UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re BRIDGESTONE/FIRESTONE, INC. TIRES PRODUCTS LIABILITY LITIGATION	)	MDL DOCKET NO. 1373
This Document Relates To:	)	
CENTER FOR AUTO SAFETY V. BRIDGESTONE/FIRESTONE, INC., ET AL.	)	INDIVIDUAL CASE No. 00-C-5004-B/S

ORDER GRANTING DEFENDANTS' MOTION TO VACATE THE SUGGESTION OF REMAND ORDER AND DISMISSING ALL CLAIMS

Plaintiff, the Center for Auto Safety, Inc. ("CFAS"), is a consumer watchdog membership organization comprised of approximately 20,000 consumers and motor vehicle drivers nationwide focused on securing the safety of American motorists. (Complaint, The Parties, ¶4.) CFAS originally filed its complaint in the District of Columbia, which was later transferred to the Southern District of Indiana as part of the Bridgestone/Firestone, Inc., ATX, ATX II and Wilderness Tires, multidistrict litigation ("MDL"). CFAS's complaint seeks injunctive relief in the form of requiring Firestone and Ford to recall and replace all ATX, ATX II, and Wilderness tires and to prohibit the defendants from manufacturing and marketing such tires, as then designed – all of course,

at the expense of Defendants.[1] (Compl. Prayer for Relief (filed Aug. 21, 2000).) The Complaint's request for injunctive relief was made on behalf of tire owners nationwide under the laws of all states.[2] (Complaint, ¶¶ 27-58.)

On June 24, 2006, this court entered a Suggestion of Remand Order in this cause. Subsequently Defendants, Bridgestone/Firestone North American Tire, L.L.C. ("Firestone") and Ford Motor Company ("Ford") filed a joint Motion to Vacate the Conditional Remand Order with the Judicial Panel on Multidistrict Litigation ("JPML"). During the pendency of the issue of transfer before the JPML this court retains continuing jurisdiction over the case. See JPML Rules 1.5 & 7.6(f). It has become clear to us, based on further review of the extensive history of this litigation, that a resolution by this court of the pending issues is preferable to the referral to another court. Thus, we GRANT Defendants' motion to vacate the suggestion of remand order. Further, we find, for the reasons set forth below, that Plaintiff lacks standing to pursue the sweeping relief sought in this action brought on behalf of all consumers and CFAS's claim must therefore be DISMISSED.

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[1] In CFAS's Memorandum in Opposition to Defendants' Motions to Dismiss for Lack of Standing states that "[i]t seeks to require Defendants to: clearly and unequivocally notify consumers of the known potential dangers associated with the ATX, ATX II, and Wilderness AT tires regardless of size or location of manufacture; inform consumers of all rights as owners or lessees of vehicles with unsafe tires; provide for immediate replacement of the tires nationwide; and reimburse consumers for all related and incidental costs and expenses."

[2] Count I alleges a violation of Consumer Protection Statutes; Count II alleges strict liability; Count III alleges negligence; Count IV alleges intentional, reckless, or negligent misrepresentation; Count V alleges breach of express warranties; Count VI alleges breach of implied warranties; and Count VII alleges a Violation of § 104(a) of the Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301 *et seq.*

Plaintiff Lacks Standing to Pursue Such Sweeping Relief

Defendant Ford moved to dismiss CFAS's complaint, in which motion Defendant Bridgestone/Firestone joined, arguing that CFAS lacks standing to prosecute this action. Defendants contend that CFAS's suit on behalf of all consumers who own or owned allegedly defective Firestone tires is an end run around the requirements of Federal Rule of Civil Procedure 23 that normally apply to class actions. Defs.' Reply at 3. CFAS argues that it does, in fact, meet the requirements of associational standing and that it has brought this suit to vindicate the safety interests of its members and to ensure that CFAS's "long-term public policy goal of auto safety is not lost among the class action suits by aggrieved consumers each of whom is concerned primarily with his or her own vehicle." Pls.' Memo. in Opp. at 1.

In Texas Independent Producers and Royalty Owners Association v. E.P.A., the Seventh Circuit laid out the three elements of associational standing:

> When a plaintiff is an association, the association has Article III standing to represent the interests of its members if [1] the individuals have standing in their own right; [2] the interests represented are germane to the association's purpose; and [3] the relief sought does not require the participation of the individual members. Hunt v. Wash. State Apple Adv. Comm'n, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977). See, e.g., Sierra Club v. Marita, 46 F.3d 606, 611-12 (7th Cir.1995) (holding that "Sierra Club may maintain standing on behalf of its members"). Plaintiffs, as the parties invoking federal jurisdiction, have the burden of proof and persuasion as to the existence of standing. Lujan II, 504 U.S. at 561, 112 S.Ct. 2130.

410 F.3d 964, 971 (7th Cir. 2005). We now examine each of these elements with

reference to this case to determine whether CFAS has established associational standing.

1. *Members of CFAS Previously Had Standing to Sue in Their Own Right*

The first element of associational standing requires that plaintiff show that an individual member had standing in his/her own right. To satisfy Article III's requirements for individual standing "a plaintiff must show (1) [he] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Friends of the Earth, Inc. v. Laidlaw Environmental Services, Inc., 528 U.S. 167, 180-181 (2000), citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992).

CFAS argues that it has attached declarations of CFAS members, Glenn Travis ("Travis") and Mathew Mueth ("Mueth"), to satisfy its obligation to show that at least one member would have standing to sue in his or her own right. Both Travis and Mueth declare that they each own a Ford vehicle which they purchased new with the Firestone tires at issue in this litigation installed as original equipment. See Pls.' Memo. in Opp. Exh. A and Exh. B. At the time Plaintiffs filed their "Memorandum in Opposition to Defendants' Motion to Dismiss" and the accompanying declarations on September 18, 2000, the Defendants had allegedly refused to recall or replace these tires free of charge. Id. However, Defendants report that both Travis and Mueth came within the subsequent

tire recall and also participated in the tires settlement implemented by plaintiff Terri Shields and class counsel, and therefore neither Travis nor Mueth currently retains a viable claim against Defendants, rendering this action moot irrespective of whether they originally might have had standing.[3] Defs.' Reply at 10-11, n. 4. We conclude, based on the described intervening events, that these two members' claims are, indeed, moot; whether CFAS could locate other members to satisfy this element, we do not know and will not speculate.

2. *The Interests That CFAS Seeks to Advance Are Germane to Its Organizational Purpose*

The second element of organizational standing requires the plaintiff to show that the interests represented in the lawsuit are germane to the association's purpose. CFAS reports that one of its organizational missions is to "help consumers hold the automobile industry accountable for the products it manufactures and sells to the public." Compl. at ¶ 4. The Defendants do not challenge the CFAS's ability to satisfy this element and we

[3] In a related matter, Defendants argue that CFAS is barred from proceeding with their claims by a Texas state court injunction. Because we find that CFAS lacks standing to proceed with its claim we need not evaluate this argument. However, we note that, in 2004, Firestone entered into a settlement agreement with class members in a Texas state court which encompassed all tire-based claims nationwide. In addition to the Firestone recall and replacement programs, Firestone agreed to continue free replacement of any ATX, ATX II, and Wilderness tires that were subject to its prior recall campaigns and were still in use. The settlement also required a design change in certain Firestone tires and the implementation of a consumer tire-maintenance and safety education program. In approving the settlement and retaining its jurisdiction over it, the Texas state court issued an injunction prohibiting the class members, and anyone acting on their behalf, from seeking any kind of relief anywhere against Firestone or Ford based on tire allegations (except for personal injury claims). Order Approving Settlement & Final Judgment, Shields v. Bridgestone/Firestone, Inc., ("Settlement Order"), 2004 WL 546883, No. G-170,462, at 6-7, 14-15, 58, 66-69 (Jefferson Cty., Tex., Mar. 12, 2004) (following appeals, the settlement is now final).

find that CFAS's stated purpose and the purpose of the lawsuit are, in fact, germane.

3. *CFAS Lacks Standing Because the Claims Asserted and the Relief Requested Require the Participation of its Individual Members in the Lawsuit*

The third element of associational standing requires plaintiff to show "the nature of the claim and the relief sought does (sic) not make the individual participation of each injured party indispensable to proper resolution of the cause." Warth v. Seldin, 422 U.S. 490, 511 (1975). CFAS argues that neither the claims asserted nor the relief requested requires participation by individual members of the organization. Pls.' Memo. in Opp. at 5. In reply, Defendants argue that the question of whether individual participation is required turns on whether "individualized proof" is necessary to support plaintiff's members' claims and that individualized proof is needed here to establish the claims of the consumers allegedly entitled to relief. Defs.' Reply at 7 citing Retired Chicago Polic Assoc. v. City of Chicago, 7 F.3d 584, 602 (7th Cir. 1993).

We agree that the specific elements of each of the causes of action require proof by each consumer establishing that he or she is entitled to relief. As Defendants point out, the remedy sought by CFAS in this litigation is new tires and other related relief, not for itself but for its individual member consumers. Any individual consumer would be required to prove each element of each asserted cause of action before he or she could obtain such relief under any specific cause of action.[4] This principle does not change

[4] As stated previously, the specific causes of action at issue include: Consumer Protection Statutes; strict liability; negligence; intentional, reckless, or negligent

(continued...)

because CFAS seeks to invoke associational standing to act on behalf of each and everyone of its members.

Further, CFAS states that it is not significant "to the standing inquiry that there may be differences in state laws that apply to Center for Auto Safety members across the country. . . ." Pls.' Memo. in Opp. at 6. About this assertion we could not disagree more strongly. In December 2001, we issued an order under Federal Rule of Civil Procedure 23 certifying two classes of plaintiffs–one of owners of Firestone tires and one of owners of Ford Explorers.[5] In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig., 205 F.R.D. 503 (S.D. Ind. 2001). On appeal, the Seventh Circuit reversed the certification orders for both classes, holding that the laws of all states must be applied to the nationwide claims and thus variations among state laws made nationwide class certification impossible. In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig., 288 F.3d 1012, 1015, 1018 (7th Cir. 2002). In June 2003, relying on its prior class certification ruling, the Seventh Circuit ordered this court to enjoin the litigation of a nationwide tires or Explorer class in any and all other courts throughout the country. In re Bridgestone/Firestone, Inc. Tires

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[4](...continued)
misrepresentation; breach of express warranties; breach of implied warranties; and § 104(a) of the Magnuson-Moss Consumer Products Warranties Act, 15 U.S.C. § 2301 *et seq.*

[5] The first certified nationwide class included "everyone who owns, owned, leases, or leased a Ford Explorer of model year 1991 through 2001 anytime before the first recall," and the second certified class included "all owners and lessees from 1990 until today of Firestone ATX, ATX II, Firehawk ATX, ATX 23 Degree, Widetrack Radial Baja, or Wilderness tire models, or any other Firestone tire "substantially similar" to them." More than 60 million tires and 3 million vehicles came within these definitions. In re Bridgestone/Firestone, Inc. 288 F.3d 1012, 1015 (7th Cir. 2002).

Prods. Liab. Litig., 333 F.3d 763 (7th Cir. 2003).

CFAS clearly is within the reach of this injunction and is thus prohibited from seeking a nationwide recall of the tires on behalf of tire owners under the laws of all states. (Compl. ¶¶ 27-58). CFAS did not frame its complaint as a class action but instead seeks as a singular plaintiff to assert its associational standing. Quite apart from the effect of the injunction barring litigation seeking a nationwide recall of tires, because the Seventh Circuit's decision that the laws of all states must be applied to the nationwide claims still controls, variations among state laws must be considered.

As for the specific relief sought, CFAS argues that declaratory and injunctive relief requests do not require individual member participation. Pennell v. City of San Jose, 485 U.S. 1, 7 n.3 (1988). Defendants argue in reply that, although CFAS phrases its demands in terms of "injunctive" and "declaratory" relief, in fact CFAS seeks damages on behalf of all owners of tires throughout the country in the form of the replacement of the allegedly defective tires including incidental costs.[6] Defs.' Reply at 3. "[A] plaintiff

[6] Further, no recall could be ordered based on our previous preemption ruling. In In re Bridgestone/Firestone, Inc. Tires Prods. Liab. Litig. this court dismissed the MDL class action plaintiffs' demand for a nationwide tire recall on the basis that the Motor Vehicle Safety Act ("MVSA") preempted that course of action due to the National Highway Traffic Safety Administration's ("NHTSA") exclusive authority to administer motor vehicle recalls. 153 F. Supp. 2d 935 (S.D. Ind. 2001). While CFAS's complaint does not seek certification of a class, CFAS seeks the same remedies as the Class Plaintiffs, namely, a recall of all ATX, ATX II, and Wilderness tires, and the retrofitting or recalling of Ford Explorers, and thus our finding is the same as before: these remedies are preempted by the MVSA and therefore must be denied. (See Docket No. 605, filed February 27, 2001, see also CFAS's "Motion in Support and in Supplement to Class Plaintiffs' Motion for a Preliminary Injunction".)

cannot transform a claim for damages into an equitable action by asking for an injunction that orders the payment of money. . . ." Jaffee v. United States, 592 F.2d 712, 715 (3d Cir. 1979).

In summary, CFAS does not meet the requirements of associational standing. First, while the members of CFAS had standing to sue in their own right at the time CFAS filed their complaint, it appears that their claims are now moot due to their participation in or the availability of subsequent recalls. In addition, the claims asserted and the relief requested by CFAS require the participation of individual members in the lawsuit. Accordingly, we find that CFAS lacks standing to pursue its claims and this complaint must be DISMISSED.

Conclusion

For the foregoing reasons, and pursuant to our continuing jurisdiction under JPML Rules 1.5 & 7.6(f), we hereby GRANT Defendants' motion to vacate the suggestion of remand order and DISMISS without prejudice Plaintiff's claims in this case. IT IS SO ORDERED.

Date: _____

SARAH EVANS BARKER, JUDGE
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Southern District of Indiana

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