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# CONSUMER NEWS

*Michelle C. Liffick*

## **The Biggest Products Liability Disaster in Years**

In August of this year, after an investigation by the National Highway Traffic Safety Commission ("NHTSA") linking tires made by Firestone to at least 21 deaths in the United States, Bridgestone/Firestone recalled 6.5 million of its tires.<sup>1</sup> The recall includes "all tires size P235/75R15 ATX, ATX II tires and all Wilderness AT tires produced at [Firestone's] Decatur, Ill., plant."<sup>2</sup> The NHTSA has received consumer complaints about the ATX, ATX II, and Wilderness tires, found on sport utility vehicles, for over ten years.<sup>3</sup>

Consumers have complained that "the tread on the tires peeled off while the vehicles were in motion, at times leading to injury or death when drivers lost control and the vehicle rolled over, according to Firestone critics and lawsuits filed against the company."<sup>4</sup> The tire manufacturer, amidst all the commotion, has "steadfastly maintained [that] poor tire maintenance, insufficient air pressure and excessive road wear can lead to problems in any tire."<sup>5</sup> Auto manufacturers including Ford, GM, Toyota, Subaru, and Nissan have used these tires as original equipment for several years.<sup>6</sup> However, Ford Motor Company is involved in the investigation because ATX and Wilderness tires on the Ford Explorer "account for many of the accidents reported."<sup>7</sup>

These "[t]ire failures and rollovers involving Bridgestone/Firestone and the Ford Motor Company have emerged as the biggest product liability controversy

in years . . . .”<sup>8</sup> A class action lawsuit was filed in the Chancery Court of Davidson County, Tennessee, on August 10, 2000.<sup>9</sup> The class complaint “charges Firestone with breach of implied warranty of merchantability and related claims in connection with defective products manufactured and sold by Firestone and issued as standard equipment in new vehicles, including the Ford Explorer, the [U.S.’s] top-selling sport utility vehicle.”<sup>10</sup> This action “seeks to compensate those individuals who purchased tires to replace the [d]efective [t]ires.”<sup>11</sup> Thirty-five civil lawsuits against Bridgestone/Firestone and Ford have been or are being filed by Venezuelan plaintiffs in the Florida federal courts.<sup>12</sup> According to a consumer group and the Venezuelan government, “[t]read separation, blowouts and rollover crashes involving vehicles with Firestone tires have been linked to [at least] 46 deaths in Venezuela.”<sup>13</sup> With the goal of forcing Firestone to widen its recall to include more of its tires, “[t]he Center for Auto Safety filed a suit at the U.S. District Court in Washington D.C.”<sup>14</sup> In addition, “[t]he state of Florida has issued subpoenas against Bridgestone/Firestone and Ford Motor Co., as part of a civil racketeering investigation launched by the state attorney general’s office.”<sup>15</sup>

According to officials, Florida’s “theory is that [Firestone] probably knew that some of this stuff was not right, and [Florida] wants to determine what it is they knew and when they knew it.”<sup>16</sup> Bridgestone/Firestone executives, “[i]n sworn testimony and public statements,” have maintained that “the company wasn’t aware of potentially fatal tread-separation problems until July, just before the Aug. 9 recall of 6.5 million ATX and Wilderness AT tires.”<sup>17</sup> However, “Bridgestone/Firestone internal documents, submitted as part of four congressional hearings and [the] safety investigation by the [NHTSA], show concern within the company for years.”<sup>18</sup> According to these documents, “Bridgestone/Firestone was tracking problems with its Firestone ATX tires as

long ago as 1994 . . .” and “a recently retired Bridgestone/Firestone official [swore] in a lawsuit deposition that top executives, including the CEO, were discussing the matter at quarterly meetings, at least since 1997.”<sup>19</sup>

According to the recall announcement made on August 9, 2000, the recall will be completed in three phases and will take more than a year to complete.<sup>20</sup> The first phase will involve recalls in “California, Arizona, Florida and Texas; the second phase extends the recall to Alabama, Georgia, Louisiana, Mississippi, Nevada Oklahoma and Tennessee; and the final phase involves tires in the remaining states.”<sup>21</sup> In addition, “Bridgestone/Firestone, Inc., will commence a ‘bounty program’ designed to remove used recalled tires from the inventories of all used tire dealers. . . .”<sup>22</sup> Under this program, “any person who returns used recalled tires by following the Bridgestone/Firestone return program will receive \$10 per tire.”<sup>23</sup>

Suits by consumers and governmental agencies regarding these Firestone tires will, without a doubt, occupy the courts for years. Whether these ATX and Wilderness tires are defective remains to be resolved. In addition, the question of whether Firestone was aware of the possible defects in its tires will be decided. Either way, Ford and Firestone and their customers will be dealing with the biggest products liability disaster in years for years to come.

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## Endnotes

1. *Continental General Tire May Have Understated Failures, Report Says*, L.A. TIMES, October 4, 2000, at C4; *U.S. to Investigate 21 Deaths Tied to Tires on Sport Utilities*, N.Y. TIMES, August 3, 2000, at C7.

2. Travis Poling, *Ford Tells Dealers to Bypass Firestone Tires; Amid Recall, Company Set to Offer Other Makers*, SAN ANTONIO EXPRESS-NEWS, August 12, 2000, Sec. A, at 1A.

3. *U.S. to Investigate 21 Deaths Tied to Tires on Sport Utilities*, N.Y. TIMES, August 3, 2000, at C7.
4. Travis Poling, *supra* note 2.
5. *Id.*
6. *U.S. to Investigate 21 Deaths Tied to Tires on Sport Utilities*, N.Y. TIMES, August 3, 2000, at C7.
7. *Id.*
8. Larry Rohter, *Low-Profile Consumer Protection*, N.Y. TIMES, September 8, 2000, at C5.
9. *Law Offices of Bernard M. Gross, P.C. Announces Class Action Suit Against Bridgestone-Firestone, Inc.*, BUS. WIRE, August 11, 2000.
10. *Id.*
11. *Id.*
12. *Continental General Tire May Have Understated Failures, Report Says*, L.A. TIMES, October 4, 2000, at C4.
13. *Id.*
14. *U.S. NHTSA Assessing Whether Bridgestone/Firestone Tire Recall is Sufficient*, AFEXUR. FOCUS, August 24, 2000.
15. Ina Paiva Cordle, *Florida Launches Civil Racketeering Inquiry of Firestone*, MIAMI HERALD, August 30, 2000.
16. Ina Paiva Cordle, *Florida Launches Civil Racketeering Inquiry of Firestone*, MIAMI HERALD, August 30, 2000 (Comment by Keith Vanden Dooren, assistant attorney general in Tallahassee, Florida.)
17. James Healey, *Documents Imply Firestone Knew of Tire Trouble in 94; Also, Testimony Shows Execs Talked of Problems in 97*, USA TODAY, October 4, 2000, at 1B.
18. *Id.*
19. *Id.*

20. *supra* note 9.

21. *Id.*

22. *AG's Office Announces Recalled Tire Bounty*, BUS. WIRE, September 21, 2000 (Comment by Attorney General Christine Gregoire).

23. *Id.*

