

LAWYERS WEEKLY USA

THE NATIONAL NEWSPAPER FOR SMALL LAW FIRMS

Issue 2002-15 / 2002 LWUSA 481

July 22, 2002

A Bi-Weekly Newspaper From Lawyers Weekly Publications

<http://www.lawyersweeklyusa.com>

\$10.00 per copy

\$29M Verdict Over Bridgestone Blowout *Sears, Which Sold Tire, 35-Percent Liable*

By Diana Digges

A Texas jury this month awarded \$29 million to the family of a man who died in a rollover accident when a tire on the SUV in which he was riding blew out.

The tire was manufactured by Bridgestone/Firestone. This was the first plaintiff's verdict since the recall of 6.5 million defective Bridgestone/Firestone tires two years ago, and a major blow against Sears, which sold the tire and later repaired it. The liability of Sears, the nation's largest tire retailer and Bridgestone/Firestone's biggest

customer, was found to be 35 percent.

The trial in Orange County, Tex., lasted six days, including a day-and-a-half of deliberation before jurors arrived at their unanimous verdict on July 3.

Plaintiff's lawyer Richard Mithoff said that one of the ironies of the case is that the tire that caused the accident – a Duyler – was not covered in the recall.

But Mithoff, who was interviewed via cell phone from the Grand Tetons, where he was climbing to celebrate his victory, said that he was able to "settle early on" with Bridgestone because "internal documents that we got from [them] indicated it was one

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Winning attorney Richard Mithoff celebrated his victory climbing in the Grand Tetons.

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\$29M Verdict Over Bridgestone Blowout

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of the worst performers of the entire Bridgestone/Firestone line."

The jurors found Sears liable for 35 percent of the plaintiff's damages, and Bridgestone/Firestone liable for the remainder. Under Texas law, they were required to assess Bridgestone/Firestone's liability, even though the plaintiff can't collect against it. As a result, the actual award against Sears is \$10 million, Mithoff noted.

Even though the voluminous data now available to attorneys because of the Bridgestone recall didn't apply to Mithoff's case, the extensive publicity over defective tires may have made his job a bit easier.

That, and an emotionally charged first day of trial.

The first witness was a deputy sheriff who saw the accident and barely escaped death himself. He testified to the heroic efforts of the driver to avert an even greater disaster – a head-on collision in which all parties would have been killed.

The sheriff's account was followed by wrenching testimony from the driver, Joe Greenwood, who was the best friend of the accident victim, 35-year-old Terry Tripp. The two men were driving to get a deer license in preparation for a hunting trip together.

Mithoff said that the victim "was wearing a seatbelt, but he was partially ejected from the SUV, and had serious head and chest injuries. He lay there dying with his best friend next to him. That first day of trial was very emotionally charged."

So difficult was the testimony of those two witnesses that the next day one of the jurors came in emotionally distraught and physically ill from having sat through it.

"The judge deemed her to be physically disabled and excused her. We proceeded with 11 jurors. I've never seen that happen in 30 years," said Mithoff.

Trust, Cost-Cutting Themes

Mithoff picked his jurors as carefully as possible. He was up against Sears, a corporate powerhouse but also one of America's most trusted names in retail. He knew that violation of that trust would be an important trial theme.

With only an hour for voir dire, Mithoff used an extensive written questionnaire developed by a jury consultant to help discern what potential jurors knew about Bridgestone tires and what experience they'd had with tire failures and road hazard warranties.

He knew he wanted some men on the jury, men who, like Terry Tripp, worked with their hands and liked to hunt. But even

more, he wanted women on the jury, middle-aged if possible.

"They have higher expectations as consumers, and they are more apt to entrust the job [of tire repair] to someone else," said Mithoff. "If Sears says it can repair something, they trust and expect that it will happen – especially if they've taken out a warranty and paid extra for it."

The owner of the car, Joe Greenwood, had taken out and fully paid for a road hazard

year on tire replacement costs and was anxious to reduce that amount.

"We argued that part of the economic incentive at work here was to encourage employees to repair a tire rather than replace it," said Mithoff.

Finally, despite a company policy of retaining records for a minimum of three years, Sears had no personnel records on the technician who repaired the tire. Nor did the company have any records on the train-

'We had internal documents that Bridgestone rated [the tire] a 'bad actor' or 'bad performer,' but they continued to sell it. And since Sears and other retailers gather the data to begin with, it was our position that they had to be aware of the problem...That was one of the themes that was very successful,' said winning lawyer Richard Mithoff.

warranty, an issue that was key for many jurors, according to post-trial interviews.

The second most important factor for the jurors was that Sears should have known of the underlying problems with the tire, and should not have taken the risk of repairing it, according to Mithoff.

"Sears took the position that the tire was defective in either design or manufacture and that that was the cause of the [blow out]. That was unusual – Sears in open court attacking a tire they sold," said Mithoff.

The plaintiff's team further contended that Sears must have been aware of the Dwyler's poor track record and should therefore have replaced the damaged tire when Greenwood brought it in with a nail puncture.

Bridgestone/Firestone maintains "adjustment data" – records of tires brought in because of problems – and that data indicated a high return rate on the Dwyler tire.

"We had internal documents that Bridgestone/Firestone produced that reflected that the adjustment was extremely high," said Mithoff. "They rated it a 'bad actor' or 'bad performer,' but they continued to sell it. And since Sears and other retailers gather the data to begin with, it was our position that they had to be aware of the problem. So the more the Sears lawyers pushed the defects of the tire, the more we asked, 'Why didn't Sears know what Bridgestone/Firestone knew?' That was one of the themes that was very successful."

The plaintiff's attorneys also argued that Sears spent approximately \$39 million a

ing of that technician.

Mithoff was able to pull together all these themes on the second day of trial when he put a Sears corporate representative on the stand as an adverse witness.

"He allowed me to bring it all together – the road hazard warranty, Sears trying to save money by repairing instead of replacing tires, the absence of key personnel records," said Mithoff. "He was the most significant witness in terms of a turning point in the trial."

The jury found Sears guilty of negligence and gross negligence, but not malice – which is required under Texas law before punitive damages can be imposed.

The jury awarded Mithoff's client \$17 million in punitives, but because they did not find Sears acted with malice, "We can't collect on that," he said.

He added that in post-trial interviews, "several of the jurors simply said they wanted to send a message to Sears: Get those tires off the road."

Defense attorney Louis Lehr was unavailable for comment, but a Sears spokesperson told the press that the company may appeal.

Plaintiff's Attorneys: Richard W. Mithoff and Joseph R. Alexander, Jr. of Mithoff & Jacks, with offices in Houston and Austin.

Defense Attorney: Louis Lehr of Arnstein & Lehr in Chicago.

The Case: *Tripp v. Sears Roebuck & Co.*, 128th District Court in Orange County, Texas, Judge Pat Clark. **LWUSA**

Questions or comments can be directed to the writer at: ddigges@lawyersweekly.com