

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

**In re: BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-9373-C-B/S
TIRES PRODUCTS LIABILITY LITIGATION) MDL NO. 1373**
_____)
**THIS DOCUMENT RELATES TO ALL)
ACTIONS)**

SECOND ENTRY REGARDING PLAINTIFFS' EXPERT KEN PEARL

The parties appeared, by counsel, this date for a telephonic conference to discuss defendant Firestone's concerns regarding the recent deposition testimony of plaintiffs' tire expert, Ken Pearl. Specifically, Mr. Pearl testified that he has been performing work for a competitor of Firestone while acting as an expert in this MDL, something which Firestone believes violates the magistrate judge's Entry Regarding Plaintiffs' Expert Ken Pearl, dated June 15, 2001. The magistrate judge agrees with Firestone that Mr. Pearl's work for a tire company violates both the letter and the intent of the June 15, 2001, Entry. The plaintiffs' position that paragraph 2 of that Entry¹ permits Mr. Pearl to conduct forensic examinations of failed tires for tire companies during the pendency of this MDL is belied by paragraph 1 of the Entry, which states:

1. For the pendency of this litigation, Mr. Pearl shall not perform any work for or have any relationship with any tire company; provided that if Mr. Pearl's services as an expert for the plaintiffs in this MDL proceeding are terminated prior to the

¹Paragraph 2 reads:

2. Until June 1, 2004, the only work Mr. Pearl may perform for any tire company is the forensic examination of failed tires to determine the cause of the failure. His work may not include any statistical analysis and may not in any way involve the adjustment data of any tire company. This requirement will not be subject to modification by the court.

end of this litigation (as defined in footnote 1 herein), Mr. Pearl may ask this court, in its discretion, to relieve him from this requirement.

If paragraph 2 were interpreted as urged by the plaintiffs, it would render paragraph 1 meaningless. Rather, paragraph 2 clearly is intended to add an *additional* restriction on Mr. Pearl's activities, beyond that set forth in paragraph 1. While paragraph 1 addresses Mr. Pearl's activities during the pendency of this litigation (as defined in the Entry), paragraph 2 addresses his activities between the termination of this litigation and June 1, 2004.

The restrictions set forth in the June 15, 2001, Entry were carefully crafted to address Firestone's legitimate desire to minimize the risk that its sensitive business information would fall into the hands of its competitors, while at the same time protecting the plaintiffs' interests in using the expert of their choice in this case as well as recognizing Mr. Pearl's interests in earning a living. The magistrate judge regrets if any perceived ambiguity in the June 15, 2001, Entry misled Mr. Pearl regarding the conditions to which he agreed; however, those conditions remain what they are, and, by the clear terms of the Entry, are not subject to revision.

Firestone quite reasonably does not seek an order disqualifying Mr. Pearl from serving as plaintiffs' expert in this case; nor does it seek an order requiring Mr. Pearl to extricate himself from any on-going work he is performing for other tire companies. Rather, Firestone merely asks for an order reiterating Mr. Pearl's obligations under the June 15, 2001, Entry and requiring that he abide by those obligations from this date forward. Accordingly, the magistrate judge

ORDERS that **within 7 calendar days of the date of this Entry** Mr. Pearl shall file an affidavit that:

1. sets forth in detail all instances since June 15, 2001, that he has performed work of any kind for any tire company, including the nature of the work performed, the

- tire company involved, and the caption of any case to which his work was related;
2. affirms that Mr. Pearl will not perform any further work of any kind for any tire company during the pendency of this litigation,² with the exception that he may complete any on-going work as an expert witness or consultant in any specific litigation that is disclosed pursuant to paragraph 1 above, provided that any such on-going work is fully disclosed in the monthly affidavits Mr. Pearl is required to file pursuant to paragraph 4 of the June 15, 2001, Entry, and that any such work consists only of the forensic examination of failed tires to determine the cause of failure and does not involve any statistical analysis or the adjustment data of any tire company;³
 3. affirms that Mr. Pearl has not shared and will not share in the future any information regarding Firestone's adjustment data with any tire company.

Any failure by Mr. Pearl to comply with this order will result in his disqualification as an expert in this case and may also result in a finding of contempt of court.

ENTERED this _____ day of April 2002.

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

²"This litigation" is defined in the June 15, 2001, Entry as including this MDL proceeding, any case which is remanded from this MDL to another federal district court for trial or other proceedings, and any state case involving the same issues.

³The magistrate judge is very disturbed by the fact that Mr. Pearl apparently has neglected his obligation to file monthly affidavits, and fully expects that he will meet that obligation from this date forward.

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