

**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 ) )**

**FIRST ENTRY REGARDING PLAINTIFFS' "PARAGRAPH 5" AND "PARAGRAPH 6"  
MOTIONS TO COMPEL PRODUCTION OF DOCUMENTS BY FORD MOTOR  
COMPANY ON GROUND OF WAIVER**

The plaintiffs filed the instant motions pursuant to the magistrate judge's Entry for February 5, 2002, paragraph 5 of which established a briefing schedule for the plaintiffs' motion challenging Ford's assertion of privilege as to "a discrete number of documents on the privilege log, which [the plaintiffs] characterize as "hot" documents, for which a determination of whether they are in fact privileged would be very helpful to the preparation of the plaintiffs' case," and paragraph 6 of which established a briefing schedule for the plaintiffs' motion challenging Ford's assertion of the attorney-client privilege as to "certain documents on the privilege log for which neither the author nor the recipient appears to be an attorney." The Entry further required Ford to provide each of the documents identified by the plaintiffs in their motions to the magistrate judge for in camera review. The magistrate judge has now completed the in camera review of the documents submitted by Ford and, after considering the arguments of the parties in their briefs, hereby determines the following.

As an initial matter, the magistrate judge has considered the plaintiffs' argument that Ford has waived any claim of privilege as to the documents at issue because its privilege log is inadequate in numerous respects. While the plaintiffs' complaints about the privilege log are not unjustified, and the log certainly could have been better in many respects, the magistrate judge

determines that it is not so deficient as to justify a finding of waiver as to any category of documents. The magistrate judge believes that the deficiencies in the privilege log are the result of the sheer volume of documents involved, rather than any attempt by Ford to impede the discovery process, although the number of completely irrelevant documents contained on the log is extremely troublesome.<sup>1</sup> Also troublesome is the number of documents on the log that clearly are not privileged, although the magistrate judge appreciates the fact that Ford, over the last several months, has withdrawn its privilege claim as to the vast majority of these documents.

The plaintiffs divided the documents at issue into nine exhibits, and this Entry is organized in the same way. This Entry will not address any document that the magistrate judge reviewed and addressed in any of her previous entries regarding Ford's privilege log. However, if a document is listed by the plaintiffs in more than one exhibit to the instant motions, it will be similarly repeated in this Entry.

All documents and affidavits ordered to be submitted in this Entry shall be submitted **within 21 days of the date of this Entry**. To the extent that some of the "historical" documents are referenced by Bates number in the historical affidavits previously submitted by Ford, Ford may cite to the relevant affidavit and paragraph number(s); it is not necessary to resubmit the

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<sup>1</sup>Ford explains the volume of irrelevant documents on the log by the fact that its electronic document depository "includes documents collected for purposes other than the MDL, including the NHTSA inquiry and the states attorneys general inquiry." This may explain some of the irrelevant documents, but the magistrate judge seriously doubts that either NHTSA or the attorneys general are remotely interested in, for example, documents relating to financing problems experienced by an individual Ford customer, or Ford's contract negotiations with Mazda, or discussions of export regulations. More importantly, however, the plaintiffs are entitled to a privilege log that includes only relevant documents that are responsive to their discovery requests, not a log of a seemingly random assortment of Ford documents which Ford believes to be privileged.

historical affidavits.

Documents Listed in Exhibit 1

Ford has withdrawn its privilege claim as to document 7683. Documents 7021, 8183, and 8444 are irrelevant to this litigation. Ford has not submitted all of the pages that are listed by Bates No. on its privilege log for document 9149; Ford shall submit this document to the magistrate judge in its entirety along with an affidavit supporting its claim of privilege for all portions of it. Each of the remaining documents listed in Exhibit 1 is clearly privileged on its face: 7001-02, 7004, 7006, 7008, 7010, 7012-13, 7015, 7017, 7022, 7026, 7028-29, 7032, 7034, 7037, 7039, and 7522-23.

Documents Listed in Exhibit 2

It does not appear that the following documents are included in the binders provided to the magistrate judge for in camera review: 7936-37, 8035, and 8835. Ford shall provide a copy of each of these documents along with an affidavit to support its claim of privilege for each.

Ford has withdrawn its claim of privilege as to the following documents: 7838, 7850, 7867, 8459, 8463, 8510, 8645, and 9073.

The magistrate judge agrees with Ford that the following documents are irrelevant to this litigation: 7560-61, 7563-64, 7648, 7652-53, 7667, and 8998.

An affidavit is required to support Ford's claim of privilege or irrelevance as to the following documents: 7899, 7900, 7903-06, 7910-13, 7938-43, 7949-52, 7957-64, 7969-70, 7992-93, 8016,<sup>2</sup> 8023-25, 8036, 8174, 8427-34, 8465, 8593, 8714, 8730, 8738, 8784, 8836-50,

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<sup>2</sup>This document was listed in the Second Entry as a document for which Ford had withdrawn its privilege claim, but this appears to have been an error.

9002, 9071-72, 9082, 9087, 9104, 9113, 9116, 9121, 9159, 9196, 9198, and 9221.

The following documents are in Spanish; Ford shall provide an English translation and an affidavit to support its claim of privilege for each: 8421, 8453, 8460, 8464, 8483, 8535, 8613, 8626, 9161, 9246, and 9249-50.

#### Documents Lists in Exhibit 3

\_\_\_\_\_ It does not appear that the following documents are included in the binders submitted to the magistrate judge for in camera review: 7080, 7264 and 7360. Ford shall provide a copy of each of these documents along with an affidavit to support its claim of privilege for each.

Ford has withdrawn its claim of privilege as to the following documents: 7110, 7737, 8170-72, and 8745.

The magistrate judge agrees with Ford that the following documents or the redacted portions thereof are privileged: 7044, 7078, 7109, 7146-47, 7150, 7156, 7199, 7214, 7254-55, 7277, 7280, 7292, 7382, and 7859.

The magistrate judge agrees with Ford that the following documents are irrelevant to this litigation: 7130, 7135, 7169, 7174, 7193, 7198, 7210, 7223, 7250, 7265, 7278, 7291, 7357-59, 7361-63, and 7396.

An affidavit is required to support Ford's claim of privilege or irrelevance as to the following documents in their entirety: 7144-45, 7178, 7212, 7414, 7435, and 7742.

The following documents are in Spanish; Ford shall provide an English translation and an affidavit to support its claim of privilege for each: 7775, 7780, and 8746.

#### Documents Listed in Exhibit 4

Document 8912 has not been provided to the magistrate judge for in camera review. Ford

shall provide a copy of this document along with an affidavit to support its claim of privilege for it.

Ford has withdrawn its claim of privilege as to document 7443.

The magistrate judge agrees with Ford that the following documents or the redacted portions thereof, which constitute “suspension orders,” are privileged: 7392, 7418, 7438-39, 7537-38, 7555-56, and 7598-99. Suspension orders are issued by Ford counsel to Ford employees instructing them to retain and forward certain categories of documents to Ford’s Office of General Counsel because they are relevant to litigation in which Ford is involved. The magistrate judge determines that these orders clearly are privileged communications between Ford’s counsel and its employees.

The magistrate judge agrees with Ford that documents 7430-31 are irrelevant to this litigation.

An affidavit is required to support Ford’s claim of privilege for document 7708.

#### Documents Listed in Exhibit 5

It does not appear that the following documents are included in the binders submitted to the magistrate judge for in camera review: 7054, 7452, 8912, and 8928-31. Ford shall provide a copy of each of these documents along with an affidavit to support its claim of privilege for each.

Ford has withdrawn its claim of privilege as to the following documents: 7055-71, 7373, 7421, 7640, 7683, and 7055-64.

The magistrate judge agrees with Ford that the following documents or the redacted portions thereof are privileged: 7307, 7382, 7556, 7579, 7649, 7651, 7782, 8166, 8602, 8716-18, and 8921.

The magistrate judge agrees with Ford that the following documents are irrelevant to this litigation: 7105, 7129, 7388, 7429, 7565, 7596-97, 7612, 7614, 7617-18, 7621, 7639, 7642, 7655, 7672, 7692, 7716, 7774, 7839, 7883, 8261, 8338, and 8498.

An affidavit is required to support Ford's claim of privilege or irrelevance as to the following documents in their entirety: 7259, 7297, 7320, 7350-53, 7583, 7586, 8139, 8365, 8933, 9046, and 9117-19.

#### Documents Listed in Exhibit 6

It does not appear that the following documents are included in the binders submitted to the magistrate judge for in camera review:<sup>3</sup> 1772-73, 2308, 3500-02, 3526, 3528, 3547, 3551, 3553, 3615-17, 3623-24, 3954, 4444-46, 5590-91, 5624-25, 7054, and 8835. Ford shall provide a copy of each of these documents along with an affidavit to support its claim of privilege for each.

Ford has withdrawn its claim of privilege as to the following documents: 7055-64, 7551, 7573, 7576, 7747, 7867, 7881, 7965, 8060, 8099, 8318, 8349-50, 8361, 8373, 8386, 8388, 8402, 8410-11, 8910, and 9020.

The magistrate judge agrees with Ford that the following documents or the redacted portions thereof are privileged: 7372, 7548, and 7656.

The magistrate judge agrees with Ford that the following documents are irrelevant to this litigation: 7115, 7552, and 8283.

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<sup>3</sup>The magistrate judge is aware that some of these documents were created after August 9, 2000, and thereof did not have to be included on Ford's privilege log. The fact is that they were included, however, and the magistrate judge will review them to insure that they are, in fact, privileged.

An affidavit is required to support Ford's claim of privilege or irrelevance as to the following documents in their entirety: 7321, 7323, 7958, 7961, 8427-34, 8493, 8749-50, 8768, 8784, 8804, 8836-50, 8909, 8911, 8946-48, 9013, 9021, 9032, 9042-43, 9048, 9051-52, 9057-61, and 9064.

The document produced for in camera review as document 9035 is only one page long and does not match the Bates numbers listed on the privilege log for document 9035; accordingly, Ford shall produce the correct document 9035 and an affidavit to support its claim of privilege for it.

#### Documents Listed in Exhibit 7

It does not appear that the following documents are included in the binders submitted to the magistrate judge for in camera review: 707, 1774, 2278, 2447, 3667, 4589, 4749, 4789, and 7829. Ford shall provide a copy of each of these documents along with an affidavit to support its claim of privilege for each.

Ford has withdrawn its claim of privilege as to the following documents: 7989, 8056-57, 8425, and 8585.

The magistrate judge agrees with Ford that the following documents or the redacted portions thereof are privileged: 8101, 8208, 8340, and 8609.

The magistrate judge agrees that document 8814 is irrelevant.

An affidavit is required to support Ford's claim of privilege or irrelevance as to the following documents in their entirety: 7847, 7917, 7919-20, 8055, 8138, 8244, and 8713.

Document 7799 is in Spanish; Ford shall provide an English translation of it and an affidavit to support its claim that it is privileged.

### Documents Listed in Exhibit 8

It does not appear that the following documents are included in the binders submitted to the magistrate judge for in camera review: 1244, 1248, 1768, 1778, 2231, 2245, 2266, 2831, 2846, 2908, 4504, 4845, 5130, 5718, 6052, 6234, Ford shall provide a copy of each of these documents along with an affidavit to support its claim of privilege for each.

Ford has withdrawn its claim of privilege as to the following documents: 7517, 7551, 7573, 7576, 7791, 7983, 8044, 8058, 8099, 8412, 8741, 8808, 8939, and 9172-73.

The magistrate judge agrees with Ford that the following documents or the redacted portions thereof are privileged: 7180-81, 7281, 7372, 7499, 7549-50, 7743, 7782, 7822, 7833, 7836, 8005, 8033, 8103, 8630, and 8740.

The magistrate judge agrees with Ford that the following documents are irrelevant to this litigation: 7563-64, 7663, 7818, and 8074.

An affidavit is required to support Ford's claim of privilege or irrelevance as to the following documents in their entirety: 7187-88, 7322-23, 8047, 8051, 8107, 8254, 8400, 8748, 8767, 8801, 8813, 8851-54, 8905, 8945, 9000-01, 9014, 9030, 9036-39, 9041, and 9228.

The following documents are in Spanish; Ford shall provide an English translation and an affidavit to support its claim of privilege for each: 7616, 7711, 7815, and 8693.

Document 7679 provided for in camera review does not match the Bates numbers listed on Ford's privilege log; accordingly, Ford shall provide the correct document and an affidavit to support its claim that it is privileged.

### Documents Listed in Exhibit 9

It does not appear that the following documents are included in the binders submitted to

the magistrate judge for in camera review: 4153, 4155, and 8884. Ford shall provide a copy of each of these documents along with an affidavit to support its claim of privilege for each.

Ford has withdrawn its claim of privilege as to the following documents: 8412, 8656-57, and 8381.

The magistrate judge agrees with Ford that document 8015 is privileged and document 8039 is irrelevant to this litigation.

An affidavit is required to support Ford's claim of privilege or irrelevance as to the following documents in their entirety: 8169, 8254, 8629, 8770, 8825, 8904, 8944, 8957, 8959-62, 8966-67, 8969-72, 8974-81, 8983-84, 9003-04, 9021, 9087, 9107, 9164, and 9260.

The following documents are in Spanish; Ford shall provide an English translation and an affidavit to support its claim of privilege for each: 7987, 8333-34, 8421, 8453, 8455, and 8458.

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

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

Copies to:

Irwin B Levin  
Cohen & Malad  
136 North Delaware Street  
P O Box 627  
Indianapolis, IN 46204

Randall Riggs  
Locke Reynolds LLP  
201 N. Illinois St., Suite 1000  
P.O. Box 44961  
Indianapolis, IN 46244-0961

William E Winingham  
Wilson Kehoe & Winingham  
2859 North Meridian Street  
P.O. Box 1317  
Indianapolis, IN 46206-1317