

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BLITZSAFE TEXAS, LLC)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:15-cv-1274
)	
HONDA MOTOR CO., LTD. et al)	LEAD CASE
)	
Defendant.)	
)	
BLITZSAFE TEXAS, LLC)	Civil Action No. 2:15-cv-1278
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	
)	
VOLKSWAGEN GROUP OF AMERICA, INC.)	
AND VOLKSWAGEN GROUP OF AMERICA)	
CHATTANOOGA OPERATIONS, LLC)	
)	
Defendants.)	

**OPPOSED MOTION FOR LEAVE TO TAKE DEPOSITION OUTSIDE
THE FACT DISCOVERY DEADLINE**

Pursuant to Local Rules CV-7(e) and (m), Defendants Volkswagen Group of America, Inc. and Volkswagen Group of America Chattanooga Operations, LLC (collectively, “VWGoA”) file this Opposed Motion for Leave to Take Deposition Outside the Fact Discovery Deadline.

Pursuant to the Court’s amended Docket Control Order of September 1, 2016 (Dkt. No. 140), the deadline to complete fact discovery is September 19, 2016. VWGoA request that the Court enter an Order allowing a deposition related to VWGoA’s third-party subpoena to Stillwater Designs, Inc.

On September 1, 2016, VWGoA issued a subpoena to Stillwater Designs, Inc., for documents to be produced on September 13, 2016, and a deposition to be held on September 15,

2016. Notice of the subpoena was served on counsel for Plaintiff Blitzsafe Texas, LLC (“Plaintiff”) on the same day, September 1, 2016. (Ex. A.)

The subpoena was served on Stillwater Designs the very next day, on September 2, 2016, and requested document production by September 13, 2016 and deposition on September 15, 2016. (Ex. B.) Stillwater Designs contacted counsel for VWGoA on September 12, 2016, stating that it would be producing documents for delivery the next day, but the production would be incomplete, as Stillwater Designs was unable to locate documents responsive to at least one document request. (Ex. C, at 3–4.) In telephone conversations with Stillwater Designs on September 13 and 14, 2016, and by email, counsel for VWGoA requested that Stillwater Designs confirm that additional documents were not available, in particular from Stillwater Designs employee Joseph Hobart. Counsel for VWGoA further requested the availability of the designated witness for a deposition, upon completion of the document production. (Ex. C, at 2.)

On September 19, 2016, Stillwater Designs confirmed to counsel for VWGoA that no additional materials had been located, and that the witness was available for a deposition from September 19-21, 2016. (Ex. C, at 1.) VWGoA attempted to schedule the Stillwater Designs deposition and document production to occur within the current discovery period, but the dates on which this third-party was able to complete its response to the document subpoena and be available for deposition conflicted with the due date to serve disclosures for expert witnesses and to file motions to compel discovery. VWGoA confirmed with Stillwater Designs, and made arrangements for, a deposition for September 21, 2016 in Stillwater, Oklahoma. VWGoA also contacted counsel for Plaintiff to confirm whether Plaintiff would oppose this motion, and to notify Plaintiff of the availability of the witness. Plaintiff did not respond before the end of the discovery period.

Accordingly, VWGoA seek leave to complete the discovery sought via the Stillwater Designs subpoena, by taking the deposition of Stillwater Designs, no later than Wednesday, September 28, 2016, at a time to be scheduled according to witness availability.

No other extension of discovery is being sought by this motion. The Court has not extended the deadline to complete fact discovery in this case.

For these reasons, VWGoA respectfully request that the Court grant this motion and grant leave for VWGoA to take the deposition of Stillwater Designs.

Dated: September 20, 2016

Respectfully submitted,

By: /s/ Peter Kerr
Deron R. Dacus
Texas State Bar No. 00790553
Peter A. Kerr
Texas State Bar No. 24076478
THE DACUS FIRM, P.C.
821 ESE Loop 323
Suite 430
Tyler, TX 75701
Telephone: (903) 705-1117
Facsimile: (903) 581-2543
Email: ddacus@dacusfirm.com
Email: pkerr@dacusfirm.com

Michael J. Lennon (admitted *pro hac vice*)
Sheila Mortazavi (admitted *pro hac vice*)
Michael S. Turner (to be admitted *pro hac vice*)
KENYON & KENYON LLP
One Broadway
New York, NY 10004-1007
Telephone: (212) 425-7200
Facsimile: (212) 425-5288
Email: mlennon@kenyon.com
Email: smortazavi@kenyon.com
Email: mturner@kenyon.com

Susan A. Smith (admitted *pro hac vice*)
KENYON & KENYON LLP
1500 K Street, N.W.
Washington D.C. 20005
Telephone: (202) 220-4200
Facsimile: (202) 220-4201
Email: ssmith@kenyon.com

Attorneys for Defendants VOLKSWAGEN
GROUP OF AMERICA, INC. and
VOLKSWAGEN GROUP OF AMERICA
CHATTANOOGA OPERATIONS, LLC

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), Michael Turner, counsel for VWGoA, and Alessandra Messing, counsel for Blitzsafe, conferred telephonically on September 19, 2016. Counsel for Blitzsafe stated that she would communicate Blitzsafe's position shortly thereafter. Counsel for VWGoA sent two follow up e-mails to counsel for Blitzsafe seeking Blitzsafe's position. However, at the time of filing, counsel for Blitzsafe had not responded as to whether Blitzsafe was opposed or unopposed to VWGoA's Motion and the relief requested. Accordingly, in consideration of the closing of the fact discovery period, VWGoA filed its Motion as opposed.

On September 20, 2016, after the Court's Notice of Deficiency that the Motion did not include a Certificate of Conference, counsel for Blitzsafe confirmed with counsel for VWGoA that the Motion is opposed.

/s/ Michael S. Turner
Michael S. Turner

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.