

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

JILL RAEANN HENRY,	)	
Plaintiff,	)	
	)	
vs.	)	IP 01-5318-C-B/S
	)	
FORD MOTOR COMPANY, a Delaware	)	
Corporation; BRIDGESTONE/FIRESTONE,	)	
INC., an Ohio Corporation,	)	
Defendants.	)	MDL No. 1373
	)	(centralized before Hon. Sarah Evans
	)	Barker)

**ENTRY ON MOTION FOR SUMMARY JUDGMENT**

This entry addresses a summary judgment motion filed by Defendant Bridgestone/Firestone North American Tire, LLC (“Firestone”) in a personal injury case pending in this Multidistrict Litigation. Firestone moves for summary judgment on the ground that Plaintiff cannot produce the subject tire and has failed to preserve that tire for examination in furtherance of this litigation and, as a result, cannot establish certain necessary elements of her claim under Oklahoma law. For the reasons explained in detail below, we GRANT Firestone’s Motion for Summary Judgment.

**Factual Background**

On July 26, 1998, Plaintiff Jill Henry was involved in a serious automobile accident with Daryl Mitchell. Mitchell’s 1994 Ford Explorer, which he had purchased two weeks earlier and was driving at the time of the accident, was equipped with four Firestone all-

terrain tires at the time of purchase. P's Statement of Additional Material Facts ¶¶ 1-4. As was his practice as commercial truck driver, Mitchell visually inspected the tires before traveling on this occasion. Id. ¶¶ 8, 26. Mitchell's vehicle was towing another vehicle on a flatbed trailer. While driving, Mitchell lost control of his vehicle and was forced to pull to the side of the road. Id. ¶ 9. The loss of control caused Mitchell to hit the center divider, which, in turn, led Henry to take evasive action and lose control of her vehicle while traveling in the opposite direction. D's Statement of Material Facts ¶ 1.

Shortly after the accident, Mitchell exited his vehicle and observed that the tread on one tire exhibited a cut, specifically a piece of tread pulled away from the surrounding tread. Mitchell Depo. at 11. Mitchell, his brother, and his father all observed the damaged tire while Mitchell replaced it, and none observed any foreign objects nearby. P's Statement of Additional Material Facts ¶ 11. Shortly after the accident, and well before receiving notice in September 2000 of the Firestone tire recall pertaining to his Firestone ATX tires, Mitchell took the tire to a local gas station and did not follow what became of the tire after that. Id. ¶¶ 12, 13.

Plaintiff filed this action in Oklahoma state court in November 2000 and the matter was removed to federal court and transferred here on May 1, 2001, for consolidated and coordinated proceedings pursuant to 28 U.S.C. § 1407. Case-specific discovery revealed that Plaintiff does not possess the tire now and cannot produce the tire for examination by Defendant's experts. D's Statement of Material Facts ¶¶ 2, 3. Plaintiff claims that "[u]nder

information and belief the subject tire was destroyed as a result of the tread separation and was subsequently disposed of.” D’s Brief in Support of Motion for Summary Judgment, ex. 4, P’s Response to Supplemental Request for Information 14. Firestone filed its Motion for Summary Judgment on April 15, 2002.

### Standard of Review<sup>1</sup>

Federal Rule of Civil Procedure 56(c) provides that summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law.” A genuine issue of material fact exists if there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party on the particular issue. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Bellaver v. Quanex Corp., 200 F.3d 485, 492 (7th Cir. 2000) (citation omitted). The court must “construe all facts in the light most favorable to the non-moving party and draw all reasonable and justifiable inferences in favor of that party. Liberty Lobby, Inc., 477 U.S. at 255; Del Raso v. U.S., 244 F.3d 567, 570 (7th Cir. 2001). However, the nonmovant “may not simply rest on his pleadings, but must demonstrate by specific evidence that there is a genuine issue of triable fact.” Colip v.

---

<sup>1</sup> Although Oklahoma law frames the substance of Plaintiff’s claims, we look to federal law for the standards applicable to the disposition of this Motion for Summary Judgment. See, e.g., Rodman Industries, Inc. v. G & S Mill, Inc., 145 F.3d 940 (7<sup>th</sup> Cir. 1998); In re Bridgestone/Firestone Inc., 2002 WL 1011781, at \*1 (S.D. Ind. May 13, 2002).

Clare, 26 F.3d 712, 714 (7th Cir. 1994) (citation omitted). A “mere scintilla of evidence in support of the plaintiff’s position will be insufficient” to avoid summary judgment.

Liberty Lobby, Inc., 477 U.S. at 252.

### Legal Issues

Firestone moves for summary judgment based on the contention that, given Plaintiff’s inability to produce the tire at the center of this dispute, Plaintiff cannot meet her burden of proof on certain essential elements of her claim. To maintain a cause of action for manufacturers’ product liability under Oklahoma law, “a plaintiff must prove the product was the cause of the injury, that the product was defective when it left the control of the manufacturer, and that the defect made the product unreasonably dangerous to an extent beyond which would be contemplated by the ordinary consumer who purchases it.”

Johnson v. Ford Motor Co., 45 P.3d 86, 91 n.12 (Okla. 2002) (citations omitted); see also Dutsch v. Sea Ray Boats, Inc., 845 P.2d 187, 190 (Okla. 1992); Kirkland v. General Motors Corp., 521 P.2d 1353, 1363 (Okla. 1974).

### *Causation*

Firestone argues that the Plaintiff’s inability to produce the subject tire renders her unable to establish causation. We note that the absence of the tire is not necessarily fatal to Plaintiff’s claim. Oklahoma courts allow plaintiffs to prove causation using circumstantial evidence, but where a plaintiff relies on such evidence, it “must tend to

support plaintiff's theory [of causation] with reasonable certainty and probability, as opposed to other causal hypotheses." Downs v. Longfellow Corp., 351 P.2d 999, 1005 (Okla. 1960); see also Barringer v. Wal-Mart Stores, Inc., 699 F. Supp. 1496, 1498 (N.D. Okla. 1988). "[C]ircumstantial evidence is not sufficient to establish a conclusion where the circumstances are merely consistent with such conclusion, or where the circumstances give equal support to inconsistent conclusions, or are equally consistent with contradictory hypotheses." Downs, 351 P.2d at 1005. In other words, a plaintiff need not present evidence excluding all other possible causal factors, but "the mere possibility that a defect caused the injury is not sufficient." Dutsch v. Sea Ray Boats, Inc., 845 P.2d 187, 191 (Okla. 1992).

Here, Plaintiff offers the deposition of Mitchell, the owner and driver of the Ford Explorer involved in the accident, who stated that he visually inspected the tire before and after the accident, that the damaged tire exhibited a tread separation, and that he saw no foreign objects or other possible causes of tire failure as he changed the tire. P's Response to D's Motion for Summary Judgment, ex. 1 at 11. Plaintiff also provides the affidavit of Ms. Henry, who stated that "[t]he defect in the Firestone ATX tire was the cause of [her] injuries." Id., ex. 2 ¶ 6. Finally, Plaintiff offers the affidavit of Tom Curtis, an expert in accident reconstruction, who, as to causation, asserts that "the plaintiff did not contribute to causing her vehicle to go out of control and roll over, nor did she contribute to the cause of the injuries that she received." Id., ex. 7 ¶ 7.

We find Plaintiff's evidentiary showing insufficient to fend off this Motion for Summary Judgment. Mitchell's observations of the damaged tire at the scene, although relevant, do not support the conclusion that the alleged defect was a reasonably certain explanation for the result. Plaintiff's affidavit bears no sign of any personal knowledge on which she bases her conclusion as to the cause of her injuries. Finally, Curtis, Plaintiff's proffered expert, expressed no opinion as to what actually caused Plaintiff's injuries, only that Plaintiff herself is not at fault. These pieces of evidence, viewed individually or collectively, do not establish that the alleged defect in the Firestone ATX tire was a reasonably certain cause of the tire failure, as opposed to other ordinary causes of such failure.<sup>2</sup> Because Plaintiff has not responded with evidence upon which a reasonable jury could conclude with reasonable certainty that the alleged defect in the Firestone tire was the cause of the accident, Defendant's Motion for Summary Judgment is GRANTED.<sup>3</sup>

### Conclusion

Defendant Firestone moved for summary judgment, arguing that Plaintiff's inability

---

<sup>2</sup> Defendant contends, and Plaintiff does not dispute, that other common causes for tire failure or tread separation include "impact damage; road hazard damage and/or punctures from nails or other objects; improper tire inflation or other servicing ...; mounting damage; improper vehicle alignment; improper rim components; and operator driving habits." D's Brief in Support of Motion for Summary Judgment, ex. 1 (Affidavit of Brian J. Queiser) ¶ 5. None of Plaintiff's evidence addresses these causes or establishes with reasonable certainty that the alleged defect was a more likely cause of the tire failure than any of these other possible causes.

<sup>3</sup> Because we resolve Defendant's Motion on Plaintiff's ability to prove causation, we need not proceed to consider Defendant's alternative arguments regarding the alleged failure to prove identity and failure to preserve evidence.

to produce the subject tire means that Plaintiff could not present evidence sufficient to establish causation. For the reasons set forth in detail above, we find that Plaintiff has failed to provide sufficient evidence from which a reasonable jury could conclude that the alleged tire defect caused Plaintiff's injuries. Accordingly, Defendant's Motion for Summary Judgment is GRANTED.

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

---

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

Copy to:

π Gregory G Meier  
Meier Cole & O'dell  
1524 S Denver Ave  
Tulsa, OK 74119-3829

John H Beisner  
O'Melveny & Myers LLP  
555 13th St NW Suite 500 W  
Washington, DC 20004

Mark Herrmann  
Jones Day Reavis & Pogue  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114

Mark Merkle  
Krieg Devault LLP

One Indiana Square Suite 2800  
Indianapolis, IN 46204

Harris A Phillips III  
Niemeyer Alexander Austin & Phillips  
300 N Walker Ave  
Oklahoma City, OK 73102-1822

Randall Riggs  
Locke Reynolds LLP  
201 N Illinois St Suite 1000  
PO Box 44961  
Indianapolis, IN 46244-0961

Colin P Smith  
Holland & Knight LLP  
55 West Monroe Street Suite 800  
Chicago, IL 60603

Curtis L Smith  
Chubbuck Smith Rhoes Stewart & Elder  
119 N Robinson Ave Suite 820  
Oklahoma City, OK 73102

