



Lawsuits involving tires could become more prevalent in the coming years, keeping the automotive lawyers busy

TREAD carefully

The law shadows every aspect of a tire company's business, from patent protection to product liability lawsuits. Top automotive attorneys are aware of the possible legal issues tire manufacturers could face

Warranty claims are one of the automotive industry's biggest issues. Vehicle OEMs and component suppliers alike, particularly in the US, are suffering in the face of crippling damages claims, which in some cases are enough to put companies without adequate insurance out of business altogether. Speaking at the recent European Automotive Components Expo in Stuttgart, Germany, Erich Nickel of IBM's automotive practise predicted that: "In the next five years, one of the big automotive suppliers will die because of the warranty issue."

But while car makers and their Tier suppliers are locked in court battles over liability, OE tire suppliers can face direct legal challenges. As Alex Geisler, an automotive lawyer from the London office of US law firm, Duane Morris puts it: "I think the tire industry has slightly different problems to the rest of the component industry. Public recognition is different for tires: struts and springs aren't seen as safety items, but tires are – they're more visible."

Geisler's view is shared by Stephen Selander, a senior counsel with Detroit-



In the USA, the big three auto makers are keen to protect themselves against legal cases with regard to tires. Above, from left: Ford suffered once before during the Firestone cases; GM is the only maker to warrant tires in the US; and Mercedes-Benz's tires feature the MO mark to show they are OE-approved

The testing anomaly

There's little doubt that every vehicle manufacturer develops and tests its products extensively on the tires it approves as OE fit. And given the amount of US legislation dedicated to tire/vehicle safety, one would expect such tests to be a legal requirement. Not so, says Selander: "It's not the tire manufacturer's responsibility to test the tire on a particular vehicle, but it does have a responsibility to ensure the tire's performance meets the safety standards. It is the responsibility of the vehicle OEM to ensure the tires it selects are appropriate. But if it has the necessary information from the tire manufacturer, and it can tell from its engineering that the tire performance will be appropriate for the vehicle, it doesn't have to test the tire on the vehicle. There is no federal requirement for testing, but because of the tire's influence on vehicle safety, the manufacturers will still want to match the tire appropriately."



Both WNJ's Stephen Selander (left), and Alex Geisler of Duane Morris (right), are experts in automotive law

based Warner Norcross & Judd. "Tire makers require the same type of legal backup as other Tier 1s," he says. "But because the [company] name is on the tire it's easier for them to get picked on first, whereas if it's a steering component the claimants would go after the OEM first." General Motors is the only company to warrant the OE tires on its cars in the US, regardless of tire brand. For other makers' vehicles, and in contrast to almost every other vehicle component, warranty claims on tires are handled by the tire makers.

Beyond warranty and product liability actions, tire companies turn to lawyers to assist with contract negotiations, for design rights and copyright issues, and to secure patents on new tire technology. Brand protection must also be addressed, but this is another area where the case of the tire diverges from those of other original equipment components. "Brand protection doesn't affect the tire industry in the same way it affects the rest of the car," Geisler explains. "The tire is not really part of the car for brand protection purposes. You don't buy genuine Ford tires, for example, but with other car parts you have the choice of a genuine Ford item, or a copy. Perhaps with the exception of the Mercedes MO symbol, the tire is the only part of the car without the car manufacturer's branding on it."

There's no question that TREAD Act compliance is a major legal issue for tire manufacturers. Stephen Selander is a leading expert on the legislation, having negotiated TREAD Act on behalf of GM during his 29 years with the auto maker. He explains how, following the Ford/Firestone case, the legal demands on tire OEMs have increased: "The performance requirements for tires have changed. There's more information available to consumers, and the tire makers are required to provide substantially more

early warning information to the National Highway Traffic Safety Administration (NHTSA) on a regular basis.

"Also, the TREAD Act increased the amount of time that a manufacturer must remedy a defect or non-compliance in a tire without charge – from three years from the date of purchase to five years," he continues. "Tire manufacturers are now required to keep the names of the tire purchaser, the tire identification number, and the name of the tire seller for five years from the date the record was generated."

And the requirements don't stop there. More legislation is environmental, dictating that in the case of a recall, the tire maker has to explain to the NHTSA what its program is for disposing of recalled tires. Not only must they be destroyed to the extent that they can't be reused, but the tires have to be disposed of with minimal use of landfill. Yet while these aspects of the Act are already set in stone, others are still to be finalized, notably the TPMS legislation. "TPMS is now required, and designed to alert consumers when they have a tire with low pressure," explains Selander. "It's one way NHTSA is trying to improve the tire maintenance situation, but the rule that went into effect a few years ago was challenged successfully. Now we have another lawsuit brought in the last few weeks by Public Citizen, and the tire manufacturers are saying the new,

"Tire makers have to keep the names of the tire purchaser, the tire identification number, and the tire seller's name, for five years"

revised rule is insufficient to meet the safety aspects of the TREAD Act." (For more on TPMS, turn to page 58).

If a case as big as the Ford/Firestone matter were to arise today, how would the situation be handled from a legal standpoint? Selander believes there would certainly be differences: "In that case, neither party made the best case for there not being a problem; by the time they were in a position to do that, Congress and the press got involved and everybody was up in arms. But because NHTSA now has more data, I think the manufacturers will themselves look more closely at the data. They will be in a better position to recall earlier."

But Selander also warns that TREAD's scope could create additional problems: "NHTSA has early warning information, but it's not clear if it is going to be able to do a lot [more] with it than before. The association gets so much information that it potentially doesn't have the time or the resources to analyze it."

Nor can one get away from the fundamental complexity of the interaction between tire, vehicle, road and consumer. "Both tire and vehicle OEMs are trying to do the right thing and not leave defective vehicles out on the road – the data's being pulled together on a regular basis, which should give them a better idea of when there's a problem," believes Selander. "But it's very hard to separate the interaction between vehicle and tire, particularly when the OEM is responsible for setting up handling and dictating recommended tire pressure. Then there's the road itself, and owners who don't follow the recommendations." The result will always be more work for the lawyers. Selander: "Attorneys are always able to find experts who'll agree with them. And the tire manufacturers can find experts for every situation that'll disagree...." **tire**

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