



July 9, 2001

## *Underinflated Tires and Overinflated Egos*

# Lawyers' Silence and Highway Deaths

*"Trial lawyers got us where we are. If it hadn't been for trial lawyers bringing the cases and filing some of the reports made on the recoveries thereof, we would not have awakened [to the Firestone/Ford issue]. . . .*

*"[T]he trial lawyers . . . have been there bringing peace and justice and safety to America's consumers. They got us this far, and I am proud to commend the trial lawyers for doing their work and saving lives."*

Senator Ernest F. Hollings  
Oct. 11, 2000 on the Senate floor<sup>1</sup>

*"A group of personal-injury lawyers and one of the nation's top traffic-safety consultants identified a pattern of failure of Firestone ATX tires on Ford Explorer sport utility vehicles in 1996. But they did not disclose the pattern to government safety regulators for four years, out of concern that private lawsuits would be compromised.*

*"All but 13 of the 203 tire-related deaths reported to regulators occurred after 1996."*

*The New York Times*  
June 24, 2001, page 1<sup>2</sup>

Remember the slogan "Silence = Death"? It looks like personal-injury lawyers have recently given that slogan a new twist. Their silence may have cost scores of lives, hundreds of injuries, and billions of dollars in the Firestone - Ford fiasco.

**NHTSA Opens an Investigation.** On May 2, 2000, the National Highway Traffic Safety Administration (NHTSA) opened an investigation into the ATX, ATX II, and Wilderness tires manufactured by the Bridgestone / Firestone Company. That investigation continues to this day. Bridgestone / Firestone made about 47 million of those tires.<sup>3</sup>

**Firestone Initiates a Recall.** On August 9, 2000, the company announced that it was voluntarily recalling some 14.4 million of the tires under investigation, including most of the ATX, ATX II, and Wilderness tires of size P235 / 75R15 that were made in the last decade. (At the time, it was estimated that only about 6.5 million of the tires were still on the road.) These tires were original

equipment on the Ford Explorer sport utility vehicle and on a relatively small number of other vehicles. The tires also were sold in the aftermarket and might be found on any sport utility vehicle or truck.

**Congress Responds.** Congress responded to the reports of tire failure by holding four hearings in September, 2000, and by promptly passing the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act). Congress didn't dawdle: The Act passed the House less than one month after it was introduced, and it passed the Senate the same day it passed the House (October 11, 2000). The President signed the bill November 1, 2000.<sup>4</sup> The TREAD Act –

- Strengthens the reporting requirements for manufacturers of motor vehicles and motor vehicle equipment (including the reporting of defects first discovered in a foreign country);
- Increases the civil penalties for violations of safety regulations (*e.g.*, fines for certain violations of Title 49 were raised from \$1,000 to \$5,000 for each violation, and the maximum penalty for a related series of violations was raised from \$800,000 to \$15,000,000);
- Provides additional criminal penalties (*e.g.*, for any knowing and willful false statement that was intended to mislead NHTSA with respect to a defect that causes death or grievous bodily harm, the possible prison term was raised from 5 years to 15);
- Requires NHTSA to revise and update its safety standards for tires;
- Increases the number of years that a defect must be remedied without charge to the owner (from three years to five for tires);
- Increases the authorization for funding NHTSA;
- Requires the Secretary of Transportation to report to Congress within a year on the criteria, procedures, and methods that NHTSA uses in determining whether to open an investigation of a possible defect; and
- Contains other safety-related provisions.

***N.Y. Times* Blows Whistle on Lawyers.** After NHTSA and Congress had the facts, they responded rapidly, **but for some five years before that there were personal-injury lawyers who knew about the situation and did nothing to alert the public or the government.** The *New York Times* broke that story last month. A key consultant to the lawyers denies the implications of *The Times*' story,<sup>5</sup> but it appears that while the lawyers kept their silence, the deaths, injuries, and monetary costs mounted.

The *Times* reported that all but 13 of the tire-related deaths occurred *after* the lawyers learned

of the situation. The *New York Times* story does not mention injuries, but it appears that more than 900 injuries also took place after the personal-injury lawyers became aware of the problem. The following RPC chart shows additional details:

**Reported Fatalities and Injuries Involving Specified Firestone Tires**  
(data from National Highway Traffic Safety Administration<sup>6</sup>)

| <u>Year</u>   | <u>Estimated Injuries</u> | <u>Fatalities</u> |
|---------------|---------------------------|-------------------|
| 1990          | 2                         | none              |
| 1991          | 3                         | none              |
| 1992          | 4                         | 2                 |
| 1993          | 1                         | none              |
| 1994          | 4                         | 4                 |
| 1995          | 18                        | 4                 |
| 1996          | 45                        | 14                |
| 1997          | 60                        | 13                |
| 1998          | 129                       | 28                |
| 1999          | 242                       | 52                |
| 2000          | 417                       | 73                |
| 2001(to date) | 8                         | none              |
| Unknown       | 25                        | 13                |
| <b>TOTALS</b> | <b>958<sup>7</sup></b>    | <b>203</b>        |

**More Costs.** In addition to the costs in human life and limb, there are also huge monetary costs (which in turn have their human costs). Last fall, the investment banking firm of UBS Warburg estimated that the tire problems could cost Firestone and Ford between \$719 million and \$2.7 billion.<sup>8</sup> In June of this year, one estimate of the costs to Ford *alone* topped \$3.5 billion.<sup>9</sup>

Two weeks ago, Bridgestone/Firestone announced that it will close its Decatur, Illinois plant which produced many of the recalled tires. The closing will directly affect 1,480 workers (thereby inflicting more human costs), but it is considered necessary because of declining sales. This year, Bridgestone / Firestone will lose \$570 million in costs related to the recall (\$210 million to cover the plant closing and \$360 million for replacement tires and legal and settlement costs). Last year, the company lost \$754 million in recall-related charges.<sup>10</sup>

**Ethics and Legal Ethics.** In the *New York Times* story, the former Administrator of NHTSA, Dr. Ricardo Martinez, was reported to be “appalled” when he learned that information had been kept from his agency. He said he would have ordered an immediate investigation if he had known of the tire problems. “It’s outrageous,” Dr. Martinez said. “If I saw something was killing my [medical] patients and I didn’t say anything because that would reduce the demand for my services, I would be putting my benefit over the benefit of my patients and the public, and that would clearly be unethical.” Personal-injury lawyers are not bound by common-sense ethics, however, and while they kept their silence the toll of death and injury mounted and the lawyers’ fees grew fatter still.

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Endnotes follow

## ENDNOTES

1. 146 *Cong. Rec.* S 10232 (daily ed. Oct. 11, 2000).
2. K. Bradsher, "S.U.V. Tire Defects Were Known in '96 but Not Reported: 190 Died in Next 4 Years," *The New York Times*, June 24, 2001, page 1.
3. The Congressional Research Service has a helpful background paper, P. Rothberg, "Firestone Tire Recall: NHTSA, Industry, and Congressional Responses," No. RL 30710, updated Jan. 24, 2001. Other helpful information can be found at [www.nhtsa.dot.gov/hot/Firestone](http://www.nhtsa.dot.gov/hot/Firestone).
4. H.R. 5164, Pub. L. 106-414, 114 Stat. 1800. See also, House Report No. 106-954, 106<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2000) (Commerce Committee).
5. J. O'Donnell, "Consultant denies withholding Ford / Firestone accident data," *USA Today*, June 25, 2001, p. 2B. The first sentence reads, "A safety consultant hired by lawyers of Ford Explorer crash victims denies a report that he and the lawyers kept information from the government for fear of jeopardizing lawsuits against Ford Motor and tiremaker Firestone."
6. The NHTSA data is from the Office of Defects Investigation which maintains a Consumer Complaint Database of complaints related to Firestone ATX, Wilderness, and other tire models that are under investigation as part of Engineering Analysis EA00-023. RPC Intern Blake Bailey helped gather the data.
7. In 56 incidents, NHTSA reports show only that there were injuries, but not how many injuries there were. In those cases, RPC counted two injuries for each incident, which is the approximate average number of injuries in all other cases in which the number of injuries was reported.
8. "Firestone Recall Could cost \$2.7 Billion," *Reuters*, Sept. 25, 2000, quoted at note 15 of CRS Report No. RL 30710, *supra* note 3.
9. R. Truett, "Tire-related costs mount for Ford," *Automotive News*, June 25, 2001, p. 45. One expert quoted in this article says that the "true cost" to Ford "could easily be 10 or 20 times the [\$2.1 billion] they have set aside." "Time spent on the crisis can't be spent on improving quality or future products," the expert said.
10. A. Reddy, "Firestone to Close Illinois Factory" *The Washington Post*, June 28, 2001, p. E 1.