAS

IN RE MAHINDRA, USA INC.

Jason Alan Cooper, Individually, as Administrator of the Estate of Venice Alan Cooper, and as Next Friend of Faith Cooper, and Christopher Cody Cooper
v.
Mahindra USA, Inc. and KMW, Ltd.
Original Mandamus Proceeding
From the 152nd Civil District Court of Harris County, Texas
No. 2016-40032

RESPONSE TO PETITION FOR WRIT OF MANDAMUS

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IDENTITY OF PARTIES AND COUNSEL

The undersigned counsel of record, pursuant to Texas Rule of Appellate Procedure 38.2, certifies that the following persons have an interest in the outcome of this case:

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APPENDIX AND MANDAMUS RECORD

Real Parties in Interest/Plaintiffs will refer to and cite the Appendix and Mandamus Record already indexed and filed by Relator Mahindra in its Petition for Writ of Mandamus.

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STATEMENT OF THE CASE

This case arises out of the wrongful death of Venice Alan Cooper, who was killed on March 30, 2016 while working on his Mahindra 8560 4WD tractor in Mississippi, when a hydraulic line ruptured and caused the front end loader on the tractor suddenly fall. (App. 2). Mr. Cooper was trapped between the front wheel of the tractor and the front end loader, and was pronounced dead at the scene from traumatic asphyxiation. (App. 2).

Jason Alan Cooper and Christopher Cody Cooper are the sons of the late Alan Cooper. (App. 5). Jason Alan Cooper and Christopher Cody Cooper currently reside in Texas, and resided in Texas at the time of the incident. (App. 5). Faith Cooper is Jason Cooper's daughter, and witnessed the death of Alan Cooper. (App. 5). Jason Alan Cooper brought his claims individually, as well as the claims as the administrator of the Estate of Venice Alan Cooper and as next friend of Faith Cooper. (App. 2). Christopher Cody Cooper also brought his claims individually. (App. 2). The lawsuit was filed in Harris County, Texas against Defendants Mahindra USA, Inc. and KMW, Ltd. (App. 2). Plaintiffs asserted claims of negligence, manufacturing defect, design defect, failure to warn, strict liability and gross negligence against Mahindra USA, Inc. (App. 2). Among other things, Plaintiffs asserted Mahindra, a company headquartered in Texas, assembled the tractor in question and its parts, and failed to include safety devices

or measures which would have prevented the equipment from failing or malfunctioning. (App. 2).

After the filing of this lawsuit, Mahindra USA, Inc. filed a Motion to Dismiss Based Upon Forum Non Conveniens. (App. 4). After a hearing, the trial court denied the Motion to Dismiss. (App. 1). The Court of Appeals for the First District of Texas denied the petition for writ of mandamus. (App. 9).

ARGUMENT AND AUTHORITIES

I. The trial court did not abuse its discretion in denying Relator Mahindra's Motion to Dismiss.

Mandamus is intended to be an extraordinary remedy, which will lie only to correct a clear abuse of discretion. *In re Maldonado*, 157 S.W.3d 910 (Tex. App.—El Paso 2005) (denying mandamus because the trial court did not clearly abuse its discretion by denying a motion to dismiss.). An appellate court rarely interferes with a trial court's exercise of discretion. *In re County of El Paso*, 104 S.W.3d 741 (Tex. App.—El Paso 2003). A clear abuse of discretion warranting correction by mandamus occurs when a court issues a decision which is without basis or guiding principles of law. *See Johnson v. Fourth Court of Appeals*, 700 S.W.2d 916, 917 (Tex. 1985).

With respect to the resolution of factual issues or matters committed to the trial court's discretion, the reviewing court may not substitute its judgment for that of the trial court. *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). The Relator

must therefore establish that the trial court could reasonably have reached only one decision. *Id*. at 840. Even if the reviewing court would have decided the issue differently, it cannot disturb the trial court's decision unless it is shown to be arbitrary and unreasonable. *Id*. With respect to a trial court's determination of the legal principles controlling its ruling, the standard is much less deferential. *Id*.

A. The forum non conveniens factors support the case remaining in Texas.

Forum non conveniens is rooted "in considerations of fundamental fairness and sensible and effective judicial administration." *Dow Chemical Co. v. Castro Alfaro*, 786 S.W.2d 674, 703 (Tex. 1990). The doctrine should be applied "with caution, exceptionally, and only for good reasons." *Van Winkle-Hooker Co. v. Rice*, 448 S.W. 2d 824, 827 (Tex. Civ. App.—Dallas 1969, no writ). "***Unless the balance is strongly in favor of the defendant***, the plaintiff's choice of forum should rarely be disturbed." *Sarieddine v. Moussa*, 820 S.W.2d 837 (Tex. App.—Dallas 1991) (emphasis added); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S. Ct. 839, 843 (1947).

In determining whether to dismiss a case based on forum *non conveniens*, the trial court should consider a number of private and public factors, including: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for attendance of unwilling witnesses; (3) the cost of obtaining

attendance of willing witnesses; (4) the enforceability of any judgment entered; (5) the burden imposed upon the citizens of the state and on the trial court; and (6) the general interest in having localized controversies decided in the jurisdiction in which they arose. *Lee v. Na*, 198 S.W.3d 492, 495 (Tex. App—Dallas 2006, no pet.) (citing *Gulf Oil*, 330 U.S. at 508; *Sarieddine v. Moussa*, 820 S.W.2d 837, 840 (Tex. App.—Dallas 1991, writ denied)).

A defendant bears the burden of proof on *all* elements of the forum non conveniens analysis and must establish that the balance of factors strongly favors dismissal. *See RSR Corp. v. Siegmund*, 309 S.W.3d 686, 710-11 (Tex. App.—Dallas 2010, no pet.). A defendant seeking forum non conveniens dismissal "bears a heavy burden in opposing the plaintiff's chosen forum." *Sinochem Int'l Co., Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430, 127 S. Ct. 1184, 1191 (2007). The doctrine rests on a strong presumption in favor of the plaintiff's choice of forum, a presumption a defendant may overcome only when the private and public interest factors clearly point toward trial in the alternative forum. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255, 102 S. Ct. 252, 70 L. Ed. 2d 419 (1981). A plaintiff has an interest in selecting a forum in which to bring his or her suit. *See A. P. Keller Dev. Co. v. One Jackson Place, Ltd.*, 890 S.W.2d 502, 505 (Tex. App.—El Paso 1994, no writ).

Plaintiffs do not dispute that the incident occurred in Mississippi. Mississippi is an alternative forum that exists. The analysis does not end there, however. The maintenance of the claim here in Texas would absolutely not work a substantial injustice on Relator, the party moving for dismissal. Relator is headquartered here. (MR050; MR051-058; MR059; MR060-062). And while Alan Cooper lived in Mississippi at the time of his death, Jason Cooper, Christopher Cooper and Faith Cooper—the Plaintiffs in this case—live in Texas. (MR065-66; MR067).

An examination of whether there is relative ease access to sources of proof does not lead to dismissal in this case. Jason Cooper, Christopher Cooper and Faith Cooper will provide testimony in this case, and as stated, all live in Texas. (MR065-66; MR067). Further, Jason Cooper, Christopher Cooper and Faith Cooper are all treating with a clinical psychologist in Houston for the emotional trauma and injuries they are suffering from due to this incident. (MR065-66; MR067). Plaintiffs intend to continue treating with Dr. Suzi Phelps in Texas. (MR065-66; MR067). As such, this doctor will be the key witness who can describe Plaintiffs' diagnoses, prognoses, and treatment.[1] Moreover, this is **not** an instance where the tractor is manufactured in its entirety, complete with all parts, somewhere other than Texas. Even if the loader itself was manufactured outside of

[1] Plaintiffs will have to bear the cost of obtaining the attendance for Dr. Phelps at trial of this cause.

Texas, it was ordered by, and sent to, Relator in Houston for assembly. Petition for Writ of Mandamus, at p.16. Before the equipment ever made it into the hands of Venice Cooper, it was assembled in Houston by Relator. *Id.* Thus, there will be evidence and witnesses in Texas, employed by Relator.

While there are witnesses in Mississippi, Relator failed to offer *any* evidence showing that "known witnesses" would not willingly come to Texas to testify. (App. 4). Relator named several emergency personnel and witnesses that arrived on the scene after the incident, and concludes without any basis, that these witnesses would be unwilling to testify and would need to be somehow compelled to do so. (App. 4). Relator has the burden, and instead speculates as to the unavailability of witnesses. In contrast, Plaintiffs, despite *not* having the burden, obtained affidavits from two key witnesses in Mississippi. (App. 5).

Scott Dean is the coroner in Webster County, Mississippi. (MR068). Mr. Dean examined Venice Alan Cooper's body and signed Mr. Cooper's death certificate. (MR068). Mr. Dean determined the cause of death to be "traumatic asphyxia, as a consequence of his chest being compressed from a hydraulic lift arm" of the tractor. (MR068). Mr. Dean's affidavit made clear he is willing to come to Texas to provide testimony in this case, *without the need for a subpoena*. (MR068). And he will do so at a time mutually convenient for the parties. (MR068). Amanda Vance is a deputy for the Sheriff's Office in Webster County,

Mississippi. (MR069). Ms. Vance was the first member of the local authorities to be present at the scene. (MR069). Ms. Vance's affidavit made clear she is willing to come to Texas to provide testimony in this case, *without the need for a subpoena*. (MR069). And she will do so at a time mutually convenient for the parties. (MR069).

Defendant also ignores that Houston is a major, metropolitan city with two major airports. Witnesses will not have to "drive ten hours to testify at a trial in Houston." Petition for Writ of Mandamus, at p. 8. With the presence of witnesses in multiple states, Relator cannot credibly advance the position that it would be more appropriate for it to be in Webster County, Mississippi over Texas. Similarly, if there are witnesses out of the country (e.g. India), Relator cannot credibly argue that it is more convenient for witnesses to travel to Webster County, Mississippi, than to Houston. Finally, Relator discusses *convenience* of the parties and witnesses, and entirely disregards that if the case is moved to Mississippi, *Plaintiffs* themselves will have to travel from Texas and stay in Mississippi for the *duration* of the trial in the case.

As stated above, this is **not** an instance where the tractor is manufactured in its entirety, complete with all parts, somewhere other than Texas. Even if the loader itself was manufactured outside of Texas, it was ordered by, and sent to, Relator in Houston for assembly. Petition for Writ of Mandamus, at p.16. Before

it ever made it into the hands of Venice Cooper, it was assembled in Houston by Relator. *Id.* At the core of this case are decisions related to the design, manufacturing and assembly of parts, and warnings for equipment. (App. 2, App. 5). There will be numerous individuals working for Relator who are involved in handling the equipment prior to it ever leaving Texas.

B. The trial court did not err in analyzing Plaintiffs' claims.

The Texas-residency exception Section 71.051(e) of the forum non conveniens statute states:

> **The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state *or* a derivative claimant of a legal resident of this state.**

TEX. CIV. PRAC. & REM. CODE § 71.051(e) (emphasis added). The "*or*" is important. A plaintiff can either be a resident of this state, or he or she can be a derivative claimant of someone who is or was a legal resident of the state.

Relator has a fundamental misunderstanding of Plaintiffs' claims. Relator repeatedly has characterized Plaintiffs' claims as representative claims, regardless of whether the trial court was to look at Texas or Mississippi law. (App. 8, at 7-10). Surviving family members have claims under the Texas wrongful death statute. *See* TEX. CIV. PRAC. & REM. CODE § 71.004(a).

In attempting to characterize all the claims as "representative" claims, Relator ignores that the claims of the Estate are distinct from the *individual* claims

brought. A plaintiff in a lawsuit arising out of a wrongful death is recovering damages for, among other things, *his or her own* mental anguish. That is not "representative" of any other individual person's damages. Here, there is no question that the lawsuit include *individual claims* filed by Plaintiffs. (App. 2). For example, either Jason Cooper or Christopher Cooper could have filed a lawsuit, as an individual, without even including the claims of the estate. Under that scenario, either Cooper individually would have viable claims. The claims of the estate would not even need to be asserted in the lawsuit for that lawsuit to survive and move forward. That demonstrates Relator's flawed stance in trying to characterize the claims in this case as purely representative.

The elements of a cause of action for wrongful death are: (1) the plaintiff is the surviving spouse, parent or child of the decedent; (2) the defendant is a person or corporation; (3) the defendant's wrongful act caused injury to the decedent; (4) the injury resulted in the death of the decedent; (5) the decedent would have been entitled to bring an action for the injury if he or she had lived; and (6) the plaintiff suffered actual injuries. *See* TEX. CIV. PRAC. & REM. CODE §§71.001-71.004; *Russell v. Ingersoll-Rand Co.*, 841 S.W.2d 343, 345-46 (Tex. 1992). A plaintiff in a wrongful death action can recover actual damages of the following four basic types: (1) pecuniary losses (e.g., loss of care, maintenance, support, services,

advice and counsel); (2) mental anguish; (3) loss of companionship and society; and (4) loss of inheritance. *Moore v. Lillebo*, 722 S.W.2d 683, 687 (Tex. 1986).

The elements of a survival action are: (1) the plaintiff is the legal representative of the estate of the decedent; (2) the decedent had a cause of action for personal injury to his or her health, reputation or person before she died; (3) the decedent would have been entitled to bring a cause of action for the injury if he or she had lived; and (4) the defendant's wrongful act caused the decedent's injury. See TEX. CIV. PRAC. & REM. CODE §71.021; *Russell*, 841 S.W.2d at 345. In a survival action, the plaintiff can recover only those damages *suffered by the decedent* before death (e.g., physical pain, mental anguish, medical expenses, etc.) and funeral expenses. *Russell*, 841 S.W.2d at 345. The damages awarded in a survival action belong to the estate and are distributed to those who would have received them had the decedent obtained them immediately before death. *Id.*

Jason Cooper and Christopher Cody Cooper are sons of the late Alan Cooper. (App. 2; MR065-066; MR067). Jason Cooper and Christopher Cody Cooper currently reside in Texas. (MR065-066; MR067). They also resided in Texas at the time of the incident. (MR065-066; MR067). Faith Cooper is Jason Cooper's daughter. (MR065-066). If the *only* claim in this lawsuit was Jason Cooper bringing a claim as either a representative, administrator, guardian or next friend, then Defendant's argument would hold weight. As it stands, it does not.

Jason Cooper's presence in this suit is not limited to being the administrator of the Estate of Venice Alan Cooper, and the next friend of Faith Cooper. (App. 2). Jason Alan Cooper brings *individual* claims. Christopher Cody Cooper also brings *individual* claims. (App. 2).

Relator claims that the trial court "effectively lumped all of the claims together, concluding that because the Texas-residency exception applied no claims were to be dismissed." Petition for Writ of Mandamus, p. 12. Relator claims the trial court failed "to give forum non conveniens consideration to the claims of the estate." Petition for Writ of Mandamus, p. 13. This is not true. At various points throughout the hearing, the trial court discussed *all* of the different claims asserted by Plaintiffs in this case. (App. 8).

> The determination of whether a claim may be stayed or dismissed under Subsection (b) shall be made with respect to each plaintiff without regard to whether the claim of any other plaintiff may be stayed or dismissed under Subsection (b) and without regard to a plaintiff's country of citizenship or national origin. **If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court shall consider the factors provided by Subsection (b) and determine whether to deny the motion or to stay or dismiss the claim of any plaintiff who is not a legal resident of this state.**

Even under the amended Texas-residency exception, it is clear the Court may determine whether to deny the motion or to stay or dismiss the claim of any plaintiff who is not a legal resident of this state. Here, the trial court recognized the difference between the claims brought, and ultimately ruled that there were

claims that should stay in Texas. For example, the Court may have believed that if the Court had denied the Motion as to the individuals' individual claims, and dismissed the claim of the Estate, this would result in unnecessary duplication of lawsuits. This would not have resulted in judicial economy. The estate's claim is a separate claim from the other claims, but under the forum non conveniens statute, the Court clearly has the ability to deny the motion or to stay or dismiss the claim as it sees fit.

Knowing it cannot win under the Texas statute, Relator attempts to muddy the Texas statute with Mississippi law, saying it is a given that Mississippi law should apply. While Relator contends a presumption existed that Mississippi law controlled due to the incident occurring in Mississippi, there is nothing requiring a court to apply the law of the state where the incident occurred. Instead, as Relator itself concedes, the court can look at the "most significant relationship" test; the trial court did in fact hear arguments at length comparing the relationship between the action and Texas, and Mississippi. (App. 8)

> (1) the place where the injury occurred,
> (2) the place where the conduct causing the injury occurred,
> (3) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
> (4) the place where the relationship, if any, between the parties is centered.

Plaintiffs do not dispute that the incident occurred in Mississippi. Plaintiffs do disagree the conduct causing the injury only occurred in Mississippi. The conduct causing the injury goes back to how the equipment was designed, manufactured, assembled, modified and ultimately *put together* with warnings. **<u>This was not an instance where Relator was blind as to whether the tractor was modified or whether a loader was added to the tractor.</u>** The loader and related parts *were ordered by, and shipped to, Relator in Houston.* Relator cannot claim ignorance as to what equipment was part of the tractor. As such, its Houston office (and thus, its employees and corporate representatives) was well aware that a loader was to be added to the tractor before it would be complete. In doing so, Relator had a duty to ensure the product and equipment would be safe for the general public. As stated earlier, Relator is doing business in, and is *headquartered* in, Texas.

Relator wants to conflate what it believes is the meaning of "representative" in Mississippi law, into the Texas forum non conveniens statute. This is improper, and Relator has no case law that supports this position. Christopher Cooper is not a representative of anyone else. His claims are his claims. Jason Cooper *is* an administrator for Venice Alan Cooper's estate, but also has his individual claims—the individual claims where he is not a representative for anyone else. His individual claims are his claims. Relator essentially wants the Court to conflate the

laws of *two* states. Instead of using the definitions within the Texas forum non conveniens statute, which clearly indicate that not all of the claims in this lawsuit are representative claims, Relator wants to inject how Mississippi views wrongful death claims *into* how the Texas statute is worded. The trial court is simply not required to do that. If Relator's position was correct, then the Texas residency exception of the Texas forum non conveniens statute would almost *never be applicable* and would serve no purpose. In Relator's mind, a plaintiff cannot use the Texas residency exception of the Texas forum non conveniens statute (or alternatively, can use it, but has to substitute out the meanings of words for other meanings found by the other state). Essentially, Relator claims that because the law of the state where the incident occurred would apply, you cannot use the actual definitions set forth in Texas residency exception of the Texas forum non conveniens statute. That cannot be true.

Finally, Relator repeatedly indicates the estate "is located, being administered, and must be closed in Mississippi by Mississippi courts." Petition for Writ of Mandamus, p. 15. Where the estate proceeding occurs has almost no relevance to the instant lawsuit. The actual individuals who are Plaintiffs (including the administrator of the estate) in this lawsuit are located here in Texas, not Mississippi. Finally, there is no case law *at all* either cited by Relator or found by Plaintiffs for the proposition that the estate is being administered in Mississippi

somehow means that Plaintiffs have agreed to subject themselves to Mississippi laws for *this lawsuit.* Similarly, there is no support for the proposition that because Mississippi probate law governs the administration of the estate that this somehow means Mississippi laws cover *this lawsuit.*

C. Even if Mississippi "representative" interpretation were to apply—which it should not—the trial court can still keep the case after considering the factors.

Even assuming *en arguendo* that Relator's argument that all of the Plaintiffs' claims are representative claims is correct—which it is not—the Court can *still* keep the case by considering all of the factors. Throughout the briefing for the Motion to Dismiss, the Response and the actual hearing, the parties discussed the forum non conveniens factors. (App. 4, 5, 8). Indeed, many courts have found the balance of factors does not weigh heavily in favor of dismissing the case, even without considering the Texas-resident exception. In *In re Old Republic Nat'l Title Co.*, a lender named AmericanHomeKey, Inc. filed suit in Texas alleging an insurance underwriting company named Old Republic breached its fiduciary duty on ten mortgage loans. 2011 Tex. App. LEXIS 714 (Tex. App.—Houston [14th Dist.] Feb. 1, 2011). The company was a Florida company, and the lender was a Texas company. Id., at *5-6. The ten mortgage loans were issued in Florida; the property and its purchasers are in Florida; the mortgages were entered into in Florida; and numerous witnesses resided in Florida. *Id.* The underwriting

company stated it anticipated calling the borrowers, who lived in Florida and who would not voluntarily travel to Texas to testify. *Id.* The lender alleged the closing coordinator on all ten loans was an employee in a Texas branch. *Id.* The trial court denied Old Republic's motion to dismiss, and *even with Old Republic's contentions*, the Court of Appeals found that "the balance of factors is *not weighed so heavily* in favor of the defendant that the court should disturb the plaintiff's choice of forum." *Id.* (emphasis added). The petition for writ of mandamus was denied. Relator must show the balance of factors weighs heavily in favor of dismissing the case. It has not.

In *Tullis v. Georgia-Pacific Corp.*, the plaintiff was injured in an automobile collision in Tennessee involving a truck owned by a Georgia corporation. 45 S.W.3d 118, 119, 2000 Tex. App. LEXIS 6612, *1 (Tex. App.—Fort Worth 2000). The Georgia corporation was authorized to do business in Texas. The plaintiff filed a personal injury suit in Texas, and Defendant moved to dismiss based on forum non conveniens. The Texas Court of Appeals found the district court had erred in granting a Motion to Dismiss based on forum non conveniens even when Plaintiff moved to Colorado after the incident, and the incident occurred in Tennessee. *Id.*, at *132. The Court noted that the Plaintiff desired the case to be in Texas, and that a plaintiff has an interest in selecting the forum in which to bring the suit. *Id.* The Court noted that the defendant had not shown that "requiring it to

litigate in Texas … would cause a substantial injustice resulting in detrimental harm to its ability to mount a viable defense." *Id.* The Court further noted Georgia-Pacific did not show that the public and private interests strongly predominate in favor of dismissal. *Id.*

Plaintiffs do not even need to solely rely upon the Texas-residency exception, and Plaintiffs did not solely rely upon it, either in briefing or at the hearing. (App. 8, at 24). Relator had the burden of showing that the balance of factors was strongly in favor of dismissing a lawsuit from plaintiff's chosen forum. It failed to do so.

Relator claims that because the estate is being administered in Mississippi, this somehow renders Plaintiffs' argument that Mississippi is an inconvenient forum as "unpersuasive" in this instant lawsuit. The administration of the estate in Mississippi pales in comparison to the fact that Relator is claiming Texas is not a convenient forum despite it (1) actively engaging in business in Texas, and (2) maintaining its headquarters for its United States' operations in Texas. Not only that, the lawsuit is filed specifically in the very county the Relator's headquarters is located.

Finally, Texas itself has a strong interest in this controversy. "The Texas legislature and courts have developed an almost paternalistic interest in the protection of consumers and the regulation of the conduct of manufacturers that

have business operations in the state." *Mitchell v. Lone Star Ammunition, Inc.*, 913 F.2d 242, 250 (5th Cir. Tex. 1990) (emphasis added); *see Dow Chemical Co. v. Alfaro*, 786 S.W.2d 674 (Tex. 1990). The Texas system of tort liability for defective products serves as an incentive to encourage safer design and to induce corporations to control more carefully their manufacturing processes. *Baird v. Bell Helicopter Textron*, 491 F. Supp. 1129, 1141 (N.D. Tex. 1980). Texas has a substantial interest in the resolution of the claims and defenses here.

Notably, in Relator's previous Petition for Writ of Mandamus in this case, Relator stated "Plaintiffs would have Texans bear the burden of judicial resources for litigating a case that has **no factual connection to Texas whatsoever**." [2] Petition for Writ of Mandamus to the Court of Appeals, at p. 9. After Plaintiffs demonstrated this was a blatant misrepresentation to the Court in their Response at the Court of Appeals proceeding, Relator's current Petition for Writ of Mandamus now states "Plaintiffs would have Texans bear the burden of judicial resources for litigating a case that has **no *significant* factual connection to Texas whatsoever.**" Petition for Writ of Mandamus, at p. 9.

[2] Plaintiffs had to file a Motion for Sanctions in the underlying action against Relator's counsel. According to a packing slip and invoice produced by Defendant KMW following the hearing on the Motion to Dismiss, Relator had previously ordered specific parts for the tractor, and had the parts shipped directly to Relator's headquarters in Texas to be installed and rebranded as Relator's parts before the tractor was "complete" and before this incident happened.

Thus, even if the trial court had found that the claims were in a representative capacity only, dismissal was not required. In fact, the trial court still can review the factors and determine that the case should remain in Texas. It did so. The ruling of the Court was not an abuse of discretion. Relator's Petition for Writ of Mandamus should be denied.

CONCLUSION

Plaintiffs ask that this Court deny Relator's Petition for Writ of Mandamus. Plaintiffs ask for any other and further relief to which they may be entitled. Plaintiffs do not believe oral argument is necessary for this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 20, 2017, a true and correct copy of this filing was served on all known counsel of record set forth below, via E-Service.

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CERTIFICATE OF COMPLIANCE

I certify that on March 20, 2017, the Word count feature of Microsoft Word found 4,375 words in this document, excluding the parts exempted under TEX. R. APP. P. 9.4(i)(1). This Response is therefore in compliance with TEX. R. APP. P. 9.4(i)(2)(D).

/s/ Andrew Dao
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