

IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA, ex rel. Attorney General
Thomas J. Miller,
99AG25112

Plaintiff,

v.

BRIDGESTONE/FIRESTONE, INC.,
an Ohio corporation with its principal
place of business in Nashville, Tennessee,

Defendant.

EQUITY NO. _____

PETITION

COMES NOW the State of Iowa ex rel. Attorney General Thomas J. Miller, by Special Assistant Attorney General William L. Brauch, pursuant to the provisions of Iowa Code § 714.16 (2001), commonly referred to as the Iowa Consumer Fraud Act, and for its claim against the Defendant states as follows:

The Attorney General brings this civil action regarding certain tires manufactured by Bridgestone/Firestone, Inc., to protect consumers from any misrepresentations or omissions of material facts regarding any of Defendant's tires in the future. The tires for which the Attorney General seeks relief include: (1) tires covered by the voluntary recall announced by Defendant in August of 2000 ("First Recall"). The tires included in the First Recall, include all P235/75 R15 Firestone Radial ATX, all P235/75 R15 Firestone Radial ATXII, and the P235/75 R15 Firestone Wilderness AT tires which were manufactured at the Defendant's Decatur, Illinois plant. (2) The Tires included in the Customer Satisfaction Program announced by Defendant on September 12, 2000. A list of the tires involved in that program are attached as Exhibit A. (3) The tires included in

the second recall (“Second Recall”) announced on October 4, 2001 are all Firestone Wilderness AT tires in the P235/75R15 and P255/70R16 sizes which were produced before May 1998 and used as original equipment on Ford Explorers and Mercury Mountaineers for model years 1995 through 1998. The tires involved in the First Recall, Second Recall, and the Customer Satisfaction Program are hereinafter referred to as the “Defined Tires.” This Petition only covers issues associated with Defined Tires. Nothing herein shall be construed to indicate that the State has raised claims broader in scope than the Defined Tires.

Most of these tires were replaced by Defendant or others such as vehicle manufacturers after the Attorneys General Multi-state Working Group began expressing its concerns to Defendant beginning in August 2000.

The Attorney General has the unique responsibility to protect the public interest of Iowa’s consumers from misrepresentations, omissions of facts and other safety hazards which impact Iowans. He also has a unique enforcement role over businesses located within the State of Iowa that operate or manufacture goods for distribution and use throughout the country from this state. It is in this critical role that the Attorney General commences this lawsuit against Bridgestone/Firestone, Inc.

I. JURISDICTION AND VENUE

1. The State of Iowa invokes the jurisdiction of this Court pursuant to the provisions of the Iowa Consumer Fraud Act, Iowa Code § 714.16. Venue is proper in Polk County, pursuant to the provisions of Iowa Code § 714.16(10), because it is a county in which Defendant has conducted business.

II. PARTIES

2. Plaintiff is the State of Iowa, ex. rel. Thomas J. Miller, the duly elected Attorney General of Iowa.

3. Defendant Bridgestone/Firestone, Inc., is a corporation organized under the laws of the State of Ohio, with its principal place of business in Nashville, Tennessee.

III. FACTUAL ALLEGATIONS

Upon information and belief, the State of Iowa alleges as follows:

Defendant's business

4. From the time of its formation in 1900 through the present, the Firestone Tire and Rubber Company and/or Bridgestone/Firestone, Inc., has been engaged in the consumer retail and wholesale business, and has transacted commerce from its tire manufacturing plant in Des Moines, and from its many stores and establishments located throughout the State of Iowa, including several stores in Polk County.

Bridgestone/Firestone, Inc. engages in the business of manufacturing automotive tires, and supplying tires, parts and services to "persons" as defined in Iowa Code § 714.16(1)(j). Defendant was engaged in this business at all times relevant to this Petition.

5. Some consumers purchase Defendant's tires through stores owned by Defendant or by independently owned dealers. Other consumers purchase Defendant's tires from motor vehicle dealers as original equipment in connection with the purchase of a new motor vehicle. In addition, motor vehicle manufacturers purchase Defendant's tires directly from Defendant for use as original equipment to be sold to the public with

new motor vehicles.

Failure to Disclose Foreign Silent Warranty

6. By at least 1997, Defendant agreed to a manufacturer's customer notification enhancement action regarding a subset of Defined Tires overseas, but made no disclosure of either the defects or the overseas notification program to consumers in the United States. As part of this program, the tires, including some of the Defined tires, were replaced because of an alleged safety related defect. These tires had been and continued to be sold in the United States.

General Non-Disclosure of Safety Risks

7. Beginning in 1990, Defendant sold to consumers certain Defined tires which it had manufactured for use on sport utility vehicles. Defendant did not disclose to consumers that under the advertised conditions the Defined Tires had a higher risk of tire failure, or request manufacturers of, or dealers in, new vehicles equipped by the manufacturer with these tires as original equipment to disclose this information to consumers.

Voluntary Safety Recall Reimbursement Program

8. On August 9, 2000, the National Highway Traffic Safety Administration (NHTSA) announced that it had found safety-related defects in the tires involved in the First Recall.

9. On August 9, 2000, Defendant, in conjunction with the National Highway Traffic Safety Administration announced a Voluntary Safety Tire Recall Reimbursement Program. This announcement was the first disclosure by Defendant to the public that the

following subgroup of Defined Tires should be removed from vehicles. This group of tires included the Firestone Radial ATX, the Firestone Radial ATXII, and the Firestone Wilderness AT in the P235/75 R15 size which were manufactured at the Defendant's Decatur, Illinois plant. Up until this time, Defendant maintained publicly that this subgroup of Defined tires were safe to use on any appropriate vehicle.

Attorneys General Multistate Working Group

10. Beginning in August 2000, the Office of the Attorney General received information to the effect that Defendant and its agents were violating the Consumer Fraud Act and that certain aspects of the recall were leading to undisclosed risks to consumer safety. As a result of this information, the Attorney General joined other State Attorneys General and various consumer agencies in a Multi-state Working Group to evaluate this information and to make the States' concerns known to Defendant.

Bounty program

11. In or about September 2000, the Multi-state Working Group expressed concern that unsafe recalled tires (a subgroup of the Defined Tires) were being re-sold to unsuspecting consumers by unscrupulous third parties. On September 21, 2000, Defendant announced a "bounty program" to pay ten dollars (\$10.00) per recalled tire (a subgroup of the Defined tires) in order to ensure all such tires were removed from the stream of commerce.

NHTSA Consumer Advisory

12. On September 1, 2000, NHTSA expressed concern about the possible safety risks associated with certain tires manufactured by Defendant not involved in the

Voluntary Recall announced on August 9, 2000. NHTSA issued a consumer advisory to inform consumers that certain tires had tread separation rates exceeding those of the August 9, 2000 recall tires, sometimes by a large margin.

Customer Satisfaction Program

13. On September 12, 2000, Defendant announced a Customer Satisfaction Program which included the Consumer Advisory tires. This announcement was the first time Defendant publicly disclosed that this subgroup of Defined tires should be removed from vehicles. Defendant refused to initiate a voluntary recall of these tires despite NHTSA's request to do so.

14. Under the customer satisfaction program, Defendant agreed to replace the consumer advisory tires or reimburse a consumer up to \$140.00 per tire for the purchase of new tires, only if requested to do so by a consumer who owned a Consumer Advisory tire.

Second Recall

15. On October 4, 2001, NHTSA made an initial decision that a defect related to motor vehicle safety existed in Firestone Wilderness AT tires in sizes P235/75 R15 and P255/70 R16 which were manufactured before May 1998 to the vehicle manufacturer's specifications, and that were installed as original equipment on certain sport utility vehicles.

16. On October 4, 2001, Defendant announced a voluntary recall program (Second Recall) to replace the tires identified in NHTSA's decision of the same date. This announcement was the first time Defendant publicly disclosed that these tires should

be removed from certain vehicles for safety reasons. The subject tires were the Firestone Wilderness AT tires in the P235/75 R15 and P255/70 R16 sizes which were produced before May 1998 and used as original equipment on Ford Explorers and Mercury Mountaineers for model years 1995 through 1998.

Manufacture and Distribution of Defined Tires

17. Defendant has ceased manufacturing and distributing the Defined Tires as either original equipment tires or replacement market tires.

Specific Misrepresentations to Consumers

Suitability for Intended Use

18. Defendant, motor vehicle manufacturers, and dealers which sold the Defined Tires publicly advertised to consumers that the Defined Tires were suitable and intended for use on sport utility vehicles under fully loaded highway and off-road conditions at the inflation pressure of twenty-six pounds per square inch. Before and during the time of these representations, Defendant knew or should have known that neither it nor the vehicle manufacturer possessed competent and reliable scientific evidence to substantiate the suitability for use of these Defined tires under the advertised conditions.

Length of Wear or Durability

19. Defendant, and the motor vehicle manufacturers and dealers which sold the Defined Tires, publicly advertised to consumers that the Defined Tires would have “long, even tread wear” or “long, even wear” under the intended conditions of use. Before and during the time these representations were made, Defendant knew or should

have known that neither it nor the vehicle manufacturer possessed competent and scientific evidence to substantiate these claims.

Mode of Failure

20. Defendant, and the motor vehicle manufacturers and dealers which sold the Defined Tires, implied that the normal end of useful life for the Defined Tires would be upon exhaustion of the tread down to the legal minimum, when Defendant knew or should have known that there was an unreasonable risk that the Defined tires would experience structural failure of components, including but not limited to belts and wedges, before the tread was exhausted.

Mileage warranties

21. The Defendant:

(a) warranted to consumers that the Defined Tires, if used under the intended conditions, would last for a particular mileage or time frame, or the consumer would have the tire replaced with an equivalent tire or receive an adjusted refund based on the amount of tread life used if the tire becomes unusable. In some cases, Defendant and its agents failed to provide consumers with an equivalent tire when the Defined Tires failed under the mileage warranty.

(b) retroactively changed the terms of existing tire warranties for Defined Tires, representing that the warranties had been “expanded” despite reduction in certain terms of coverage; and,

(c) replaced Defined Tires with tires which were not “equivalent” to the warranted tire under the terms of the consumer’s warranty and failed to reimburse

the consumer with the monetary difference in value.

Deceptive and Unfair Practices in connection with Recall and Customer Satisfaction Program

22. In conjunction with the August 2000 Voluntary Safety Recall Reimbursement Program, Defendant announced that it was manufacturing specific replacement tires to be used in replacing the recalled tires (a subgroup of the Defined Tires). Defendant and its agents failed to comply with the terms of the announced Recall program as to all consumers, and gave consumers incorrect, confusing or misleading information regarding the availability of program replacement tires and the costs associated with obtaining such tires. Specifically, Defendant and its agents took the following actions:

- (a) charged some consumers for installation of recall program replacement tires or for the recall program tires themselves;
- (b) communicated to some consumers that program replacement tires were unavailable and that the consumer would either have to wait for recall program replacement tires, or pay to upgrade to a more expensive tire, when in fact a program replacement tire was available;
- (c) charged some consumers for road hazard warranties on replacement tires even though the consumer had purchased the road hazard warranty on the recalled tires; and,
- (d) replaced recalled tires with non-program replacement tires which were not “equivalent” to the recalled tires under the terms of the warranty and recalls and failed to reimburse the consumer with the monetary difference in value.

These practices were not consistent with the terms of the Defined Tire's warranty and the Voluntary Safety Recall Reimbursement Program as announced and promoted by Defendant publicly and privately to consumers.

23. As part of its recall program, Defendant and its agents announced publicly to consumers that Defendant had retained an independent expert to conduct an independent analysis of incidents involving tires affected by the recall and promoted that "We are taking this step because we are committed to finding out what, if any, problems may have led to the incidents involving the affected tires". The Defendant also stated that it would rely on the independent expert to examine and verify its own internal investigation process. However, Defendant failed to provide all requested information to the independent expert, and failed to publicly inform consumers that it had failed to do so.

Silent Warranty

24. Defendant engaged in a silent warranty on a subgroup of Defined Tires when the Defendant and/or its agents instructed consumers who owned Defined Tires to bring in their vehicles for a non-tire related purpose when in fact the purpose was to enable Defendant's agents to inspect tires and determine whether they should be replaced.

Restitution to consumers

25. Defendant has made restitution to a number of consumers through its publicly announced recall and customer satisfaction programs. However, a number of other consumers have been unjustly denied restitution despite having purchased one of

the Defined Tires and having made a claim to Defendant. Further, Defendant in some cases failed to inform consumers of their right to appeal a denial of restitution.

IV. CAUSES OF ACTION

26. The State of Iowa re-alleges all preceding paragraphs of this Petition and incorporates them herein.

27. Defendant has violated the Consumer Fraud Act, Iowa Code § 714.16, by engaging in various unfair, misleading, omissive, or deceptive acts or practices, including, but not limited to:

- (A) failing to clearly and conspicuously disclose prior to purchase all material and necessary safety disclosures associated with the use of the Defined Tires in a manner designed to arrest the eye or attract the attention of the average purchaser of the product;
- (B) providing consumers with inconsistent warning labels or instructions (such as but not limited to inconsistent tire pressure information) for the Defined Tires;
- (C) promoting Defendant's Defined Tires as appropriate for use off road by using such statements as "For on and off-road driving", "outstanding off-road capability", and "Hunting, fishing, or camping --wherever you're going, these rough aggressive tires can take you there. Deep tread designs and steel belted construction give you the traction and impact resistance you need on remote back roads" but later disallowing warranty claims because of "consumer abuse" associated with off road use or punctures;
- (D) failing to clearly and conspicuously disclose that Defendant's Defined Tires were defective;
- (E) selling Defined Tires which are defective without clear and conspicuous disclosure of that fact;
- (F) marketing the Defined Tires for particular use when the tires present a risk of harm to consumers;
- (G) failing to disclose material facts associated with the purchase and use of the Defined Tires, such as but not limited to their susceptibility for tread

separations;

- (H) misrepresenting or implying a particular inflation tire pressure is safe and appropriate inflation for its Defined Tires when it is not safe and appropriate;
- (I) misrepresenting the tire load capacity of its Defined Tires or by implying that the Defined Tires could carry a larger load than it actually could;
- (J) misrepresenting or implying that its Defined Tires were appropriate for highway use at maximum posted speed limits and maximum weight at expected driving conditions, when such is not the case;
- (K) misrepresenting or implying the number of miles or number of years that its Defined Tires will be useful;
- (L) misrepresenting or implying that its Defined Tires were appropriate for use on a light truck or sport utility vehicle;
- (M) misrepresenting or implying that its Radial ATX tires (a subset of the Defined Tires) are “Our Best Tires”, when such is not the case;
- (N) misrepresenting or implying the durability of its Wilderness AT (a subset of the Defined Tires) as “resistant to cuts, punctures and impact” when Defendant denied warranty claims on the tires for “consumer abuse” resulting from cuts and punctures and impact;
- (P) misrepresenting the benefits of its Wilderness AT tire (a subset of the Defined Tires), including but not limited to “long, even wear” when such is not the case on the certain sport utility vehicles;
- (Q) misrepresenting the length of time its Defined Tires would last;
- (R) failing to comply with offered or implied warranties or guarantees on its Defined Tires;
- (S) promoting a guarantee or warranty of a Defined Tire which under normal conditions is impractical to fulfill or which covers such a period of time or number of miles as to mislead consumers into the belief that the tires so guaranteed or warranted have a greater degree of serviceability or durability than is true in fact;
- (T) making misrepresentations to consumers regarding the Defined Tires itself, through its company owned stores, or through its authorized

dealerships during the voluntary recall and consumer satisfaction program involving the Defined Tires such as engaging in bait and switch tactics or charging consumers for items promised or promoted as free of charge;

- (U) using illustrations or statements which imply that certain Defined Tires are appropriate for use on certain sport utility vehicles, when such is not the case;
- (V) replacing Defined Tires with tires of lower quality or lower mileage warranty;
- (W) replacing Defined Tires with private label tires made by the Defendant when a consumer specifically requested a tire not made by the Defendant;
- (X) making misleading statements in advertisements after the recall about the Defined Tires;
- (Y) advertising Defined Tires which were blemished, imperfect or which, for any reason, were defective without conspicuous disclosure of that fact;
- (Z) using or employing a silent warranty to replace the Defined Tires;
- (AA) unfairly denying refunds and/or warranty replacements to consumers prior to the recall and after the recall for the Defined Tires that Defendant knew or should have known were defective;
- (BB) failing to notify consumers in the United States about silent warranties or similar programs in foreign countries involving Defined Tires also sold in the United States;
- (CC) promoting that Defendant is “expanding” its warranties during the Voluntary Recall involving Defined Tires, when such is not the case;
- (DD) directing employees to merely replace the Defined Tires on the consumer’s vehicle and tell them the vibration problem arises from something other than the tires;
- (EE) promoting or implying that Defendant will provide an expert with all the information needed to evaluate the problems with the Defined Tires and then failing to give the expert the documents and access to documents represented or implied to the public;
- (FF) representing that Defined Tires will last a certain length of time or number of miles, when Defendant does not have competent and reliable scientific

evidence that such is the case; and,

- (GG) promoting that the Wilderness AT (a subset of the Defined Tires) was the “best” tire in a good, better, best comparison, when such is not the case.

RELIEF

REQUEST FOR RELIEF

Plaintiff respectfully requests that the Court order relief against Defendant as follows:

1. That the Court, pursuant to Iowa Code § 714.16(7) permanently enjoin Defendant from advertising, offering or selling merchandise in a manner which does not comply with the Iowa Consumer Fraud Act.
2. That the Court, pursuant to Iowa Code § 714.16(7) order Defendant to restore any money to consumers whom the Court deems to be entitled to reimbursement as a result of Defendant's unlawful practices.
3. That the Court order that any and all reimbursement paid herein to consumers by Defendant include interest at the maximum allowable rate.
4. That the Court, in its discretion, order Defendant to pay a civil penalty to the State in an amount up to \$40,000.00 per violation pursuant to Iowa Code § 714.16(7).
5. That the Court order Defendant to pay the State's costs, including but not limited to reasonable attorney fees and investigative costs incurred in this action pursuant to Iowa Code § 714.16(11).
6. That the Court order Defendant to pay all court costs.
7. That the Court grant any further relief as the Court deems just and equitable.

Respectfully submitted,

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