

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT REIBSTEIN, on behalf of himself and all others similarly situated Plaintiff	CLASS ACTION
vs.	
CONTINENTAL TIRE NORTH AMERICA, INC.	NO. 07-cv-302(LP)
and	
CONTINENTAL AG Defendant	

AMENDED COMPLAINT

Plaintiff, Robert Reibstein, brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf all other Pennsylvanians similarly situated, and avers the following:

I. INTRODUCTION

1. This class action seeks damages, injunctive and declaratory relief on behalf of a class of all persons who purchased Continental “ContiSeal” tires during 2004 through the present either as part of original equipment installed on newly purchased or leased cars or as replacement tires.

2. Through a common and uniform course of conduct, defendants Continental Tire North America, Inc. and its parent company, Continental AG (collectively “Continental”), manufactured, supplied, promoted, and sold ContiSeal tires when it knew or should have known that these tires would incur premature, rapid or abnormal tread wear.

3. Through a common and uniform course of conduct, defendant Continental, acting individually and collectively through its agents and dealers, failed to disclose to the consuming public the fact that its ContiSeal tires would incur premature, rapid or abnormal tread wear, typically becoming unserviceable and requiring replacement within 20,000 miles of first use.

4. Furthermore, through a common and uniform course of conduct, defendant Continental failed to honor both federally mandated and voluntarily offered warranties that would have required them to repair or replace, at no cost to the consuming public, the nonconforming and/or defective tires.

5. The purpose of this action is to hold accountable, and to obtain maximum legal and equitable relief from, Continental for producing and placing into the stream of commerce ContiSeal tires. These ContiSeal tires do not conform to the durability and longevity of tires reasonably expected by retail consumers or to the statements and affirmations made by Continental in connection with the sale and delivery of the tires to retail consumers.

II. JURISDICTION

6. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d). The claims made herein are asserted on behalf of a class of all persons in the Commonwealth of Pennsylvania who purchased ContiSeal tires from 2004 to the present.

7. Venue is proper in this district as plaintiff is situate in this district and defendants regularly conduct business in this district.

III. PARTIES

8. Plaintiff Robert Reibstein is a retail consumer residing at 107 Morlyn Avenue, Bryn Mawr, PA, 19010.

9. In July 2004, Plaintiff purchased a new 2005 Chrysler 300C equipped with Continental ContiSeal tires.

10. The ContiSeal tires were separately warranted by Continental to be free of defects in materials, workmanship and design. The warranty was in place for 72 months.

11. At all times relevant to this Complaint, defendant Continental Tire North America, Inc. was a foreign corporation with a registered agent address c/o CT Corporation System, 1515 Market Street, Suite 1210, Philadelphia, Pennsylvania 19102. Continental Tire North America, Inc. is a wholly owned operating subsidiary of Continental AG, a German corporation having publicly traded securities that are traded on United States securities exchanges pursuant to registered American Depositary Receipts with registered principal executive offices of the depository disclosed as Continental Tire North America, Inc., 1800 Continental Boulevard, Charlotte, NC 28273.

12. At all times relevant herein, Continental, through its agents, distributors, servants and/or employees, engaged in the design, manufacture, marketing, sale and delivery of ContiSeal tires nationally and internationally.

13. Continental conducts business throughout Pennsylvania and the United States.

IV. CLASS ALLEGATIONS

14. Plaintiff brings this action pursuant to F.R.Civ.P. 23 on behalf of himself and all others similarly situated, comprising a class of “all persons in the Commonwealth of Pennsylvania who purchased (or received as part of an automobile purchase or transaction), during 2004 through the present, Continental ContiSeal tires (the “Class”).”

15. Plaintiff is a member of the Class.

16. Excluded from the Class are judicial personnel involved in considering the claims herein, all persons and entities with claims for personal injury, the defendants, any entities in which the defendants have a controlling interest, and all of their legal representatives, heirs and successors.

17. It is estimated that the Class consists of hundreds of persons throughout the Commonwealth of Pennsylvania and is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable. The exact number of Class members is presently unknown to plaintiff, but can easily be ascertained from the sales and warranty claim records of defendants.

18. There are numerous questions of law or fact common to the members of the Class which predominate over any questions affecting only individual members and which make class certification appropriate in this case, including:

(a) whether defendants, acting individually or collectively with their agents, failed to conduct appropriate, reasonable and adequate testing of the ContiSeal tires to determine the durability and longevity of the tires and their conformity to the reasonable expectations of consumers in the United States;

(b) whether defendants, acting individually or collectively with their agents, failed to warn or otherwise inform plaintiff and other members of the Class of the premature and abnormal wear caused by degradation of the tread on the ContiSeal tires;

(c) whether defendants omitted to adequately disclose and/or affirmatively concealed, in their affirmations and promotional materials, among other things, the premature and/or abnormal wear associated with the use of ContiSeal tires; and,

(d) whether defendants violated the Magnuson-Moss Warranty Act, 15 U.S.C. §2301 *et seq.*, the Uniform Commercial Code and common law.

19. The claims asserted by the named Plaintiff are typical of the claims of the members of the Class.

20. This class action satisfies the criteria set forth in Fed. R. Civ. P. 23(a) and 23(b)(3) in that plaintiff is a member of the Class; plaintiff will fairly and adequately protect the interests of the members of the Class; plaintiff's interests are coincident with and not antagonistic to those of the Class; plaintiff has retained attorneys experienced in class and complex litigation; and Plaintiff has, through his counsel, access to adequate financial resources to assure that the interests of the Class are adequately protected.

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

(a) it is economically impractical for most members of the Class to prosecute separate, individual actions; and

(b) after the liability of defendants has been adjudicated, the individual and aggregate claims of all members of the class can be determined readily by the Court.

22. Litigation of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to the individual Class members which would substantially impair or impede the ability of other Class members to protect their interests.

23. Class certification is also appropriate because defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and/or injunctive relief with respect to the claims of plaintiff and the Class members.

V. **FACTUAL BACKGROUND**

24. Paragraphs 1 through 23 are incorporated herein by reference as though the same were set forth below at length.

25. Defendants sell Continental tires throughout the United States and the world.

26. Beginning in 2004, defendants began marketing a self-sealing (“run-flat”) tire referred to as “ContiSeal.” The tires were delivered as part of the original equipment on at least the following new cars: 2005 Chrysler 300c; 2005-6 Chrysler Magnum; 2006 Chrysler Charger. The tires were offered as part of a “safety package,” and defendants represented and affirmed them as having the wear characteristics of ordinary touring tires with the added “seal and heal” self-sealing (“run-flat”) benefits of premium class tires.

27. In or about July 2004, plaintiff purchased a new Chrysler 300c equipped with ContiSeal tires as part of the original equipment on the car. Within the first year of purchase, the tires exhibited excessive wear. By December of 2005, and with only about 14000 miles on the car, the ContiSeal tires became unserviceable, as the tread had worn so quickly that the tires had become dangerous to use any further. In or about December of 2005, plaintiff found it necessary to, and did replace those tires with the exact same brand and model tires.

28. Plaintiff was referred to Tires Plus Store in Bryn Mawr, where he was sold the new tires but was required to pay 66% of their retail sale price.

29. In or about November of 2006, some eleven months after purchasing the replacement tires, plaintiff took note that the tires were again quite worn. Although plaintiff had traveled only approximately 9000 miles in the intervening ten or eleven months, the replacement tires had worn down to nearly unserviceable levels again.

30. On or about December 14, 2006, plaintiff was caused to replace the replacement ContiSeal tires, though the first replacement tires had less than 10000 miles wear on them.

31. In January of 2007, Reibstein paid \$721.06 for a complete set of four new (non Continental brand) tires. At that point in time, the vehicle had only approximately 24000 miles on it and two new sets of ContiSeal tires had worn out to the point of being unserviceable.

32. In connection with the delivery of the ContiSeal tires with the car plaintiff purchased in July 2004, defendants delivered to plaintiff and the Class a warranty and related affirmations as to the absence of defects in materials and workmanship, including design, and the durability and longevity of the tires. In particular, defendants' affirmations and warranties stated as follows:

LIMITED WARRANTY AND ADJUSTMENT POLICY FOR ORIGINAL EQUIPMENT PASSENGER CAR AND LIGHT TRUCK TIRES (including Special Spare Tires)

This Limited Warranty and Adjustment Policy (the "Policy") is issued by Continental Tire North America, Inc. (the "Company") and is applicable for Continental brand original equipment tires and is a promise of replacement under certain specified conditions. This Policy applies to tires in normal service displaying adjustable conditions (see Section 4) and does not require the existence of a workmanship or material related condition to qualify for adjustment. THIS POLICY IS NOT A WARRANTY THAT YOUR TIRE WILL NOT FAIL OR BECOME UNSERVICEABLE IF NEGLECTED OR MISTREATED.

* * * * *

2. WHAT IS THE ADJUSTMENT POLICY AND FOR HOW LONG

Limited Warranty coverage is for a maximum period of 72 months from date of purchase*, determined by the new vehicle registration date or new vehicle sales invoice showing date purchased.

If an eligible Passenger, Light Truck or Special Spare Tire, used in normal service, becomes unserviceable from a condition other than those listed under Section 4 during or after the time or treadwear periods shown below, it will be replaced with a comparable new Continental brand tire according to A and B below.

A. Free Replacement Policy

	<u>Time</u>		<u>Treadwear</u>
Passenger Tire	First 12 Months	or	First 2/32nds
	(whichever comes first)		

Mounting and balancing included free of Charge. Owner pays all applicable taxes.

**B. Pro Rata Replacement Policy
Passenger/Light Truck Tires**

After the “Free Replacement Policy” expires (set forth in section 2A), and the tire is still within 72 months from date of purchase, you will pay, on a pro rata basis, for a comparable new Continental brand replacement tire. A tire is eligible for an adjustment on a pro rata basis until the tread is worn down to the tread wear indicators (2/32nds of an inch of tread remaining). The tire tread is worn out at this point and this Policy ends regardless of time period. Owner pays all applicable taxes (including FET), mounting and balancing charges.

* * * * *

3. HOW A PRO RATA PRICE IS CALCULATED

The replacement tire price will be determined by multiplying the percentage of the useable {sic} worn by the Dealers Selling Price (excluding all applicable taxes) at the time of the adjustment or the Continental brand current published Adjustment Base Price, whichever is lower. The usable {sic} tread is the original tread down to the tread wear indicators (2/32nd of an inch of tread remaining). The Adjustment Base Price is intended to fairly represent a Dealers Selling Price for the same or comparable tire.

33. Defendants failed to comply with the foregoing warranty with respect to plaintiff and with respect to Class members. Among other things, defendants have not provided “free replacement tires” to Class members as required by the terms of the express warranty and instead have instituted selective “adjustments,” requiring plaintiff and Class members to accept discounts on the purchase of new, but equally defective, tires.

34. Defendants’ unilateral limitation of warranty also has caused a failure of the essential purpose of the warranty, as that term is used in the Uniform Commercial Code, because defendants have failed to replace the defective tires with non-defective conforming tires and because defendants have executed the warranty in such a way as to replace the defective tires with other defective tires. In addition, defendants have construed and executed the warranty so as to require consumers to purchase replacement tires from defendants, albeit at an allegedly

discounted price, even though those replacement tires are also defective and defendants' warranty otherwise requires a free replacement of the nonconforming tires with conforming tires.

35. Defendants failed to disclose at the time they marketed, sold or delivered the ContiSeal tires to consumers that the tires would exhibit abnormal and premature treadwear, often requiring replacement within the first 20,000 miles of use. Despite having knowledge of this premature wear problem since at least 2005, defendants have not recalled the subject tires, have required affected class members to pay at least the pro rata cost of replacement tires, and have continued to market the tires for replacement on cars. (For the 2006 model year, Chrysler apparently no longer installs the ContiSeal tires as an OEM component on its 300c model vehicle).

36. On information and belief, defendants have ceased production of the ContiSeal tires, but have been using the remaining inventory of the defective tires as replacements for the existing defective tires installed on cars before defendants stopped production of the ContiSeal tires.

37. At all relevant times, plaintiff and other members of the Class were, and continue to be, misinformed, misled and deceived by defendants with respect to the wear characteristics, durability and longevity of the ContiSeal tires in light of the reasonable expectations for tire wear among the consuming public.

38. At all relevant times, defendants controlled the design, manufacture, marketing, lease and sale of ContiSeal tires.

39. The Owners Manuals provided to consumers and the interval service policies followed by dealers in effect during the period relevant to this Complaint, were wholly

inadequate to alert plaintiff and the Class to the increased costs, servicing requirements and wear limitations associated with the use of the ContiSeal tires.

40. In addition, in June 2005, Chrysler disseminated the attached (Exhibit A) “Solution Number K85299291,” to its dealers indicating a “Modification Date” of “6/9/05” and describing the following “Vehicle Issue” for model year 2005 and 2006 Chrysler 300s, Magnums and Chargers: “Premature or rapid tire wear on the 17 and 18 inch continental tires.” This document demonstrates knowledge and awareness on the part of Chrysler and Continental that the premature wear plaintiff’s tires ultimately incurred was a defective condition uniform to all of the ContiSeal tires, and not a condition unique to plaintiff’s vehicle. Had Chrysler and Continental disclosed the facts reflected in the “Solution” document, the ContiSeal tires would not have been merchantable.

41. Defendants have not adequately informed the Class about the increased costs, servicing requirements and wear limitations of the ContiSeal tire, including the premature, rapid and abnormal wear characteristics of the tire and the virtual certainty that the tire will become unserviceable after less than 20,000 miles of normal use.

42. Defendants knew, or should have known, that the design, materials and workmanship utilized for the ContiSeal tires were insufficient to handle the heat, friction and conditions that characterize every day tire use on roadways in the United States.

43. At all times relevant to the claims herein, defendants failed to conduct adequate testing and research regarding the ContiSeal tire. Not only did the defendants fail to engage in adequate pre-market testing, but after introducing the ContiSeal tire in the marketplace, defendants continued to fail to fulfill their ongoing obligation to fully disclose the results of this testing and research regarding the premature and abnormal wear incurred by the ContiSeal tires.

Indeed, defendants have known from at least June 2005 that the ContiSeal tires are unmerchantable as touring tires because of their premature and rapid wear characteristics which defendants have failed to disclose to consumers.

44. Under the Uniform Commercial Code (“UCC”), “A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance... the cause of action accrues when the breach is or should have been discovered.” UCC Sales 2-725(b). Standard motor vehicle warranties, including tire warranties, explicitly extend to future performance of the goods.

45. The tires purchased and delivered with vehicles leased by the Class were delivered with standard future performance warranties. Here, Class members exercising due diligence were unable to discover the nonconformity of the tires and the injury because defendants did not disclose the premature and abnormal wear characteristics and injury when the vehicles were delivered or brought in for service.

46. By their affirmations, representations and nondisclosures, defendants portrayed and warranted the ContiSeal tires as having the wear, durability and longevity of ordinary touring tires with the added benefit of the “run flat” automatic sealing feature. Defendants failed to deliver tires having these characteristics, as the ContiSeal tires lacked the design, materials and workmanship necessary to meet the minimum wear characteristics reasonably expected by ordinary consumers in the United States.

47. Defendants also breached their express and implied warranties, as they did not deliver ContiSeal tires having the characteristics, uses and benefits portrayed by defendants, and defendants have failed to replace the tires in accordance with the express promises of their written warranties.

48. To the extent it is suggested that the written warranty is limited based on wear beyond 2/32nds of an inch within 20,000 miles of use, the warranty as so interpreted is unfair, deceptive and unconscionable, particularly given the premature and rapid wear characteristics of the ContiSeal tires and the reasonable expectation of consumers that a tire should not go bald within 20,000 of normal driving. Defendants' failure to disclose the subpar wear characteristics of the ContiSeal tires renders the warranty objectively and materially misleading, as the warranty implies and indicates that 72 months of serviceability could reasonably be expected from the tires when, in fact, defendants knew, or recklessly disregarded the fact, that the ContiSeal tires were incapable of achieving that service level under ordinary driving conditions. Therefore, to the extent the warranty is so limited, defendants have engaged in an unfair and deceptive warranty practice, including a bait and switch scheme.

49. Similarly, defendants have perpetuated this abuse by refusing to replace the defective ContiSeal tires with more durable touring tires. Instead, on information and belief, defendants are attempting to exhaust the remaining inventory of the defective and otherwise unmarketable ContiSeal tires by using them as replacements for the defective ContiSeal tires originally delivered with newly purchased or leased automobiles.

COUNT I
VIOLATION OF MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. § 2310(D)(1)

50. Paragraphs 1 through 49 are incorporated herein by reference as though the same were set forth below at length.

51. Congress enacted the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* (the "Act") in 1975 in response to widespread complaints from consumers that many warranties were misleading and deceptive, and were not being honored. To remedy this problem of deception and failure to honor warranties, the Act imposes civil liability on any "warrantor" for,

inter alia, failing to comply with any obligation under a written warranty and/or implied warranty. See 15 U.S.C. § 2310(d)(1). The Act authorizes a “suit for damages and other legal and equitable relief.” *Id.* The Act authorizes the award of attorneys’ fees (*id.*), and expressly authorizes class actions. 15 U.S.C. § 2310(e).

52. Defendants are “warrantor[s]” within the meaning of Section 2301(5) of the Act. Plaintiff and other members of the Class are “consumers” within the meaning of Section 2301(3) of the Act.

53. As set forth in Count II below, the allegations of which are incorporated herein by reference, defendants expressly warranted the ContiSeal tires, which warranties are “written warranties” within the meaning of Section 2301(6) of the Act and the Uniform Commercial Code. Defendants breached their express warranties in the manner described above and below.

54. As set forth in Count III below, the allegations of which are incorporated herein by reference, defendants impliedly warranted the ContiSeal tires as being merchantable and fit for a particular purpose, which warranties are implied warranties within the meaning of Section 2301(7) of the Act, and Sections 2-314 and 2-315 of the Uniform Commercial Code. Defendants breached these implied warranties in the manner described above and below. Any limitation period, limitation on recovery or exclusions of implied warranties are unconscionable within the meaning of Section 2-302 of the Uniform Commercial Code and, therefore, are unenforceable, in that, among other things, plaintiff and members of the Class lacked a meaningful choice with respect to the terms of the written warranties due to unequal bargaining power and a lack of warranty competition.

55. Defendants' knowledge of the fact that their ContiSeal tires would incur premature, rapid and/or abnormal wear has given defendants more than adequate opportunity to cure the problem, which opportunity they have not taken to date.

56. Plaintiff and other members of the Class were damaged by defendants' failure to comply with their obligations under the applicable express and implied warranties. As a direct and proximate cause of defendant Continental's breaches of express and implied warranties, plaintiff and other Class members have suffered actual economic damages, and are threatened with irreparable harm.

WHEREFORE, plaintiff respectfully requests that this Court grant the following relief:

(a) Enter an Order pursuant to F.R.Civ.P. 23 permitting this Court to be maintained as a class action on behalf of the Class as specified herein, appointing plaintiff as representative of the Class, and plaintiff's counsel as counsel for the Class;

(b) Enter judgment in favor of plaintiff and the Class against defendant Continental, as may be apportioned by the Court or finder of fact, for damages consisting of, among other things, compensation for excess tire wear and/or depreciation in tire value (including reimbursing Class members who already have incurred repair and/or maintenance costs), and the remediation costs of replacement tires other than the ContiSeal tires as well as interest, attorneys' fees, expert fees and costs of suit;

(c) Enter declaratory and injunctive relief against defendant Continental, requiring written Notice to all owners of vehicles upon which the ContiSeal tires were originally installed who may have incurred costs of repairs as to their right to recoup those monies; and

(d) Award such further relief as the Court deems just and proper.

COUNT II
BREACH OF EXPRESS WARRANTY

57. Paragraphs 1 through 56 are incorporated herein by reference as though the same were fully set forth at length.

58. Continental ContiSeal tires were subject to express warranties as described herein, including affirmations, nondisclosures and related representations as to the ordinary wear characteristics that may be reasonably expected from the ContiSeal tires.

59. Defendant Continental breached the express warranties in the manner described above.

60. The express warranties were part of the “basis of the bargain” as that term is used in the Uniform Commercial Code and are presumed to be a part of the contract among each of the Class members and the warrantor, Continental. Plaintiff and the Class have been damaged by defendant Continental’s breaches of the express warranties in the manner described above.

WHEREFORE, plaintiff respectfully requests that this Court grant the following relief:

(a) Enter an Order pursuant to F.R.Civ.P. 23 permitting this Count to be maintained as a class action on behalf of the Class as specified herein, appointing plaintiff as representative of the Class, and plaintiff’s counsel as counsel for the Class;

(b) Enter judgment in favor of plaintiff and the Class against defendant Continental, as may be apportioned by the Court or finder of fact, for damages consisting of, among other things, compensation for excess tire wear and/or the difference in tire value between the defective tire delivered and the non-defective tire promised (including reimbursing Class members who already have incurred repair and/or maintenance costs), and the remediation costs for the replacement of all ContiSeal tires with replacement tires having ordinary wear,

durability and longevity characteristics as well as interest, attorneys' fees, expert fees and costs of suit;

(c) Enter declaratory and injunctive relief against defendant Continental, requiring written notice to all owners of vehicles upon which the ContiSeal tires were originally installed who may have incurred costs of repairs as to their right to recoup those monies; and

(d) Award such further relief as the Court deems just and proper.

COUNT III
BREACH OF IMPLIED WARRANTY

61. Paragraphs 1 through 60 are incorporated herein by reference as though the same were fully set forth below at length.

62. Under common and statutory law, a warranty of merchantability and a warranty of fitness for particular purpose are implied in all sales transactions where the seller has reason to know the particular purpose for which the product is to be used and that the consuming public is relying on the skill or judgment of the seller to furnish a suitable product. A warranty of merchantability is a warranty implied by law that a product is fit for the ordinary purposes for which it is used, is properly labeled and conforms to the representations made about it. See Uniform Commercial Code § 2-314. A warranty of fitness for a particular purpose is a warranty implied by law that a product is fit for its intended use. See Uniform Commercial Code § 2-315.

63. Continental ContiSeal tires were subject to both an implied warranty of merchantability and an implied warranty of fitness for a particular purpose.

64. Defendant Continental breached these warranties in the manner described above.

65. Plaintiff and other Class members have been damaged by defendants' breaches of warranties in the manner described above.

WHEREFORE, plaintiff respectfully requests that the Court grant the following relief:

(a) Enter an Order pursuant to F.R.Civ.P. 23 permitting this Count to be maintained as a class action on behalf of the Class as specified herein, appointing plaintiff as representative of the Class, and plaintiff's counsel as counsel for the Class;

(b) Enter judgment in favor of plaintiff and the Class against defendant Continental, as may be apportioned by the Court or finder of fact, for damages consisting of, among other things, compensation for excess tire wear and/or the difference in value between the defective tire delivered and the non-defective tire promised (including reimbursing Class members who already have incurred repair and/or maintenance costs), and the remediation costs for the replacement of all ContiSeal tires with tires having ordinary wear characteristics as well as interest, attorneys' fees, expert fees and costs of suit;

(c) Enter declaratory and injunctive relief against defendant Continental, requiring written notice to all owners of vehicles upon which the ContiSeal tires were originally installed who may have incurred costs of repairs and advising as to their right to recoup those monies; and

(d) Award such further relief as the Court deems just and proper.

COUNT IV
DECLARATORY RELIEF

66. Paragraphs 1 through 65 are incorporated herein by reference as though the same were fully set forth below at length.

67. This claim is asserted on behalf of plaintiff and other Class members in accordance with the Declaratory Judgments Act, 28 U.S.C. §2201.

68. Plaintiff and other Class members are entitled to declaration that defendant Continental's conduct described herein constitutes violations of applicable statutory and common law. The declaratory relief requested includes an order declaring defendant Continental's

conduct, as alleged herein, to be unlawful, and requiring defendant Continental to compensate plaintiff and other Class members in the manner described herein and to supply Class members with replacement tires having ordinary wear characteristics.

WHEREFORE, plaintiff respectfully requests that the Court grant the following relief:

(a) Enter an Order pursuant to F.R.Civ.P. 23 permitting this Court to be maintained as a class action on behalf of the Class as specified herein, appointing plaintiff as representative of the Class, and plaintiff's counsel as counsel for the Class;

(b) Enter an Order declaring defendant Continental's conduct, as alleged herein, to be unlawful, compensating plaintiff and other Class members in the manner described herein and requiring defendant Continental to furnish plaintiff and other Class members with notice of their right to a free set of replacement tires for the ContiSeal tires;

(c) Award plaintiff and the Class attorneys' fees, litigation expenses and costs; and

(d) Award such further relief as the Court deems just and proper.

VI. JURY DEMAND

Plaintiff hereby demands trial by jury of all issues properly triable thereby.

Date: 4/24/07

/s/ Cary L. Flitter – CLF5997

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