

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

VERONICA JOHNSON, Individually and as Personal
Representative of the Wrongful Death Beneficiaries of
BRANDON T. JOHNSON, SR., DECEASED, and as
Mother and Next Friend of B.T. JOHNSON, a Minor
and as Mother and Next Friend of J. JOHNSON, a Minor

VS.

CIVIL ACTION NO. 2:09CV113-MPM-DAS
CONSOLIDATED WITH: 2:10CV184-MPM-DAS

HANKOOK TIRE MFG. CO., LTD., a Foreign
Corporation; HANKOOK TIRE AMERICA CORP.,
A Foreign Corporation; FORD MOTOR COMPANY; and
JOHN DOES 1-10, ET AL.

ORDER

This matter is before the court on motion of the defendants to compel the plaintiffs to produce the subject tire and the omega sections relied upon by Richard Adams (# 332). On January 10, 2012, the plaintiffs designated Richard Adams as a rebuttal expert. Adams is a tire chemist who has opined that the subject tire was defective because of its inner liner. In forming this opinion Adams, of course, examined the subject tire. He also analyzed and compared the compounds of four tires and brought four pieces of these tires to his deposition.

In response to the plaintiffs' designation, the defendants designated Jerry Leyden. Leyden now wants to examine the subject tire and the four pieces Adams brought to his deposition. Leyden, however is in Akron, Ohio, and the defendants argue they should not be forced to pay the costs and expenses for Leyden to travel to Clarksdale to examine the items – they argue instead the plaintiffs should be compelled to ship the items to Leyden.

The plaintiffs argue they are concerned that the items may be lost or destroyed if they are

forced to ship them to Ohio but are willing to make them available for inspection at Ralph Chapman's office in Clarksdale, Mississippi.

After considering the matter, the court finds the plaintiffs' argument to be compelling. This is not to say that the court believes the defendants would do anything to destroy the evidence. To the contrary. This is only to say the possibility that the items may be lost in transit is a possibility, and the items are too important to create such a risk. Moreover, Rule 34 of the Federal Rules of Civil Procedure provides for situations in which items may be made available for inspection rather than producing them directly to a party opponent. Fed. R. Civ. P. 34(a)(1)(B). The court further notes the defendants explain in their motion that "Mr. Leyden will need several weeks after his inspection of these items to fully supplement his report." Because Leyden's deposition must take place no later than November 16, 2012, the court orders the plaintiff to make these items available at Ralph Chapman's office in Clarksdale, Mississippi, beginning no later than October 15, 2012.

IT IS, THEREFORE, ORDERED that the defendants' motion to compel the plaintiffs to produce the subject tire and the omega sections relied upon by Richard Adams (# 332) is hereby DENIED.

SO ORDERED, this the 11th day of October, 2012.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE