

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) Master File No. IP 00-9373-C-B/S
PRODUCTS LIABILITY LITIGATION) MDL No. 1373
_____) (centralized before Hon. Sarah Evans
Barker, Chief Judge)

THIS DOCUMENT RELATES TO ALL)
ACTIONS)
)

**ORDER OF APPOINTMENT OF
SPECIAL MASTER**

Hundreds of plaintiffs have filed suit in federal courts against Bridgestone/Firestone, Inc. as well as other defendant businesses alleging that these companies are responsible for harm or risk of harm caused by defective tires. Numerous other claims are expected to be filed in the future. In the interests of efficiency and consistency, the Judicial Panel on Multidistrict Litigation issued an order transferring these cases to the United States District Court for the Southern District of Indiana for coordinated or consolidated pretrial proceedings. In re Bridgestone/Firestone, Inc., ATX, ATX II and Wilderness Tires Products Liability Litigation, MDL No. 1373 (J.P.M.L. Oct. 24, 2000) (“Transfer Order”). Because of the number and complexity of these cases and because of the need for an expeditious resolution of the dispute, the court Hereby appoints a Special Master, whose duties and terms of appointment are detailed below.

Procedural Background and Legal Analysis

Since October 26, 2000, when the jurisdiction of this court over the consolidated federal

litigation became official, the court has issued an Order Staying Discovery, 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/C (S.D. Ind. Oct. 26, 2000), and today, in response to a request interposed by certain counsel (Motion for Setting Initial Conference, filed Oct. 26, 2000 by Irwin B. Levin, David J. Cutshaw and Richard E. Shevitz), has issued an Order Setting Initial Conference setting out an agenda for the initial conference and formulating a blueprint for subsequent organization of the litigation. See Manual for Complex Litigation (Third) § 41.2 (1995).

These early proceedings have already made clear the extent of the complexity of this litigation. Faced with such demands, courts have been authorized to appoint a Special Master. Fed. R. Civ. Pro. 53. Federal Rule of Civil Procedure 53(b) allows appointment “[i]n actions to be tried by a jury . . . only when the issues are complicated.” This limitation helps ensure compliance with Article III of the Constitution and with the general limitation that “[a] reference to a master shall be the exception and not the rule.” Fed R. Civ. P. 53(b).

This admonition that the exercise of judicial authority in pretrial management is inappropriate in some situations, see Manual for Complex Litigation (Third), §20.14, nonetheless has permitted the appointment of special masters to assist with and assume duties in a significant number of Multidistrict Litigation (“MDL”) cases and other similar disputes. In In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation, MDL No. 1203, 1999 WL 782560 at *2 (E.D. Pa. Sept. 27, 1999), a Special Master was enlisted to help resolve discovery disputes between hundreds of plaintiffs and dozens of defendants. See also In re “Agent Orange” Product Liability Litigation, MDL No. 381, 818 F.2d 145, 155 (2d Cir. 1987) (three Special Masters assisted in settlement negotiations

for MDL in which 600 cases were transferred); In re Consolidated Litigation Concerning International Harvester's Disposition of Wisconsin Steel, 1987 WL 16225 (N.D. Ill. Aug. 21, 1987) (Special Master appointed to resolve disputes over whether 265 documents or portions of documents were privileged). In addition, Special Masters have been assigned the tasks of "discovery masters, case managers, settlement masters, expert advisors, remedial masters, monitors, claims evaluators, etc." Active Products Corp. v. A.H. Choitz & Co. Inc., 163 F.R.D. 274, 282-83 (N.D. Ind. 1995).¹ We view the proceedings before this Court to be at least as complex as the above-cited litigations. Even our scant, initial review of these lawsuits discloses that multiple tire models are apparently involved; related accidents are alleged to have occurred in at least five different countries; discovery will likely be extensive.

For these reasons, in accordance with the following description of duties and terms of appointment, we Hereby appoint as Special Master Debra McVicker Lynch, whose curriculum vitae is attached hereto, of the law firm of Sommer and Barnard, 4000 Bank One Tower, 111 Monument Circle, Indianapolis, IN 46204-5140 (phone: 317-630-4000) to serve in such capacity in the litigation captioned 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/C (centralized before Hon. Sarah Evans Barker, Chief Judge). Consistent with Rule 53, Federal Rules of Civil Procedure, the duties and responsibilities specifically included below are hereby referred to the Special Master:

- 1) assisting with preparation, including formulating agendas, for attorney conferences with

¹It is our understanding that Special Masters were also used with particular efficacy in the silicone gel breast implant litigation.

the court;

- 2) establishing timely discovery schedules, reviewing and attempting to resolve informally any discovery conflicts, and overseeing distribution of completed discovery to the parties;
- 3) assisting in formulating a governance structure of this MDL;
- 4) reviewing and analyzing parties' submissions regarding class certification in order to identify common issues of law and fact for purposes of class certification and to make recommendations concerning classes and subclasses, satisfaction of notice, and appointment of class counsel and class representatives;
- 5) overseeing management of docketing, including the identification and processing of matters requiring court rulings and coordinating the assignment of tag-along actions to any classes that may be certified by the court;
- 6) assisting with court scheduling;
- 7) assisting with responses to media inquiries, including substantive oversight of the court web page devoted to Firestone MDL and email communications with counsel or other external inquirers of the Court;
- 8) advising and assisting in identifying court-appointed experts, if any are required, to assist the Court;
- 9) helping to coordinate federal, state and international litigation;
- 10) proposing structures and strategies for attorneys fees and for settlement negotiations;
- 11) assisting with legal analysis of the parties' motions or other submissions as the Court

may request and fulfilling other duties as directed by the court as permitted by Federal Rule of Civil Procedure 53 and consistent with Article III of the Constitution;

- 12) communicating informally with attorneys as needs may arise in order to permit the full and efficient performance of her specified duties, and

Unless specifically authorized hereafter by separate order of reference by the Court, the Special Master will not be expected or required to formulate any final rulings on matters formally submitted to the Court for adjudication. All such final rulings will be made by the District Court Judge or the assigned Magistrate Judge.

FURTHER, it is ordered that the agenda at the Second MDL Attorneys Conference scheduled for December 6, 2000 at 10:00 a.m EST will include an opportunity for counsel to comment on the duties of the Special Master and methods of compensation;

FURTHER, it is ordered that, pursuant to Federal Rule of Civil Procedure 53(e), at the completion of her duties, other than those of assisting, advising or consulting with the Court, the Special Master shall promptly file a report upon the matters submitted to her and shall serve a copy of the report on each party;

FURTHER, it is ordered that the Special Master shall be compensated at the rate of \$225 per hour, and her total hours in any 12-month period shall not exceed 500, the expense of which shall be shared equally by the parties;

FURTHER, it is ordered that her duties and terms of appointment shall be subject to ongoing review and revision as necessary and shall be renewable annually;

FINALLY, it is ordered that, in accordance with Federal Rule of Civil Procedure 53(d)(1), the Clerk of Court shall furnish the Special Master with a copy of this order of appointment, and the Special Master shall commence the performance of her duties consistent herewith at the direction of the Court.

It is so ORDERED this 1st day of November 2000.

(Signed)

SARAH EVANS BARKER, CHIEF JUDGE
United States District Court
Southern District of Indiana

Copies to Panel Attorney Service List as listed on the Court's web site on this date.

**RÉSUMÉ OF
DEBRA McVICKER LYNCH**

Sommer & Barnard, PC
4000 Bank One Tower
Indianapolis, Indiana 46204
(317) 630-4000

**Current
Employment:**

Sommer & Barnard, PC
Indianapolis, Indiana
Of counsel, 1997-present
Director and shareholder, 1994-1997
Associate, 1988-1994

*Have litigated in federal and state courts, principally in the following areas: general business, employment, antitrust, professional malpractice, constitutional causes of action, securities fraud, business dissolution, and trade secrets

*Have been involved in complex litigation, including: national class action by gasoline retailers against major oil refiner for violation of federal energy regulations; suit in United States Court of Federal Claims alleging taking as a result of implementation of USDA regulations; representation of bankruptcy trustee in multi-defendant action alleging RICO violations, professional negligence, and bankruptcy fraud; antitrust litigation in two states challenging NCAA eligibility rules; suit alleging breach of contract and copyright infringement by software developer; litigation arising from dissolution of large computer wholesaler involving claims of securities fraud, breach of contract, and breach of fiduciary duty; antitrust class actions brought in Indiana against Microsoft Corporation; national antitrust class action brought by purchasers of industrial-use diamonds

*Have advised clients and provided drafting services in the following areas: general corporate matters, statutory and regulatory compliance, estate planning, and employment matters

*Have served firm as hiring director, secretary of professional corporation, and member of associate training and evaluation committee

**Previous
Employment:**

Honorable Sarah Evans Barker, Chief Judge
United States District Court, Southern District of Indiana
Law Clerk, 1986-1988
Mount Pleasant Community Schools, Yorktown, Indiana
Taylor Community Schools, Kokomo, Indiana
High school English teacher, 1977-1982

Education:**Indiana University School of Law, Indianapolis, Indiana**

Doctor of Jurisprudence, *summa cum laude*: May, 1986

Class Rank: 2/185

Activities and honors: Editor-in-Chief, *Indiana Law Review*; Author, "The Interest of the Child in the Home Education Question: *Wisconsin v. Yoder* Re-examined," 18 *Ind.L.Rev.*711 (1985); Federal Court intern for the Honorable William E. Steckler; Dean's Tutorial Society; Jump Memorial Scholarship

University of Miami, Coral Gables, Florida

Bachelor of Arts (English), *magna cum laude*: May, 1977

Professional Memberships and Activities:

*Local Rules Committee for the Southern District of Indiana, 1989-present

*Civil Justice Reform Act Advisory Group for the Southern District of Indiana, 1991-1995

*Chairman, Magistrate Reappointment Committee, 1997

*Chairman, Federal Judiciary Committee of State Bar Association, 1995

*Frequent seminar speaker on federal court practice

*Program Committee, Women in Law Conference, 1998 and 1999

*Member: Indianapolis Bar Association, Indiana State Bar Association (Federal Judiciary Committee, Publications Committee), American Bar Association

Bar Admissions:

Indiana Supreme Court (1986), Southern District of Indiana, Northern District of Indiana, Seventh Circuit Court of Appeals, Federal Circuit Court of Appeals, United States Court of Federal Claims