

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Wiley Y. Daniel**

Civil Action No. 05-cv-02605-WYD-BNB

REGINA HENRY;  
DAN HENRY;  
SHERRI MILLER;  
KRYSTAL SULLIVAN; and  
DELORES SULLIVAN,

Plaintiff(s),

v.

BRIDGESTONE CORPORATION; and  
BRIDGESTONE FIRESTONE NORTH AMERICAN TIRE, LLC, formerly  
BRIDGESTONE/FIRESTONE, INC.,

Defendant(s).

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**ORDER**

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THIS MATTER is before the Court on Defendant Bridgestone Corporation's Motion to Dismiss for Lack of Jurisdiction, filed February 13, 2006 (docket #18) ("Motion to Dismiss"). A hearing was held Thursday, June 29, 2006. For the reasons set forth on record at the hearing and in this Order, the Motion to Dismiss is **DENIED**.

**I. BACKGROUND**

This case arises out of an automobile accident. According to the complaint, on October 10, 2003, Jesus Anima was driving a 1998 Pontiac Firebird northbound on Highway 71 in Nebraska. Compl. ¶ 7. Plaintiffs Regina Henry and Krystal Sullivan were passengers sitting in the rear seat of the vehicle. *Id.* The vehicle was equipped

with Bridgestone Potenza RE 900 tires. *Id.* While Plaintiffs were traveling on Highway 71, the tread and top belt of the right rear Bridgestone Potenza RE 900 tire separated from the tire causing Jesus Anima to lose control of the vehicle. *Id.* ¶ 8. The vehicle ran off the road, hit a ditch, and rolled approximately two times. *Id.* Both Regina Henry and Krystal Sullivan were ejected from the vehicle. *Id.* The vehicle landed on top of Krystal Sullivan. *Id.* The complaint alleges that, “Defendants designed and manufactured Bridgestone Potenza RE 900 tires,” and that Defendants are strictly liable for the injuries Plaintiffs sustained because the tire was “designed, manufactured, prepared, sold, and supplied by Defendants in a defective condition.” *Id.* ¶¶ 6, 14. The complaint further alleges that the Defendants negligently designed, manufactured, inspected, and tested the tire. *Id.* ¶ 19.

Plaintiffs Regina Henry and Krystal Sullivan seek to recover damages for injuries sustained in the accident. Plaintiffs Dan Henry and Sherri Miller, parents of Plaintiff Regina Henry, and Plaintiff Delores Sullivan, mother of Plaintiff Krystal Sullivan, seek to recover damages including loss of time, loss of earnings, and expenses for medical, surgical, and rehabilitative care and treatment. *Id.* ¶¶ 9-12.

The complaint states that Defendant Bridgestone Corporation (“Bridgestone”) is a Japanese corporation engaged in the business of designing, manufacturing, and selling automobile tires. *Id.* ¶ 2. Defendant Bridgestone Firestone North American Tire, LLC (“Firestone”) is a Delaware limited liability company with its principal place of business in the Tennessee, and is engaged in the business of designing, manufacturing, and selling automobile tires. *Id.* ¶ 3.

## II. MOTION TO DISMISS

### A. Legal Standard

The plaintiff bears the burden of establishing personal jurisdiction over the defendant. *Intercon, Inc. v. Bell Atlantic Internet Solutions, Inc.*, 205 F.3d 1244, 1247 (10th Cir. 2000). However, the plaintiff's burden will vary "depending on the pretrial procedure employed by the district court." *FDIC v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992). The district court may decide which procedures will be employed in reviewing a motion to dismiss for lack of jurisdiction. *FDIC*, 959 F.2d at 174. "[W]hen the district court holds a pretrial evidentiary hearing to resolve factual disputes relating to jurisdictional questions, the plaintiff has the burden to prove facts supporting jurisdiction by a preponderance of the evidence." *Id.*

The Court must engage in a two-step analysis in determining whether the exercise of personal jurisdiction is appropriate. *Wenz v. Memery Crystal*, 55 F.3d 1503, 1507 (10th Cir. 1995). The Court "must initially determine whether the exercise of jurisdiction is sanctioned by the Colorado long-arm statute, which is a question of state law, . . . and then determine whether the exercise of jurisdiction comports with the due process requirements of the Constitution." *Wenz*, 55 F.3d at 1506-07.

In this case, there are two sections of the Colorado long-arm statute that may be implicated. Colo. Rev. Stat. § 13-1-124 (2005). First, section 13-1-124(1)(b) allows the court to exercise personal jurisdiction over a defendant who commits a tortious act within the state. Colorado courts have held this provision of the Colorado long-arm statute can be satisfied when the tortious conduct occurs in Colorado, or when tortious

conduct initiated in another state causes injury in Colorado. *Classic Auto Sales, Inc. v. Schocket*, 832 P.2d 233, 235-236 (Colo. 1992); *Wenz*, 55 F.3d at 1507.<sup>1</sup> Second, section 13-1-124(1)(a) allows the court to exercise jurisdiction when the cause of action arises from the transaction of any business in Colorado. Because this section of the long-arm statute has been construed by the Colorado Supreme Court as allowing personal jurisdiction to the full extent permitted under federal law, “the Court’s analysis collapses into a single inquiry, whether the exercise of personal jurisdiction over [the defendant] comports with due process.” *Nat’l Business Brokers, Ltd. v. Jim Williamson Prods., Inc.*, 115 F. Supp. 2d 1250, 1253 (D. Colo. 2000), *aff’d*, 16 Fed. Appx 959 (10th Cir. 2001); *see also Safari Outfitters, Inc. v. Superior Ct.*, 448 P.2d 783, 784 (Colo. 1968).

“[D]ue process requires only that ... [the defendant] have certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Trierweiler v. Cruxton and Trench Holding Corp.*, 90 F.3d 1523, 1532 (10th Cir. 1996) (quotation omitted). Critical to the due process analysis “is that the defendant’s conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court there.” *Trierweiler*, 90 F.3d. at 1534 (quotations omitted). The reasonable anticipation requirement is satisfied if the defendant has engaged in “some act by which [it] purposefully avails itself of the privilege of conducting activities with the forum State,

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<sup>1</sup>Bridgestone argues section 13-1-124(1)(b) does not apply because both the accident and the injury occurred in Nebraska. Plaintiffs did not dispute this argument in their response to Bridgestone’s Motion to Dismiss.

thus invoking the benefits and protections of its laws.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

The “minimum contacts” standard can be met by showing the existence of either specific jurisdiction or general jurisdiction. *Trierweiler*, 90 F.3d at 1532. Specific jurisdiction exists over a nonresident defendant “if the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.” *OMI Holdings, Inc. v. Royal Ins. Co. of Can.*, 149 F.3d 1086, 1090-91 (10th Cir. 1998) (quoting *Burger King Corp.*, 471 U.S. at 471-72 (internal quotation marks omitted)). When the “court’s exercise of jurisdiction does not directly arise from a defendant’s forum-related activities, the court may nonetheless maintain *general* personal jurisdiction over the defendant based on the defendant’s general business contacts with the forum state.” *OMI Holdings*, 149 F.3d at 1091 (citing *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 415 (1984)). However, in order for the court to exercise general jurisdiction, a more stringent test is applied. *Id.* To meet this test a plaintiff must show that a defendant has continuous and systematic general business contacts with the forum state. *Id.* The court still “must see to it that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Trierweiler*, 90 F.3d at 1533 (quoting *World-Wide Volkswagen Corp. V. Woodson*, 444 U.S. 286, 292 (1980)).

#### B. Analysis

Defendant Bridgestone moves to dismiss the claims brought against it in this case based on lack of personal jurisdiction. Bridgestone argues that the Colorado

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