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10 UNITED STATES DISTRICT COURT
11 DISTRICT COURT OF ARIZONA

12 LEROY and DONNA HAEGER,
13 husband and wife; BARRY and
14 SUZANNE HAEGER, husband and
15 wife; FARMERS INSURANCE
16 COMPANY OF ARIZONA, an
17 Arizona corporation,

18 Plaintiffs,

19 v.

20 GOODYEAR TIRE AND RUBBER
21 COMPANY, an Ohio corporation;
22 SPARTAN MOTORS INC., a
23 Michigan corporation;

24 Defendants.

No. CV05-2046-PHX-ROS

**RESPONSE TO DONNA HAEGER'S
MOTION FOR SUBSTITUTION Docket
640]**

25 Defendants Goodyear and Spartan (“Defendants”) respond to Plaintiff Donna
26 Haeger’s Motion for Substitution as the Personal Representative of the Estate of LeRoy
Haeger [Docket 640], stating that they have no objections to the proposed substitution of
parties following Mr. Haeger’s otherwise unrelated death. Defendants object, however, to
the bulk of Plaintiffs’ brief, which argues issues concerning the appropriate choice of law.
In addition to being substantively in error, Plaintiffs’ choice of law briefing ignores the
existing Order expressly deferring choice of law issues until *after* the Court’s ruling on the

1 pending dispositive motions. *See* Order, February 28, 2008 [Docket 472] (“Therefore, the
2 Court will defer resolution of the choice-of-law issue until after resolution of the summary
3 judgment motions.”).

4 As the Court will recall, Plaintiffs asked to suspend briefing on the pending
5 dispositive motions for new briefing on the choice of law issues, arguing that choice of
6 law decisions were prerequisite to deciding the pending motions for summary judgment.
7 *See* Docket 424, 426. Defendants’ opposition argued that those motions were not
8 dependent on any choice of law issue and that the Court should defer such issues until the
9 Court could rule on the pending dispositive motions. *See* Docket 428. After receiving
10 briefs on the Plaintiffs’ choice of law issues, the Court followed the Defendants’ proposal,
11 noting that Plaintiffs’ choice-of-law issues were *not* relevant to the dispositive motions
12 and that it would defer resolution of Plaintiffs’ questions until a later date. Order, Dated
13 2/28/08 [Docket 472] (“The court agreed to suspend briefing on the motions for summary
14 judgment to resolve the choice-of law issue because it assumed that this issue related to
15 the substance of the summary judgment motions. Upon reviewing the briefs, this does not
16 appear to be the case.”); *see* Docket 453, 454, 461, 462.

17 The Court has not issued any order asking for additional briefing on choice of law
18 issues or reversing its decision to defer consideration on these issues until after its rulings
19 on the pending motions for summary judgment. In short, Plaintiffs appear to be briefing
20 matters that are not part of, or needed for, the pending motions for summary judgment or
21 Plaintiffs’ motion to substitute the executor of Mr. Haeger’s estate for Mr. Haeger.¹

22 The parties have several other important issues to raise, depending on the outcome

23 ¹ Plaintiffs’ motion implies some difference in the substantive law of New Mexico and
24 Arizona that somehow affects or justifies raising choice of law in their motion. However,
25 the substitution of Mr. Haeger’s estate would be appropriate in this Court, regardless of
26 any subsequent ruling on any choice of law issue. Rule 25, Fed. R. Civ. Pro.; *See e.g.*,
Arizona Rules of Civil Procedure Rules 17(a), 25 (Arizona law permits substitution of
personal representatives); ARS 14-3110 (Arizona’s survival statute).

1 of the pending motions for summary judgment.² While the Court can grant the motion to
2 substitute parties, without objection, Plaintiffs' extended briefing on choice of law is both
3 unwarranted and unnecessary at this stage. Defendants ask that the Court allow
4 Defendants the opportunity to respond to Plaintiffs' additional briefing on these new
5 choice of law arguments when, and if, that becomes appropriate.

6 Dated this 20th day of November 2008.

7 FENNEMORE CRAIG

8
9 By s/ Graeme Hancock
10 Graeme Hancock
11 Attorneys for Defendant The Goodyear
Tire & Rubber Company

12 LISA G. LEWALLEN, PLLC

13
14 By s/ Lisa G. Lewallen, with permission
15 Lisa G. Lewallen
Attorney for Defendant Spartan Motors

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25 ² There are, for example, motions regarding Plaintiffs' spoliation of the accident scene the
26 accident vehicle and the vehicle's data recorder. Docket 392, 410; See Docket 436
(denying motions without prejudice and with leave to be renewed at appropriate time).

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CERTIFICATE OF SERVICE

I hereby certify that on 11/ 20 /08, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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