

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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In re: BRIDGESTONE/FIRESTONE, INC., )  
TIRES PRODUCTS LIABILITY ) Master File No. IP 00-9373-C-B/S  
LITIGATION ) MDL No. 1373  
\_\_\_\_\_) (centralized before Hon. Sarah Evans  
) Barker, Judge)  
CARLOS RODRIGUEZ and RICARDO )  
MORALES, Plaintiffs, )  
V. ) Individual Case No. IP 01-5179-C-B/S  
BRIDGESTONE/FIRESTONE, INC., et al., )  
Defendants. )  
)

**ORDER GRANTING LEAVE TO AMEND**

Before the Court is the Plaintiffs' Motion for Leave to File First Amended  
Complaint. For the reasons set forth below, the Court GRANTS leave to amend. Plaintiffs'  
First Amended Complaint for Damages attached as Exhibit A to the motion for leave (at  
docket number 6149) is deemed filed as of the date of this Order. Because the Amended  
Complaint adds an apparently non-diverse defendant, the parties are ordered to SHOW  
CAUSE on or before December 6, 2002, why this action should not be remanded to the  
appropriate state court for lack of federal subject matter jurisdiction.

## Discussion

The plaintiffs originally brought this action<sup>1</sup> against Bridgestone/Firestone, Inc., (“Firestone”) alleging defective design and/or manufacture of the tire at issue. They also sued Sears, Roebuck and Co. (“Sears”) as seller of the tire and State Farm Mutual Automobile Insurance Company (“State Farm”) for spoliation of the tire. At the time the action was filed, the plaintiffs did not have the subject tire for inspection because State Farm could not locate it. Their allegations of defect against Firestone were based on an expert’s analysis of photographs of the tire. Over two years later, however, the tire was located on State Farm premises and subjected to expert inspection. The plaintiffs’ expert report dated August 16, 2002, maintains that the tread separation in this case was attributable to mounting damage and not to a defect in the tire. The plaintiffs acknowledged this in response to Firestone’s motion for summary judgment, and the Court has entered summary judgment in Firestone’s favor.

Based on their expert determination that tire mounting damage was the cause of the accident, the plaintiffs seek leave to add Miami Tire, Inc. (“Miami Tire”) as a defendant. They allege that Miami Tire negligently rotated and mounted the tires. The proposed amended complaint also alleges that Sears rotated and mounted the subject vehicle’s tires. The plaintiffs acknowledge a factual issue about whether the mounting damage was caused by Sears, which initially installed the tires, or by Miami Tire, which rotated and remounted

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<sup>1</sup>The plaintiffs filed the action in Miami-Dade County, Florida. The defendants then removed the case to federal court.

them six months later.

Sears objects to amendment, arguing that it will be prejudiced by this shift in theories against it and that evidence shows that the tire that caused the accident was a 1992 spare tire that Sears did not mount at the time of purchase of the 1995 replacement tires. Neither of these arguments persuades us that the plaintiffs should be denied leave to amend. Their original allegations against Sears were broad enough to encompass these new, more specific allegations. Moreover, the plaintiffs acted promptly to adjust their theories upon State Farm's discovery of the tire and their expert's report. Although the evidence suggesting that Sears did not handle the subject tire when it installed new tires on the vehicle appears to be strong, that issue will not be determined in the context of this motion, without proper development of the factual record by the parties. Rather, the Court will address Sears's arguments in connection with its pending motion for summary judgment, which it can now supplement in light of the plaintiffs' new allegations in the amended complaint.<sup>2</sup>

State Farm also opposes amendment, asserting that the plaintiffs were not damaged by its initial inability to locate the subject tire and that the allegations in the amended complaint regarding State Farm's failure to retain the other tires and the vehicle are factually baseless because State Farm was never requested to retain them. We find that these objections, like Sears's objections, are better addressed in a different procedural

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<sup>2</sup>Any supplementation shall be filed within thirty days of this order. Response and reply briefs shall be submitted according to the schedule set forth in S.D.Ind. L.R. 56.1.

posture that allows for full development of the applicable facts and law. State Farm has, in fact, filed a motion for summary judgment, which it may also supplement as provided above.

None of the parties has addressed another issue presented by the plaintiffs' motion for leave to amend – the addition of an apparently non-diverse defendant that will deprive the Court of jurisdiction. When an action has been removed to federal court and the additional defendant sought to be joined by the plaintiff would destroy subject matter jurisdiction, 28 U.S.C. §1447(e) establishes that the Court has one of two options. We “may deny joinder, or permit joinder and remand the action to the State court.” 28 U.S.C. §1447(e). The parties here have briefed the propriety of amendment under the standards of Fed.R.Civ.P. 15(a). A number of courts have held, however, that when an amendment will destroy diversity, analysis should proceed under 28 U.S.C. §1447(e), rather than under Fed.R.Civ.P. 15(a). See, e.g., Mayes v. Rapoport, 198 F.3d 457, 462 n.11 (4<sup>th</sup> Cir. 1999); Ascension Enterprises, Inc. v. Allied Signal, Inc., 969 F. Supp. 359, 360 (M.D. La. 1997).

In order to permit joinder and remand the action, the Court need not find that the additional party is indispensable to just adjudication of the lawsuit. Vasilakos v. Corometrics Medical Sys., Inc., 1993 WL 390283, at \*2 (N.D. Ill. Sept. 30, 1993); Goutanis v. Mutual Group, 1995 WL 86588, at \*6 (N.D. Ill. Feb. 24, 1995). Instead, courts base their decisions to permit or deny joinder on a balance of the equities. See Clinco v. Roberts, 41 F. Supp. 2d 1080, 1083 (C.D. Cal. 1999); Hensgens v. Deere & Company, 833 F.2d 1179, 1182 (5<sup>th</sup> Cir. 1987); County of Cook v. Philip Morris, Inc., 1997 WL 667777,

at \*2 (N.D. Ill. Oct. 17, 1997). While the Seventh Circuit has not enumerated factors to be considered in balancing the equities, district courts in the Seventh Circuit look to a number of factors to make this determination.<sup>3</sup> The factors examined include:

(1) the extent to which the joinder of the nondiverse party is sought merely to defeat federal jurisdiction; (2) whether plaintiff has been dilatory in asking for amendment; (3) the balance between the risk that the plaintiff will experience significant injury by pursuing multiple lawsuits if the amendment is not allowed and the risk that the defendant will be prejudiced if the amendment is allowed; and (4) any other equitable considerations, including defendants's [sic] interest in maintaining a federal forum.

Vasilakos, 1993 WL 390283, at \*3. See also Goutanis, 1995 WL 86588, at \*6.

Our examination of these factors leads us to conclude that the plaintiffs have met these more stringent requirements for amendment. The circumstances make clear that the principal purpose of amendment is to add the defendant that the expert evidence points to and that leave to amend was sought promptly when this evidence was obtained. It would also make little sense to require the plaintiffs to pursue this defendant in a separate lawsuit. Leave to file the amended complaint is therefore GRANTED.

Having allowed amendment, we must now raise the subject matter jurisdiction issue not addressed by the parties. It appears to the Court on the face of the amended complaint that federal question jurisdiction is not present here and that diversity is lacking because the plaintiffs and defendant Miami Tire are citizens of Florida.<sup>4</sup> Before remanding this

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<sup>3</sup> Seventh Circuit law applies to the issues presented by the plaintiffs' motion. See Fehmers v. Bridgestone/Firestone, Inc., et al., 129 F.Supp.2d 1202, 1204 n.2 (S.D. Ind. 2001).

<sup>4</sup>The amended complaint also states an amount in controversy insufficient to meet the requirements of 28 U.S.C. § 1332, but we suspect this was attributable to an oversight.

action to state court, however, the Court will afford the parties an opportunity to address this issue.<sup>5</sup> The parties are therefore ordered to SHOW CAUSE on or before December 6, 2002, why this action should not be remanded to the state court in Miami-Dade County, Florida for lack of federal subject matter jurisdiction.

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

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

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<sup>5</sup>The amended complaint alleges, for example, that each plaintiff “was” a resident of Florida, apparently at the time of the accident. It is not absolutely clear that the plaintiffs are **now** citizens of Florida.

