

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

In re: BRIDGESTONE/FIRESTONE, INC.,)	Master File No. IP 00-9373-C-B/S
ATX, ATX II AND WILDERNESS TIRES)	
PRODUCTS LIABILITY LITIGATION)	MDL No. 1373
_____)	
)	(centralized before the
THIS DOCUMENT RELATES TO ALL)	Honorable Sarah Evans Barker)
ACTIONS)	
_____)	

**PLAINTIFFS’ REPLY IN FURTHER SUPPORT OF
PLAINTIFFS’ MOTION TO COMPEL THE
PRODUCTION OF DOCUMENTS**

I. INTRODUCTION

From the moment discovery began in this case, defendant Ford Motor Company (“Ford”) has used every excuse and argument to avoid providing plaintiffs with responses to various discovery requests. Ford now takes the position that it is not Ford, but plaintiffs who are misdirecting their complaints, and intentionally frustrating the discovery process by “abandoning the orderly and productive meet and confer process” and filing motions to compel. Def. Opp., p. 2. However, the so called “orderly and productive” meet and confer process has failed to produce any meaningful results. Seven months have passed since Ford originally answered Plaintiffs’ First Set of Requests for the Production of Documents (“Requests”), yet, many of those Requests remain outstanding. Ford claims that the record of meet and confers shows how effectively things can be resolved without the need for motions like this. Quite the contrary. The

record shows that despite *six months* of meet and confer efforts, plaintiffs still do not have everything that Ford promised, let alone everything that they are entitled to. The fact that this motion does not address all of the issues discussed in the June 19, 2001 letter defendants refer to is a reflection of the fact that many items in that letter have been subjects of prior motions, are the subject of the separate motion relating to databases, or are areas where plaintiffs are still counting on Ford to deliver responsive information even though it has failed to fully respond to date. The narrowness of the motion to compel is only a reflection of plaintiffs' desire to focus the issues for the Court, not any reflection of confidence that Ford has produced everything. In fact, Ford continually tells plaintiffs that it is just starting to look for some things plaintiffs requested in February. Clearly, Ford has no intention of supplying the much needed discovery, and as previously stated, in many instances the meet and confer process has been anything but "orderly and productive."

II. ARGUMENT

A. Despite Ford's Claim, It Has Not Produced The Requested Documents Relating To Profit

Plaintiffs' Motion to Compel specifically identifies requests nos. 402, 455, 460, 462, 466 and 467 to which Ford has failed to respond. Despite repeated requests for this information, Ford has not produced hard copies of responsive documents, nor has it created pull down menus on its website identifying documents that are responsive to any of these individual requests.

In fact, the only documents Ford has produced are the Vehicle Economic Profit System ("VEPS") Reports for model years 1991 through 1994 and 1996 through 1999. Ford claims that plaintiffs only "discovered" their VEPS documents because they were posted on forddocs.com. In actuality, plaintiffs found a couple of VEPS reports on forddocs.com that Ford had

inadvertently posted on the system. There is no evidence that Ford intended to post any such reports. When plaintiffs focused their meet and confer discussions on Ford's blanket assertion that it would produce **no** profit documents, plaintiffs noted that Ford had produced a couple of VEPS reports and, therefore, it should at least be willing to produce the ones for other quarters that had not previously been on the website. Only after Ford discovered that it had mistakenly placed a few VEPS reports on the website did it begrudgingly agree to provide plaintiffs with the quarters that had not previously been posted. If plaintiffs had not found those few reports on forddocs.com, Ford most likely would never have provided plaintiffs with any of the VEPS reports.

Now, Ford claims that it has produced “numerous documents” and lists them in its opposition. However, Ford never told plaintiffs, or in anyway indicated, that these documents had been produced. On the contrary, of those referenced documents that were posted prior to the meet and confer correspondence of last summer, Ford never said “we have already given you what you want.” Instead, Ford said “we refuse to give you any profit documents.”

Also, it appears that many of these documents were posted after Ford had provided only the few responsive documents relating to profit noted within the motion. If Ford would have informed plaintiffs that additional profit documents were placed on the website, plaintiffs would have been able to narrow the issue further to determine what was still missing. On the contrary, in a September 27, 2001 letter Ford's attorney stated under the heading “Profit and Residual Value Issues” that Ford was looking into the missing VEPS reports but “[a]s for the other profit information, Ford is not willing to produce unredacted documents.”¹ This continued blanket

¹ See J. Tracy Walker’s IV September 27, 2001 letter to Cynthia Moore attached as Exhibit “A.”

refusal to produce clearly did not suggest or give reason for plaintiffs to believe that Ford may have produced additional profit documents on its website.

Furthermore, not only did Ford fail to mention that these documents were available, it did not designate a pull down menu for any of the requests at issue, so that these documents could have been readily located. This only exacerbated the problem. Because the Ford website contains 15,498 documents that reference “profit” in some way, the documents would have been virtually impossible for plaintiffs to locate without a pull down menu.

The problems listed above are only exacerbated by Ford's mechanism for production which does not indicate what is responsive to each request and/or indicates that hundreds of thousands of documents are responsive to certain requests. It is impossible to tell whether Ford has provided everything requested or when Ford will ever complete its production.

Furthermore, there are several other discrepancies within the documents that were produced. First, Ford's continued reliance on the production of “income statement summaries with breakdown of variable revenue, variable marketing, variable costs, economic profit and variable profit” is laughable. The documents are so heavily redacted that they do not provide any meaningful information. There is no way that an economic or damages expert could effectively analyze the information in the documents.

Similarly, Ford has not, nor does it claim to have produced, documents addressing Explorer pricing, volume, revenue, fixed and variable costs, residual value, or profits for years 1996 - 2000, and it claims that it is “unable to locate” the VEPS Report for 1995.

Plaintiffs’ motion to compel references five different letters sent to Ford over a three month time period that discuss this very issue. Plaintiffs have made a very straightforward

request to Ford for documents that show Ford's profits from the Explorer, and how that profit was calculated. This discovery is relevant and is needed for calculating damages. Nevertheless, Ford intentionally stalls the discovery process by providing thousands of documents which are virtually irrelevant instead of simply providing the documents requested. Ford's claims that the meet and confer process has been orderly and productive is nothing more than a fabrication at best.

B. Ford Has Not Sufficiently Produced The Requested Explorer Meeting Minutes.

Ford has now produced three versions of what it claims to be an "updated set of unredacted (except for privilege) meeting minutes." The first production of four boxes was in June, 2001. This production did not include unredacted meeting minutes of management or engineering committees. Although Ford acknowledged the problem with the production and produced a second set of documents on or about August 7, 2001, Ford failed to correct the problems with the documents. Plaintiffs' attorneys spent hours comparing the two productions, only to determine that they were virtually the same.

Now, despite repeated requests from plaintiffs asking Ford to produce a complete set of unredacted meeting minutes, Ford has produced, for a third time, what appear to be the same documents. Plaintiffs requested that Ford provide a list of meeting minutes that it believed it had produced in unredacted form so that plaintiffs could identify which documents were missing.² Plaintiffs also made it clear that they did not just want another "reproduction" of the original set of documents. Plaintiffs' attorneys have already spent hours reviewing the first two sets of

² See Cynthia Moore's September 24, 2001 letter to Steven Harburg, Timothy Quinlan and Michael Grbic attached as Exhibit "B."

meeting minutes (approximately 24,000 pages of documents). Ford's suggestion that plaintiffs should spend more resources reviewing yet another set of the same documents is ridiculous. Plaintiffs ask this Court to require Ford to provide a detailed explanation of the new documents included, or those that have been changed in some way instead of simply providing a whole new set of documents, and to certify that all unredacted meeting minutes have been produced.

C. Ford Has Not Produced The Requested Communications With Its Fleet Purchasers.

Ford states in its opposition that it produced communications between Ford and its fleet purchaser regarding tire failure and/or replacement of tires. Def. Opp.p.8. As an example of its "responsiveness" to these requests, Ford cites a document produced in response to request no. 324 and argues that it identified and produced approximately 41,000 documents responsive to that request. However, the individual requests referred to within plaintiffs motion to compel are request nos. 65 and 71. Clearly, Ford cannot believe that its responsiveness to request no. 324 somehow exempts it from responding to request nos. 65 and 71.

Ford further argues that a search within the pull down menu to request no. 324 "reveals communications between Ford and its fleet purchasers, including Hertz." *Id.* However, Ford fails to mention that it has yet to create pull down menus for request nos. 65 and 71.

Request no. 324 states:

All records of communication between Ford and any other retailer or other business entity, including but not limited to, Firestone, Mazda Motor Corporation, General Motors Corporation, Nissan Motor Company, Toyota Motor Corporation or Subaru of America, and any of their divisions, subsidiaries, or affiliates relating to:

- (a) Research, design and development of the Ford Explorer or Tires;
- (b) Manufacturing and production monitoring, reviews, analyses, evaluations, tests, examination, assessments or studies, including but not limited to, any resulting changes or modifications to the

manufacturing and production process, of the Ford Explorer or Tires;

- (c) Quality assurance, quality management and quality improvement, including but not limited to testing, inspection, adjustments and failure rates, of the Explorer or Tires;
- (d) Defective Tires, including but not limited to testing, inspection, adjustments and failure rates; Complaints and inquiries, including but not limited to, claim rates, related to Defective Tires;
- (e) Complaints and inquiries, including but not limited to, claim rates, related to Defective Tires;
- (f) Marketing and sales contracts, arrangements, and programs for the purchase or sale of the Tires;
- (g) Any modifications or changes to agreements and contracts for the purchase and sale of Tires between Ford and retailers or any other business entity, including but not limited to, Firestone, Mazda Motor Corporation, General Motors Corporation, Nissan Motor Company, Toyota Motor Corporation or Subaru of America, and any of their divisions, subsidiaries, or affiliates;
- (h) Quotas, commissions, bonuses, incentives or disincentives pertaining to the Defective Tires or vehicles.

Request no.65 states:

Please produce any correspondence with third parties, including but not limited to fleet divisions, Hertz or other car rental companies, Tire retailers or suppliers, foreign companies or divisions, or others related to the failure or replacement of the subject tires, or any accident, injury or claim caused thereby.

Request no. 71 states:

Please produce all Change Orders or similar documents reflecting when and why the Wilderness, ATX, and ATX 11 tires were changed on Hertz automobiles, or those operated by any fleet or rental agency or corporation.

Certainly, Ford does not believe that its response to request no. 324 vitiates its duty to respond to other requests it “presumes” to be related.

Ford states that it is somehow confused with regard to what it is that plaintiffs are requesting. Ford sarcastically argues that “if plaintiffs are now seeking all communications relating to ALL tire failures, whatever the cause, Ford has not produced such documents.” Def.

Opp., p.9. Plaintiffs are not asking for such documents. Plaintiffs only request that Ford respond to the Requests that were propounded over eight months ago. Clearly, Ford understands that it has failed to respond to these requests, as is evidenced by the September 24, 2001 letter cited within its opposition. The significant language reads:

With regard to Hertz, Ford continues to offer to search for and produce pertinent documents in Hertz' possession without the need for a subpoena to Hertz. As noted in Steve's September 17, 2001 letter, ***Ford has begun this process.*** See letter from Cynthia M. Moore to Stephen Harburg and Timothy Quinan dated September 24, 2001; Exhibit "I" to Plaintiffs Motion to Compel.

Plaintiffs' frustration, and the reason that this motion was filed, is as follows: Ford stated on June 5, 2001 that it would produce these documents. See letter from Richard Denny to Timothy Quinlan and Stephen Harburg dated June 8, 2001; Exhibit "F" to Plaintiffs' Motion to Compel. When it failed to produce the documents as promised, Ford's counsel agreed that they would produce the documents responsive to these requests by June 20, 2001. See letter from Suzanne Lafleur Klok's to Stephen Harburg and Tim Quinlan dated June 18, 2001; Exhibit "G" to Plaintiffs' Motion to Compel. When that production never occurred, Ford once again promised on June 25, 2001 that "[t]his information [was] being assembled and Ford [would] provide it on a rolling basis with the aim of completing the production by July 16th." See letter from Timothy Quinlan to Suzanne Lafleur Klok dated June 25, 2001; Exhibit "H" to Plaintiffs' Motion to Compel. When Ford once again failed to produce the documents, another letter, dated September 17, 2001, again promised production. Now, Ford attempts to argue that it either does not understand what plaintiffs are requesting, or that it has produced related documents in response to a different individual request, and that somehow it is exempt from providing this information, which it has been promising to produce for over five months.

In fact, the only information that has been produced in response to request nos. 65 and 71 amounts to no more than four documents. Clearly, Ford possesses much more information responsive to these requests than it has produced. For example, in response to NHTSA's inquiry into Firestone tires,³ Ford identified its Fleet database as containing relevant information. *See Exhibit "B" at 251229.* Ford's meager production as to fleet documents is not credible considering it has an entire database for those materials alone. Ford has not properly responded to plaintiffs' Requests, and its efforts to further complicate the discovery process should not be tolerated.

III. CONCLUSION

Plaintiffs respectfully request the Court grant Plaintiffs Motion to Compel.

³ Attached as Exhibit "C" is an excerpt of Ford's response to NHTSA's request for information about Firestone tires.

DATED: November 26, 2001

Respectfully submitted,

COHEN & MALAD, P.C.

Don Barrett
Charles F. Barrett
BARRETT LAW OFFICE, P.A.
404 Court Square North
P.O. Box 987
Lexington, MS 39095
Telephone: (662) 834-2376
Facsimile: (662) 834-2628
Lead Counsel for Class Plaintiffs

By: _____
Irwin B. Levin
Richard E. Shevitz
136 North Delaware Street, Suite 300
P.O. Box 627
Indianapolis, IN 46206-0627
Telephone: (317) 636-6481
Facsimile: (317) 636-2593
Liaison Counsel for Class Plaintiffs

Elizabeth J. Cabraser
Jonathan D. Selbin
Lisa J. Leebove
**LIEFF, CABRASER, HEIMANN &
BERNSTEIN**
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Keith M. Fleischman
Elizabeth A. Berney
Gerald J. Gardner
**MILBERG WEISS BERSHAD HYNES
& LERACH LLP**
One Pennsylvania Plaza
New York, NY 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

Stephen Neuwirth
Cynthia M. Moore
BOIES, SCHILLER & FLEXNER LLP
570 Lexington Avenue, 16th Floor
New York, NY 10022
Telephone: (212) 446-230
Facsimile: (212) 446-2350

Executive Committee for Class Plaintiffs

Robert S. Green
Jenelle Welling
GREEN, FAUTH & JIGARJIAN, LLP
25 Pine Street, 15th Floor
San Francisco, CA 94104
Telephone: (415)477-6700
Facsimile: (415)477-6710
Chair of the Law Committee

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

In re: BRIDGESTONE/FIRESTONE, INC.)	MDL NO. 1373
ATX, ATX II and WILDERNESS TIRES)	
PRODUCTS LIABILITY LITIGATION)	Master File No. IP 00-9373-C-B/S
)	
)	

This Document Relates to All Actions

CERTIFICATE OF SERVICE

The undersigned Plaintiffs' Liaison Counsel certifies that a copy of the foregoing document was served via hand delivery or facsimile upon the following local counsel for the Defendants and Intervenors in this MDL Proceeding, this 26th day of November, 2001:

Mr. Mark J. R. Merkle
KRIEG DeVAULT ALEXANDER
& CAPEHART, L.L.P.
One Indiana Square, Ste. 2800
Indianapolis, IN 46204-2017

Mr. Randall R. Riggs
LOCKE REYNOLDS BOYD & WEISELL
1000 Capital Center S. Tower
201 N. Illinois St.
Indianapolis, IN 46204-4210

Mr. Thomas G. Stayton
Ms. Ellen E. Boshkoff
BAKER & DANIELS
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204

Mr. Daniel P. Byron
McHALE, COOK & WELCH, P.C.
320 N. Meridian Street, Suite 1100
Indianapolis, IN 46204

Irwin B. Levin
Richard E. Shevitz
COHEN & MALAD, P.C.
136 N. Delaware Street, Suite 300
P.O. Box 627
Indianapolis, IN 46206-0627
Telephone: (317) 636-6481
Facsimile: (317) 636-2593

