

WWM WINS DISMISSAL OF HEARING LOSS COVERAGE SUIT IN FEDERAL DISTRICT COURT

WWM attorneys succeeded in obtaining the dismissal on behalf of its client, Pacific Employers Insurance Company, of a declaratory judgment action filed by Bridgestone Americas Tire Operations LLC. By order dated February 27, 2013, an Ohio federal judge dismissed Bridgestone's suit seeking to hold Pacific liable for hearing loss claims made by Bridgestone factory employees, finding that the dispute had already been decided by a prior federal court decision.

U.S. District Judge Sara Loi vacated her own March 2012 order that denied Pacific Employers Insurance Co.'s Motion to Dismiss based on res judicata grounds and entered dismissal of Bridgestone's Complaint. In doing so, Judge Loi found that Pacific Employers Insurance Co.'s motion for reconsideration convincingly argued that the doctrine of res judicata barred Bridgestone's suit given that the same issues had been previously litigated in a federal action filed in Louisiana that was subsequently affirmed on appeal by the Fifth Circuit Court of Appeals. Judge Loi had previously denied Pacific Employers Insurance Co.'s initial bid to dismiss the Ohio suit after erroneously determining that the Louisiana action did not involve the same insurance policies at issue in the Ohio suit.

Judge Loi found that she previously "erred in concluding that the claims and policies in the instant action were not included in the Louisiana coverage action." She also found that "the court's error was in concentrating on the entire record of that case, rather than confining the inquiry to a comparison of the two complaints. When the proper comparison is made, it is apparent that the instant action is barred by res judicata." Judge Loi added that the March order further erred in applying the res judicata doctrine's declaratory judgment exemption, which she conceded did not apply when the claims listed in a complaint are not limited to declaratory relief.

The underlying case involved employees who sued Ohio-based Bridgestone for hearing loss they allegedly suffered from continuous exposure to noise at an industrial facility in Lake Charles, La. That facility was owned by Firestone Tire & Rubber Co., which was bought by Bridgestone Corp. in 1988. After the U.S. District Court for the Western District of Louisiana granted summary judgment to the defendants, Bridgestone appealed the case to the Fifth Circuit, which in June 2010 held that, under the policies involved, long-term exposure to noise did not count as an accident even if it eventually resulted in the hearing loss of employees.

Pacific Employers Insurance Co. was represented by Joyce F. Noyes and Justin H. Lessner of Walker Wilcox Matousek LLP.

A copy of the Court's Opinion is attached [here \(PDF\)](#).