

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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	)	
In re: BRIDGESTONE/FIRESTONE, INC.,	)	
TIRES PRODUCTS LIABILITY	)	Master File No. IP 00-9373-C-B/S
LITIGATION	)	MDL No. 1373
_____	)	(centralized before Hon. Sarah Evans
	)	Barker, Judge)
LYNN BROWN JACKSON, et al.,	)	
Plaintiffs,	)	
V.	)	Individual Case No. IP 01-5410-C-B/S
BRIDGESTONE/FIRESTONE, INC., et al.,	)	
Defendants.	)	
	)	

**ORDER DENYING MOTION TO REMAND**

Before the Court is the plaintiffs’ motion to remand this action to the Mississippi state court in which it was originally filed. For the reasons set forth below, the motion is DENIED.

**Discussion**

The plaintiffs, residents of Louisiana, filed this action on February 1, 2001, in Mississippi state court against Ford Motor Company (“Ford”), a Michigan corporation, Bridgestone/Firestone, Inc. (“Firestone”), an Ohio corporation with its principal place of business in Tennessee, and 16<sup>th</sup> Avenue Shell Service Station (“16<sup>th</sup> Avenue Shell”), a

citizen of Mississippi. Ford and Firestone were served with the complaint on February 22, 2001. On March 13, 2001 (16<sup>th</sup> Avenue Shell having not been served), Ford removed the action to the Southern District of Mississippi, and Firestone joined in the removal on March 15, 2001. On April 3, 2001, the plaintiffs served 16<sup>th</sup> Avenue Shell, and on April 9, 2001, filed their motion to remand with the Southern District of Mississippi, which stayed the case pending transfer to this MDL without ruling on the motion to remand.

The defendants predicated removal on diversity jurisdiction and federal question jurisdiction, both of which are challenged by the plaintiffs' motion to remand. Because of our resolution of the former challenge, we need not and do not reach the latter.

In cases where federal question jurisdiction does not apply, an action is removable under 28 U.S.C. §1441 only when (1) complete diversity among the parties exists, and (2) no "properly joined and served" defendant is a citizen of the state in which the action was brought. See 28 U.S.C. §1441(a) and (b). Complete diversity clearly exists here, because no named defendant resides in Louisiana. Plaintiffs maintain, however, that removal was improper because 16<sup>th</sup> Avenue Shell is a citizen of Mississippi, the state in which they filed their complaint. Section 1441(b) would have precluded removal, however, only if 16<sup>th</sup> Avenue Shell had been *properly served*, and it had not been served at the time Ford filed the removal petition. That it ultimately was served does not affect the propriety of removal. See In re Shell Oil Co., 970 F.2d 355, 356 (7<sup>th</sup> Cir. 1992) (properly removed case not to be

remanded because of subsequent events).<sup>1</sup> Moreover, contrary to the plaintiffs' argument, 16<sup>th</sup> Avenue Shell's consent to removal was not required. Shaw v. Dow Brands, Inc., 994 F.2d 364, 369 (7<sup>th</sup> Cir. 1993) (consent of defendant served after filing of removal petition not required).

The defendants' removal of this action was proper under 28 U.S.C. §1441. The plaintiffs' motion to remand is therefore DENIED.

It is so ORDERED this \_\_\_\_ day of January, 2002.

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

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<sup>1</sup>The law of the Seventh Circuit governs the removal and remand issues presented in this case. Halkett v. Bridgestone/Firestone, Inc., et al., 128 F.Supp.2d 1198 (S.D. Ind. 2001).

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