

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
_____	)	(centralized before Hon. Sarah Evans
THIS ORDER RELATES TO:	)	Barker, Judge)
	)	
MARIA ANGELES C. de RAMIREZ, JORGE	)	
CARILLO, and FERNANDO CARILLO,	)	
Plaintiffs, v.	)	Individual Case No. IP 00-5006-C-B/S
	)	
BRIDGESTONE/FIRESTONE, INC., et al.,	)	
Defendants.	)	

**ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

Defendant Bridgestone/Firestone North American Tire LLC (“Firestone”) has filed a motion seeking “summary judgment declaring that: 1) Florida law will govern Firestone’s seatbelt defense in this case (making decedent’s failure to wear a seatbelt admissible as evidence of comparative negligence); and 2) plaintiff’s decedent was comparatively negligent as a matter of law.” For the reasons set forth below, the Court DENIES Firestone’s motion for summary judgment, without prejudice to the substantive arguments contained therein.

**Discussion**

Fed.R.Civ.P. 56(c) provides the mechanism by which a court renders “*judgment*” when the evidence demonstrates “that there is no genuine issue as to any material fact and that the moving party is entitled to *judgment* as a matter of law.” (Emphasis added.)

Summary judgment can also be rendered under Rule 56 “on the issue of *liability* alone although there is a genuine issue as to the amount of damages.” (Emphasis added.)

The “declaration” sought by Firestone is not appropriate under Rule 56(c). Firestone does not and cannot maintain in its motion that it is entitled to judgment in its favor on any of the plaintiffs’ claims; rather, it seeks only this court’s opinion on the *availability* of the plaintiffs’ non-use of seatbelts as a defense. Even if we agreed with Firestone that it can maintain this defense (and we intend to express no view on the issue), a jury would still be required to hear the relevant evidence and make what it deemed to be the proper attribution, if any, of comparative fault. Victory on the motion therefore would provide Firestone with neither a “judgment” nor a determination of its “liability” on any claim in this case. See Fed.R.Civ.P. 56(c).

Moreover, Firestone cannot bring its motion under Rule 56(d), which allows a court to determine certain facts even when the case is not fully adjudicated on the motion for summary judgment. See, e.g., Antenor v. D & S Farms, 39 F.Supp.2d 1372, 1375 n. 4 (S.D. Fla. 1999). Although Rule 56(d) gives this court the discretion to determine “the facts that appear without substantial controversy” (see, e.g., Hampton v. Dillard Dept. Stores, 18 F.Supp.2d 1256, 1265-66 (D. Kan. 1998)), we do not find the issue presented here to warrant the exercise of that discretion. First, Firestone asks us to determine the law applicable to the plaintiffs’ claims, not a fact. Its motion presents evidentiary and jury instructions issues that can be properly addressed by the transferor court at (or before)

trial. Second, the court's discretion to determine *issues* -- as opposed to *claims* -- is most prudently exercised when, for example, a decision on the issue presented could significantly pare down the presentation of proof at trial or materially advance the settlement of the case. See First Nat'l Ins. V. F.D.I.C., 977 F.Supp. 1051, 1055 (S.D. Cal. 1997). We have no reason to believe that resolution of the issue raised by Firestone would substantially further either of these goals.

For these reasons, the Court DENIES Firestone's motion for summary judgment without prejudice to the substantive arguments contained therein.<sup>1</sup>

It is so ORDERED this \_\_\_\_ day of May, 2002.

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SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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<sup>1</sup>Counsel contemplating similar motions for summary judgment in other cases are admonished to consider the guidelines provided by this order.

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