### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

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# IN RE: BRIDGESTONE/FIRESTONE, INC. ATX, ATXII AND WILDERNESS TIRES PRODUCTS LIABILITY LITIGATION

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

# THIS DOCUMENT RELATES TO ALL ACTIONS

## SUBMISSION OF PLAINTIFFS IN FORD EXPLORER DIMINUTION IN VALUE ACTIONS <u>RELATING TO ORGANIZATION AND STRUCTURE</u>

AsAs this Court is aware, the Judicial Panel oAs this Court is aware, the Judicial Panel on MuAs this conditionallyconditionally transferred conditionally transferred to this Court, as part of MDL No. 1373, fiveconditionally related to the diminution in value of the Ford Explorer related to the diminution in value of the Ford Explorer related to the diminution in value of the Ford Explorer toto result from the to result from the cover-up to result from the cover-up by Ford Motor Co. (Ford ), in concer and and Bridgestone/Firestone Inc. (collectivelyand Bridgestone/Firestone Inc. (collectively Bridgestone/Firestone Explorer Diminution in Value Actions involve an alleged class of well overover three million present and former owners and lessees of Ford Explorersover three million present and for type of tires that were on those Explorers.

Plaintiffs from Plaintiffs from these Ford Explorer Diminution in Value ActionsPlaintiffs from these Ford time time because: (a) on November 29, 2000, Plaintiffs filed with the because: (a) on November *not* oppose the transfer of the Ford Explorer Diminution in Value Actions to this Court as part of MDLMDL No. 1373<sup>1/</sup>; ; (b) Plai; (b) Plaintiffs also understand that no opposition to the transfer was filed by any other party as of November 30, 2000, the deadline for filing such opposition withothe

 $<sup>\</sup>frac{1}{2}$  A copy of the notice filed on November 29, 2000, with the Judicial Panel on Multidistrict Litigation is attached hereto as Exhibit A.

andand that (c) and that (c) Plaintiffs understand that the and that (c) Plaintiffs understand that the MDL Panel ther byby certified mail, that theby certified mail, that the Ford Explorer Diminutionby certified mail, that the Ford Exploret toto this Court s jurisdiction. Accordingly, in the near future (and possibly before this Court s jurisdiction. *A* 20002000 hearing before this Court)2000 hearing before this Court) it is expected that these cases will be transferre of these proceedings.

PlaintiffsPlaintiffs from the Ford Explorer Diminution in Value Actions also addressPlaintiffs from the For timetime to seek to ensure that theirtime to seek to ensure that their interests are appropriately protect particular, particular, in light of this Court sparticular, in light of this Court s particular, in light of this Court s counselcounsel for the (a) ccounsel for the (a) class action cases and (b) personal injury/wron Firestone tires and Firestone tires and tire recall issues, Firestone tires and tire recall issues, that have previously b Court as part of MDL No. 1373.

WhileWhile it is clear that there will be substantial overlapping discoveWhile it is clear that there will DiminutionDiminution in ValueDiminution in Value Actions and theDiminution in Value Actions and the Firesto cases, cases, it is also plain that the Ford Explorer Dimcases, it is also plain that the Ford Explorer Dimcases, it is also plain that the Ford Explorer Dimcases it

\* AsAs expressly set forth by the As expressly set forth by the MAs expressly set for injury/wrongfulinjury/wrongful death cases previously transferred toinjury/wrongful death cases previousl

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 $<sup>\</sup>frac{2}{2}$  A copy of the MDL Panel s October 24, 2000 order is attached hereto as Exhibit

originally originally transferred originally transferred are baoriginally transferred are based, as FirestoFirestoneFirestone and, in most instances, Ford are responsible for harm or risk of hFir caused by defective tires. Id. (Emphasis added).

- \* ByBy contrast, the Ford Explorer Diminution in Value ActionsBy contrast, the Ford Explorer Diminution ownersowners and lesseesowners and lessees of Ford Explorers (whetherowners and lessees of Fo tirestires)tires) that Ford, in concert with Bridgestone and Bridgestone/Firestone, caustires) that dimidiminution diminution indiminution in value of the Ford Explorer itself by fraudulent defect and other defects inherent in the Ford Explorer itself.
- \*<sup>1</sup> The The distinct nature of the Ford Explorer Diminution The distinct nature of the Ford Explorer Dim uponupon aupon a comparison of upon a comparison of the definitions of the putative classes repre initially initially transferred to this Court in MDL No. 1373 and those in the Forinitially transferred DiminutionDiminution in Value Actions. ForDiminution in Value Actions. For example, the propoactionaction originally transferredaction originally transferred to this Court is composed of [a]Il p whowho now who now own, or owned as of who now own, or owned as of August 9, 2000, Fireston and other comparably designed Firestoneand other comparably designed Firestone steel-belted ByBy contrast, in the Ford Explorer DiminutionFord Explorer Diminution in Value Actions, theF are comprised of are comprised of all residents are comprised of all residents of the United States employees of Fordemployees of Ford and/or Bridgestone/Firestone, who purchased, employees of newnew or used Ford Explorers at any timenew or used Ford Explorers at any time during the perior

and and who either continue to own or lease such vehicles or who sold, traand who either c otherwise disposed of those vehicle. <u>Grant Complaint ¶¶ 127, 128.<sup>3/</sup></u>

\* Although Although the FordAlthough the Ford Explorer Diminution in ValueAlthough the Ford E concerted concerted scheme involving Fconcerted scheme involving Fordconcerted scheme invol isis is relais related to the design and marketing of Ford Explorer vehicles whether or not equippedequipped with Bridgestone/Firestone tires which vehicles were inherently dangerousdangerous in their design and operation due to instability and enhanced rollover risks eveneven when the vehicle s tires remain intact.even when the vehicle s tires remain intact. As aeve initially initially transferred as part of MDL No. 1373, the Ford Explorer Diminutioninitially transfer Actions Actions are not foActions are not foCusActions are not focused upon the manufacture, design and safety of the Ford Explorer itself.

Indeed,Indeed, a significant potential for conflict exists between the interests,Indeed, a significant potential those those involved in the tire-related actions who in order those involved in the tire-related actions who in order financial financial recovery of their clients will likely seekfinancial recovery of their clients will likely seek to em atat issue, and the interests, on the other hand, at issue, and the interests, on the other hand, at issue, and the interests, on the other hand, at issue, and lessees, who will focus upowners and lessees, who will focus upowners and lessees, who will focus powners and lessees, who will focus upowners and lessees, who will focus upowners and lessees, who will focus upowners and lessees.

ForFor all ofFor all of these reasons, theFor all of these reasons, the Ford Explorer Diminution in Value p submitsubmit that it will be critical and, submit that it will be critical and, indeed, imperative to establish asub counsel, counsel, liaison counsel and executive committee members, as well as an opportunity for meanincounsel, lia

 $<sup>\</sup>frac{3}{2}$  A copy of the Complaint in the <u>Grant</u> Ford Explorer Diminution in Value case, originally filed in the Middle District of Florida, is annexed hereto as Exhibit C.

participation in other committees, for the Fordparticipation in other committees, for the Ford Explorer Diminutio thisthis Court has already established using the terms of the Manual for Complex Litigation separate tracks tracks within MDL No. 1373 for: (a) tire-related class actions; and (b) tire-related personal injury/wrongfulinjury/wrongful death claims, it is respectfully submitted thatinjury/wrongful death claims, it is respectfully submitted thatinjury/wrongful death claims, it is respectfully requested that:

- tthisthis Court appoint, for the Ford Explorer Diminution in Value Actions, this Court appoint, for BoiesBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner LLP, and Theodore J. LeopoldBoies of Boies, Schiller & Flexner P. A., as co-lead counsel and (b)Henry PricLeopold, Franker Potter Jackson & Mellowitz, P.C., as liaison counsel;<sup>4/</sup>
- \*<sup>1</sup> inin orderin order to integrate the Ford Explorer Diminution in Value Actions into thein order to integrate already establalready established for the tire-related cases, the co-lead court ExplorerExplorer Diminution in ValueExplorer Diminution in Value AExplorer Diminution in ValueExplorer Diminution in Value AExplorer Diminution in ValueActions to themselves, two additional counsel from the Ford Explorer Diminution into them Actions Actions to serve as members of the Executive CommitteeActions to serve as members of the Wouldwould be expanded to include representatives from the Ford Explorer Diminution in Value Actions; and
- \* forfor each offor each of the six other committees contemplated by the Court for MDL No. 1373, there be, in addition to the two co-chairs to be appointed

<sup>&</sup>lt;sup>4</sup>/ We wish to be clear that the request for appoint of co-lead counsel for the Ford Explorer Diminution in Value Actions is not the result of some compromise among competing lawyers in these cases, but rather reflects that Boies, Schiller & Flexner and the Ricci Hubbard firm have been working side by side from the outset in the Ford Explorer Diminution in Value Actions and, from the outset, served as co-lead counsel in the <u>Grant</u> case.

actions and actions and actions and tire-related personal injury/wrongful death cases, a thir the Ford Explorer Diminution in Value Actions.

PlaintiffsPlaintiffs and their counsel in thePlaintiffs and their counsel in the Ford Explorer Diminution in toto cooperate fully witto cooperate fully with to cooperate fully with counsel for the tire-related cases within the Court.Court. It is very respectfully submitted that the addition of a Ford Explorer DimCourt. It is very respect track track within that framework will allow for efficient coordination of track within that framework will a overlapping doverlapping discovery a overlapping discovery and other pre-trial activity while problems by protecting problems by protecting the distinct and unique problems by protecting the distinct class members.

MerelyMerely appointing a separate committee for the Ford ExplorerMerely appointing a separate committe asas suggested in the recent submission by the tire-related leadas suggested in the recent submission by the tire-relat interests of these interests of these distinct classes of plaintiffs. As proposed, such interests of these distinct of andand under and under the dand under the direction of previously-appointed class lead counsel. However, the tire-related tire-related classes are distinct from and such classes seek stire-related classes are distinct from ar putativeputative plaintiff classes in the Ford Explorer putative plaintiff classes in the Ford Explorer Diminution in injinjunctiveinjunctive relief, expanded recalls, or any of the other solely tire-related relief sought by thinjunctive ffocused focused classes. Rather, the plaintiffs in the Ford Explorer Diminution in Value Actionfocused class monetarymonetary damages for all class members who own(ed) or lease(d) a Fordmonetary damages for all class damagesdamages are the result damages are the result of a diminutiodamages are the result of a diminution previouslypreviously concealed defects. Without a separate trackpreviously concealed defects. reducereduce the commitment of counsel in the Ford Expreduce the commitment of counsel in the Ford Ex cooperativelycooperatively with the lawyers in the two tire- related tracks, as we have in the past, to seek justice for all clients.

#### **Background**

InIn September 2000, immediately after rIn September 2000, immediately after recognizing thIn Septe FordFord Explorers, Plaintiffs Diana Grant and JaneFord Explorers, Plaintiffs Diana Grant and Jane Lill filed a co Court for the Middle District of Florida,Court for the Middle District of Florida, on behalf of themselves and the andand former purchasers and lessees of Fordand former purchasers and lessees of Ford Explorers whether and for atat any time wiat any time with at any time with Bridgestone/Firestone tires. The complaint seeks to recover th FordFord Explorer resultingFord Explorer resulting from the revelation of rollover-related defects in the Explorer previouslypreviously been fraudulentlypreviously been fraudulently concealed. Four subsequently-filed federal su GrantGrant and Lill suit, the FordGrant and Lill suit, the Ford Explorer DiminutionGrant and Lill suit, the Ford similar relief.<sup>2/</sup>

WeWe understand that the MDL Panel immediately will beWe understand that the MDL Panel immediately that that it now has formal jurisdiction, as part of MDL No. DiminutionDiminution in ValueDiminution in Value Actions. As noted above, Plaintiffs in the Ford Explorer Dim ActionsActions advised the MDL Panel that they do not oppose the transferActions advised the MDL Panel that they inin Value Actions to this Court as part of MDL No.1373, and Plain Value Actions to this Court as part of MDL No.1373, and Plain Value Actions to this Court as part of MDL No.1373, whether a successful the transfer.

## I. The Ford Explorer Diminution in Value Actions Center on Issues and Interests Materially Different from Those In the Firestone Tire-related

 $<sup>\</sup>frac{5}{2}$  Each of these actions is identified in the list of counsel joining in this proposal at the end of this submission.

#### **Cases Originally Consolidated and Transferred as Part of MDL No. 1373**

AsAs expressly set forth in the MDLAs expressly set forth in the MDL Panel OrderAs expressly set forth the actions in MDL No. 1373, all of those cases originallythe actions in MDL No. 1373, all of the <u>defectsdefects in certain tires</u> manufactured by Bridgestone/ manufactured by Bridgestone/Firestone, manufactored by Bridgestone 24, 2000, October 24, 2000, MDL No. 1373, Exhibit B hereto, atOctober 24, 2000, MDL No. 1377 transferred are based on allegations that Firestone and, in most instances, Fordtransferred are based or harm or risk of harm <u>caused by defective tires</u>. <u>Id.</u> (emphasis added).

IndeedIndeed,Indeed, a reviIndeed, a review of the complaints in the cases previously transferred to this of MDL No. 1373 confirms that such cases are clearly MDL No. 1373 confirms that such cases are clearly valuevalue of certain Firestone tires. value of certain Firestone tires. Those cases do not address the inherent defere of Ford Explorers which are the foundation for the claims in <u>Grant</u> and the other Ford and the other Ford DDiminutionDiminution in Value Actions. Moreover, although the tire-focused cases before thDiminution in assertassert claims under certain statutes oassert claims under certain statutes or coassert claims under certain statutes or coassert claims and the relief sought legal theories arise from and relate to Firestone tires and tire recall issues.

ThThisThis factThis fact is well illustrated by the complaint in <u>Gustafson, et al. v. Bridgestone/Firestone</u> <u>Inc.</u>, No. IP00-C-5025-B/S (previously Civil Action No., No. IP00-C-5025-B/S (previously Civil Action No. 00-e action, a tire-relaction, a tire-related caction, a tire-related case, was initiated by the lead counsel appointe 22,22, 2000, for the tire-related22, 2000, for the tire-related class22, 2000, for the tire-related class cases. The <u>Gusta</u>

 $<sup>\</sup>frac{6}{2}$  The emphasis of the class actions initially transferred to this Court on tire-related issues is readily apparent from the fact that unlike the Ford Explorer Diminution in Value Actions such tire-focused class actions typically identify Bridgestone/Firestone, Inc. as the lead or, in many cases, only defendant.

citedcited incited in the November 10, 2000 Preliminary Status Report to this Court by counselcited in the Novemb 60 tire-related cases.

AsAs As with the other tire-related class cases initially transferred to this Court, the claims iAs with the GGusGustafson are premised on allegations that Firestone ATX, ATX II, Wilderness and other comparably-designed comparably-designed FIRESTONE steel-belted radial tires (the Tires) . . . are compared dangerous by design, are not fit for their ordinary dangerous by design, are not fit for their ordinary consumers, in that the Tires all have a propensity to exexperience aexperience a sudden and complete tread separation while operating at normal highwer Gustafson Complaint  $\P 2.^{2/2}$  To address these t To address these ti To address these tire-focused concerns, injunctive relief to recall, buy back, and/or replace its unreasonably dangerously injunctive relief to wellwell as [a]n award of compensatory and puniwell as [a]n award of compensatory and punitive dawell as unreasonably dangerous andunreasonably dangerous and that Firestone is unreasonably dangerous and of the tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dangers associated with the Tires and for the costs and expenses of the dang

<sup>&</sup>lt;sup>27</sup> Similar allegations are found in the other class complaints transferred to this Court. <u>E.g.</u>, <u>Baugh-Seawright</u> Complaint ¶ 2, No. \_\_\_\_\_ (previously (No. 3:00 CV 1873 (PCD) D. Conn)) ( Defendants and their subsidiaries, . . . have reaped hundreds of millions of dollars in profits through employment of a pattern of deceptive practices, misled Baugh-Seawright and the class into purchasing defective tires by creating an illusion of safety ); <u>Cruz</u> Complaint ¶ 4, No. IP))-C-5018-B/S (previously (No. 00-3180 S.D. Fla.)) (Ford sold motor vehicles in Florida and throughout the United States having defective original equipment tires (hereinafter referred to as the tires in question with said tires being ATX, ATX II, and Wilderness AT model tires) ); <u>Knapp</u> Complaint ¶ 1, No. IP00-C-5057-B/S (previously (C.A. No. H-00-2718 S.D. Tex.) ( seeking monetary damages and injunctive relief for purchasers of defective tires designed, manufactured and sold by Defendant ); <u>Zelenika</u> Second Amended Class Action Complaint ¶ 5, No. IP00-C-5020-B/S (previously (No. 00 C 5013 N. D. Ill.)) ( As a result of the defective Model ATX, ATX II and Wilderness tires, the Plaintiffs and the members of the Plaintiffs Class have or will suffer damages. ).

allall such Tires and must disgorge, for the benefit of theall such Tires and must disgorge, for the benefit or received from the sale of the Tires. <u>Gustafson</u>, Prayer for Relief at  $\P \P 2$  to 5.<sup>8/</sup>

ByBy contrast, theBy contrast, the Ford Explorer Diminution inBy contrast, the Ford Explorer Diminution and and lesand lessees of Fordand lessees of Ford Explorers (whether or not ever equipped with Firestone tire concertconcert with Bridgestone/Firestone, concert with Bridgestone/Firestone, caused a diminution concert with B byby fraudulently concealing the rollover defect fraudulently concealing the rollover defect and other defects in

Although Although the Ford Explorer Diminution in Value Actions discuss aAlthough the Ford Explorer Dim schemescheme involving Ford and Bridgestone/Firestone, that schemescheme involving Ford and Bridgestone/Fire marketingmarketing of Ford Explorermarketing of Ford Explorer vehicles whether or not it wasmarketing of F tirestires tires which vehicles were inherently dangerous in their design and operation due totires which vehicle enhanced rollover risks even when the vehicle senhanced rollover risks even when the vehicle s tires remain inta

<sup>&</sup>lt;sup>8</sup>/ Although different causes of action are alleged in some of the various class action complaints initially transferred to this Court, the nature of the relief sought and the emphasis on tire-related remedies is similar. <u>E.g., Baugh-Seawright, supra</u> pp. 77-79 (seeking wide array of equitable and legal relief including tire recall, disgorgement of profits, compensatory and punitive damages); <u>Fidan</u> Complaint, No. (previously (No. 00C-5622 N.D. Ill.)) (seeking tire recall and orderly replacement of tires with a refund of monies paid for such tires); <u>Knapp</u>, <u>supra</u> at p. 9 (seeking injunction against sale of defective tires as well as actual and punitive damages for defective tires); <u>Rice</u> Complaint, No. (previously (C.A. No. 300-0884 M.D. Tenn.)) (seeking damages for class members who suffered tire blowouts).

<sup>&</sup>lt;sup>9'</sup> The complaints in the Ford Explorer Diminution in Value Actions discuss Bridgestone/Firestone and the tires it manufactures and sells only to show that Bridgestone/Firestone had knowledge of and worked in complicity with Ford to maximize profits through the sale of Ford Explorers (and, thus, the Bridgestone/Firestone tires with which they were often equipped) while concealing the knowledge of all defendants that such <u>vehicles</u> were inherently defective and dangerous as designed. For example, the allegations regarding tire pressure in the Ford Explorer Diminution in Value Actions are part of the overall explanation of the cover-up through, <u>inter alia</u>, improper tire inflation recommendations of the intrinsic rollover defect in Ford Explorers. It is the latter rollover risk which is the central ground for the contention, in these cases, that Explorers were initially overpriced and have now dramatically diminished in value. The underinflation of tires is not alleged as a basis by itself for the relief

which were initially transferred aswhich were initially transferred as part of MDLwhich were initially transferred ActionsActions are not focused upon the manufacture, use and/or recall ofActions are not focused upon the manuf safety of the *Ford Explorer itself*.

TheseThese Ford Explorer Diminution in Value Actions specifically andThese Ford Explorer Diminution defendants coordinated pattern of deceit misled millions of consumers to purch ExplorersExplorers at prices in excess of the values which properly wouldExplorers at prices in excess of the values hadhad these dangers been disclosed, and left millions ofhad these dangers been disclosed, and left millions of substantially diminished value solely as a result of of substantially diminished value solely as a result of function of a substantially diminished value solely as a result of function of a substantially diminished value solely as a result of function of a substantially diminished value solely as a result of function of a substantially diminished value solely as a result of function of a substantially diminished value solely as a result of function of a substantially diminished value solely as a result of function of a substantially diminished value solely as a result of defendation. Complaint at ¶ Complaint at ¶ 1.<sup>10</sup> Thus, unlike the tire-related cases Thus, unlike the tire-related cases i FordFord Explorer DiminutionFord Explorer Diminution in ValueFord Explorer Diminution in Value Actions se ExplorersExplorers owned or leased by [the namedExplorers owned or leased by [the named plaintiff(s) and plaintiff class] to purchase orpaid by [the named plaintiff(s) and plaint paidpaid by [the named plaintiff(s) and plaintiff class] to purchase orpaid by [the named plaintiff(s) and plaint at Prayer for Relief. This Complaint at Prayer for Relief. This diminut attributable to the rollover risks and safety issues associated with the attributable to the rollover risks and reduced the value of such vehicles whether or not equipped with Bridgestone/Firestone tires.

The distinct nature of the The distinct nature of the Ford Explorer Diminution in Value Actions is also a comparison comparison of the definitions of the putative tire-related classes reprcomparison of the definitions of transferred transferred to this Court in MDL No. 1373 and those in the Fortransferred to this Court in MDL N Actions. For eactions. For example, the proposed class in <u>Gustafson</u> is composed of [a]

requested in the Ford Explorer Diminution in Value Actions.

 $<sup>\</sup>frac{10}{10}$  The <u>Grant</u> Complaint is attached hereto as Exhibit C as a representative example of the Ford Explorer Diminution in Value Actions.

whowho now own, or owned as of August 9, 2000, Firestone ATX, ATX II, Wilderneswho now own, or ow comparablycomparably designed Firestone steel-belted radialcomparably designed Firestone steel-belted radial tirr transferred cases thattransferred cases that defined a class with some reference to Ford Explorers, the cinin such cases is determined solely on the in such cases is determined solely on the basis of the in such cases itself.itself. See, e.g., Fidan Complaint ¶ 9 (certification is so Complaint ¶ 9 (certification is sought for class C personspersons and entities located in the United States who purchased, leasedpersons and entities located in the United States who purchased, leasedpersons and entities located in the United States who purchased, leasedpersons and entities located in the United States who purchased, leased or ATX tires, and other size and purchased, leased or acquired a vehicle including, purchased, leased or acquired a vehicle including, but not limit Model, with FIRESTONE 15 or 16 inch Model Wilderness AT or ATX tires. ).

ByBy contrast, theBy contrast, the classes represented in the FordBy contrast, the classes represented in the thethe claims and allegations in such cases focus upon the Ford Exthe claims and allegations in such cases suchsuch vehicles maysuch vehicles may have been equipped at some point in time.such vehicles other thanthan directors, officers or employees of Ford and/or Bridgestone/Firestone, who purchased, owned, oror leased new or used Ford Explorers at anyor leased new or used Ford Explorers at any time during the whowho either continue to own or leasewho either continue to own or lease such vehicles or either continue to own vehicles). Thus, vehicles). Thus, the criteria for membership in the proposed plaintiff classes in the For DiminutionDiminution in Value Actions are totally different from the criteria for membership in the putative tire-related classes initially transferred in MDL No. 1373.

Further, Further, while the tire-related cases previously-transferred in MDFurther, while the tire-related reimburse consumers for costs associated with defective Bridgestone/Firestone tires on a variety of vehicles vehicles incluvehicles including, but not limited to, Ford Explorers those cases (whet

personalpersonal injury/wrongful death cases)personal injury/wrongful death cases) are <u>not</u> designed designed to ExplorerExplorer itself. In fact, at this time, the overwhelming majorityExplorer itself. In fact, at this time, the o nenevernever have been equipped with the defective Bridgestone/Firestone tires at issue in the initiallytransferredtransferred tire-focused cases. Nevertheless, such vehicles are now of diminished value as a result ofof the defendants fraudulent scheme. Thus, the vehicles and notof the defendants fraudulent scheme. Thus, lie at the heart of the class definitions in the Ford Explorer Diminution in Value Actions.

# II. TheThe Distinct Interests, Classes and Issues In the Ford EThe Distinct Interests, Classes and Iss Actions Warrant a Separate Track for Pretrial Proceedings Relating to Such Claims

InIn light of the material differences bIn light of the material differences between the light of the material DiminutionDiminution in Value Actions and those in the tire-related classDiminution in Value Actions and those in the tire-related classDiminution in Value Actions and those in the transfer of the Ford Explorer Diminution MDL No. 1373, it is readily apparent that the transfer of the Ford Explorer Diminution MDL No. 1373, it is readily apparent that the transfer of the Ford Explorer Diminution in MDL No. 1373, it is readily apparent that the transfer of the Ford Explorer Diminution in MDL No. 1373, it is court will introduce a new rangeActions to this Court will introduce a new range of partiesparties parties not represented by counsel in either the tire-related class action cases or the tire personal injury/wrongful death cases.

Indeed,Indeed, a real potential for conflict exists between the interIndeed, a real potential for conflict exists between the interIndeed, a real potential for conflict exists between the interIndeed, a real potential for conflict exists involved in involved in the tire-rinvolved in the tire-related actions who in order to serve the best financial financial recovery of their clients willfinancial recovery of their clients will likely seekfinancial recover attact issue, and the interests, on the other hand, of those seeking to maximize reliefat issue, and the ownersowners and lessees by focusing upon and accentuating the dangers inherent inowners and lessees by focusing Explorer.

CounselCounsel in the Ford Explorer DiminutionCounsel in the Ford Explorer Diminution of ValueCoun anyany counsel for the tireany counsel for the tire class action cases will be able to any counsel for the tire class action DiminutionDiminution in Value Actions due to potentialDiminution in Value Actions due to potential conflicts of areare very differare very differenare very different and each class has separate and distinct interests. Indeed, th ExplorerExplorer Diminution in Value Actions is the Ford Explorer sExplorer Diminution in Value Actions is th FirestoneFirestone (or any other) tires. Thus, aFirestone (or any other) tires. Thus, a substantialFirestone (or any other) tires. Thus, aFirestone (or any other) tires at issue, in the tire-related actions inin the tire-related in the tire-related actions on dangers associated with the tires at issue, in the tire-related actions ExplorerExplorer Diminution in Value Actions in focusing upon and accentuating theExplorer Diminution in Value designdesign of the Ford Explosing of the Ford Expldesign of the Ford Explorer itself. The extensive finger FirestoneFirestone and Ford when their failures to warn the public came to Firestone and Ford when their failur conflictconflict that may develop between class membersconflict that may develop between class members in Diminution in Value Actions.

Indeed,Indeed, in light of the nature of their claims as discussed above, separate classes can and shouldshould be certifiedshould be certified with regard to the Ford Explorer Diminution in Value Actions to ensu classesclasses of current and former owners or lessees of Ford Explorers obtain the full relief to which they areare are entitled. Such separate class certification would be consistent with and appropriate entitled. accompanied by the separate track structure proposed in this accompanied by the separate distinct distinct classes cannot properly be represented by counsel who already represent interests which are different from and, to some extent, in conflict with the interests of such classes.

ConseConsequently, Consequently, Consequently, in order to assure that the interests of their clients are protecteprotected protected and that the unique issues and concerns in both of these classes of cases are not lost underminedundermined once this Court receives formal notice of its jurisdiction overundermined once this DiminutionDiminution Diminution in Value Actions, counsel in the Ford Explorer Diminution in Value Action CourtCourt Court to establish at that time a distinct track within MDL No. 1373 for the Ford ExCourt to DiminutionDiminution in Value Actions. Diminution in Value Actions. Thus, in addition to the existing tracks Court on November 22, 2000, for the tire-related class actionsCourt on November 22, 2000, for the tire-related c cases, cases, there could be added an additional track for the Ford Explorercases, there could be added an additional TheThe Ford Explorer Diminution in Value ActionsThe Ford Explorer Diminution in Value Actions would have the executive executive committee members, and co-chairs and memberexecutive committee members, and co-chairs and by the Court.<sup>11/</sup>

TheThe viability of a structure with more than one track was recently confirThe viability of a structure successful implementation of such an arrangement in the <u>ManagedManaged CManaged Care Litigar</u> proceedings proceedings before Judge Moreno in the Southern District of Florida. <u>See In re Hu</u> <u>ManagedManaged Care Litigation</u>, MDL No. 133, MDL No. 1334 (S.D. , MDL No. 1334 (S.D. Fla.), Pretr Plaintiffs Plaintiffs Counsel and Order Setting Initial Briefing Schedule (June 13, 2000) (A copy of Judge Moreno s Order is attached hereto as Exhibit D.)

TheThe <u>Managed Care Litigation</u> bears substantial similarity to the present procee bears substantial simularity number of respects. In partnumber of respects. In particular, like the present procee and and Ford Explorer-related design defect cases may be addressed inand Ford Explorer-related design defect cases thethe <u>Managed Care Litigation</u> also involves two quite different groups of plaintiff also healthclaims (1) subscribers or health plan participants who assert claims relating to healthclaims (1) subscriber care plan and (2) providers such covered by a particular managed care plan and (2) providers such of their activities and reimbur

<sup>&</sup>lt;sup>11/</sup> This Court has already recognized its authority and substantial discretion to manage the various cases and claims assigned to it and to establish separate tracks or management structures so as to complete pre-trial activities in the most efficient manner and to protect all parties interests. This authority is well established. <u>See, e.g., In re Multi-Piece Rim</u> <u>Products Liability Litigation</u>, 464 F. Supp. 969, 974 (J.P.M.L. 1979).

provided to patients.provided to patients. As in the present case, both sets of plaintiffs inprovided to patients. As will, will, undwill, undoubtedly, seek discovery of similar documents and depositions of many of the same witnesses witnesses relating to a particular defendant health planwitnesses relating to a particular defendant differences differences in the focus of each of these two different groupsdifferences in the focus of each of the betweenbetween the claims between the claims presented between the claims presented therein, Judge Moreno ado Pretrial Order No. 1, attached hereto as Exhibit D.

As this Court s initial structure recognizes, counsel in a multi-track arrangementAs this Court s initial str expected expected to work expected to work cloexpected to work closely with their counterpart(s) in the other tr <u>WestinghouseWestinghouse Elec. Corp. EmploymentWestinghouse Elec. Corp. Employment Discrimination Litis</u> 1977);1977); <u>In re Scotch Whiskey</u>, 299, 299 F. Supp. 543, 544 (J.P.M.L. 1969).<sup>12/</sup> Additionally, all parties interests in minimizing costs should assure that interests in minimizing costs should assure that the specter of unior motion practice will not materialize.

InIn sum, In sum, once this In sum, once this Court receives formal notice that it has jurisdiction over the Fo DiminutionDiminution in Value Actions, establishing a thirdDiminution in Value Actions, establishing a third t already designated by this Court will allowalready designated by this Court will allow the interests of thealready inin Value class members to Value class members to be vigorously and adequately represented in Value class men that that all of the cases in MDL No.1373 can be effectively coordinated through cooperative case management under the supervision of the Court.

#### **Proposal and Conclusion**

 $<sup>\</sup>frac{12}{}$  Moreover, the defendants can hardly be heard to complain that they will be required to work with different sets of counsel representing distinct types of plaintiff classes when these defendants have regularly participated in numerous separate cases throughout the United States for decades prior to these proceedings.

CounselCounsel for the Plaintiffs and proposed plaintiff classesCounsel for the Plaintiffs and proposed pla ValueValue Actions submit that at the time this Court assumes jValue Actions submit that at the time this DiminutionDiminution Value Actions, the addition Diminution Value Actions, the addition ofDiminution Value Act No.No. 1373 willNo. 1373 will prevent potential prejudice to the interests of the millions of Ford ExplorerNo. 137 substantialsubstantial number of substantial number of whom did not own Firestone tires at or after the recall of su whomwhom have interests far beyond, whom have interests far beyond, distinctly different from, whom have interest outlined in the tire-related cases that wereoutlined in the tire-related cases that were previously transferred tooutl whose claims are uniquely presented in the Ford Explorer Diminution in Value Actions.

WHEREFORE, WHEREFORE, Plaintiffs in the the Ford Explorer Diminution in Value Actions resubmitsubmit that, at the time this Court assumes jurisdiction of their cases, a third trasubmit that, at the time ExplorerExplorer Diminution in Value Actions should Explorer Diminution in Value Actions should be incluproceedings, and request that at that time:

- \* thisthis Court appoint, for the Ford Explorer Dimithis Court appoint, for the Ford Explorer Din BoiesBoies of Boies, Schiller & Flexner LLP, and Theodore J.Boies of Boies, Schiller & Flexner LL LeoLeopold,Leopold, Frankel & Farmer, P.A., as co-lead counsel and (b) Henry Price of PriLeop Potter Jackson & Mellowitz, P.C., as liaison counsel;
- \*<sup>1</sup> inin order to integrate the Ford Explorer Diminution in Value Actions intoin order to integrate the Ford alreadyalready established for the tire-related cases, that the co-lead counsel for the Ford ExploreExplorerExplorer Diminution in Value Actions beauthorized to designate themselves Explo additionaladditional counseladditional counsel from the Ford Explorer Diminutionadditional cour members of themembers of the Executive Committee for MDL No. 1373, which would members of

expanded to include expanded to include four (4) representatives from expanded to include four (4) Value Actions; and

\* forfor each for each offor each of the other committees contemplated by the Court for MDLNo. 1373 be,be, in addition tobe, in addition to the two co-chairs to be appointed from the tire-relatedbe, in a andand tire-related personal injury/wrongful death cases,and tire-related personal injury/wrongful Explorer Diminution in Value Actions.

Dated: December 1, 2000

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I,I, Henry J. Price herebyl, Henry J. Price hereby certify that a true and correctl, Henry J. Price hereby cert

PlaintiffsPlaintiffs in Ford Explorer Diminution in Value Actions Plaintiffs in Ford Explorer Diminution in Value

waswas served via first class, United States was served via first class, United States mail,was served via first of

Service List last updated on November 30, 2000, this 1<sup>st</sup> day of December, 2000.

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# **INDEX OF EXHIBITS**

Exhibit A	Joint Submission of Ford Explorer Diminution in Value Actions in Response to Conditional Transfer Order (CT0-2)
Exhibit B	MDL Panel s October 24, 2000 Order
Exhibit C	Complaint in the <u>Grant</u> Ford Explorer Diminution in Value case, originally filed in the Middle District of Florida
Exhibit D	Judge Moreno s Pretrial Order No. 1 - Order Appointing Plaintiffs Counsel and Order Setting Initial Briefing Schedule