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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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10 Manuel Bernal, husband, individually)
and on behalf of Kevin Bernal, their)
11 minor son, et al.,)

No. CV09-1502 PHX-DGC

12 Plaintiffs,)

ORDER

13 vs.)

14 Daewoo Motor America, Inc., a)
Delaware corporation, et al.,)

15 Defendants.)
16 _____)

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18 Daewoo Motor America, Inc. (“Daewoo America”) asks the Court to reconsider its
19 recent order denying in part Plaintiffs’ motion to strike their affirmative defenses. Dkt. #35.

20 Daewoo America argues that Court prematurely decided which law governs this case.

21 Motions for reconsideration are disfavored and should be granted only in rare
22 circumstances. *See Stetter v. Blackpool*, No. CV 09-1071-PHX-DGC, 2009 WL 3348522,
23 at *1 (D. Ariz. Oct. 15, 2009). Courts in this district have identified four circumstances
24 where a motion for reconsideration will be granted: (1) the moving party has discovered
25 material differences in fact or law from those presented to the Court at the time of its initial
26 decision, and the party could not previously have known of the factual or legal differences
27 through the exercise of reasonable diligence, (2) material factual events have occurred since
28 the Court’s initial decision, (3) there has been a material change in the law since the Court’s

1 initial decision, or (4) the moving party makes a convincing showing that the Court failed to
2 consider material facts that were presented to the Court at the time of its initial decision. *See*,
3 *e.g.*, *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz.
4 2003).

5 In their motion to strike, Plaintiffs argued that Daewoo America’s affirmative
6 defenses should be stricken under Arizona law. *See* Dkt. #19 at 4-7. In response, Daewoo
7 America analyzed Arizona’s choice of law rules and argued that Arizona law should not
8 apply. Dkt. #20 at 3. Plaintiffs responded to this argument in their reply. Dkt. #22 at 3-5.
9 The choice of law issue was thus clearly presented to the Court for decision.

10 Daewoo America never argued, as it does now, that consideration of the choice of law
11 issue and the motion to strike should be postponed until further discovery is conducted or
12 additional parties are brought into the case. The Court need not consider these arguments
13 made for the first time in a motion for reconsideration. *Martinez-Vazquez v. INS*, 346 F.3d
14 903, 905 n.5 (9th Cir. 2003).

15 Daewoo America also argues that the Court should not have considered matters
16 outside the pleading when deciding the motion to strike. Dkt. #35 at 2. In its response,
17 however, Daewoo America asked the Court to consider the “most critical information as to
18 where the accident occurred” – information, it claimed, that was “purposely omitted” from
19 the complaint. Dkt. #20 at 3. Moreover, even if the Court considered only the specific
20 allegations in the complaint – that Plaintiffs are residents of Maricopa County, Arizona and
21 that Daewoo America does business in Arizona – the Court still would have determined that
22 Arizona law applies. “Arizona courts traditionally have accorded great weight in the
23 conflicts analysis to the domicile of the tort victim in a personal injury case.” *Garcia v. Gen.*
24 *Motors Corp.*, 990 P.2d 1069, 1075-76 (Ariz. App. 1999); *see Baroldy v. Ortho Pharm.*
25 *Corp.*, 760 P.2d 574, 580 (Ariz. App. 1988) (holding that, because “plaintiffs are Arizona
26 domiciliaries,” Arizona law should apply even when the injury did not occur in Arizona, the
27 conduct causing the injury did not occur in Arizona, and the relationship between the parties
28 was centered in North Carolina).

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IT IS ORDERED that Daewoo America's motion for reconsideration (Dkt. #35) is **denied.**

DATED this 3rd day of December, 2009.



David G. Campbell
United States District Judge