

IN THE CIRCUIT COURT FOR BLOUNT COUNTY, TENNESSEE

**FILED**  
SEP 18 2009 3:58 PM  
TOM HATCHER  
CIRCUIT COURT CLERK

JIM POE, on behalf of himself  
and all others similarly situated,

Plaintiffs,

v.

HARLEY DAVIDSON MOTOR COMPANY,

Defendant.

Docket No.: L-16775

CLASS ACTION

**CLASS ACTION COMPLAINT**

NOW INTO COURT comes Plaintiff, Jim Poe, by the undersigned counsel, individually, and on behalf of all others similarly situated in the State of Tennessee who purchased 2009 model Harley Davidson motorcycles which came equipped with original Dunlop D407 tires, and brings this action for unjust enrichment and breach of warranties (both express and implied) and seeks compensatory damages and/or restitution from Defendant. This Complaint is alleged upon personal knowledge as to Plaintiff's own acts, and upon information and belief as to all other matters.

**I. Nature of Action**

1. This is a class action seeking compensatory damages and/or restitution damages for unjust enrichment and breach of warranties on behalf of all persons and entities residing in Tennessee who purchased 2009 model Harley Davidson motorcycles manufactured and sold by Defendant which came equipped with original Dunlop D407 tires (the "Motorcycles"). Specifically, the Dunlop D407 tires all suffer from a common and uniform defect that accelerates wear and cupping because the tire tread patterns are reversed.

## II. Parties, Jurisdiction, and Venue

2. Plaintiff, Jim Poe, is a citizen of the State of Tennessee residing at 424 Old Tacora Hills Road, Clinton, Tennessee 37716. Peterson purchased a 2009 Harley Ultra Classic (VIN # 1HD1FC41X9Y629754) equipped with Dunlop D407 tires from Smoky Mountain Harley-Davidson located in Maryville, Blount County, Tennessee.

3. Defendant, Harley Davidson Motor Company (“Harley”), is a Wisconsin corporation with its principal place of business and offices located at 3700 W. Juneau Avenue, Milwaukee, WI 53208. Harley may be served with process through its registered agent, C T Corporation System, 800 S. Gay Street, Suite 2021, Knoxville, TN 37929-9710.

4. This Court is the proper venue for this suit, pursuant to T.C.A. § 20-4-101 because all or part of Defendant’s acts and conduct alleged herein occurred in, is occurring in, and/or is about to occur in this county.

5. A substantial part of the trade and commerce and the common course of conduct giving rise to Plaintiff’s claims, occurred within the State of Tennessee. As a result of the manufacture, distribution, delivery, and sale of the Motorcycles to purchasers within Blount County, Tennessee and throughout Tennessee, Defendant, directly or through subsidiaries, affiliates or agents, obtained the benefits of the laws of the State of Tennessee.

6. Defendant has significant contact with the State of Tennessee. Among other things, the Defendant has numerous agents in this State through which it sell the Motorcycles; advertises through television, radio and newspapers in this State; and, derives significant revenue and income from residents in this State. Finally, Plaintiff’s claims against Defendant, as alleged below, were and are related to Defendant’s contacts with this State.

7. Plaintiff asserts no claim under the laws of the United States. The amount in controversy as to the Plaintiff and each individual member of the Proposed Class does not exceed Seventy-Four Thousand Dollars (\$74,000.00) each, exclusive of interest and costs; and Plaintiff disclaims compensatory and/or restitution damages, punitive damages, declaratory, injunctive, equitable or other relief greater than Seventy-Four Thousand Dollars (\$74,000.00) per individual Class member. Further, Plaintiff and members of the Proposed Class limit their aggregate class-wide claims for relief to less than Four Million-Nine-Hundred Thousand Dollars (\$4,900,000.00) and specifically disclaim compensatory and/or restitution damages, punitive damages, declaratory, injunctive, equitable or other relief greater than Four Million-Nine-Hundred Thousand Dollars (\$4,900,000.00).

8. Without limiting the generality of the foregoing, Plaintiff alleges that Defendant (directly or through agents who were at the time acting with actual and/or apparent authority and within the scope of such authority) has:

- (a) transacted business in Tennessee and Blount County;
- (b) intentionally availed itself of the benefits of doing business in Tennessee and in Blount County;
- (c) produced, promoted, imported, sold, marketed, and/or distributed products in Tennessee and in Blount County and purposefully profited from access to the markets of Tennessee and Blount County;
- (d) caused damage by act or omission in Tennessee and in Blount County;
- (e) committed acts and omissions that Defendant knew or should have known would cause damage in Tennessee and in Blount County to the Plaintiff and the Proposed Class while:

- (i) regularly doing or soliciting business within Tennessee and in Blount County, engaging in other persistent courses of conduct within Tennessee and in Blount County; and/or
  - (ii) deriving substantial revenue from goods used or consumed or services rendered in Tennessee and in Blount County;
- (f) otherwise had the requisite minimum contacts with Tennessee and Blount County such that, under the circumstances, it is fair and reasonable to require Defendants to come to this Court to defend this action.

### **III. Class Action Allegations**

9. Plaintiff brings this action on behalf of itself and as the representative of the following Proposed Class under Rule 23 of the Tennessee Rules of Civil Procedure:

All persons and entities residing in the State of Tennessee who have purchased 2009 model Harley Davidson motorcycles which came equipped with original Dunlop D407 tires

Excluded from the Class is Defendant, its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint ventures, franchisees, or entities controlled by Defendant, and its heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or officers and/or directors, or any of them, the Judge assigned to this action, and any member of the Judge's immediate family. Also excluded are those persons who have suffered bodily injury, wrongful death, or property damage as a result of the Motorcycles.

10. Plaintiff does not know the exact number of Class members, but due to the nature of the trade and commerce involved, believes that there are (at least) thousands of Class members.

11. Members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable.

12. There are questions of law and fact common to the Class, including:

(a) Whether the Motorcycles share a common defect and, as a result, suffer common problems;

(b) Whether Defendant breached the implied warranty of merchantability by manufacturing and selling the Motorcycles that possessed the common defect;

(c) Whether Defendant breached any of its express warranties by manufacturing and selling the Motorcycles that possessed the common defect;

(d) Whether Defendant was unjustly enriched by its manufacture and sale of the Motorcycles that possessed the common defect and, if so, the proper measure of restitution; and

(e) Whether the Class has sustained damages as a result of their purchase of the Motorcycles and, if so, the proper measure thereof.

13. Plaintiff's claims are typical of the claims of the Class members, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff and all members of the Class are similarly affected by Defendant's wrongful conduct. Plaintiff's claims arise out of the same common course of conduct giving rise to the claims of the other Class members. Plaintiff's interests are coincident with, and not antagonistic to, those of the other members of the Class.

14. Plaintiff is represented by counsel who are competent and experienced in the prosecution of class action litigation.

15. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendant.

16. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

17. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The Class is readily definable. Prosecution as a class action will eliminate the possibility of repetitious litigation. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. This class action presents no difficulties in management that would preclude maintenance as a class action.

18. Adequate notice can be given to Class members through direct contact using information maintained in Harley's records, and from those retailers that sell/sold Harley's motorcycles. Damages may be calculated from the sales information maintained in Harley's records, and from those retailers that sell/sold Harley's motorcycles, so that the cost of administering a recovery for the Class can be minimized.

#### **IV. Statement of Facts**

19. Since 1984, Harley and Goodyear Dunlop Tires North America, Ltd. ("Dunlop") have had a symbiotic relationship whereby Dunlop manufactured, sold, and otherwise provided Harley with tires which Harley incorporated into the motorcycles which Harley manufactured and sold. Since 1984, Dunlop tires have been original equipment on all Harley motorcycles. Further, Dunlop tires are the only tires tested and approved by Harley for use on Harley motorcycles. Harley chose the tires with which its motorcycles were to be equipped. Dunlop designed and manufactured the tires with knowledge of Harley's intended use for same. The tires which Dunlop manufactured, sold, and otherwise provided to Harley were the only tires approved by Harley as OEM replacements.

20. Harley's 2009 models were equipped with "new" Dunlop D407 tires which were to provide "long tread life", "maximum strength for long life", increased stability, and "excellent traction under braking." The Dunlop D407 "with Multi-Tread technology" was "specifically engineered and tested by Dunlop and Harley-Davidson development teams for fitment as original equipment on Harley-Davidson's entire 2009 FL touring series." The Dunlop D407 was warranted as "deliver[ing] performance that clearly surpasses current standards."

21. However, the Dunlop D407 tires all suffer from a common defect that accelerates wear and cupping as a result of a reversed tread pattern. This common defect not only adversely affects the wear of the tire, but also presents a potentially dangerous condition.

22. All 2009 Harley model motorcycles equipped with original Dunlop D407 tires suffer from this common and uniform defect.

23. As a direct and proximate result of the aforesaid common and uniform defect in the 2009 Harley model motorcycles equipped with original Dunlop D407 tires, each member of the Class has suffered financial loss.

## **V. Claims for Relief**

### **a. Breach of Implied Warranty**

24. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

25. Defendant impliedly represented and warranted that the Motorcycles being sold to the general public were free of defects and were merchantable. Defendant breached this implied warranty by selling the Motorcycles with significant, inherent and common defects. Moreover, Defendant made and/or allowed this warranty to be made with the intent of inducing

Plaintiff and Class members to purchase the Motorcycles. If Plaintiff and Class members had known the true facts as to the Motorcycle's tires, they would not have purchased the Motorcycles or paid as much as they did for the Motorcycles.

26. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiff and Class members have been harmed and are entitled to compensatory damages.

**b. Breach of Express Warranty**

27. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

28. Defendant expressly warranted that the Dunlop D407 tires would provide greater tread life.

29. Defendant breached this express warranty as the Dunlop D407 tires all suffered from a common defect that accelerates wear and cupping.

30. As a direct and proximate result Defendant's breach of express warranty, Plaintiff and Class members have been harmed and are entitled to compensatory damages.

**c. Unjust Enrichment**

31. The allegations of the preceding paragraphs are incorporated by reference as if fully set forth herein.

32. Defendant unjustly enriched itself at the expense of Plaintiff and Class members by manufacturing, selling, and receiving monies for the Motorcycles containing a common and uniform defect.

33. As such, Plaintiff and Class members are entitled to full restitution of the price



paid for the tires as part of their purchase of the Motorcycles.

## **VI. Prayer for Relief**

**WHEREFORE**, Plaintiff, on behalf of himself and Class members, requests judgment as follows:

A. Determination that this action is a proper class action maintainable pursuant to the provisions of *Tennessee Rule of Civil Procedure 23* and appointing Plaintiff as the Class representative;

B. Declaration that Defendant is financially responsible for notifying all Class members that the Motorcycles' tires are defective;

C. Declaration that Defendant has breached the implied and express warranties given with the purchase of the Motorcycles;

D. Awarding Plaintiff and each Class member actual or compensatory damages for said breaches of implied and express warranties;

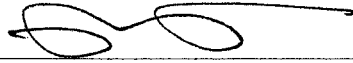
E. Declaration that Defendant has been unjustly enriched by their actions and awarding restitution to Plaintiff and Class members;

F. Awarding the Class costs and attorneys' fees against Defendant, as allowed by law, from any common fund created hereby;

G. Awarding Pre-judgment and post-judgment interest at the maximum rate allowable at law; and

H. Awarding such other, further, and general relief as is just and proper.

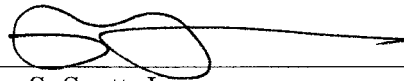
Respectfully submitted, this the 18<sup>th</sup> day of Sept, 2009.



Thomas S. Scott, Jr., BPR # 001086  
Christopher T. Cain, BPR # 019997  
**BALL & SCOTT**  
Suite 601, Bank of America Center  
550 Main Avenue  
Knoxville, TN 37902  
(865) 525-7028

**COST BOND**

We acknowledge ourselves as sureties for the costs of this cause as required by *Tennessee Code Annotated* § 20-12-120.



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