# 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

THIS DOCUMENT RELATES TO THE MASTER COMPLAINT

Master File No. IP 00-9373-C-B/S MDL No. 1373 (centralized before the Honorable Sarah Evans Barker)

# PLAINTIFFS REPLY IN SUPPORT OF EMERGENCY MOTION TO COMPEL THE DEPOSITION OF HIROYUKI KITA, OR IN THE ALTERNATIVE, TO STRIKE THE AFFIDAVIT OF HIROYUKI KITA

# I. <u>Introduction</u>

AsAs the Court is aware, Defendant BridgeAs the Court is aware, Defendant BridgestoAs the Court is a extricateextricate itself extricate itself fextricate itself from theseproceedings by filing a motion to dismiss asserting jurisdiction. In suppjurisdiction. In support of that motion, Bridgestone relies entirely upon the aff. Kita.Kita. Bridgestone refuses to produce Mr. Kita for a deposition,Kita. Bridgestone refuses to produce Mr. I filedfiled an Emergency Motion to Compfiled an Emergency Motion to Compfiled an Emergency Motion to Compel thefiled an Emergency Motion StrStrikeStrike Strike the Affidavit of Hiroyuki Kita (Plaintiffs Motion ). Bridgestone filed Defendar BridgestoneBridgestone Corporation sBridgestone Corporation s Brief in Opposition to Emergency MotionBridge Hiroyuki Kita, or, in the AlternHiroyuki Kita, or, in the Alternative, toHiroyuki Kita, or, in the AlternHiroyuki Kita, or, in the reasons exResponse ). For the reasons expressed ir Reply, Plaintiffs Motion should be granted.

#### II. Discussion

#### a. Bridgestone s claims with respect to timeliness are unfounded.

BridgestoneBridgestone devotes much Bridgestone devotes much of iBridgestone devotes much of its F longlong to depose Mr. Kita. Defendant s Response, at 1-3, 4, long to depose Mr. Kita. Defendant s Response respectrespect to timeliness ignores therespect to timeliness ignores the record in this matter. respect to timeliness ignored of of jurisdiction overof jurisdiction over Bridgestone with all due speed and diligence. of jurisdiction over Bridges FebruFebruaryFebruary 16February 16, 2001, two weeks after Bridgestone s Motion to Dismiss was filed. depositiondeposition pursuant deposition pursuant todeposition pursuant to F.R.Civ.P. 30(b)(6) were serv thereaftethereafter, thereafter, in orthereafter, in order to allow Plaintiffs counsel time to review writte examination.examination. (Ex. 1, Notice of Depositionexamination. (Ex. 1, Notice of Deposition and Subpoena Du dated and served March 7, 2001.)

PlaintiffPlaintiffsPlaintiffs requested depositions of persons most knowledgeable on the narrow issu involved in the jurisdictional analysis. (See involved in the jurisdictional analysis. (See Ex. 1.) It was in affiant affiant - would be among those designated. Rather than identify individuals such as Mr. Kitaaffiant - woul factual factual information to support its jurisdictional arguments, Bridgestone refused to produce any pepersonspersons with such knowledge and instead served only objections. (Ex. 2, Defendant Brpersons with s Corporation s Objections to Plaintiffs Discovery Requests, dated March 16, Corporation s Objections are provided to ibridgestone s refusal to ibridgestone s refusal to identify and briefingbriefing schedule, Plaintiffs have little choice but to pbriefing schedule, Plaintiffs have little choice but opbriefing schedule, Plaintiffs have little choice but to pbriefing schedule, Plaintiffs have little choice but only individual who has been identified in Bridgestone s papers.

Bridgestone sBridgestone s claimBridgestone s claim that it is somehow surprised by the need forBridges personalpersonal jurisdiction compersonal jurisdiction completely personal jurisdiction completely ignores the ThereThere hasThere has been no changeThere has been no change of strategy. The change in strategy, Bridgestone sBridgestone s continued stonewalling and to ackBridgestone s continued stonewalling and to ack timingtiming of completing the briefing on the jurisdictional issue.<sup>1</sup> As a result of Bridgestone s intransigence intransigence on discovery generally and the resulting time pressure, Plaintiffsintran the depositions they seek at thethe depositions they seek at the present time.<sup>2</sup> Bridgestone cannot have it both w identifyidentify identify and identify and produce persons with knowledge or information on matters relating to matters, matters, and then to complain when Plaintiffs seek to depose thematters, and then to complain identified in connectionidentified in connection with that issue. Bridgestone, not the Plaintiffs, hasiden this (or any) deposition by refusing to identify and produce relevant witnesses.

### b. The cases cited by Bridgestone do not support its position.

BridgestoneBridgestone contends that Plaintiffs suffer from the misguided belief that they are entitled toto take Mr. Kita s deposition at any timeto take Mr. Kita s deposition at any time and at any to take Mr. Ki affidavitaffidavit in support of Bridgestone saffidavit in support of Bridgestone s motion to dismiss and that [i]n plainplain wrong. Defendant s Response atplain wrong. Defendant s Response at 3.plain wrong. Defendant thatthat contention, however, do not suggest that Plaintiffs cannot depose Mr. Kita in this countrythat contention, h thethe circumstances of this case. To the contrary, each of those casesthe circumstances of this case. To the contrary, each of those casesthe circumstances of this case. To the contrary, each of those casesthe circumstances of this case.

<sup>&</sup>lt;sup>1</sup> Under the Under the Order Regarding Bridgestone Corporation s Motion for Under the Order Regarding AprilApril 6th, a April 6th, a supplemental pleading by April 6th, a supplemental pleading by Plaintiffs is due two we materials, materials, thirty days from the date of the Order. If Bridgestone s responses are fomaterials, thirty PlaintiffsPlaintiffs calculate the supplemental filing will be Plaintiffs calculate the supplemental filing will be due Clearly, time is of the essence.

<sup>&</sup>lt;sup>2</sup> Of course, Plain Of course, Plaintiffs ma Of course, Plaintiffs make no concessions as to examinations examinations of Bridgestone witnesses; clearly, Plaintiffs are enexaminations of Bridgestone w PlaintiffsPlaintiffs have simply chosen to limit their deposition to Mr.Plaintiffs have simply chosen to limit their deposition to Mr.Plaintiffs have simply chosen to limit their deposition of the court of, among other things, the Court of, among other things, the Court s desire to resolve forth in the April 6th Order.

the Plaintiffs may the Plaintiffs may explore the statements and conclusions in his affidavit relating the Plaintiff contacts in this country.

InIn <u>Chris-Craft Industrial Products, Inc. v. Kukaray Company, Ltd.</u>, 184 F.R.D. 605 (N.D., 184 F.R.D. 603 (1999), 1999), the first decision 1999), the first decision cited by Bridgestone, the defendant did not seek to dismiss 1 uponupon the lack of personal jurisdiction, nor did it file anyupon the lack of personal jurisdiction, nor did it file anyupon the lack of personal jurisdiction, nor did it file anyupon the lack of personal jurisdiction has done in the present matter. Instead, the Japanese defendant filedas Bridgestone has done raisedraised a counterclaim against the plaintiraised a counterclaim against the plaintiraised a counterclaim against the plaintiff then sought the sought the sought the plaint company. *ememployeesemployees of the defendant to be conducted in the United States with only five (5) days ademploy notice.*. Not surprisingly, the. Not surprisingly, the defendant filed a motion for a. Not surprisingly, the defendant motion in part, and ordered that the depositions go forward in Japan.

TheThe Court noted that the general rule is thatThe Court noted that the general rule is that the deposition officers officers should be taken at the corporation s principalofficers should be taken at the corporation s principal circumstances which justify . . . circumstances which justify . . . an inconveni 607.607. The Plaintiff argued607. The Plaintiff argued that it should be permitted to conduct the depositions into the the Japanese defendant had raised a permissive counterclaim.the Japanese defendate butbut rejected that argument in that case becausebut rejected that argument in that case because the plaintiff h taketake the deposition for the purpose otake the deposition for the purpose of explorintake the deposition for the purpose otake the deposition for the purpose of explorintake the deposition for the purpose of explorintake the deposition for the purpose of the defendant.

InIn the present case, in contrast, the Plaintiffs are not seeking to depose In the present case, in contrast, BridgBridgestoneBridgestone sBridgestone s Japanese employees at this time for the purpose of developing the claims; claims; instead, the Plaintiffs seekclaims; instead, the Plaintiffs seek to depose a single Bridgestone claims

personal personal jurisdiction over Bridgestone, the precise subject of submitted to the Court in this matter.

InIn proceeding In proceeding to order the depositions in <u>Chris-Craft</u> to go forward in to go forward in Jap examined examined the evidence submitted by examined the evidence submitted by the examined the evidence submit if the Court required the Japanese employees to travel if the Court required the Japanese employees to travel demonstrates the obvious differences between that case and the present matter:

The The second reason why the court finds that these depositions should not The second reason why the co IllinoisIllinois is that the [Japanese] defendants have made a substantial shIllinois is that the [Japanese] defend their their employees deposed in Illinois would create an undue burden. [Plaintiff] has noticednoticed the depositions of eight [Japanese] executives. The [Japanese] defnoticed the deposition hhavehave submitted uncontroverted evidence that forcing each of these execuhave submitted uncontro traveltravel from Japan to Chicago will impose a more travel from Japan to Chicago will impose a more defendant]defendant] in terms of defendant] in terms of lost executive workdefendant] in terms of lost exec werewere taken were taken in Japan. were taken in Japan. In addition, [the Japanese Defendant s] fi MarchMarch 31, March 31, 1999. AllMarch 31, 1999. All of the noticed executives are involved in the deadlines deadlines imposed by the fiscal year's deadlines imposed by the fiscal year's end. If the deposit insteadinstead of Japan, [the Japanese defendant] will be precinstead of Japan, [the Japanese defend closing its fiscal year, causing economic loss to [the Japanese Defendant].

Chris-Craft, 184 F.R.D. at 607-608. None of these circu, 184 F.R.D. at 607-608. None of these circu

BridgestoneBridgestone has not submitted any evidence that the schBridgestone has not submitted any eviden

countrycountry will impose any economic burden upon it.<sup>3</sup> There is no suggestion that There is no suggestion that

forfor a deposition for a deposition in this country will threaten Bridgestone s ongoing business operations in anyfo

As the Plaintiffs pointed out in their opening memorandum, it will be substantially more efficient

<sup>&</sup>lt;sup>3</sup> Ironically, the only burden Bridgestone Ironically, the only burden Bridgestone attempts to manufacture deposition deposition of Mr. Kita may delay Bridgestone s responses [to plai deposition of Mr. Kita m requests] . Defendant s Response at 2, n.1. The Court should not countenarequests] . Defendant threatened threatened delay in responding to Plaintiffs outstanding discovery requests as a burden that should allow Bridgestone to avoid should allow Bridgestone to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr. Kita for a deposition as response to avoid producing Mr.

forfor Mr.for Mr. Kita to travel to this country thanfor Mr. Kita to travel to this country than for the lawyers rep this matter to travel to Japan.

InIn <u>Snow Becker Krauss, P.C. v. Proyectos E Instalaciones De Desalacion, S.A.</u>, 1992 WL 395598395598 (Dec. 11, 395598 (Dec. 11, 1992, S.395598 (Dec. 11, 1992, S.D.N.Y.), the court similarly or defendant bedefendant be taken overseas to protect the defendant from the burden and expense of defendant be ta itsits emploits employees to thiits employees to this country. The Court emphasized (1) that there was no defendants defendants representatives defendants representatives regularly travel to United States for business; ( anticipateanticipate discovery disputes requiring the Court s intervention during the deposition; anticipate discover thethe burden of overseas travel placed a significant financial burden on the burden of overseas travel placed a significant country the court selected as the location for the deposition.

TheThe application of each of these considerations to the present matter counsels in favor of schedulingscheduling Mr.scheduling Mr. Kita s deposition in this country. Firestonescheduling Mr. Kita s depos assignedassigned on a rotating assigned on a rotating basis to work on the design and development of racing assigned 3.,3., Respons to Int3., Response to Interrogatory No. 18, Bridgestone/Firestone, Inc. s Res InterrogatoriesInterrogatories on the Issue of JuriInterrogatories on the Issue of JurisdictioInterrogatori Bridgestone s resistance to the Plaintiffs request to depose Mr. Kita suggests Bridgestone s r discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during the course discovery disputes are likely to arise during difficult difficult to present to the figure to the Court from Japan. Finally, as set forth above

<sup>&</sup>lt;sup>4</sup> <u>See also</u> (A) Class Plaintiffs Preliminar (A) Class Plaintiffs Preliminary Respon (A) Class Corporation sCorporation s Motion to Dismiss Master Complaint for LackCorporation s Motion to Dismiss Master Plaintiffs Plaintiffs (1) Response Plaintiffs (1) Response to BridgePlaintiffs (1) Response to Bridgeston Supplemental Response to BridgestonSupplemental Response to Bridgestone CorporSupplement Jurisdiction (presenting evidence of Bridgestone s personnel s presence in the United States.)

requiring requiring a single individual to travel from Japan to the United States pales in comparison to the financial burden of requiring counsel for all of the parties to travel to Japan for a deposition.

InIn <u>Gulf UGulf Union InsuraGulf Union Insurance Company v. M/C Lacerta</u>, 1992 WL 51532 (M S.D.N.Y),S.D.N.Y), another case citedS.D.N.Y), another case cited by Bridgestone,S.D.N.Y), another case cited by ofof an admof an admiralty disof an admiralty dispute involving a single shipment of goods. The court found th *facie* showing of jurisdiction was made, deposition discovery on this issue was proper. The analysis thenthen moved to the location of then moved to the location of depositions involving a foreign defendant, and aftert presumptionpresumption that a deposition presumption that a deposition should be conducted in the districtpresu courtcourt explained the factors to consider incourt explained the factors to consider in overcomingcourt explain 5.5. The court employed a thre5. The court employed a three-factor an5. The court employed a three-factor suspended, suspended, examining cost, suspended, examining cost, convenience and litigation efficiency. <u>Id.</u>, cit heldheld in that case thatheld in that case that there was no showing that the costs would beheld in that case that t andand thand that litigation efficiency would be enhanced by holding the deposition abroad where is corporate records were located.

InIn the In the In the presentIn the present In the present case, In the present case, In the present case, Plainti aboutabout its regional headquarters in Nashville, Tennessee and its testing and research about its regional headquar throughout thethroughout the United States. <u>See</u> Class Plaintiffs Preliminary Response to Defendant B Corporation sCorporation s Motion to Dismiss Master Complaint for Lack of Personal JurisdictionCorporation Plaintiffs Plaintiffs (1) Response to Bridgestone Corporation s Motion for Plaintiffs (1) Response to Bridgestone SupplementalSupplemental Response Supplemental Response to BridgSupplemental Response to Bridgeston Jurisdiction.Jurisdiction. The present matter is a far cry from anJurisdiction. The present matter is a far cry from an a single ship. Bridgestone holds itself out as a global citizen. InIn furtherIn further contrast to the present case, the court inIn further contrast to the present case, the co judicialjudicial oversight of the discovery process. See <u>Gulf Union Insurance</u>, at 5. Once again, Bridgestone sBridgestone s unfortunateBridgestone s unfortunate resistance to theBridgestone s unfortunate resi willwill arise duringwill arise during the coursewill arise during the course of Mr. Kita s examination. In addition JapanJapan by the interested parties in this matter are cleaJapan by the interested parties in this matter are litigation efficiency all mitigate toward bringing Mr. Kita to the United States.<sup>5</sup>

AsAs to Bridgestone s contention that Mr. Kita may be deposed only through thAs to Bridgestone s concentration and Protocol, the Plaintiffs note that Court has preConsular Convention and BridgestoneBridgestone from relying uponBridgestone from relying upon such diplomatic procedures withBridge matter.matter. It is surprising that Bmatter. It is surprising that Bridgestone woulmatter. It is surprising that Bmatter. It is surprising that Bridgestone saccept that affidavit to the Court and asking the acceptaccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis for granting Bridgestone saccept that affidavit as the principal basis <u>NationalNational Industrielle Aerospatiale et. al. v. United States District Court for the National Industrielle Aerospatiale et. 2008</u> (diplomatic protocol of the Hague Convention does not provide provide the exclusive and mandatory procedure for obtaining foreign testimony, nor does it deprive the district court of jurisdiction).

Finally, Finally, Bridgestone sFinally, Bridgestone s assertion that Plaintiffs tie their recently allegedFina of of Mr. Kita on the issue of how Japanof Mr. Kita on the issue of how Japanese-maof Mr. Kita on the issue of point.point. point. (Defendant s Response at 4) Evidence of Bridgestone s U.S. presence mounts daily, but this particular proof further supports a findiparticular proof further support

<sup>&</sup>lt;sup>5</sup> At the Court s request, Pla At the Court s request, Plaint At the Court s request, Plaintiffs counsel actions. Because Mr. Kita s affidavit is being submitted in jurisdictions across the nation, potentially dozens of plaintiffs counsel have an interest in this matter.

*participated participated in the manufacture of the defective tires at issue*. Plaintiffs are enti. Plaintiffs are entity statements in Mr. Kita's Affidavit regarding Bridgestone's contacts in this county in general.

# c. Plaintiffs have met their prima facie showing and Plaintiffs have met their prima faci deposedepose Mr. Kita on the issues on which he is depose Mr. Kita on the Bridgestone.

CourtsCourts have recognized thatCourts have recognized that facts whichCourts have recognized that fact overover the defendants are often in the exclusive control <u>NuemuellerNuemuellerGmbH</u>, a foreign corporation, 163, 163 F.R.D. 471 (D.C., 163 F.R.D. 471 (D.C. Del. 199 onon the issue of personal jurisdiction overon the issue of personal jurisdiction over a foreign corporation);on the is <u>v.v. L Union</u>, 723 F.2d 357, 362 (3d Cir. 1983). The Magistrate s April 6th Order recognized, 723 F.2d 357, 362 eveneven with only publicly availableven with only publicly available materia forfor jurisdiction, affording thefor jurisdiction, affording them the ofor jurisdiction, affording them the opport: RegardingRegarding BridgestoneRegarding Bridgestone Corporation s Motion for Protective Order. The general liberliberal liberal discovliberal discovery also apply where the plaintiff seeks discovery to establish personal jurisdiction for the plaintiff seeks discovery to establish personal jurisdiction affording the court in <u>Hansen</u> explained:

AA plaintiff whoA plaintiff who is a total stranger to a corporation shouldA plaintiff who is a total stranger hashas been undiligent, to try such an issue on affidavits without the benefit of full discovery. ... discovery. ... in such event the plaintiff was certainly entitled to file such furth interrogatories interrogatories as were reasonably necessary and, if he wished, to take depositions. TheThe condemnation of plaintiff s proposed furtherThe condemnation of plaintiff s proposed further activaswas unwarranted. When the fish is identified, was unwarranted. When the fish is identified, was unwarranted. When the fish is identified, and thewar pond, we know no reason to deny a plaintiff the customary license.

Hansen, 163 F.R.D. at 474 (quoting Compagnie des Bauxites de Guinee).

### III. Conclusion

ForFor all of the reasons set forth above and in theFor all of the reasons set forth above and in the Plainti eithereither ordeeither order Beither order Bridgestone to produce Mr. Kita for a deposition in this country fort alternative strike Mr. Kita s declaration from the record in this matter.

DATED: May 4, 2001

Respectfully submitted,

### COHEN & MALAD, P.C.

Don Barrett Charles F. Barrett **BARRETT LAW OFFICE, P.A.** 404 Court Square North P.O. Box 987 Lexington, MS 39095 Telephone: (662) 834-2376 Facsimile: (662) 834-2628 *Lead Counsel for Class Plaintiffs* 

Elizabeth J. Cabraser Lisa J. Leebove LIEFF, CABRASER, HEIMANN & BERNSTEIN

Embarcadero Center West 275 Battery Street, 30th Floor San Francisco, CA 94111-3339 Telephone: (415) 956-1000 Facsimile: (415) 956-1008

Stephen Neuwirth Cynthia M. Moore **BOIES, SCHILLER & FLEXNER LLP** 570 Lexington Avenue, 16th Floor New York, NY 10022 Telephone: (212) 446-2300 Facsimile: (212) 446-2350 By: \_\_\_

Irwin B. Levin Richard E. Shevitz 136 North Delaware Street P.O. Box 627 Indianapolis, IN 46206-0627 Telephone: (317) 636-6481 Facsimile: (317) 636-2593 *Liaison Counsel for Class Plaintiffs* 

Keith M. Fleischman Elizabeth A. Berney Gerald J. Gardner **MILBERGMILBERG WEISS BERSHAD HYNES** & LERACH LLP One Pennsylvania Plaza New York, NY 10119 Telephone: (212) 594-5300 Facsimile: (212) 868-1229

### Gordon Ball LAW OFFICES OF GORDON BALL

550 Main Avenue, Suite 750 Knoxville, TN 37902 Telephone: (865) 525-7028 Facsimile: (865) 525-4679

Executive Committee for Class Plaintiffs

# IN THE 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 MDL NO. 1373

Master File No. IP 00-9373-C-B/S

This Document Relates to the Master Complaint

# **CERTIFICATE OF SERVICE**

TheThe undersigned Plaintiffs Liaison Counsel certifies that a copy of the foregoing documThe undersigned Pla

sservedserved via hand delivery or facsimile upon the following local counsel for the Defendants and Intervenserved via h

in this MDL Proceeding, this <u>4th</u> day of May, 2001:

Mr. Mark J. R. Merkle KRIEG DeVAULT ALEXANDER & CAPEHART, L.L.P. One Indiana Square, Ste. 2800 Indianapolis, IN 46204-2017

Mr. Thomas G. Stayton Ms. Ellen E. Boshkoff BAKER & DANIELS 300 N. Meridian Street, Suite 2700 Indianapolis, IN 46204 Mr. Randall R. Riggs LOCKE REYNOLDS BOYD & WEISELL 1000 Capital Center S. Tower 201 N. Illinois St. Indianapolis, IN 46204-4210

Mr. Daniel P. Byron McHALE, COOK & WELCH, P.C. 320 N. Meridian Street, Suite 1100 Indianapolis, IN 46204

> Irwin B. Levin Richard E. Shevitz **COHEN & MALAD, P.C.** 136 N. Delaware Street, Suite 300 P.O. Box 627 Indianapolis, IN 46206-0627 Telephone: (317) 636-6481