

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

<b>In Re: BRIDGESTONE/FIRESTONE, INC.,</b>	) <b>Master File No. IP 00-9374-C B/S</b>
<b>TIRES PRODUCTS LIABILITY ACTION</b>	) <b>MDL No. 1373</b>
_____	)
	)
<b>THIS DOCUMENT RELATES TO:</b>	)
	)
<b>BLANCA COLLAZO,</b>	)
	)
<b>Plaintiffs,</b>	)
<b>vs.</b>	) <b>Case No. IP 03-5763-C-B/S</b>
	)
<b>FORD MOTOR COMPANY, et al.,</b>	)
	)
<b>Defendants.</b>	)

**ENTRY REGARDING MOTION FOR RELIEF**

This cause is before the magistrate judge on the plaintiffs’ motion for relief for failure to comply with deadlines. The motion is fully briefed, and the magistrate judge, being duly advised, **DENIES** the plaintiffs’ motion for the reasons set forth below.

The chronology of events relevant to the instant motion is as follows.<sup>1</sup> This case was transferred to this court by certified order of the Judicial Panel on Multi-District Litigation on June 10, 2003. Pursuant to a case management order entered on April 14, 2003, the plaintiffs were required to identify their expert witnesses by August 12, 2003. When they failed to do so, Ford filed a Motion to Preclude Plaintiffs’ Expert Testimony and for Summary Judgment on

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<sup>1</sup>The magistrate judge notes that plaintiffs have at all relevant times been represented by attorney Kenneth M. Sigelman; two additional attorneys, Angel Saenz and Alberto Valle also have been counsel of record for the plaintiffs in this case, although their representation of the plaintiffs was limited to specific roles, and they had no actual responsibility for litigating this case. See Saenz Affidavit (attorney Saenz’s role has been limited to assisting attorney Sigelman “with regard to New Mexico matters”); Valle Affidavit (attorney Valle’s role was limited to representing the estate of Rosalio Collazo as its conservator until Rosalio’s widow, plaintiff Blanca Collazo could be substituted as conservator).

September 9, 2003; on the same day, Ford filed a motion to dismiss based upon spoliation of evidence. On September 15, 2003, Ford filed a motion to compel plaintiffs to respond to its interrogatories and document requests which it had served on July 7, 2003. On September 30, 2003, Ford filed its Amended Motion to Preclude Plaintiffs' Expert Testimony and for Summary Judgment, which noted that the plaintiffs had by that time failed to serve their expert reports by the September 10, 2003, deadline. Firestone joined in Ford's amended motion on October 8, 2003, and filed its own motion for summary judgment the next day. On October 29, 2003, the magistrate judge granted Ford's motion to compel. On November 18, 2003, the magistrate judge granted a motion filed by Firestone to stay all deadlines in this case pending the court's ruling on the pending dispositive motions, and on November 25, 2003, Firestone filed a notice that its motion for summary judgment was ripe for ruling, inasmuch as the plaintiffs had failed to file a response to it by the November 8, 2003, deadline.

Indeed, the plaintiffs filed nothing at all regarding any of the defendants' motions (or anything else) until January 5, 2004, when they filed the instant motion for relief, a response to Ford's motion to dismiss, and a response to Firestone's motion for summary judgment; two days later they filed a response to Ford's motion to preclude and for summary judgment. In the instant motion, plaintiffs' counsel concedes that he failed to comply with the expert witness deadlines and failed to file timely responses to the defendants' numerous motions, but argues that there is substantial justification for those failures and that the defendants have suffered no prejudice as a result.

Federal Rule of Civil Procedure 6(b) provides the appropriate standard for considering the plaintiffs' motion. Rule 6(b) provides:

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect . . . .

The issue, then, is whether the plaintiffs' failure to act—or, more accurately, repeated failures to act—were the result of “excusable neglect.”

In an affidavit submitted in support of the instant motion, plaintiffs' counsel gives the following reasons for missing the deadlines set forth above:

1. The two secretaries in his office were both out of the office for several weeks (one on maternity leave, the other on jury duty) beginning in mid-September, 2003, leaving him with “support staff consist[ing] entirely of temporary personnel completely unfamiliar with our caseload and our office procedures.” Sigelman Affidavit at ¶ 3.
2. He and his associate tried a case that began on October 8, 2003, and was expected to last six weeks, although it actually ended in a mistrial on or about November 4, 2003. The two attorneys spent “60 to 90 days” prior to October 8, 2003, in trial preparation and in “get[ting their] remaining case loads to the point where [they] could devote the six weeks to [trial].” *Id.* at (misnumbered) ¶ 3.
3. His practice is concentrated in state court, and this is his first MDL experience. *Id.* at ¶ 4.

4. On October 31, 2003,<sup>2</sup> he sent materials regarding this case by Federal Express to another attorney, one with alleged experience in this MDL, whom he had located to assist him “in setting this matter procedurally back on track.” On December 29, 2003, that attorney notified him by fax that he would no longer be able to assist him. *Id.* at ¶ 7.

While, as set forth above, plaintiffs’ counsel attempts to place at least part of the blame for his failure to act on his inexperience in federal court, and specifically in this MDL, it appears that the real problem was that he simply was too busy with other cases to litigate this case.

Unfortunately for the plaintiffs, this is not an adequate excuse for counsel’s abject failures in this case.

This is not a case of a technical violation of this court’s rules; nor is it a case in which the plaintiffs missed a deadline and promptly sought relief once they were made aware of their error. Rather, the plaintiffs in this case have repeatedly missed deadlines and—even worse—simply failed to respond to numerous motions filed by the defendants. While a lack of MDL experience may excuse counsel’s initial failure to read and appreciate the import of the scheduling orders that already were in place before this case was transferred here, it does not take any MDL or federal court experience to know that a response of some kind is required when your opponents file a motion to preclude your expert testimony, two motions for summary judgment, a motion to dismiss, and a motion to compel. Absent some extraordinary and catastrophic circumstance which is not present here, silence in the face of all of these

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<sup>2</sup>This statement seems to contradict counsel’s statement in misnumbered ¶ 3 that it was not until after the November 4, 2003, mistrial in the case he was trying that he learned that “as a result of non-calendar or miscalendar by our temporary personnel while . . . in trial, we had missed several significant deadlines.”

motions—not to mention the magistrate judge’s October 29, 2003, entry granting Ford’s motion to compel<sup>3</sup>—cannot be deemed “excusable neglect.” While the magistrate judge is painfully aware of the detrimental effect this ruling will have on the plaintiffs’ case, the simple fact is that the plaintiffs have not satisfied the Rule 6(b)(2) excusable neglect standard which would give the court the discretion to grant the instant motion for relief. Indeed, if the relief sought by the plaintiffs were appropriate in this case, it is hard to imagine a case in which relief would not be appropriate—granting the plaintiffs’ motion here effectively would obviate Rule 6(b)(2).

For the reasons set forth above, the plaintiffs’ motion is **DENIED**. The plaintiffs’ response to Ford’s motion to dismiss and response to Firestone’s motion for summary judgment, filed January 5, 2004, and response to Ford’s motion to preclude and motion for summary judgment, filed January 7, 2004, are all **ORDERED STRICKEN** on the ground that they were not timely filed. The defendants’ dispositive motions will be addressed by the court in a separate order.

ENTERED this \_\_\_\_\_ day of March 2004.

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

Copies to:

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<sup>3</sup>The magistrate judge notes that the entry granting Ford’s motion to compel concluded as follows: “**FAILURE TO COMPLY WITH THIS ENTRY WILL RESULT IN THE MAGISTRATE JUDGE RECOMMENDING THAT THIS CASE BE DISMISSED.**” This certainly should have indicated to counsel that prompt action on his part was necessary.

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