

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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In re: BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-9373-C-B/S
TIRES PRODUCTS LIABILITY) MDL No. 1373
LITIGATION) (centralized before Hon. Sarah Evans
_____) Barker, Judge)
)
THIS DOCUMENT RELATES TO ALL)
ACTIONS)

ORDER DENYING MOTION TO ENJOIN
CLASS PROCEEDINGS

This matter is before the Court on two motions: (1) Ford Motor Company’s (“Ford”) Motion to Temporarily Enjoin the Class Aspect of Parallel State and Federal Proceedings Pending Disposition of Ford Motor Company’s Motion to Enjoin, and in the Alternative, Motion for Expedited Briefing Schedule, and (2) Ford Motor Company’s Motion to Enjoin the Class Aspect of Parallel State and Federal Proceedings. Defendant Bridgestone/Firestone North American Tire, LLC (“Firestone”) has joined in these motions. For the reasons set forth below, each of these requests is DENIED.

Ford and Firestone seek an order enjoining all persons¹ from “litigating or

¹The moving papers and the proposed order are inconsistent. The proposed order is directed at all named plaintiffs in any class case transferred to this MDL, their attorneys and other representatives, and any persons or attorneys who would litigate or participate in any “Enjoined Lawsuit,” which refers to any lawsuit in which the aforementioned MDL plaintiffs

otherwise participating in any pending or future lawsuit [in any state or federal court] brought as a class action” that alleges a Ford Explorer rollover propensity or a tread separation defect of the Firestone tires that were the subject of class claims in this MDL (“Enjoined Lawsuit”). Ford and Firestone also ask this court to prohibit any named plaintiff, attorney, or law firm from receiving any fees, compensation, or other compensation in connection with any Enjoined Lawsuit.

The defendants ground their request in the All Writs Act (28 U.S.C. § 1651), and they further assert that this injunctive power can be imposed on state court litigants consistent with the Anti-Injunction Act (28 U.S.C. § 2283) because (1) it would prevent relitigation of a federal court judgment and (2) is necessary in aid of this federal court’s jurisdiction.

Having reviewed the defendants’ submissions and the cases offered as authority for their request, the Court finds no basis for granting this extraordinary (and, as far as we can determine, unprecedented) relief. Having made this determination on the basis of the moving papers, which presumably contain the best arguments and authorities the defendants can muster, we are issuing this order promptly so that the parties² are not put to the time and expense of further briefing.

and attorneys are participating. The defendants’ motion and brief in support make clear, however, that the defendants seek an injunction that extends to “all persons.”

²Because the requested injunction would reach far beyond the parties and their lawyers in this MDL, the Court is also mindful of numerous counsel in other cases who would otherwise wish to file responses.

The factual underpinning for the defendants' request for injunctive relief consists of two orders: (1) the Seventh Circuit's May 2, 2002 order decertifying the classes that had been certified in this MDL, and (2) this court's order directing that MDL class counsel participating in plaintiffs' management of this litigation not participate in parallel state court class cases.

The latter basis need be addressed only briefly. It was never this court's intent to proscribe MDL class counsels' participation in other class cases beyond the pendency of a certified class action in the MDL, nor do we perceive the commitment class counsel made to the Court so broadly. Given the decision of the Seventh Circuit, our order is in all likelihood moot at this point. To the extent our previous order could be construed otherwise, it is hereby RESCINDED.

The primary basis the defendants assert for their request for injunction is the Seventh Circuit's order decertifying the class. An injunction is necessary, so their argument goes, to "protect" and "effectuate" the preclusive effect of the Seventh Circuit's decertification determination. The flaws in this position are obvious and many.

First, the defendants' argument is constructed on the faulty premise that the Seventh Circuit's decertification decision constitutes a "mandate" that there be no case involving allegations of an Explorer rollover propensity or Firestone tire defect prosecuted as a class action in any state or federal court. Even assuming a federal court's power to issue such a mandate (which, of course, we don't), that is certainly not what the Seventh Circuit *said*. The Seventh Circuit's decision does not speak to class certification

determinations under state procedural rules, nor does it address all conceivable class definitions. Indeed, the opinion clearly contemplates the possibility that class actions will be maintained in the state courts.³ In addition, the Seventh Circuit’s admonition regarding the maintenance of statewide classes expressly refers only to those in the MDL that would be evaluated under Fed.R.Civ.P. 23.⁴ The defendants’ assertion that there was a “mandate” that this court must protect and effectuate by barring access of all persons and their counsel to any court in this country plainly rests on a mischaracterization of the bounds of the Seventh Circuit’s decision.

Second, for reasons alluded to above, the Seventh Circuit’s decertification decision does not necessarily have preclusive (collateral estoppel) effect on all persons and cases the defendants want to enjoin. The propriety of class treatment of any case alleging a rollover or Firestone tire defect in any court is an issue that can be precluded by the Seventh Circuit’s decertification decision only if, among other things, it was the same issue litigated before and decided by the Seventh Circuit. The injunction sought here reaches issues far beyond what the Seventh Circuit decided. It would preclude a state court from determining the propriety of class treatment under its own class action rule; it

³The opinion notes, for example, that a series of decisions or settlements in multiple cases “(say, 1995 Explorers in Arizona equipped with a particular tire specification)” will “yield the information needed for accurate evaluation of mass tort claims.” In re Bridgestone/Firestone, Inc., 288 F.3d 1012, 1020 (7th Cir. 2002).

⁴See 288 F.3d at 1018 (“Lest we soon see a Rule 23(f) petition to review the certification of 50 state classes, we add that the litigation is not manageable as a class action even on a statewide basis.”)

would preclude the maintenance of classes defined differently from those at issue in this MDL,⁵ and as a threshold matter, it would deny the state courts the opportunity to make their own determinations of what preclusive effect, if any, the Seventh Circuit's class certification determination might or might not have with respect to the issues before them.⁶

Third, none of the decisions cited by the defendants authorizes the extraordinary relief they seek. The propositions that a federal court can enjoin another federal court from passing on the propriety of certification of the same class under the same federal rule (In re Dalkon Shield Punitive Damages Litigation, 613 F. Supp. 1112 (E.D. Va. 1985), and In re Keck, Mahin & Cate, 253 B.R. 530 (N.D. Ill. 2000)), or that a federal court can enjoin relitigation of the same class certification and fairness determination in the context of a state court malpractice action against federal class counsel (Thomas v. Powell, 247 F.3d 260 (D.C. Cir. 2001)), or that one federal district court's denial of class certification can be entitled to collateral estoppel effect in a subsequent federal action (In

⁵The defendants have not addressed the (product) contours of the class definitions in the specific state court actions they list in their moving papers, though they have provided the Court with a stack of complaints from some of those cases. It would matter not, though, if the class definitions were identical to those used in the MDL, because the defendants ask the Court to enjoin *all* present and future class litigation involving allegations of Explorer rollover propensity or Firestone tire tread separation, regardless of the breadth or narrowness of the proposed class definitions.

⁶We recognize that the Anti-Injunction Act allows a federal court in certain instances to enter an injunction that would effectively preempt the state court's collateral estoppel inquiry. Not only do we find such a preemptive action improper for the reasons noted, but doing so would also require us to analyze facts (the proposed classes) not even before us and the law (class certification and collateral estoppel principles) of numerous states.

re Piper Aircraft Distribution System Antitrust Litigation, 551 F.2d 213 (8th Cir. 1977)), or that a federal court can opine (in the context of a Rule 11 sanctions inquiry) that a state court would likely accord the federal court’s class certification decision preclusive effect (Lee v. Criterion Ins. Co., 659 F. Supp. 813 (S.D. Ga. 1987)), or that a federal court can enjoin overlapping state court class actions in connection with its *approval* of a proposed settlement and class certification (In re Mexico Money Transfer Litigation, 1999 WL 1011788 (N.D. Ill. 1999)), are a far cry from authority for the unbridled intrusion the defendants want this court – which is not even presiding over a class action – to make into the realm of state court decision-making.⁷

Fourth, there being no certified class in this MDL, the only litigants over whom this court has jurisdiction are the named plaintiffs in all the individual actions pending in the MDL. The All Writs Act authorizes courts to issue orders “necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). While the exercise of the power conferred by the Act is governed by the sound discretion of the trial court, Roche v. Evaporated Milk Ass’n, 319 U.S. 21, 25 (1943); Chicago, R.I. & P.R. Co. v. Igoe, 212 F.2d 378, 381 (7th Cir. 1954), such power should not be exerted “to control or interfere with state court litigation, thus exceeding our jurisdiction.” In re Campbell, 264 F.3d 730, 731 (7th Cir. 2001). Imposing the

⁷This court will, of course, adhere to the Seventh Circuit’s determination, as well as law of the case and collateral estoppel principles, with respect to future class certification requests in cases properly before it in this MDL.

extraordinary restrictions sought by the defendants on all current and future state court litigants would extend well beyond the bounds of our jurisdiction over this action.

We close with this additional observation: it should have been as perfectly obvious to the defendants and their counsel as it was to this court and all other reasonable observers that the prosecution of multiple state court cases each seeking class certification was the probable consequence of denial of class certification in the MDL. The Seventh Circuit inveighed against the “central planner” role when it foreclosed one federal district court’s attempt to manage varying litigants with varying circumstances in varying regional markets; this is the same role Ford and Firestone originally criticized, but now attempt to reprise when it apparently serves their current litigation strategies. The die was cast when the Seventh Circuit adopted the defendants’ theory opposing class certification in the MDL. They cannot hope to have it both ways – at least not in the same litigation. Their motion to enjoin other proceedings is accordingly DENIED.

It is so ORDERED this ____ day of February, 2003.

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

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