

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

**In re: BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-9373-C-B/S
TIRES PRODUCTS LIABILITY LITIGATION) MDL NO. 1373**
_____)
**THIS DOCUMENT RELATES TO THE)
MASTER COMPLAINT)**

**ENTRY ON DEFENDANT BRIDGESTONE CORPORATION'S
MOTION TO DISMISS MASTER COMPLAINT**

This cause is before the Court on defendant Bridgestone Corporation's ("Bridgestone")
Motion to Dismiss Master Complaint. The motion is fully briefed,¹ and the Court, being duly

¹The following briefs and other submissions have been filed and considered in conjunction with the instant motion to dismiss, along with their accompanying affidavits and exhibits:

- Bridgestone's Motion and Brief in Support (filed 1-29-01);
- Plaintiffs' Preliminary Response to Bridgestone's Motion (filed 2-26-01);
- Bridgestone's Reply to Plaintiffs' Preliminary Response (filed 3-13-01);
- Plaintiffs' Supplemental Response to Bridgestone's Motion (filed 3-20-01);
- Plaintiffs' Submission of Supplemental Authority in opposition to Bridgestone's Motion (filed 4-4-01);
- Plaintiffs' Submission of Supplemental Facts in opposition to Bridgestone's Motion (filed 4-5-01);
- Bridgestone' Response to Plaintiffs' Submission of Supplemental Authority (filed 4-9-01);
- Submission of Affidavit of Gabriel D. Browne in opposition to Bridgestone's Motion (filed by plaintiffs on 5-4-01);
- Plaintiffs' Third Supplement of Jurisdictional Evidence regarding Bridgestone's Motion (filed 8-29-01);
- Plaintiffs' Submission of Additional Supplemental Authority in opposition to Bridgestone's Motion (filed 9-7-01);
- Ford's Statement in Opposition to Bridgestone's Motion (filed 10-1-01);
- Plaintiffs' Final Response to Bridgestone's Motion (filed 10-5-01);
- Ford's Notice of Filing of Public Records Relevant to Bridgestone's Motion (filed 10-9-01);
- Bridgestone's Reply Brief in Support of its Motion (filed 10-26-01).

In addition, the Court has considered the parties' filings related to Bridgestone's Motion for Protective Order, to the extent they are relevant to the instant motion.

advised, **DENIES** Bridgestone's motion for the reasons set forth below.

I. PRELIMINARY MATTERS

In the instant motion, Bridgestone argues that the claims asserted against it in the Master Complaint, which was filed in this court on January 2, 2001, should be dismissed because this court lacks personal jurisdiction over Bridgestone. The Master Complaint combines dozens of class action complaints involving Firestone tires which were filed in or removed to federal district courts throughout the country and transferred to this MDL proceeding. The named Plaintiffs in the Master Complaint are residents of numerous states² who seek to represent a nationwide class consisting of "all persons and entities in the United States who now own or lease, or owned or leased, vehicles that are or were equipped with Firestone-brand ATX, ATX II, Firehawk ATX, ATX 23 Degree, Widetrack Radial Baja, Wilderness, or other comparably designed or manufactured Firestone-brand, steel-belted radial tires."³ The Master Complaint names three defendants: Bridgestone, a Japanese corporation with its principal place of business in Tokyo, Japan; Bridgestone/Firestone, Inc. ("Firestone"), an Ohio corporation with its principal place of business in Nashville, Tennessee, and a wholly-owned subsidiary of Bridgestone; and Ford Motor Company ("Ford"), a Delaware corporation with its principal place of business in Dearborn, Michigan.

²The named Plaintiffs reside in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, and West Virginia.

³The Master Complaint also asserts claims against defendant Ford Motor Company relating to alleged defects in the Ford Explorer; these claims are irrelevant to the instant motion. Also irrelevant are the various subclasses proposed in the Master Complaint.

A. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

In an Order dated July 27, 2001, the Court granted in part and denied in part a motion to dismiss the Master Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) which was filed by Ford and Firestone. In ruling on that motion to dismiss, the Court erroneously noted in a footnote that Bridgestone had not joined in the motion.⁴ In fact, Bridgestone states in the instant motion that it “joins and incorporates herein by reference” that motion. Accordingly, the Court has reexamined the issues raised in the Rule 12(b)(6) motion as they apply to Bridgestone.

In the July 27, 2001, Order, the Court determined that Indiana’s choice of law rules dictate that Tennessee law applies to the state law claims asserted against Firestone in the Master Complaint. Because virtually all of the factual allegations against Bridgestone in the Master Complaint involve actions it took in conjunction with Firestone, the bulk of which presumably took place at Firestone’s corporate headquarters in Tennessee, we now determine that Tennessee law presumptively applies to the state law claims asserted against Bridgestone in the Master Complaint. That said, the reasoning of the Court’s ruling on Ford and Firestone’s motion to dismiss applies equally on all counts to Bridgestone. Accordingly, the Court hereby **GRANTS IN PART AND DENIES IN PART** the Rule 12(b)(6) motion as to Bridgestone for the reasons and to the extent set forth in the July 27, 2001, Order. Thus, in resolving the instant motion to dismiss, we will address only the following claims in the Master Complaint, to the extent that they remain following the July 27, 2001, Order: the First Claim for Relief, which is a claim under the Magnuson-Moss Warranty Act; the Ninth Claim for Relief, which is an unjust

⁴That error was corrected by a *Nunc Pro Tunc* Order dated November 5, 2001.

enrichment claim; the Tenth Claim for Relief, which is a claim under state consumer protection statutes; the Eleventh Claim for Relief, which is a claim for breach of implied warranty; and the Twelfth Claim for Relief, which is a claim for breach of express warranty.

B. PLAINTIFFS' MOTION TO STRIKE

The plaintiffs have filed a motion entitled Motion to Strike Certain Statements in Paragraph 8 of Affidavit of Hiroyuki Kita on the ground that the statements in question are made based upon Mr. Kita's "best knowledge," rather than his personal knowledge. While it is possible that this distinction may be important in some contexts, in this case our decision does not hinge on the strength of Mr. Kita's averments. Accordingly, the motion to strike is **denied**.

C. FORD'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

On November 5, 2001, Ford filed a motion entitled Motion for Leave to File Supplemental Statement in Opposition to Bridgestone Japan's Motion to Dismiss for Want of Personal Jurisdiction. Because the other materials before the Court are more than sufficient to elucidate the issues relevant to Bridgestone's motion to dismiss, Ford's motion is **denied**, and Ford's proposed Supplemental Statement has not been considered by the Court in making this ruling.

II. THIS COURT'S PERSONAL JURISDICTION OVER BRIDGESTONE

To survive the instant motion to dismiss, the plaintiffs (in this instance aided by defendant Ford) bear the burden of establishing by a prima facie showing that this court may properly exercise personal jurisdiction over Bridgestone. Weidner Communications, Inc. v. H.R.H. Prince Bandar Al Faisal, 859 F.2d 1302, 1306 n.7 (7th Cir. 1988) (citing Nelson by Carson v. Park Indus., Inc., 717 F.2d 1120, 1123 (7th Cir. 1983)). In addition, "the party asserting

jurisdiction is entitled to the resolution in its favor of all disputes concerning relevant facts presented in the record,” id., and all reasonable inferences must be drawn in favor of the plaintiffs. United States Securities & Exchange Comm. v. Carrillo, 115 F.3d 1540, 1542 (11th Cir. 1997); Felch v. Transportes Lar-Mex Sa De CV, 92 F.3d 320, 327 (5th Cir. 1996); Mylan Labs., Inc. v. Akzo, N.V., 2 F.3d 56, 59-60 (4th Cir. 1993); Simpson v. Quality Oil Co., Inc., 723 F. Supp. 382, 386 (S.D. Ind. 1989). With this standard in mind—which we note is different from the preponderance of the evidence standard which will apply at trial—we address Bridgestone’s motion to dismiss.

A. APPLICABLE LAW

The question of what law this court should apply in deciding the various issues raised in Bridgestone’s motion to dismiss, while somewhat complex, ultimately is well-settled. First, whether we may exercise personal jurisdiction over Bridgestone is a question of federal law. As we have noted before, for any questions of federal law about which federal circuits disagree, this court, as the transferee court, applies the law of the federal circuit in which it sits, here the Seventh Circuit. See In re Korean Air Lines Disaster of September 1, 1983, 829 F.2d 1171, 1176 (D.C. Cir. 1987) (“[T]he law of a transferor forum on a federal question merits close consideration, but does not have stare decisis effect in a transferee forum situated in another circuit.”), judgment aff’d by Chan v. Korean Air Lines, Ltd., 490 U.S. 122 (1989); Eckstein v. Balcor Film Investors, 8 F.3d 1121, 1126 (7th Cir. 1993) (“We agree with Korean Air Lines that a transferee court normally should use its own best judgment about the meaning of federal law when evaluating a federal claim.”). Therefore, in addition to the Supreme Court’s rulings, we will look for guidance first to the Seventh Circuit’s decisions on personal jurisdiction.

Next, as the parties agree, this court may exercise personal jurisdiction over Bridgestone to the extent that any of the transferor courts properly could. See Class Plaintiffs’ Preliminary Response to Defendant Bridgestone Corporation’s Motion to Dismiss Master Complaint for Lack of Personal Jurisdiction (“Preliminary Response”) at 9-10 (citing In re Agent Orange Prod. Liab. Litig., 818 F.2d 145, 163 (2nd Cir. 1987)); Defendant Ford Motor Company’s Statement in Opposition to Defendant Bridgestone Corporation’s Motion to Dismiss the Master Complaint for Lack of Personal Jurisdiction (“Ford’s Brief”) at 20 n.5 (citing same); Bridgestone Corporation’s Reply Brief in Support of Its Motion to Dismiss the Master Complaint for Lack of Personal Jurisdiction (“Reply Brief”) at 4 n.3 (citing same and In re Showa Denko K.K. L-Tryptophan Prods. Liab. Litig.-II, 953 F.2d 162, 165-66 (4th Cir. 1992)). Because we have subject matter jurisdiction over the Master Complaint pursuant to 28 U.S.C. § 1331, by virtue of the federal Magnuson-Moss Warranty Act claim, whether any of the transferor courts has personal jurisdiction over Bridgestone for the claims asserted in the Master Complaint is governed by Federal Rule of Civil Procedure 4(k). See Graphic Controls Corp. v. Utah Medical Prods., Inc., 149 F.3d 1382, 1385 n.2 (Fed. Cir. 1998) (applying Fed.R.Civ.P. 4(k) in patent case); Weinstein v. Todd Marine Enterprises, Inc., 115 F.Supp.2d 668, 671 (E.D. Va. 2000) (citing Omni Capital Int’l Ltd. v. Rudolf Wolff & Co., 484 U.S. 97 (1987)) (applying Rule 4(k) to claim under Magnuson-Moss Act). Rule 4(k)(1) provides, in relevant part, that a federal court may exercise jurisdiction over a defendant “who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which the district court is located.” Accordingly, Bridgestone is subject to the personal jurisdiction of each of the transferor courts, and consequently of this court, to the extent that a state court in the state in which the transferor court sits would be able to

exercise personal jurisdiction over Bridgestone for the plaintiffs' claims.

The determination of whether a state court would have jurisdiction over a nonresident defendant traditionally is made by employing the following two-part inquiry: (1) whether the state's long-arm statute allows jurisdiction; and (2) whether the assertion of jurisdiction by the state would comport with constitutional due process standards. NUCOR Corp. v. Aceros Y Maquilas de Occidente, S.A. de C.V., 28 F.3d 572, 580 (7th Cir. 1994). Here, Bridgestone does not argue that jurisdiction over it is precluded by the applicable state long-arm statutes, but rather contends that the assertion of jurisdiction over it by any state would violate the Due Process Clause of the Fourteenth Amendment. Brief in Support of Bridgestone Corporation's Motion to Dismiss Master Complaint ("Bridgestone's Brief") at 4 ("Because any exercise of jurisdiction over Bridgestone by this court would offend due process, no separate analysis of the potentially applicable state long-arm statutes is even necessary."). Therefore, Bridgestone has waived any argument it may have had based upon any state's long-arm statute, and we, too, will limit our analysis to the second prong of the two-part inquiry.⁵

⁵Bridgestone's decision not to address the application of any state's long-arm statute to it has no practical effect on our analysis, inasmuch as a quick (and by no means comprehensive) search of the law of the states in which the transferor courts are located suggests that many of them extend their exercise of personal jurisdiction to the fullest extent permitted by federal due process. See, e.g., Neal v. Janssen, ___ F.3d ___, 2001 WL 1262226, at *2 (6th Cir. 2001) (Tennessee courts construe its long-arm statute to "extend to the limits of due process."); Remick v. Manfredy, 238 F.3d 248, 255 (3rd Cir. 2001) (Pennsylvania's long-arm statute "authorizes Pennsylvania courts 'to exercise personal jurisdiction over nonresident defendants to the constitutional limits of the due process clause of the fourteenth amendment [sic.].'" (citation omitted); Gordy v. Daily News, L.P., 95 F.3d 829, 831 (9th Cir. 1996) ("California's long-arm statute extends jurisdiction to the limits imposed by the Due Process Clause."); City of Virginia Beach, Va. v. Roanoke River Basin Ass'n, 776 F.2d 484, 487 (4th Cir. 1985) ("The Supreme Court of Virginia has construed the long-arm statute to extend in personam jurisdiction to the limits of due process.") (citation omitted); Peridyne Tech. Solutions, LLC v. Matheson Fast Freight, Inc., 117 F.Supp.2d 1366, 1369 (N.D. Ga. 2000) (same as to Georgia's long-arm

In order for the exercise of personal jurisdiction to comport with due process, “a defendant must have purposefully established minimum contacts with the forum.” Central States, Southeast and Southwest Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 942-43 (7th Cir. 2000) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474-76 (1985)). The critical inquiry is “whether the defendant’s conduct and connection with the forum are such that it should reasonably anticipate being hailed into court there.” Id. at 943.

To establish such a reasonable anticipation the defendant must have purposefully availed itself of the privilege of conducting activities in the forum, invoking the benefits and protections of its laws. Once minimum contacts have been shown to exist, a court must examine other factors, such as the forum's interest in adjudicating the dispute and the burden on the defendant, to determine whether the exercise of personal jurisdiction satisfies traditional notions of fair play and substantial justice.

Id. (citations omitted).

Bridgestone’s due process argument is not directed toward any particular state, however, but rather to the United States in general. While Bridgestone does not say so explicitly, we

statute); P.M. Enterprises v. Color Works, Inc., 946 F. Supp. 435, 438 (S.D.W.Va. 1996) (same as to West Virginia); Ex Parte McInnis, ___ So.2d ___, 2001 WL 1346648 at *6 (Ala. 2001) (same as to Alabama); Williams v. Lakeview Co., 13 P.3d 280, 282 (Ariz. 2000) (same as to Arizona); Szalay v. Handcock, 819 S.W.2d 684, 686 (Ark. 1991) (same as to Arkansas); Davis v. Dempster, Inc., 790 So.2d 43, 46 (La. Ct. App. 2000) (same as to Louisiana); Balloon Bouquets, Inc. v. Balloon Telegram Delivery, Inc., 466 N.E.2d 523, 524 (Mass. App. Ct. 1984) (same as to Massachusetts); Kam-Tech Systems Ltd. v. Yardeni, 774 A.2d 644, 653 (N.J. Super. Ct. App. Div. 2001) (same as to New Jersey); Mony Credit Corp. v. Ultra-Funding Corp., 397 S.E.2d 757, 759 (N.C. Ct. App. 1990) (noting legislature’s “intent to liberally construe the North Carolina ‘long arm’ statute to the limits of due process”); Rescue Tech., Inc. v. Claw, Inc., 956 P.2d 1010, 1014 (Or. Ct. App. 1998) (Oregon long-arm statute effectively “extend[s] jurisdiction to the limits of due process under the Fourteenth Amendment.”); Porter v. Porter, 684 A.2d 259, 261 (R.I. 1996) (same as to Rhode Island); W. Gessmann, GmbH v. Stephens, 51 S.W.3d 329, 335 (Tex. App. 2001) (same as to Texas). In such states, the “twin inquiries collapse into one,” and the court must determine only whether the exercise of jurisdiction is constitutionally permissible. NUCOR Corp., 28 F.3d at 580.

assume that it addresses its contacts with the United States as a whole because it realizes that even if no one state constitutionally can exercise jurisdiction over it, because it does not have sufficient minimum contacts with any one state, this court still may have jurisdiction over it pursuant to Federal Rule of Civil Procedure 4(k)(2). Rule 4(k)(2) provides for personal jurisdiction as to federal claims⁶ over defendants who are not subject to the jurisdiction of any state “[i]f the exercise of jurisdiction is consistent with the Constitution and laws of the United States.” When, as here, “[a] defendant contends that [it] cannot be sued in the forum state and refuses to identify any other [state] where suit is possible, then the federal court is entitled to use Rule 4(k)(2).” ISI Int’l, Inc. v. Borden Ladner Gervais LLP, 256 F.3d 548, 552 (7th Cir. 2001). None of the parties explicitly recognize that Rule 4(k)(2), rather than Rule 4(k)(1), applies in this case. However, this is ultimately a distinction without a difference, because applying Rule 4(k)(2) leads us, in the end, to the same analysis as that performed by the parties in their briefs: whether Bridgestone’s contacts with the United States, as a whole, are such that a federal district court could exercise jurisdiction over it without offending due process.⁷

As promised, this long and winding road has finally led us to the following

⁶If personal jurisdiction over Bridgestone vis-à-vis the federal claim is appropriate, the Court also can exercise personal jurisdiction as to the state claims under the doctrine of pendent personal jurisdiction. See Robinson Engineering Co., Ltd. Pension Plan & Trust v. George, 223 F.3d 445, 449-50 (7th Cir. 2000) (recognizing and applying the doctrine of pendent personal jurisdiction).

⁷One difference is that when Rule 4(k)(1) applies, the question is whether a state’s exercise of jurisdiction would violate the Due Process Clause of the Fourteenth Amendment, while under Rule 4(k)(2), the analysis is whether a district court’s exercise of jurisdiction would violate the Due Process Clause of the Fifth Amendment. Again, however, this distinction is irrelevant for all practical purposes; the Court has found no authority holding that the two analyses differ in any way.

straightforward and undisputed statement of the issue before this court: Have the plaintiffs satisfied their burden of making a prima facie showing that Bridgestone's contacts with the United States are such that this court may, consistent with the federal constitutional right to due process, exercise personal jurisdiction over it as to the plaintiffs' claims asserted (and remaining) in the Master Complaint? The plaintiffs (and Ford) pose three alternative theories under which they argue the exercise of personal jurisdiction is appropriate: (1) Bridgestone's contacts with the United States are sufficient to permit this court to exercise general jurisdiction over it; (2) Bridgestone's contacts with the United States are such that this court may exercise specific jurisdiction over it as to the claims asserted in the Master Complaint; and (3) The contacts of Firestone, Bridgestone's wholly-owned subsidiary, with the United States may be imputed to Bridgestone for jurisdictional purposes. Because we conclude that the plaintiffs (and Ford) have made a prima facie showing that this court constitutionally may exercise general jurisdiction over Bridgestone, we need not, and do not, address the two remaining theories.

B. GENERAL JURISDICTION

The Supreme Court has recognized two distinct types of personal jurisdiction: specific and general. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984). A court may exercise specific jurisdiction over a defendant that has certain minimum contacts with the relevant forum when the controversy before the court "is related to or 'arises out of' [the] defendant's contacts with the forum." Id. at 414 (citation omitted). However, "[e]ven when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, due process is not offended by a State's subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the State and the foreign corporation." Id.

(footnote and citations omitted). In such general jurisdiction cases, the contacts between the defendant and the relevant forum must be “continuous and systematic” in order for the exercise of personal jurisdiction to be constitutionally permissible. Id. at 415 (citing Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952)). The overriding principle always is whether the maintenance of the suit against the defendant would “offend traditional notions of fair play and substantial justice.” International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (citation omitted). There is no rigid test employed to make this determination; rather, “[t]he amount and kind of activities which must be carried on by the foreign corporation in the state of the forum so as to make it reasonable and just to subject the corporation to the jurisdiction of that state are to be determined in each case.” Perkins, 342 U.S. at 445. Therefore, we must examine Bridgestone’s⁸ contacts with the relevant forum, in this case the United States, to determine whether they rise to the level of “continuous and systematic.”⁹ We find that the plaintiffs (and Ford) have made a prima facie case that they do.

As evidence that it does not have continuous and systematic contacts with the United States,¹⁰ Bridgestone submits the affidavit of Hiroyuki Kita, manager of Bridgestone’s Corporate

⁸Of course, as a corporation, Bridgestone “creates contacts for personal jurisdiction purposes through its authorized representatives: its employees, directors, officers, and agents.” Kuenzle v. HTM Sport-Und Freizeitgerate AG, 102 F.3d 453, 458 (10th Cir. 1996) (citing International Shoe, 326 U.S. at 316).

⁹Even in cases in which a defendant has sufficient minimum contacts with the forum, it is still possible that the exercise of personal jurisdiction will be impermissible because it would “offend traditional notions of fair play and substantial justice.” International Shoe Co., 326 U.S. at 316. Bridgestone does not argue that this is the case here; rather, it confines its argument to the issue of whether its contacts with the United States are sufficient.

¹⁰Bridgestone argues that any of its contacts after the August 2000 recall are irrelevant for jurisdictional purposes, because “[t]his Court’s power to exercise jurisdiction over a defendant

Legal Department. Paragraph 8 of Mr. Kita's affidavit asserts:

Bridgestone Corporation is not licensed to do business in any state and does not maintain a registered agent or officer for service of process in any state. Bridgestone Corporation does not transact business in any state. It does not contract to supply goods or services in any state. Bridgestone Corporation also does not engage in any other persistent course of conduct in, or derive substantial revenue from goods used or consumed or services rendered in, any state.¹¹ Moreover, to my best knowledge: (i) Bridgestone Corporation maintains no offices, post office boxes, places of business, or telephone listings in any state. (ii) Bridgestone Corporation has no real estate, bank accounts or other interest in property in any state, and has not had real estate, bank accounts or other interest in property in any state. (iii) It has not incurred any obligation to pay, and has not paid, any taxes in any state. (iv) It does not have employees in any state and has not recruited any employees from any state. (v) Bridgestone Corporation has not conducted any advertising,¹² solicitation, service, marketing or other sales promotions in any state. (vi)

consistent with constitutional due process is determined by the defendant's contacts with the forum at the time of the events that gave rise to the claim alleged in the complaint, not later." Reply Brief at 28 (citing Tomar Electronics, Inc. v. Whelen Technologies, Inc., 819 F. Supp. 871, 876 (D. Ariz. 1992)). However, the Seventh Circuit expressly has found that contacts with the forum that occurred between the time the cause of action accrued and the date the complaint was filed can be relevant to the jurisdictional analysis. See Logan Productions, Inc. v. Optibase, Inc., 103 F.3d 49, 53 (7th Cir. 1996). A simple example demonstrates that this is the case, at least for general jurisdiction purposes. Imagine that Mr. Brown was involved in an automobile accident with Ms. Green in Florida in 1998. At the time of the accident, Mr. Brown had never had any contacts with Indiana. However, one month after the accident, Mr. Brown moved to Indiana and established his residency there. Obviously, Mr. Brown would then be subject to the general jurisdiction of courts in Indiana, and if Ms. Green chose to file suit against him in Indiana alleging negligence in the Florida accident, there would be no personal jurisdiction impediment to her doing so.

¹¹This statement must come as a surprise to Bridgestone's shareholders, especially in light of Bridgestone's 1998 Annual Report, which reported that Bridgestone's sales in the Americas (which, of course, includes the United States) amounted to a consolidated operating profit of \$546 million and accounted for 31.1% of its "total operating profit before eliminations for consolidation." See Exhibit F to Plaintiffs' Preliminary Response. These sales figures include sales made in the United States by Firestone, of course, and not Bridgestone itself, but Bridgestone certainly appears to have "derive[d] substantial revenue" from Firestone's U.S. sales.

¹²In fact, Bridgestone subsequently stated in its response to the plaintiffs' interrogatories that "during the course of its investigation to respond to these interrogatories, it believes it has identified a single instance [in the January 2000 issue of *Forbes* magazine] in which Bridgestone

Bridgestone Corporation has not designed, manufactured, sold, advertised, delivered, or issued warranties on any good or product in any state, nor has it participated in the decision to sell or deliver any good or product to any state. (vii) At no time relevant to this lawsuit has Bridgestone Corporation entered into a contract in any state or committed any tort, in whole or in part, in any state.

Kita Affidavit, Exhibit 1 to Bridgestone's Motion to Dismiss Master Complaint. Mr. Kita further asserts in paragraph 14 of his affidavit that Bridgestone "does not maintain an interactive web site to solicit business from the United States and does not solicit business for or on behalf of Firestone." Finally, in the remainder of his affidavit, Mr. Kita asserts that Bridgestone's and Firestone's "daily operations" are separate, that the two corporations observe all appropriate corporate formalities, and that Bridgestone "did not market or sell in the United States the Firestone tires that are at issue in the subject lawsuit."

Mr. Kita's affidavit paints a picture of Bridgestone as a Japanese corporation which, aside from owning all of the stock of Firestone, a U.S. corporation, has no contact at all with the United States. The evidence submitted by the plaintiffs and Ford paints a very different picture of Bridgestone, however. Bridgestone is not a parent corporation that sits idly by reaping profits from its investment, Firestone. Rather, the evidence of record indicates that Bridgestone actively conducts business with Firestone and others in the United States on a regular basis in a variety of ways.¹³ The plaintiffs and Ford have made a prima facie showing of at least the following

placed an advertisement in the United States." Bridgestone's Response to Plaintiffs' Interrogatory No. 10 served February 16, 2001, Exhibit 1 to Declaration of Brian D. Boyle in Support of Ford's Brief.

¹³The plaintiffs and Ford argue that Bridgestone does more than conduct business with Firestone, but actually controls Firestone to such a degree that Firestone's actions can be imputed to Bridgestone for both jurisdictional, and presumably liability, purposes. If a parent corporation exercises "an unusually high degree of control over [its] subsidiary," personal jurisdiction over the parent may be premised upon the subsidiary's contacts with the relevant forum. Central

activities by Bridgestone in or directed to the United States:¹⁴

1. Bridgestone utilizes Firestone to both manufacture and sell Bridgestone brand tires in the United States. John Lampe, CEO of Firestone, testified that Firestone “is responsible for the sales of Bridgestone branded consumer tires and light truck tires in the United States replacement market and Bridgestone truck tires both in the replacement market and in the original equipment market” and that Firestone “manufactured Bridgestone branded tires in I believe all of our tire facilities, and we do import Bridgestone branded tires as well as Firestone branded tires from Japan.” Lampe Deposition at 236, Exhibit G to Class Plaintiffs’ Final Response to Bridgestone Corporation’s Motion to Dismiss Master Complaint (“Final Response”); see also Bridgestone’s Response to Plaintiffs’ Interrogatory No. 12 served February 27, 2001 (hereinafter referred to as “Response to Plaintiffs’ Second Set of Interrogatories, No. ___”), Exhibit 1 to Declaration of Brian D. Boyle in Support of Ford’s Brief (“Boyle Dec.”) (Bridgestone designed Bridgestone brand tires that are manufactured by Firestone). This testimony regarding Firestone’s responsibility to its parent lends support to the plaintiffs’ and Ford’s argument that Firestone acts as Bridgestone’s agent in the manufacture

States, 230 F.3d at 943. Because we find the evidence of Bridgestone’s own contacts with the United States sufficient to support our exercise of general jurisdiction, we do not address at this stage the issue of whether jurisdiction also could be based upon Bridgestone’s alleged control of Firestone. The plaintiffs may, of course, pursue this contention at trial.

¹⁴The Court has carefully reviewed all of the voluminous materials submitted by the various parties. The record citations that follow constitute a representative sample of the evidence contained in those materials.

and sale of Bridgestone tires in the United States, and to the extent that Firestone was acting as Bridgestone's agent, its contacts with the United States may be imputed to Bridgestone.¹⁵ See IDS Life Ins. Co. v. SunAmerica Life Ins. Co., 136 F.3d 537, 541 (7th Cir. 1998) (stating, in personal jurisdiction context, that “[i]f the subsidiaries were acting as SunAmerica's Illinois agent in the sense of conducting SunAmerica's business rather than their own business, the parent could be sued” because “a corporation should not be able to insulate itself from the jurisdiction of the states in which it does business by the simple expedient of separately incorporating its sales force and other operations in each state”); Donatelli v. National Hockey League, 893 F.2d 459, 466 (1st Cir. 1990) (“Sometimes, the parent has utilized the subsidiary in such a way that an agency relationship between the two corporations can be perceived—and that is enough.); Gallagher v. Mazda Motor of America, Inc., 781 F. Supp. 1079, 1085 (E.D. Pa.

¹⁵This is not the same as piercing the corporate veil between Bridgestone and Firestone; nor does it have the same consequences. “Despite the fact that corporate entities are distinct and their veils unpierced, courts can—and usually do—make an actual inquiry into the nature of the interrelationship before abandoning the jurisdictional quest.” Donatelli, 893 F.2d at 465; see also IDS Life Ins. Co., 136 F.3d at 541 (noting a “broader principle” than piercing the veil is involved when examining whether a subsidiary operates as an agent of its parent in the relevant forum). Indeed, it is not the parent/subsidiary relationship that is important; the same analysis would apply if a corporation employed an unrelated corporation or person as its agent in the relevant forum. See, e.g., Kuenzle v. HTM Sport-Und Freizeitgerate AG, 102 F.3d 453 (10th Cir. 1996). If the corporate veil were pierced, *all* of Firestone's actions could be imputed to Bridgestone for jurisdictional purposes; the two companies would be treated as one for legal purposes. However, if the plaintiffs ultimately prove that Firestone acted as Bridgestone's agent in the manufacture and sale of Bridgestone brand tires in the United States, regardless of whether Bridgestone controlled other aspects of Firestone's business, the actions taken by Firestone in this capacity as Firestone's agent would be considered the actions of Bridgestone for jurisdictional (and, if relevant, for liability) purposes.

1992) (“[I]f a parent uses a subsidiary to do what it otherwise would have done itself, it has purposefully availed itself of the privilege of doing business in the forum. Jurisdiction over the parent is therefore proper.”). The manufacturing and sales of these tires certainly constitute considerable contacts in and with the United States; indeed, depending on the number of Bridgestone brand tires manufactured in the United States and the amount of the sales made here (information which the Court does not have before it at this time), it is possible that general jurisdiction could be premised on these facts alone. See LSI Indus. Inc. v. Hubbell Lighting, Inc., 232 F.3d 1369, 1375 (Fed. Cir. 2000) (“Based on [the defendant’s] millions of dollars of sales of lighting products in Ohio over the past several years and its broad distributorship network in Ohio, we find that Hubbell maintains ‘continuous and systematic’ contacts with Ohio . . . [and therefore] is subject to general jurisdiction in Ohio under the Due Process Clause.”). Further, regardless of whether the plaintiffs ultimately can show an agency relationship by a preponderance of the evidence, it is at least reasonable at this stage to infer that Bridgestone has regular contacts with Firestone, and therefore with the United States, arising out of Firestone’s manufacture of Bridgestone brand tires here.

2. During the years 1994-2000, Bridgestone sold tires to Firestone and four other

U.S. corporations¹⁶ for resale in the United States. Bridgestone asserts that its sales of tires to U.S. companies are irrelevant for jurisdictional purposes because it does not sell the tires here itself. Rather, it sells its tires to Firestone and the other U.S. companies in Japan, and “exercises in principle no control over where and to whom such tires are sold” by its buyers. Supplemental Affidavit of Hiroyuki Kita at ¶ 5, Exhibit A to Plaintiffs’ Final Response. Regardless of where the title to the tires technically passes, however, it is reasonable to infer that Bridgestone’s regular sales to U.S. corporations involve contacts with those U.S. companies, and therefore contacts with the United States. While those contacts alone may not be sufficient to constitute the “systematic and continuous” contacts required for general jurisdiction, they certainly are relevant to the general jurisdiction analysis.

3. Bridgestone manufactures Firestone brand tires for sale in the U.S. replacement tire market, including some of the models of tires at issue in this litigation. See Bridgestone’s Response to Plaintiffs’ Interrogatory No. 1 served February 16, 2001 (hereinafter referred to as “Response to Plaintiffs’ First Set of Interrogatories, No. ___”), Exhibit 1 to Boyle Dec.; Excerpts of Deposition of Hideo Hara, Exhibit 71 to Boyle Dec. Again, the fact that Bridgestone manufactures and sells Firestone brand tires is further evidence that, in the course of the relationship between the two companies, Bridgestone has regular contacts

¹⁶Servco Pacific, Inc., PIC Inc., Thompson Aerospace Corporation, and Bridgestone Aircraft Tire (USA), Inc.

with the United States.¹⁷

4. Bridgestone contracts with Bridgestone/Firestone Research, Inc. to conduct research within the United States. See Response to Plaintiffs' First Set of Interrogatories, No. 4, Exhibit 1 to Boyle Dec. Regardless of where the contract physically was executed, this contractual relationship between Bridgestone and a U.S. corporation involving performance in the United States constitutes contacts with the United States. See Madison Consulting Group v. South Carolina, 752 F.2d 1193, 1204 (7th Cir. 1985) (finding plaintiff's performance of the contract at issue within the forum, as contemplated by the defendant at the time of contracting, to be "another meaningful contact" between defendant and the forum).
5. Bridgestone and Firestone regularly and routinely exchange technology and engineering information with one another. See, e.g., Deposition of Robert Wyant, Exhibit A to Final Response, at 307-09 (discussing regularly scheduled meetings between Bridgestone and Firestone to exchange information and technology); Excerpts from Deposition of Hideo Hara, Exhibit H to Final Response (discussing exchange of technology); Deposition of Hideo Hara, Exhibit 19 to Class

¹⁷We are not relying on the fact that tires manufactured by Bridgestone, under both the Bridgestone and the Firestone brand names, are sold throughout the United States, inasmuch as the "stream of commerce" theory is relevant to specific jurisdiction, not general jurisdiction. See, e.g., Alpine View Co., Ltd. v. Atlas Coco AB, 205 F.3d 208, 216 (5th Cir. 2000) ("We have specifically rejected a party's reliance on the stream-of-commerce theory to support asserting general jurisdiction over a nonresident defendant."). The stream of commerce and specific jurisdiction analysis will be relevant, however, as to the claims of any plaintiff who owned an allegedly defective tire that was, in fact, manufactured by Bridgestone.

Plaintiffs' Third Supplement to Jurisdictional Evidence Regarding Bridgestone Corporation ("Third Supp."), at 125 (same); *id.* at 128-29 (discussing Bridgestone engineers' visits to Firestone plants in the U.S.); Deposition of James Gardner, Exhibit 31 to Third Supp., at 61-63 (discussing exchange of technical information between Bridgestone and Firestone); Exhibits 3, 5, 8, 34-37, 54, 62 to Boyle Dec. (examples of Bridgestone and Firestone cooperating on technical matters and exchanging technical and engineering information). These visits, meetings and other communications between Bridgestone and Firestone personnel constitute regular contacts with the United States.¹⁸

6. Bridgestone and Firestone regularly and routinely exchange business information and otherwise coordinate their business activities in a variety of areas. See, e.g., Deposition of John Lampe, Exhibit I to Final Response, at 75 (discussing Firestone employees whose job responsibilities include communication with Bridgestone); Deposition of John Lampe, Exhibit G to Final Response, at 227-30 (discussing committee with the responsibility of coordinating "Bridgestone's

¹⁸Bridgestone cites numerous cases for the proposition that such contacts and communications between a parent and a subsidiary, as well as the exchange of employees, are normal and do not support a finding that the parent exercises such control over the subsidiary that the corporate veil should be pierced. See Reply Brief at 6 (citing *IDS Life Ins. Co.*, 136 F.3d at 540; *Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001); *Central States*, 230 F.3d at 945; *Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269, 1274 (6th Cir. 1998)); *id.* at 8 (citing *Fidenas AG v. Honeywell, Inc.*, 501 F. Supp. 1029, 1037 (S.D.N.Y. 1980); *Salon Group, Inc. v. Salberg*, 156 F. Supp.2d 872, 877 (N.D. Ill. 2001); *Hopper v. Ford Motor Co. Ltd.*, 837 F. Supp. 840, 844 (S.D. Tex. 1993); *Snowden v. Connaught Labs, Inc.*, 793 F. Supp. 1040, 1044 (D. Kan. 1992)). However, none of these cases stands for the proposition that a parent corporation's contacts with its subsidiary in the relevant forum are irrelevant to the general jurisdiction analysis, or that a parent corporation cannot be subject to general jurisdiction based upon its continuous and systematic contacts with its subsidiary in the forum.

global business with the OE [original equipment] accounts” between Bridgestone and its worldwide subsidiaries, including Firestone); Exhibit 25 to Boyle Dec. (memo regarding “OE Global Meeting”); Deposition of John Behr, Exhibit 13 to Third Supp., at 503-16 (discussing his contacts with Bridgestone in his capacity as Firestone’s account executive for the Ford account); Exhibits 6-7 to Boyle Dec. (examples of Bridgestone and Firestone sharing confidential business information); Exhibits 10, 16-24 to Boyle Dec. (examples of monthly reports sent from Firestone to Bridgestone and Bridgestone’s follow-up questions regarding those reports); Exhibit 32 to Third Supp. (describing travel by various Bridgestone employees to the United States between 1994 and 2000); Exhibit 14 to Boyle Dec. (memo regarding visit by Bridgestone employee to Firestone).

7. Bridgestone employees are sent by Bridgestone to work for Firestone in the United States, several Bridgestone executives have served on Firestone’s Board of Directors, and Bridgestone asked John Lampe to assume the position of Firestone CEO. See Deposition of John Lampe, Exhibit G to Plaintiffs’ Final Response, at 146-47 (discussing Bridgestone employees sent to “run” Firestone); *id.* at 147 (Bridgestone asked Lampe to consider assuming position of Firestone CEO); Response to Plaintiffs’ First Set of Interrogatories, No. 6, Exhibit 1 to Boyle Dec. (identifying directors, officers, and board members of Bridgestone and Firestone between 1994 and 2000); Response to Plaintiffs’ First Set of Interrogatories, No. 16, Exhibit 1 to Boyle Dec. (identifying five individuals who served as directors of Bridgestone while employed by Firestone); Deposition of Harry MacMillan,

Exhibit 25 to Third Supp., at 69-75, 134 (discussing the practice of “advisers” from Bridgestone working at Firestone plants in the United States). While this exchange of employees and overlap of high-level executives is not necessarily evidence that Bridgestone controls Firestone, and certainly is not enough, by itself, to support piercing the corporate veil, see United States v. Bestfoods, 524 U.S. 51, 69 (1998), it certainly is convincing evidence of the extensive amount of contact between the two companies. Further, while Bridgestone emphasizes that the Japanese expatriates who come to the United States from Bridgestone become employees of Firestone, the fact that Bridgestone sends its employees to work in the United States on a regular basis constitutes further evidence of Bridgestone’s regular and extensive contacts with Firestone, and therefore with the United States.

8. Bridgestone Executives have met with Ford in the United States on at least two occasions. See Deposition of Jacques Nasser, Exhibit 14 to Third Supp., at 407 (describing meeting between Nasser, then-CEO of Ford, and Yoichiro Kaizaki, then-CEO of Bridgestone, in the United States in early 2000 to discuss “general business matters” between Bridgestone and Ford); Exhibit 32 to Boyle Dec. (memo regarding 1996 meeting between Ford, Mr. Kaizaki, then President of Bridgestone, and others, in the United States “[t]o discuss relevant business issues and to reaffirm our commitment as a 1st class global partner”). While these meetings alone certainly are not sufficient to establish general jurisdiction, they certainly may be considered as part of the overall picture of Bridgestone’s

contacts with the United States.

9. Bridgestone has had contacts with the United States through its involvement with auto racing. Bridgestone describes its involvement with auto racing in the United States in the years 1994 to 2000 as follows:

Bridgestone was involved in the design, development and manufacturing of racing tires for the IRL and CART series and sold these racing tires to Firestone in Japan. Further, Bridgestone supplied racing tires in the United States for the 2000 Formula One championship race in Indianapolis, and supplied racing tires in the United States to certain contracted teams for the 1997 and 1998 FIA-GT championship automobile races held in the United States for (1) the IRL and CART series automobile racing leagues during the years 1994-2000 and (2) the FIA-GT championship Le Mans 24 hour automobile race in 1999.

Response to Plaintiffs' First Set of Interrogatories, No. 23, Exhibit 1 to Boyle Dec. Again, were these contacts Bridgestone's only contacts with the United States, they clearly would not be sufficient to justify the exercise of general jurisdiction over Bridgestone. However, these contacts do serve as further examples of Bridgestone doing business in, and having contact with, the United States.

Based upon the evidence set forth above, we are of the view that the plaintiffs (and Ford) have clearly satisfied their burden of making a prima facie showing that Bridgestone has the type of "continuous and systematic" contacts with the United States necessary for this court to exercise general jurisdiction over it within constitutional boundaries.

The cases cited by Bridgestone on the issue of general jurisdiction do not dictate a different result, as none of the defendants in those cases had the type of contacts with the relevant forum that Bridgestone has had with the United States. For example, in Hall, the defendant's

insufficient contacts with the relevant forum (Texas) were summed up by the Supreme Court as follows:

Basically, Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training.

Hall, 466 U.S. at 1873. The Court concluded that the defendant's acceptance of checks drawn on a Texas bank was "of negligible significance for purposes of determining whether [the defendant] had sufficient contacts in Texas." Id. The Court also concluded that, aside from the CEO's one meeting in Texas, all of the defendant's remaining contacts with Texas related to their purchase of goods and training services from a Texas company, and held that "mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions." Id. at 418. Bridgestone's contacts with the United States clearly amount to more than the single meeting and regular purchases that the Court found insufficient in Hall.

Similarly, in Glass v. Kemper Corp., 930 F. Supp. 332, 338 (N.D. Ill. 1996), the defendant's contacts with Illinois were described by the court as follows:

Oberst's physical presence in Illinois was sporadic. He came to Illinois once to interview with Kemper Financial; once for a week-long job orientation for Kemper Financial; and several times per year, for one or two days at a time, to attend board meetings. Oberst's other contacts with Illinois were more regular, but still relatively insubstantial. Oberst occasionally had telephone conversations with and wrote letters to Kemper Financial, Kemper, and Prime employees in Illinois. He also maintained a banking relationship with First Chicago in Illinois.

These contacts, too, are far less substantial than Bridgestone's contacts with the United States.

See also IDS Life Ins. Co., 136 F.3d at 540 (defendant's advertising in national media that is seen

in Illinois, borrowing money from Chicago bank, and having security interest in Illinois property does not constitute “doing business” under Illinois long arm statute); C.R. Bard Inc. v. Guidant Corp., 997 F. Supp. 556, 561 (D. Del. 1998) (holding that defendant’s maintenance of a website providing information about its products and fact that defendant’s name was used on California subsidiary’s cartons and promotional materials shipped to Delaware did not constitute “persistent course of conduct” by defendant in Delaware).

In contrast to the cases cited by Bridgestone in which the contacts necessary for general jurisdiction were lacking, the evidence of record, viewed in the light most favorable to the plaintiffs, demonstrates that Bridgestone has continuous and systematic contacts with Firestone and others in the United States and that those contacts are an important part of Bridgestone’s business. In light of these contacts, it is neither unreasonable nor unfair to subject Bridgestone to the general jurisdiction of this court.¹⁹

CONCLUSION

The plaintiffs and Ford have submitted sufficient evidence to establish a prima facie case in support of this court’s exercise of general personal jurisdiction over Bridgestone for the claims remaining in the Master Complaint. Accordingly, Bridgestone’s motion to dismiss for lack of

¹⁹The Court notes that several state courts recently have denied motions to dismiss for lack of personal jurisdiction filed by Bridgestone. See, e.g., In Re: Bridgestone/Firestone & General Motors Corp. Tire Cases, No. 01MD-3 (Circuit Court of Davidson County, Tenn., August 10, 2001), Exhibit 7 to Third Supp.; McDaniel v. Bridgestone/Firestone, Inc., No. 01-CP-25-160 (Court of Common Pleas of 14th Judicial Circuit, S.C., July 18, 2001), Exhibit 2 to Third Supp.; Gregory v. Bridgestone/Firestone, Inc., No. 00-C-1583 (Circuit Court of Ohio County, W. Va., June 4, 2001), Exhibit 1 to Third Supp. A federal district court in California has similarly ruled. Smith v. Bridgestone/Firestone, No. CV 00-12718-GHK (JWJx) (C.D. Cal. March 29, 2001), Exhibit 6 to Third Supp. Bridgestone’s motion to reconsider that ruling was denied on May 7, 2001.

personal jurisdiction must be **DENIED**.²⁰

ENTERED this _____ day of November 2001.

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

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²⁰Of course, the plaintiffs still retain the burden of ultimately proving the necessary jurisdictional facts by a preponderance of evidence, and while the Court has not addressed the issue of specific jurisdiction or the plaintiffs' assertion that Firestone's actions may be imputed to Bridgestone because of its control of Firestone in ruling on the instant motion, the plaintiffs are in no way precluded from pursuing these alternative arguments at trial.