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## COURT ASKED TO BAR DISCLOSURE OF TRADE SECRET DOCUMENTS

*(Chicago Tribune Co. v. Bridgestone/Firestone, Inc.)*

The Washington Legal Foundation (WLF) today asked the U.S. Court of Appeals for the Eleventh Circuit not to order the public release of a company's trade secret documents based solely on the news media's argument that the public may have a strong interest in seeing the documents.

In a brief filed in *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, WLF argued that internal company documents are not fair game for public release simply because they have been made available to the opposing party in a lawsuit -- unless the documents become evidence in a public trial. WLF argued that to the extent that public safety requires the release of company documents, the release should be ordered by the appropriate government regulatory agency -- not at the behest of plaintiffs' attorneys who hope to use those documents to bring additional lawsuits.

WLF noted that parties to litigation routinely are granted access to the opposing party's internal documents, in order to assist in resolution of their dispute. WLF argued that if litigants fear that documents they make available to opposing parties will routinely be made public, they will become unwilling to cooperate in pre-trial document exchanges, and the entire litigation process will break down.

This case involves an effort by the news media to gain access to documents in a Georgia tort suit in which the plaintiffs' son was killed in a 1997 automobile accident caused when one of his tires (made by Firestone/Bridgestone) blew out. The case was settled on confidential terms in 1999; pursuant to a confidentiality agreement reached by the parties well before the settlement, many of the court records were sealed. The sealed records included nine documents that had been attached to two pre-trial procedural motions ruled on by the trial judge before the case was settled.

The documents sat unnoticed in a Georgia court for nearly a year after the settlement. But after Bridgestone/Firestone announced a nationwide recall of certain of its tires, four news media organizations -- the Chicago Tribune, the Washington Post, the Los Angeles Times, and CBS -- learned about the documents (apparently from the

plaintiffs' attorney in this case) and asked that they be made public.

Bridgestone/Firestone consented to release of the great majority of documents on file with the district court. But it asserted that nine documents should not be released because they contained valuable trade secret information regarding the manner in which its tires are manufactured.

The district court ordered the release of all the documents. The court held that there is a strong presumption that documents in the hands of a court are subject to public disclosure, and that such documents may be withheld only upon a showing of compelling circumstances. Bridgestone/Firestone appealed that ruling to the Eleventh Circuit, which has stayed release of the documents until it has a chance to rule.

WLF argued in its brief that the First Amendment provides no support for the news media's effort to win the release of the documents. WLF argued that the First Amendment protects the right to speak, not the right to gain access to private records, even if the documents happen to come into the possession of a court in connection with litigation.

WLF also argued that the common law right of access to public records does not support the district court's decision to release documents in this case. WLF argued that the common law right of access is inapplicable to documents that are before the court only in connection with the pre-trial process. Only when the documents become part of a trial record should they be deemed "public records" and thus subject to disclosure to the general public, WLF argued.

The Bridgestone/Firestone trade secret documents at issue describe in detail the specifications and production methods for the tires Bridgestone/Firestone makes at its North Carolina manufacturing plant. WLF noted that if the disputed documents are ordered release, their value as trade secrets will be destroyed. WLF argued that under those circumstances, the Fifth Amendment's Takings Clause would require compensation to Bridgestone/Firestone for that lost value.

WLF is a public interest law and policy center with members in all 50 states. It devotes a significant part of its resources to promoting tort reform and protecting individuals and businesses from excessive government regulation.

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