

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)  
THIS ORDER RELATES TO: )  
)  
ALLISON WOOTTON, ) Individual Case No. IP 01-5324-C-B/S  
Plaintiff, )  
v. )  
)  
BRIDGESTONE/FIRESTONE, INC., a )  
foreign corporation f/k/a THE FIRESTONE )  
TIRE AND RUBBER COMPANY, )  
Defendant. )

**ENTRY GRANTING FIRESTONE’S MOTION FOR SUMMARY JUDGMENT**

This entry addresses a summary judgment motion filed by Defendant Bridgestone/Firestone, Inc. (“Firestone”) in a product liability/personal injury case pending in this Multidistrict Litigation (“MDL”). In support of its motion, Firestone contends that Plaintiff’s claims are barred by the applicable statute of limitations. Plaintiff argues in response that the limitations period should be tolled because Firestone allegedly engaged in fraudulent concealment relating to her cause of action. For the reasons explained below, we GRANT Firestone’s Motion for Summary Judgment.

Factual Background

On or around April 19, 1995, Plaintiff Allison Wootton, along with passenger Kenneth Vessels, was driving home from a rock concert in Lexington, Kentucky, in a Ford Explorer owned by Vessels when she heard a noise and felt the car pull in one direction. Pl.'s Resp. to Def.'s Statement of Undisputed Facts ¶¶ 1, 6, 7, 20. Plaintiff lost control of the vehicle, which then rolled over and/or flipped. Complaint ¶ 7. Plaintiff suffered injuries in the accident, requiring that medical care be rendered to her in Kentucky. Pl.'s Resp. to Def.'s Statement of Undisputed Facts ¶ 10. At the time of the accident, both Wootton and Vessels were Kentucky residents, and the accident occurred on the Kentucky Bluegrass Parkway within the Commonwealth of Kentucky. Id. ¶ 5.

On or around November 2, 1995, within seven months of the accident, Plaintiff filed suit against Ford Motor Company in the United States District Court, Western District of Kentucky, alleging that the Ford Explorer involved in the accident was defectively designed and manufactured and that it lacked sufficient warnings to alert users to its rollover propensity. Id. ¶¶ 2,3. In the course of that suit, Plaintiff's attorney deposed Lee Carr, Ford's designated expert, regarding the relationship between the tires on the Ford Explorer and the vehicle's stability. Id. ¶ 18. In addition, there is some indication that Plaintiff's expert in the earlier litigation inspected both the Explorer and its tires. See Def.'s Memo. in Support of Motion for Summ. J., Ex. F.<sup>1</sup> Prior to a trial on the merits, Plaintiff's claims

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<sup>1</sup> Defendant offers a letter written by Ford's counsel in the prior lawsuit to another Ford attorney, in which counsel relays the contents of a conversation with Plaintiff's lawyer in that prior action. Plaintiff protests only that "a letter between two Ford lawyers should not mandate the grant of

against Ford were resolved by settlement. Def.'s Statement of Undisputed Facts, Ex. G at unnumbered 2.

On December 27, 2000, Plaintiff filed this suit against Firestone in the Circuit Court of Miami-Dade County, Florida, stating claims for products liability and negligence, based on an alleged defect in one of the Firestone tires on the Explorer involved in the 1995 accident. The matter was subsequently removed to the Southern District of Florida, and the matter was transferred here on May 21, 2001, for consolidated and coordinated proceedings pursuant to 28 U.S.C. § 1407.

#### 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 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.

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summary judgment against Allison.” We agree. However, Plaintiff has not properly objected to the admission of this exhibit in compliance with Local Rule 56.1(f)(3), which requires that “[o]bjections to material facts and/or cited evidence shall (to the extent practicable) set forth the grounds for the objection in a concise, single sentence, with citation to appropriate authorities.” Nor has she phrased an objection in any manner sufficient to put Firestone on notice that it must defend the admissibility of this evidence. Therefore, we consider it along with all other properly referenced, undisputed evidence offered in support of Firestone’s motion.

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

#### *1. Choice of law*

As an initial matter, the parties dispute whether the state law of Kentucky or Florida governs this action. Plaintiff contends that the applicable state law does not matter, because the results should be the same under either Kentucky or Florida law. While Kentucky’s and Florida’s discovery rules may appear substantially similar, the particular twists and turns of each state’s jurisprudence in this area may be relevant to the outcome. Therefore, we must endeavor to determine which state’s law applies to this dispute.

As a federal court exercising diversity jurisdiction over this case as part of an MDL, we must apply the choice-of-law rules of the state in which the matter was originally filed to determine which state’s law governs the claims in this case. In re Air Crash Disaster Near Chicago, Ill. on May 25, 1979, 644 F.2d 594, 610 (7<sup>th</sup> Cir. 1981), citing Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941); Roynat, Inc. v. Richmond Transp. Corp.,

772 F.Supp. 417, 421 n.4 (S.D. Ind. 199). Florida applies the “significant relationship” test as articulated by the Restatement (Second) of Conflict of Laws §§ 145-46. Bishop v. Florida Specialty Paint Co., 389 So.2d 999, 1001 (Fla. 1980), cited in Merkle v. Robinson, 737 So.2d 540, 542 (Fla. 1999). The rule states that, “[i]n an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship ... to the occurrence and the parties, in which event the local law of the other state will be applied.” Id. § 146. Factors to consider in determining which state has the more significant relations include “(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered.” Id. § 145.

Here, we note, and the parties do not directly dispute, that Kentucky bears a significant relationship to the present legal action, given that the automobile accident giving rise to Plaintiff’s injuries occurred in Kentucky; the alleged cause of the accident in this case – the tire failure – occurred in Kentucky; at the time of the accident, Plaintiff was a resident of Kentucky, although she later became a resident of Florida; and Plaintiff previously filed suit against Ford in Kentucky for injuries arising out of the very same accident as we address in this case. The only factor counseling in favor of applying Florida law is that the Plaintiff presently resides there. We cannot say, as a matter of law, that Kentucky bears less of a significant relationship to this legal action than Florida or any

other state identified by the Restatement factors.<sup>2</sup> Therefore, we find that Kentucky law applies to this action, and we apply the Kentucky statute of limitations in determining the filing period for Plaintiff's claims.

## *2. Statute of limitations*

Plaintiff has filed claims against Firestone for products liability and negligence. Firestone contends that these claims accrued either when the accident occurred or, at the latest, when Plaintiff filed suit against Ford in November 1995 for injuries resulting from the same accident. Under Kentucky law, actions for personal injury, such as the ones alleged in this case, enjoy a one-year statute of limitations, commencing on the date of accrual. Ky. Rev. Stat. § 413.140. Kentucky utilizes the “discovery rule” in products liability actions, meaning that a cause of action for products liability does not accrue until the plaintiff discovers, or in the exercise of reasonable diligence should have discovered, both the injury and “that his injury may have been caused by the defendant’s conduct.” Hazel v. General Motors. Corp., 863 F. Supp. 435, 438 (W.D. Ky. 1994), affirmed in relevant part, 83 F.3d 422 (6<sup>th</sup> Cir.) (emphasis added). See also Munn v. Pfizer Hosp. Products Corp., 750 F. Supp. 244, 246 (W.D. Ky. 1990), citing Louisville Trust Co., v. Johns-Manville Products, Inc., Ky., 580 S.W.2d 497 (Ky. 1979). Kentucky courts have

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<sup>2</sup> For completeness, we note that Firestone is an Ohio corporation and that no state necessarily represents the center of the relationship between the parties, since there is no evidence that prior to the accident Plaintiff had any dealings with Firestone that relate to this dispute.

further refined this rule in the products liability context, such that a potential plaintiff's awareness of an injury and of the instrumentality causing the injury is enough to trigger the limitations clock and to impose on the plaintiff the duty to discover the responsible parties. Reese v. General American Door Co., 6 S.W.3d 380, 383 (Ky. Ct. App. 1999), citing Hazel, 863 F. Supp. at 435. The key question is when a potential plaintiff knew or should have known enough facts to trigger the duty to engage in further inquiry.<sup>3</sup>

We find the decision in Hazel v. General Motors Corporation, 863 F. Supp. 435, particularly helpful in guiding our analysis. There, plaintiff James Hazel was injured when his General Motors truck overturned and collided with a utility pole, rupturing the fuel tank. Id. at 437. Shortly after the impact, a fire ignited from the released fuel. Id. Hazel, then seventeen years old, was rescued from the fire after suffering serious injuries. Id. He subsequently towed the truck to his residence for inspection and noticed that the side-saddle fuel tanks had burst open in the accident. Id. In fact, the crash "dislodged the gas tank from its mounting brackets and tore it from the filler neck and cap." Id. However, Hazel did not pursue any cause of action within one year of the accident.

In November 1992, NBC's "Dateline" program broadcast a report on the crashworthiness of GM trucks with side-saddle fuel tanks similar to those on Hazel's truck.

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<sup>3</sup> While this determination may require an evaluation of relevant facts, it is not necessarily the sort of inquiry inappropriate for disposition at the summary judgment stage – or even earlier. See, e.g., Hazel, 863 F. Supp. 435 (holding, on a motion to dismiss, that plaintiff had sufficient facts to give rise to the duty of inquiry and, thus, that plaintiff's limitations period had expired).

Id. After watching the program, Hazel “surmised that GM’s faulty design was responsible for his own car fire in 1988, which was induced by the fuel tank rupture.” Id. Hazel then contacted an attorney, conducted discovery, and filed suit against General Motors eleven months after he “suspected that he had a right of action.” Id. The suit actually commenced five-and-a-half years after the date of injury and four-and-a-half years after Hazel reached the age of majority. Id. at 438.

General Motors filed a motion to dismiss, arguing that the one-year statute of limitations expired before Hazel filed suit. Hazel countered that the action did not accrue until 1992, when he learned of the specific defect that (he maintained) caused his injuries. The district court found (based only on the face of the complaint) that Hazel had sufficient facts to surmise following the accident that a fuel-related fire caused his injuries. “In other words, the injury and the instrumentality causing the injury were obvious.” Id. at 438. Hazel, therefore, immediately knew all the relevant facts sufficient to commence the running of the statute, despite the fact that “he may not have perceived that a design defect was the cause of his injury” or that he could potentially bring a legal action against the manufacturer. Id., citing Conway v. Huff, 644 S.W.2d 333, 334 (Ky. 1982).

Here, Plaintiff’s circumstances are substantially similar. Plaintiffs’ injuries resulted from the vehicle rollover, in other words, the event in which the tires of the car she was driving lost contact with the surface of the road. The Hazel court found such an event, in which the instrumentality of the injury was not hidden or obscured, sufficient as a matter

of law to trigger a plaintiff's duty to investigate the cause of the accident. The question is not, as Plaintiff contends, precisely when "Allison should have known about Firestone's tire problems" or even the existence of her cause of action against Firestone, but at what moment the facts and circumstances were sufficient to put her on notice that she should investigate whether a tire defect had caused her injuries. Plaintiff's prior claims against Ford indicate that the accident provided enough information to cause her to inquire as to whether the Explorer might have played a role in her injuries; there is no reason to believe that Plaintiff's duty to inquire as to defects in the vehicle would begin earlier than the duty to inquire about the tires on that vehicle. Indeed, the fact that Plaintiff's attorney in the earlier action questioned Ford's expert regarding the relationship between the tires on the Explorer and its relative stability reflect the existence of this duty to inquire. We find the holding of the Hazel court dispositive of the outcome of our case and, therefore, find that Plaintiff's cause of action against Firestone accrued at the time of the accident, or, at the latest, when she made inquiry into the role the tires played in the accident in the course of the 1995 lawsuit against Ford.<sup>4</sup> Under either scenario, the one-year statute of limitations

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<sup>4</sup> Plaintiff directs our attention to this court's prior decisions in the Mancuso/Ferrer/Wilkinson cases, which Plaintiff claims mandate the denial of summary judgment in the instant case. These cases, while marginally relevant to the issues raised here, rest on distinctive facts and each utilizes a different state law standard for claim accrual and discovery. We are compelled by the governing law of Kentucky to apply the "injury plus instrumentality" approach expressed in Hazel. This formulation of the accrual standard differs in significant respects from the accrual standards of California and Arizona standards applied in the Mancuso/Ferrer/Wilkinson decisions. See, e.g., Tucker v. Baxter Healthcare Corp., 158 F.3d 1046, 1049 (9th Cir. 1998) (Under California's discovery rule, "the accrual of a cause of action is delayed until the plaintiff is aware of her injury and its negligent cause."); Lawhon v. L.B.J. Institutional Supply, Inc., 765 P.2d 1003, 1007 (Ariz. Ct. App. 1988) (Under Arizona's

would have run out well before the December 2000 filing date of this action.

### *3. Fraudulent concealment*

Plaintiff vehemently argues that the applicable statute of limitations must be tolled because Firestone fraudulently concealed information relating to her cause of action. The doctrine of fraudulent concealment focuses on conduct by the defendant that is designed to prevent discovery of either the injury or the responsible party. McCollum v. Sisters of Charity of Nazareth Health Corp., 799 S.W.2d 15, 19-20 (Ky. 1990). In order to toll the limitations period, Kentucky courts require that “there must be ‘some act or conduct which in point of fact misleads or deceives the plaintiff and obstructs or prevents him from instituting his suit while he may do so. ... [M]ere silence with respect to the operative fact is insufficient. There must be an affirmative act by the party charged.’” Gailor v. Alsabi, 990 S.W.2d 597, 603 (Ky. 1999) (citations omitted).

Plaintiff’s allegations as to fraudulent concealment by Firestone amount to the simple assertion that Firestone failed to disclose the defect in their tires to the general public, including Plaintiff. Under the relevant Kentucky standard, such allegations, even if

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discovery rule, “[t]he cause of action does not accrue until the plaintiff knows or should have known of both the what and who elements of causation,” in other words, that he or she has been injured “by a particular defendant’s negligent conduct.”) So, while we note the relatedness of these cases, we do not find them dispositive of the instant motion.

proven true, are not sufficient to toll the statute of limitations.<sup>5</sup> Plaintiff has neither alleged nor offered sufficient evidence from which a jury could reasonably find that Firestone took any affirmative act to prevent Plaintiff from instituting her lawsuit within the time limit provided by statute. Accordingly, we find that no action on the part of Firestone operated to toll the applicable limitations period, Plaintiff filed this action after the expiration of the one-year statute of limitations, and we GRANT Firestone's Motion for Summary Judgment.

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> Just as the court noted in Hazel, "Plaintiff asks this Court to do what Kentucky courts have not yet done, namely to extend the protection to consumers a step further, to toll the statute of limitations based upon Defendant's duty to inform consumers of a dangerous defect." Id. at 440.

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