

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: BRIDGESTONE/FIRESTONE, INC., )  
ATX, ATX II AND WILDERNESS TIRES )  
PRODUCTS LIABILITY LITIGATION )  
\_\_\_\_\_)  
THIS DOCUMENT RELATES TO ALL )  
ACTIONS )  
\_\_\_\_\_)

Master File No. IP 00-9373-C-B/S  
MDL DOCKET NO. 1373

**CENTER FOR AUTO SAFETY’S MOTION FOR REMAND, OR IN  
THE ALTERNATIVE, A RULING ON ITS MOTION FOR PRELIMINARY  
INJUNCTION**

The Center for Auto Safety, by the undersigned counsel, hereby moves the Court for an Order and in support thereof states as follows:

For the reasons set forth in the accompanying Memorandum of Law, the Center respectfully requests this Court to issue an Order remanding the Center’s actions-- *Gustafson, et al., v. Bridgestone/Firestone, Inc.*, No. 00-CV-00612-DRH (S.D. Ill) and *Center for Auto Safety, Inc. v. Bridgestone/Firestone, Inc., et al.*, No. 1:00cv02011 (PLF)(D.D.C.) -- back to their respective transferor courts, or, in the alternative, to issue a ruling as soon as is practicable on the Center for Auto Safety’s Motion in Support and in Supplement to Class Plaintiffs’ Motion for a Preliminary Injunction.

WHEREFORE, the Center for Auto Safety respectfully requests this Court to grant the above-requested relief.

Dated: June \_\_, 2001

Respectfully submitted

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**MEMORANDUM IN SUPPORT OF CENTER FOR AUTO SAFETY’S MOTION  
FOR REMAND, OR IN THE ALTERNATIVE, A RULING ON ITS MOTION FOR  
PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

More than three months ago, Plaintiff Center for Auto Safety, Inc. (“CAS” or the “Center”) requested that the Court hold a hearing to determine to whether all Firestone ATX, ATX II, Wilderness and similarly designed and made tires, regardless of size or plant of manufacture should be recalled. On February 27, 2001, the Center urged the Court to order the tire recall because there was a documented history of performance failures which posed a significant threat to public safety; there were no characteristics distinguishing the recalled tires from the non-recalled tires; and all available information and evidence strongly demonstrated that the non-recalled tires would be subject to further and increased rates of failure. Ford Motor Company (“Ford”) now has agreed to the expanded recall<sup>1</sup> concurring in the need for an

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<sup>1</sup>This position is diametrically opposed to the representation made by Ford CEO, Jacques Nasser, during Congressional hearings in September 2000 when Mr. Nasser stated that all Firestone ATX, ATX II and Wilderness tires not subject to the August 9, 2000 recall were of “world class” quality. *Bridgestone/Firestone Tire Recall: Hearing of the Senate Commerce, Science and Transportation Committee*, Panel III (Sept. 12, 2000)(Statement of Jacques Nasser)(Attached hereto as Ex. 1)(“Nasser Statement”)

expanded recall for precisely the reasons articulated by the Center.<sup>2</sup> announced that it would recall approximately 13 million Bridgestone/Firestone, Inc. (“Firestone”) Wilderness AT brand tires that are mounted on are sold for use on its Explorer vehicle. Given Ford’s decision to recall these tires, it appears that many of the tires that the Center for Auto Safety (“CAS” or the “Center”) has argued should be recalled will, in fact, be recalled. Ford’s decision to recall these tires clearly indicates that no further pretrial proceedings are required in order to justify the other injunctive relief sought by CAS and by Class Plaintiffs. Accordingly, the actions in which the Center is a Plaintiff should be remanded to the transferor courts from which they emanated.

In the alternative, if this Court believes that remand is premature, it should immediately rule upon the Center’s pending Motion in Support and in Supplement to Class Plaintiffs’ Motion for a Preliminary Injunction (“CAS Motion”), for although Ford’s decision to recall tires addresses some of the issues in the Center’s motion, Ford’s decision to recall more tires does not fully address the safety risks facing the motoring public. Indeed, Ford’s actions do not address in any respect, the role played by its Explorer in causing the tragedies that have befallen the motoring public from Firestone tire failure and Ford vehicle rollover. Nor has Firestone done anything to address the safety threat posed to the public by the Ford Explorer.

As CAS made clear in its Motion filed on February 23, 2001, to ensure public safety what is needed is broad relief including the recalls that Class Plaintiffs seek but also including: the

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<sup>2</sup>The public safety standard for a recall differs from that advocated by the Class Plaintiffs. In their motion for preliminary injunction, Class Plaintiffs were apparently arguing that the non-recalled Firestone tires needed to be recalled because they all were defective. That is not the position of the Center, nor is the admission of Ford. As stated by Ford, a further recall is a necessary “precautionary and preventive step” because “[w]e [Ford] lack confidence in the future performance of many Wilderness tires . . . ,” *Washington Post* (5/23/01) at A1(Attached hereto as Ex. 2)

immediate establishment of a research protocol, funded by Defendants, to assess the implications of the interplay between Firestone tires and the Ford Explorer; a requirement that Defendants take steps to prevent further tragedies by warning the consuming public about the dangers of underinflation and overloading; and a requirement that Defendants report and evaluate safety-related and recall data. It is only by arming the public with the results of this research, with warnings and with information about accident data that the public will know whether the Defendants' products may safely be used

CAS' Motion has been outstanding for several months and the issues addressed therein are of pressing concern to the motoring public. Accordingly, CAS respectfully requests that this Court rule on its Motion at this time.

## **II. BACKGROUND<sup>3</sup>**

CAS is a consumer watchdog organization focused on securing the safety of American motorists. Accordingly, when it became known to the motoring public that Firestone tires and Ford Explorers suffered from performance and/or safety defects that caused the tires to separate and the vehicles to rollover, the Center commenced litigation against Firestone and Ford to obtain the injunctive relief necessary to guarantee the safety of its members and of the public. *See Center for Auto Safety, Inc. v. Bridgestone/Firestone, Inc., et al.*, No. 1:00cv02011 (PLF) (D.D.C.). In addition, the Center sought and was granted leave to intervene as a plaintiff in a similar action pending in the United States District Court for the Southern District of Illinois styled *Gustafson v. Bridgestone/Firestone, Inc.*, No. 00-CV-00612-DRH (S.D. Ill.). *See Order*

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<sup>3</sup> For purposes of brevity, CAS will not repeat the factual background of the events leading up to this litigation. Instead, CAS incorporates herein the factual background detailed in its Motion in Support and Supplement to Class Plaintiffs' Motion for a Preliminary Injunction.

(10/10/00) *Gustafson v. Bridgestone/Firestone, Inc.*, No. 00-CV-00612-DRH (S.D. Ill.)(Attached hereto as Ex. 3). Ultimately, both these actions were transferred to and consolidated in the Multidistrict Litigation (“MDL”) proceedings which are pending before this Court.

Subsequent to the creation of these MDL proceedings, both Class Plaintiffs and CAS moved for preliminary injunctive relief. Class Plaintiffs’ motion, filed January 29, 2001, was limited to seeking a recall of Firestone tires. The Center’s Motion, filed February 23, 2001, sought broader relief, including: (1) creation of a research protocol financed by defendants, (2) placement of detailed warnings on both Firestone’s and Ford’s products, (3) retrofit and/or recall of the Explorer, and (4) requirements that both Firestone and Ford provide comprehensive reporting and evaluation of recalls and safety-related complaints.

Since the filing of CAS’ Motion, both Ford and Class Plaintiffs have recognized the need for further remedial measures. Following an investigation into the data available on the tire failures, Ford, recognizing a pattern of problems with Wilderness AT tires equipped on Explorers, issued a public statement announcing a second recall of the tires. On May 22, 2001, Ford publicly announced that “it will replace all 13 million Firestone Wilderness AT tires on its vehicles.” *See* Ford Firestone Wilderness AT Program, [www.ford.com](http://www.ford.com) (Attached hereto as Ex. 4). Ford stated that “analysis of real world performance data, information from NHTSA and lab and vehicle testing indicate that some of the non-recalled Wilderness AT tires will probably experience elevated failure rates at some time in the future.” *Id.*

Specifically, Ford said that its decision to replace all Wilderness AT tires was based on several factors, including:

- “Field data . . . showed that failure rates had increased for some of the Wilderness

AT tires. Projections indicate that the failure rates . . . could reach unusually high levels in the future.”

- “Information shared by NHTSA showed that failure rates in actual road performance for many of the non-recalled Wilderness AT tires were measurably worse than comparable tires from other manufacturers.”
- “Laboratory and vehicle testing by Ford shows that tire design and variations in physical characteristics of the non-recalled Wilderness AT tires make them less durable than comparable tires from other manufacturers.”

*Id.*

Ford’s Wilderness AT Recall Program calls for the replacement of all 15, 16 and 17 inch Wilderness AT tires on Ford vehicles. Tires are to be replaced at Ford and Lincoln Mercury dealers free of charge and Ford is to reimburse customers who purchase replacement tires from other authorized dealers.<sup>4</sup> Ford has not stated a time frame in which it expects the recall to be completed, but has announced that the program will prioritize replacement based on the age of the tire. Finally, Ford has announced a refund program for customers who paid to replace Wilderness AT tires on specified Ford vehicles between August 1, 2000 and May 22, 2001. *Id.*

Class Plaintiffs also have recognized the need for further action to ensure the safety of the American public. On June 1, 2001, Class Plaintiffs filed their second motion for preliminary injunction, this time against Ford Motor Company, seeking a recall of the Explorer. While CAS welcomes Class Plaintiffs’ effort to focus on Ford’s role in the tragedy which is the subject of this litigation, Class Plaintiffs do not seek the further measures CAS believes (and seeks in its Motion) are necessary to ensure that further fatalities and injuries do not occur.

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<sup>4</sup>The announced reimbursement is \$110 per tire for 15 and 16 inch tires and \$130 per tire for 17 inch tires.

### III. DISCUSSION

#### A. The *Gustafson* Action and the *Center for Auto Safety* Action Should Be Remanded Back to the Transferor Courts from Which They Came

Pursuant to 28 U.S.C. § 1407(a), once pretrial proceedings in a case are complete, the MDL panel should remand the case to the district from which it was transferred. 28 U.S.C. § 1407(a)(2001).<sup>5</sup> *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 34 (1998). The statute states, in relevant part, that all cases “shall be remanded . . . at or before the conclusion of such pretrial proceedings to the district **from which it was transferred . . .**” 28 U.S.C. § 1407(a)(2001)(emphasis added). The statute’s use of the word “shall” indicates a mandatory obligation on the part of the Panel to remand a case when pre-trial proceedings are complete. *Lexecon*, 523 U.S. at 34; *Save the Valley, Inc. v. United States EPA*, 99 F. Supp. 2d 981, 984 (S.D. Ind. 2000); *Flatow v. Islamic Republic of Iran*, 76 F. Supp. 2d 16, 27 (D.D.C. 1999). Further, as is clear from the language of the statute, a case is properly remanded to the district from which it was transferred.

Pretrial proceedings, by definition, include all judicial proceedings conducted before the start of trial. *In re Patenaude*, 210 F.3d 135, 144 (3<sup>rd</sup> Cir. 2000), *cert. denied*, 121 S.Ct. 565(U.S. 2000) . The decision that pretrial proceedings are complete and remand is proper is inherently

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<sup>5</sup>“When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: Provided, however, that the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.” 28 U.S.C. § 1407(a) (2001).



case-specific, *id.* at 141, though it is clear that 28 U.S.C. § 1407 compels remand “when, *at the latest*, those pretrial proceedings have run their course.” *Lexecon*, 523 U.S. at 34-35 (emphasis added); *Patenaude*, 210 F.3d at 142 (citation omitted). Thus, “when everything that remains to be done is case-specific,” the Panel should remand a case even prior to the completion of all pretrial proceedings. *Patenaude*, 210 F.3d at 142 (citing 28 U.S.C. § 1407 (2001)). Notably, “[i]t is not contemplated that a Section 1407 transferee judge will necessarily complete all pretrial proceedings in all actions transferred and assigned to him by the Panel...” but may use sound discretion in deciding the proper time to transfer a case. *In re Evergreen Vale Project Litig.*, 435 F. Supp. 923, 924-25 (J.P.M.L. 1977).

In the instant proceedings, it is clear that the pretrial proceedings necessary to try the matters at issue in the actions in which CAS is involved as a plaintiff are complete and that the actions are ready to proceed to trial. The claims that the Center brought and is pursuing are injunctive relief claims aimed at safeguarding the public. Defendants in this litigation have argued that no such relief is appropriate because the plaintiffs cannot show that there is a specific manufacturing and/or design defect in their products. In fact, in testimony before Congress in September 2000, Ford CEO, Jacques Nasser, claimed that the Firestone tires outside the August 9, 2000 recall announced by defendants were “world class.” *See* (Nasser Statement)(Ex. 1) Yet, now, Ford has contradicted itself by announcing the recall of 13 million Firestone tires based not on the adjudication of a specific product defect but on “real world” performance data, along with information from NHTSA and vehicle testing. That data, upon which Ford now relies, has been available from the inception of this litigation. Thus, Ford now has conceded in essence that additional pretrial proceedings aimed at amassing proof of specific product defects are not

required before the Center's injunctive relief claims can be tried.

Likewise, Firestone has submitted an in-depth investigation of the role of Ford vehicles in causing the tragedies associated with Firestone ATX, ATX II and Wilderness tires. That information, along with other information that has been developed in other actions, literally completes the pretrial evidentiary processes with regard to the information needed by plaintiffs to proceed against Ford for its complicity in these tragedies.

Accordingly, pursuant to 28 U.S.C § 1407, this Court should remand the actions in which the Center is involved back to the transferor courts from which they came.<sup>6</sup>

**B. This Court Should Rule on CAS' Motion in Support and in Supplement to Class Plaintiffs' Motion for a Preliminary Injunction**

In the event that the Court determines that it is premature to remand the Center's actions to their respective Courts, the Center respectfully requests that the Court rule upon the Center's motion for injunctive relief as soon as possible. Without the relief sought by the Center, the public remains exposed to serious risk of injury on the nation's highways.

Ford's May 22, 2001 announcement that it was planning to recall 13 million Firestone tires certainly is a positive step towards addressing the very real safety threat posed to the public.

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<sup>6</sup>That CAS intervened in the *Gustafson* matter and was not an original party is of no import. Courts have found that permissive intervenors, like CAS, have participatory rights and may be treated like an original party to an action and enjoy equal standing with original parties. *Harris v. Amoco Production Co.*, 768 F.2d 669, 675 (5th Cir. 1985); *Donovan Oil, Chem., and Atomic Workers Int'l Union*, 718 F.2d 1341, 1351 (5th Cir. 1983). Permissive intervenors, since they may be treated as original parties, are permitted to participate in the litigation in which they intervened. *See Harris*, 768 F.2d at 675 (recognizing that an intervenor party may move to dismiss a proceeding as well as challenge the jurisdiction of a court). CAS should be treated as an original party to the *Gustafson* action, and thus is permitted to move for remand. *See Kirkland v. New York State Dep't of Correctional Services*, 711 F.2d 1117, 11126 (2d Cir. 1983)(holding that the standing of an intervenor as a party depends upon the nature of the intervenor's interest).

However, as argued in the CAS Motion, “[n]either Firestone nor Ford (nor indeed any of their experts) has been able to identify the exact cause of the problem that is causing the treads of Firestone tires to separate.” CAS Motion at 12 (citations omitted). Thus, even with Ford’s expanded recall program, there is no assurance that the public safety threat has been adequately addressed. Indeed, Firestone CEO John Lampe continues in his belief that a very real part of the problem is the Ford Explorer vehicle itself, and neither Firestone nor Ford has taken the necessary steps to remediate the risk posed by the Explorer.

Class Plaintiffs’ Motion for Preliminary Injunction Relief Against Ford Motor Company, filed on June 1, 2001, reinforces and endorses the position taken by CAS since the inception of this litigation that the threat posed by the Ford Explorer vehicle must be addressed to truly guarantee public safety. However, Class Plaintiffs’ June 1 Motion ultimately falls short because it fails to seek an investigation into the root cause of the tragedies that plague owners and drivers of the Ford Explorer, fails to require Ford and Firestone to place more prominent warnings on their products and fails to require Ford or Firestone to report all data regarding recalls and/or safety-related complaints.

CAS believes that a recall or retrofit of the Explorer, without research into the root cause of the tragedies that occur when Firestone tires are combined with Ford’s Explorer, without more prominent warnings placed on Ford’s and Firestone’s products, and without greater requirements on the companies to report safety-related data is insufficient to assure the safety of the American public. *See* CAS Motion, pp. 5-6. Thus, while CAS commends Class Plaintiffs for recognizing the continued threat posed by the Explorer and calling for the recall of the Explorer, CAS respectfully submits that Class Plaintiffs’ second motion (like their first motion for preliminary

injunctive relief, filed on January 29, 2001), fails to fully address the remediation of the safety problems raised by the tragedies of the past. Absent the immediate establishment of a research protocol to investigate the tires, the Explorer and the interplay between the tires and vehicle when they are combined, there is no assurance that the tragedies of the past will not be replicated in the future. Indeed, without a full investigation into the cause of the tragedies that led to this litigation, Ford will be hard pressed to adequately retrofit or repair the Explorer to improve the safety of consumers.

Defendants both have conceded that public safety is paramount and must be guaranteed -- they asserted before Congress that not even one fatality is acceptable, see *Bridgestone/Firestone Tire Recall: Hearing of the Senate Commerce, Science and Transportation Committee*, Panel I (Sept. 12, 2000)(Statement of John Lampe)(Attached hereto as Ex. 5); *Bridgestone/Firestone Tire Recall: Hearing of the Transportation Subcommittee of the Senate Appropriations Committee*, Panel II, (Sept. 6, 2000)(Statement of Helen Petruskas)(Attached hereto as Ex. 6), and now, in announcing the 13 million tire recall, Ford indicated its “deep-seated conviction that customer safety comes first.” *See* (Ex.4). The prevention of further fatalities and a guarantee of public safety will be achieved only through a thorough investigation into the cause of the tire failures and vehicle rollovers. CAS sought exactly such an investigation in its Motion filed with this Court more than three months ago. Accordingly, CAS respectfully requests that this Court, as a matter of law based on the admissions of both Ford and Firestone, grant the Center’s outstanding Motion in Support and in Supplement to Class Plaintiffs’ Motion for a Preliminary Injunction.

#### **IV. CONCLUSION**

For the reasons stated herein, CAS respectfully requests that this Court remand the actions in which it is a plaintiff -- *Gustafson v. Bridgestone/Firestone, Inc.*, No. 00-CV-00612-DRH (S.D. Ill.) and *Center for Auto Safety, Inc. v. Bridgestone/Firestone, Inc., et al.*, No. 1:00cv02011(PLF) (D.D.C.) -- back to their respective transferor courts for trial. In the alternative, CAS respectfully requests that the Court rule on its Motion in Support and in Supplement to Class Plaintiffs' Motion for a Preliminary Injunction.

Dated: June \_\_, 2001

Respectfully submitted

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