
The State of South Carolina In the Supreme Court

ON CERTIFICATION FROM AN APPEAL IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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Appellate Case No. 2016-002398

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S.C. SUPREME COURT
THEODORE G. HARTSOCK, JR., as Personal Representative of the
Estate of Sarah Mills Hartsock (Estate of Sarah Mills Hartsock),

Plaintiff – Respondent,

v.

GOODYEAR DUNLOP TIRES NORTH AMERICA LTD, a foreign
corporation; and THE GOODYEAR TIRE & RUBBER COMPANY,
a foreign corporation,

Defendants – Appellants.

RESPONSE TO BRIEF OF *AMICUS CURIAE*

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ARGUMENT

Respondent's Final Brief addresses the majority of the issues raised in the Brief of Amicus Curiae Rubber Manufacturers of Association ("RMA"). Respondent will not burden the Court by repeating his substantive arguments. However, RMA asserts that "[m]any [tire] manufacturers have chosen to locate their operations in South Carolina, based in part on reliance on the privileges and protections afforded by the Trade Secrets Act." (Amicus Brief p 1). This is the sole distortion of fact to which Respondent replies.

RMA's statement ignores the history of tire manufacturing in South Carolina. Michelin North America, Inc. ("Michelin") was the first company to locate a manufacturing facility in South Carolina and remains the most significant tire manufacturing presence in the State with ten plants¹, a research and development facility,² a proving ground, and its headquarters here. The decision to locate in the state was made in 1971. Initially two plants were constructed, one in Greenville and the other in Anderson. The first tire was manufactured on March 10, 1975. Michelin's third South Carolina plant began production in Spartanburg in 1978 and a fourth plant opened in the 1980's in Lexington. In 1988, Michelin relocated its North American headquarters to Greenville, South Carolina from New York.³

¹ Seanna Adcox, *Michelin Making Airless Tires at its 10th SC Plant*, The State (Nov. 20, 2014), <http://www.thestate.com/news/business/article13916624.html>.

² Greenville Area Development Corporation, <http://www.greenvilleeconomicdevelopment.com/headquarters-rd.php> (last visited May 17, 2017).

³ Michelin, <http://www.michelinman.com/US/en/why-michelin/about.html> (last visited May 17, 2017).

The South Carolina Uniform Trade Secrets Act, formerly S.C. Code Ann. §§ 39-8-1 to -9, was enacted in 1992, and the South Carolina Trade Secrets Act (“SCTSA”), S.C. Code Ann. §§ 39-8-10 to -130, followed in 1997. Michelin’s decision to locate manufacturing facilities and its headquarters in South Carolina could not have been influenced by either act because those decisions were made before either statute was enacted. In contrast, Michelin’s North American headquarters was located in New York from 1950 to 1988. See n. 3. The common law of New York has recognized trade secret protection since at least 1933. New York State Joint Commn. on Pub. Ethics v. Campaign for One N.Y., Inc., 37 N.Y.S.3d 851, 2016 N.Y. Misc. LEXIS 3277 (2016); Minerals & Chemicals Philipp Corp. v. Panamerican Commodities, 224 N.Y.S.2d 763, 1962 N.Y. App. Div. LEXIS 11204 (1962); Drake v. Herman, 261 N.Y. 414, 185 N.E. 685 (1933). If trade secret protection was an important element of Michelin’s decision-making process, it is incongruous that it did not expand its manufacturing facilities in New York or maintain its headquarters there rather than relocating here where there was no similar law.

Further, Michelin has built plants in states that have unquestionably adopted trade secret privileges, namely Alabama⁴ and Oklahoma.^{5, 6} However, those plants were

⁴ Ala. R. Evid. Rule 507 (LexisNexis, LEXIS through March 27, 2017) (effective date January 1, 1996, Ala. R. Evid. Rule 1103 (LexisNexis, LEXIS through March 27, 2017)).

⁵ 12 Okl. St. § 2508 (LEXIS through Chapter 215 (SB 147) of the First Regular Session of the 56th Legislature (2017)) (effective November 1, 2002, Laws 2002, c. 468, § 80).

⁶ The language adopted in the two states is identical:

A person has a privilege, which may be claimed by the person, the person’s agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the

completed prior to adoption of the privilege in either state and no further facilities have been built since the privileges were adopted. Michelin's facilities in Alabama were completed in the 1970s (Dothan, Alabama), see n. 3, and 1946 (Tuscaloosa, Alabama; originally opened as a BFGoodrich plant).⁷ The Oklahoma plant was completed in 1970.⁸

RMA's statement further fails to acknowledge the complex process that leads companies to locate and invest capital in specific locales. In 2009 Continental Tire North America ("Continental") moved its headquarters to Lancaster County, South Carolina from Charlotte, North Carolina, investing \$11 million to construct its new building.⁹ Although not mentioned in the company's press release concerning the move, the move followed a labor dispute in North Carolina that led the company to shut down a production facility and close a related office complex.¹⁰ In 2011 Continental announced plans to build a manufacturing facility in Sumter, South Carolina, involving a total

allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege, of the parties and of justice require.

⁷ Stephan Dethrage, *BFGoodrich Tire Plant Marks 70 Years in Tuscaloosa*, Tuscaloosa News (Oct. 21, 2016), <http://www.tuscaloosanews.com/news/20161021/bfgoodrich-tire-plant-marks-70-years-in-tuscaloosa>.

⁸ *Michelin Plant in Oklahoma Celebrates 40th Anniversary*, ReliablePlant, <http://www.reliableplant.com/Read/25283/Michelin-Oklahoma-plant-anniversary> (last visited May 17, 2017).

⁹ Continental Corporation, http://www.continental-corporation.com/www/pressportal_us_en/themes/press-releases-us/2_corporation/pr_2009_03_26_en.html (last visited May 17, 2017).

¹⁰ Mike McNulty, *Conti Decision to End Tire Production at Charlotte Plant: 'It's All About Costs'*, TireBusiness (Sept. 2, 2012), <http://www.tirebusiness.com/article/20060522/ISSUE/305229989/conti-decision-to-end-tire-production-at-charlotte-plant-it-39-s-all>.

investment in excess of \$500 million in Sumter County for the production facility and \$4 million in Lancaster County for additions to its headquarters.¹¹ Continental termed the investment “significant.” Grants totaling \$35 million were approved for costs associated with the construction of the Sumter plant.¹² Similarly, Bridgestone Americas, Inc. (“Bridgestone”) has two manufacturing facilities in Aiken County, South Carolina.¹³ One opened in 1998, the other in November 2014.¹⁴ The possibility that the first plant might locate in Aiken County arose in April 1997 with an inquiry looking for a 400-acre site upon which to build.¹⁵ Bridgestone received a \$15.5 million grant from the South Carolina Department of Commerce for costs associated with the construction of the second plant, along with job development credits from the Coordinating Council.¹⁶ Finally, Giti Tire group expects to open a new facility in Chester, South Carolina, in

¹¹ Continental Corporation, *Continental Holds Groundbreaking Ceremony for New Tire Plant in Sumter, South Carolina (USA)* (Mar. 28, 2012), http://www.continental-corporation.com/www/pressportal_us_en/themes/press-releases-us/4_rubber_group/pr_2012_03_28_sumter_en.html; *Continental Tire to Expand to Lancaster Co., SC Headquarters*, Charlotte Business Journal (Oct. 7, 2011), <http://charlottesights.com/877/continental-tire-to-expand-lancaster-co-sc-headquarters/>.

¹² South Carolina Department of Commerce, *Continental Tire the Americas LLC Announces New Plant in Sumter County* (Oct. 6, 2011), <https://www.sccommerce.com/news/continental-tire-americas-llc-announces-new-plant-sumter-county>.

¹³ Bridgestone, <http://www.bridgestone.com/corporate/locations/tire/americas.html> (last visited May 17, 2017).

¹⁴ Roddie Burris, *Bridgestone Opens Off-road Giant Tire Plant in Aiken County*, The State (Nov. 18, 2014), <http://www.thestate.com/news/business/article13914824.html>.

¹⁵ *Tire Plant About to Open*, The Augusta Chronicle (Aug. 16, 1998), http://chronicle.augusta.com/stories/1998/08/16/bus_236141.shtml#.WRthW8YpBPY.

¹⁶ South Carolina Department of Commerce, *Bridgestone Americas Announces New Facility, Expansion in Aiken County* (Sep. 21, 2011), <https://www.sccommerce.com/news/bridgestone-americas-announces-new-facility-expansion-aiken-county>.

2017.¹⁷ Over time, Giti will receive a \$37.8 million grant towards costs of constructing the plant.¹⁸

RMA's assertion that any provision of the SCTSA contributed to the decision-making process of tire manufacturers as they evaluated where to invest their resources and build their facilities lacks support of any kind. The information provided by the manufacturers and those that interacted with them in the decision-making process is devoid of any reference to South Carolina having some sort of enhanced or special protections for trade secrets. For Michelin, the most significant tire manufacturer in South Carolina, initial investments in the state and the decision to move its headquarters here predate adoption of the SCTSA by decades in some instances. Realistically, the decision-making process appears to be driven by myriad and diverse factors including the existence of other facilities in the state, costs of doing business in a particular locale, the availability of land, economic incentives provided by state and local governments, and labor issues and costs.

CONCLUSION

RMA's unsupported assertion that any construction of South Carolina law now advanced by Appellant has somehow affected business decisions to relocate to our state is simply without factual support and should be disregarded by this Court.

¹⁷ Giti, <http://www.giti.com/corp/search.asp> (last visited May 17, 2017).

¹⁸ *Giti Tire's New Richburg Plant by the Numbers*, The State (Feb. 11, 2015), <http://www.thestate.com/news/business/article13952282.html>.

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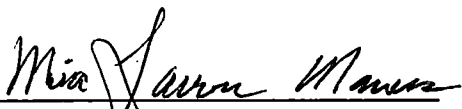
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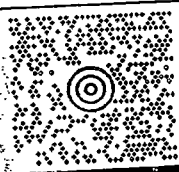


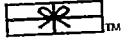
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