UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| In re BRIDGESTONE/FIRESTONE, INC. ATX, ATX II, AND WILDERNESS TIRES PRODUCTS LIABILITY LITIGATION | ) ) ) | Master File No. IP00-C-9373-B/S MDL No. 1373 (centralized before Hon. Sarah Evans Barker) |
| THIS DOCUMENT RELATES TO ALL ACTIONS | ) ) | |

**DEFENDANT BRIDGESTONE CORPORATION'S BRIEF IN OPPOSITION TO EMERGENCY MOTION TO COMPEL THE DEPOSITION OF HIROYUKI KITA, OR, IN THE ALTERNATIVE, TO STRIKE THE AFFIDAVIT OF HIROYUKI KITA**

## I. Introduction

Plaintiffs' Emergency Motion to Compel the Deposition of Hiroyuki Kita, or, in the Alternative, to Strike the Affidavit of Hiroyuki Kita is without merit and should be denied. Plaintiffs' motion neither is an "emergency" nor are plaintiffs entitled to any of the relief they seek. Plaintiffs' claim of urgency is completely belied by their own conduct. Even though they had the Kita Affidavit since it was filed on January 29, 2001, plaintiffs did not seek a deposition of Mr. Kita until 2½ months later and only after this Court's ruling limiting the jurisdictional discovery to which they are entitled.

On April 6, 2001, Magistrate Judge Shields issued an order granting in part and denying in part Bridgestone's motion for protective order and limiting jurisdictional discovery by plaintiffs. The Court held that the responses to certain interrogatories and requests for production of documents "will not be overly burdensome on Bridgestone and will provide the

plaintiffs with adequate information to support their jurisdictional arguments." April 6 Order at 9. Even after the Order was issued, plaintiffs still waited another 10 days before making their very first request for Mr. Kita's deposition.

Plaintiffs strategically seek to disrupt the balance struck in the April 6 Order and to ride rough-shod over the rights of both Bridgestone, a Japanese corporation, and Mr. Kita, a Japanese citizen, by demanding that Mr. Kita travel to Indianapolis for an eleventh-hour deposition that is neither necessary nor appropriate. Alternatively, plaintiffs once again seek to strike (again without any legitimate basis) the Kita Affidavit, which is the only competent evidence before this Court on the issue of Bridgestone's (lack of) contacts with Indiana and the United States. Trying to run from this Affidavit and escape the consequences of their inability to state a case for personal jurisdiction, plaintiffs make these extraordinary requests even though they have never deposed a single Firestone witness on the issue of personal jurisdiction over Bridgestone, nor have they reviewed any of the information Bridgestone will provide in response to the April 6 Order.[1]

For the reasons discussed more fully below, plaintiffs' motion is without merit and should be denied.

## II. There Is No Emergency

Plaintiffs cry "emergency" in an attempt to support their belated, extraordinary request that Mr. Kita, a Japanese citizen, be ordered by this Court to travel on short notice from his home in Tokyo to Indianapolis to be deposed. There is absolutely no "emergency," however.

Plaintiffs were served with a copy of Mr. Kita's affidavit on January 29, 2001, when it was filed. Apparently not then "needing" to depose Mr. Kita, plaintiffs did not request his

[1] Indeed, given that Mr. Kita has the responsibility of collecting information and documents to respond to plaintiffs' written discovery, an intervening deposition of Mr. Kita may delay Bridgestone's responses.

deposition. Nor did they notice his deposition when they served upon Bridgestone a sequence of discovery requests – on February 16, on February 27 and on March 7 – which included a Rule 30(b)(6) deposition notice (to which Bridgestone objected). Instead, plaintiffs waited until April 16 – ten days after the April 6 Order – to make their first request for Mr. Kita's deposition. Some emergency.[2]

Given that no emergency exists that could ever justify the extraordinary relief requested, plaintiffs should not be allowed to ignore Bridgestone's and Mr. Kita's rights under the Japan-U.S. Consular Convention and applicable law.[3]

## III. Plaintiffs Do Not Have An Automatic, Unqualified Right To Depose Mr. Kita Nor Do They Need To Do So

Plaintiffs' motion is premised upon plaintiffs' misguided belief that they are "entitled" to take Mr. Kita's deposition at any time and at any place simply because Mr. Kita executed an affidavit in support of Bridgestone's motion to dismiss. In this respect, plaintiffs are just plain wrong. See *Chris-Craft Indus. Prod., Inc. v. Koraray Co.*, 184 F.R.D. 605 (N.D. Ill. 1999); *Snow Becker Krauss P.C. v. Proyectos E Instalaciones de DeSalacion*, S.A., 1992 U.S. Dist. LEXIS 19026 (December 11, 1992 S.D.N.Y.); *Gulf Union Ins. Co. Saudi Arabia v. M/V Lacerta*, 1992 U.S. Dist. LEXIS 2759 (March 9, 1992, S.D.N.Y.). Indeed, plaintiffs have previously conceded that "it is … well established that a plaintiff does not enjoy an automatic right to discovery pertaining to personal jurisdiction." Class Plaintiffs' (1) Response to Bridgestone

[2] Until mere days ago, plaintiffs apparently intended to proceed without Mr. Kita's deposition. Their strategic change of course does not constitute an emergency. And their strategy is transparent. Plaintiffs knew that Bridgestone would oppose their outrageous request to compel Mr. Kita's presence in the United States. So they waited until the last minute, with discovery issues already resolved by the Court, to ask for the deposition. And why? So they could again seek to strike the Kita Affidavit – an affidavit they know they have no evidence to counter.

[3] See, e.g., Japan Consular Convention and Protocol, entered into force August 1, 1964, 15 U.S.T. 768, T.I.A.S. No. 5 602 ("Consular Convention").

Corporation's Motion for Protective Order; and (2) Supplemental Response to Bridgestone's Motion to Dismiss for Lack of Personal Jurisdiction at 2 (quoting *Anderson v. Sportmart, Inc.*, 179 F.R.D. 236, 241 (N.D. Ind. 1998)).

Trying to support their current position, plaintiffs mischaracterize a thirty-year-old case from the Fourth Circuit to suggest that the deposition of a foreign national is proper where he provides an affidavit which "is the sole basis for a jurisdictional challenge." Id. at 2 (citing *Lakkas [sic] v. Liberian M/V Caledonia*, 443 F.2d 10 (4th Cir. 1971). In fact, *Lekkas* involved neither a motion to dismiss supported only by affidavit, nor an order for deposition. The court there, as here, merely held that answers to certain interrogatories were required before a ruling on jurisdiction could be rendered. 443 F.2d at 11 & n.1. This is entirely different than the Court's ordering a foreign national employee of a foreign corporation to travel halfway around the world to be deposed.

Nor is the belatedly proposed deposition necessary in any event. Plaintiffs tie their recently alleged need for a deposition of Mr. Kita on the issue of how Japanese-manufactured tires get to the United States. See Motion at 3 and attached declaration.[4] First, as the Court noted, the responses to the ordered discovery will be sufficient to provide plaintiffs adequate information on this issue. See April 6 Order at 9.

Second, while plaintiffs are closely monitoring the state court actions,[5] see Motion at 5,

[4] The Gardner Declaration does not establish the existence of any "emergency" either, as it again addresses the issue of Japanese-manufactured tires in the U.S. – an issue already addressed by plaintiffs' written discovery and in the Court's April 6 order. Nor does the Declaration call into question the veracity of the Kita Affidavit.

[5] Plaintiffs chide Bridgestone for its wholly consistent actions in filing similar motions in state cases. See Motion at 5. The motions are all tailored to the complaints filed and present the only competent evidence regarding Bridgestone's contacts (and the fact that there are none sufficient to support jurisdiction). To the extent Bridgestone's motions are similar, it is because the state court complaints are. And that is not surprising given that a "litigation packet" has been circulated that includes, among other things, complaints "that with a few changes to reflect local law, can be recycled anywhere in the country." See January 29, 2001 *Business Week* article, "The Litigation Machine."

they disregard the supplemental Kita Affidavit filed in one of these actions. That affidavit answers in full the questions of why and how Japanese-manufactured tires are found in the United States. Specifically, in Juan Macias Lopez et al. v. Bridgestone Corporation, et al., Cause No. C-01-039, United States District Court, Southern District of Texas, Corpus Christi Division, Mr. Kita provided an unrebutted supplemental affidavit, which provided, among other things:

> Bridgestone brand tires that are sold in the United States are imported and sold by other entities. All Bridgestone brand tires that come as original equipment on vehicles are purchased by the vehicle manufacturer in Japan through transactions that are governed by Japanese law. The vehicle manufacturer imports and is responsible for the sale of such tires. Bridgestone Corporation exercises no control over where and to whom such tires are sold. The vehicle manufacturer is responsible for any advertising and all warranting of the Bridgestone brand tires sold in this manner. Bridgestone brand tires are also sold individually in the United States by Bridgestone/Firestone, Inc. and other entities/distributors neither affiliated with nor controlled by Bridgestone Corporation. These tires are also sold in Japan through transactions that are governed by Japanese law. Bridgestone Corporation exercises no control over where and to whom such tires are sold. Bridgestone/Firestone, Inc. is responsible for any advertising and all warranting of the Bridgestone brand tires sold in this manner.

(Ex. A at ¶ 5). Plaintiffs' excuse for the Kita deposition no longer exists. Clearly, no deposition is required, and given plaintiffs' failure to request Mr. Kita's deposition prior to April 16, none is appropriate.

## IV. Plaintiffs' "Judicial Economy" Arguments Are Without Merit

Even if plaintiffs were somehow entitled to depose Mr. Kita (and they are not), such a deposition should, as a matter of international law and comity, take place in Japan subject to the provisions of the Japan-U.S. Consular Convention. Japan Consular Convention and Protocol, August 1, 1964, 15 U.S.T. 769, T.I.A.S. No. 5602 ("Consular Convention").

In support of their efforts to compel Mr. Kita's deposition in the United States, plaintiffs rely upon three things: (a) a single case from the District of Maryland, which they mischaracterize in an effort to support their efforts to short-cut international practice; (b) an anecdotal account of one lawyer's experiences taking depositions in Japan, which is not precedent and, in any event, only serves to confirm that depositions of Japanese nationals are routinely taken in Japan and not by ordering foreign nationals to present themselves in the U.S.; and (c) self-serving statements concerning judicial economy and inconvenience.

Plaintiffs' reliance on *In re Honda American Motor Co. MDL*, 168 F.R.D. 535 (D. Md. 1996), is misplaced. They quote *Honda* in an effort to suggest that Mr. Kita not only must be produced for deposition, but he must be produced in the United States. Yet *Honda* merely discusses the propriety of conducting Rule 30(b)(6) depositions of directors, officers or managing agents of a Japanese corporation that already is subject to the personal jurisdiction of the Court. See 168 F.R.D. at 537. That is not the situation here. Here, the issue is whether a foreign defendant corporation's foreign national employee should be ordered by a U.S. court to appear for deposition in the United States when there has been no finding of personal jurisdiction over the corporation and the corporation contests that jurisdiction exists. Given international comity concerns, no such order should issue.

Next, plaintiffs' reliance upon a colorful New York Bar Journal article detailing one lawyer's supposed experiences taking depositions in Japan does nothing to advance their argument that Mr. Kita should be deposed here. To the extent it stands for anything, the article stands for the proposition that depositions are routinely taken in Japan in U.S. cases and Japan is the proper location for any such deposition in this case.

While mistakenly equating "judicial economy" with "lawyer convenience," plaintiffs, not surprisingly, ignore the hardship an Indiana deposition would impose upon Mr. Kita (and exaggerate the hardships a Tokyo deposition would impose upon plaintiffs' counsel). While relative convenience should not be the test where the interests of foreign nationals contesting jurisdiction are concerned, see, e.g., *Central States, Southeast and Southwest Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 946 (7th Cir. 2000), plaintiffs conveniently ignore the fact that requiring Mr. Kita to be deposed in Indiana would impose hardships on him, including requiring him to travel halfway around the world to a foreign country and to be away from his job and family. Plaintiffs exaggerate the relative expense of taking Mr. Kita's deposition in Tokyo, particularly in comparison with the costs incurred by defendants in responding to plaintiffs' discovery and, more pointedly, the costs incurred by Bridgestone as a result of being improperly brought into this and other lawsuits. Plaintiffs' economic arguments also ring hollow, given the combined resources of plaintiffs' counsel and the likelihood that no particular plaintiff will bear a disproportionate share of the cost of Mr. Kita's deposition. And, finally, plaintiffs' unsupported hearsay assertion that following the procedures of international law would unduly delay Mr. Kita's deposition is meritless given the fact that had plaintiffs really wanted to depose Mr. Kita, they could have started the process as early as January 29, but they chose not to. For each of these reasons, the Court should reject plaintiffs' self-serving arguments about "convenience."

In sum, the requested deposition is neither urgent nor necessary. Plaintiffs should be limited to the discovery already ordered by the Court and should not be allowed to hale Mr. Kita into a United States forum for deposition while Bridgestone at the same time is challenging the

constitutionality of haling it into a United States forum to litigate. Finally, there still is no basis whatsoever upon which the Kita Affidavit should be stricken.

## CONCLUSION

For the reasons stated herein and in Bridgestone's prior briefing, the Court should deny plaintiffs' extraordinary "emergency" motion in its entirety.

Respectfully submitted,

Thomas S. Kilbane
Robin G. Weaver
Joseph C. Weinstein
SQUIRE, SANDERS & DEMPSEY L.L.P.
4900 Key Tower
127 Public Square
Cleveland, OH 44114-1304
(216) 479-8500

Thomas G. Stayton
Ellen E. Boshkoff
BAKER & DANIELS
300 N. Meridian Street
Suite 2700
Indianapolis, IN 46204
(317) 237-0300

By: _____

Attorneys for Defendant
Bridgestone Corporation

**CERTIFICATE OF SERVICE**

A copy of the foregoing was sent by facsimile and first-class U.S. mail, postage prepaid, to each of the attorneys appearing on the Court's Attorney Service List on this _____ day of May, 2001.

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One of the Attorneys for Defendant