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**JURISDICTIONAL STATEMENT**

Respondent adopts the Jurisdictional Statement of Relator.

## **STATEMENT OF FACTS**

On April 25, 2005 Plaintiffs filed suit against Hubbell Power Systems, Inc. (hereinafter “Hubbell”) for the wrongful death of David Saddoris, Jr. (hereinafter “decedent”). Relator’s Appendix, pp. A2-A9. Decedent’s surviving spouse, Terri Saddoris, is a resident of the state of Georgia, while decedent’s parents, David W. Saddoris, Sr. and Flow Eva Saddoris (hereinafter “the parents”) are residents of Missouri. Hubbell is a business incorporated in Missouri, with its principle place of business in Mexico, Missouri. Relator’s Appendix, p. A12. Plaintiffs filed the wrongful death action in Missouri pursuant to Missouri’s wrongful death statute, § 537.080 R.S.Mo. Relator’s Appendix, p. A19.

On April 15, 2005 Defendant Hubbell Power Systems, Inc. filed a Motion to Dismiss the parents from this action claiming that Georgia law, rather than Missouri law, should apply and that Georgia bears the “most significant relationship” to the case because the fatal occurrence took place in Georgia. Relator’s Appendix, p. A12-A16. While parents have a right to recovery under Georgia law for the death of a child, where as here, the decedent is survived by a wife or child, the surviving spouse is the only party permitted by Georgia law to pursue a claim. Ga. Code Ann. § 51-4-2(a). However, it should be noted that Ga. Code Ann. § 19-7-1(c) permits the parents of a deceased child to recover for the wrongful death of a child “if the deceased child does not leave a spouse or a child.” Therefore, the state of Georgia has recognized the right of parents to bring a cause of action for the wrongful death of a child in certain circumstances

On July 28, 2005, respondent Judge Gene Hamilton denied Hubbell's Motion to Dismiss. Relator's Appendix, p. A1. Relator then filed a Petition for Writ of Prohibition or, in the alternative, a Writ of Mandamus in the Missouri Court of Appeals, which the court denied on September 16, 2005. Relator's Appendix, p. A22. Hubbell then sought a Writ of Prohibition or, in the alternative, a Writ of Mandamus in the Missouri Supreme Court. This Court granted a Preliminary Writ of Prohibition on November 1, 2005. Relator's Appendix, p. A47. Respondent filed an Answer to the Writ of Prohibition on November 29, 2005. Relator's Appendix, p. A47-A52.

**POINTS RELIED ON**

**I. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING RELATOR'S MOTION TO DISMISS, BECAUSE SUCH A REMEDY IS ONLY AVAILABLE IN EXTRAORDINARY CIRCUMSTANCES AND THE ISSUE PRESENTED TO THE COURT IS NOT ONE FOR WHICH PROHIBITION IS APPROPRIATE.**

*State ex rel. Douglas Toyota, III, Inc. v. Ketter*, 804 S.W.2d 750 (Mo. 1991)

*State ex rel. Lankmark KCI Bank v. Stuckey*, 661 S.W. 2d 58 (Mo. App. W.D. 1983)

*State ex rel. Springfield Underground, Inc. v. Sweeney*, 102 S.W. 3d 7 (Mo. banc 2003).

*State ex rel. Chaney v. Franklin*, 941 S.W.2d 790 (Mo. App. S.D. 1997)

**II. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING RELATOR'S MOTION TO DISMISS, BECAUSE MISSOURI BEARS THE MOST SIGNIFICANT RELATIONSHIP TO THE ISSUE OF WHETHER THE PARENTS ARE PROPER PARTIES TO THE CASE.**

*Goede v. Aeroject General Corp.*, 143 S.W.3d 14 (Mo. App. 2004)

*Harter v. Ozark-Kenworth, Inc*, 904 S.W.2d 317 (Mo. App. W.D. 1995)

*Glasscock v. Miller*, 720 S.W.2d 771 (Mo .App. 1986)

*Nelson v. Hall*, 684 S.W.2d 350 (Mo. App. W.D. 1984)

## ARGUMENT

**I. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING RELATOR’S MOTION TO DISMISS, BECAUSE SUCH A REMEDY IS ONLY AVAILABLE IN EXTRAORDINARY CIRCUMSTANCES AND THE ISSUE PRESENTED TO THE COURT IS NOT ONE FOR WHICH PROHIBITION IS APPROPRIATE.**

**A. Standard of Review**

Relator/Defendant here attempts to have the trial court’s denial of a motion to dismiss reviewed through the extraordinary writ of prohibition. (Hereinafter, the parties will be referenced by their respective designations in the trial court). The issue before the trial court below and presented here on Defendant’s petition for writ of prohibition is inappropriate for review.

This Court has expressed reluctance in issuing writs of prohibition and will only do so in the most extreme circumstances. In *State ex rel. Douglas Toyota, III, Inc. v. Ketter*, 804 S.W.2d 750, 752 (Mo. 1991), this Court held that “[t]he writ of prohibition, an extraordinary remedy, is to be used with great caution and forbearance and only in cases of extreme necessity.” (citing *Derfelt v. Yocom*, 692 S.W.2d 300, 301 (Mo. banc 1985)). This case does not present the “extreme necessity” compelling issuance of a writ of prohibition.

The reluctance of Missouri courts to issue writs of prohibition except in the most extreme circumstances is seen in the appellate courts as well. In *State ex rel. Lankmark*

*KCI Bank v. Stuckey*, 661 S.W. 2d 58 (Mo. App. W.D. 1983), the court was presented with a petition seeking to set aside the trial court’s denial of the Defendant’s motion to set aside a default judgment. In its decision, the court articulated its reluctance to entertain such petitions. Citing *State ex rel. Morasch v. Kimberlin*, 654 S.W. 2d 889, 891 (Mo. banc 1983), the court noted, “We are persuaded that we should not continue the unfettered use of the writ of prohibition to allow interlocutory review of trial court error.” 661 S.W. 2d at 60.

Where, as here, the “[C]ourt has jurisdiction to render judgments, in ordinary civil causes, it would be manifestly improper to issue a writ of prohibition against it on an application alleging that it was about to pronounce such a judgment on a petition which did not state a cause of action, but which the trial court had held sufficient . . . “ *Id.* at 60 (Citing *Morasch* at 891). This is precisely what Defendant attempts in the instant cause. The trial court, which has properly exercised jurisdiction, has denied Defendant’s motion to dismiss. Irrespective of whether the trial court’s decision is correct or incorrect, the interlocutory appeal of Defendant is disfavored and should be denied.

Generally, a writ of prohibition is appropriate only in the following limited circumstances: (1) to prevent the usurpation of judicial power when the trial court lacks jurisdiction; (2) to remedy an excess of jurisdiction or an abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not made available in response to the trial court’s order. *State ex rel. MacDonald v. Franklin*, 149 S.W. 3d 595 (Mo. App. S.D. 2004). None of these three standards are met. Such petitions are to be, “[U]sed with great caution, forbearance, and

only in cases of *extreme* necessity.” *Id.* at 597 (Emphasis added). Where is the extreme necessity? There is no compelling reason this issue cannot be dealt with through the regular appeal process should that become necessary. Irrespective of the trial court’s ruling, a case would continue. Undisputedly, Terri Saddoris would continue to maintain a cause of action. Defendant seeks only to dismiss the claims of the decedent’s parents. The issuance of a writ will not prevent unnecessary, inconvenient or expensive litigation. “Prohibition is generally unavailable if an appeal would provide adequate relief . . .” *State ex rel. Springfield Underground, Inc. v. Sweeney*, 102 S.W. 3d 7 (Mo. banc 2003).

**B. Issuance of a Writ of Prohibition in the Present Case Would Be Directly At Odds with Long-Standing Precedent Followed By Missouri Courts Which Holds That This Extraordinary Writ Shall Not Issue Absent Extreme Circumstances.**

Defendant cites case law standing for the principle that a writ of prohibition is proper when it will prevent “unnecessary, inconvenient and expensive litigation.” *State ex rel. Springfield Underground Inc. v. Sweeney*, 102 S.W.3d 7, 8-9. Despite Defendant’s reliance on *Springfield Underground*, Defendant fails to offer any explanation as to how issuance of a Writ of Prohibition will prevent such litigation. Where is the lack of necessity? Where is the inconvenience or expense? All parties to the case except one of the plaintiffs, Terri Saddoris, reside in Missouri. Missouri clearly has the most significant relationship to the litigation. There is no evidence or record that allowing the decedent’s parents to remain as parties to the litigation through the

application of Missouri law will result in “unnecessary, inconvenient and expensive litigation.”

Further, this court should defer to the trial court’s decision. In *State ex rel. Chaney v. Franklin*, 941 S.W.2d 790, 792 (Mo. App. S.D. 1997), the court stated that “[i]n an action for prohibition, there is a presumption that the trial court acted correctly.” (citing *In re Bd. of Registration for the Healing Arts v. Spinden*, 798 S.W.2d 472, 475 (Mo.App. W.D. 1990). Because the Defendant has failed to show the extreme necessity required for issuance of such a writ and because the decision of the trial court is presumed correct, the Missouri Supreme Court’s preliminary issuance of a Writ of Prohibition should not be made absolute.

**II. RELATOR IS NOT ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS ORDER DENYING RELATOR’S MOTION TO DISMISS, BECAUSE MISSOURI BEARS THE MOST SIGNIFICANT RELATIONSHIP TO THE ISSUE OF WHETHER THE PARENTS ARE PROPER PARTIES TO THE CASE.**

Defendant argues that Georgia law ought to be applied to the present action; first, because the injury occurred in Georgia and second, because Georgia has the most significant relationship to the litigation. Defendant’s misguided analysis of Missouri choice of law principles fails upon application of the facts presented in this case to Missouri’s “most significant contacts” test.

The appropriate test for determining which state’s substantive law should apply is the “most significant contacts” test. Pursuant to this test, the contacts with the state

should be evaluated according to their relative importance with the **issue**. *Harter v. Ozark-Kenworth, Inc*, 904 S.W.2d 317, 320 (Mo. App. W.D. 1995) (Emphasis added). The relevant contacts which the court will consider include the place where the injury occurred, the place where the conduct causing injury occurred, domicile, residence, nationality, place of incorporation and place of business of parties, and place where the relationship, if any, between the parties is centered. *Id.* Additionally, Missouri courts do not base their decision on how *many* factors favor a particular state, but rather how *important* the contacts are to a particular issue. *Goede v. Aerojet General Corp.*, 143 S.W.3d 14, 27 (Mo. App. 2004).

Defendant argues that the laws of the state where the injury occurred governs the action. This analysis is incomplete, insufficient and ignores the proper application of Missouri's choice of law principles. If the parties disagree as to which state's law applies, then to determine which state's law applies, the court follows the approach set out in Section 145 of the Restatement, Second, Conflict of Laws. *Goede v. Aerojet General Corp.*, 143 S.W.3d 14, 24-25 (Mo. App. E.D. 2004) (citing *Kennedy v. Dixon*, 439 S.W.2d 173, 184 (Mo. *banc* 1969)). According to the Restatement, a multitude of contacts are taken into consideration in determining which state has the most significant relationship with an issue. *Id.*

Other factors, beyond the place where the injury occurred, which courts should and do take into consideration in determining choice of law include the residence and place of incorporation of the parties. In this instance, Missouri bears the most significant relationship to the action. A division of Defendant Hubbell, A.B. Chance Company,

manufactured the hoist. At the time the hoist was manufactured, A.B. Chance Company had its principal place of business in Centralia, Missouri. Decedent's parents are also residents of Missouri.

Defendant argues that the relationship of the parties is centered in Georgia. However, Defendant is only partially correct. The relationship between the parents and the decedent was centered in Missouri. Further, as Defendant is located in the state of Missouri, Defendant will in no way be prejudiced in applying the law of the state of its residence and citizenship. Even more compelling is the fact that Plaintiff Terri Saddoris is entering no objection to including the decedent's parents as plaintiffs.

In its claim that Georgia has the most significant contacts with the occurrence, Defendant simply points out that the injury occurred in Georgia and one of the Plaintiffs was domiciled in Georgia, and thereby concludes that Georgia law applies. This is hardly an exhaustive analysis of the proper test. But the issue is not as claimed by Defendant. The laws of different states can apply to different issues. *Glasscock v. Miller*, 720 S.W.2d 771, 774-75 (Mo .App. 1986). While Georgia law may well govern the basic question of whether the state of Georgia would recognize a tort or basic cause of action based on the facts giving rise to the occurrence, other issues in the case, including the proper parties, damages, and the like, may be controlled by the law of other states, particularly Missouri. *Id.*

Defendant's claim that Plaintiff "conceded" that Georgia law should apply is an unreasonable and gross contortion of Plaintiff's argument. The "concession" made by the Plaintiffs is that the law of different states can apply to different issues. This is hardly

a novel idea and is found in the case law cited by Defendant. In the case of *Thompson by Thompson v. Crawford*, 833 S.W.2d 868, 870 (Mo. banc 1992), cited by Defendant, the court stated that “[u]nder *Kennedy v. Dixon* and the Restatement (Second) of Conflict of Laws, the conflict analysis is made issue by issue in terms of which state has the most significant relationship to the occurrence and the parties with respect to the particular issue.” Therefore, in *Thompson*, the court held that, although Tennessee law governed the basic determination of liability, there remained a question as to which state’s statute of limitations applied. *Id.* The practice of applying different state’s laws to different issues in a case is well-rooted in Missouri precedent. Plaintiffs’ acknowledgement and recognition of this rule hardly amounts to a concession that Georgia law ought to apply to the entire action.

Defendant cites *Nelson v. Hall*, 684 S.W.2d 350 (Mo. App. W.D. 1984), in support of its proposition that if the injury and death occur in the same state, the law of that state should be applied. However, the court in *Nelson* stated that the plaintiff’s petition invoked “choice of law principles, not to ameliorate a rule or policy of Colorado [the state of occurrence, injury and death] on a particular issue of the cause of action – such as an expired statute of limitations, a restricted recovery of damages, a local defense, a *right to maintain the cause of action*, or a guest statute or other immunity to suit – but to enable a wrongful death action on the Colorado occurrence in the Missouri court ...” *Id.* at 354, (Emphasis added). The court distinguishes between the basic right to bring a wrongful death action (generally governed by the law of the state where the cause of action arose) and the issues that arise once the wrongful death action is filed. A cause of

action for wrongful death can be brought in the state of Georgia. However, according to the language of the court, the right to maintain the cause of action (e.g. the proper parties), which is the issue in Defendant's Motion to Dismiss, is a separate issue from whether or not a wrongful death cause of action exists. Put differently, Missouri will honor, under Georgia law, the elements of the cause of action for wrongful death. However, Missouri law should control the procedure and the conduct of the action with respect to the issue now before the court.

In *Nelson*, the court makes a distinction between two issues: whether a tort has been committed and who may bring an action for that tort. Even if this court finds that the former question is answered by Georgia's substantive law, the latter question is answered by the Missouri's law. In the words of the court:

The precept of § 145 is that as a general principle the law of the *locus delicti* governs...to define the minimum standard of acceptable conduct of persons within the territory—and hence whether the act which produced the harm was tortious—finds acceptance in court decisions, treatises, and commentaries.

*Nelson* at 353. Therefore, applying *Nelson* to the present case, Georgia law could possibly govern whether a tort occurred. However, Missouri's law would govern whether the parents are in a position to bring a cause of action for wrongful death as they are residents of Missouri.

## CONCLUSION

The Defendant's Petition for Writ of Prohibition is based upon a misapplication of Missouri's choice of law principles. As demonstrated above, Missouri substantive law is the appropriate body of law to apply to the issue before the trial court, i.e. whether the parents of David Sadoris, Jr. are proper parties to the cause of action.

Even if this court finds that it is improper to apply Missouri's substantive law to this action, Missouri's procedural law still applies. Missouri procedure is the appropriate authority governing whether a party is entitled to bring an action. Furthermore, it is Missouri's practice to allow wrongful death claims from parents in conjunction with spousal claims. Therefore, even if Georgia's substantive law applies, the parents of the decedent should not be dismissed from this suit.

Therefore, Defendant's request for a writ of prohibition or, in the alternative, a writ of mandamus should be denied and this cause of action should be allowed to proceed to the merits of the case so that all parties may be heard in one proceeding.

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## **CERTIFICATE OF COMPLIANCE AND SERVICE**

COMES NOW, the undersigned counsel of Respondent on this 23rd day of January, 2006 and hereby certifies pursuant to **Supreme Court Rule 84.06(c)** the following:

1. This brief includes the information required by **Supreme Court Rule 55.03**.
2. This brief complies with the limitations contained in **Supreme Court Rule 84.06(b)**.
3. This brief contains 3,367 words according to statistics compiled by Microsoft Word version 2003.
4. Pursuant to **Supreme Court Rule 84.06(g)**, a Microsoft Word file containing this brief is being submitted on a floppy disk, which has been scanned for viruses and is virus-free.
5. Two (2) true and accurate copies of the foregoing brief were served via U.S. Mail on this 23rd day of January, 2006, upon: **MR. EDWARD R. SPALTY, ARMSTRONG TEASDALE, L.L.P.**, 2345 Grand Blvd., Suite 2000, Kansas City, Missouri 64108-2617, Attorney for Relator Hubbell Power Systems, Inc.; and the **HONORABLE GENE HAMILTON, CIRCUIT COURT OF BOONE COUNTY**, Division I, 705 E. Walnut St., Columbia, Missouri 65201, Judge of the Boone County Circuit Court.