

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
THIS ORDER APPLIES TO:) Barker, Judge)
)
DIANA MAGERS, et al., Plaintiff,)
v.) Individual Case No. IP 01-5337-C-B/S
BRIDGESTONE/FIRESTONE, INC., et al.,)
Defendants.

DENIAL OF SUGGESTION FOR REMAND

Plaintiff Diana Magers has filed an Amended Motion for Remand to the United States District Court Northern District of Texas. This motion is properly addressed as a request for suggestion of remand, which we DENY for the reasons below. We also DENY the defendant's motion for costs and fees.

Discussion

Ms. Magers filed her complaint against Bridgestone/Firestone, Inc. (“Firestone”) and Ford Motor Company (“Ford”), alleging, among other things, that the Wilderness ATX tires on her Ford Explorer experienced a tread separation. (See Complaint ¶¶ 9, 10, 11.) In her motion requesting remand, she now reports that both her expert and Ford’s expert have determined that there was no tread separation on the subject tires. She maintains that “[b]ased on the fact that this is not a tread separation, this case should not be included in this Multi District Litigation as it is not possible to find an expert who could, with intellectual honesty, testify favorable [sic] for Plaintiff on the threshold issue.”

Ford¹ apparently does not object to remand but wants Ms. Magers to be bound by the case management deadlines that have governed her case in the MDL, some of which have expired. Ford also wants this court to award it fees and costs under 28 U.S.C. § 1927, which allows for such an assessment against counsel “who so multiplies the proceedings in any case unreasonably and vexatiously.” Ford complains in support of its request that the plaintiff has taken no discovery, has not responded to its discovery requests, and has unduly delayed investigation of her claims and admission of no tread separation, causing Ford to incur expert expenses.

¹Firestone has not weighed in on the plaintiff’s motion, and the Court assumes that it has reached some agreement with her, although no dismissal has been filed.

The Court will not issue to the Panel a suggestion for remand. This case was properly transferred to the MDL based on the allegations of the plaintiff's complaint. That plaintiff apparently has now determined that she cannot prove her allegations against Firestone is not a sufficient basis for remand, for several reasons. First, it would be too blurry a line to draw: if, for example, a plaintiff has resolved a case against Firestone (based, perhaps, on a paucity of proof) but proceeds toward trial against Ford, is that case no longer a "tread separation case?" Second, remand would be inefficient: the parties should not have successive discovery periods in two different district courts;² that is inconsistent with the purposes of multidistrict litigation. Third, the plaintiff in this case still maintains her Explorer rollover claims against Ford; the litigation of those claims will benefit from the coordinated proceedings in the MDL.

Ford's request for sanctions under section 1927 is denied. The facts before the Court do not demonstrate that plaintiff's counsel "unreasonably or vexatiously" multiplied the proceedings, particularly those against Ford. Ford's complaint that the plaintiff hasn't taken or provided appropriate discovery will be addressed if and when an appropriate motion is before the Court.

For the foregoing reasons, the plaintiff's request for suggestion of remand is DENIED. Ford's motion for costs and fees is likewise DENIED.

²The plaintiff will not assent to the stipulation Ford seeks that she remain bound by the MDL deadlines after remand.

It is so ORDERED this ____ day June, 2002.

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

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