

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

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
RELATING TO ORGANIZATION AND STRUCTURE**

AsAs this Court is aware, the Judicial Panel oAs this Court is aware, the Judicial Panel on MuAs this
conditionallyconditionally transferredconditionally transferred to this Court, as part of MDL No. 1373, fiveconditi
relatedrelated to the diminution in value of the Ford Explorer related to the diminution in value of the Ford Explor
toto result from theto result from the cover-upto result from the cover-up by Ford Motor Co. (Ford), in concer
andand Bridgestone/Firestone Inc. (collectivelyand Bridgestone/Firestone Inc. (collectively Bridgestone/Fireston
ExplorerExplorer itself. These Ford 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 fromPlaintiffs from these Ford Explorer Diminution in Value ActionsPlaintiffs from these Ford
timetime because:time because: (a) on November 29, 2000, Plaintiffs filed with thetime because: (a) on Novembe
not oppose the transfer of the Ford Explorer Diminution in Value Actions to this Court as part of
MDLMDL No. 1373^{1/}; ; (b) Plai; (b) Plaintiffs also understand that no opposition to the transfer was filed by any
other party as of Novemberother party as of November 30, 2000, the deadline for filing such opposition withothe

^{1/} A copy of the notice filed on November 29, 2000, with the Judicial Panel on
Multidistrict Litigation is attached hereto as Exhibit A.

and that (c) Plaintiffs understand that the MDL Panel there-
by certified mail, that the Ford Explorer Diminution by certified mail, that the Ford Explo-
to this Court's jurisdiction. Accordingly, in the near future (and possibly before to this Court's jurisdiction. A
2000 hearing before this Court) it is expected that these cases will be transferred
of these proceedings.

Plaintiffs from the Ford Explorer Diminution in Value Actions also address Plaintiffs from the For-
time to seek to ensure that their interests are appropriately protected
particular, in light of this Court's particular, in light of this Court's
counsel for the (a) class action cases and (b) personal injury/wrong-
Firestone tires and tire recall issues, that have previously been
Court as part of MDL No. 1373.

While it is clear that there will be substantial overlapping discovery
Diminution in Value Actions and the Firestone
cases, it is also plain that the Ford Explorer Diminution
distinctly different from and potentially in conflict with claims asserted
focused cases:

*□ As expressly set forth by the MAs expressly set forth for
injury/wrongful death cases previously transferred to
defects in certain tires manufactured by
Order of October 24, 2000, MDL No. 1373 at 2 (emphasis added)^{2/} Those case

^{2/} A copy of the MDL Panel's October 24, 2000 order is attached hereto as Exhibit
B.

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

* □ By contrast, the Ford Explorer Diminution in Value Actions By contrast, the Ford Explorer Dimi
owners and lessees of Ford Explorers (whether owners and lessees of Fo
tires) that Ford, in concert with Bridgestone and Bridgestone/Firestone, caustires) that
diminution in value of the Ford Explorer itself by fraudulent
defect and other defects inherent in the Ford Explorer itself.

* □ The distinct nature of the Ford Explorer Diminution The distinct nature of the Ford Explorer Dim
upon a comparison of the definitions of the putative classes repre
initially transferred to this Court in MDL No. 1373 and those in the For initially transferre
Diminution in Value Actions. For example, the propo
action originally transferred to this Court is composed of [a]ll p
who now own, or owned as of August 9, 2000, Fireston
and other comparably designed Firestone steel-belted
By contrast, in the Ford Explorer Diminution in Value Actions, the F
are comprised of all residents of the United States
employees of Ford and/or Bridgestone/Firestone, who purchased, employees of
new or used Ford Explorers at any time during the period

and who either continue to own or lease such vehicles or who sold, transferred and who either continue to own or lease such vehicles or who sold, transferred or otherwise disposed of those vehicles. Grant Complaint ¶¶ 127, 128.^{3/}

* □ Although the Ford Explorer Diminution in Value Although the Ford Explorer Diminution in Value Although the Ford Explorer Diminution in Value is a concerted scheme involving Ford Explorer vehicles whether or not equipped with Bridgestone/Firestone tires which vehicles were inherently dangerous in their design and operation due to instability and enhanced rollover risks even when the vehicle's tires remain intact. As a result, the Ford Explorer Diminution in Value Actions are not focused upon the manufacture, design and safety of the Ford Explorer itself.

Indeed, a significant potential for conflict exists between the interests of those involved in the tire-related actions who in order to achieve financial recovery of their clients will likely seek to emphasize the issue, and the interests, on the other hand, of those owners and lessees, who will focus upon the Ford Explorer.

For all of these reasons, the Ford Explorer Diminution in Value plaintiffs submit that it will be critical and, indeed, imperative to establish a subcommittee of counsel, liaison counsel and executive committee members, as well as an opportunity for meaningful

^{3/} A copy of the Complaint in the Grant 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 Ford Explorer Diminution in Value Actions, this Court has already established using the terms of the Manual for Complex Litigation separate tracks within MDL No. 1373 for: (a) tire-related class actions; and (b) tire-related personal injury/wrongful death claims, it is respectfully submitted that in the proceedings for such cases. At that time, it is respectfully requested that:

- * □ This Court appoint, for the Ford Explorer Diminution in Value Actions, Boies of Boies, Schiller & Flexner LLP, and Theodore J. Leopold, Leopold, Frankel & Farmer, P.A., as co-lead counsel and (b) Henry Pric Potter Jackson & Mellowitz, P.C., as liaison counsel;^{4/}
- * □ In order to integrate the Ford Explorer Diminution in Value Actions into their order to integrate the Ford Explorer Diminution in Value Actions already established for the tire-related cases, the co-lead counsel for the Ford Explorer Diminution in Value Actions to themselves, two additional counsel from the Ford Explorer Diminution in Value Actions to serve as members of the Executive Committee would be expanded to include representatives from the Ford Explorer Diminution in Value Actions; and
- * □ For 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

^{4/} We wish to be clear that the request for appointment 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 Grant case.

actions and actions and tire-related personal injury/wrongful death cases, a third track within that framework will allow for efficient coordination of overlapping discovery and other pre-trial activity while protecting the distinct and unique interests of these distinct classes of plaintiffs. As proposed, such classes are distinct from and such classes seek tire-related relief, expanded recalls, or any of the other solely tire-related relief sought by these distinct classes. Rather, the plaintiffs in the Ford Explorer Diminution in Value Action seek monetary damages for all class members who own(ed) or lease(d) a Ford Explorer Diminution in Value Action focused classes. Without a separate track, such classes cannot be adequately protected. Of course, such a structure d

Plaintiffs and their counsel in the Ford Explorer Diminution in Value Action to cooperate fully with counsel for the tire-related cases within that framework will allow for efficient coordination of overlapping discovery and other pre-trial activity while protecting the distinct and unique interests of these distinct classes of plaintiffs. As proposed, such classes are distinct from and such classes seek tire-related relief, expanded recalls, or any of the other solely tire-related relief sought by these distinct classes. Rather, the plaintiffs in the Ford Explorer Diminution in Value Action seek monetary damages for all class members who own(ed) or lease(d) a Ford Explorer Diminution in Value Action focused classes. Without a separate track, such classes cannot be adequately protected. Of course, such a structure d

Merely appointing a separate committee for the Ford Explorer Diminution in Value Action as suggested in the recent submission by the tire-related lead counsel. However, the tire-related classes are distinct from and such classes seek tire-related relief, expanded recalls, or any of the other solely tire-related relief sought by these distinct classes. Rather, the plaintiffs in the Ford Explorer Diminution in Value Action seek monetary damages for all class members who own(ed) or lease(d) a Ford Explorer Diminution in Value Action focused classes. Without a separate track, such classes cannot be adequately protected. Of course, such a structure d

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 whetherand form
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 i
previouslypreviously been fraudulentlypreviously been fraudulently concealed. Four subsequently-filed federal sui
GrantGrant and Lill suit, the FordGrant and Lill suit, the Ford Explorer DiminutionGrant and Lill suit, the Ford
similar relief.^{5/}

WeWe understand that the MDL Panel immediately will beWe understand that the MDL Panel immediatel
thatthat it now has formal jurisdiction, as part of 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
November 30, 2000 deadline, no other parties had filed opposition to such transfer.

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

^{5/} 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

As expressly set forth in the MDL Panel Order, the actions in MDL No. 1373, all of those cases originally transferred are based on allegations that Firestone and, in most instances, Ford harm or risk of harm caused by defective tires. *Id.* (emphasis added).

Indeed, a review of the complaints in the cases previously transferred to this Court confirms that such cases are clearly of value of certain Firestone tires. Those cases do not address the inherent defects of Ford Explorers which are the foundation for the claims in *Grant* and the other Ford Diminution in Value Actions. Moreover, although the tire-focused cases before this Court assert claims under certain statutes or common law, the factual predicate for such claims and the relief sought legal theories arise from and relate to Firestone tires and tire recall issues.

This fact is well illustrated by the complaint in *Gustafson, et al. v. Bridgestone/Firestone, Inc.*, No. IP00-C-5025-B/S (previously Civil Action No. 00-22,22,2000, for the tire-related class cases. The *Gustafson*

^{6/} 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.

all such Tires and must disgorge, for the benefit of the all such Tires and must disgorge, for the benefit of received from the sale of the Tires. Gustafson, Prayer for Relief at ¶¶ 2 to 5.^{8/}

By contrast, the Ford Explorer Diminution in Value Actions discuss a scheme involving Ford and Bridgestone/Firestone, that scheme involving Ford and Bridgestone/Firestone marketing of Ford Explorer vehicles whether or not it was marketing of Ford Explorer vehicles which vehicles were inherently dangerous in their design and operation due to enhanced rollover risks even when the vehicle's tires remain intact by fraudulently concealing the rollover defect and other defects in concert with Bridgestone/Firestone, caused a diminution in value of Ford Explorers (whether or not ever equipped with Firestone tires) by fraudulently concealing the rollover defect and other defects in concert with Bridgestone/Firestone.

Although the Ford Explorer Diminution in Value Actions discuss a scheme involving Ford and Bridgestone/Firestone, that scheme involving Ford and Bridgestone/Firestone marketing of Ford Explorer vehicles whether or not it was marketing of Ford Explorer vehicles which vehicles were inherently dangerous in their design and operation due to enhanced rollover risks even when the vehicle's tires remain intact by fraudulently concealing the rollover defect and other defects in concert with Bridgestone/Firestone, caused a diminution in value of Ford Explorers (whether or not ever equipped with Firestone tires) by fraudulently concealing the rollover defect and other defects in concert with Bridgestone/Firestone.

^{8/} 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. E.g., Baugh-Seawright, *supra* pp. 77-79 (seeking wide array of equitable and legal relief including tire recall, disgorgement of profits, compensatory and punitive damages); Fidan 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); Knapp, *supra* at p. 9 (seeking injunction against sale of defective tires as well as actual and punitive damages for defective tires); Rice Complaint, No. ___ (previously (C.A. No. 300-0884 M.D. Tenn.)) (seeking damages for class members who suffered tire blowouts).

^{9/} 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 vehicles 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, *inter alia*, 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 as which were initially transferred as part of MDL which were initially transferred
Actions Actions are not focused upon the manufacture, use and/or recall of Actions are not focused upon the manu
safety of the *Ford Explorer itself*.

These These Ford Explorer Diminution in Value Actions specifically and These Ford Explorer Diminution
defendants coordinated pattern defendants coordinated pattern of deceit misled millions of consumers to purch
Explorers Explorers at prices in excess of the values which properly would Explorers at prices in excess of the values
had had these dangers been disclosed, and left millions of had these dangers been disclosed, and left millions of
of of substantially diminished value solely as a result of of substantially diminished value solely as a result of defenda
Grant Complaint at ¶ Complaint at ¶ 1.^{10/} Thus, unlike the tire-related cases Thus, unlike the tire-related cases i
Ford Ford Explorer Diminution Ford Explorer Diminution in Value Ford Explorer Diminution in Value Actions see
Explorers Explorers owned or leased by [the named Explorers owned or leased by [the named plaintiff(s) and plain
paid paid by [the paid by [the named plaintiff(s) and plaintiff class] to purchase or paid by [the named plaintiff(s) and p
true value. Exhibit C, Grant Complaint at Prayer for Relief. This Complaint at Prayer for Relief. This diminut
attributable 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 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 re comparison of the definitions o
transferred transferred to this Court in MDL No. 1373 and those in the For transferred to this Court in MDL N
Actions. Actions. For Actions. For e Actions. For example, the proposed class in Gustafson is composed of [a]

requested in the Ford Explorer Diminution in Value Actions.

^{10/} The Grant Complaint is attached hereto as Exhibit C as a representative example
of the Ford Explorer Diminution in Value Actions.

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

By contrast, the classes represented in the Ford Explorer Diminution in Value Actions focus upon the Ford Explorer vehicles such vehicles may have been equipped at some point in time. ¶¶ 127, 128 (certification is sought for classes composed of all residents of the United States other than directors, officers or employees of Ford and/or Bridgestone/Firestone, who purchased, owned, or leased new or used Ford Explorers at any time during the period who either continue to own or lease such vehicles). Thus, the criteria for membership in the proposed plaintiff classes in the Ford Explorer Diminution in Value Actions are totally different from the criteria for membership in the putative tire-related classes initially transferred in MDL No. 1373.

Further, while the tire-related cases previously transferred in MDL No. 1373 reimburse consumers for costs associated with defective Bridgestone/Firestone tires on a variety of vehicles including, but not limited to, Ford Explorers those cases (whether

personal injury/wrongful death cases) are not designed to Explorer itself. In fact, at this time, the overwhelming majority Explorer itself. In fact, at this time, the o never have been equipped with the defective Bridgestone/Firestone tires at issue in the initially-transferred tire-focused cases. Nevertheless, such vehicles are now of diminished value as a result of the defendants' fraudulent scheme. Thus, the vehicles and not of the defendants' fraudulent scheme. Thus, lie at the heart of the class definitions in the Ford Explorer Diminution in Value Actions.

II. The Distinct Interests, Classes and Issues in the Ford Explorer Diminution in Value Actions Warrant a Separate Track for Pretrial Proceedings Relating to Such Claims

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

Indeed, a real potential for conflict exists between the individuals involved in the tire-related actions who, in order to serve the best financial recovery of their clients, will likely seek financial recovery at issue, and the interests, on the other hand, of those seeking to maximize relief at issue, and the owners and lessees by focusing upon and accentuating the dangers inherent in Explorer.

Counsel in the Ford Explorer Diminution of Value Actions and any counsel for the tire class action cases will be able to

Diminution in Value Actions. Diminution in Value Actions. Thus, in addition to the existing tracks Court on November 22, 2000, for the tire-related class actions Court on November 22, 2000, for the tire-related cases, there could be added an additional track for the Ford Explorer cases, there could be added an additional track for the Ford Explorer Diminution in Value Actions. The Ford Explorer Diminution in Value Actions would have the same executive committee members, and co-chairs and members as the other Diminution in Value Actions tracks established by the Court.^{11/}

The viability of a structure with more than one track was recently confirmed by the successful implementation of such an arrangement in the Managed Care Litigation proceedings before Judge Moreno in the Southern District of Florida. See In re Hurricane Katrina Managed Care Litigation, MDL No. 133, MDL No. 1334 (S.D. Fla.), Pretrial Proceedings, Plaintiffs' Counsel and Order Setting Initial Briefing Schedule (June 13, 2000) (A copy of Judge Moreno's Order is attached hereto as Exhibit D.)

The Managed Care Litigation bears substantial similarity to the present proceedings in a number of respects. In particular, like the present proceedings and Ford Explorer-related design defect cases may be addressed in the Managed Care Litigation also involves two quite different groups of plaintiffs: (1) subscribers or health plan participants who assert claims relating to health care services covered by a particular managed care plan and (2) providers whose claims relate to the oversight and direction of their activities and reimbursement.

^{11/} 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. See, e.g., In re Multi-Piece Rim Products Liability Litigation, 464 F. Supp. 969, 974 (J.P.M.L. 1979).

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

As this Court's initial structure recognizes, counsel in a multi-track arrangement As this Court's initial structure expected to work closely with their counterpart(s) in the other track. Westinghouse Elec. Corp. Employment Discrimination Litigation (1977); In re Scotch Whiskey, 299 F. Supp. 543, 544 (J.P.M.L. 1969).^{12/} Additionally, all parties' interests in minimizing costs should assure that the specter of unnecessary or motion practice will not materialize.

In sum, once this Court receives formal notice that it has jurisdiction over the Forfeiture Diminution in Value Actions, establishing a third track already designated by this Court will allow the interests of the already designated in Value class members to be vigorously and adequately represented in Value class members 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

^{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.

expanded to include expanded to include four (4) representatives from expanded to include four (4)

Value Actions; and

*□ for for each for each of the other committees contemplated by the Court for MDL No. 1373

be, be, in addition to be, in addition to the two co-chairs to be appointed from the tire-related be, in a

and and 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, Henry J. Price hereby certify that a true and correct copy of the above captioned lawsuit was served via first class, United States mail, was served via first class, United States mail, Service List last updated on November 30, 2000, this 1st 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 Grant 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