

# LAW WEEK

## COLORADO

# Wheeler Trigg O'Donnell Gets Jury Verdict in \$80 Million Michelin Suit

*Tire maker wins another complete defense verdict*

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After nine weeks of trial, a team of Denver litigators helped secure a major defense win in a product liability case that drew the collective eye of the automotive industry.

A Florida jury on Aug. 24 decided in favor of Michelin North America, Inc., and co-defendant Takata Corporation in an \$80 million product liability case. The jury rejected the plaintiffs' claims that a Michelin tire involved in a rollover car crash was defective and that the tire maker was liable for the catastrophic brain and bodily injury the plaintiffs suffered from the accident.

A team from Denver-based litigation firm Wheeler Trigg O'Donnell, led by firm partner and chairman Michael O'Donnell, represented Michelin in what was the trial team's second multimillion-dollar complete defense verdict in favor of the company in under a year. Firm partners Ed Stewart and Theresa Wardon rounded out the trial team, and they defended Michelin alongside Orlando-based co-counsel Michael Wiggins and Michael Correnti, who built the case pre-trial.

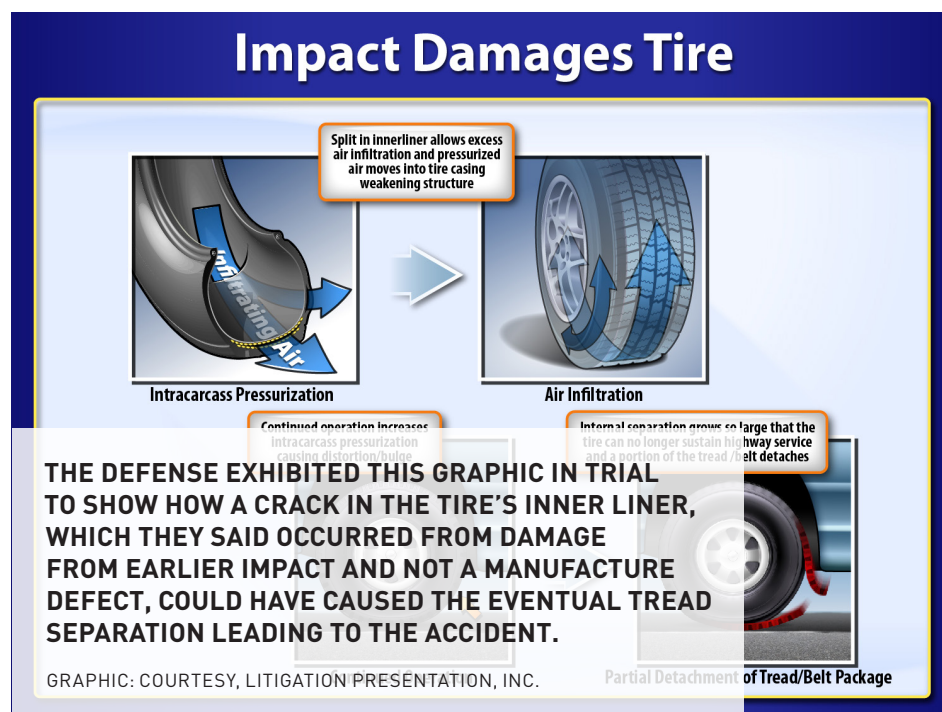
The case centered around a used Michelin tire that the plaintiffs had purchased in March 2009. The following month, the plaintiff was in a Chevrolet Trailblazer driven by Latoya Dukes on a highway in Port St. Lucie, Florida, when the tread belt came off one of the tires, causing Dukes to lose control and roll the SUV three and a half times. Dukes and her four passengers were all injured in the crash.

The plaintiffs' suit claimed that one of the passengers, Kiara Dukes, had her seat belt come unlatched during the rollover, causing her to be ejected from the Trailblazer and suffer catastrophic body and brain injury. Dukes, who was 16 years old at the time, lost the ability to speak and is partially paralyzed.

The plaintiffs alleged that the Michelin tire that caused the rollover was "in a dangerous and defective condition" from the time it was manufactured to the day of the crash. They also alleged that Michelin should have known there was a split inner liner in the tire and failed to inspect it before it left the factory.

The plaintiffs also sued Japan-based Takata Corporation, which made the vehicle's seat belt system; the complaint alleged that the seat belt system was "dangerous and defective." The jury later found that Dukes was not actually wearing the seat belt at the time of the accident.

The WTO team anticipated the trial to last about a month, according to O'Donnell.



But jury selection lasted longer than expected, with voir dire taking five days and the plaintiffs arguing damages for five weeks, he added.

O'Donnell said that the plaintiff's lead attorney, Christian Searcy, is a "gifted" litigator who is known as one of Florida's top-rated plaintiff's lawyers. Also representing the plaintiffs were Darryl Lewis and Michael Kugler of Searcy Denney Scarola Barnhart & Shipley and Henry Didier and Mitchell Chubb of Didier Law Firm.

The defense's central argument was that the tire in the accident was damaged from a prior impact, but it wasn't defective. Having come off the Michelin factory line in October 2000, the tire was eight-and-a-half years old at the time of the crash and had an estimated 50,000 miles on it. Although it was worn, it still had a legal amount of tread left on it, according to the defense. The plaintiffs bought it used three weeks prior to the crash.

The plaintiffs argued that the tire had a multitude of manufacture defects, including deficiencies in cure of the tire through the vulcanization process, which they said created air pockets that caused accelerated tire wear. The belt placement was off as well, they argued. The plaintiffs pointed to a crack in the tire's inner liner — a component that is supposed to prevent air infiltration into the tire — and said the crack was there when the tire left the factory.

The defendants challenged the notion that all of those defects could have existed yet still enabled the tire's longevity.

"If it had all five of these (defects) by the time it left the plant, there's no way this

tire would have gone eight-and-a-half years," Stewart said. O'Donnell said the defense repeated that argument to the jury from opening to closing, to the point where it was "pretty much a mantra."

Wardon said that if the plaintiffs' theory that there was a defect in the tire's vulcanization process were true, it would have occurred in every other tire that underwent the same process.

"So we were able to show that if what they said was true, 78,000 tires would also be similarly defective, and obviously that was not true," Wardon said.

What made more sense, O'Donnell said, is that there was a more recent impact to the tire — likely within its last 2,000 miles, according to the defense's expert testimony — causing the damage that soon led to the tread separation at highway speed.

Like many product liability cases, expert testimony proved pivotal. Each side's engineer witnesses came to completely different conclusions on exactly what happened to the tire to make the tread come off. And with the arguments of porosity and vulcanization being too technical for the jury to judge on their face, the defense focused on attacking the opposing expert's credibility.

"You have a tire that's ripped apart, and it's sitting there in front of the jury, and your average jury ... really can't tell what you're looking at," Stewart said. So the defense pitted the qualifications of each side's engineer against each other, painting the opposition's expert as "a disgruntled former employee" without an engineering degree "who was fired

from his job because he was meeting with other tire companies in violation of his non-compete," Stewart said, versus the defense's expert who had 40 years of experience and published peer-reviewed papers.

Despite the scientific support the defense brought to its case, it still perceived a potential challenge in overcoming the sympathetic nature of the plaintiff. Kiara Dukes, who was permanently paralyzed, was homecoming queen prior to her tragic accident.

From a juror's perspective, O'Donnell said, ruling against the plaintiff would be "an easy decision based on the science," but "it was hard to do because this young lady and the other two plaintiffs are affected for the rest of their lives."

He said that minimizing the sympathy factor begins in voir dire. He got "commitments" from jurors during the selection process that they would make their decision based on the facts and the law, and he later asked the jury to uphold that commitment.

"Easy decision, hard to do. We are asking you to do the hard thing," O'Donnell said he told the jury in closing arguments.

O'Donnell, Stewart and Wardon all worked together previously when they won a different defense verdict for Michelin North America Nov. 19, 2015. Following a three-week trial in Arizona, a jury found Michelin not liable for the \$20 million in damages the plaintiffs said resulted from another rollover crash caused by a tire tread separation.

This summer's trial in Florida ran three times as long with four times as much in alleged damages.

O'Donnell said he, Stewart and Wardon have strengths that complement each other as attorneys. Stewart's litigation career has had a focus on automotive-related cases. Wardon, a recently minted partner at WTO, argued jury instructions. O'Donnell said he tends to be the "high-strung" member of the group, and that Stewart and Wardon's presence lowers his blood pressure by virtue of them being "on top of things."

"Nine weeks is a long time to have the guitar strings strung pretty tightly," O'Donnell said. Rapport makes a difference when a trial team has to spend an entire summer together on a single high-stakes case, including the daily, hour-long round-trip carpools from the hotel to the courthouse. The team spent much of that time together on the road talking over trial strategy as much as current events and pop culture.

"We like trial and we genuinely like each other," O'Donnell said. •

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