

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

**IN RE BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-9373-C B/S
ATX, ATX II and WILDERNESS TIRES) MDL Docket No. 1373
PRODUCTS LIABILITY LITIGATION)**

THIS DOCUMENT RELATES TO ALL ACTIONS

ORDER REGARDING DOCUMENT PRODUCTION

The Court has referred to the magistrate judge the issues of the manner in which the defendants shall produce documents during the course of discovery in this action and the manner in which the defendants shall preserve electronic data for possible future discovery. The parties have presented their arguments to the magistrate judge in written form and at a discovery conference on March 8, 2001. The parties reported at the conference that the plaintiffs and defendant Bridgestone/Firestone, Inc., (“Firestone”) had reached an agreement regarding Firestone’s document production; this agreement is memorialized in a separate Order. While defendant Bridgestone Corporation did not participate in the conference, by a submission dated February 12, 2001, Bridgestone indicated its intention to follow a document production protocol substantially similar to that followed by Firestone.

The parties were given additional time to arrive at an amicable resolution of the remaining disputes. The plaintiffs and Firestone have reported success in the area of electronic data preservation; their agreement is set forth in a separate Order. However, Ford and the plaintiffs were unable to reach an agreement regarding either Ford’s document production or electronic data preservation. The latter issue is addressed by separate Order. As to Ford’s document production, the magistrate judge, being duly advised, **ORDERS** the following:

1(a). Ford shall respond to each document request with a list of all responsive documents, identified by Bates number;

OR

1(b). Ford shall provide plaintiffs with a readily-printable and word-searchable index of each document which is contained in the electronic document depository. The index shall identify the following for each document:

1. The author(s) of the document;
2. The recipient(s) of the document;
3. The date the document was created;
4. The individual(s) in whose file the document was kept;
5. The Ford file (paper or electronic) from which the document was produced (the file in which the document was kept in the ordinary course of business, not a file into which it was placed for litigation production purposes);
6. The department in which the document was kept in the ordinary course of business;
7. A general description of the document (e.g. "e-mail correspondence"; "test data"); and
8. The category to which the document belongs. To that end, by **April 1, 2001**, the parties shall confer and develop a list of specific categories of documents which will aid the plaintiffs in reviewing and organizing the documents contained on the electronic document depository. Obviously, some documents will not fit into any pre-identified category; such

documents shall be categorized as "miscellaneous," and the description of such documents shall be detailed enough to permit the plaintiffs to determine whether it is relevant to any of its document requests (e.g. "email correspondence" would not be sufficient; "email correspondence re: Explorer tire size" would be required).

This index shall be completed by the date Ford's responses to plaintiffs' document requests are due. In recognition of the volume of the plaintiffs' responses, the magistrate judge grants Ford an automatic 30-day extension of that deadline, so that Ford's responses are due 60 days from the date the requests were served, unless otherwise agreed by the parties.

The magistrate judge recognizes that each of these options imposes a significant burden upon Ford to examine and assess each document in the electronic document depository. However, the very nature of this litigation will impose significant discovery burdens upon all parties at various times. Here, Ford already has taken the initiative to amass hundreds of thousands of documents, both paper and electronic, and place them into the electronic document depository. While the magistrate judge commends Ford for this effort, the fact remains that the creation of the electronic document depository does not satisfy Ford's obligations under the Federal Rules of Civil Procedure to respond to the plaintiffs' document requests.

Ford's proposal is that the plaintiffs use the electronic document depository's search function to search for and identify responsive documents. This process seems entirely reasonable and appropriate, in theory. In practice, however, there is no way that the plaintiffs could have any degree of certainty that the searches they devise actually retrieve all relevant documents, for several reasons. First, it is the magistrate judge's understanding that the word search technology is not

100% accurate; for example, handwritten words and documents which did not scan clearly may not be included in search results. Second, the subject of this litigation is such that abbreviations are commonplace, as are company-specific code words. For example, the magistrate judge easily can imagine the plaintiffs attempting to search for documents related to reported problems with tires by searching for the words "tread separation," "blow-out," "b/o," "b-o," "flat," "tire incident," "tire accident," -- the possibilities are virtually endless, and the plaintiffs would have no way of knowing whether they had developed a complete list of all interchangeable terms in any given situation. Finally, once the plaintiffs obtained a mass of documents in response to a search, they would have to review those documents outside of any organizational or analytical framework. They would have no knowledge of how individual documents, authors, or recipients were related; they may not even know within which department of Ford a particular document originated.

In contrast, Ford has the advantage of "insider" knowledge. As onerous as the burden of responding to each document request or indexing each document may be from Ford's perspective, it is far less burdensome than the alternative offered by Ford is to the plaintiffs. The impact of this order is to impose upon Ford the burden of finding responsive documents rather than to impose that burden upon the plaintiffs, a burden which the magistrate judge firmly believes is required by the Federal Rules of Civil Procedure and the interests of justice.

In addition to complying with one of the alternatives set forth above:

2. The batch printing function within the electronic document depository shall be fully functional by **April 16, 2001**;
3. The electronic document depository must permit each document to be retrieved by Bates number;

4. Ford shall make CD ROMs available for purchase by the plaintiffs. The CD ROMs shall contain all of the documents contained in the electronic document depository and, if Ford chooses alternative 1(b) above, the index, as of the date Ford's responses to the plaintiffs' document requests are due. Supplemental CD ROMs with documents added to the electronic document depository shall be made available as necessary.¹ The CD ROMs shall permit the user to retrieve each document by Bates number and to print each document and the index.
5. The plaintiffs are concerned that the electronic document depository is housed by a vendor who is paid by Ford. The magistrate judge believes that Ford's assurance that it will not have access to any information regarding searches performed on the electronic document depository is sufficient to eliminate this concern. However, the magistrate judge also believes that the plaintiffs should be permitted to establish their own electronic document depository, independent of Ford's, if they wish to do so. Any such depository shall be at the plaintiffs' expense. To that end, Ford shall give its vendor permission to allow the vendor to work with the plaintiffs to develop their own electronic document depository using the data contained in Ford's depository.

¹If Ford chooses alternative 1(b), each supplemental CD ROM shall contain its own index of the documents contained on it.

6. The plaintiffs' request that Ford be required to provide a hard copy of each document to the plaintiffs is **DENIED**, except to the extent that Ford shall provide a copy of any document which is illegible as scanned into the electronic document depository.

ENTERED this _____ day of March 2001.

V. Sue Shields
United States Magistrate Judge
Southern District of Indiana

Distribution to Liaison Counsel for all parties