

SUGGESTION FOR REMAND

In October of 2000, the Judicial Panel on Multidistrict Litigation (“Panel”) issued its Transfer Order establishing the “*In re* Bridgestone/Firestone, Inc. ATX, ATX II, and Wilderness Tires Products Liability Litigation” for the purpose of coordinated or consolidated proceedings pursuant to 28 U.S.C. §1407. Since that original transfer order, which transferred fifty-three cases, the Panel has transferred, under forty-two certified transfer orders, approximately 580 tag-along cases.

In issuing the original transfer order, the Panel noted that all of the originally transferred cases related to “alleged defects in certain tires manufactured by Bridgestone/Firestone, Inc. (Firestone), primarily in their use with certain vehicles manufactured by Ford.” (Order at p. 2) The Panel determined that treatment under section 1407 was appropriate, principally because the actions “raised similar questions including whether Firestone’s ATX, ATX II, and Wilderness AT tires are defective,” and because “[r]elevant discovery, including expert testimony, will overlap substantially in each action.” (*Id.* at p. 3) Indeed, the Panel excluded one particular case from the transfer because it involved a different type of tire. (*Id.* at n.3)

This court thus began the task of supervising, administering, and coordinating these cases. Schedules governing both “core” (common) discovery and case-specific discovery were established. Core discovery has focused, at least with respect to Firestone, on the

tires named in the original transfer order and has subsequently expanded through allegations of similar defects in Firestone tires that share certain characteristics with the Firestone ATX, ATX II, and Wilderness AT “families” of tires. That discovery is nearing completion. The most straightforward (though not entirely inclusive) identification of Firestone tires that have been the subject of core discovery in the MDL was set forth in Class Plaintiffs’ Submission of Class Structure/Class Definition filed November 16, 2001.¹

The above captioned cases involve tires not included on that list. As to these cases, the Court has thus presumed that the core discovery will generally not be applicable.² In response to the plaintiffs’ assertions that these cases do not belong in the MDL, the defendants argue that these cases belong in the MDL simply because the Panel transferred them to the MDL. See, e.g., “Firestone and Ford’s Response to Plaintiffs’ Objection to Transfer of this Matter to the Multidistrict Litigation” in Rainey, Case No. IP 01-5528-C-B/S, at 3 (“The tires involved in [this] case are the subject of MDL 1373 because the Panel has said that they are.”) This response does not address the Court’s concerns, and it ignores the Panel’s discussion of this subject. For example, in its Transfer Order dated June 15, 2001, the Panel transferred cases involving two of the tires at issue in the above

¹That list of tires (Exhibits A through F of Class Plaintiffs’ November 16, 2001 filing) was incorporated by reference in this court’s order of November 28, 2001. Copies of Exhibits A through F are attached to this entry.

²We make use of this presumption only for purposes of determining whether the MDL court should retain jurisdiction over these cases as this time. We do not intend to suggest that in these particular cases or other cases outside this MDL that the parties should not be allowed to introduce evidence developed in the course of core discovery.

cases – the Firehawk R4S and the Affinity.³ In doing so, however, the Panel invited this court, “on further refinement of the issues and close scrutiny,” to determine whether these cases would benefit from the procedures contemplated by section 1407. (Transfer Order dated June 15, 2001, at p. 2)⁴

We believe that we are now in a position to do what the Panel has invited us to do: to offer refinements as to the appropriate scope of this MDL. In doing so, we are guided by the primary purpose of section 1407 transfer in this instance: “Centralization in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (particularly with respect to overlapping class certification requests), and conserve the resources of the parties, their counsel and the judiciary.” (Original Transfer Order at p. 3)

As noted above, discovery in the MDL relating to defects allegedly common to certain Firestone tires has focused on a large number of tires previously identified in connection with the class certification proceedings.⁵ The tires at issue in the cases listed in the caption of this entry are not among those that have been the subject of coordinated, common discovery. Moreover, none of these cases involves a Ford Explorer. Unlike

³Most of the other tires that had been included in the MDL at that point, though not named “ATX,” “ATX II,” or “Wilderness AT,” were, as noted above, part of those “families” of tires and shared, according to the plaintiffs’ allegations, common defects.

⁴At this time the Panel also renamed the MDL “*In re* Bridgestone/Firestone, Inc. Tires Products Liability Litigation.”

⁵See supra note 1 and accompanying text.

other cases in this MDL, the parties in these cases likely cannot make significant use of the discovery developed to date. In fact, plaintiffs' counsel in some of these cases have requested new, separate discovery periods. This court believes that the purposes of section 1407 are not served by inclusion of these "different tire" cases. The relevant discovery, including expert discovery, likely will *not* overlap substantially.

We therefore suggest the remand of the above cases to their transferor district courts noted in the caption. The Clerk is ORDERED to provide copies of this Entry to those transferor district courts and to the Clerk of the Judicial Panel on Multidistrict Litigation.

It is so ORDERED this ____ day of July, 2002.

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

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