

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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In re: BRIDGESTONE/FIRESTONE, INC.,) Master File No. IP 00-9374-C-B/S
TIRES PRODUCTS LIABILITY) MDL No. 1373
LITIGATION) (centralized before Hon. Sarah Evans
_____)) Barker, Judge)
)
DAVID KATZ, on behalf of himself, the)
general public, and all others in California) Individual Case No. IP 03-5736-C-B/S
similarly situated,)
Plaintiff,)
v.)
FORD MOTOR COMPANY,)
Defendant.)

ORDER ON MOTION FOR REMAND

Before the Court is the plaintiff's Motion for Remand. For the reasons set forth below, that motion is GRANTED, and this action is REMANDED to the Superior Court of the State of California, County of Los Angeles. The plaintiff is also awarded his fees and costs incurred as a result of removal, as provided by 28 U.S.C. § 1447(c). He shall file his petition for fees and costs within fourteen days of the date of this Order; Ford shall then have fourteen days to file any response.

Discussion

The plaintiff filed this action against Ford Motor Company ("Ford") on behalf of a

putative class of persons or entities in California who now own or lease, or who formerly owned or leased, certain Ford Explorer sport utility vehicles. He seeks on behalf of the class restitution of the “overcharge” Ford is alleged to have received and retained from the lease/purchase of the Explorers, disgorgement of Ford’s revenues or profits attributable to unjust enrichment, prejudgment and postjudgment interest, punitive damages, costs and attorney fees as allowed by law or under common fund principles, and a declaration of Ford’s financial responsibility for the costs of class notice. (*See* Complaint Prayer for Relief and ¶ 83) The complaint contains no express substantive claim based on federal law.

Ford removed the case to federal court, based on assertions of federal subject matter jurisdiction under both 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1332 (diversity). The plaintiff then filed a motion for remand challenging both of those asserted bases for federal subject matter jurisdiction, and that motion is now fully briefed.

On April 11, 2003, we issued a comprehensive order on motions for remand pending in numerous cases in this MDL that had been brought as class actions. *See In re Bridgestone/Firestone, Inc.*, 256 F.Supp.2d 884 (S.D. Ind. 2003) (“April 2003 Remand Order”). Virtually every issue presented by the motion for remand in this case has been analyzed and decided in connection with that order, and that discussion will be referenced but not repeated here.

First, for the reasons explained in the April 2003 Remand Order, the plaintiff's claims are not completely preempted by the Motor Vehicle Safety Act, so no federal question jurisdiction exists in this matter. *See* 256 F.Supp.2d at 896-900.

Whether diversity jurisdiction exists depends on whether the \$75,000 amount in controversy threshold has been met. Ford has the burden of demonstrating, with evidence, that it has. *See id.* at 890. The substance of the plaintiff's money damages claim in this case is that the Ford Explorers identified in the complaint are, because of their alleged rollover propensity, design flaws, and tire problems, worth less than the putative class members paid for them. The plaintiff seeks, on behalf of the class, restitution or disgorgement of this alleged "overcharge."

Ford asserted in its removal papers that a Ford Explorer has "a typical purchase price in excess of \$20,000," and went on to maintain that the plaintiff's requested relief would exceed \$75,000 in cost to Ford even if it had sold just four Explorers in California. That position is flawed because it ignores the non-aggregation rule. As we explained in our April 2003 Remand Order, the cost of restitution or disgorgement must be measured with respect to a single plaintiff, not the entire class, because the cost to Ford of restitution will depend on the number of claimants benefitted by a restitution order. *See id.* at 891 & n. 10. Moreover, Mr. Katz's¹ complaint does not necessarily put the entire

¹The Seventh Circuit instructs that the court is to value the claims with reference to the named plaintiffs, not hypothetical putative class members. *See In re Brand Name Prescription*

purchase price of the Explorer at issue, but rather the amount by which its purchase or lease price allegedly exceeded its actual value, an amount obviously less than the purchase price. Even if a class member could recover a total refund of the purchase price or replacement of the vehicle (apparently in the range of \$17,000 to \$25,000²), a remedy that the plaintiff does not disclaim (*see* Reply Memorandum in Support of Motion to Remand at 9), we nevertheless find that Ford has failed to demonstrate a reasonable probability that the total relief attributable to a single plaintiff will reach \$75,000.³

In sum, the Court determines that Ford has failed to establish as a reasonable probability that the amount in controversy requirement is met in connection with the restitution or disgorgement claims of a single plaintiff (even when individually apportioned interest, attorney fees, and punitive damages are included⁴). *See* April 2003 Remand Order, 256 F.Supp.2d at 891-92.⁵

Finally, we address Ford's argument that the plaintiff's unspecified request for

Drugs Antitrust Litigation, 123 F.3d 599, 607 (7th Cir. 1997).

²This figure would presumably be reduced by the offsetting net value of the vehicle to be returned to Ford as a result of a full refund or replacement.

³*See infra* note 4.

⁴Ford has offered no evidence, for example, of attorney fee and/or punitive damage awards in similar cases that, when attributed to the class members individually, raise the amount in controversy to a figure approaching the jurisdictional minimum.

⁵The requested total cost of class notice also does not cause the jurisdictional minimum to be satisfied. *See* 256 F.Supp.2d at 894-95 & n.17.

“other appropriate equitable relief” authorized by California Business and Professions Code § 17200 et seq. (“California Unfair Competition Law”) implicates the sort of injunctive relief this court has found to satisfy the amount in controversy. In our April 2003 Remand Order, we noted that the cost to the defendant of injunctive relief indivisibly running in favor of the plaintiffs as a whole and not apportionable to the individual plaintiffs could be considered to satisfy the amount in controversy. *Id.* at 894-96. Ford’s attempt to apply that principle to the plaintiff’s claim under the California Unfair Competition Law fails, however. California courts have made clear that requests on behalf of a class for injunctive relief under the California Unfair Competition Law are a “collection of separate and distinct claims” that cannot be aggregated to achieve the jurisdictional minimum. *Boston Reed Co. v. Pitney Bowes, Inc.*, 2002 WL 1379993, *5 (N.D. Cal. June 20, 2002). *See also Ecker v. Ford Motor Co.*, 2002 WL 31654558, *3-4 (C.D. Cal. Nov. 12, 2002); *Tompkins v. Bridgestone/Firestone*, CIV-S-02-1300, Memorandum of Opinion and Order at 9-10 (E.D. Cal. Aug. 20, 2002). For this reason, the plaintiff’s request for “appropriate equitable relief” does not supply federal diversity jurisdiction over this case.

For all of the above reasons, the Court finds that it lacks subject matter jurisdiction over this action and accordingly REMANDS it to the Superior Court of the State of California, County of Los Angeles. The plaintiff is also awarded his fees and costs incurred as a result of removal, as provided by 28 U.S.C. § 1447(c). He shall file his

petition for fees and costs within fourteen days of the date of this Order; Ford shall then have fourteen days to file any response.

It is so ORDERED this _____ day of November, 2003.

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

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