

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re: BRIDGESTONE/FIRESTONE,	:	
INC., ATX, ATX II AND WILDERNESS	:	Master File No. IP 00-9373-C-B/S
TIRES PRODUCTS LIABILITY	:	MDL No. 1373
LITIGATION	:	(centralized before the
	:	Honorable Sarah Evans Barker)
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THIS DOCUMENT RELATES TO	:	
THE MASTER COMPLAINT	:	
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**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. Introduction

As the Court is aware, Defendant Bridgestone Corporation ("Bridgestone") has attempted to extricate itself from these proceedings by filing a motion to dismiss asserting lack of jurisdiction. In support of that motion, Bridgestone relies entirely upon the affidavit of Hiroyuki Kita. Bridgestone refuses to produce Mr. Kita for a deposition. In response, Plaintiffs filed an Emergency Motion to Compel the deposition of Mr. Kita and to strike the Affidavit of Hiroyuki Kita (Plaintiffs' Motion). Bridgestone filed its Brief in Opposition to Plaintiffs' Motion. Plaintiffs' Motion should be granted. For the reasons expressed in Plaintiffs' Motion, Plaintiffs' Motion should be granted.

II. Discussion

a. **Bridgestone's claims with respect to timeliness are unfounded.**

Bridgestone devotes much of its effort to long to depose Mr. Kita. Defendant's Response, at 1-3, 4, long to depose Mr. Kita. Defendant's Response to timeliness ignores the record in this matter. respect to timeliness is of jurisdiction over Bridgestone with all due speed and diligence. of jurisdiction over Bridgestone February 16, 2001, two weeks after Bridgestone's Motion to Dismiss was filed. deposition pursuant to F.R.Civ.P. 30(b)(6) were served thereafter, in order to allow Plaintiffs' counsel time to review written examination. (Ex. 1, Notice of Deposition and Subpoena Duces Tecum dated and served March 7, 2001.)

Plaintiffs requested depositions of persons most knowledgeable on the narrow issue involved in the jurisdictional analysis. (See Ex. 1.) It was in fact a fact - would be among those designated. Rather than identify individuals such as Mr. Kita as factually information to support its jurisdictional arguments, Bridgestone refused to produce any persons with such knowledge and instead served only objections. (Ex. 2, Defendant's Corporation's Objections to Plaintiffs' Discovery Requests, dated March 16, 2001.) Bridgestone's refusal to identify and brief its briefing schedule, Plaintiffs have little choice but to depose only individual who has been identified in Bridgestone's papers.

Bridgestone's claim that it is somehow surprised by the need for personal jurisdiction completely ignores the fact that there has been no change of strategy. The change in strategy, in

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

In Chris-Craft Industrial Products, Inc. v. Kukaroy Company, Ltd., 184 F.R.D. 605 (N.D., 184 F.R.D. 605 (1999)), the first decision cited by Bridgestone, the defendant did not seek to dismiss the case upon the lack of personal jurisdiction, nor did it file any motion upon the lack of personal jurisdiction, nor did it file any motion as Bridgestone has done in the present matter. Instead, the Japanese defendant filed a counterclaim against the plaintiff, raised a counterclaim against the plaintiff, raised a counterclaim against the plaintiff's parent company. The plaintiff then sought to depose the employees of the defendant to be conducted in the United States with only five (5) days advance notice. Not surprisingly, the defendant filed a motion for a protective order. Not surprisingly, the defendant's motion in part, and ordered that the depositions go forward in Japan.

The Court noted that the general rule is that depositions of officers should be taken at the corporation's principal place of business, unless the circumstances which justify . . . an inconvenience. 607. The Plaintiff argued that it should be permitted to conduct the depositions in Japan because the Japanese defendant had raised a permissive counterclaim. The Japanese defendant, however, rejected that argument in that case because the plaintiff had taken the deposition for the purpose of exploring the defendant's claims, not to conduct discovery relating to its own claims against the defendant.

In the present case, in contrast, the Plaintiffs are not seeking to depose Bridgestone's Japanese employees at this time for the purpose of developing their claims; instead, the Plaintiffs seek to depose a single Bridgestone employee.

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

In proceeding to order the depositions in Chris-Craft to go forward in Japan, the Court examined the evidence submitted by the parties. The Court examined the evidence submitted by the parties to determine if the Court required the Japanese employees to travel if the Court required the Japanese employees to travel. The Court demonstrates the obvious differences between that case and the present matter:

The second reason why the court finds that these depositions should not be granted in Illinois is that the [Japanese] defendants have made a substantial showing that the depositions of their employees in Illinois would create an undue burden. [Plaintiff] has noticed the depositions of eight [Japanese] executives. The [Japanese] defendants have submitted uncontested evidence that forcing each of these executives to travel from Japan to Chicago will impose a more substantial burden on the [Japanese] defendant in terms of lost executive work time than the depositions were taken in Japan. In addition, [the Japanese Defendant s] filed their depositions on March 31, 1999. All of the noticed executives are involved in meeting deadlines imposed by the fiscal year's end. If the depositions were taken in Japan, [the Japanese defendant] would be precluded from closing its fiscal year, causing economic loss to [the Japanese Defendant].

Chris-Craft, 184 F.R.D. at 607- 608. None of these circumstances are present in the Bridgestone case. Bridgestone has not submitted any evidence that the deposition of its employees in this country will impose any economic burden upon it.³ There is no suggestion that a deposition in this country will threaten Bridgestone's ongoing business operations in any foreign country. As the Plaintiffs pointed out in their opening memorandum, it will be substantially more efficient

³ Ironically, the only burden Bridgestone attempts to manufacture is the deposition of Mr. Kita may delay Bridgestone's responses [to plaintiffs' deposition requests]. Defendant's Response at 2, n.1. The Court should not countenance a threatened delay in responding to Plaintiffs' outstanding discovery requests as a burden that should allow Bridgestone to avoid producing Mr. Kita for a deposition as required.

for Mr. Kita to travel to this country than for the lawyers representing this matter to travel to Japan.

In Snow Becker Krauss, P.C. v. Proyectos E Instalaciones De Desalacion, S.A., 1992 WL 395598 (Dec. 11, 1992), the court similarly ordered the defendant be taken overseas to protect the defendant from the burden and expense of taking its employees to this country. The Court emphasized (1) that there was no evidence that the defendants' representatives regularly travel to United States for business; (2) to anticipate discovery disputes requiring the Court's intervention during the deposition; and (3) that the burden of overseas travel placed a significant financial burden on the country the court selected as the location for the deposition.

The application of each of these considerations to the present matter counsels in favor of scheduling Mr. Kita's deposition in this country. Firestone assigned on a rotating basis to work on the design and development of racing tires. 3., Response to Interrogatory No. 18, Bridgestone/Firestone, Inc.'s Responses to Interrogatories on the Issue of Jurisdiction. Bridgestone's resistance to the Plaintiffs' request to depose Mr. Kita suggests that discovery disputes are likely to arise during the course of the litigation. It is difficult to present to the Court from Japan. Finally, as set forth above,

⁴ See also (A) Class Plaintiffs Preliminary Response to Bridge Corporation's Motion to Dismiss Master Complaint for Lack of Jurisdiction (1) Response to Bridge Corporation's Supplemental Response to Bridgestone's Motion to Dismiss Master Complaint for Lack of Jurisdiction (presenting evidence of Bridgestone's personnel's presence in the United States.)

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.

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InIn tIn theIn the In the presentIn the present In the present case,In the present case, In the present case, Plaintiff aboutabout its regional headquarters in Nashville, Tennessee and its testing and research about its regional headquarter throughoutthroughout thethroughout the United States. See 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 Br 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 a single ship. Bridgestone holds itself out as a global citizen.

In further contrast to the present case, the court in Gulf Union Insurance, at 5. Once again, judicial oversight of the discovery process. See Gulf Union Insurance, at 5. Once again, Bridgestone's unfortunate resistance to the deposition process will arise during the course of Mr. Kita's examination. In addition, the interests of justice and litigation efficiency all mitigate toward bringing Mr. Kita to the United States.⁵

As to Bridgestone's contention that Mr. Kita may be deposed only through the Consular Convention and Protocol, the Plaintiffs note that Court has precluded Bridgestone from relying upon such diplomatic procedures with respect to this matter. It is surprising that Bridgestone would contend that Mr. Kita's deposition, especially after submitting his affidavit to the Court and asking the Court to accept that affidavit as the principal basis for granting Bridgestone's motion, is subject to the National Industrielle Aerospatiale et. al. v. United States District Court for the District of Iowa, 482 U.S. 522, 107 S.Ct. 2542 (1987) (diplomatic protocol of the Hague Convention does not provide the exclusive and mandatory procedure for obtaining foreign testimony, nor does it deprive the district court of jurisdiction).

Finally, Bridgestone's assertion that Plaintiffs tie their recently alleged motion to depose Mr. Kita on the issue of how Japanese-made products are manufactured is a point. (Defendant's Response at 4) Evidence of Bridgestone's U.S. presence mounts daily, but this particular proof further supports a finding that Bridgestone is a U.S. entity.

⁵ At the Court's request, Plaintiffs' counsel have submitted affidavits in support of their motion. 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 in the manufacture of the defective tires at issue. Plaintiffs are enti. Plaintiffs are en
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 facie showing and
deposed Mr. Kita on the issues on which he is deposed Mr. Kita on the issues on which he is deposed
Bridgestone.**

Courts have recognized that facts which Courts have recognized that facts which Courts have recognized that facts which
over the defendants are often in the exclusive control of the defendants are often in the exclusive control of the
Nuemueller GmbH, a foreign corporation, 163 F.R.D. 471 (D.C., 163 F.R.D. 471 (D.C. Del. 199
on the issue of personal jurisdiction over a foreign corporation); on the is
v. v. L Union, 723 F.2d 357, 362 (3d Cir. 1983). The Magistrate s April 6th Order recognized, 723 F.2d 357, 362
even with only publicly available material even with only publicly available material even with only publicly available material
for jurisdiction, affording them the opportunity for jurisdiction, affording them the opportunity for jurisdiction, affording them the opportunity
Regarding Bridgestone Corporation s Motion for Protective Order. The general
liberal discovery also apply where the plaintiff seeks discovery to establish personal jurisdiction.

As the court in Hansen explained:

A plaintiff who is a total stranger to a corporation should not be required to file such affidavits without the benefit of full
discovery. . . . in such event the plaintiff was certainly entitled to file such further
interrogatories as were reasonably necessary and, if he wished, to take depositions.
The condemnation of plaintiff s proposed further action was unwarranted. When the fish is identified, and the
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

For all of the reasons set forth above and in the Plaintiff's
either order or either order Bridgestone to produce Mr. Kita for a deposition in this country for
alternative strike Mr. Kita's declaration from the record in this matter.

DATED: May 4, 2001

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re: BRIDGESTONE/FIRESTONE, INC.)	MDL NO. 1373
ATX, ATX II and WILDERNESS TIRES)	
PRODUCTS LIABILITY LITIGATION)	Master File No. IP 00-9373-C-B/S
)	
)	

This Document Relates to the Master Complaint

CERTIFICATE OF SERVICE

The undersigned Plaintiffs Liaison Counsel certifies that a copy of the foregoing document has been served via hand delivery or facsimile upon the following local counsel for the Defendants and Intervenor in this MDL Proceeding, this 4th day of May, 2001:

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