

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

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Philadelphia Lawsuit Could Prompt National Tire Recall

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Of the Legal Staff

When Woloshin & Killino signed on to represent victims of a fatal car accident, they initiated a nine-month investigation into what caused the driver of the van to lose control, killing two of the passengers and seriously injuring the third.

After determining that it was defective tires that caused the operator to lose control of his work van while driving on Pennsylvania Route 476, Jeffrey B. Killino filed a lawsuit in Philadelphia against the manufacturer and distributors of the tires as well as the van manufacturer, General Motors.

It has been nearly two months since the 330-page complaint in *McCulley v. General Motors* was filed on behalf of the estates of passengers Rafael B. Melo and Claudeir Jose Figueiredo and seriously injured passenger Carlos Souza. The driver is not a party to the lawsuit and was not seriously injured, Killino said.

In that time, one of the defendants, distributor Foreign Tire Sales, has written a noncompliance report to the National Highway Traffic Safety Administration (NHTSA) alerting them to safety breaches by Chinese manufacturer Hangzhou Zhongce Rubber Co., another defendant in *McCulley*.

Now, attorneys involved in the case have said that a mass recall is likely.

In a copy of the report — which has yet to be made public — shown to *The Legal*, Foreign Tire Sales told the NHTSA that tests of the tires in 2001 demonstrated safety compliance, but by 2005 reported problems with the tires had dramatically increased.

Foreign Tire Sales told the NHTSA in the June 11 report that Hangzhou Zhongce had removed gum strips from the tires, and Foreign Tire Sales had known of this since at least September 2006. According to Killino, gum strips help keep the tread from pulling away from the belt of the tire. In the accident that prompted this suit, the tread came loose and

wrapped around the axle, causing the driver to lose control of the van, Killino said.

“They’re trying to save pennies, and instead they cost lives,” he said of the Chinese manufacturer.

Foreign Tire Sales, as the distributor, is responsible for having a recall remedy, according to Safety Research & Strategies President Sean E. Kane. But according to the report filed with the NHTSA, the company said it had no remedy and would face bankruptcy if it had to endure the cost of a national recall.

So Foreign Tire Sales is looking to the manufacturer to foot the bill. The Union, N.J., company has filed an \$80 million federal lawsuit in New Jersey against Hangzhou Rubber Co.

According to Killino, neither he nor Foreign Tire Sales has heard from the Chinese manufacturer.

“They’re brazen,” he said. “They’re not doing anything.”

The distributor stopped buying tires from the company in June 2006, according to Foreign Tire Sales attorney, Lawrence N. Lavigne of Norris McLaughlin & Marcus in Bridgewater, N.J.

Lavigne said Foreign Tire Sales has fewer than 10 employees and “just financially can’t handle a recall.” He said he is trying to get the Chinese manufacturer to do the right thing and come to the United States to face this suit.

“FTS is as much of a victim here as anybody else,” Lavigne said.

After several requests to Hangzhou Zhongce by Foreign Tire Sales, the manufacturer finally admitted that it had reduced or omitted the gum strip from an unspecified number of tires, Lavigne said.

There were about 444,000 tires purchased by Foreign Tire Sales from Hangzhou Zhongce, so the \$80 million is a rough estimate of what a recall of those tires would cost, Lavigne said. That number would most likely go down, however, because the company isn’t sure that all of those tires were missing gum strips and some of those tires are already out of commission, he

said.

When Foreign Tire Sales first did tests on Hangzhou Zhongce’s tires, they held up at 40,000 miles, he said. The tests were repeated this year after the lawsuit was filed and they were having problems at 25,000 miles, he said.

Without any cooperation from Hangzhou Zhongce, Lavigne said his client has no way of knowing “from when to when the tires were being manufactured like this.”

Besides Foreign Tire Sales, there are at least six other distributors of Hangzhou Zhongce tires in the United States, the attorneys involved in the case have said. That could put the number of defective tires over a million, Killino said.

“This may be just the tip of the iceberg,” Kane said.

Kane and his company were involved with the Firestone/Ford Explorer tire debacle and have experience in tire safety. Killino called him when first investigating the *McCulley* case and the two have now petitioned the NHTSA to issue a consumer advisory alerting the public to the potential hazards of these tires.

Kane said this is just one more example of defective Chinese products causing safety concerns in the United States. He said this lawsuit points not only to the fact that consumers should be warned about the tires, but that the United States may want to re-examine procedures for recalls of defective products.

An example, he said, would be to require distributors to post bond to ensure they can handle a recall if need be.

“It really highlights a crack in the system,” Kane said, adding later “There’s not enough enforcement in the U.S. on these Chinese tires.”

Killino said his lawsuit could have potentially saved lives by spawning requests for a recall of the tires.

“A private lawsuit here in Philadelphia had served a public benefit,” he said.

The tires in question have been sold under the names Westlake, Telluride, Compass and YKS, and are known as steel-belted, light-truck tires. •