

**CONDITIONALLY GRANT; and Opinion Filed March 9, 2016.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-15-01480-CV**

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**IN RE MICHELIN NORTH AMERICA, INC.**

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**Original Proceeding from the 134th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-14-07255**

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**MEMORANDUM OPINION**

**Before Justices Lang, Fillmore, and Brown  
Opinion by Justice Brown**

Relator Michelin North America, Inc. filed a petition for writ of mandamus requesting that this Court order the trial court to withdraw portions of three orders requiring Michelin to produce tire specifications and financial information in a products liability lawsuit arising from an automobile accident. We conditionally grant the writ of mandamus.

**BACKGROUND**

On September 3, 2012, a 2000 Ford Expedition was involved in a single-car accident on an Illinois highway after its left rear tire failed. The vehicle had eight occupants, including four members of the Medina family, the real parties in interest. The Medinas suffered serious injuries, and the accident left one of them a quadriplegic. The tire that failed was a Michelin P255/70R16 LTX M/S manufactured at Michelin's Dothan, Alabama plant in the 31st week of 2001.

In July 2014, the Medinas sued Michelin for strict products liability, negligence, breach of implied and express warranties, and violations of the deceptive trade practices act. They seek actual and punitive damages. The Medinas have alleged that the tire was defective for a number of reasons, including: over-age rubber stock, liner pattern marks, thin inner liner, premature oxidation on the belt skim, improper splicing of belts, improper spacing and placement of the steel cords and belts, improper inspection and/or repair of the tire at the factory, lack of nylon overlay/nylon cap ply or safety, air migration through the inner liner, aging of the tire and its components, issues inside the tire components, aging and/or contamination of pre-cured rubber and rubber coated tire components, and misplacement of the steel belts.

The Medinas served fifty requests for production on Michelin. Among other things, the Medinas requested copies of the design drawings for the subject tire, any and all documents relating to the building, testing, and inspection of passenger and light truck tires at the Dothan plant, copies of the model tire's and similar tires' specifications, and all documents relating to adjustment of the subject tire, similar tires, and all tires from the same LTX tire line. Michelin objected to a majority of the discovery requests on grounds that the Medinas sought disclosure of Michelin's trade secrets and/or the requests were overbroad. Michelin has already produced documents related to the tire in question and to three "common green" tires<sup>1</sup> made at the Dothan plant for six months before and six months after the week the tire was produced. It also agreed to expand its production for the tire at issue to include the whole time the tire was produced—roughly a six-year period.

The Medinas moved to compel production of Michelin's tire aspect specifications. Aspect specifications are quality assurance documents created and used by Michelin to inspect a

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<sup>1</sup> "Common green" tires are tires that have the same fundamental design and are built to the same specifications as a particular tire except for exterior moldings.

tire after it has been manufactured. The Medinas explain in their mandamus brief that aspect specifications:

are the actual manufacturing/quality control information/laser photographs that the tire inspectors use to look for defects/anomalies/abnormal manufacturing conditions (blisters, abnormal coloring, molding, cord/cable placement, improper creases, folds, and openings, mold or curing issues, foreign material found in the tire and other various conditions) found *after* the tire is manufactured but *before* it leaves the factory for distribution. The aspect specifications also provide a decision tree on what the inspector/verifier should do when a specific defect is found (repair, scrap, etc.).

They further note:

These Aspect Specification documents contain policies, diagrams, drawings, and photos of such manufacturing anomalies and abnormal conditions similar to the ones identified by Plaintiffs as causes of the tire failure. Thus, these documents are necessary for Plaintiffs to prove their case so they can show that the defects/conditions/components alleged by Plaintiffs or the conditions that Michelin claim were caused by the tire's wear and tear left the factory that way.

These aspect specifications are plant specific, but not tire-line specific; they apply to all tires being made at a particular plant. Michelin has given the Medinas aspect specifications related to the components of the tire that are at issue in this case. The Medinas also sought to expand discovery to permit discovery related to different sizes of tires produced in plants other than the Dothan plant.

Michelin responded to the motion to compel with the affidavit of Vaneaton Price III, a senior technical advisor for Michelin. Before the trial court ruled on the motion to compel, it allowed the Medinas to depose Price about his affidavit. Price currently works in Michelin's legal department but is trained as a chemical engineer, has worked as a tire designer, and has been employed by Michelin for fifteen years. He testified in his affidavit that he is familiar with the tires designed and manufactured by Michelin, the design and manufacturing procedures used, the process by which tire specifications are developed, and the efforts that Michelin takes to protect its proprietary and trade secret information. Price testified that the aspect specifications

are marked “D3,” a designation Michelin uses for confidential documents not allowed outside the company.

Also, Price testified in his affidavit that the subject tire was a P255/70R16 109S Michelin LTX M/S tire. “P” stands for passenger tire, “255” is the tire’s section width measured in millimeters, “70” means that the sidewall height is 70% of the tire’s width, and “16” is the tire’s inner diameter measured in inches. “109S” is the tire’s service description, which includes its load index and speed rating. LTX M/S is a marketing label used by Michelin to describe many tires suitable for use in sport-utility vehicles (SUVs) or light trucks. According to Price, between 1998 and 2003 there were fifty-four different tire models and roughly 5,000 specifications associated with the LTX M/S tire line, and the tires were manufactured at five different plants. Price further testified that no two Michelin plants have the same equipment and, as a result, the manufacturing processes and specifications are developed for the equipment and processes at each plant. Price noted that different tires within the LTX M/S line do not merely have proportionally larger dimensions, but rather differ in size, load capacity, components, number of plies, types of plies, recommended pressures, speed ratings, tread depths, and intended applications.

In an order signed November 19, 2015, the trial court ordered Michelin to produce “the oldest version of all Aspect Specifications”<sup>2</sup> and expanded the scope of discovery to permit discovery relating to:

1. All Michelin P255/70R16 LTX M/S tires including the three (3) common green tires made at the Dothan, Alabama plant from the date production started (1998) until the date it allegedly stopped in 2003.

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<sup>2</sup> The parties apparently agree that aspect specifications are periodically updated and that the aspect specifications in effect at the time the tire at issue was manufactured would not necessarily be available.

2. All Michelin P-Metric 235, 245, 255 and 265 LTX M/S tires manufactured, within six (6) months before and one (1) year after the incident made the basis of this lawsuit.

The trial court later ordered Michelin to produce a corporate representative to testify about the aspect specifications ordered produced by the trial court.

The Medinas also moved to compel the deposition of a Michelin corporate representative concerning its financial condition. In a November 21, 2015 order, the trial court ordered Michelin to produce a corporate representative to testify about Michelin's "financial condition, wealth, assets, and financial statements." The Medinas gave notice that they would take such a deposition and also requested production of Michelin's financial statements from 1998 to 2014. In response, Michelin filed a motion for stay of disclosure of financial information and supplement to its response opposing the financial disclosures. Michelin offered the affidavit of its controller, Marcel Chabot, who attested that because Michelin is not publicly traded and its financial statements are consolidated with its corporate parent's financial statements,<sup>3</sup> Michelin does not separately make public disclosures concerning its net worth, financial condition, or financial statements. As a result, Michelin's information is not known to anyone other than those people within Michelin and the corporate parent who have a business need to know, and the parent's financial statements reflect only an overall picture of the financial position of the Michelin Group as a whole and not Michelin's individual financial position. Chabot attested that Michelin considers its financial information "highly confidential" and "vitally sensitive" and treats the information as a trade secret. He stated, "Disclosure of [Michelin's] financial information could seriously endanger [Michelin's] ability to remain financially competitive in the tire industry, which is a highly competitive business environment." Specifically, he attested

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<sup>3</sup> Michelin is a fully-owned subsidiary of the publicly traded French company Compagnie Generale Des Etablissements Michelin.

that disclosure of such information would allow competitors to deduce Michelin's "corporate strategies, research and development capabilities and options, and other vital aspects of its corporate objectives, plans, financial position, governance and management." On December 7, 2015, shortly after Michelin filed its petition in this Court, the trial court limited the order regarding financial condition to "to two (2) years prior to date of incidence [sic] to date," but denied Michelin's motion for stay of disclosure in all other respects.

Michelin contends all of the information covered by the trial court's orders, both about the tires and Michelin's financial condition, is covered by the trade secret privilege. It further argues that the expanded scope of discovery was improper because the expanded scope included tires not substantially similar to the tire that was involved in the accident in this case. It asks us to order the trial court to withdraw the relevant portions of its discovery orders. We granted Michelin's emergency motion and stayed the complained-of portions of the trial court's orders pending the outcome of this original proceeding.

#### **AVAILABILITY OF MANDAMUS REVIEW**

Mandamus relief is available if the relator establishes a clear abuse of discretion for which there is no adequate remedy by appeal. *In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009) (orig. proceeding) (per curiam). "Generally, the scope of discovery is within the trial court's discretion, but the trial court must make an effort to impose reasonable discovery limits." *Id.* (quoting *In re Graco Children's Prods., Inc.*, 210 S.W.3d 598, 600 (Tex. 2006) (orig. proceeding) (per curiam)). A trial court abuses its discretion if it orders discovery exceeding the scope permitted by the rules. *In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding) (per curiam); *K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996) (orig. proceeding) (per curiam); *Texaco, Inc. v. Sanderson*, 898 S.W.2d 813, 815 (Tex. 1995) (orig. proceeding) (per curiam).

Whether a clear abuse of discretion can be adequately remedied by appeal depends on a careful analysis of costs and benefits of interlocutory review. *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 464 (Tex. 2008) (orig. proceeding). Because this balance depends heavily on the circumstances, it must be guided by analysis of principles rather than simple rules that treat cases as categories. *Id.* An appeal is inadequate when the parties are in danger of permanently losing substantial rights. *In re Van Waters & Rogers, Inc.*, 145 S.W.3d 203, 211 (Tex. 2004) (orig. proceeding) (per curiam). “Such a danger arises when the appellate court would not be able to cure the error, when the party’s ability to present a viable claim or defense is vitiated, or when the error cannot be made part of the appellate record.” *Id.* For this reason, mandamus relief is available when the trial court compels production beyond the permissible bounds of discovery. *See In re Weekley Homes, L.P.*, 295 S.W.3d 309, 322 (Tex. 2009) (orig. proceeding). “Intrusive discovery measures . . . require, at a minimum, that the benefits of the discovery measure outweigh the burden imposed upon the discovered party.” *Id.*; *see In re CSX Corp.*, 124 S.W.3d at 153 (holding relator lacked adequate remedy by appeal where discovery order compelled production of “patently irrelevant” documents); *Tilton v. Marshall*, 925 S.W.2d 672, 683 (Tex. 1996) (orig. proceeding) (mandamus relief may be justified when burden on producing party is far out of proportion to any benefit to requesting party).

#### **TRADE SECRETS**

Michelin asserts that the trial court erred in requiring it to produce all aspect specifications, information related to other sizes of tires manufactured at all of its plants, and its financial information because all the information constituted trade secrets. “A trade secret is any formula, pattern, device or compilation of information which is used in one’s business and presents an opportunity to obtain an advantage over competitors who do not know or use it.” *Computer Assocs. Int’l v. Altai, Inc.*, 918 S.W.2d 453, 455 (Tex. 1996); *In re Goodyear Tire &*

*Rubber Co.*, 392 S.W.3d 687, 692–93 (Tex. App.—Dallas 2010, orig. proceeding). Texas Rule of Evidence 507 authorizes a party to refuse to disclose and to prevent others from disclosing trade secrets if it will not tend to conceal fraud or otherwise work injustice. TEX. R. EVID. 507.

Rule 507 requires a party resisting discovery of trade secrets to first establish that the information sought constitutes a trade secret. *In re Cont'l Gen. Tire, Inc.*, 979 S.W.2d 609, 610, 613 (Tex. 1998). Courts must weigh six factors to determine whether a trade secret exists: (1) the extent to which the information is known outside of the business; (2) the extent to which the information is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and to its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *In re Union Pac. R.R.*, 294 S.W.3d 589, 592 (Tex. 2009) (orig. proceeding) (per curiam) (citing *In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003) (orig. proceeding)).

If the party resisting discovery establishes that the information constitutes a trade secret, the burden then shifts to the requesting party to establish that the information is necessary for a fair adjudication of its claim or defense. *In re Bridgestone/Firestone, Inc.*, 106 S.W.3d 730, 732–34 (Tex. 2003) (orig. proceeding); *In re Cont'l Gen. Tire*, 979 S.W.2d at 610, 613. Although the Texas Supreme Court has not provided a specific test to be applied in determining whether the requesting party has carried its burden to show that trade secret information is necessary to a fair adjudication of its claim, the court has stated that the test is not satisfied by general assertions of unfairness or relevance. *See In re Union Pac. R.R.*, 294 S.W.3d at 592–93; *In re Bridgestone/Firestone*, 106 S.W.3d at 732–33 (unfairness); *In re Cont'l Gen. Tire*, 979 S.W.2d at 613–14 (relevance). The requesting party “must demonstrate with specificity exactly



how the lack of the information will impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat.” *In re Goodyear Tire & Rubber*, 392 S.W.3d at 696 (quoting *In re Bridgestone/Firestone*, 106 S.W.3d at 732–33). A trial court abuses its discretion if it orders disclosure of trade secrets when the requesting party has not carried its burden to show the information is necessary for a fair adjudication of its claim. *In re Bridgestone/Firestone*, 106 S.W.3d at 734; *In re Cont’l Gen. Tire*, 979 S.W.2d at 615.

## **TIRE DISCOVERY**

### ***Trade Secrets***

We first address Michelin’s assertion that it is entitled to mandamus relief regarding the trial court’s order requiring it to produce all aspect specifications and other information about its tires. Michelin contends that, through Price’s affidavit, it proved that this information constituted trade secrets. Michelin further contends that the Medinas did not meet their burden to show the information was necessary for a fair adjudication of their case.

In their mandamus response, the Medinas complain about Michelin’s failure to offer evidence in support of its trade secret objection until the Medinas filed their motion to compel. But Michelin was not required to offer evidence before the motion to compel was filed. Under rules 193.2 and 193.3, a party responding to discovery is required to make objections to the requested discovery and identify any privilege it asserts. TEX. R. CIV. P. 193.2(a), 193.3(a). If the requesting party challenges the objection or privilege, the party opposing the discovery must provide support for the objection or assertion of privilege. *Id.* 193.4(a). That is precisely what Michelin did in this case. It timely complied with its discovery duties in conjunction with the assertion of the trade secret privilege.

As for the specific requirements of a trade secret privilege, the Medinas do not directly challenge the existence of any of the six elements that would suggest that the information

Michelin seeks to protect from disclosure is covered by the privilege. Rather, their major argument is that the Price affidavit did not meet Michelin's burden because Price lacks personal knowledge of the subject matter of his affidavit. Specifically, they argue that the Price affidavit is not based on personal knowledge because he was never: 1) a tire builder, 2) a tire manufacturer, 3) a tire designer,<sup>4</sup> 4) a tire project manager, 5) a skim stock compounder, 6) a tire inspector, or 7) an adjustment inspector (warranty defects inspector). Nor had he ever worked 8) at an assembly line, or 9) at the Dothan plant. The Medinas also fault Price for "not being the author" of the policies concerning trade secrets at Michelin or various security policies. They also impugn his testimony because he admitted he never authored aspect specifications, technical notes, general principles, tire non-conforming procedures, tire inspection procedures, or adjustment data policies and was not able to name anyone who works as a skim stock formulator, tire builder, or various types of tire inspector. They argue his affidavit was "made up" by Michelin's legal team<sup>5</sup> and Price did not talk to a single tire builder, manufacturer, inspector, designer, compounder, formulator, or plant worker in drafting his affidavit. The Medinas' argument is essentially one that the affidavit lacks probative value. *See Valenzuela v. State & Cty. Mut. Fire Ins. Co.*, 317 S.W.3d 550, 552 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (for affidavit to have probative value, affiant must swear to facts within his personal knowledge).

Mere recitation in an affidavit that the affidavit is based on personal knowledge is inadequate if the affidavit does not positively show a basis for the knowledge. *Id.* at 553. The affidavit must explain how the affiant has personal knowledge. *Radio Station KSCS v. Jennings*, 750 S.W.2d 760, 761–62 (Tex. 1988) (per curiam). An affiant's position or job responsibilities

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<sup>4</sup> This claim appears to be incorrect. Price stated in his deposition that early in his career at Michelin he designed light truck SUV tires, but he did not design the subject tire in this case. He also testified that he had responsibility for converting the design of an LTX M/S tire from original equipment to replacement, but did not remember the size and did not think it was the dimension involved in this case. At argument on the motion to compel, the Medinas seemed to narrow their argument to the fact that Price didn't design the tire at issue.

<sup>5</sup> Price testified that he was given a "framework" for the affidavit by Michelin's national discovery counsel, but he "did the work and did the lion's share of the material that's in it."

can qualify him to have personal knowledge of facts and establish how he learned of the facts. *Hydroscience Techs., Inc. v. Hydroscience, Inc.*, 401 S.W.3d 783, 791 (Tex. App.—Dallas 2013, pet. denied). Contrary to the Medinas’ assertions, Price can have personal knowledge of the nature of the tire manufacturing and inspection process without having ever personally worked in those capacities. Price is a trained chemical engineer. He has been employed by Michelin in the legal department since 2012 and worked for an affiliate as a tire designer prior to that time. He testified he has “applied aspect specifications,” “designed Michelin light truck SUV tires,” and “had responsibility for converting a design of an LTX M/S from [Original Equipment] to replacement.” The record sufficiently establishes the basis for the personal knowledge Price claimed regarding tire manufacturing and inspection procedures although he has never personally manufactured or inspected tires.

Similarly, an employee can have personal knowledge of company policies without having drafted those policies. *See, e.g., Dickey v. Club Corp. of Am.*, 12 S.W.3d 172, 176 (Tex. App.—Dallas 2000, pet. denied) (although affiant was not employed at country club when plaintiffs joined, affidavit made clear that as general manager, he had knowledge of club’s policies and bylaws). We have explained, “During employment, an employee may gain personal knowledge of regulations or procedures that were instituted prior to the time he was hired.” *Id.* This statement also necessarily suggests that an employee may have personal knowledge of regulations or procedures instituted during his current employment that he did not personally draft. The length of Price’s employment and the nature of his positions establish a basis for personal knowledge of Michelin’s security and trade secret policies.

The Price affidavit had probative value and clearly established that the information Michelin seeks to protect is within the trade secret privilege. The Medinas, on the other hand, did not meet their burden to show with specificity exactly how the lack of the information will

impair the presentation of the case on the merits to the point that an unjust result is a real, rather than a merely possible, threat. The gist of the Medinas' argument with regard to their need for the trade secret information seems to be that they need the information to prove the existence of a safer alternative design, an element of required proof in a design defect claim. *See Ford Motor Co. v. Wiles*, 353 S.W.3d 198, 200 (Tex. App.—Dallas 2011, pet. denied). The degree to which a trade secret is necessary to the fair adjudication of the case depends on the nature of the information and the context of the case. *In re Bridgestone/Firestone*, 106 S.W.3d at 732. If an alternative means of proof is available that would not significantly impair the presentation of the case's merits, then the information is merely useful and not necessary. *In re Valero Ref.—Texas, LP*, 415 S.W.3d 567, 570 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding). Here the Medinas made no effort to show that the discovery of the trade secrets was their only means of proving the existence of a safer alternative design. Without such evidence, they could not overcome their burden of showing substantial need. The trial court abused its discretion in ordering Michelin to produce aspect and tire specifications covered by the trade secret privilege.

### ***Overbreadth***

Michelin also argues that the court's November 19 order constitutes an abuse of discretion because it expands the scope of discovery to include dissimilar tires manufactured at all plants and is thus overbroad. It is not clear from the briefing of this case whether our resolution of Michelin's trade secret claim implicitly disposes of this overbreadth argument or whether there are some documents that the trial court ordered produced in its expanded scope of discovery that do not fall within the matters covered by the trade secret affidavit. The record seems to indicate that our conclusion regarding trade secrets does not resolve all of Michelin's complaints. The Medinas' motion to compel was addressed to forty-two of its fifty requests for production. Michelin asserted a trade secret and/or rule of evidence 507 objection to thirty-two

of these forty-two requests. Thus, there were ten requests before the trial court on the motion to compel that were not the subject of a trade secret objection, but that were the subject of an overbroad objection. It is unclear how many of these ten requests fall within the expanded scope of production. But some of them clearly do. For example, request for production seven asked Michelin to produce “true, complete and accurate cop[ies] of any and all limited warranty claim forms and consumer claims for Michelin LTX M/S tires returned for tread/belt separation.” Thus, we will address the overbreadth argument.

Michelin argues that within the additional sizes of LTX M/S brand tires that are now subject to discovery “the type and size of many individual components vary significantly, including different thicknesses of shoulder areas of the tread, tread widths, different top and bottom belt widths, belt gauges, tread compounds, rubber formulas, and many other items.”<sup>6</sup> It further points out that the trial court’s order requires production of information related not only to tires produced at the Dothan, Alabama plant that manufactured the tire in this case but at all Michelin plants. It argues that the trial court’s order is overly broad because of the significant variation in the tires and the difference in the manufacturing locale. The Medinas argue that the trial court’s order actually constituted a narrowing of the scope of discovery because it gave them far less discovery than they sought by limiting the scope of discovery to only three additional tire widths (235, 245, and 265), allowing discovery only as to P-Metric tires and not light truck tires, and by narrowing the time scope to six months before and one year after the date of the tire at issue’s manufacture. Despite the Medinas’ arguments, the trial court’s order plainly states, “the Scope for Production concerning Michelin’s production is expanded to include. . . . “

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<sup>6</sup> A federal regulation regarding reporting of information about potential tire defects defines tires as being “substantially similar” if they have “the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component materials, irrespective of plant of manufacture or tire line.” 49 C.F.R. § 579.4(d)(3) (2014).

Discovery is overly broad in products liability cases when the order covers products not relevant to the case and the order is not reasonable in its scope. *In re Deere*, 299 S.W.3d at 820. The supreme court routinely grants mandamus in product liability cases when a discovery order covers products the plaintiff never used. *See, e.g., In re Graco Children's Prods.*, 210 S.W.3d at 600–01 (in suit alleging infant car seat's harness was defective, mandamus granted concerning discovery order regarding defects not similar to defect alleged in case); *In re American Optical Corp.*, 988 S.W.2d 711, 712–13 (Tex. 1998) (orig. proceeding) (per curiam) (mandamus granted concerning discovery order regarding respiratory protection equipment plaintiffs never alleged they used); *Gen. Motors Corp. v. Lawrence*, 651 S.W.2d 732, 734 (Tex. 1983) (orig. proceeding) (in suit claiming truck with in-cab fuel tank was defectively designed, mandamus granted concerning discovery order requiring information about all GM vehicles); *see also Texaco*, 898 S.W.2d at 814–15 (in suit based on plaintiffs' alleged exposure to asbestos and other toxic substances, mandamus granted regarding discovery order requiring production of all documents written by corporate safety director that concern safety).

The Medinas argue that the scope of discovery ordered by the trial court is appropriate because it will allow them to show the existence of a safer alternative design. Because product liability claimants must prove a safer “alternative” design, discovery cannot be uniformly limited to the specific model at issue because that would necessarily preclude discovery on alternative designs. *In re Exmark Mfg. Co.*, 299 S.W.3d 519, 529 (Tex. App.—Corpus Christi 2009, orig. proceeding [mand. dismiss'd]). But parties seeking discovery are not simply permitted to “go fishing” among documents concerning the defendant's products to attempt to stumble upon some element of another product manufactured by the defendant that might prove to be safer. *See In re American Optical*, 988 S.W.2d at 713. They must make at least some effort to articulate why the specific products about which they seek discovery potentially qualify as safer alternative

designs. In this case, there is no apparent connection between the alleged defects and the discovery ordered. Michelin met its burden of showing that the tires subject to the expanded discovery order are not substantially similar in design to the product at issue. The Medinas did not offer any evidence suggesting that there is a common element in all of the tires that are the subject of the discovery order that might have caused the failure of the tire at issue in this case. Based on the record in this case, the November 19 order is overly broad. The trial court abused its discretion in expanding the scope of discovery to include additional sizes of tires.

#### **DISCOVERY OF FINANCIAL INFORMATION**

We turn to Michelin's claim that it is entitled to mandamus relief from the trial court's order requiring the deposition of its corporate representative regarding its financial condition. Michelin first argues that net-worth discovery should be limited because the Medinas have not shown they are entitled to punitive damages. More than twenty-five years ago, the Texas Supreme Court expressly rejected this argument. *Lunsford v. Morris*, 746 S.W.2d 471, 473 (Tex. 1988) (orig. proceeding), *overruled on other grounds by Walker v. Packer*, 827 S.W.2d 833, 842 (Tex. 1992) (orig. proceeding). Under Texas law, a party seeking discovery of net-worth information need not satisfy any evidentiary prerequisite, such as making a prima facie showing of entitlement to punitive damages, before discovery of net worth is permitted. *In re Jacobs*, 300 S.W.3d 35, 40–41 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding [mand. disp'd]); *In re House of Yahweh*, 266 S.W.3d 668, 673 (Tex. App.—Eastland 2008, orig. proceeding); *In re Garth*, 214 S.W.3d 190, 192 (Tex. App.—Beaumont 2007, orig. proceeding [mand. disp'd]); *In re W. Star Trucks US, Inc.*, 112 S.W.3d 756, 763 (Tex. App.—Eastland 2003, orig. proceeding); *Al Parker Buick Co. v. Touchy*, 788 S.W.2d 129, 131 (Tex. App.—Houston [1st Dist.] 1990, orig. proceeding).

On June 19, 2015, Senate Bill 735 was signed into law changing the way net-worth discovery will be conducted going forward. Act of June 19, 2015, 84th Leg., R.S., ch. 1159, § 2, 2015 Tex. Sess. Law Serv. 3923, 3923 (West 2015). The bill, codified as section 41.0115 of the civil practice and remedies code, requires a party seeking net worth discovery to first demonstrate and obtain a finding from the trial court that there is a substantial likelihood of success on the merits of a claim for exemplary damages. *See* TEX. CIV. PRAC. & REM. CODE § 41.0115(a) (West Supp. 2015). The provisions of section 41.0115 did not become effective until September 1, 2015, and apply only to an action filed on or after that effective date. *See* Act of June 19, 2015, 84th Leg., R.S., ch. 1159, § 3, 2015 Tex. Sess. Law Serv. 3923, 3923 (West 2015). A case presently pending before the supreme court argues that section 41.0115 should be applied retroactively. *See In re Robinson Helicopter Co.*, No. 01-15-00594-CV, 2015 WL 4623939 (Tex. App.—Houston [1st Dist.] Aug. 4, 2015, orig. proceeding [mand. pending]). The supreme court has ordered full briefing in the case. Although the supreme court may soon revisit its thinking on the timing of net-worth discovery, it is not our prerogative to predict the action of the supreme court in the face of clearly controlling precedent. *See Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (“If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [court] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.”); *Owens Corning v. Carter*, 997 S.W.2d 560, 571 (Tex. 1999) (same); *In re Smith Barney, Inc.*, 975 S.W.2d 593, 598 & n.27 (Tex. 1998) (same); *Va. Indon. Co. v. Harris Cty. Appraisal Dist.*, 910 S.W.2d 905, 912 (Tex. 1995) (same).

The Medinas also argue that Michelin waived its trade secret privilege with regard to its financial information because it did not provide the Chabot affidavit, which attempted to establish that the financial data was a trade secret, until after the hearing at which the trial court



ordered the financial information produced. The Chabot affidavit was not submitted until after the hearing and after the trial court ruled. Thus, by definition, the trial court did not abuse its discretion in failing to treat the financial information as protected under the trade secret privilege. *See, e.g., J.K. & Susie L. Wadley Research Inst. & Blood Bank v. Whittington*, 843 S.W.2d 77, 86 n.9 (Tex. App.—Dallas 1992, orig. proceeding) (relator cannot rely on argument first raised after trial court ruled to complain that court abused its discretion). “[M]ultiple hearings are not available to a party so the party can marshal his defenses consecutively and present them to the court for ruling, one by one. Once a party has had the opportunity to present his defenses, a trial court need not protract the dispute by extending further opportunities.” *Elec. Data Sys. Corp. v. Tyson*, 862 S.W.2d 728, 736 n.5 (Tex. App.—Dallas 1993, orig. proceeding); *see J.K. & Susie L. Wadley Research Inst.*, 843 S.W.2d at 86 n.9 (“a party cannot drag out the discovery process by taking all the procedural steps necessary to protect records from discovery, one by one, and each one only after it has received an adverse ruling from the trial court after the earlier steps.”). Because Michelin did not establish before the trial court ruled that the financial information it sought to protect was a trade secret, the Medinas were not required to show substantial need for the information.<sup>7</sup>

In the final analysis, however, whether or not Michelin waived trade secret protection with regard to the financial information is immaterial because the trial court’s order is overly broad. In addition to its argument that the information is a trade secret, Michelin alternatively asserts the financial discovery should be limited to its current net worth. It is not clear from the trial court’s order whether it has ordered five years or sixteen years of data produced. The trial

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<sup>7</sup> Net worth is one among several factors a jury should consider in determining the amount of punitive damages TEX. CIV. PRAC. & REM. CODE ANN. § 41.011(a) (West 2015) (trier of fact shall consider evidence, if any, relating to the nature of the wrong; the character of the conduct involved; the degree of culpability of the wrongdoer; the situation and sensibilities of the parties concerned; the extent to which such conduct offends a public sense of justice and propriety; and the net worth of the defendant). The record here shows that Michelin’s financial information is not publicly available. In and of itself, the absence of other available evidence of net worth would seem to suggest that substantial need has been established.

court's order allows financial discovery "two (2) years prior to date of incidence [sic] to date." The tire was manufactured in 2001 but the accident occurred in 2012. Thus, the trial court has permitted discovery either for the period 1999–2015, which was the date of the trial court's order, or from 2010–2015. Either is excessively broad. The Medinas are entitled to only documents that show the current net worth of Michelin. *See In re Ameriplan Corp.*, No. 05-09-01407-CV, 2010 WL 22825, at \*1 (Tex. App.—Dallas Jan. 6, 2010, orig. proceeding) (mem. op.) (trial court erred in ordering production of corporation's balance sheets for two prior years and its current and prior income statements because documents did not reflect current net worth); *In re House of Yahweh*, 266 S.W.3d at 673–74 (trial court erred by requiring production of previous years' balance sheets and other documents that did not show net worth); *In re Garth*, 214 S.W.3d at 194 (trial court erred by requiring production of income statements because they would not show current net worth). Further, the scope of the deposition the trial court ordered of Michelin's corporate representative regarding its financial condition should be similarly limited to permit inquiry into only the company's current net worth. *See In re Jacobs*, 300 S.W.3d at 45–46 (limiting scope of oral deposition inquiry into defendants' net worth to information related to current net worth). While a trial court may permit broader discovery in cases in which it is necessary to provide an accurate reflection of the defendant's net worth, *see In re Brewer Leasing, Inc.*, 255 S.W.3d 708, 713 (Tex. App.—Houston [1st Dist.] 2008, orig. proceeding [mand. denied]) (permitting additional net worth discovery where trial court implicitly found that previously provided unaudited balance sheets did not adequately represent the net worth of the relator), the Medinas made no showing that anything more than the current balance sheet for Michelin is necessary to provide an accurate representation of Michelin's net worth. The trial court abused its discretion in ordering Michelin to produce more than its current financial information.

## CONCLUSION

We conditionally grant mandamus relief directing the trial court to vacate that portion of its November 19, 2105 order requiring Michelin to produce the oldest version of all aspect specifications. In addition, we conditionally grant mandamus relief directing the trial court to vacate that portion of its November 19, 2015 order expanding the scope of production to include all Michelin P-Metric 235, 245, 255, and 265 LTX M/S tires manufactured within six months before and one year after the incident made the basis of this lawsuit. We also conditionally grant mandamus relief directing the trial court to modify that portion of its December 7, 2015 order limiting financial discovery to “two (2) years prior to date of incidence to date” to instead limit financial discovery to Michelin’s current net worth. A writ will issue only if the trial court fails to comply with these directives.

/Ada Brown/  
ADA BROWN  
JUSTICE

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