

COOPER TIRE TREAD/BELT SEPARATION DATA

Prepared by Richard Zitrin, February 2017

With the assistance of the Arthur & Charlotte Zitrin Foundation Anti-Secrecy Database Project

The information below is divided into seven segments: narrative summary; defect causing serious injury; estimates of number of incidents/cases and extent of harm; science of the defect; internal company knowledge of the defect; evidence that cases were settled secretly; status today of current lawsuits, public awareness of defect, etc. References are listed for the information as necessary. Documentation is either footnoted or noted by “Exhibit” and an exhibit number, or both. However, the exhibit number is only for indexing purposes and copies of the exhibits do not contain the number and are not necessarily attached.

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1. Narrative summary:

Cooper tires have had unusually high numbers of tread and belt separations. These separations, caused by Cooper’s not bringing their tires up to the state-of-the-art level of their competitors, have resulted in at least 331 deaths, hundreds of injuries, and at least 460 documented lawsuits – probably half the number of actual lawsuits, and undoubtedly low estimates on the number of deaths and injuries. Cooper settles virtually every case, but all of them are under settlements requiring secrecy, or, most commonly, protective orders, including at least two omnibus protective orders.

Cooper clearly knew about its tire problems, based on the very few documents that have surfaced in the last 20 years, and knew of three areas where its tires were below standard. It did nothing. It has been particularly successful in stonewalling discovery of its malfeasance, including shutting down a reporter who was given “smoking gun” documentation, and suing a one of the principal lawyers who had sued Cooper for injuries from defects when he deposed a former employee who admitted destroying documents.

In addition to secrecy agreements or protective orders in every settled case I could find, there is an omnibus secrecy order that covers every case in the state of California, whether the lawyers and plaintiffs want to agree to it or not. As a result of this and Cooper’s extraordinary efforts, the secrets about its defective tires – unlike what happened in 2000 when Firestone’s similar tread separation issues were exposed – have remained almost entirely buried until now.

2. Defect causing serious injury:

Tire tread “separations” that result in tires “shredding” as the two belts of the tire separate and the tire completely fails.

3. Number of incidents/cases and degree of harm:

Lawsuits against Cooper tires for their thread or belt separation have been going on since at least 2000. By 2000, products liability attorneys brought in class action lawyers to file a consumer class action case in New Jersey.¹ According to Bruce Kaster, probably the country's leading lawyer against Cooper, the case came about partly as a result of frustrations products liability lawyers had with individual cases, including destruction of documents in an early case involving four deaths in 1998, *Hervey and Whitaker v. Cooper*, in federal court in Arkansas.²

The New Jersey *Talalai* case was limited to consumer remedies and had only a modest settlement, but it did involve 170,000,000 tires and 42,500,000 tire owners. The settlement was non-monetary; the judge in her settlement order claimed it was worth \$1.02 to 1.7 billion, but that seems grossly inflated by assuming everyone participated in the warranty program.

At the very least, however, **460 cases involving 331 deaths, 114 serious injuries including quadriplegia, paraplegia, brain damage, and loss of limbs, and 127 other injuries** have been documented by Bruce Kaster by case name, location, date of occurrence, tire and vehicle description, and injury.³ It is believed that the number of lawsuits is much higher, as Kaster had to rely on individual anecdotal information except what he was able to glean from the *Winston Tire Cases* consolidated action in Los Angeles (see section 6 below).

4. The science of the defect:

Tires we use today on cars and passenger trucks all have basically the same components, including two steel belts. A tread separation is a bit of a misnomer because the separations actually occur between the two steel belts. Cooper failed to protect against this separation in these three distinct ways:

1. No use of "belt edge gum strips," commonly known as a rubber "wedge," between the two belts. Other companies add extra rubber at the edge between belt 1 and belt
2. This adds extra protection because it's at the belts' edges where separations begin.⁴

¹ *Talalai v. Cooper v. Cooper Tire & Rubber Co.*, NJ Superior Court, Middlesex Co. Docket # L-008830.00, settled in September 2002. Other similar cases in Michigan and Ohio; all eventually consolidated in New Jersey.

² Bruce Kaster conversations and emails with me, February 2017. This case involved document destruction, see section 5, no. 5, below. An article describing settlement on the eve of trial and the court ruling evidence of destruction admissible: <http://usatoday30.usatoday.com/money/autos/2002/05/24/cooper-tire-settlement.htm>.

³ Kaster has been compiling this database for years, entitled "Index of Cooper tread separation cases with description of injuries," and forwarded it to me in its most updated form in February 2017. Exhibit 1, which is available. It is still not complete and will hopefully be further updated.

⁴ See Exhibit 2, Kaster testimony before House Judiciary subcommittee, 2009, referencing exhibit in *Bradley v. Cooper Tires*, discussed under item 3; expert testimony of expert Dennis Carlson, as discussed by the court in upholding admissibility of that evidence both generally and for punitive damages, in *Mascarenas v. Cooper Tire Rubber Company*, 643 F. Supp.2d 1363 (S.D. Ga. 2009). Kaster's key testimony references Firestone's defective

2. Cooper did not use a nylon cap ply. This is a piece of nylon that lies over the two steel belts and constricts when the tire is vulcanized (or baked). It doesn't prevent the belt separation, but it prevents the tire from failing because it holds the belts together.⁵
3. The rubber that is used on the steel belts is called skim stock. It requires sufficient anti-oxidant to prevent premature oxidation, which means that the rubber easily becomes brittle, like a rubber band left in the sun. When the skim stock becomes brittle over time, the belts separate.

5. Internal company knowledge of the defect

1. Sheer numbers of lawsuits: Gross numbers are so large it is difficult to fathom that Cooper could be unaware of the problems with tread (or belt) separation given that these allegations have been repeated in hundreds of – perhaps 1,000 or more – lawsuits over the last 18 years. This is ample evidence that at least after the first 100 lawsuits that were almost always settled, not dismissed, Cooper would become aware of the defects if it didn't already know.

However, in this particular instance, there is far more evidence of knowledge:

2. Evidence from *Bradley v. Cooper Tires*: This case went to trial in Mississippi. Because of trial, some Cooper documents are available, though they are redacted. The evidence is from the year 2000 and involves memos in the aftermath of a “tire durability meeting” that involved a technical and practical discussion of what could be done to increase “durability,” i.e., prevent increasing separation failures.⁶ Among the highlights:

- “The purpose of the meeting was to identify areas where our tire durability performance could be improved; identify both the short-term and long-term action items that need to be accomplished to provide the desired improvements.” Also, “During our discussions, the group operated under the assumption that continuous improvements needed to be made to passenger [and various specific model] tires.”
- Cooper was aware of “belt/belt separations that occurs [sic] in all tires when the tire lines when the tires are subjected to a combination of high ambient temperatures and high operating speeds.” Repeated reference to an “initial action item” or “key short-term recommendation” of using “belt edge gum strips,” commonly called wedges, to improve “durability.” This issue repeated several times throughout the memo.

“wedges” that were too narrow. But Cooper “not only has a reduced wedge, it is worse than that. They don't have any. They don't even have the product that Firestone reduced that resulted in all these deaths.

⁵ Information provided by Kyle Farrar, tire lawyer in Houston and the attorney in *Toe*, see below.

⁶ The entire 25 pages of documents is available, Exhibit 3, as is a 1 ½ page summary of highlights that I prepared, Exhibit 3A.

- The attendees were aware that using the gum strips would “decrease plant efficiencies and would require additional capital to implement.”
- A “long-term action item”: “Evaluate the use of nylon cap ply as a means of improving durability under conditions of high speed and high ambient operating conditions. This is the second issue above under “Science.”
- Attachment #7 to the memo was called “Competitive Information” – “Virtually all [REDACTED] large passenger tires use belt edge gums.” “BEGS proven in all steel tires.” The attachment acknowledges that Cooper is: “Deficient in durability compared to competition.”
- In an attachment to the memo, heavily redacted, the three solutions to the tire failures are all specifically noted:
 - Make tire more resistant to oxygen attack.
 - Reduce stress at the belt edge of the tire.
 - Use a nylon cap ply to hold the tire together.

3. Documents provided to Arizona TV reporter Boudreau. In 2005, Abbie Boudreau, an Arizona TV reporter, had been attending the *Flores v. Cooper Tire* trial when she received anonymously some Cooper documents from as early as 1996 showing, according to an Arizona appellate court, that “Cooper had refused to pursue safety measures suggested by its own employees due to cost concerns.”⁷ The television station posted two of the documents on line, but when Cooper objected, took them down. Cooper then fought with the station and Boudreau to get her source, noting that the same documents, essentially smoking guns, had been admitted at the Flores trial. The court eventually ruled in Boudreau’s favor, but the documents were never put back on line.

4. Evidence reconstructed from Toe v. Cooper Tires. *Toe*, an Iowa case, went to trial, very rare for Cooper. After the trial, the plaintiff wanted the documents open, but Cooper argued long and hard. When the non-profit Center for Auto Safety intervened, the judge ruled that the transcript of testimony could be public, but the documents had to remain undisclosed. Plaintiff attorney Kyle Farrar painstakingly reconstructed the documents from the testimony. Those reconstructed documents included:

- A 3-13-2000 document that was the first Bradley document. Unredacted, the document shows that in addition to adding the belt edge gum strips, the attendees of the Cooper durability meeting recommended “Increasing the AO protection,” referring to anti-oxidants to protect against rubber becoming brittle at high temperatures. The need for this “has been documented through multiple test programs over the past five years but never been invoked because of the cost considerations.”
- A 1996 memo referencing “problems” with “passenger tire durability” and suggesting examining “anti-degradent systems,” or oxidant sufficiency related to brittle rubber.

⁷ The appellate case is *KNXV TV v. Cooper Tire and Rubber Co.*, Court of Appeals of Arizona, Division 1, No. 1 CA-CV 06-0655, (March 25, 2008). Exhibit 4.

- Numerous references to increases in belt/tread separations, including a memo from 1999 saying “it is imperative we provide a very focused effort on improving our belt/tread area separation resistance.”
- Documentation throughout of the need for modifying the “antidegradent system.”
- Reports on testing programs and studies that show the tire defects.⁸

5. Admissions of Cathy Barnett. Barnett was a Cooper employee who admitted twice under oath that she and a cohort had both shredded and burned Cooper documents at the request of a Cooper superior in 2003 in Tupelo, MS. The documents were to be disclosed in a *Whitaker v. Cooper Tires* case in Arkansas. When called to testify in that case, Barnett admitted she had shredded and burned documents but claimed it was not on Cooper’s orders.⁹

6. Cases settled secretly.

There is absolutely no question that hundreds of Cooper Tire cases have been settled secretly. Many cases have been filed nationwide, and only two – *Bradley* and *Toe* – are known to have gone to trial. And in those two cases, revelation of documents was very limited.

“Ordinary” cases: It can safely be assumed that lawsuits in all venues have been subject to tight secrecy, such as the pretrial protective order in *Toe* that was largely left intact. Both Farrar, the *Toe* lawyer, and Kaster have advised me that they have never done a Cooper case without a pre-trial secrecy order or agreement.

But there is no question about the protective order in the *Talalai* case in New Jersey or the *Winston Tire Cases* coordinated action in Los Angeles.

Talalai: According to the court’s final order in September 2002, plaintiffs’ counsel had reviewed 3,000 boxes of documents and examined “thousands” of tires. In that final order, the court stated that “all documents obtained ... were to be retained and not further disseminated as part of the settlement. Class and defense counsel have agreed that all such documents will be destroyed or returned to defendant. That shall be part of this final order.”¹⁰

Winston Tire Cases: In 2003, a group of products liability lawyers filed a case in Los Angeles County under the name “Winston tires,” a recently defunct California tire company.

⁸ *Toe v. Cooper Tire and Rubber Co.*, Iowa District Court, Polk County, Case # CL 106914. Trial exhibits reconstructed by Toe’s attorney Farrar in that case available as Exhibit 5.

⁹ Most information regarding Barnett is contained in an opinion of the court in *Cooper Tire and Rubber Co. v. Farese, et al.*, 423 F.3d 446 (5th Cir. 2005), a case in which Cooper accused Barnett’s lawyer and the Arkansas case’s plaintiff’s attorney Bruce Caster with interference with business interests by deposing Barnett in connection with Kaster’s case. Available as Exhibit 6. These comments also based on my conversations with Bruce Kaster in February 2017.

¹⁰ *Talalai v. Cooper Tire & Rubber Co.*, NJ Superior Court, Middlesex Co. Docket # L-008830.00, a 76-page Opinion and Order of September 13, 2002. Available as Exhibit 7.

For reasons I am not certain of, the California Judicial Council made the case a special statewide Judicial Council Coordination Proceeding, or “JCCP,” the California equivalent of “multi-district litigation.” On November 7, 2003, the court issued a protective order covering all “coordinated” cases, stated that “All Confidential Material shall be used for the purpose of these coordinated proceedings only,” and provided that any lawyer who no longer had a case within the coordinated proceeding, “shall confirm in writing to the Defendant, within 10 days of the final resolution of an individual action, that any confidential information has been returned....”¹¹

Most of the cases litigated under this coordinated proceeding have been Cooper cases. When cases are filed in other CA counties – and some in other states – Cooper moves to bring the case under the coordination umbrella, which is routinely granted. Standing orders on discovery, timing, and other matters, including the protective order, automatically apply to these newly coordinated cases.¹² In the years since the order, at least 102 Cooper cases have been litigated under the *Winston Tire* case and its protective order.¹³ It does not appear that any have gone to trial.

7. Status today of lawsuits, public awareness, etc.

To this day, Cooper has insistently denied the existence of any defect. It is not known whether Cooper made any “remediation” changes to its tires, as described in Section 4 above. However, Cooper has never at any time recalled any of its tires.

Lawsuits are pending throughout the country, with eleven pending in the *Winston Tire* litigation as of December 15, 2016, and five more pending settlement.¹⁴ Protective orders and secrecy agreements have almost entirely shut down information from public scrutiny. The Center for Auto Safety, which compiles information on automobile dangers and puts them on its website, has virtually nothing on Cooper. Kaster, who prepared the database that is Exhibit 1, is bound by various protective orders in various cases as well as an ongoing protective order in the case in which Cooper sued him, about which he was bound by secrecy to even discuss the breadth or parameters of that order with me.

I am hopeful that the near future will allow for exposure one way or another of the information contained in this “dossier.”

¹¹ *Winston Tire Cases*, California Superior Court, Los Angeles Co. # JCCP4292, Order of November 7, 2003. Exhibit 8.

¹² Copies of dockets and pleadings in *Palafox*, *Reynosa*, *Holguin*, and *Mall* cases, all coordinated. See Exhibit 9.

¹³ See Exhibit 1.

¹⁴ See Joint Report of Counsel in *Winston*, filed December 20, 2016. Available as Exhibit 10.