

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

NORMA GARCIA, as Guardian
of Jorge Lizandro
Garcia, an incompetent
person,

Plaintiff,

v.

CASE NO. 8:99-CV-1611-T-17TGW

KELLY-SPRINGFIELD
TIRE COMPANY, a foreign
corporation, and THE GOODYEAR
TIRE & RUBBER COMPANY,
a foreign corporation,

Defendants.

ORDER

This cause is before the Court on:

Dkt. 427 Motion in Limine to Exclude Plaintiff's
Tire Liability Experts
Dkt. S-31 Exhibits
Dkt. S-32 Memorandum

I. Defendants' Motion

Defendants request the exclusion of Plaintiff's proffered expert witnesses because each has failed to identify a specific defect with regard to the Load Range E Light Truck steel-belted radial tire designed and manufactured by Defendants. Defendants argue that the expert opinions do not satisfy the requirements of Kumho Tire Company Ltd. V. Carmichael, 526 U.S. 137 (1999).

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A. Mr. R.J. Grogan - International Pneumatic Tire Consultant

Mr. Grogan intends to testify as to the reasons for the tread and upper belt separation of the tire, that the tire was defectively designed, that the alleged defects caused the tire failure, and Defendants could have prevented the failure

B. Mr. Alan Milner - Product Failure Analyst

Mr. Milner intends to testify as to the cause of the tread separation of the subject tire, that the subject tire was defective, that the alleged defects caused the tire's failure and that Defendants could have prevent the failure.

C. Mr. William Max Nonnamaker - Tire Consultant

Mr. Nonnamaker intends to testify as to the cause of the tread separation of the subject tire, that the subject tire was defective, that the alleged defects caused the tire's failure and that Defendants could have prevent the alleged failure.

D. Mr. Dennis Carlson - Tire Failure Analyst

Mr. Carlson intends to testify as to the cause of the tread separation in the subject tire, that the subject tire was defective, that the alleged defects caused the tire's failure, and that Defendant could have prevented the alleged failure.

Defendants argue that the above expert witnesses all improperly rely on confidential documents, cannot identify a specific reason for the alleged adhesion deficiency, and ignore evidence of prior impact damage.

II. Plaintiff's Response

A. Timeliness of Motion

Plaintiff argues that Defendants' Motion is untimely because it was brought many months after the last deposition of Plaintiff's experts was completed. Plaintiff relies on Webster v. Fulton County, Georgia, 85 F.Supp.2d 1375 (N.D. Ga. 2000), in which the trial court explained that a request for a Daubert hearing is waived unless it is made in a timely fashion. The Webster court found that a pretrial request for a Daubert hearing should be made within a reasonable time after the close of discovery if the grounds for the objection can be reasonably anticipated.

While it is a better practice to file motions such as this Motion in Limine sooner rather than later, and the Court wishes every litigant would follow the Webster ruling, the Court will not deny the Motion because it is untimely. There are other grounds for denial of the motion.

B. No Challenge to Qualifications, Credentials, Opinions, or Methodologies

Plaintiff argues that Defendant does not challenge the education, experience or methodologies of Plaintiff's experts. Mr. Carlson was excluded from testifying Kumho Tire, but that opinion was limited to the methods used in that case. Other courts have subsequently found Mr. Carlson's methodology reliable. The other experts have not been disqualified from giving the opinions rendered in this case in other cases.

C. Reliability of Experts' Opinions

Plaintiff argues that Defendants have not argued at any time that Plaintiff's experts lack a reliable scientific basis for their opinions as to the need for a nylon cap overlay in the subject tire. Plaintiff also argues that Defendants have not objected to the reliability of the experts' conclusion regarding Defendants' notice of the existence of the defective condition which allegedly caused the subject tire to fail well in advance of the subject accident.

D. Same Mode of Analysis of Defendants' Own Experts

Plaintiff argues that Plaintiff's expert witnesses used the same, as well as a more detailed, process of analyzing the subject tire and reaching their conclusions as Defendants' experts. (Chart, Dkt. S-32, pp. 6-7).

E. No Identification of Proper Methodology

Plaintiff argues that Defendants do not identify the proper methodology that Plaintiff's experts should have used.

F. Objection to Opinion as to Adhesion

Plaintiff argues that Defendants' contention that Plaintiff's experts did not account for direct physical evidence, and did not identify specific defects in the subject tire, does not require exclusion, but is the proper subject of cross-examination at trial.

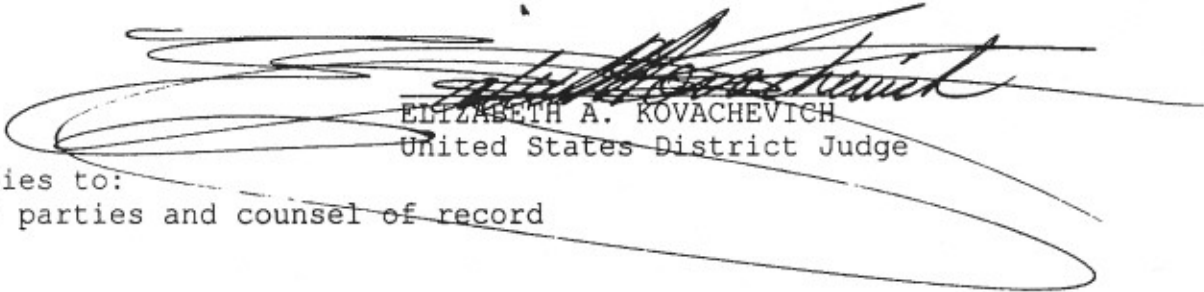
G. Plaintiff's Experts Considered the Impact Theory, But Rejected It

Plaintiff argues that the Motion in Limine should be denied because Defendants have challenged neither their experts' credentials or qualifications, nor the methods the experts used to reach their conclusions. Plaintiff also argues that Plaintiff's experts considered the impact theory, but rejected it.

After consideration, the Court **denies** the Motion in Limine because Defendants' objections to the testimony of Plaintiff's expert witnesses go to the weight rather than the admissibility of the testimony. Accordingly, it is

ORDERED that the Motion in Limine (Dkt. 457) is **denied**.

DONE and ORDERED in Chambers, in Tampa, Florida on this 12th day of March, 2004.



ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:
All parties and counsel of record