

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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:

(centralized before Hon. Sarah Evans
Barker, Judge)

Boonlorn	IP 01-5405-C-B/S
Richardson	IP 01-5535-C-B/S
Schmidt	IP 01-5356-C-B/S
Haffey	IP 01-5411-C-B/S

**FIRESTONE'S AND FORD'S RESPONSE TO
PLAINTIFFS' NOTICE OF CASES TO BE REMANDED**

Bridgestone/Firestone North American Tire, LLC, formerly known as Bridgestone/Firestone, Inc., ("Firestone") and Ford Motor Company ("Ford") submit this response to plaintiffs' Notice of Cases to be Remanded filed on January 18, 2002. That notice requests immediate remand of four cases to their respective transferor courts on the ground that the cases "do not involve the products, [sic] which are the subject matter of the MDL proceedings." Defendants construe the notice as a request for suggestion of remand.¹ Plaintiffs' request should be denied as to each of the four cases listed.

Plaintiffs' request apparently is premised on the notion that MDL 1373 is limited to cases involving "recall tires." Indeed, plaintiffs explicitly seek remand of

¹ Only the MDL Panel has the authority to order remand to the transferor court. 28 U.S.C. § 1407(a); see also In re Roberts, 178 F.3d 181, 184 (3d Cir. 1999) ("The statutory power to order a remand under § 1407(a) from the transferee district to the transferor district lies in the Panel, not the transferee district judge.").

both Schmidt² and Richardson solely on the ground that they "do[] not involve one of the Firestone recall tires." Pl. Notice at 1, 2.

The premise of plaintiffs' argument is incorrect. MDL 1373 is not limited to recalled tires, nor is it necessarily limited even to ATX and Wilderness model tires. The MDL Panel has determined that cases involving Affinity and other non-ATX/Wilderness model tires belong in this litigation. The MDL Panel made this point implicitly in its June 15, 2001 Transfer Order, when it changed the name of this litigation from "In re Bridgestone/Firestone, Inc. ATX, ATX II and Wilderness Tires Products Liability Litigation" to "In re Bridgestone/Firestone, Inc. Tires Products Liability Litigation." See MDL Panel Transfer Order, filed June 15, 2001, at 2. And the MDL Panel made this point expressly when it flatly rejected the argument that cases not involving ATX or Wilderness tires should be excluded from MDL 1373 (id.):

Plaintiffs . . . argue against transfer that their actions concern sizes and models of Firestone tires . . . different from those included in the multidistrict proceedings. We are not persuaded by these contentions. Rather, we find that these actions involve common questions of fact with other previously transferred actions, including whether Firestone tires are defective, [and] whether Firestone had knowledge of the alleged defects. . . .

In that Order, the Panel transferred (over objection) two cases alleging defects in *Affinity* tires. Schmidt, for which plaintiffs seek remand here, was one of those cases. Josefina Torres v. Bridgestone/Firestone, Inc., No. IP 01-5357-C-B/S,

² Schmidt is not a personal injury action. It is a quasi-class action (styled as a private attorney general action) purportedly brought under California's consumer protection statute on behalf of all California "consumers." Complaint ¶ 8. Schmidt, accordingly, should not have been included in a notice filed by co-counsel on behalf of the personal injury/wrongful death cases.

was the other. Thus, the Panel considered and rejected the very argument being made here and concluded that cases involving allegations about Affinity --and other models of Firestone tires -- belong in this proceeding, so long as the cases involve at least one of the common questions the Panel has identified. The tires involved in each of these cases are thus the subject of MDL 1373 because the Panel has said that they are. Plaintiffs' attempt to relitigate an issue that has already been decided should be rejected.

A. *Boonlorn v. The Bridgestone/Firestone Corporation, et al.*, IP 01-5405-C-B/S

Regardless of the tire model involved, the parties have reached an agreement to settle this case.³ All that remains is for the parties to complete the settlement documents and file a stipulation of dismissal. Upon entry of an order or stipulation of dismissal, the case should be dismissed and should not be remanded to the transferor court. See J.P.M.L. Rule of Procedure 7.6, 192 F.R.D. 459, 470-72 (2000). Accordingly, the court need not address this request for remand.

B. *Richardson v. Ford Motor Company, et al.*, IP 01-5535-C-B/S

This case involves a Firestone Wilderness HT tire. Wilderness HT tires are clearly within the Wilderness tire line at issue in this litigation. They are expressly mentioned in and subject to the terms of the Court's March 6, 2001 Tire Preservation Order; they are categorized as "Consumer Advisory Tires." Tire Preservation Order at 4. "Wilderness HT" tires are also part of the "tire class." Order Certifying Classes at 2-3, 3 n.2) (incorporating tires listed in paragraphs 1

through 6 of plaintiffs' Class Structure/Class Definition, paragraph 6 of which is a "Wilderness HT Tires Subclass"). This case is solidly within the scope of this litigation and there is no justification upon which it should be remanded early.

C. *Schmidt v. Bridgestone Corporation, et al.*, IP 01-5356-C-B/S

As note above, the Panel has already determined that this action should be consolidated in this proceeding.⁴ Schmidt, moreover, is not the only case involving Affinity tires. Affinity tires are the subject of the class plaintiffs' claims and the claims in at least two individual actions. Class representative Susan Pledger (Master Complaint ¶ 40) asserts that Affinity tires are defective and purports to represent plaintiffs seeking relief for alleged defects in Firestone's Affinity model tires. (See Pledger Dep., relevant portions attached as Ex. 1, at 25, 32-33, 99-102.). And Affinity tires are the subject of the claims in Torres, mentioned above, and Easterly v. Bridgestone/Firestone, Inc., No. IP 01-5390-C-B/S. Thus, Affinity model tires have been a part of MDL 1373 in both the class action and individual cases.

Moreover, even assuming allegations relating to ATX or Wilderness tires is a requirement for continued inclusion in MDL 1373, Schmidt should remain part of this litigation. The Schmidt plaintiff seeks to prove that her Affinity tires were defective (and that Firestone knew they were defective) based on evidence about ATX and Wilderness tires. Plaintiff pleads that the so-called "defect" in Affinity

³ Ford was not a defendant in the *Boonlorn* case.

⁴ Ford is not a defendant in the *Schmidt* case.

tires is "similar, if not identical," to the purported defect in the recalled tires (Complaint ¶ 5):

On August 9, 2000, defendants issued a recall of approximately 6.5 million tires for similar, if not identical, failures. Yet defendants have failed to issue a recall for the Affinity. (Defendants have similarly failed to issue recalls for other tire models, although they are aware that other models exhibit the same or similar defects.).

Plaintiff in Schmidt has thus made an issue of the recalled ATX and Wilderness tires by setting out to prove that Affinity tires suffer from the same "defect" as the "recalled" tires and that Firestone's knowledge of the alleged defect in recalled tires should have put it on notice of "defects" in Affinity tires. Thus, to prove defect and knowledge with respect to Affinity tires, plaintiff must use and rely on the same fact and expert evidence as the plaintiffs who have alleged claims premised on ATX or Wilderness tires. To the extent discovery unique to Affinity tires was or is required, that can take (or should have taken) place concurrently with common discovery. The fact that some case-specific discovery must take place, however, is no reason to remand; the Court's case management plan contemplates and allows for the simultaneous pursuit of case-specific discovery.

D. Barbara Haffey Bogy v. Ford Motor Company, et al., IP 01-5411-C-B/S

This is yet another case in which the MDL Panel has already issued a ruling specifically finding that it is properly within the scope of MDL 1373. This case involves a Firestone P235/75R15 Radial ATX tire and a 1994 Ford Explorer. This tire model was included in Firestone's August 2000 recall, is well within the Court's class definition, and has been at the heart of this proceeding since its inception.

Similarly, the Explorer vehicle has been a continuous focus of activities in MDL 1373. The resolution of this action will necessarily rely heavily on the discovery and proceedings here. It should remain in this proceeding.

For the foregoing reasons, Defendants Firestone and Ford respectfully request this Court to decline to suggest early remand as to any of these actions.

Dated: February 4, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was hand delivered, faxed or electronically mailed to each of the attorneys appearing on the Court's Panel Attorney Service List and sent via facsimile to others on February 11, 2002.

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