

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

In re BRIDGESTONE/FIRESTONE, INC.,	)	
TIRES PRODUCTS LIABILITY	)	
LITIGATION	)	Master File No. IP 00-9373-C-B/S
_____	)	MDL No. 1373
THIS DOCUMENT RELATES TO	)	
ALL PERSONAL INJURY/WRONGFUL	)	
DEATH ACTIONS LISTED IN	)	
“EXHIBIT A”	)	
_____	)	

**MEMORANDUM IN SUPPORT OF DEFENDANT FORD MOTOR COMPANY’S  
MOTION TO STRIKE LOUISIANA AND PUERTO RICO PLAINTIFFS’ REQUESTS  
FOR PUNITIVE DAMAGES OR, IN THE ALTERNATIVE, FOR PARTIAL SUMMARY  
JUDGMENT IN FAVOR OF FORD MOTOR COMPANY ON LOUISIANA AND  
PUERTO RICO PLAINTIFFS’ REQUESTS FOR PUNITIVE DAMAGES**

By this motion, defendant Ford Motor Company (“Ford”) seeks an order striking or granting summary judgment on the punitive damages claims asserted in the complaints listed in Exhibit A (the “Exhibit A Complaints”) (or any possible claims), concerning personal injury/wrongful death cases in this proceeding that were originally filed in Louisiana or Puerto Rico. Under any of the state laws that might conceivably govern punitive damages issues in those cases (that is, the laws of Louisiana, Puerto Rico, or Michigan (Ford’s home state)), punitive damages are barred. Because there is no conflict of law on this question, there is no

necessity for a choice of law inquiry, and the punitive damages claims in the Exhibit A Complaints (or any possible claims) therefore are foreclosed.<sup>1</sup>

### Argument

#### **PLAINTIFFS CANNOT RECOVER PUNITIVE DAMAGES BECAUSE BOTH PLAINTIFFS' HOME STATES/PLACES OF INJURY AND DEFENDANT FORD'S HOME STATE BAR PUNITIVE DAMAGES.**

Under Michigan law, “[i]t is well established that generally only compensatory damages are available [] and that punitive sanctions may not be imposed.” *McAuley v. Gen. Motors Corp.*, 578 N.W.2d 282, 285 (Mich. 1998), *overruled, in part, on other grounds by Rafferty v. Markovitz*, 602 N.W. 2d 367 (Mich. 1999). Subject to a few exceptions for statutory causes of action not relevant here, Michigan does not allow the recovery of punitive damages. *See, e.g., Veselenak v. Smith*, 327 N.W.2d 261, 264 (Mich. 1982); *Fellows v. Superior Prods. Co.*, 506 N.W.2d 534, 536 (Mich. Ct. App. 1993); *Hicks v. Ottewell*, 436 N.W.2d 453, 456 (Mich. Ct. App. 1989); *Ass'n Research & Devel. Corp. v. CNA Fin. Corp.*, 333 N.W.2d 206, 210-11 (Mich. Ct. App. 1983); *Kelly*, 933 F. Supp. at 467.<sup>2</sup>

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<sup>1</sup> Both a motion to strike and a motion for partial summary judgment are appropriate vehicles for determining the choice of law question on punitive damages. *See, e.g., In re Air Crash Disaster Near Chicago*, 644 F.2d 594 (7th Cir. 1981) (“*Air Crash Disaster*”) (motion to strike); *Kelly v. Ford Motor Co.*, 933 F. Supp. 465 (E.D. Pa. 1996) (motion for partial summary judgment). “[T]he choice of law question regarding punitive damages should be resolved as early as possible,” because the “determination may facilitate settlement negotiations.” *In re Air Crash Disaster at Sioux City*, 734 F. Supp. 1425, 1429 (N.D. Ill. 1990).

Although not every plaintiff specifically or explicitly requests punitive damages, Ford seeks a judgment covering all Exhibit A Complaints to preclude any later attempts to assert punitive damages claims against Ford.

<sup>2</sup> In some circumstances, Michigan courts do allow exemplary damages, but only to *compensate* a plaintiff “for the humiliation, sense of outrage, and indignity.” *Kewin v. Mass. Mut. Life Ins.*, 295 N.W.2d 50, 55 (Mich. 1980) (internal quotations omitted). But Michigan does not allow even this compensatory version of exemplary damages in tort cases, because in such cases damages for pain, suffering, and mental anguish are already allowed as ordinary damages. *See Veselenak*, 327 N.W.2d at 263, 265.

Similarly, Louisiana and Puerto Rico bar punitive damage awards unless they are specifically authorized by statute. In neither state are punitive damages available in wrongful death/personal injury cases like the ones listed in Exhibit A. *See, e.g., Brodtmann v. Duke*, 708 So. 2d 447, 451-52 (La. Ct. App. 1998) (no punitive damages available under Louisiana law in personal injury product liability action); *Wallace v. Gen. Motors Corp.*, No. 94-2627 Section “K”, 1996 U.S. Dist. LEXIS 4383, at \*8-9 (E.D. La. Apr. 2, 1996) (same); *Kelly v. Bass Enters. Prod. Co.*, 17 F. Supp. 2d 591, 592, 600 (E.D. La. 1998) (no punitive damages available under Louisiana law in personal injury/wrongful death action); *Cruz v. Molina*, 788 F. Supp. 122, 123 (D.P.R. 1992) (“Puerto Rico law does not sanction punitive damages.”); *Noble v. Corporacion Insular de Seguros*, 738 F.2d 51, 54 (1st Cir. 1984) (“[P]unitive damages do not exist in Puerto Rico.”); *Cooperative de Seguros Multiples v. San Juan*, 289 F.2d 858, 859-60 (D.P.R. 1968) (same).

Because Michigan, Louisiana, and Puerto Rico law all prohibit punitive damages claims against Ford in the wrongful death/personal injury cases listed in “Exhibit A,” plaintiffs cannot recover punitive damages under any of the laws that might possibly govern their claims: the law of the home state of Ford, the defendant manufacturer, or the laws of the plaintiffs’ home states/places of injury. Hence, there is no need for a full conflict of law analysis. *See Motion to Dismiss Order*, 155 F. Supp. 2d 1069, 1078 (S.D. Ind. 2001) (“The threshold question is whether the relevant substantive laws of the different states involved are sufficiently different to require a choice of law analysis.”). Any punitive damages claims should be stricken or foreclosed by summary judgment as to Ford.

**A. The Only State Laws Relevant To The Louisiana Complaints Are Those Of Louisiana And Michigan.**

In identifying the state laws that might be relevant to the punitive damages claims of the Louisiana plaintiffs, this Court must apply the choice of law principles of Louisiana. *See id.* (applying choice of law principles of state in which transferor court sits). Under Louisiana choice of law rules, the only state laws relevant to the punitive damages issue are those of Louisiana and Michigan. Because the laws of both those states bar punitive damages, there is no need for the Court to choose between them.

Louisiana codified its choice of law rules in 1992 and adopted specific choice of law provisions for punitive damages. In a product liability action, “[d]elictual and quasi-delictual liability for injury caused by a product, as well as damages, whether compensatory, special, or punitive, are governed by the law of this state: (1) when the injury was sustained in this state by a person domiciled or residing in this state; or (2) when the product was manufactured, produced, or acquired in this state and caused the injury either in this state or in another state to a person domiciled in this state.” La. Civ. Code § 3545. Thus, Louisiana law on punitive damages governs most actions filed in Louisiana courts involving automobile accidents. For example, Louisiana law applies to the punitive damages request of a plaintiff living in Louisiana whose accident occurs in Louisiana, as well as to a plaintiff living in Louisiana who acquires his or her vehicle in Louisiana (irrespective of the place of the accident).

The only other state law that might be relevant to the Louisiana plaintiffs’ punitive damages claims is that of Michigan. If some unusual set of circumstances took an automobile accident case out of the purview of Louisiana’s product liability section, then Louisiana’s more general choice of law provision on punitive damages would apply. That section provides that “[p]unitive damages may not be awarded by a court of this state unless authorized: (1) ***By the law of the state where the injurious conduct occurred and*** by either the

law of the state where the resulting injury occurred or the law of the place where the person whose conduct caused the injury was domiciled; or (2) By the law of the state in which the injury occurred ***and by the law of the state where the person whose conduct caused the injury was domiciled.***” La. Civ. Code § 3546 (emphasis added). As thoroughly explained in prior briefing (see Exhibit B), Michigan is the place where the alleged injurious misconduct would have occurred and the place where Ford is domiciled.<sup>3</sup> Accordingly, any Louisiana punitive damages claim that is not governed by Louisiana law would be controlled by Michigan law – and, as discussed above, the laws of both jurisdictions prohibit punitive damages in these cases.

**B. The Only State Laws Relevant To The Puerto Rico Complaints Are Those Of Puerto Rico And Michigan.**

Puerto Rico follows the “most significant relationship” approach of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971) (“RESTATEMENT”) in determining what law applies to tort-based claims and issues. See *Wadsworth, Inc. v. Schwarz-Nin*, 951 F. Supp. 314, 320 (D.P.R. 1996). Under the RESTATEMENT approach, the only state laws that might even arguably be relevant to the Puerto Rico plaintiffs’ punitive damages claims are those of Michigan and Puerto Rico. Again, because the laws of both jurisdictions bar punitive damages under the circumstances of these cases, there is no need for the Court to choose between them.

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<sup>3</sup> Article 3518 treats a juridical person such as Ford “as a domiciliary of either the state of its formation or the state of its principal place of business, whichever is most pertinent to the particular issue.” In this instance, Ford’s place of incorporation (Delaware) has no pertinence to the punitive damages issue. A state implicated only by virtue of the formality of incorporation, in which no activity related to the litigation actually occurs, does not have an interest in the choice of law analysis. See, e.g., *Kelly*, 933 F. Supp. at 469; *Air Crash Disaster at Sioux City*, 734 F. Supp. at 1435 n.16. As this Court has noted in another context, Ford’s state of incorporation lacks a meaningful connection to the litigation that would trigger any real interest on its part. See Motion to Dismiss Order, 155 F. Supp. 2d at 1082. Arguably, Ford might be considered a domiciliary of Louisiana under Louisiana law. See La. Civ. Code § 3548. But that would make no difference, as both Louisiana and Michigan bar punitive damages.

As explained in Ford's prior briefing, RESTATEMENT principles dictate that the law applicable to punitive damages claims is that of the defendant's primary place of business and the place of misconduct, at least when those two states are the same. (*See* Exhibit B.) In these cases, both those contacts are with the state of Michigan. (*Id.*) Accordingly, Michigan law is relevant to – and indeed controls – the Puerto Rico plaintiffs' claims for punitive damages.

Even if the Court were to disagree with this well established understanding of the RESTATEMENT, it would make no difference in the Puerto Rico cases. The only other state that is conceivably relevant to plaintiffs' punitive damages claims under the RESTATEMENT is Puerto Rico – the place of plaintiffs' domiciles and the site of the accidents giving rise to plaintiffs' claims. *See* Exhibit B at 7-10 (discussing place of injury); RESTATEMENT § 146 (same). And as noted above, Puerto Rico law (like Michigan law) prohibits the award of punitive damages in these cases. There is no conflict here necessitating a choice of laws.

### **Conclusion**

The claims for punitive damages asserted in the Exhibit A Complaints (or any possible claims) should be stricken. In the alternative, partial summary judgment in Ford's favor should be granted on those claims (or any possible claims).

Dated: December 21, 2001

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Service of the foregoing was made by hand delivery or by placing a copy of the same into the United States Mail, first class postage prepaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2001, addressed to all counsel of record appearing on the Panel Attorney Service List, and others, as necessary.

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**Exhibit A**

**MDL Personal Injury Cases in Which Claims for Punitive Damages  
Should Be Stricken or Upon Which Partial Summary Judgment Granted for  
Ford Motor Company**

*Louisiana*

IP 01-5512-C-B/S	Adams et al. v. Bridgestone/Firestone, Inc. et al. Civil Action No. 2:01-2912
IP 01-5419-C-B/S	Arena v. Ford Motor Co., et al. Civil Action No. 2 01-2114
IP 01-5506-C-B/S	Babin v. Bridgestone/Firestone, Inc., et al. Civil Action No. 2-01-2765
IP 00-5130-C-B/S	Bankston v. Transcor America, Inc., et al. Civil Action No. 00-2739
IP 01-5504-C-B/S	Boudreaux v. Bridgestone/Firestone, Inc., et al. Civil Action No. 2-01-2754
IP 01-5505-C-B/S	Boudreaux v. Bridgestone/Firestone, Inc., et al. Civil Action No. 2-01-2755
IP 01-5507-C-B/S	Chauvin v. Bridgestone/Firestone, Inc., et al. Civil Action No. 6-01-1401
IP 01-5277-C-B/S	Clark v. Bridgestone/Firestone, Inc., et al. Civil Action No. 01-121
IP 01-5276-C-B/S	Dorsey v. Ford Motor Co., et al. Civil Action No. 01-24
IP 01-5390-C-B/S	Easterly v. Bridgestone/Firestone, Inc. Civil Action No. 3 00-864
IP 01-5418-C-B/S	Fontana v. Bridgestone/Firestone, Inc., et al. Civil Action No. 2 01-2070
IP 01-5409-C-B/S	Gaudet v. Bridgestone/Firestone, Inc. Civil Action No. 3 01-1
IP 01-5237-C-B/S	Goodman v. Bridgestone/Firestone, Inc. Civil Action No. 00-2728

IP 00-5129-C-B/S	Hall v. State Farm Mutual Automobile Ins., et al. Civil Action No. 00-2692
IP 01-5236-C-B/S	Hyatt v. Bridgestone/Firestone, Inc. Civil Action No. 00-2426
IP 01-5468-C-B/S	Johnson v. Ford Motor Co., et al. Civil Action No. 01-2551
IP 01-5290-C-B/S	Kinkella v. Bridgestone/Firestone, Inc. Civil Action No. 01-331
IP 01-5203-C-B/S	Romero v. Tire Distribution Systems, Inc., et al. Civil Action No. 99-1716
IP 00-5133-C-B/S	Sortina, et al. v. Bridgestone/Firestone, Inc., et al. Civil Action No. 00-2987
IP 00-5128-C-B/S	Washington v. Bridgestone/Firestone, Inc. Civil Action No. 99-2925
<b><i>Puerto Rico</i></b>	
IP 00-5163-C-B/S	Aymat v. Bridgestone/Firestone, Inc., et al. Civil Action No. 00-2277
IP 01-5363-C-B/S	Bado-Santana v. Bridgestone/Firestone, Inc., et al. Civil Action No. 00-2517
IP 01-5525-C-B/S	Sanchez-Nieves et al. v. Bridgestone/Firestone, Inc. et al. Civil Action No. 01-2220

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