

**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 FOR AUGUST 8, 2002

The parties appeared, by counsel, this date for a telephonic discovery conference, during which the following was discussed:

1. The parties agree that all core discovery in these cases can be completed by December 31, 2002. The magistrate judge asked the parties to confer regarding the appropriate deadlines for filing motions relating to *Daubert* issues and report their positions to her during the next discovery conference.
2. The magistrate judge reminded the parties of their obligation to file a notice to the court when a dispositive motion becomes fully briefed and ready for ruling.
3. The parties reported that they have agreed that the defendants shall serve their case specific expert reports in the First Wave foreign accident cases either by hand delivery to plaintiffs' counsel on August 19, 2002, or via overnight delivery to arrive at plaintiffs' counsel's office on August 20, 2002. For these case specific expert reports, no service is necessary on liaison counsel.
4. The parties reported the following additional agreements, which the magistrate judge approved: (1) In *Jaimes*, IP 01-5349, the deadline for defendants' case specific liability reports is extended until two weeks after the depositions of Swarez and Areniz, and Ford's deadline for serving the core expert reports of Hector Rodriguez and Hank Sleath is extended to August 31, 2002; (2) In *Sumaya*, IP 01-

5114, the defendants' deadline to serve their orthopedic expert reports is extended to thirty days after additional medical documents are produced by the plaintiffs; (3) In *Urdaneta*, IP 00-5011, the defendants' deadline to serve their expert reports pertaining to the independent medical examinations of the plaintiffs performed by Dr. Kushner is extended to August 28, 2002; and (4) In *Ordaz*, IP 01-5343, the defendants' deadline to serve their case specific damage reports is extended to September 5, 2002. The plaintiffs' consent to these extensions is not to be considered a waiver and is premised on the fact that they will not impact in any way the timing of the eventual remand of these cases to their Transferor Courts.

5. The parties report that on August 1, 2002, Ford served its Amended Expert Witness Disclosures and Ford has withdrawn as expert witnesses those employees who are not included in that amended disclosure.
6. The parties have agreed to the following time allocations for case-specific expert witness depositions in the foreign accident cases: (1) Case specific depositions shall be limited to a total of 2½ hours for direct examination; and (2) Direct examination of experts who will be offering common testimony in multiple personal injury cases shall be limited to 8 hours, followed by a brief (no more than 2½ hours) case specific deposition for each case in which the expert will be offering case specific testimony. If the party offering the expert conducts cross-examination, an additional period of redirect examination shall be permitted not to exceed the amount of time expended on cross-examination. The parties agree that seven days prior to the deposition of each expert, a copy of the expert's file materials, which includes but are not limited to those matters which he reviewed in rendering and

formulating his opinion, shall be delivered to the party who has requested the deposition. In the case of experts providing medical testimony, this will include but not be limited to all medical records, x-rays, films and other related materials. The party requesting the deposition shall pay the reasonable cost incurred by the party presenting the expert in copying those files.

7. The parties report that they have agreed on the list of cases which are to be considered Second Wave Foreign Accident Cases for purposes of case management deadlines. The parties will file a list identifying those cases.
8. The plaintiffs have agreed to provide the defendants with acceptable medical release forms to be used in the Mexican foreign accident cases by August 15, 2002.
9. The parties reported that they have agreed to the language and form of the economic release forms to be used in any case in which the plaintiffs are claiming lost wages, lost earning capacity, or loss of net estate accumulations.
10. The parties reported that they will continue to work to develop a mutually agreeable form for the release of tax information. If they are unable to agree on the form, they will seek the court's intervention.
11. The issue of the scheduling of independent medical examinations in the foreign accident cases was discussed. The defendants requested that plaintiffs' counsel notify them at least two weeks before a plaintiff plans to visit the United States, and that their visit be scheduled so that they are here at least three days, so that their independent medical exam may be scheduled during their visit. The magistrate judge believes that the order previously entered pertaining to the scheduling of independent medical exams is adequate and covers all situations.

12. The plaintiffs addressed their pending Motion to Compel the Taking of Case Specific Experts, in which they seek to compel the defendants to schedule the deposition of each of the plaintiffs' case specific experts in the First Wave foreign accident cases on one of the dates the plaintiffs have proposed. The defendants agreed to respond to the proposed dates by August 9, 2002. If the defendants believe that any of the identified witnesses cannot be deposed due to outstanding discovery requests, they shall raise that issue by August 9th as well. The parties will report back to the magistrate judge if they are unable to agree on the scheduling of these expert witnesses.
13. The parties next reported that, pursuant to the magistrate judge's prior directives, depositions are being scheduled using video conference technology. The parties have resolved all issues regarding the technical feasibility of video conferencing, but have been unable to agree whom should bear the cost of the video conference depositions, which the parties believe will be approximately \$390 per hour. The magistrate judge now rules that the cost of the video conference depositions shall be divided equally between the parties who have representatives present at the deposition.
14. The issue of case management deadlines for the Second Wave foreign accident cases was discussed, and the parties presented their various positions. The magistrate judge encouraged the parties to agree upon schedule, but if they remain unable to do so, she will issue an order establishing appropriate deadlines.
15. The magistrate judge directed the parties to identify five First Wave foreign accident cases which can be readied for remand to their transferor courts in an

expedited manner. This issue will be discussed further during the next discovery conference.

16. The issue of the defendants' Notice of Determination of Foreign Law was discussed, and the defendants were directed to file supplemental foreign law designations to identify with more particularity the subjects upon which they contend foreign law applies by August 16, 2002. The magistrate judge encouraged the parties to discuss in the interim whether any stipulation can be reached with respect to the choice of law issue in the foreign accident cases.
17. The plaintiffs raised the issue of the continued deposition of Ford employee John Daws, whose deposition was adjourned to permit the plaintiffs to review additional documentation which was produced at the beginning of the deposition. The parties have agreed to reopen Mr. Daws's deposition and will continue to confer regarding the location of that deposition, which should take place within the next thirty days. If the parties are unable to agree on the location, they should report back to the magistrate judge.
18. The plaintiffs next raised the issue of certain documents to which Ford asserted a claim of privilege at the deposition of Mr. Heinrich, which occurred on July 10-12, 2002, in Brazil. Ford shall inform the plaintiffs by August 12, 2002, whether it will produce the documents or whether the plaintiffs need to file a motion to compel regarding the issue.
19. The issue of Ford's privilege log, and the fact that Ford's monthly updates do not include notations of the changes that have been made since the last update, was raised by the plaintiffs. The magistrate judge agrees that this is a problem. In

order to arrive at an intelligent solution, the magistrate judge requests that Ford advise her and the plaintiffs, in writing, how Ford has gone about updating its privilege log since its creation, and whether the software used by Ford to create the log and work with the data within it would enable it to determine what changes were made to the log each month.

20. The plaintiffs raised an issue concerning certain documents for which Ford has withdrawn its claim of privilege but which plaintiffs have been unable to obtain from Ford's electronic document depository. Counsel for Ford agreed to insure that the documents are made accessible online, and also to provide the plaintiffs with hard copies of the documents in the meantime.
21. The defendants raised an issue with respect to the surreplies recently filed by the plaintiffs in response to the defendants' motions to compel in the foreign accident cases. The parties have scheduled a conference on August 13, 2002, to discuss any outstanding issues on a case by case basis and will then report to the court. To the extent that any enlargements of time for filing expert reports is required as a result of the disputes, the parties should confer and, if necessary, defendants should file motions for extensions of time on a case-by-case basis.
22. The plaintiffs have requested that doctors from Venezuela who are deposed in the United States be compensated at the rate of \$200 per hour. Defendant Firestone has objected on the basis that such rate is not commensurate with some of the hourly rates of the physicians in Venezuela. The magistrate judge requests that the parties confer to determine whether an agreement can be reached as to the hourly rate for such deponents. The parties agreed to report back to the magistrate judge on this

issue at the next discovery conference.

23. The class plaintiffs recently filed their Proposal for Proceedings with Claims in the MDL Trial. The defendants' deadline for responding to the proposal is extended to August 28, 2002.
24. The next discovery conference is scheduled for August 20, 2002, at 2:00 p.m. Counsel for Ford will arrange the call and advise the magistrate judge and liaison counsel accordingly.

ENTERED this _____ day of August 2002.

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

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

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