

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA

In re: BRIDGESTONE/FIRESTONE, INC., )  
ATX, ATX II AND WILDERNESS TIRES )  
PRODUCTS LIABILITY LITIGATION )  
\_\_\_\_\_) )  
THIS DOCUMENT RELATES TO )  
ALL ACTIONS )  
\_\_\_\_\_)

Master File No. IP 00-9373-C-B/S  
MDL No. 1373

**PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE  
CONCERNING THE SUPPLEMENTAL PROPOSED CASE MANAGEMENT ORDER**

Defendants have filed comments concerning the Supplemental Case Management Order and a response to Plaintiffs' suggestions regarding this Court's handling of non-core issues. But Defendants' comments and response mischaracterize Plaintiffs' suggestions. According to Defendants:

Plaintiffs have contended that defendants' proposals are inappropriate because they would give this Court responsibility for handling matters ruled beyond the authority of an MDL transferee court in *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

Defendants' Comments at 7. Plaintiffs did not argue that this Court had no authority to address non-core issues. Instead, Plaintiffs argued that, for both legal and factual issues, Defendants' proposed schedule, which required the parties and this Court to first address non-core case specific liability issues before the core liability issues, simply made no sense.

As explained in detail in Plaintiffs' submission, Defendants' schedule calls for discovery depositions to begin on April 16, 2001 and for non-core liability experts and their reports to be disclosed on August 1, 2001, three and one-half months later. It is simply impossible, and

fundamentally unfair, for non-core fact discovery to be substantially completed (as it must be for experts to render their reports) in the hundreds of cases in that short period of time.

Significantly, Defendants' comments fail to offer any explanation as to why the efforts of the parties should be directed initially to non-core issues rather than the core issues which gave rise to the MDL in the first instance.

As also explained in Plaintiffs' submission, Plaintiffs should not be required to disclose non-core liability experts and their opinions until after core liability discovery is substantially complete and both Plaintiffs' and Defendants' core liability experts and their reports have been disclosed. A critical non-core liability issue is case-specific causation. The non-core liability experts will necessarily need to address the extent to which a design defect in the Firestone tire and the Ford Explorer caused or contributed to each individual accident. But, before this can be accomplished with any degree of finality, the exact nature of the design defect in the Firestone tire and the Ford Explorer and the exact nature of the failure mechanism of the tire and Explorer must be determined. In other words, these core issues must be analyzed through appropriate fact and expert discovery before the individual non-core issues of causation can be addressed with finality.

Significantly, Defendants' comments fail to offer any explanation as to why Plaintiffs should be required to disclose experts and expert reports on causation before the core issues relating to the exact nature of the design defect in the Firestone tire and the Ford Explorer and the exact nature of the failure mechanism of the tire and Explorer have been fully explored. Indeed, Defendants' comments fail to explain how it is even possible for an expert to reach a final opinion on causation before the nature of the defects at issue and their failure mechanism has been determined with

finality.

Defendants' silence on these critical points is telling. There is simply no logic behind its proposal requiring Plaintiffs to address non-core issues, and submit final expert reports on those issues, before the core issues have been addressed. Defendants' "cart before the horse" schedule should be rejected.

Defendants' response relegates to a footnote their comments concerning non-core expert discovery. That footnote suggests that there is no reason why non-core damage discovery, and corresponding non-core expert damage disclosures, should not go forward. Plaintiffs do not disagree. But the important point is that Defendants' proposed schedule called for early disclosure of experts and final expert reports on non-core liability issues, which in turn will require early completion of non-core liability discovery. As detailed in Plaintiffs' initial submission and in this reply, it is this aspect of Defendants' proposal which makes no sense.

Respectfully submitted,

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