

DOCKET NO. 1373

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

**IN RE BRIDGESTONE/FIRESTONE, INC., ATX, ATX II AND
WILDERNESS TIRES PRODUCTS LIABILITY LITIGATION**

**BEFORE JOHN F. NANGLE, CHAIRMAN, LOUIS C. BECHTLE,* JOHN
F. KEENAN,** WM. TERRELL HODGES, MOREY L. SEAR, BRUCE M.
SELYA AND JULIA SMITH GIBBONS, JUDGES OF THE PANEL**

TRANSFER ORDER

This litigation consists of 53 actions pending in 27 districts as follows: ten actions in the Southern District of Florida; six actions in the Middle District of Tennessee; four actions each in the Northern District of Illinois and the Southern District of Texas; three actions in the Middle District of Florida; two actions each in the Southern District of Illinois, the District of Massachusetts, the District of New Mexico, and the Southern District of Ohio; and one action each in the Central District of California, the Northern District of California, the Southern District of California, the District of District of Columbia, the Central District of Illinois, the Eastern District of Louisiana, the Middle District of Louisiana, the Western District of Louisiana, the District of Maryland, the Eastern District of Michigan, the Western District of Missouri, the District of New Jersey, the Western District of Oklahoma, the District of Rhode Island, the Eastern District of Texas, the Northern District of Texas, the Western District of Texas, and the Southern District of West Virginia.¹

* Although Judge Bechtle was not present at the hearing, he has, with the consent of all parties, participated in this decision.

** Judge Keenan took no part in the decision of this matter.

¹ Ten additional actions on Schedule A, two of the actions in the Eastern District of Louisiana, and one action each in the Western District of Arkansas, the Central District of Illinois, the Northern District of Illinois, the Southern District of Illinois, the District of Maryland, the Southern District of Mississippi, the Eastern District of Oklahoma, and the Southern District of Texas, were not included in the Section 1407 motions in this docket, but are now included in this transfer order, because all parties to these ten actions have stated in writing their respective positions and had the opportunity to present oral argument at the Panel's October 17, 2000, hearing in this matter.

In addition, four actions that were subject to a Section 1407 motion have been remanded to their respective state court: *Pete Lennon, et al. v. Bridgestone/Firestone, Inc., et al.*, E.D. Pennsylvania, C.A. No.

Before the Panel are three motions or cross-motions for transfer of these actions for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. §1407. The Section 1407 moving parties are arrayed as follows: 1) defendant Ford Motor Company (Ford), whose motion, as amended, seeks centralization of 47 actions in the Northern District of Illinois; 2) plaintiffs in one of the Southern District of Illinois actions, whose motion seeks centralization of six actions in the Southern District of Illinois; and 3) plaintiff in one Middle District of Tennessee action, whose motion initially sought centralization of four actions in that district, or alternatively, the Southern District of Illinois, but who now solely supports centralization in the latter district.² All actions relate to alleged defects in certain tires manufactured by Bridgestone/Firestone, Inc. (Firestone), primarily in their use with certain vehicles manufactured by Ford.

Objections to transfer, generally, are raised with respect to transfer of particular actions: 1) plaintiffs in certain actions or potential tag-along actions who contend that actions removed by Firestone or Ford from state to federal court should be excluded from transfer because there is no federal jurisdiction and the actions should be remanded to state court; 2) plaintiffs in certain actions who contend that actions brought on behalf of persons injured or killed in accidents related to the defective tires should not be centralized or should be centralized separately from the other MDL-1373 actions; and 3) plaintiffs in the Western District of Texas action, which is the only action involving a different model of Firestone tire, who object to inclusion of their action in 1407 proceedings. Finally, plaintiffs in various actions have suggested the Middle District of Florida, the Southern District of Florida, the Central District of Illinois, the Eastern District of Louisiana, the District of New Mexico, the Middle District of Tennessee, or the Southern District of Texas as possible transferee forums for this litigation.

On the basis of the papers filed and the hearing held, the Panel finds that, with one exception, the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the Southern District of Indiana before Chief Judge Sarah Evans Barker will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.³

2:00-4469; *Harry Dorian v. Bridgestone/Firestone, Inc., et al.*, E.D. Pennsylvania, C.A. No. 2:00-4470; *Ann Miller v. Bridgestone/Firestone, Inc., et al.*, E.D. Pennsylvania, C.A. No. 2:00-4575; and *David Michael Parham v. Bridgestone/Firestone, Inc., et al.*, D. South Carolina, C.A. No. 6:00-2737. Accordingly, the question of Section 1407 transfer with respect to these actions is moot at this time. Also, various parties have notified the Panel of the pendency of more than 90 additional, potentially related actions pending in federal district courts. These actions and any other newly filed actions that come to the Panel's attention will be treated as potential tag-along actions. *See* Rules 7.4 and 7.5, R.P.J.P.M.L., 192 F.R.D. 459, 468-470 (2000).

² Much of the differences among the number of actions subject to the various motions seems to be in large part attributable to the various movants' awareness or lack of awareness of the pendency of related actions.

³ In light of the different type of tire involved in the Western District of Texas action, we are persuaded that this action should be excluded from Section 1407 proceedings at this time.

All actions involve allegations that Firestone and, in most instances, Ford are responsible for harm or risk of harm caused by defective tires, ranging in various degrees from economic or property damage to personal injury or wrongful death. Accordingly, each action raises similar questions including whether Firestone's ATX, ATX II, and Wilderness AT tires are defective; whether the August 9, 2000, recall as subsequently modified adequately addresses the problems with the defective tires; whether defendants had knowledge which they failed to disclose concerning the defects in the subject tires; and whether defendants failed to adequately warn or notify members of the public concerning the defective tires. Relevant discovery, including expert testimony, will overlap substantially in each action. Centralization under Section 1407 is thus necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (particularly with respect to overlapping class certification requests), and conserve the resources of the parties, their counsel and the judiciary.

Various plaintiffs' principal objection to Section 1407 transfer at this time is rooted in their contention that the Panel's decision should carve out any action that is subject to a motion to remand to state court. We note, however, that jurisdictional and remand motions can be presented to and decided by the transferee judge. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 368 F.Supp. 812, 813 (J.P.M.L. 1973).

Other parties that either oppose inclusion of their respective action in Section 1407 proceedings or seek creation of two separate multidistrict dockets have argued, *inter alia*, that such an approach is necessary because 1) their action or type of action involves unique issues, parties, or legal theories; and/or 2) centralization of all actions would be unduly burdensome. We are not persuaded by these contentions. We point out that transfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer. Nor is the presence of additional or differing legal theories significant when the underlying actions still arise from a common factual core. We observe that transfer under Section 1407 has the salutary effect of placing all actions in this docket before a single judge who can formulate a pretrial program that: 1) allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues, *In re Joseph F. Smith Patent Litigation*, 407 F. Supp. 1403, 1404 (J.P.M.L. 1976); and 2) ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. Finally, to any parties who believe that the uniqueness of their particular situation or the type of their claims renders continued inclusion of their action in MDL-1373 unnecessary or inadvisable, we point out that whenever the transferee judge deems remand of any claims or actions appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Rule 7.6, R.P.J.P.M.L., 192 F.R.D. 459, 470-72 (2000).

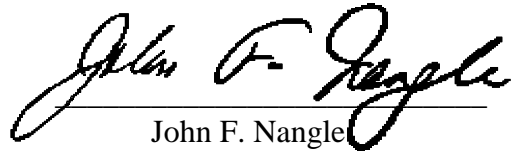
Given the range of locations of parties and witnesses in this docket and the geographic dispersal of constituent actions, it is clear that no single district emerges as a nexus. Thus, we have searched for a transferee judge with the ability and temperament to steer this complex litigation on a steady and expeditious course. By centralizing this litigation in the Southern District of Indiana

before Chief Judge Barker, we are confident that we are entrusting this important and challenging assignment to an able jurist.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. §1407, the actions on the attached Schedule A be, and the same hereby are, transferred to the Southern District of Indiana and, with the consent of that court, assigned to the Honorable Sarah Evans Barker for coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED that transfer pursuant to 28 U.S.C. § 1407 of the action entitled *Carol Veytia, et al. v. Bridgestone/Firestone, Inc.*, W.D. Texas, C.A. No. 1:00-478, be, and the same hereby is, DENIED.

FOR THE PANEL:

A handwritten signature in black ink, reading "John F. Nangle". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

John F. Nangle
Chairman

SCHEDULE A

MDL-1373 -- In re Bridgestone/Firestone, Inc., ATX, ATX II and Wilderness Tires Products Liability Litigation

Western District of Arkansas

Cheryl H. McKinney, etc. v. Bridgestone/Firestone, Inc., C.A. No. 2:00-2164

Central District of California

Lawrence Kaufman v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-9592

Northern District of California

Public Remedies, Inc. v. Bridgestone/Firestone, et al., C.A. No. 3:00-3183

Southern District of California

Daryl L. Ford v. Ford Motor Co., et al., C.A. No. 3:00-1766

District of District of Columbia

Center for Auto Safety v. Bridgestone/Firestone, et al., C.A. No. 1:00-2011

Middle District of Florida

Gabriel Carrillo, etc. v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-350

Jorge Carrillo, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-351

Kate Sanders v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-367

Southern District of Florida

David Jacobs v. Bridgestone/Firestone, Inc., et al., C.A. No. 0:00-7267

Randall Smithwick, III, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 0:00-7329

Leo Cruz, et al. v. Ford Motor Co., et al., C.A. No. 1:00-3180

Eduardo Salegui, et al. v. Ford Motor Co., et al., C.A. No. 1:00-3256

Jeffrey Margolis v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-3257

Rufino Rujano, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-3360

William Halkett, Jr., et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-3370

Robero Vives, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-3371

John Flanagan v. Bridgestone/Firestone, Inc., et al., C.A. No. 9:00-8819

Joanne Epstein v. Bridgestone/Firestone, Inc., et al., C.A. No. 9:00-8820

Central District of Illinois

Esther Siewert-Sitzmore v. Bridgestone/Firestone, Inc., C.A. No. 1:00-1289
Dennis Mickunas v. Ford Motor Co., et al., C.A. No. 2:00-2228

Northern District of Illinois

John Zelenika, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-5013
Susan P. Grayson, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-5405
Martha K. Benford, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-5406
Rodolfo Trujillo, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-5407
Florence Bruemmer v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-5408

Southern District of Illinois

Gary Gustafson, et al. v. Bridgestone/Firestone, Inc., C.A. No. 3:00-612
Jeana Wonnacot, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 3:00-678
Dawn Whorl v. Ford Motor Co., et al., C.A. No. 3:00-797

Eastern District of Louisiana

Donita Qualey, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-2599
Ethelyn Collins, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-2822
Douglas Sylvester v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-2834

Middle District of Louisiana

Kellerman Woodworks, LLC, et al. v. Bridgestone/Firestone, Inc., C.A. No. 3:00-621

Western District of Louisiana

Charles T. Gray, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 3:00-1877

District of Massachusetts

Thomas J. Kerner, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-11686
George Saccardo v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-11789

District of Maryland

Joan Spied v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-2653
Patricia Marie Maguire, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 8:00-2862

Eastern District of Michigan

George R. Burkes, Jr. v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-73881

Southern District of Mississippi

Jennifer L. Burge v. Bridgestone/Firestone, Inc., C.A. No. 1:00-436

Western District of Missouri

Kevin Stafford v. Bridgestone/Firestone, Inc., et al., C.A. No. 4:00-935

District of New Jersey

Barbara Felice, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 3:00-4447

District of New Mexico

Eve Monson, etc. v. Bridgestone/Firestone, Inc., C.A. No. 1:00-1144

David Sena, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-1273

Southern District of Ohio

John Dovich, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-731

Louis Rubenstein v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-750

Eastern District of Oklahoma

DeAndrea Johnson v. Bridgestone/Firestone, Inc., et al., C.A. No. 6:00-531

Western District of Oklahoma

Pamela S. Jones v. Bridgestone/Firestone, Inc., et al., C.A. No. 5:00-1254

District of Rhode Island

Eric E. Gasbarro v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-439

Middle District of Tennessee

James H. Powell v. Bridgestone/Firestone, Inc., C.A. No. 3:00-750
Martin Brookes v. Bridgestone/Firestone, Inc., et al., C.A. No. 3:00-756
Jennifer L. Hakker v. Bridgestone/Firestone, Inc., et al., C.A. No. 3:00-785
Michael Louridas v. Bridgestone/Firestone, Inc., et al., C.A. No. 3:00-833
Marie Davison, et al. v. Ford Motor Co., et al., C.A. No. 3:00-834
Willie J. Hardy v. Bridgestone/Firestone, Inc., et al., C.A. No. 3:00-846

Eastern District of Texas

Connie Gibson v. Bridgestone/Firestone, Inc., et al., C.A. No. 1:00-621

Northern District of Texas

James C. Morris, et al. v. Ford Motor Co., C.A. No. 5:00-313

Southern District of Texas

Michelle Stallone v. Bridgestone/Firestone, Inc., et al., C.A. No. 2:00-364
Greyson Knapp v. Bridgestone/Firestone, Inc., C.A. No. 4:00-2718
John Brick v. Bridgestone/Firestone, Inc., et al., C.A. No. 4:00-3050
Carrie Lynn Spencer, et al. v. Bridgestone/Firestone, Inc., et al., C.A. No. 6:00-76
Cindy G. Garza v. Bridgestone/Firestone, Inc., et al., C.A. No. 7:00-225

Southern District of West Virginia

Kathe E. Deitzler, et al. v. Bridgestone Corp., et al., C.A. No. 3:00-722