

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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In re: BRIDGESTONE/FIRESTONE, INC., )  
TIRES PRODUCTS LIABILITY LITIGATION ) Master File No. IP 00-9373-C-B/S  
\_\_\_\_\_) MDL No. 1373  
) (centralized before Hon. Sarah Evans Barker,  
JOHN F. MORRIS, Plaintiff, ) Judge)  
)  
v. )  
FORD MOTOR COMPANY and )  
BRIDGESTONE/FIRESTONE, INC., ) Individual Case No. IP 01-5166-C-B/S  
Defendants. )  
)

**ENTRY GRANTING MOTION FOR SUMMARY JUDGMENT FILED BY DEFENDANT  
BRIDGESTONE/FIRESTONE**

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 has failed to preserve the subject tire for examination in furtherance of this litigation, cannot produce that tire, and, as a result, cannot establish certain necessary elements of his claim under Arkansas law. For the reasons explained in detail below, we GRANT Firestone’s Motion for Summary Judgment. In addition, we DENY as moot Defendant’s Motion to Strike.

Factual Background

In 1996, Plaintiff John Morris purchased a new 1996 Ford Explorer, which came equipped with Firestone Wilderness AT tires. Complaint ¶ 7. Plaintiff also purchased Firestone Wilderness AT tires as replacement tires in June or July 1999. Id. ¶ 8. On October 27, 1999, Plaintiff John Morris was driving his Ford Explorer, equipped with Firestone Wilderness AT tires, on Interstate 55 in Arkansas, when his rear passenger-side tire experienced a tread separation, causing Plaintiff to lose control of the vehicle, which rolled over. Id. ¶ 25. Plaintiff lost consciousness and woke up at the hospital. Morris Affidavit ¶ 6.

A few days later, Plaintiff visited the scene of the accident to retrieve his personal belongings. Id. ¶ 7. He also visited the salvage yard where his vehicle had been transported and observed the right rear tire, which exhibited a tread separation. Id. He took no photographs of the tire at that time, and he never saw the subject tire again. Id. Two or three weeks after the accident, Plaintiff contacted State Farm and requested that State Farm take custody of the subject tire. Id. ¶ 8. He later discovered that the vehicle was “no longer available” and that State Farm did not have the tires. Id. According to Plaintiff, he has “no information about the current location of the Ford Explorer or any of the Firestone tires that were on the Ford Explorer at the time of the accident,” and he has “never been able to find out the current location of the vehicle or the tires.” Id.

Plaintiff filed this action in federal court in the Eastern District of Arkansas on October 26, 2000, and the matter was transferred here on January 8, 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. Firestone

filed its Motion for Summary Judgment on April 15, 2002.

### Standard of Review

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. Clare, 26 F.3d 712, 714 (7th Cir. 1994) (citation omitted).

### Legal Issues

Firestone moves for summary judgment based on the contention that, given Plaintiff’s inability to produce the subject tire, Plaintiff cannot meet his burden of proof on causation, an essential element of his claim. Under Arkansas law, “a supplier of a product is strictly liable for an injury caused by the product if (1) the product is in a defective condition that rendered it unreasonably dangerous, and (2)

the defective condition was a proximate cause of the injury.” Boerner v. Brown & Williamson Tobacco Corp., 260 F.3d 837, 842 (8<sup>th</sup> Cir. 2001), citing Hill v. Searle Labs., 884 F.2d 1064, 1066 (8<sup>th</sup> Cir. 1989); Bushong v. Garman Co., 843 S.W.2d 807, 812 (1992). Plaintiff’s inability to produce the subject tire is not necessarily fatal to his claim, however, because Arkansas law provides that proximate cause may be proved by either direct or circumstantial evidence. St. Paul Fire & Marine Ins. Co. v. Brady, 891 S.W.2d 351, 353 (Ark. 1995), citing Cockman v. Welder’s Supply Co., 265 Ark. 612, 580 S.W.2d 455 (1979). However, “[i]t is ... necessary that there be evidence that would tend to eliminate other causes that may fairly arise from the evidence and that the jury not be left to speculation and conjecture in deciding between two equally probable possibilities.” Id. at 353-54, citing McAway v. Holland, 266 Ark. 878, 599 S.W.2d 387 (Ark. App. 1979). Ultimately, in order to establish proximate cause in the absence of direct evidence, a plaintiff must negate other possible causes by a preponderance of the evidence. Harrell Motors, Inc. v. Flanery, 612 S.W.2d 727 (1981).

In response to this Motion for Summary Judgment, Plaintiff provides two affidavits to establish the causal connection between the alleged tire defect and the accident at issue: the affidavit of Plaintiff John Morris and the affidavit of Kenneth Pearl, a proffered expert in accident reconstruction and tire performance. Morris states that while driving on October 28, 1998, he heard three thumps from the rear of the vehicle, “almost simultaneously the vehicle spun around backwards,” and Morris was rendered unconscious. Morris Affidavit ¶ 6. Morris also states, by subsequent affidavit, that he never “had a flat tire or other problem that necessitated repair of the tire[,]... never struck a large object, hazard or pothole with the tires that were on the vehicle at the time of the accident[, and] ... never

drove the tires in an under inflated [sic] condition.” Morris Supp. Affidavit ¶ 1. Morris did not see the tire immediately after the accident, but viewed it a few days later at a salvage yard and observed a tread separation. Morris Affidavit ¶ 7. Without examining photos or actually viewing the damaged tire, and admittedly relying entirely on the truth and accuracy of Morris’ affidavit testimony, Pearl states that “the failure (tread belt separation) of the present tire would have resulted from the design and manufacturing inadequacies of the recalled tires and not from some extraneous cause or reason.” Pearl Affidavit ¶ 4.

We find Plaintiff’s evidentiary showing insufficient to fend off this Motion for Summary Judgment. Based on testimony by a specialist in tire engineering, design and construction, 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.” Queiser Affidavit ¶ 5. Plaintiff’s evidentiary showing in response to this Motion tends to negate certain of these possible causes, such as puncture, road hazard damage, and underinflation. However, Plaintiff’s evidence, including the proffered expert opinion of Pearl, does not address other possible common causes for the tire failure that fairly arise from the evidence, such as servicing, alignment, faulty rim components, etc., as indicated by Defendant’s proffered expert testimony. Plaintiff’s evidentiary showing leaves the jury to speculate as to the comparative likelihood of the alleged defect versus another possible cause. Under Arkansas law, an evidentiary showing that requires the jury to speculate as between two (or more) equally possible

causes is not sufficient to establish proximate cause. Therefore, Defendant's Motion for Summary Judgment is GRANTED.

Conclusion

Defendant Firestone moved for summary judgment, arguing that Plaintiff's inability 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 not provided sufficient evidence from which a reasonable jury could conclude that the alleged tire defect was the proximate cause of Plaintiff's injuries. Accordingly, Defendant's Motion for Summary Judgment is GRANTED. In addition, we DENY as moot Defendant's Motion to Strike.

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

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

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