

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: )  
)  
TESSIE ARROYO ) Individual Case No. IP 01-5457-C-B/S  
Plaintiff, )  
v. )  
)  
BRIDGESTONE/FIRESTONE, INC., et al., )  
Defendants. )

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

This entry addresses summary judgment motions filed by Defendant Bridgestone/Firestone North American Tire, LLC (“Firestone”) and Plaintiff Tessie Arroyo in a personal injury case pending in this Multidistrict Litigation (“MDL”). Firestone moves for summary judgment on the grounds that Ms. Arroyo cannot establish certain necessary elements of her products liability claim under California law, and that, as a result, her related claims for misrepresentation, unfair competition, unlawful business practices, issuing false statements, and fraud must also fail. Ms. Arroyo responds with a cross-motion for summary judgment on these issues. For the reasons explained in detail below,

we GRANT Firestone's Motion for Summary Judgment.<sup>1</sup>

### Factual Background

On or about November 13, 1999, Plaintiff Tessie Arroyo was driving her 2000 Ford Explorer equipped with Firestone ATX tires on the San Diego Freeway in Los Angeles when she lost control of her vehicle and collided with another vehicle, resulting in physical injuries to Ms. Arroyo and significant damage to her vehicle. Pl.'s Resp. to Def.'s Statement of Uncontroverted Facts ¶¶ 1-2. At the time of the accident, Ms. Arroyo had leased the vehicle for only two months and the subject tires had been driven 1,746 miles. Pl.'s Addt'l Facts ¶¶ 2-3. In those two months of ownership, Ms. Arroyo had not changed, modified, or serviced the subject tires, nor had she had any maintenance, repairs, or modifications completed on the subject vehicle. Id. ¶¶ 4-5. Before driving the vehicle on the date of the accident, Ms. Arroyo did not observe any unusual condition in the tires, such as punctures, cuts, or over- or underinflation. Id. ¶ 6. Immediately prior to the accident, Ms. Arroyo did not observe any hazards in the roadway that might have caused a puncture or blowout. Id. ¶ 7. She testified (by declaration) that she was not hauling excessive weight in the vehicle that day and that she was driving within the posted speed limit. Id. ¶¶ 8-9.

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<sup>1</sup> We recognize that the document Ms. Arroyo has filed titled "Cross Motion for Summary Judgment" is, in truth, a response to Firestone's Motion, and so we evaluate its contents as such. To the extent that Ms. Arroyo's motion could be construed as a cross motion for summary judgment, however, it is DENIED.

A California Highway Patrol officer responding to the accident determined that two of the tires on Ms. Arroyo's vehicle drifted into the adjacent lane of traffic "for unknown reasons," and that "[Ms. Arroyo] was at fault in this collision by changing lanes without making sure the intended lane was clear of traffic." Decl. of Pl.'s Resp. to Def.'s Statement of Uncontroverted Facts ¶ 3; Decl. of James T. Capretz, Ex. 1. At the time of the accident, the vehicle was insured by 20<sup>th</sup> Century Insurance Group ("20<sup>th</sup> Century"). Id. ¶ 5. Following the accident, the vehicle was stored for an unspecified duration at a Honda dealership several miles from Ms. Arroyo's home. Id. ¶ 6. Days after the accident, Eduardo Coscolluela, a friend of Ms. Arroyo, visited the dealership where the vehicle was stored and viewed what he believed were the subject tires and a piece of separated tread. Decl. of Eduardo Coscolluela ¶¶ 6-8. The parties agree that Mr. Coscolluela has no training in accident reconstruction, tire failure analysis, or tire design and manufacturing, and therefore that he is not qualified to render an expert opinion on the fact of or possible causes of the alleged tread separation. Pl.'s Resp. to Def.'s Statement of Uncontroverted Facts ¶ 7.

In the weeks and months following the accident, Ms. Arroyo never contacted 20<sup>th</sup> Century about preserving the subject tires or the vehicle. Id. ¶ 8. The vehicle and all component parts, including the tires, were sold for salvage on or about March 2000. Id. ¶ 9. Ms. Arroyo filed her lawsuit against Firestone and Ford Motor Company ("Ford") in the United States District Court for the Central District of California on July 25, 2001, and it

was transferred to this Court on October 9, 2001. During discovery, co-defendant Ford requested the subject tires for inspection, and Ms. Arroyo notified Ford that they were unavailable. Id. ¶¶ 10-13. Ms. Arroyo chose not to designate any case-specific experts, but instead “has relied on Plaintiffs’ Steering Committee’s retention of core experts, and has adopted those experts’ opinions relating to Firestone’s defective tires.” Pl.’s Resp. to Def.’s Statement of Uncontroverted Facts ¶ 14. Firestone filed this Motion for Summary Judgment on August 23, 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 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). 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. In addition, a self-serving affidavit, unsupported by specific concrete facts reflected in the record, cannot preclude summary judgment.

Albiero v. City of Kankakee, 246 F.3d 927, 933 (7th Cir. 2001); Slowiak v. Land O’Lakes, Inc., 987 F.2d 1293, 1295 (7th Cir. 1993).

### Legal Analysis

Firestone first contends that Ms. Arroyo cannot meet her burden of proof on certain essential elements of her products liability claim. To maintain a cause of action for manufacturers’ product liability under California law, a plaintiff must prove “1) the product is placed on the market; 2) there is knowledge that it will be used without inspection for defect; 3) the product proves to be defective; and 4) the defect causes injury to a human. Thomas v. Lusk, 27 Cal. App. 4th 1709, 1716 (Cal. Ct. App. 1994), quoting McCreery v. Eli Lilly & Co., 87 Cal. App. 3d 77, 83 (Cal. Ct. App. 1978). California law recognizes multiple theories by which a plaintiff may prove a design defect. McCabe v. American Honda Motor Co., 100 Cal. App. 4<sup>th</sup> 1111 (Cal. Ct. App. 2002) (distinguishing “consumer expectation” test from “risk-benefit analysis” in product liability cases). Regardless of the theory a plaintiff pursues, however, the plaintiff bears the burden of proving that the defective product supplied by the defendant was a substantial factor in bringing about her injury. Rutherford v. Owens-Illinois, Inc., 16 Cal. 4<sup>th</sup> 953, 968 (Cal. 1997). California law

provides that the elements of defect and proximate cause may be proved by circumstantial (as well as direct) evidence. Dimond v. Caterpillar Tractor Co., et al., 65 Cal. App. 3d 173, 177 (Cal. Ct. App. 1976), citing Elmore v. American Motors Corp., 70 Cal.2d 578, 583-84 (Cal. 1969).

### *1. Products liability*

Ms. Arroyo's first two causes of action hinge on an alleged defect in the Firestone tires with which her vehicle was equipped at the time of the accident.<sup>2</sup> Firestone argues that Ms. Arroyo cannot produce the subject tires and has not offered any other testimony (for example, by any case-specific expert) tending to establish the existence of a defect. Ms. Arroyo counters that California law does not require a plaintiff to produce a defective product in order to prove a design defect and that she intends to rely on the testimony of the MDL Core Experts to establish the elements of her claim. However, Ms. Arroyo does not cite any specific testimony regarding the existence of a tire defect in the expert testimony on which she purportedly relies.

Instead, Ms. Arroyo cites the decision in Greco v. Ford Motor Company, 937 F. Supp. 810 (S.D. Ind. 1996) for the proposition that “[t]o reach a jury, it [is] sufficient [for a

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<sup>2</sup> Ms. Arroyo also states claims for negligence, misrepresentation, and breach of express and implied warranties. Each of these claims rests on the allegation that Firestone designed, manufactured, and/or marketed a defective product, which caused damage to Ms. Arroyo. Therefore, as discussed later in this Entry, our conclusion regarding Ms. Arroyo's ability to prove the existence of a product defect applies equally to those other causes of action.

plaintiff] to point to evidence that the defendant made the vehicle, the vehicle had a propensity to roll over, and the failure was consistent with that propensity.” Pl.’s Opposition to Def.’s Motion for Summary Judgment at 5 (citation omitted). This synopsis simultaneously overstates the holding in Greco and fails to acknowledge certain important differences from the present case. There, the court decided that, in the context of a products liability suit under Indiana law based on an alleged design defect, the plaintiff’s failure to preserve the subject vehicle did not amount to the sort of “intentional or even grossly negligent conduct resulting in the destruction of critical evidence” that might warrant a dismissal with prejudice. Id. at 815-816. Moreover, the plaintiff in Greco offered at least some other evidence (specifically, expert testimony) raising questions of fact as to whether the vehicle was in a defective condition and whether such defect caused the alleged damages. Id. at 816. For these reasons, the court denied the defendant’s motion for summary judgment.

Here, we face a very different evidentiary offering. Although Ms. Arroyo “intends to take full advantage of the testimony provided by the MDL Core Experts that have been retained by Plaintiffs’ Steering Committee,” she has not cited or made any reference to the passages of the Core Experts’ testimony on which she relies. It is not the absence of the tires that proves fatal to Ms. Arroyo’s claim, but the lack of other evidence tending to establish the existence of a defect in those tires. Of course, the tires are not the only means by which to prove the existence of a defective condition, but California law makes

clear that the mere fact of an accident does not prove the existence of a design defect. Henderson v. Harnischfeger Corp., 12 Cal.3d 663, 676 (Cal. 1974). In the absence of some other circumstantial evidence tending to prove the existence of a defect, Plaintiff simply lacks sufficient legal evidence from which a jury could reasonably infer that her tires “proved to be defective,” as required under California law.

Even assuming that Plaintiff has identified evidence from which a jury could reasonably infer the existence of a design defect in the Firestone tires on Ms. Arroyo’s vehicle, Plaintiff has offered insufficient evidence to establish that such defect was the proximate cause of a tire failure that led to Plaintiff’s injuries.<sup>3</sup> The MDL Core Experts offer no opinion (at least, none that Plaintiff identifies) regarding the relationship between the alleged tire defect, Ms. Arroyo’s loss of vehicle control, and her subsequent collision. This lack of evidence would leave the jury to speculate as to possible causes of the collision. Moreover, although Ms. Arroyo denies the existence of road hazards or any sign of negative tire performance on the date of the accident, her testimony represents the only evidence on these issues and, as such, cannot preclude summary judgment without some

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<sup>3</sup> The parties make arguments regarding the “spoliation” of the subject tires and whether the absence of the subject tires mandates dismissal of Ms. Arroyo’s action. California decisions indicate that “willful suppression of evidence” may justify an unfavorable inference against the assertions of the suppressing party. Cedars-Sinai Medical Center v. Superior Court, 18 Cal. 4th 1, 12 (Cal. 1998), citing Fox v. Hale & Norcross S.M. Co., 108 Cal. 369, 415-417 (Cal. 1895). Here, there is simply no evidence that Ms. Arroyo willfully suppressed the vehicle or subject tires. For the purposes of this motion, and because we must view all facts in the light most favorable to the nonmoving party, we train our focus on the quantum of evidence Ms. Arroyo has offered to support her claim, and not simply the absence of the subject tires.

supporting record evidence. Plaintiff cites none.<sup>4</sup>

In addition, the parties have not identified and the Court has not found any California cases in which such limited evidence of defect and causation necessitated jury consideration of these issues. Therefore, because Plaintiff has not identified sufficient evidence from which a jury could reasonably conclude that the alleged tire defect caused Ms. Arroyo's collision, Firestone's Motion for Summary Judgment is GRANTED as to Ms. Arroyo's product liability claims.

## *2. Other causes of action*

Ms. Arroyo also brings claims for negligence, misrepresentation, breach of express and implied warranty, and related claims under a number of California statutes regarding unfair or unlawful business practices,<sup>5</sup> each based on the contention that Firestone designed, manufactured and/or sold a defective product. Firestone moves for summary judgment on these claims, arguing that Ms. Arroyo's inability to prove a defect necessarily precludes her recovery under these statutes. Our earlier discussion of Plaintiff's lack of

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<sup>4</sup> Ms. Arroyo cites the testimony of Eduardo Coscolluela for the observation that some days after the accident, he returned to view the vehicle and the tires where they were stored at a car dealership. At that time, he viewed a piece of tread which had apparently separated from one of the subject tires. Although this testimony may bear on the condition of the tires at or immediately following the time of the accident, it does not tend to establish whether a design defect in the subject tires caused the separation and, ultimately, Ms. Arroyo's injuries.

<sup>5</sup> Specifically, these claims include alleged violations of the California Consumers Legal Remedies Act; unfair competition; unfair and deceptive trade practices; false and misleading statements; fraud, misrepresentation and deceit; and intentional infliction of emotional distress.

evidence of defect guides our consideration of these claims as well. In support of these claims, Plaintiff sets forth no new or additional evidence in opposition to Firestone's motion. Indeed, Plaintiff simply rests on her earlier arguments regarding defect and causation. As explained in detail above, Ms. Arroyo has failed to set forth admissible evidence from which a jury could conclude that her Firestone ATX tires in fact suffered from a defect. Absent evidence tending to establish that her tires were defective and, therefore, that Firestone violated any of the statutory duties cited in Ms. Arroyo's Complaint, we find that she has not made the requisite showing to stave off this properly fashioned summary judgment motion. Accordingly, Firestone's Motion for Summary Judgment as to Counts 3-11 is GRANTED.

#### Conclusion

Defendant Firestone moved for summary judgment, arguing primarily that Ms. Arroyo was unable to establish either defect or causation – two necessarily elements of her products liability claim, and that this inability proved fatal to her other claims as well. For the reasons set forth in detail above, we find that 1) Ms. Arroyo has failed to provide sufficient evidence from which a reasonable jury could conclude that the alleged tire defect existed in Ms. Arroyo's tires or that such defect caused Ms. Arroyo's injuries; and 2) the failure to provide evidence from which a jury could reasonably infer a tire defect necessarily undermines her other claims regarding violations of the California Consumers Legal Remedies Act, unfair competition, unfair and deceptive trade practices, false and

misleading statements, fraud, misrepresentation and deceit, and intentional infliction of emotional distress. Accordingly, Firestone's Motion for Summary Judgment is GRANTED and Ms. Arroyo's Cross Motion for Summary Judgment is DENIED.

It is so ORDERED this \_\_\_\_\_ day of February, 2003.

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

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