

Tire Tips: 10 Ways



to Avoid Blowing Your Tire Case

BY JEB BUTLER¹ AND MATT WETHERINGTON²

He is driving. There need not be—and probably will not be—any remarkable details. There are no drunk drivers, no excessive speeds, no adverse weather conditions, no unmarked curves, no fatigued truckers, and no unusual steering inputs. Without warning, the vehicle starts to shake. There is a “baloomp, baloomp, baloomp” or simply a BOOM from one corner. The vehicle veers toward the sound and the driver attempts to stay in control of the vehicle, but it is too late. The vehicle rolls. If the driver survives, he becomes your injured client. If he does not, he becomes your decedent.

It happens more often than you think.

Tire defects and failures received substantial national attention in 2000 when Firestone/Bridgestone recalled more than 6.5 million tires with abnormally high failure rates. However, most consumers do not realize that tire failures are not specific to a particular brand or to a particular failure mode. Tire failures take many forms: tread separations, belt separations, sidewall ruptures, and patch failures, just to name a few.

When and how a tire might fail can be difficult or impossible for a consumer to predict because the failure of a tire can occur at virtually any point in its expected lifetime. There is one thing you can predict, however: when someone gets hurt or killed, the tire industry will attempt to blame the driver, the vehicle owner, and/or a retailer that serviced or installed the tires.

Holding the tire industry accountable for its errors is never easy. The tire industry as a whole categorically and unequivocally denies the existence of manufacturing or design defects in its products. A tire defect plaintiff can expect to confront a deep-pocketed defendant who, according to the Northern District of Georgia, may engage in a “pattern of subterfuge and withholding relevant and responsive documents.”³ Your goal is to unearth the evidence—most of which is in the defendant’s possession—and deliver it to a jury. Our goal

in writing this article is to offer some 10 practice tips to help get your case rolling smoothly and keep it on track to a fair resolution.

Tip #1

Inspect the Tires in Every Case

Believe it or not, it is often difficult to recognize a tire case. The driver of a car that experienced a tire failure—if he survives—often does not know what caused the wreck. Investigating officers may not recognize a tire failure either, and therefore may not document it. If an out-of-control vehicle struck the injured party, it is possible that a tire failure caused that *other* vehicle to lose control. Without an expert, it is often difficult to determine whether a tire was damaged before, during, or even after a wreck.

First, locate and secure the vehicle. Then, go and inspect the tires for signs of failure. Inspect them for damage. In some cases, it can be difficult to determine whether a tire was damaged before, during, or after an accident—however, an expert can always help make this determination as discussed below. Also, go to the accident scene and search for vehicle debris or pieces of tread. But do not stop with a manual inspection—consider other indicators of tire failure. Consider the age of the tire, the tire’s manufacturer, whether the tire has been subject to a recall, and the tire’s maintenance history as discussed below.

Tip #2

Pick Up the Pieces

As your tire case progresses, you will want every available piece of evidence. Did the tire fail because it contained trapped air? Did it fail because it contained snaked belts, dog-eared splices, or even food or shop debris from the factory caught between the layers of rubber? The difference between winning and losing your case may be sitting on the side of the road or left behind in a tow yard. Therefore, it is important to speak with the investigating officer, the tow-truck driver, and anyone else who may have come into possession of a piece of the tire or its tread. Of course you will need the tire itself, because without the tire, it will be difficult to prove a tire defect case.

Tip #3

When in Doubt, Call the Expert Out

If there is any question about whether a tire failure caused the wreck, you owe it to your client to have an expert look at it. It is beyond any doubt that if you have a tire case, you will need a tire expert. The best practice is to get him or her involved early. There are only a handful of qualified tire experts in the country, and it is important to hire an expert whose work can withstand the tire industry's inevitable *Daubert* challenge.⁴ Many tire manufacturers even pay for a single lawyer to chase a single tire expert around the country, deposing him or her in hundreds of cases in order to manufacture a *Daubert* challenge. Select your expert carefully and consult him in the investigation stage of your case.

Tip #4

Check the D.O.T. Number for the Tire's Age

Here is a secret the tire industry would like to keep: *tires expire*. Although automobile manufacturers and NHTSA warn against the dangers of aged tires, the tire industry refuses to acknowledge, and refuses to warn tire buyers, that a tire's age can affect its safety. The evidence is clear: Older tires are substantially more likely to fail than newer ones. This is because tires are made mostly of rubber, and rubber degrades with age. Sunlight, heat, ice, and general wear and tear can accelerate the breakdown of a tire. Once a tire begins to break down, it becomes more likely to fail—often at highway speeds, when the failure is most likely to cause catastrophic injuries. Manufacturers, sellers, and installers of old tires may be liable for distributing these old, failure-prone tires and for failing to warn consumers of the dangers associated with them.

Fortunately, you can crack the code on the side of a tire to determine a tire's actual age. Federal rules mandate that the D.O.T. number be clearly branded or etched on the side of each tire.⁵ The D.O.T. number is typically 11 digits. If the tire has only 10 digits, the tire was manufactured before the year 2000. A current D.O.T. number looks like this for a tire made in the fifty-first week of 2007; with the final digits "5107" revealing the week (51) and year (07) of manufacture:



Unfortunately, some manufacturers place the full D.O.T. number on the inner side of the tire—the side facing the *inside* of vehicle. In those cases, only a portion of the D.O.T. number will be on the outer-facing side of the tire, like this:



If the full number is not on the outside and the tire is already mounted on the vehicle, you will have to either crawl under the vehicle with a flashlight or take it to a service station or garage and request that they locate the number for you. Fortunately, tires made after Sept. 1, 2003, are required to place the full D.O.T. number on the outer wall, so you should not encounter this too often, although it does happen.

Tip #5

Check the D.O.T. Number for the Tire's Manufacturing History

Most tire manufacturers sell tires under a variety of names and brands. Manufacturers do this for many reasons, including targeted marketing in specialized areas, creating artificial price classes, and allowing major retailers to carry a "private" brand. An unfortunate side effect is that it is more difficult for consumers to know who actually produced a tire and whether it has been subject to a recall. The first two digits of a tire's D.O.T. number indicate which company manufactured a tire, and at which plant. However, the code is not intuitive, and you will have to enter it into the NHTSA search database at <http://www.nhtsa.gov/cars/rules/manufacture>. Once you do this, you will know who made the tire and where they made it, and you will be better able to determine whether the tire has been subject to a recall.

Tip #6

Examine the Maintenance History

There are at least two good reasons to examine the tire's maintenance history: First, to identify potential defendants, and second, to address the tire industry's common defenses.

When you are identifying defendants, consider entities that worked on the tire after it entered the stream of commerce. Although only the tire manufacturer may be held strictly liable in Georgia, an at-fault product seller or repairer may also be liable if the seller or repairer was negligent.

If a tire repair shop patched or plugged the tire, that “repair” may have contributed to the tire’s failure in ways you would not expect. The patch or plug itself could fail. But less obviously from a consumer’s perspective, the patch or plug may have allowed air to seep between layers of the tire—e.g., between the top and bottom belt—thereby weakening the bonding between those layers. This weakening of the bonding can cause a dangerous belt separation. Moreover, failing to detect and warn of a dangerously aged tire may subject a manufacturer or seller to liability.

You will also need to know about the tire’s maintenance history to rebut probable defenses. Tire manufacturers inevitably argue that the tire failed because of “underinflation” and/or “over deflection”—i.e., the driver did not keep the tire pressure high enough or put too much weight on the tire. Anticipate this defense, and be ready to address whether your driver kept his tires adequately inflated.

Tip #7

Find a Qualified Accident Reconstructionist and Handling Expert

Another common defense of the tire industry is that even after the tire failed, the driver should have been able to maintain control of the vehicle and avoid the wreck. The tire industry and its experts have become practiced at making the argument to juries that the driver alone bears all of the fault for a tire failure. To rebut that attempt to avoid responsibility, you will need a qualified accident reconstructionist to determine what happened, and a qualified handling expert to explain how a tire failure leads to loss of control.

Tip #8

Check the Plant: Manufacturing Defects

The conditions under which tires are made can be shocking. A tire plant in Georgia leaked whenever it rained, getting water all over the raw tire-building materials and the machines used to make them (practice tip: water is the enemy of proper tire building); a plant in Kentucky had birds, raccoons, and opossums roaming the floor. Former employees told of scrapped rubber being reused, pay structures that emphasized quantity at the expense of quality, and scrapped tires being shipped for sale when production numbers ran low. It is no surprise, then, that many tires are shipped with manufacturing defects.

Through discovery, investigate conditions at the plant where your tire was made. Check weather reports to see if it rained the week of your tire’s manufacture. After checking the relevant state’s ethical rules, visit the area of the plant that manufactured your tire and ask around for former employees. If the ethical rules permit it, ask them about what it was like to work inside the plant.

Tip #9

Check the Specs: Design Defects

This is another area where your expert will be helpful, because not all tires are created equal. Some manufacturers have sought to save money by skimping on safety features or high quality material. For instance, the design of some tires necessitates a nylon cap over

the belt plies to make the tires safe, but manufacturers often omit the nylon cap as a cost-saving measure. Other tires may be designed with belt widths incompatible with the width of the tread. Still others may be built with insufficient, or low-quality, halobutyl rubber in the inner liner, which will allow tires to lose pressure rapidly. It would be impossible to list the entire range of possible design defects here, but the point is this: they exist. Be sure that your expert looks into the adequacy of the tire’s design, not just defects in how that particular tire was made.

Tip #10

Anticipate the FMVSS Defense

Tire manufacturers inevitably invoke the Federal Motor Vehicle Safety Standards (“FMVSS”) as a defense to tort liability. On the merits, the defense is not a good one: Federal law expressly establishes that the FMVSS are “minimum standards” that do not preclude tort liability.⁶ Manufacturers invoke them anyway, inaccurately arguing to the judge that compliance with the FMVSS precludes punitive damages and to the jury that compliance with the FMVSS constitutes the government’s “gold stamp” of approval.

Be prepared to rebut both arguments. Point out to the judge that under Georgia law, compliance with the FMVSS does not preclude punitive damages.⁷ Introduce evidence that demonstrates to the jury that FMVSS 109, which governs tires, is a weak standard that even defective tires can meet. There are a few former NHTSA employees who are familiar with the way the agency works and can explain the regulatory process to the jury.

Conclusion

By following these 10 guidelines, you may be able to identify, pursue, and succeed in helping not only your client obtain a recovery; but also help explore and identify problems within the tire industry that are long overdue for improvement and whose resolution can and will save lives. ●

References

- ¹ Jeb Butler is an associate at Butler, Wooten & Fryhofer LLP. He graduated *magna cum laude* from the University of Georgia School of Law after serving on the editorial board of the Georgia Law Review and arguing for the National Moot Team. Before joining Butler, Wooten & Fryhofer, Jeb clerked for District Judge Lisa Godbey Wood and worked as a prosecutor for the Clayton County District Attorney’s Office. He can be contacted at (404) 321-1700 or jeb@butlerwooten.com.
- ² Matt Wetherington is an associate at Conley Griggs Partin, LLP. He graduated from the Mercer University School of Law, and has served as an associate attorney on complex product liability claims throughout the South, particularly in the field of automotive and tire defects. He can be contacted at (404) 809-2581 and matt@conleygriggs.com.
- ³ *Bates v. Michelin N. Am.*, 1:09-CV-3280-AT, Sanctions Order, January 13, 2012.
- ⁴ See *Kumbo Tire Co. v. Carmichael*, for an excellent example of how vigorously the tire industry will attack your expert in a tire defect case. 526 U.S. 137 (1999).
- ⁵ 49 C.F.R. § 574.5.
- ⁶ 49 U.S.C. § 30102(a)(9); 49 U.S.C. § 30103(e).
- ⁷ *Gen. Motors Corp. v. Moseley*, 213 Ga. App. 875, 885 (1994) *abrogated on other grounds* by 269 Ga. 191 (punitive damages are appropriate where, “notwithstanding the compliance with applicable safety regulations [i.e., the FMVSS], there is other evidence showing culpable behavior”).