

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

In re BRIDGESTONE/FIRESTONE, INC. ATX, ATX II, AND WILDERNESS TIRES PRODUCTS LIABILITY LITIGATION)	
)	
)	Master File No. IP 00-9373-C-B/S
)	MDL No. 1373
)	Hon. Sarah Evans Barker
THIS DOCUMENT RELATES TO ALL ACTIONS)	
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**BRIDGESTONE/FIRESTONE, INC.'S MEMORANDUM IN OPPOSITION
TO FORD MOTOR COMPANY'S MOTION TO COMPEL
BRIDGESTONE/FIRESTONE, INC. TO PRODUCE DOCUMENTS IN RESPONSE TO
FORD'S REQUEST FOR PRODUCTION**

The core discovery dispute presented by Ford's Motion to Compel can be succinctly summarized. Ford requests enforcement of certain discovery requests that would require Firestone to produce documents and data relating to virtually every tire manufactured by Firestone "without limitation," regardless of whether the tire was ever equipped or could be equipped on a Ford Explorer. Firestone, in contrast, asserts that discovery should appropriately be limited to Ford's defenses in this action which, according to Ford, relate solely to the performance of Wilderness and ATX tires on the Ford Explorer. Ford's attempt to push the discovery envelope to include tires not at issue in this litigation is a transparent attempt to punish Firestone for its proper discovery regarding the role of the Ford Explorer in the tread/belt separations and subsequent rollovers, a motive that Ford thinly veils in its Memorandum In Support. In short, Ford's requested discovery is overbroad, unduly burdensome and punitive. Accordingly, Ford's Motion to Compel should be denied.

I. FORD UNNECESSARILY SEEKS TO EXPAND THE SCOPE OF DISCOVERY TO TIRES NOT AT ISSUE IN THIS LITIGATION THROUGH ITS REQUESTS REGARDING THE C95 PROGRAM

Through its motion, Ford requests enforcement of three requests that seek documents and data relating to all "Firestone branded tires" affected by an internal program implemented by Firestone in 1994 called C95. Memorandum In Support Of Defendant Ford Motor Company's Motion To Compel Bridgestone/Firestone, Inc. To Produce Documents In Response To Ford's First Request For Production at 1, 4, 13 ("Mem. In Supp."). Because the C95 program affected, as Ford puts it, "virtually all of [Firestone's] tires in the mid-1990s" (Mem. In Supp. at 4), Ford effectively seeks discovery regarding every tire manufactured by Firestone during that time period, including "passenger car" tires, heavy truck tires, tractor tires and other tires clearly not designed for use on SUVs or light trucks. Mem. In Supp. at 9, 15. Firestone should not have to produce documents or data concerning tires that have never been challenged as defective in this litigation, and which have little, if any, common design characteristics with the Wilderness or ATX tires, particularly when Ford offers no significant reason for doing so.

Firestone does not maintain that the C95 program is irrelevant to this action. Indeed, Firestone already has produced or offered to produce a wide spectrum of material and data relating to the C95 program's effect on the Wilderness and ATX tires, including all documentation and data relating to the performance of those tires pre- and post-C95. Ford's nearly three-page discussion regarding the C-95 program, as well as the nearly two inches of C95 materials attached to Ford's Motion to Compel, alone attest to the extent of Firestone's production. See Mem. In Supp. at 1-4. Firestone simply asserts that discovery related to the C95 program should be limited to the Wilderness and ATX tires at issue in this litigation.

A. Firestone Has Reasonably Complied With Ford's Requests For Production Relating To The C95 Program

In Request for Production No. 1, Ford seeks a copy of Firestone's "C-95 Adjusted/Worn Tire Survey" database. Firestone already has produced all C95 adjusted tire field surveys, including the underlying data documentation. In any event, and as Firestone previously advised Ford, Firestone is willing to produce the requested database. See Letter from C. Smith to B. Boyle (Nov. 9, 2001) (attached as Exhibit 9 to Declaration of Brian Boyle, dated Nov. 16, 2001) ("Boyle Decl."). Thus, this request is effectively moot.

In Ford's Request For Production No. 2, Ford seeks a copy of Firestone's "C-95 Skewer Testing" database. As Firestone previously informed Ford, Firestone already has placed all documents and test data relating to Firestone's skewer testing of the Wilderness and ATX tires in its document depository, including all printouts of test records. Id. at 1-2. Indeed, Firestone has now confirmed that all documents and data relating to Firestone's skewer testing of its tires -- above and beyond the Wilderness and ATX tires -- have been produced by Firestone. In addition, Firestone has indicated its willingness to specifically identify by Bates numbers the documents and data relating to the skewer testing of the Wilderness and ATX tires. Id. In short, Ford already has access to all of the data it seeks and Firestone was, and still is, willing to assist Ford in identifying relevant documents. Thus, Ford's Request No. 2 either is, or should be, a moot point.

Finally, in Ford's Request For Production No. 3, Ford seeks a copy of Firestone's "C95 Masterlist" database and "C-95 tracking system." The information sought by Ford's request includes changes in tire manufacturing processes and materials that have no relationship or possible connection to the failures at issue, tread/belt separations in general, or the performance of the tread/belt package on the Wilderness and ATX tires. Consequently, this request is nothing

short of a fishing expedition that unnecessarily puts at risk a wide range of confidential and proprietary information unrelated to the tires at issue in this litigation. Ford has failed to articulate a basis as to why proprietary information relating to irrelevant changes should be produced in this case. Ford's request is quite simply overbroad and unduly burdensome.

Notwithstanding these facts, Firestone -- in the spirit of cooperation -- informed Ford that it would investigate what materials were available that might satisfy Ford's request. Letter from C. Smith to B. Boyle (Nov. 9, 2001) (Mem. In Supp., Boyle Decl, Ex. 9). Ford filed the subject motion before receiving Firestone's response. Firestone has now completed its investigation and can verify that it has produced substantial documentation relating to the design characteristics, materials information and changes implemented through the C95 program to the Wilderness and ATX tires at issue in this litigation. This includes specification information for all of the tires at issue in this litigation, including every change to those specifications for every tire in the ATX and Wilderness tire universe. Firestone's production of the "tracking system" database would not add any value to the information already available to Ford or assist Ford in its investigation of the C95 issue.

B. The C95 Program Had No Detrimental Effect On The Subject Tires

In its attempt to expand the scope of discovery, Ford pieces together select quotes from several C95 documents in an effort to create the illusion that Firestone orchestrated a grand conspiracy to cut costs behind Ford's back, thereby causing an increased number of tread/belt separations in the Wilderness and ATX tires. This is far from the truth.

Firestone's C95 program, implemented in 1994 after a period in which the company invested approximately \$500 million to improve its equipment and systems, was a quality and productivity improvement program intended to enhance Firestone's ability to uniformly produce

quality tires. See Deposition of H. Hara at 306-308 (July 25, 2001) ("Hara Dep.") (Ex. A); Deposition of G. Bohm at 173 (Sept. 6, 2001) (Ex. B) (explaining that C95 "was always meant to be an effort to assess what can be done to improve productivity."). As one Firestone engineer explained it, C95 was a way to "commonize parts wherever possible and to streamline and increase the efficiency of the operation." Deposition of R. Reichenbach at 264 (Aug. 20, 2001) (Ex. C).

Contrary to Ford's assertions, C95 was not a cost-cutting program intended to enable Firestone to "take more money to the bottom line." Mem. In Supp. at 1- 2; cf. Deposition of J. Lampe at 247 (July 5, 2001) ("Lampe Dep.") (Ex. D) (denying that C95 was a "cost-cutting" program). In some instances, costs decreased under the C95 program, while in other instances costs increased. For example, in an effort to streamline the number of compounds used in the tire tread, Firestone selected a "superior grade" compound for many of its tires. Although this compound cost more, it was a better "fit" with a greater number of tires, and thus the production process was more uniform, thereby decreasing the amount of machine downtime. See, e.g., Deposition of R. Duvall at 130 (Oct. 15, 2001) ("Duvall Dep.") (Ex. E). As Hideo Hara, Firestone's Vice President of Product Development in North America, summarized the matter, "some [C95] programs lead to cost reduction, but other programs lead to [an] increase. But [the] priority is how to uniformly produce tire[s] more effectively in the plant. That [was] the purpose of this program." Hara Dep. at 307-08 (Ex. A); Duvall Dep. at 130 ("A "number of [C95] programs" increased the cost of Firestone tires) (Ex. E).

At no point did Firestone sacrifice the quality of its tires at the hand of profits. Indeed, like other Firestone programs, C95's "first priority" was the production of quality tires. Hara Dep. at 307 (Ex. A). Every C95 change was extensively tested prior to implementation to assure

that performance of the changed product would be "equal to or better than" that of the predecessor product. Duvall Dep. at 130 ("any [C95] changes that are made in the company are to be at least equal to or better than what we already had in place.") (Ex. E). This fact was reflected in the Wilderness and ATX tires' adjustment data -- which is the primary performance indicator for all tire manufacturers -- which revealed no discernible increase in tread/belt separations for tires manufactured pre-C95 as compared to post-C95. See PSR/LTR Belt Related Adjustments at BHA0063410, BHA0063437 (Feb. 23, 1999) (Mem. in Supp., Boyle Decl., Ex. 17) (showing tread separations either decreasing or remaining flat from pre- to post-C95 time periods); Duvall Dep. at 70 ("the adjustment data showed all along that [Firestone] was performing virtually the same as 1992 levels.") (Ex. E); Deposition of B. Halverson at 634 (Oct. 30, 2001) (adjustment data indicates "no change in the performance of the tires" since the implementation of C95) (Ex. F); Lampe Dep. at 265 (July 5, 2001) (stating that the adjustment figures pre-C95 as compared to post-C95 "did nothing highly significant.") (Ex. D).

In its attempt to expand discovery, Ford misrepresents the meaning and import of certain C95 documents. Most notably, Ford cites "Scrap Surveys" and "Adjusted/Worn Tire Surveys" as support for its position that C95 led to an increase in tread/belt separations for the Wilderness and ATX tires. Mem. In Supp. at 2, 10. As the adjustment data discussed above makes clear, this conclusion is incorrect. Ford's error lies in a fundamental misunderstanding of the surveys.

The terms "scrap" and "adjusted" refers to tires that have been removed from vehicles because a Firestone dealer or some other agent determined that the tire was improper or that customer satisfaction justified exchanging the tires. In a "scrap survey" or "adjusted tire survey," Firestone takes the adjusted tires and conducts a review of them. The sample is typically very small and although important for monitoring, they are of little value in drawing conclusions

about a given tire population's performance as a whole. Drawing conclusions from these limited surveys is the equivalent of taking 5 bad apples from a 100-apple bushel, conducting an analysis of those bad apples, and then making conclusions about the bushel as a whole. That is simply a misuse of the sample data. As Firestone engineer Dan Saurer explained it: "You got to remember field surveys are a biased sample. They are adjusted tires. When you go out and you look at tires in the field for adjustment reasons they've already been adjusted . . . it is not a really good way to look at trends" Deposition of Dan Saurer at 234 (Aug. 14, 2001) (Ex. G). See also Duvall Dep. at 48, 49 (Oct 15, 2001) ("A scrap survey is a highly prejudiced selection of tires." It does not represent a "statistically significant number" of tires.) (Ex. E).

Even if one were to adopt this mistaken, analytical approach, the documents cited by Ford do not support the conclusions Ford seeks to draw. For example, in describing the results of Firestone's "adjusted worn tire survey," Ford correctly admits that the survey showed that "fewer 'C95' tires were revealed to have belt-leaving-belt conditions" (Mem. In. Supp. at 11 n.6) (emphasis added) -- the very problem that is at the root of this lawsuit and NHTSA's defect determination.¹ In sum, the evidence depicts Firestone's post-C95 tires as substantially similar, from a qualitative standpoint, to its predecessors. Ford has failed to provide any evidence to the contrary.

C. Ford Has The Materials It Needs To Support Its Defense Regarding C95

The discovery that Ford now seeks goes far beyond permissible discovery under the Federal Rules. Federal Rule of Civil Procedure 26(b) instructs that discovery be limited to matters "relevant to the *claim or defense* of any party." Fed. R. Civ. P. 26(b)(1) (emphasis

¹ Ford asserts that because Firestone lumped belt edge separations ("BES") and belt leaving belt ("BLB") separations together for comparative purposes in performing the adjusted/worn tires survey, the Court should conclude that pre-C95 tires were better quality than the post-C95 tires because this cumulative figure increased over

added). As the Court is well aware, limiting discovery to the "claim or defense" of a party represents a departure from the former Rule 26, which allowed all discovery that was "relevant to the subject matter involved in the pending action." While few courts have addressed the significance of the amendment, it is clear that the scope of discovery has been restricted. See, e.g., Anderson v. Hale, No. 00 C 2021, 2001 WL 641113, at *2 (N.D. Ill. June 1, 2001) (noting that a "narrowing" of discovery has taken place); see also Thompson v. Dep't. of Hous. & Urban Dev., 199 F.R.D. 168, 171 (D. Md. 2001) ("it is clear that the [current Rule 26] is intended to be narrower . . . and that the broader discovery is only to be allowed for 'good cause.'").

As Ford correctly states, plaintiffs' claims in this action are based on the "alleged defects in original equipment Firestone tires that were fitted on Explorer vehicles." Mem. In Supp. at 8. Moreover, Ford candidly admits that its "fundamental defense" to plaintiffs' claims is that "Firestone significantly (and secretly) modified the original equipment Wilderness AT and Radial ATX tires that it supplied to Ford." Id. As Ford's own words concede, Ford's C95 defense relates not to all Firestone tires, but rather only to the Wilderness AT and ATX tires at issue in plaintiffs' complaint. As demonstrated above, Ford already has, or will receive, the C95 documents and claims data information that it seeks relating to these tires. Its efforts to expand discovery to tires beyond this relevant set is unnecessary and contrary to the plain dictates of Rule 26(b).

Ford does not provide any legal authority to support its expansive view of discovery. Indeed, courts have routinely denied discovery that is directed beyond the product, or a substantially similar product, at issue in the litigation. See, e.g., Rider v. Caterpillar Tractor, No.

(continued...)

the two time periods. That is an inaccurate comparison since BES and BLB are two substantively different conditions.

86-2381-S, 1989 WL 106820 (D. Kan. Aug. 4, 1989) (denying discovery regarding trucks with different lift capacities than those at issue in action); Orleman v. Jumpking, Inc., No. 99-2522-CM, 2000 WL 1114849, at *2 (D. Kan. July 11, 2000) (denying discovery relating to different models of trampolines); Uitts v. General Motors Corp., 62 F.R.D. 560, 562-63 (E.D. Pa. 1974) (denying discovery of a vehicle recall where the recalled vehicles lacked the same component as the model at issue in the litigation).

In an attempt to lend some "legitimacy" to its broad discovery claim, Ford cites NHTSA's recent defect determination relating to the Wilderness and ATX tires. Specifically, Ford asserts that because NHTSA commented on the "belt wedge thickness" in concluding there was a defect in the Wilderness and ATX tires, and because the C95 program affected the thickness of the wedge in those tires, the requested C95 records relating to all Firestone branded tires should be produced. Mem. in Supp. at 12-13.

In truth, NHTSA's defect determination actually detracts from Ford's claim to broaden discovery. As Ford is well aware, NHTSA limited its investigation to the Wilderness and ATX tires. NHTSA also never requested C95 information from Firestone relating to any tire other than those it was investigating, and never indicated that it believed the C95 program's effect on other Firestone tires had any relevance to their review or finding of a defect in the Wilderness and ATX tires. In short, NHTSA's defect determination lends no support to Ford's attempt to engage in expansive discovery beyond the Wilderness and ATX tires at issue.

II. FIRESTONE IS WILLING TO EXPLAIN ANY CLAIMS DATA ANOMALIES TO FORD, BUT IS UNWILLING TO PRODUCE CLAIMS DATA RELATING TO ALL TIRES AS FORD REQUESTS

In Request For Production No. 43, Ford seeks "[a]ll documents relating to claims for personal injury or property damage, including electronic or computerized records, growing out of

an incident, event or circumstance involving any P-metric or LT-metric tire manufactured by Firestone." Boyle Decl., Ex. 1 at 18. Firestone already has produced all property damage and personal injury claims data relating to the Wilderness and ATX tires, as well as several other tire types and models, many of which are not even appropriate for use on Ford vehicles. Firestone also has produced all claims data summaries relating to these tires. What Firestone has not provided, and is unwilling to provide absent Court direction, is all personal injury and property claims data for all Firestone tires, which would necessarily include data that has no relation to the tires at issue in this case.

During the initial "meet and confer" on this request, Ford asserted that it needed Firestone's entire claims database in order to understand certain discrepancies in Firestone's "current production tapes." Letter from B. Boyle to C. Smith (Oct. 18, 2001) (Mem. In Supp., Boyle Decl., Ex. 6). In response, and as Ford admits (Mem. In Supp. at 17), Firestone offered to explain any anomalies that existed. Upon learning that Firestone was willing to answer its questions, Ford changed its tune and asserted that it wanted explanations of all alleged anomalies, as well as complete production of the electronic claims database. See Letter from C. Smith to B. Boyle (Nov. 9, 2001) (Mem. In Supp., Boyle Decl, Ex. 9). In other words, Ford sought both explanations of the anomalies, as well as standing to seek all claims relating to every tire manufactured by Firestone. See id. at 3. As Firestone explained at the time, Ford's request was and remains plainly overbroad and unduly burdensome. Indeed, it is hard to imagine how claims data relating to totally different tire types could ever shed light on any anomalies in the unrelated ATX and Wilderness data that Firestone had previously produced.

Nevertheless, Firestone remains willing and able to explain any anomalies that Ford believes exist in the personal injury and property claims data that Firestone already has produced

to Ford. Firestone has more than complied with Ford's requests, and Ford has failed to provide any legitimate rationale to support its request that Firestone produce all claims data.

Accordingly, Ford's Motion to Compel with respect to this request should be denied.

III. FORD'S REQUEST FOR DOCUMENTS RELATING TO ALL REPORTS OF TIRE FAILURES ON ALL FIRESTONE TIRES IS OVERBROAD AND UNDULY BURDENSOME

In Request For Production No. 37, Ford seeks all documents relating to any "information or data, or any summary or analysis thereof, received at any time from any automobile manufacturer other than Ford concerning tire failure or tread/belt separation in Firestone tires, or any instance thereof." Mem. In Supp., Boyle Decl., Ex. 1 at 17. In similar respect to the claims data and C95 material issues, Firestone has produced all documents relating to "any information or data" regarding the report of any failure on the Wilderness and ATX tires, regardless of the vehicle on which the tires were equipped. Firestone's production to date goes far beyond Ford original equipment tires and includes reports of tire failures and tread/belt separations from every major vehicle manufacturer to whom Firestone sells tires. Thus, Ford already has access to every report of tire failure or tread/belt separation regarding the tires at issue in this litigation.

Once again, Firestone objects to Ford's attempt to expand discovery beyond the tires at issue in this litigation and to include tires that have no relevance to this litigation as grossly overbroad. Firestone has repeatedly reiterated this common sense position to Ford. See, e.g., Letter from C. Smith to B. Boyle (Nov. 9, 2001) (Mem. In Supp., Boyle Decl., Ex. 9). Although this request makes no mention of the C95 program, Ford asserts that it should be enforced in its entirety because of the relevance of the C95 program. Mem. In Supp. at 14. That argument is mistaken for the reasons discussed above. Accordingly, Ford's motion with respect to this request should also be denied.

IV. FORD'S REQUEST TO EXPAND DISCOVERY IS PUNITIVE IN NATURE

Ford offers only one justification for its assertion that Firestone's "production should . . . be without limitation as to whether the information relates to the specific tires challenged as defective in this litigation." Mem. In Supp. at 13. Ford asserts that its overbroad requests are appropriate because "Firestone has sought to defend the performance of its Wilderness AT and Radial ATX tires by contending that alleged defects in the Ford Explorer are somehow responsible for any unique separation problem found in those tire lines" and in doing so has taken "aim at Explorers made in the 1995 through 1999 model years . . . insisting that there is some hidden vehicle characteristic at work." Mem. In Supp. at 13. From this, Ford makes the illogical conclusion that "Firestone's persistence in leveling this charge makes it fair and just to permit a thorough review -- on a full record -- of whether the C95 cost cuts aggravated separation concerns in certain categories of Firestone tires." Id. Ford makes a similar argument in asserting that Firestone should be ordered to produce reports of separations and records relating to claims for all tires affected by the C95 program. Id. at 14-15.

Firestone fails to comprehend how its legitimate investigation of, and discovery into, the Ford vehicle on which the tread/belt separations and related rollovers have occurred -- which are obviously at issue in this litigation -- has any relevance to Ford's claim that discovery should be permitted regarding tires that are not at issue in this litigation. What this "tit for tat" argument does reveal is that Ford is seeking this discovery not because it would be helpful to any defense it may seek to put forward, but rather to punish Firestone for challenging its vehicle. In other words, Firestone's investigation into the Explorer is Ford's motive for moving to compel with respect to these requests, not a legitimate justification for granting that motion.

V. FIRESTONE AND FORD HAVE AGREED TO A SIMULTANEOUS EXCHANGE OF CONSULTANT MATERIAL

Dr. Dennis Guenther is a vehicle dynamics consultant employed by Firestone to investigate the effect of a tread/belt separation on Ford Explorers. As has been previously reported, Dr. Guenther discovered, through extensive testing, that certain Explorers rapidly and unexpectedly become oversteer, uncontrollable vehicles in the event of a tread/belt separation. Not surprisingly, Ford has its own vehicle dynamics consultant, Lee Carr of Carr Engineering, who also conducted testing relating to the effect of a tread/belt separation on Ford Explorers.

As Ford admits, Firestone has never objected to producing relevant and responsive materials from Dr. Guenther's files.² Rather, Firestone informed Ford that it considered it both appropriate and fair that the two parties simultaneously exchange their individual consultants' responsive files. This was largely due to Firestone's concern that if Firestone produced the Guenther material without receiving all of the Carr material, that production would effectively eliminate Ford's incentive to expedite and complete production of all discoverable materials on the subject. See Letter from C. Smith to B. Boyle (Nov. 9, 2001) (Mem. In Supp., Boyle Decl., Ex. 9). Despite Ford's intimations to the contrary, the simultaneous exchange of materials was a proposal to which Ford agreed. See Letter from B. Boyle to M. Shumaker (Nov. 2, 2001); Letter from B. Boyle to C. Smith (Nov. 14, 2001) (Mem. In Supp., Boyle Decl., Exs. 8 & 10) (submitting proposals for the simultaneous exchange). Regardless, the matter is now moot since the parties have formally agreed to conduct the simultaneous exchange.

² Ford specifically requested, in summary, "[a]ll documents relating to the testing performed by Dr. Dennis Guenther on Ford Explorers and other sport utility vehicles at the request of Firestone" (Request No. 17, Boyle Decl., Ex. 1 at 9-10), and "[a]ll documents relating to communications of any kind between Firestone . . . and Dr. Dennis Guenther. . . ." Request No. 18, Boyle Decl., Ex. 1 at 11.

VI. CONCLUSION

For the reasons set forth above, Ford's Motion to Compel should be denied in its entirety.

Dated: December 4, 2001

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served by facsimile or hand delivery, with a copy by U.S. Mail, postage prepaid, or by hand delivery to each of the attorneys appearing on the attached Court Panel's Attorney Service List on this 4th day of December, 2001.

Attorney for Defendant
Bridgestone/Firestone, Inc.