

**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 NO. 1373
PRODUCTS LIABILITY LITIGATION)	
_____)	
THIS DOCUMENT RELATES TO ALL)	
ACTIONS)	

**ENTRY ON PLAINTIFFS’ MOTION TO COMPEL PRODUCTION OF
ELECTRONIC ADJUSTMENT DATA**

This cause is before the magistrate judge on the plaintiffs’ Motion to Compel Production of Electronic Adjustment Data. The motion is fully briefed, and the magistrate judge, being duly advised, **GRANTS** the plaintiffs’ motion for the reasons and to the extent set forth below.

At issue in the instant motion is to what extent the plaintiffs are entitled to discover the “adjustment data” Firestone has maintained regarding its tires in the regular course of business. As Firestone has explained:

A warranty “adjustment” occurs when a customer brings his or her vehicle to a tire retailer asking for a new replacement tire under the terms of the Firestone written tire warranty. The reasons for the customer’s dissatisfaction might range from cosmetic appearance to unpleasing road noise to in-service failure. A retailer “adjusts” the tire by providing the customer with either a new replacement tire or by offering a discount on the customer’s purchase of a new replacement tire. . . . Firestone records warranty adjustment information, using adjustment codes to indicate the reasons for the warranty replacement. This data is collected and then maintained in computer databases, and the effort involved in gathering, organizing, storing, and accessing the data come only with the annual expenditure of thousands of person-hours and considerable financial investment.

Declaration of James D. Gardner at ¶ 5, Exhibit F to Firestone’s Brief in Opposition to Plaintiffs’ Motion to Compel Production of Electronic Adjustment Data. Firestone uses this adjustment data for many purposes, including monitoring the rates of problems its customers experience with each

model of tire in order to determine whether a particular model has a defect which may require a recall or other action. For example, Firestone has pointed to its adjustment data to support its position that it is not necessary to recall any of its tire models beyond those which have already been recalled. See September 2, 2000, Statement by Christine Karbowskiak, Exhibit A to Plaintiffs' Reply Brief in Support of Plaintiffs' Motion to Compel Production of Electronic Adjustment Data. The adjustment data is treated by Firestone as highly confidential, for the reason that if its competitors had access to the information they could target actual or perceived problems with Firestone's tires when they design and market competing tires.

The parties have resolved much of their initial dispute regarding the plaintiffs' discovery of adjustment data. Firestone agreed to provide, by May 18, 2001,¹ "electronic adjustment data from Firestone's U.S./Canada adjustment database relating to 15 and 16 inch ATX and Wilderness AT tires, the H-rated P255/70R16 Wilderness HT tire, and the P255/70R16 special service tire, as well as tires that are common green to those tires," for the codes² plaintiffs have identified as relevant and in the form plaintiffs have requested. Firestone's Response to Plaintiffs' Supplemental Request for Production at 7. The dispute that remains is whether the plaintiffs are entitled to "comparative adjustment data" -- that is, adjustment data regarding models of tires which are not at issue in this litigation, which the plaintiffs wish to evaluate and compare to the adjustment data for the tires at issue to test, *inter alia*, the accuracy of Firestone's assertion that the difference in the

¹The magistrate judge assumes that this information was provided as promised.

²Each adjusted tire is assigned a code to indicate the problem about which the customer complained; the plaintiffs have identified those codes which they believe are relevant to the tread or belt separation problem at issue in this litigation, and the defendants, while not conceding the relevance of all of the codes identified by plaintiffs, have agreed to provide information regarding each of those codes.

tread or belt separation rates between the two groups does not warrant a wider recall. Firestone has agreed to provide the plaintiffs with “a spreadsheet including the aggregate adjustment rate for each of the seventeen adjustment codes [plaintiffs] requested . . . for the ten largest populations of Firestone P-metric tires used on light trucks and SUV’s other than the ATX and Wilderness tire lines.” This, Firestone argues, “would be more than adequate to make a comparison of the adjustment performance of those tires and the tires in issue, without putting the confidentiality of Firestone’s adjustment database at risk unnecessarily.” Letter from Colin Smith dated April 18, 2001, at ¶ 8, Exhibit A to Firestone’s Brief in Opposition to Plaintiffs’ Motion to Compel Production of Electronic Adjustment Data. The plaintiffs find this unacceptable, and seek to discover the same underlying data for the comparison tires that they have for the tires at issue, rather than simply an aggregate adjustment rate compiled by Firestone.

The magistrate judge agrees with the plaintiffs that they are entitled to discover the underlying, item-by-item comparison adjustment data, not just the aggregate adjustment rates. The information clearly is relevant to this litigation, in that it will permit the plaintiffs to evaluate, *inter alia*, the accuracy of claims made by Firestone to explain its position regarding expanding the recall to include other models of tires. The plaintiffs should not be required to rely upon the aggregate adjustment rates compiled by Firestone, but instead are entitled to perform their own evaluation of the underlying data from which Firestone arrived at its aggregate rates. As Firestone’s own engineer, Virginia Gregory-Kocaj, compared the adjustment data for the tires at issue in this litigation with “all other Firestone radial passenger tires in the 15, 16, and 17 inch rim

size . . . from January 1994³ through December 2000,”⁴ Declaration of Virginia Gregory-Kocaj at ¶ 10, Exhibit C to Plaintiffs’ Reply Brief in Support of Plaintiffs’ Motion to Compel Production of Electronic Adjustment Data, it is not unreasonable for the plaintiffs to want to make the same comparison. Accordingly, plaintiffs are entitled to discover the same information, in the same format, for that comparison group of tires which Firestone has agreed to provide for the tires at issue in this case.

Firestone shall begin taking the necessary steps to provide this information to plaintiffs immediately, and shall be prepared to report during the May 31, 2001, telephonic conference by what date it will be able to provide the information to the plaintiffs. The magistrate judge understands Firestone’s concerns regarding the proprietary nature of this information, but is confident that the Confidentiality Order in place in this case, coupled with the parties’ agreement that the information “will not be provided to any consultant who has a current relationship with any American tire or vehicle manufacturer,” Letter from Colin Smith dated April 18, 2001, at ¶ 6, Exhibit A to Firestone’s Brief in Opposition to Plaintiffs’ Motion to Compel Production of Electronic Adjustment Data, is sufficient to protect Firestone’s interests. All parties are admonished that the Court will not tolerate any improper disclosure of this or any other confidential information.

³The Wilderness AT line was introduced in 1994.

⁴The magistrate judge understands that Ms. Gregory-Kocaj was comparing aggregate rate information, not the underlying data; again, however, the plaintiffs are entitled to perform their own analysis to determine whether the aggregate rate information is correct.

ENTERED this _____ day of May 2001.

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

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