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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

RAMON TINOCO LOPEZ et al., Plaintiffs and Appellants, v. MICHELIN NORTH AMERICA, INC., Defendant and Respondent.	B320953 (Los Angeles County Super. Ct. No. 19STCV21650)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Affirmed.

The Chavez Law Group, Lance H. Swanner, Iliana Madrigal; The Cochran Firm–Dothan and Joseph D. Lane for Plaintiffs and Appellants.

Horvitz & Levy, Emily V. Cuatto, John B. Sprangers; Yukevich Cavanaugh, Thomas Borncamp and Justin M. Marvisi for Defendant and Respondent.

This appeal arises out of a catastrophic automobile accident that occurred when the tread of a 10-year-old tire purchased by plaintiff Andres Tinoco Lopez (Andres)[1] and manufactured by defendant Michelin North America, Inc. (Michelin) separated, causing Andres's vehicle to overturn. Andres and his siblings (plaintiffs) sued Michelin and other defendants for a variety of causes of action, including failing to warn that tires become unsafe as they age. The trial court granted summary adjudication of plaintiffs' failure-to-warn claims, concluding (1) there was no duty to warn, and (2) any failure to warn was not a substantial factor causing the accident. Plaintiffs then dismissed their remaining causes of action and filed this appeal.

We conclude that the trial court properly granted summary adjudication of plaintiffs' failure-to-warn claims. As we discuss, plaintiffs did not demonstrate a triable issue as to Michelin's duty to warn because they did not show there was a scientific consensus in 2008, the year the tire was manufactured, that tires should be removed from use at any particular age. Accordingly, we affirm the judgment for Michelin.

FACTUAL AND PROCEDURAL BACKGROUND

I. The accident.

On May 12, 2019, a 2004 Ford Explorer owned by Andres and driven by his brother, Javier Tinoco Lopez (Javier), was involved in a catastrophic accident on Interstate 5 in Fresno,

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[1] Because many of the plaintiffs have the same last name, we will refer to them by their first names.

California. Andres and Javier's parents, Maria Guadalupe Tinoco[2] and Jose Lopez, were thrown from the vehicle and killed. Andres, Javier, and their brothers, Ramon Tinoco Lopez and Pedro Tinoco Lopez, were injured.

A California Highway Patrol accident report concluded that the accident occurred after the tread on the Explorer's left rear tire separated, causing Javier to lose control of the vehicle. When Javier braked, the Explorer overturned and landed on its roof.

Andres had purchased the Explorer's four tires from defendant L&L Tires in January 2019, about four months before the accident. All four tires were used when Andres bought them, but L&L Tires told him they still had more than half their useful life left. The tire installed on the left rear (the failed tire) had been manufactured by Michelin in 2008, and thus it was more than 10 years old when Andres bought it.

II. The present action.

Plaintiffs[3] filed the present action in June 2019, and filed the operative third amended complaint (complaint) in May 2021 against Michelin, Ford Motor Company (Ford), Lauro Leal and Maria C. Leal d/b/a L&L Tires, and Does 1–50. As against Michelin, the complaint alleged causes of action for negligence (second cause of action), strict product liability (fourth cause of

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[2] Maria Guadalupe Tinoco is alternatively referred to as Maria Guadalupe Tinoco, Guadalupe Tinoco Docil, and Maria Guadalupe Tinoco Docil.

[3] The plaintiffs are Andres, Javier, Ramon, and Pedro, individually and as surviving heirs of Jose and Maria; Jose and Maria's other surviving children; and Javier's wife.

action), negligent infliction of emotional distress (sixth cause of action), punitive damages (tenth cause of action), and loss of consortium (eleventh cause of action).

The negligence and strict product liability claims were based on three separate theories: defective design, defective manufacture, and failure to warn. Regarding failure to warn, the complaint alleged that Michelin "failed to provide adequate warnings concerning the dangers associated with operating tires older than 6 years of age."

III. Michelin's motion for summary judgment or summary adjudication; plaintiffs' opposition.

Michelin filed a motion for summary judgment or summary adjudication. As relevant to the present appeal, Michelin sought summary adjudication of Issue No. 3: that plaintiffs' failure-to-warn theories (as pled in the negligence and strict product liability claims) failed because "there was no requirement to warn, nor was any failure to warn a cause of the accident." Michelin contended there was no duty to warn because no evidence established that Michelin's tires became unsafe at any particular age; in any event, any alleged failure to warn could not have caused the accident because Andres admitted that before buying the failed tire, he did not inspect it, did not read the information printed on its sidewall, and did not read any tire maintenance information provided by Michelin or his vehicle's manufacturer.

Plaintiffs opposed Michelin's motion, urging that Michelin had a duty to warn consumers that tires become less safe as they age. Plaintiffs also contended that Michelin's failure to warn of the dangers associated with aging tires was a substantial

contributing cause of the car crash because had Andres been properly warned, he would not have purchased the failed tire.

The parties adduced the following evidence in support of and in opposition to Michelin's motion:

A. Industry and government research concerning tire life and oxidative aging.

1. Ford Motor Company's research.

In the early 2000's, Ford conducted research to develop a tire-aging test protocol to reduce accidents related to tire failure. In 2006, Ford delivered a "Tire Aging Update" to the National Highway Traffic Safety Administration (NHTSA or agency), in which it noted there presently was "no industry consensus" on tire life. While the automotive industry "generally backs a 6 year age limit for tires to remain in service," the Rubber Manufacturers Association (RMA) "has dismissed chronological age as a valid criteria for determining tire service life." Separately, three RMA members (Bridgestone/Firestone, Michelin, and Continental) "have very recently announced a 10 year age limit," but Ford was "not aware of any data that exists to support their claim." Based on its own research into tire aging, Ford asked the NHTSA to "issue a consumer advisory recommending a 6 year age limit for tires to avoid confusion among consumers." Ford asserted that its six-year recommendation was based on a "defendable, data driven analysis" based on expected tire aging in Phoenix, Arizona.

2. The NHTSA's 2007 report on tire aging.

In August 2007, the NHTSA submitted a "Research Report to Congress on Tire Aging" (report) that summarized the agency's multi-year research program on the aging of car and light truck

tires. The report concluded that a tire's materials deteriorate over time through heat and oxygen exposure, and thus age can affect a tire's safe performance even if the tire has adequate tread and is properly inflated. Specifically, tires "experience[ ] a reduction in peel (adhesion) strength between the steel belts, an increase in hardness of most rubber components, a loss of the rubber components' ability to stretch, increased crack growth rates, and a reduction in cycles to failure in fatigue tests." The effects of aging are more pronounced in hotter climates because "thermo-oxidative degradation is accelerated with higher temperatures and is a contributing factor for tire failures, such as tread separations." However, because "[t]ires differ in both new tire performance characteristics and their degradation rates of these performance characteristics during service," the NHTSA characterized "defining the end of a tire's service life" as "challenging."

The report noted that car and tire manufacturers had issued inconsistent tire-age recommendations. For example, DaimlerChrysler, Ford, VW/Audi, and BMW recommended that tires be replaced after six years; Toyota recommended a professional inspection at six years, with no maximum service life recommendation; BFGoodrich provided a warranty on its tires for 72 months or original tread life, but did not recommend a maximum service life; Bridgestone-Firestone provided a warranty for 60 months from date of purchase or 72 months from date of manufacture and recommended a maximum service life of 10 years; and Pirelli did not have a maximum service life recommendation.

The report concluded: "At this time, NHTSA's research supports the conclusion that the age of a tire, along with factors

such as average air temperature and inflation, plays some role in the likelihood of its failure. . . . However, the agency must take additional steps before it can have a sufficient understanding of the aging phenomenon to support any possible safety standard or consumer recommendations on the issue."

B. Michelin's service life recommendations.

In 2006, Michelin distributed a technical bulletin to its dealers that included a service life recommendation. Michelin included the same service life recommendation in its passenger and light truck tire owner's manual, its tire fitment guide (covering vehicles from 1999–2008), and its website, and language printed on Michelin's tires directed users to consult their tire manual and vehicle manual regarding tire maintenance. In relevant part, Michelin's service life recommendation was as follows:

"Tires are composed of various types of material and rubber compounds, having performance properties essential to the proper functioning of the tire itself. These component properties evolve over time. For each tire, this evolution depends upon many factors such as weather, storage conditions, and conditions of use (load, speed, inflation pressure, maintenance, etc.) to which the tire is subjected throughout its life. This service-related evolution varies widely so that accurately predicting the serviceable life of any specific tire in advance is not possible.

"That is why, in addition to regular inspections and inflation pressure maintenance by consumers, it is recommended to have passenger car and light truck tires, including spare tires, inspected regularly by a qualified tire specialist, such as a tire dealer, who will assess the tire's suitability for continued service.

Tires which have been in use for 5 years or more should continue to be inspected by a specialist at least annually. . . .

"Consumers are strongly encouraged to be aware not only of their tires' visual condition and inflation pressure but also of any change in dynamic performance such as increased air loss, noise or vibration, which could be an indication that the tires need to be removed from service to prevent tire failure. It is impossible to predict when tires should be replaced based on their calendar age alone. However, the older a tire the greater the chance that it will need to be replaced due to the service-related evolution or other conditions found upon inspection or detected during use.

"While most tires will need replacement before they achieve 10 years, it is recommended that any tires in service 10 years or more from the date of manufacture, including spare tires, be replaced with new tires as a simple precaution even if such tires appear serviceable and even if they have not reached the legal wear limit.

"For tires that were on an original equipment vehicle (i.e., acquired by the consumer on a new vehicle), follow the vehicle manufacturer's tire replacement recommendations, when specified (but not to exceed 10 years).

"The date when a tire was manufactured is located on the sidewall of each tire. Consumers should locate the Department of Transportation or DOT code on the tire which begins with DOT and ends with the week and year of manufacture. For example, a DOT code ending with '2204' indicates a tire made in the 22nd week (May) of 2004."

C. Evidence concerning the failed tire.

1. Michelin's evidence.

Andres testified at his deposition that he purchased four tires, including the failed tire, in January 2019. The tires were selected by an employee of L&L Tires, who said the tires were in good shape and had more than half their useful life left. The employee showed Andres the tires, and Andres said, " 'They look good. Perfect. Put them on.' " Andres did not own a device for checking tire tread and did not know what tire pressure Ford recommended. He did not have the tires checked or serviced prior to the accident, and he did not add air to the tires. Further, prior to the accident, Andres had never read the information on the side of a tire, never researched tire maintenance, never looked for information provided by tire manufacturers about tire maintenance, never read a manual provided by any tire manufacturer, and never read a vehicle owner's manual about tire care.

Michelin's forensic tire analyst, Joseph Grant, opined in an expert declaration that it was widely recognized in the tire industry that tire tread separations can result from many causes, including over-deflection (overloading or underinflation), unrepaired punctures, impact damage, road hazards, mounting damage, high-speed operation, misalignment, and wear into the belt structure. Each of these service-related conditions "changes the physical condition of the tire or otherwise leaves physical evidence of the underlying cause of the tread/belt separation." Grant's inspection of the failed tire revealed that the tire had been chronically underinflated and was worn to less than 1/32nd of an inch through the tread and into the tire's belt structure. Grant opined to a reasonable degree of scientific certainty that

the tire's underinflation, wear into the belt structure, and possibly a road hazard impact caused the tread and top belt to detach. He observed no evidence that the material properties of the tire had degraded due to time or that any such degradation contributed to the tire's failure. Grant believed that the failed tire should have been removed from service before the accident due to its chronic underinflation and wear below minimum tread depths.

2. Plaintiffs' evidence.

Andres stated in a declaration submitted in opposition to Michelin's motion that if he had been properly warned of the danger of driving on old tires, he would not have bought the failed tire. Although he cannot read English, Andres recognizes some English words and knows their meaning, including the words "warning" and "danger." He also was "familiar with expiration dates, as I encounter them in my daily life." He concluded: "If there had been a clearly marked expiration date on the tire, I would have seen it and not purchased [the] tire [that] caused the accident."

Troy Cottles, an expert in tire failure analysis and tire design, opined in a declaration that the tire failed as a result of extreme chronological oxidative aging, which exacerbated design and manufacturing defects.

Joseph Incavo, a tire materials and forensic analyst, stated in an expert declaration that oxidation of tire components occurs when oxygen from the air cavity penetrates into the rubber components. Oxidation hardens the rubber and can lead to tire detachments. A 10-year old tire is more susceptible to failure because the chemical degradation caused by oxygen is irreversible and cumulative. Incavo observed evidence of

oxidation in the failed tire, including brittle rubber adjacent to and throughout the steel belts, widespread diagonal cracks throughout the upper, middle, and lower sidewall, and debonded steel belts.

Dr. Anthony Andre, a human factors expert, stated in a declaration that under standards issued by the American National Standards Institute (ANSI), a warning must be given if a condition or situation could lead to serious injury or death. Dr. Andre opined that because driving on tires that are more than ten years old creates a hazardous situation that can result in serious injury or death, a warning is required. He further opined that Michelin's service life recommendation did not constitute an adequate warning because it did not contain the signal word "WARNING," did not mention tire aging or oxidation, and did not explain the risk of serious injury or death. Dr. Andre believed that Michelin should have warned consumers of the danger of driving on old tires by putting "a tire-age related ANSI compliant warning on the tire and in written materials that accompany the tire, as well as a clear expiration date printed in contrasting color on the tire." Moreover, Dr. Andre opined that "to a reasonable degree of Human Factors certainty, if Michelin had placed an effective and compliant warning about tire aging coupled with a clear expiration date, it is more probable than not that Andres Lopez: a) would not have been sold the subject tire or b) would have been aware the subject tire was unsafe to use due to its age and would not have purchased the tire."

IV. Trial court's order granting summary adjudication; dismissal and judgment.

On March 16, 2022, the trial court granted summary adjudication of Issue No. 3 (failure to warn). The court explained:

"One, I don't think there's a duty [to warn] that's been established but, two, even if there is a duty, there's absolutely no causation here based upon the testimony of Mr. Andres Lopez. That's it for me right there." The trial court also granted summary adjudication of Issue No. 5 (punitive damages), and denied summary adjudication of the remaining issues.

On April 18, 2022, plaintiffs sought dismissal of "all remaining Claims and Causes of Action"—specifically, all causes of action against L&L Tires, all remaining strict liability and negligence claims against Michelin, all causes of action against Doe defendants, and all derivative claims for negligent infliction of emotional distress and loss of consortium. The court granted the request for dismissal.[4]

On May 18, 2022, the court issued an order stating that by virtue of its grant of summary adjudication of Issues Nos. 3 and 5, and of plaintiffs' dismissal of all remaining claims and causes of action, "the Court's ruling dismissing Plaintiffs' Strict Liability and Negligent Failure to [W]arn claims constitutes a Final Order and Judgment for Michelin North America, Inc. in this matter." Plaintiffs timely appealed.

On October 6, 2022, the trial court entered judgment for Michelin.[5]

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[4] Separately, plaintiffs entered into a settlement with Ford and requested that the action against Ford be dismissed with prejudice. The court entered the dismissal on April 22, 2022.

[5] To the extent that the May 18, 2022 order was not appealable, we will deem plaintiffs' notice of appeal a premature appeal of the October 2022 judgment. (Cal. Rules of Court,

DISCUSSION

Plaintiffs contend there are triable issues of material fact as to whether (1) Michelin failed to warn that tires become more dangerous as they age, and (2) Michelin's failure to warn of the danger posed by aging tires was a cause of the accident. With regard to the first issue, plaintiffs urge there was substantial evidence of an increased risk of catastrophic tire separation six to ten years after a tire's manufacture, and thus a jury should decide the failure-to-warn claim. With regard to the second issue, plaintiffs urge that contrary to the trial court's conclusion, there was substantial evidence that if Michelin had put a conspicuous warning and expiration date on the tire itself, Andres would have seen it and would not have purchased the tire. Plaintiffs thus contend that a jury should also have decided causation.

As we discuss, we conclude that plaintiffs failed to introduce evidence sufficient to create a triable issue of material fact that Michelin had a duty to place a warning and expiration date on the tire. The trial court thus properly granted summary adjudication of the failure-to-warn claims.

I. Legal standards.

A. Standard of review.

A party may move for summary adjudication as to one or more causes of action if the party contends that the cause of action has no merit. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an

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rule 8.104(d)(2); see *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 223.)

affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).)[6]

Summary judgment or summary adjudication is appropriate "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (§ 437c, subd. (c).) To prevail on the motion, a defendant must demonstrate the plaintiffs' cause of action has no merit. This requirement can be satisfied by showing either one or more elements of the cause of action cannot be established or that a complete defense exists. (§ 437c, subds. (o), (p).)

" '[T]he party moving for summary [adjudication] bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if [it] carries [its] burden of production, . . . the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.' (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) 'A prima facie showing is one that is sufficient to support the position of the party in question.' [Citation.] 'There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.' (*Id.* at p. 850; see *Catholic Healthcare West v. California Ins. Guarantee Assn.* (2009) 178 Cal.App.4th 15, 23.)

"In performing our de novo review, we use the same procedure as the trial court. We first consider the pleadings to

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[6] All subsequent undesignated statutory references are to the Code of Civil Procedure.

determine the elements of each cause of action. Then we review the motion to determine if it establishes facts, supported by admissible evidence, to justify judgment in favor of the moving party. Assuming this burden is met, we then look to the opposition and 'decide whether the opposing party has demonstrated the existence of a triable, material fact issue.' (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1438.)" (*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 877.)

"While we must liberally construe plaintiff's showing and resolve any doubts about the propriety of a summary judgment in plaintiff's favor, plaintiff's evidence remains subject to careful scrutiny. [Citation.] We can find a triable issue of material fact 'if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.' (*Aguilar v. Atlantic Richfield Co.*[, *supra*,] 25 Cal.4th [at p.] 850.)" (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433.) To defeat summary adjudication, therefore, plaintiffs "[may] not rely on assertions that are 'conclusionary, argumentative or based on conjecture and speculation,' but rather [are] required to 'make an independent showing by a proper declaration or by reference to a deposition or another discovery product that there is sufficient proof of the matters alleged to raise a triable question of fact . . . .' " (*Roberts v. Assurance Co. of America* (2008) 163 Cal.App.4th 1398, 1404.)

B. Failure to warn.

California law recognizes three types of product defects: manufacturing defects, design defects, and warning defects. (*Webb v. Special Electric Co., Inc.* (2016) 63 Cal.4th 167, 180,

citing *Anderson v. Owens-Corning Fiberglas Corp*. (1991) 53 Cal.3d 987, 995 (*Anderson*).) " 'Under California law, a product may be defective because of the absence of an adequate warning of the dangers inherent in its use.' [Citation.] 'Even though the product is flawlessly designed and manufactured, it may be found defective within the general strict liability rule and its manufacturer or supplier held strictly liable because of the failure to provide an adequate warning.' " (*Schwoerer v. Union Oil Co*. (1993) 14 Cal.App.4th 103, 111.)[7]

The elements of a cause of action for strict liability failure to warn are: (1) defendant manufactured the product; (2) the product had potential risks that were known or knowable in light of the scientific knowledge that was generally accepted in the scientific community at the time of manufacture; (3) the potential

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[7] A manufacturer may also be held liable for failure to warn under a negligence theory. (*Camacho v. JLG Industries Inc.* (2023) 93 Cal.App.5th 809, 817.) However, because "the manufacturer's strict liability duty to warn is greater than its duty under negligence, and thus negligence requires a greater showing by plaintiffs," a finding of a lack of duty supporting a strict liability failure-to-warn claim necessarily defeats a negligent failure-to-warn claim arising out of the same facts. (*Valentine v. Baxter Healthcare Corp*. (1999) 68 Cal.App.4th 1467, 1482, 1483 [jury's defense verdict on strict liability failure-to-warn claims required directed verdict on negligent failure-to-warn claims]; see also *Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, 133 [jury's finding that defendant was not liable under a strict liability failure-to-warn theory " 'disposed of *any* liability for failure to warn' " on a negligence theory].) Accordingly, because we find no triable issues of fact as to strict liability failure to warn, we will not separately address plaintiffs' negligent failure-to-warn claims.

risks presented a substantial danger when the product was used or misused in an intended or reasonably foreseeable way; (4) ordinary consumers would not have recognized the potential risks; (5) defendant failed to adequately warn of the potential risks; (6) plaintiff was harmed; and (7) the lack of sufficient warnings was a substantial factor in causing plaintiff's harm. (CACI No. 1205; see also *Anderson*, *supra*, 53 Cal.3d at pp. 995–1004.)

II. The trial court correctly concluded that there were no triable issues of material fact regarding a duty to put an expiration date on the failed tire.

Plaintiffs contend that the trial court erred in finding no triable issues as to Michelin's alleged duty to warn about the dangers associated with aging tires. For the reasons that follow, we disagree.

Establishing a cause of action for strict liability failure-to-warn requires a plaintiff to prove that the defendant " 'did not adequately warn of a particular risk that was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution.' (*Anderson*, [*supra*,] 53 Cal.3d at p. 1002.)" (*Petitpas v. Ford Motor Co.* (2017) 13 Cal.App.5th 261, 295; see also *Scott v. Ford Motor Co.* (2014) 224 Cal.App.4th 1492, 1502 [same].) Stated differently, there is a duty to warn only of risks that are " 'known or knowable' " in light of the " 'generally

recognized and prevailing best scientific and medical knowledge.' " (*Scott*, at p. 1502.)[8]

It was undisputed below that, beginning in 2006, Michelin provided information in its tire owner's manuals and on its

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[8] Plaintiffs contend that a duty to warn is not an element of a strict liability cause of action. Not so. A duty to warn is an element of both strict liability and negligent failure to warn; the difference between the two causes of action is that " '[t]he manufacturer's duty, per strict liability instructions, to warn of potential risks and side effects envelops a broader set of risk factors than the duty, per negligence instructions, to warn of facts which make the product "likely to be dangerous" for its intended use.' " (*Johnson & Johnson Talcum Powder Cases* (2019) 37 Cal.App.5th 292, 322, italics omitted, quoting *Valentine v. Baxter Healthcare Corp*. (1999) 68 Cal.App.4th 1467, 1483; see also *Carlin v. Superior Court* (1996) 13 Cal.4th 1104, 1111–1112 [knowledge or knowability requirement for failure to warn "infuses some negligence concepts into strict liability cases"; "[i]ndeed, in the failure-to-warn context, strict liability is to some extent a hybrid of traditional strict liability and negligence doctrine"].)

Elsheref v. Applied Materials, Inc. (2014) 223 Cal.App.4th 451, the sole case plaintiffs cite for the proposition that duty is not an element of a strict liability cause of action, does not support it. The issue in *Elsheref* was whether an employer owed a preconception duty of care to an employee's unborn child, who was born with significant birth defects. The court's statement that duty was not an element of a strict liability claim, therefore, concerned whether the plaintiff was required to plead and prove that the defendant owed a preconception duty *to the plaintiff* (the unborn child). (*Id.* at pp. 463–464.) There is no analogous issue in the present case—that is, it appears undisputed that any duty to warn ran to *all* of the plaintiffs in this case.

website that tire rubber degrades over time, and thus that tires should be inspected annually after five years and removed from service after 10 years "even if such tires appear serviceable and even if they have not reached the legal wear limit." Andres was not aware of this recommendation because, by his own admission, he did not read his vehicle's owner's manual regarding tire maintenance and did not look online for information regarding tires. In opposition to Michelin's motion for summary adjudication, however, Andres asserted that had there been a "clearly marked expiration date *on the tire*," he "would have seen it and not purchased [the] tire [that] caused the accident." (Italics added.) Our duty inquiry therefore is a limited one: Because the only kind of warning plaintiffs claim Andres would have seen was a "conspicuous expiration date . . . placed on the subject tire's sidewall," we consider solely whether the facts adduced in opposition to summary judgment would support a duty to provide a warning of that kind.

Plaintiffs' evidence does not establish that the "generally recognized and prevailing" scientific knowledge available in 2008 pointed to a specific date at which tires are no longer safe to use. As discussed above, the NHTSA issued a report to Congress in 2007 that summarized the agency's multi-year research program on tire aging. The report concluded that a tire's materials deteriorate over time as a result of exposure to heat and oxygen—specifically, tires "experienced a reduction in peel (adhesion) strength between the steel belts, an increase in hardness of most rubber components, a loss of the rubber components' ability to stretch, increased crack growth rates, and a reduction in cycles to failure in fatigues tests"—and thus that aging can affect the safe performance of tires that have adequate tread and are properly

inflated. The report noted, however, that there was no consistency among industry recommendations: Some manufacturers recommended removing tires from use after six years, others after 10 years, and others did not make any recommendations regarding tire life. The report further said that while NHTSA's research "supports the conclusion that the age of a tire, along with factors such as average air temperature and inflation, plays some role in the likelihood of its failure," that research did not support a recommendation regarding tire life. Instead, the report said the NHTSA "*must take additional steps before it can have a sufficient understanding of the aging phenomenon to support any possible safety standard or consumer recommendations on the issue*." (Italics added.)

The NHTSA analysis fatally undermines plaintiffs' contention that a reasonable trier of fact could conclude that there was a consensus in 2008 that tires should be removed from use at any particular time. To the contrary, the NHTSA concluded there was *no* such consensus and that additional research was necessary before a safety standard could be adopted. On this record, the trial court properly concluded that plaintiffs had not established a triable issue as to duty.

In support of their contention that Michelin failed to adequately warn, plaintiffs contend that "a virtual mountain of evidence has been presented establishing that the tire aging hazard exists and was generally known in the car and tire industry, and specifically known by Michelin[,] long before the subject tire was manufactured." Plaintiffs thus urge that "[s]ince there is a hazard there is duty to warn (negligence claim) and an obligation to remove the defect (strict liability claim). What the appropriate expiration date should be is not a relevant issue on

appeal because Michelin claims not to be aware of the hazard and does not warn at all." We do not agree. As we have said, beginning in 2006, Michelin told tire consumers and installers in its owner's manuals, tire fitment guides, and on its website that tires degrade over time, tires should be regularly inspected by qualified tire specialists for suitability for continued use, and "any tires in service 10 years or more from the date of manufacture, including spare tires, [should] be replaced with new tires as a simple precaution even if such tires appear serviceable and even if they have not reached the legal wear limit." Michelin also advised consumers how to read the DOT code printed on each tire to determine the tire's date of manufacture. Plaintiffs acknowledge these recommendations, but they urge Michelin also should have provided a tire-age warning or expiration date on the tires *themselves*. But plaintiffs do not explain—and we cannot envisage—how Michelin could have put a warning/expiration date on the tires without determining a specific date by which tires are no longer safe to use. Stated differently, Michelin could have a duty to place a "use by" or "do not use after" warning on its tires only if there were a scientific consensus about the age by which all tires should be removed from use. Plaintiffs did not demonstrate any such consensus. Instead, as we have said, plaintiffs' evidence showed a wide variation in the use recommendations of various car and tire companies.

Nor have plaintiffs demonstrated a consensus among the scientific community. Plaintiffs suggest that the undisputed scientific literature supports a six-year expiration date, but in support they cite only Ford's presentation to the NHTSA and the NHTSA's report to Congress. At best, this evidence suggests that

Ford believed there was a scientific consensus—not that such a consensus actually existed.

Plaintiffs assert finally that "virtually all auto manufacturers warn about the tire aging hazard and place a six-year expiration date on tires." While there is evidence that many auto manufacturers recommended replacing tires after six years, we are not aware of evidence that any auto manufacturer placed such a warning *on the tires*.

For all the foregoing reasons, plaintiffs did not demonstrate triable issues of material facts as to Michelin's alleged duty to warn. Because duty to warn is an essential element of a failure-to-warn claim, the absence of triable issues as to duty is fatal to those claims. Summary adjudication thus was properly granted.[9]

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[9] Having so concluded, we need not reach plaintiffs' alternative contention that there are triable issues of material fact as to causation.

DISPOSITION

The judgment is affirmed. Michelin is awarded its appellate costs.

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EDMON, P. J.

We concur:

LAVIN, J.

ADAMS, J.