ANTHONY TALALAI, et al., Plaintiffs, v. COOPER TIRE & RUBBER COMPANY, Defendant.	)	SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY LAW DIVISION DOCKET NO. L-008830-00-MT CIVIL ACTION CASE CODE 249

SUMMARY OF OBJECTIONS OF MATTHEW G. KAISER AND FRANCIS X. SULLIVAN

As detailed in the Certification of Bonnie Robin-Vergeer, undersigned counsel have moved for a brief extension of time until Tuesday, January 22, 2002, for filing objections to the proposed class action settlement in this case. To protect the interests of Public Citizen Litigation Group's clients, Matthew G. Kaiser and Francis (Frank) X. Sullivan, both of whom are members of the settlement class that has been certified by this Court, and both of whom object to the settlement as currently structured, counsel have prepared a brief summary of their objections. This summary description of objections will be supplemented with a memorandum of law and an affidavit from an expert witness on Tuesday, January 22, 2002, with copies to be served upon class counsel and the defendant's counsel by fax on Friday, January 18, 2002, and by overnight delivery on Tuesday, January 22, 2002.

As documented in their affidavits, which are attached hereto, Matthew Kaiser and Frank Sullivan object to the proposed class settlement as currently structured because it is of virtually no value to owners of tires manufactured by Cooper Tire & Rubber Company (Cooper Tire). The following is a summary description of their objections to each of the principal components

of the proposed settlement.

1. The Enhanced Warranty Program

a. Free Replacement Tires

The proposed settlement is not fair to owners of Cooper Tires because it does little to ensure that these tires are safe and provides no meaningful remedy for those owners whose tires are defective. First and foremost, under this proposed settlement, Cooper Tire owners are entitled to a free replacement tire, which undoubtedly will also be another Cooper tire, only at the point that their tire has suffered a separation, which is defined by the settlement as follows:

> "Adjustable separation" shall mean an adjustable condition determined by and in accordance with Defendant's standard adjustment policies, procedures and manuals which consists of: a separation between plies, a separation between belts, a tread separation, a separation between the liner and the body, a separation in the sidewall, a separation at wind and tread junction, a separation at ply turn-up, a separation between ply and belt, a separation at rim flange, a distorted tread (radial tires), and/or pick cordwicking.

The paramount defect with this proposed settlement is that for the most part, a Cooper Tire owner is entitled to a replacement tire only if his tire actually separates. To wait until a tread separates before providing a new tire is to risk serious bodily injury and death. Those Cooper tires with latent defects are ticking time-bombs that present an unacceptable level of risk to their owners, to passengers, and others on the roads, and it is an insufficient response from a safety standpoint to wait until a tire separates to replace it—if, indeed, the driver is fortunate enough to make it to the dealer—to replace it.

Moreover, even if a Cooper tire tread does separate, Cooper Tire remains free, under this proposed settlement, to refuse to replace the tire if the company determines that the tire has not suffered an "adjustable" separation—with adjustability to be determined in accordance with

Cooper Tire's "standard adjustment policies, procedures and manuals." This provision leaves it up to Cooper Tire, the very company that is accused of knowingly selling tires with an increased risk of tread separation, to decide when to replace a tire. Evidently, the proposed settlement contemplates that Cooper Tire will not provide a free replacement tire for all separations, but will pick and choose, depending on whether it considers the separation to be the fault of the consumer or the fault of the manufacturer. The list of non-adjustable conditions set forth in Cooper Tire's adjustment manual is so extensive that it provides substantial room for Cooper Tire to claim that even a bona fide separation will not be treated as adjustable pursuant to this settlement. For example, "Separation with Puncture" is not an adjustable separation. (An excerpt from Cooper Tire's adjustment manual will be appended to the affidavit of the objectors' expert witness, which will be provided with the supplemental filing). Equally troubling, the full list of adjustment codes has not been provided either in the settlement documents or in the full notice of the class settlement; thus, class members have not been given a clear picture of the criteria by which the eligibility of their defective tires, if any, will be judged.

The parties claim that this "enhanced" warranty confers a benefit of $850 million to $1.19 billion to the class, based on a calculation that there are 170 million qualifying Cooper tires on the road multiplied by the alleged value of this enhancement, which the parties peg at $5 to $7 per tire. That valuation is inflated to an extraordinary degree—in all likelihood, to lend credence to the disproportionately high attorneys' fees that class counsel intends to request. As far as one can tell from a review of the settlement documents, the $5 to $7 valuation has been pulled out of thin air and cannot possibly be justified. It is difficult to see how there can be any market at all for a "warranty" that applies only when a tire owner has suffered a separation—a highly unlikely

event—and, even then, only when the manufacturer decides that it should be held accountable for that separation. Given the low number of Cooper Tire owners who will qualify for a replacement tire, coupled with the fact that not every Cooper tire owner would know or take advantage of his right to a new replacement tire, the cost to Cooper Tire of this enhanced warranty—which the objectors submit is a far superior measure of its value to class members—is likely to be in the low millions, not billions, of dollars. Indeed, Cooper Tire has reported in its most recent quarterly report filed with the SEC that this class action settlement will cost it only $55 million in pre-tax dollars—$30 million of which will go to attorneys' fees and costs.

In any event, to guess at the value this illusory enhanced warranty would have in the marketplace is the wrong way to look at the question of whether it would confer a benefit on Cooper tire owners. Tread and belt separations can lead to devastating bodily injury and death. The parties' calculation of the value of this enhanced warranty, which will do almost nothing to remove hazardous tires from the road, cheapens the value of human life.

b. Alternative Dispute Resolution Mechanism

Class members Sullivan and Kaiser also object to the alternative dispute resolution (ADR) mechanism outlined in the settlement documents. First, the description of the ADR remedy is so vague as to be of virtually no benefit to class members, as they will not understand what they would need to do to avail themselves of the ADR remedy or what they might hope to recover from such a process. The description of the ADR mentions claim forms and the fact that class members will not be able to recover punitive damages, but there is no description of what type of recovery might be available through this procedure. Even assuming that a tire owner can recover something of value through this process, the ADR option applies only to a tire owner

with an adjustable separation, and for the reasons outlined above, that is not much of a remedy.

2. Enhanced Finishing Inspection Program

Class members Sullivan and Kaiser also object to the second feature of the proposed settlement, the Enhanced Finishing Inspection Program, in which Cooper Tire essentially commits to follow good practices regarding its inspection of tires at the finishing stage—which it already should be doing—and makes vague promises that it will improve "where possible" its inspection procedures and protocols and will add inspectors and over-inspectors "as necessary." This feature, too, is of no value to class members.

First, there is the obvious problem that the current owners of Cooper tires who are members of the class will not benefit from any improvements that Cooper Tire makes regarding inspections during the manufacturing process. At best, these improvements would benefit future owners of Cooper tires, who are not involved in this case. There is also the problem that the description of the enhanced finishing inspection program leaves it up to Cooper Tire to decide which improvements are "possible" or "necessary" to make.

More fundamentally, from a safety perspective, this enhanced finishing inspection program would do nothing to rectify the manufacturing defects and quality control lapses that have been identified in this class action. The latent defects in the tire identified in this class action (and explained in greater detail in the expert witness affidavit that will be submitted with the supplemental filing) cannot be detected at the finishing stage, which follows vulcanization, or "cooking," of the tire. The inspectors are looking at a finished product; they cannot see how the tire was put together on the inside. It is particularly troubling that in a case that is about hidden defects in tires, only finishing inspectors and over-inspectors are proposed to be added. The only

inspections that might be of some benefit to avoid the types of problems that have surfaced with Cooper tires would be those that would occur much earlier in the manufacturing process, when the tires are actually being built.

In short, the enhanced finishing inspection program is only a cosmetic change. Indeed, the practices described only restate what every manufacturer in the industry already is doing at the finishing stage. Such practices will do nothing to address the allegations made in this class action by the owners of Cooper tires.

3. Consumer Education Program

Finally, the proposed consumer education program will be of little benefit either to the class or to future Cooper tire owners. First, again, is the obvious point that the proposed tire and driving safety guide will do little to help current Cooper tire owners, who are members of the class. Unless these tire owners happen to go to a dealer (which is likely to occur only if they have problems with their Cooper tires or are ready to replace them) or unless the owners access the Cooper Tire website (which is not very likely), they will not receive the information Cooper Tire plans to disseminate.

Second, the proposed consumer education program does not focus on the problems with Cooper tires identified in this class action—namely, that Cooper tires may contain latent defects that increase the risk of tread and belt separation. The proposed education program appears to be more of a pitch for tire owners to be responsible, "to check pressure, alignment, rotation and tread wear." While this may be sound advice, it is advice that has little bearing on the possibility of tread and belt separation, unless the program plans to provide consumers with specific information about the kinds of tread wear that may indicate impending tread and belt separation,

a goal that is not stated in the description of the program.

Unfortunately, the consumer education program is more of a marketing opportunity for Cooper Tire than a serious effort to deal with the problems in its manufacturing process. Cooper Tire has already advertised this consumer education program on its website even though the settlement has not been approved yet. The description of the program in the settlement documents states that Cooper will offer consumers the ability to purchase from Cooper Tire a "Tire Safety Kit"—on which Cooper Tire will undoubtedly make a profit. The conclusion is inescapable that this last feature of the proposed settlement is also purely cosmetic and designed to benefit Cooper Tire more than the class.

4. Attorneys' Fees

The settlement documents indicate that class counsel intends to petition this Court for $30 million in attorneys' fees ($27,500,000 for prosecution of the action and $2,500,000 for implementation of the settlement). Objectors Kaiser and Sullivan believe that sum to be grossly out of proportion to the meager remedy that would be afforded members of the class. While the objectors and their counsel do not yet know the basis for a fee request of this enormity, as no fee petition has yet been filed, the objectors cannot conceive of any possible justification for such a fee, given the absence of a settlement of any meaningful value to the class. Even if the fee request were based on a straight lodestar calculation (which is implausible, to say the least), the attorney fee award should be discounted substantially to reflect the low degree of success achieved for the class. As it stands now, the entire proposed class settlement reflects little more than an enormous transfer of wealth from Cooper Tire to class counsel, with little to no benefit conferred on members of the class.

5. Preservation of Other Objections

Because of the circumstances under which these objections have been filed, as detailed in the Certification of Bonnie Robin-Vergeer, class members Kaiser and Sullivan wish to preserve additional arguments and evidence to be offered in support of the objections outlined above and to preserve additional bases for objection—all of which will be addressed in greater detail in the memorandum of law, expert witness affidavit, and other evidence to be filed in support of these objections on Tuesday, January 22, 2002.

Dated: January 14, 2002

Respectfully submitted,

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