

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-C-9373-B/S
ATX, ATX II, and WILDERNESS TIRES) MDL No. 1373
PRODUCTS LIABILITY LITIGATION)
) (centralized before Hon. Sarah Evans
) Barker, Judge)

This Document Relates to:

)
JAMES CLINTON MORRIS)
and RONNIE JAMES MORRIS)
)
VS.) Individual Cause No. 5:00-CV-313-C
)
FORD MOTOR COMPANY and)
BRIDGESTONE/FIRESTONE, INC.)

**DEFENDANT BRIDGESTONE/FIRESTONE, INC.'S
MOTION FOR LEAVE TO FILE ITS FIRST AMENDED
ORIGINAL ANSWER AND BRIEF IN SUPPORT THEREOF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Bridgestone/Firestone, Inc. (hereinafter "Firestone") and makes and files this its Motion for Leave to File its First Amended Original Answer and Brief in Support Thereof, and for such would respectfully show unto this Honorable Court as follows:

I.

Defendant Firestone respectfully moves the Court to grant it leave to file its First Amended Original Answer attached hereto as Exhibit "A." Defendant Firestone respectfully requests that this Honorable Court direct the clerk to accept Defendant Bridgestone/Firestone, Inc.'s First Amended Original Answer.

II.

By its First Amended Original Answer, Defendant Firestone seeks to more completely set forth its defenses and contentions learned from facts and opinions developed during the course of its investigation and discovery since the filing of its Original Answer. Defendant Firestone's First Amended Original Answer should not unduly surprise the parties herein as all matters contained therein have been developed in the discovery process.

III.

Rule 15 of the Federal Rules of Civil Procedure provides in relevant part as follows:

[A] party may amend his pleadings only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.

The federal courts have liberally allowed amendments of pleadings under Rule 15 so as to assist the disposition of litigation on the merits. *See, 3 Moore's Federal Practice* (2d Ed.) ¶15.02[1]. The liberality of the rule has been repeatedly noted resulting in appellate court reversal of those cases in which the trial court failed to effectuate the policy of the rule. *See, e.g., Forman v. Davis*, 371 U.S. 178 (1962). The function of Rule 15(a) is to enable a party to assert matters that were overlooked or were unknown to him at the time he interposed his original complaint or answer. *See, 6 Wright & Miller, Federal Practice & Procedure* §1473 (1971). Rule 15(a) "evinces a bias in favor of granting leave to amend when justice so requires." *Louisiana v. Litton Mortgage Co.*, 50 F.3d 1298, 1302-1303 (5th Cir. 1995) (citing *Chitimacha Tribe of Louisiana v. Harry L. Laws Co., Inc.*, 690 F.2d 1157, 1163 (5th Cir. 1982), *cert denied* 464 U.S. 814 [1983]).

IV.

Defendant Firestone would respectfully show the Court that the filing of its First Amended Original Answer will not delay the trial of this cause. This amendment is not proposed for the purposes of delay, but so that justice may be done.

WHEREFORE, PREMISES CONSIDERED, Defendant Bridgestone/Firestone, Inc. respectfully prays that its Motion for Leave to File its First Amended Original Answer be in all things granted; that the Court enter an order granting it leave to amend and directing the Clerk of the Court to file and accept this Defendant's First Amended Original Answer in the Court's file; and for such other and further relief to which this Defendant may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Counsel for Defendant Bridgestone/Firestone, Inc. attempted to confer with Plaintiff's counsel regarding this Motion. Plaintiff's counsel was not available. Consequently, the merits of this Motion are presented to the Court for its determination.

SCOTT G. EDWARDS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served upon Plaintiff's counsel of record, liaison counsel for Plaintiffs and Intervenor, and counsel for Ford via certified mail, return receipt requested on this the 28th day February, 2001.

SCOTT G. EDWARDS