

(Nerison, Jane P.)

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**FIRESTONE**

TELEX NO.: 666114 or 98-64-31  
CABLE ADDRESS: FIRESTONE, AKRON, (OHIO)  
TELECOPY: 216-379-6386

October 13, 1987

Securities and Exchange Commission  
450 5th Street, N.W.  
Washington, DC 20549

PUBLIC AVAILABILITY DATE: 12-08-87  
ACT SECTION RULE  
1934 14(a) 14a-8

Attention: Office of Chief Counsel  
Division of Corporation Finance

OCT 15 1987

OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Re: The Firestone Tire & Rubber Company  
1988 Annual Stockholders' Meeting -  
Shareholder Proposal Submitted by  
The Ministers and Missionaries Benefit  
Board of the American Baptists Churches

Gentlemen:

The 1988 Annual Stockholders' Meeting (the "Annual Meeting") of The Firestone Tire & Rubber Company ("Firestone") is scheduled for March 22, 1988. By letter dated September 9, 1987, The Ministers and Missionaries Benefit Board of the American Baptists Churches (the "MMB Board") submitted a proposal for inclusion in the proxy materials relating to the Annual Meeting. The MMB Board's proposal seeks to have the Firestone Board of Directors establish the following policy:

"Firestone Tire & Rubber Company will take immediate steps to terminate all economic relationships with South Africa, specifically; terminating licensing, management or franchise agreements and servicing of products."

The MMB Board by letter dated August 21, 1987, also submitted a shareholder proposal which was withdrawn in the September 9, 1987 letter. Accordingly, Firestone will omit from its proxy materials relating to the Annual Meeting the shareholder proposal submitted under cover of the August 21, 1987 letter.

Firestone submits this letter pursuant to Rule 14a-8(d) to request your concurrence that the MMB Board's proposal submitted by letter dated September 9, 1987 may be omitted from Firestone's 1988 proxy materials pursuant to the provisions of Rule 14a-8(c)(2).

In May 1987, Firestone sold its entire remaining minority interest in Firestone South Africa (Pty.) Ltd. ("FSA"), a South African corporation, to a wholly-owned subsidiary of Federale Volksbeleggings Beperk ("Federale"). Federale is a large South African corporation in which Firestone owns no shares. Firestone does not otherwise have any interest in or control of Federale or any of its subsidiaries. By agreement, Federale is obligated to change the name of FSA to a name which does not include "Firestone" on or before November 18, 1987.

Firestone has four long-term agreements with FSA covering technical services, trademark licenses, distribution and export sales. The four agreements have at least four or more years to run. The agreements may be terminated only for cause or, upon the giving of notice, at the end of the initial term or any succeeding term, except one agreement which may be terminated with or without cause upon 60 days written notice. Each of the four agreements was made under, and is to be construed in accordance with, Ohio law.

The MMB Board's proposal, if adopted, would require the Firestone Board of Directors to terminate all economic relationships with South Africa, including the four agreements. In general, an agreement cannot be terminated unilaterally by one party absent some specific provision of the agreement or breach by the other party. The MMB Board's proposal, if adopted, would mandate that Firestone breach its four agreements with FSA. The breach of these agreements by Firestone, an Ohio corporation, would violate Ohio law and give rise to one or more causes of action for damages and/or specific performance by the non-breaching party. See, e.g. 17 O Jur 3d, Contracts §1; 18 O Jur 3d, Contracts §262; Akron v. Lynn Realty, Inc., 62 O. L. Abs. 103, 106 N.E. 2d 325 (1951); Advertisers Exchange v. Bleich, 40 O. L. Abs. 212, 57 N.E. 2d 91 (1943); Fuchs v. Stage Co., 135 O. St. 509, 21 N.E. 2d 669, 14 O Op. 399 (1939); and Van Canfort v. Realty Co., 13 O. L. Abs. 499 (1932).

Rule 14a-8(c)(2) permits exclusion of a proposal which would require an issuer to violate state law. As is set forth in the preceding paragraph, the MMB Board proposal by its terms requires the breach by Firestone of existing contracts with FSA. The staff has recognized that a shareholder proposal to require the cancellation of "golden parachute" employment contracts would have violated state law as a breach of contract and, therefore, was excludable pursuant to Rule 14a-8(c)(2). Brunswick Corporation, January 31, 1983. See also Mobil Corporation, February 20, 1985, Occidental Petroleum Corporation, March 18, 1976, and Texaco Inc., December 20, 1985. For these reasons we submit that the MMB Board's proposal should be excluded from

Firestone's 1988 proxy materials to avoid the anomalous result of shareholders being asked to vote to violate Ohio law, i.e. the intentional breach of an Ohio contract.

Enclosed are six copies of the proposal, supporting statement and letter of September 9, 1987 received from the MMB Board, together with six copies of this letter.

If you desire additional information on Firestone's reasons for omitting the above referenced proposal, please telephone Mr. Randall D. Luke (216) 379-7458 or the undersigned (216) 379-6024.

For the reasons set forth, it is the opinion of the undersigned that omission of the MMB Board's proposal from Firestone's 1988 proxy materials is proper. We would appreciate receiving a written expression of your views concerning Firestone's intention to omit the MMB Board's proposal and supporting statement from the 1988 proxy soliciting materials as soon as possible.

Very truly yours,

*Jane P. Nerison*  
Jane P. Nerison  
Senior Counsel

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Enclosures

cc: The Ministers and Missionaries Benefit Board  
of the American Baptist Churches - with attachments  
475 Riverside Drive  
New York, NY 10115  
Attention: Ms. Cheryl H. Wade  
Assistant Treasurer

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THE MINISTERS AND MISSIONARIES BENEFIT BOARD  
of the  
AMERICAN BAPTIST CHURCHES

475 Riverside Drive, New York, New York 10115

RECEIVED

SEP 15

RANDALL D. LUKE

September 9, 1987

Mr. Randall Luke  
Firestone Tire & Rubber Company  
1200 Firestone Parkway  
Akron, Ohio 44317

Dear Mr. Luke:

As we agreed in our telephone conversation of September 9, 1987, I am authorized to withdraw the resolution on South Africa which I submitted to you with an accompanying letter on August 21, 1987.

While I do appreciate your position, American Baptist Churches, U.S.A., has a continuing commitment to change in the apartheid system in South Africa. Therefore, we do consider this to be an extraordinary situation where extraordinary responses are necessary.

Therefore, I am enclosing a copy of a shareholder proposal for consideration and action by the stockholders at the next annual meeting. I hereby submit it for inclusion in the proxy statement in accordance with rule 14a-8 of the general rules and regulations of the Securities and Exchange Act of 1934.

The Ministers and Missionaries Benefit Board of American Baptist Churches is the owner of 18,500 shares of stock. Verification of ownership of these shares for more than one year is already in your hands.

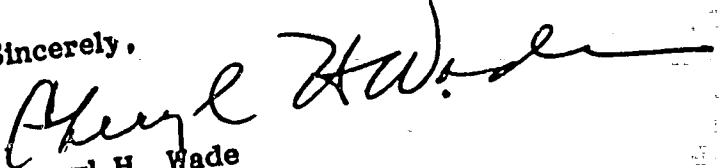
We would appreciate your sending to us, as soon as possible, date, place and time of your 1988 annual shareholders meeting. If the time and place are not yet set, please inform us of the date.

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Mr. Randall Luke  
Page 2  
September 9, 1987

Again, I appreciate the opportunity to talk to you about our concerns. The South African situation is one requiring our continued attention.

Sincerely,

  
Cheryl H. Wade  
Assistant Treasurer

CHW:cj  
Area Code 212/870-3060  
Enclosure

cc: Securities and Exchange Commission

SHAREHOLDER PROPOSAL FOR COMPANIES IN SOUTH AFRICA 000013

- Whereas the South African government has persistently blocked peaceful channels for blacks to request changes in apartheid:
- Africans cannot vote in national elections.
  - The government has refused to negotiate with recognized black leaders.
  - Large public meetings are forbidden and thousands of people have been arrested for participating in such meetings.
  - Individual leaders are "banned" without trial and it is a crime to quote them or meet with them.
- Whereas the Nationalist Government following the elections in May 1987 has intensified the enforcement of key apartheid laws;
- Whereas the African National Congress has been outlawed and its leaders arrested and the government is repeating this pattern with the United Deomocratic Front and other nonparliamentary opposition groups;
- Whereas the South African government has turned increasingly to violence against blacks. Hundreds of school-children have been shot and the government has forcefully removed over 3,000,000 blacks from their homes and relocated them;
- Whereas over 2,000 people had been killed as of July 1986 when the South African government declared a state of emergency, with extreme press censorship and martial law, resulting in arrests of over 30,000 people including 10,000 children;
- Whereas by July 1987 over 100 U.S. corporations, including Firestone Tire & Rubber Company, had already ended direct investment in South Africa, and some, like Eastman Kodak, have severed all economic ties;
- Whereas we believe that severance of all international economic ties to South Africa increasingly isolates the country and brings pressure on the white government to end apartheid;
- Whereas Archbishop Desmond Tutu, Dr. Allan Boesak, the Reverend Beyers Naudé and other South African religious leaders and the South African Council of Churches and the South African Catholic Bishops Conference have called for international economic sanctions to hasten the end of apartheid;
- Whereas Dr. Léon Sullivan, recognizing that the Principles he authored had failed to bring an end to apartheid, now calls for all U.S. companies to end economic relationships with South Africa;
- Whereas because of mounting public opinion companies continuing to have ties to South Africa are becoming the object of selective buying campaigns and consumer boycotts and stand to lose sales and suffer further in their public image unless they sever all relationships with South Africa;
- Whereas that shareholders request the Board to establish the following policy:
- Firestone Tire & Rubber Company will take immediate steps to terminate all economic relationships with South Africa, specifically; terminating licensing, management or franchise agreements and servicing of products.

PAUL M. NEUHAUSER

ATTORNEY AT LAW  
914 HIGHWOOD STREET  
IOWA CITY, IOWA 52240

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HOME PHONE  
319-338-6077

OFFICE PHONE

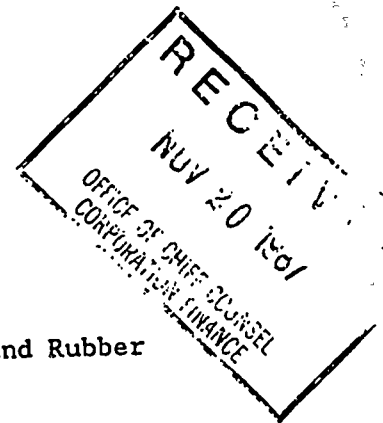
November 17, 1987

319-335-9076

Securities & Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Att: Cecilia D. Blye  
Office of the Chief Counsel  
Division of Corporation Finance

Re: Shareholder Proposal Submitted to The Firestone Tire and Rubber  
Company



Dear Sir/Madam:

I have been asked by The Ministers and Missionaries Benefit Board of the American Baptist Churches (hereinafter referred to as the "Baptist Church"), the beneficial owners of 18,500 shares of common stock of The Firestone Tire and Rubber Company (hereinafter referred to as "Firestone" or the "Company"), which has submitted a shareholder proposal to Firestone, to respond to the letter dated October 13, 1987, sent to the Securities & Exchange Commission by the Company, in which Firestone contends that the Baptist Church's shareholder proposal may be excluded from the Company's 1988 proxy statement by virtue of Rule 14a-8(c)(2).

I have reviewed the shareholder proposal, as well as the aforesaid letter from the Company, and based upon the foregoing, as well as upon a review of Rule 14a-8, it is my opinion the Baptist Church's shareholder proposal must be included in Firestone's 1988 proxy statement and that it is not excludable by virtue of Rule 14a-8(c)(2).

We do not believe that any reasonable shareholder would read the proposal in the manner suggested by the Company. Although the proposal requests Firestone to "terminate" various agreements, it does not require that Firestone terminate such agreements in a manner which would violate state law. Rather, the proposal, if read reasonably, requests Firestone to terminate all such contracts at the earliest feasible time. Thus, in the case of one of the contracts, which the company concedes is terminable at will upon the giving of 60 days notice, the Baptist Church's proposal would request that such notice be given forthwith. In the case of the other contracts, the reasonable reading of the proposal is that Firestone should not renew them when they expire. Such a reading of the proposal, which we


believe to be the natural and reasonable one, would not cause the proposal to violate Rule 14a-8(c)(2).

If the staff were to disagree with us, and agree with the Company's interpretation of the proposal, namely that it calls on the Company to breach its contracts (despite the fact that such a request that is nowhere made in the proposal), we would, of course, be willing to amend the proposal to make even more explicit what was intended, namely that Firestone should terminate all such contracts at the earliest feasible time, by ending at once those which are terminable at will, and by not renewing the others at the earliest date that such non-renewal is permitted under the contract. Such an amendment, which would conform the proposal to its original intent, would, of course, obviate the Company's objection.

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In conclusion, we request that the staff inform the Company that the SEC proxy rules require denial of the Company's no-action request. We would appreciate your telephoning the undersigned at 319-335-9076 with respect to any questions in connection with this matter or if the staff wishes any further information.

Very truly yours,

  
Paul M. Neuhauser  
Attorney at Law

cc: Jane P. Nerison  
Rev. Andy Smith  
Cheryl H. Wade  
Tim Smith



DEC 08 1987

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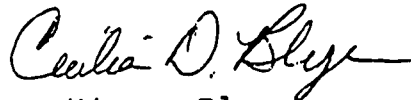
RESPONSE OF THE OFFICE OF CHIEF COUNSEL  
DIVISION OF CORPORATION FINANCE

Re: The Firestone Tire & Rubber Company (the "Company")  
Incoming letter dated October 13, 1987

The proposal relates to the Company immediately terminating all economic relationships with South Africa.

There appears to be some basis for your opinion that the proposal may be omitted from the Company's proxy material under Rule 14a-8(c)(2). Under the circumstances, this Division will not recommend any enforcement action to the Commission if the Company omits the subject proposal from its proxy material.

Sincerely,



Cecilia D. Blye  
Special Counsel