

Detroit Free Press

**METRO
FINAL**
TUESDAY
 Nov. 7,
 2000

42 cents outside 6-county metropolitan area 35 cents
WWW.FREEP.COM

THE STRAIGHT STORY ABOUT BAD TIRES TRICKLES OUT

A Houston attorney leading the charge against Ford and Firestone knew there was a problem, but couldn't talk

LIABILITY OF SILENCE

By **JEFFREY McCRACKEN**
 FREE PRESS BUSINESS WRITER

Beating big corporations with big verdicts made Richard Mithoff one of the country's best-known product-liability attorneys. The Texas lawyer won the first reported breast-implant lawsuit against **Dow Corning** in 1977 and bested the Midland-based giant in nearly 400 suits, winning more than \$70 million.

Mithoff — think Geoffrey Fieger with cowboy boots but without the smirk — was named one of the nation's 10-best litigators by the National Law Journal and one of the country's most successful trial attorneys by Forbes.

This history alone would be enough to alarm his next corporate targets — **Bridgestone/Firestone Inc.** and **Ford Motor Co.** But other Mithoff qualities may give the companies even more reason to cringe — namely his reputation as a thorough document digger and his drive to make public all the Firestone and Ford documents he can. Also of note: He's a Ralph Nader disciple.

Mithoff is joining other product-liability lawyers around the country to swap corporate memos and push Ford and Firestone to make public all the documents possible.

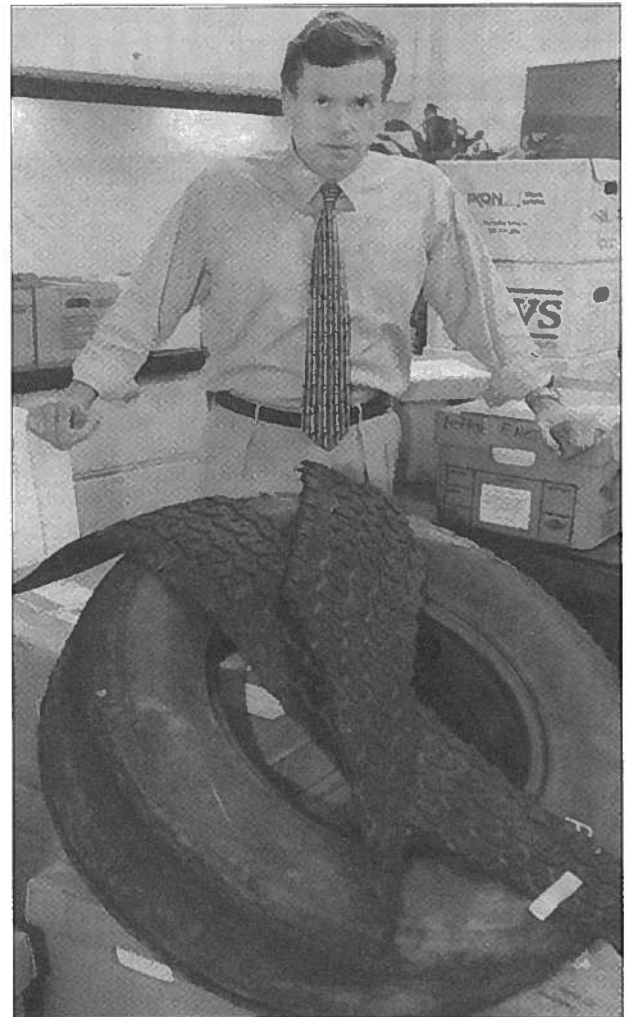
Some of this collaboration is back-scratching, but much of it also appears to be motivated by guilt.

Many of these attorneys, Mithoff included, quietly settled with Ford and Firestone years ago in cases that involved the same tires that were recalled in August. Firestone recalled 14.4 million tires, most of them on Explorers. So far 119 deaths have been linked to accidents on those tires.

These attorneys never alerted government authorities about problems with Firestone tires on Explorers, even though they knew similar suits had been filed. Many signed settlement agreements with confidentiality clauses that kept the attorneys and clients quiet.

"With so many of my cases, I'm put in the position of telling the client, 'This a good settlement offer, but you can't tell people what you know.' That's really starting to bother me in these Firestone cases," said Mithoff, during a mid-October interview.

The Houston lawyer's current case, **Peggy Turner Trahane v. Ford and Bridgestone/Firestone**, was filed in Harris County District Court in Texas. Trahane suffered permanent brain damage in 1999 when her 1996 Ford Explorer



PAT SULLIVAN/Associated Press

A separated tread and boxes of documents surround attorney Richard Mithoff. He's representing a woman who was injured in an Explorer rollover last year

Please see **LAWYER**, Page 8C

LAWYER | Case opens memories, files

From Page 1C

rolled over after a Firestone tire failed. The case is scheduled for trial Jan. 16, which would make it one of the first cases against the automaker and tire manufacturer to go to court.

Mithoff, a soft-spoken man, says he wants to find out what Ford and Firestone knew and when. But he's humbled by the knowledge that in October 1999, he settled out of court with Ford and Firestone. Mithoff was representing the family of Timothy Lockwood, a 28-year-old man who died in September 1997, when his 1996 Ford Explorer rolled over. Mithoff and his client were barred from talking about the case.

"After 30 years of doing this, I'm worried about the price of confidential settlements. I don't know whether early disclosure would have saved lives here, but it concerns me to see the substantial delay in information getting out to the public. Too often, what's best for my clients isn't what's best for society," he said.

Ford and Firestone say they support making documents public and they say the information that was made public to Mithoff is available to the federal government.

Swapping information

Mithoff, Arkansas product-liability specialist Tab Turner and numerous other attorneys have been swapping and sharing Ford or Firestone-related information for more than a year.

Swapping information is not new for trial attorneys. One of their organizations — the Association of Trial Lawyers of America — was founded 54 years ago as a way for worker's compensation attorneys to share strategy and documents.

What is new is the attorneys' push to make these documents public to the media and other interested parties.

Other lawyers have used the fallout from the recall to push to get information released about other product-liability cases.

Christine Spagnoli, a lawyer in Los Angeles representing families in a suit against Goodyear Tire & Rubber, is petitioning the Superior Court of New Jersey to release sealed documents in the interest of public safety. She thinks lawyers like Mithoff and Turner will make it easier for her.

"Firestone was the perfect example of what can go wrong because of secrecy," Spagnoli said.

Among the hundreds of attorneys engaged in Ford and Firestone litigation, Mithoff probably is the one best known for taking on corporate giants.

"Ford and Firestone should know these cases will gravitate to first-rate lawyers and in Richard Mithoff they've got a first-rate opponent who will make this case every bit as serious and hard for them as they think it might be," said Paul Stallings, a Houston attorney who's opposed Mithoff in several medical-malpractice cases.

Last month, Mithoff got Ford and Firestone to agree to make boxes of their internal documents open to the public, as part of a court-authorized motion called a Rule 11 Agreement.

Days after that agreement was signed, Mithoff's firm was distributing Firestone accident data to newspapers.

"What Richard did, pushing for public disclosure while the case was going on, was very unusual, but he's very concerned about this issue and that's why he fought this gag order," said Joan Claybrook, president of Public Citizen, a Washington D.C. consumer-interest group which filed a motion in support of Mithoff.

Doing the research

Forbes magazine, which used to track the best-paid trial attorneys in the country, reported Mithoff made more than \$5 million a year through the late 1980s and early '90s. In 1994, Forbes reported he made \$13 million.

"I've had some success. I've kept my firm small. I enjoy it that way and I've had success taking on the bully. I like to feel like I'm defending the little guy who's getting picked on," said the 54-year-old Mithoff.

Ford spokeswoman Susan Krusel said the company doesn't pay attention to what attorney represents a particular case. Currently there are about 200 class-action and personal-injury lawsuits filed against Ford stemming from tire accidents in Explorers.

Ford disputes the notion that plaintiff's attorneys like Mithoff are somehow getting out the truth.

"We've been providing Explorers documents to the government for a number of years," said Krusel, Ford manager of public affairs.

"Now all of a sudden these attorneys say they are making public this information or that they knew all along there was something wrong. But they didn't go and get this corrected before because then there wouldn't be any more clients for them," she said.

Mithoff's detailed-document dive and disclosure drive could be especially important because federal investigators and consumer advocates have yet to find a "smoking-gun" document that could explain why so many Firestone tires on Explorers experienced tread separation.

So far, Ford and Firestone have turned over 25 boxes of documents, engineering studies and accident data.

Currently, Mithoff or his firm's attorneys and paralegals are poring through the documents.

"Corporations try to make this process difficult. They mislabel things or they put documents out of order," said Mithoff. "I guess what we hope to learn is if Ford and Firestone knew there was a problem and what steps they took or didn't take to solve it."

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