

**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 ALL** )  
**ACTIONS** )

**ENTRY ON FORD’S MOTION FOR PROTECTIVE ORDER**

This cause is before the magistrate judge on Ford Motor Company’s Motion for Protective Order, which was filed on January 10, 2002. The magistrate judge heard argument on the motion during her status conference on January 11, 2002, and the plaintiffs report that they do not wish to file a written response to the motion. Accordingly, the motion is ripe for ruling, and the magistrate judge, being duly advised, **DENIES** Ford’s motion for the reasons set forth below.

At issue is the plaintiffs’ request to depose four of Ford’s in-house counsel: Donald Lough, Timothy Quinlan, Corey MacGillivray, and Thomas Falahee. Not surprisingly, Ford objects to having its counsel deposed, on the grounds that any relevant information they may have will be protected by either the attorney-client or the work product privilege. Ford argues that this court should apply the rule set forth in Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8<sup>th</sup> Cir. 1986) (citation omitted), in which the Eighth Circuit held that a party should not be permitted to depose opposing counsel without first demonstrating that “(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case.” Ford then argues that the plaintiffs are unable to make such a showing in this case, and therefore the requested depositions should not go forward.

The Shelton rule has a certain philosophical appeal, in that the magistrate judge agrees that deposing opposing counsel should be the exception, not the rule, and the court should exercise its discretion to prevent such depositions to be used for the purpose of harassment. However, the

magistrate judge has significant concerns regarding the burden the Shelton rule places upon parties who may have legitimate reasons for seeking to depose opposing counsel, especially in-house corporate counsel who may have worn many hats within the corporation, including some that did not carry with them the protection of the attorney-client privilege, or who may otherwise be the most efficient, if not the only, source of relevant, non-privileged information. In such cases, it may be extremely difficult, if not impossible, for a party to demonstrate that opposing house counsel has relevant, non-privileged information if it is not given the opportunity to question the attorney under oath regarding his or her role in the events in question. Further, as a practical matter, it is very difficult for a court to rule on privilege matters in a vacuum, and Shelton essentially requires just that: the court somehow must determine that all of the relevant information that an attorney has about a case is privileged before the attorney is asked a single question regarding the case. Finally, the burden of convening a deposition, even if virtually every question is met with a privilege objection, is simply not so great as to justify a prior restraint on the deposition, absent a showing that the impetus behind the deposition request is merely harassment.

The magistrate judge is not bound by the Eighth Circuit's ruling in Shelton, and the Seventh Circuit has neither directly addressed Shelton or the rule pronounced therein nor, to the magistrate judge's knowledge, established any such rule itself. For the reasons set forth above, the magistrate judge declines to follow Shelton, and determines that, in this case, it is appropriate for the depositions of the attorneys in question to go forward so that the parties may create an appropriate record regarding Ford's claims of privileges. This will enable the parties to brief the privilege issues in context, and permit the court to resolve those issues in a concrete, rather than hypothetical, manner. Accordingly, Ford's motion for protective order is **DENIED**.

ENTERED this \_\_\_\_\_ day of January 2002.

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V. Sue Shields  
United States Magistrate Judge  
Southern District of Indiana

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